

GIB/TN/NANDI DHALL MILLS/07.04.2021/HC-173

High Court Category : REFUND

State : Tamil Nadu

Order No.: GIB/TN/NANDI DHALL MILLS/07.04.2021/HC-173

Name of Entry :

M/S SHRI NANDHI DHALL MILLS INDIA PRIVATE LIMITED

Date : 07-04-2021

Breif Issue :

FACTS OF THE CASE:

In the above case Shri Nandhi Dhall Mills India Pvt. Ltd. ("**the Petitioner**") is registered as a Small Scale Industry and is engaged in the business of dealing in pulses, dhals, and flour and also manufactures food products, grain mill products and dal.

An investigation was conducted by the officials of the Director General of Goods and Services Tax ("**the Respondents**") in the premises of the Petitioner on October 22, 2019 and various documents and registers were seized. In the course of the investigation, a statement was recorded to the effect that the Petitioner has not discharged its GST liability correctly and it had accepted that there has been a mistake in computation of GST liability and assured the Respondents that the liability would be discharged along with applicable interest.

Further, a scheme of payment was set out and the undertaking was signed by the Managing Director of the Petitioner on October 22, 2019. Further, the Petitioner remitted a sum of INR 1 crore in FORM GST DRC-03 corresponding to Rule 142(2) and Rule 142(3) of the ("**CGST Rules**") read with Section 74(5) of the ("**CGST Act**") on the same day. The second installment of the tax amounting to INR 1 crore was paid on October 30, 2019.

Further, the Managing Director of the Petitioner vide letter dated November 05, 2019 retracted its earlier statement and stated that there is no tax liability and that the Managing Director and employees of the Petitioner were forced to accept the liability to tax and the admission was, by no means, voluntary but under the influence of coercion, threat and in a state of panic without giving an opportunity to read the content of the Mahazar and without providing the workings of the actual determination of tax liability.

This writ petition has been filed to restrain the Respondents from demanding any amount from the Petitioner except by following the due process of law and to refund a sum of INR 2 crores along with statutory interest under the provisions of the CGST Act.

ISSUE OF THE CASE:

Whether the Petitioner is entitled to refund of INR 2 crores paid during investigation along with interest?

Decision of Advance Ruling Authority :**DECISION:**

Section 74(5) is a statutory sanction for advance tax payment, pending final determination in assessment. This is contrary to the scheme of assessment set out under Section 74.

Records were summoned to examine whether there was an ascertainment in this case. The records revealed the tabulation of installments furnished by the assessee at the time of recording of statement and out of which the first two installments have been paid. These, according to Mr.Sundareswaran constitute self-ascertainment and trigger the provisions of Section 74(5) and (7) - Had this been the position, the records must contain material to show that (i) the assessee accepts the ascertainment made by it and (ii) the revenue has applied its mind and arrived at the position that the self-ascertainment by the assessee is inadequate. However, statement recorded at the time of search admitting GST liability and setting the scheme of instalments have been retracted by the petitioner on 05.11.2019 and the petitioner has consistently and vehemently been contested the liability to tax. With this, the requirement of 'ascertainment' under Section 74(5), fails.

The ascertainment contemplated under Section 74(5) is of the nature of self-assessment and amounts to a determination by it which is unconditional, and not one that is retracted as in the present case. Had such ascertainment/self-assessment had been made, there would be no further proceedings contemplated, as Section 74(6) states that with ascertainment of demand in Section 74(5), no proceedings for show cause under Section 74(1) shall be issued. In this case, enquiry and investigation are on-going, personal hearings have been afforded and both the parties are fully geared towards issuing/receiving a show cause notice and taking matters forward.

The amount of ₹ 2.00 crores collected shall be refunded to the petitioner within a period of four (4) weeks - Petition allowed.