

GIB/TS/Deem Distributors (P) Ltd./03.08.2021/HC-248

High Court Category : DEMAND OF TAX WITH PENALTY

State : Telangana

Order No.: GIB/TS/Deem Distributors (P) Ltd./03.08.2021/HC-248

Name of Entry :

Deem Distributors (P) Ltd.

Date : 03-08-2021

Breif Issue :

Facts of the Case:

1. Petitioner is Partnership firm engaged in the business of dealing in goods & services relating to Ferrous waste and scrap, re-melting scrap ingots of iron or steel, flat rolled products of iron or non-alloy steel of a width of 600 mm or hot rolled, not clad, plated or coated etc.
2. Department has issued a notice to the petitioner saying that petitioner is liable to pay Rs. 1,17,35,822/- for the period of February to march 2018 and being advised to pay it, as department said that petitioner claimed input tax credit on the basis of invoices issued by certain supplier/firms which are fictitious and are issuing fake invoices.

Issues

Whether tax demand could be issued or raised when investigation was still in progress? Whether without there being a determination of liability of applicant in any enquiry conducted under the act, a demand for immediate reversal of input tax credit allegedly availed by applicant could be raised ?

Views of the Court

1. Sub-Section (1) of Section 74 of the Act may be issued by the proper officer if he is of the opinion that the input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts, to the person who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

Sub-Section (5) of Section 74 of the Act, however, enables the person chargeable with tax to, before service of notice under sub-Section (1) of Section 74, pay the tax along with interest payable under section 50 and a penalty of 15% of such tax on the basis of his own ascertainment of such tax or the tax ascertained by the proper officer and inform the proper officer in writing of such payment.

Sub-Section (9) of Section 74 of the Act enables the proper officer to determine the amount of tax, interest and penalty due from such person and issue an order, if the contents of the notice are disputed.

2. Sub-Section (5) of Section 74 of the Act gives a choice to the tax payer to make any payment, if he is so chooses, but it does not confer any power on the respondents to make a demand as if there has been a determination of liability of the Assessee and demand tax along with interest and penalty.
3. no tax demand can be issued or raised when investigation is still in progress. The respondents cannot be allowed to put the cart before the horse and collect any tax, interest or penalty before they determine, in an enquiry, after putting the petitioner/assessee of notice, and we are of the opinion that their action is wholly arbitrary and without jurisdiction.

Decision of Advance Ruling Authority :**Decision**

“Accordingly, the Writ Petition is allowed; the respondents are restrained from coercing the petitioner to make any payment without issuing notice under section 74(1) of the Act and following the procedure therein; and they are directed to refund Rs. 35,00,000/-already paid by petitioner with interest @ 7% p.a from the date of payment till date of refund within four (04) weeks from the date of receipt of a copy of this order.”