

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7458 of 2022

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M/S HINRON STEEL PRIVATE LIMITED
Versus
UNION OF INDIA

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Appearance:

RAHUL L GAJERA(9399) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 20/04/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Having regard to the facts of the present litigation, we are of the view that we can dispose of this writ application today itself. In such circumstances, we requested Mr. Nikunt Raval, the learned Standing Counsel to accept one set of the entire paper book and appear in the matter on behalf of the respondents.

2. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“(a) This Hon’ble Court may be pleased to issue a writ of certiorari quashing and setting aside the order dated 18.08.2021 of Commissioner (Appeals) of CGST, Rajkot impugned as Annexure “E” to this petition;

“(b) This Hon’ble Court may be pleased to issue a writ of certiorari quashing and setting aside the order dated 06.01.2021 of Joint Commissioner of Central GST, Kutch, Gandhidham impugned as Annexure “B” to this petition or to issue

appropriate writ, direction or order directing the appellate authority to restore the appeal of the Petitioner to its original number;

(c) Pending hearing and final disposal of this Petition, this Hon'ble Court may be pleased to stay the operation and implementation of Order dated 06.01.2021 (Anx.B) and Order dated 18.08.2021 (Anx.E) passed by the Joint Commissioner of Central GST, Kutch and Commissioner (Appeals) CGST, Rajkot respectively impugned as Annexure "B" and Annexure "E" to this Petition and be further pleased to restrain the Respondents, servants and agents from taking any coercive action under the said Orders dated 06.01.2021 (Anx.B) and 18.08.2021 (Anx.E);

(d) ex-parte ad interim relief in terms of para(c) above be granted;

(e) such other and further reliefs as are deemed just and proper be granted."

3. It appears from the materials on record that the writ applicant is engaged in the business of supply of goods like iron and steel. The writ applicant is registered under the CGST Act. The writ applicant was assessed towards his liability under the GST by the Joint Commissioner, Central GST, Gandhidham. The Joint Commissioner upon conclusion of the assessment proceedings passed an order in original dated 06.01.2021 determining the total liability of the writ applicant to the tune of Rs.1,10,89,614/-.

4. The writ applicant being dissatisfied with the order in original passed by the Joint Commissioner, Central GST, Gandhidham, preferred an appeal before the Commissioner (Appeals) under Section 107 of the CGST Act. In appeal, the Appellate Authority asked the writ applicant to make a pre-deposit of 10% of his total liability. 10% of the total liability is to the tune of Rs.11,08,961/-.

5. It is the case of the writ applicant that on account of some communication gap, he was not in a position to make the

pre-deposit and in such circumstances, the appeal came to be dismissed vide order dated 18.08.2021. The operative part of the impugned order passed by the Commissioner (Appeals) reads thus:

"4. On going through the Appeal Memorandum, I find that the Appellant has mentioned 'NA' against details of pre-deposit under column No. 15 of form GST APL-01. Further, the Appellant vide letter dated 10.5.2021 has stated that 'Since there is no demand of tax or denial of ITC confirmed, depositing any amount towards mandatory pre-deposit in terms of Section 107(1)(b) towards filing present appeal does not arise.

4.1 I find that Show Cause Notice was issued to the Appellant for denial of input tax credit availed by them through TRAN-1 and for recovery of the same under Section 74 of the Act. The adjudicating authority held that the Appellant had wrongly transitioned input tax credit through TRAN-1 and confirmed the said amount under Section 74 of the Act. The Appellant has challenged such confirmation of amount under Section 74 of the Act by filing the present appeal. Under the circumstances, the Appellant is required to pre-deposit 10% of confirmed amount i.e. Rs. 11,08,961/- in terms of Section 107(6) of the Act. Since, the Appellant has not made pre-deposit, the appeal filed by them is not sustainable.

5. In view of above, the present appeal cannot be entertained and is required to be dismissed for non-compliance of the provisions of Section 107(6) of the Act and I order accordingly.

6. I uphold the impugned order and dismiss the appeal filed by the Appellant."

6. No sooner the appeal came to be dismissed then the writ applicant started receiving notice towards recovery. In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

7. We have heard the learned counsel appearing for the respective parties.

8. We need not adjudicate this writ application on merits as there is nothing that we can look into on merits.

9. Mr. Gajera, the learned counsel appearing for the writ applicant submit that his client is ready and willing to deposit an amount of Rs.11,08,961/- in accordance with Section 107(6) of the Act within a period of two weeks from today. His request is that his client may be permitted to deposit this amount so that his appeal can be restored and heard on merits.

10. There should not be any difficulty in acceding to the request made by the learned counsel appearing for the writ applicant.

11. We dispose of this writ application with a direction that the writ applicant shall deposit the amount of Rs.11,08,961/- within a period of two weeks with the Office of the Commissioner (Appeals) in accordance with Section 107(6) of the Act. If this amount is deposited within the stipulated time then the appeal shall be restored to its original file and the Commissioner (Appeals) shall proceed to hear the appeal on its own merits.

12. We clarify that we have otherwise not expressed any opinion on the merits of this case.

13. With the aforesaid, this writ application stands disposed of.

14. Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

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