

GST : Where Competent Authority visited business premises of assessee and recovered certain amount from it on premise that certain input tax credit was not allowable and there was some difference in stock, said authority was directed to frame assessment of assessee at earliest and thereafter it shall be open to assessee to proceed further in accordance with law

■ ■ ■

[2019] 111 taxmann.com 488 (Gujarat)

HIGH COURT OF GUJARAT

Navkar Ispat (P.) Ltd.

v.

State of Gujarat*

J.B. PARDIWALA AND A.C. RAO, JJ.
R/SPECIAL CIVIL APPLICATION NO. 11249 OF 2019
AUGUST 21, 2019

Section 71 of the Central Goods and Services Tax Act, 2017/Section 71 of the Gujarat Goods and Services Tax Act 2017 - Search, seizure, etc. - Business premises, access to - Competent Authority visited business premises of assessee and recovered certain amount from it on premise that certain input tax credit was not allowable and there was some difference in stock - Whether Competent Authority was to be directed to frame assessment of assessee at earliest and thereafter it shall be open to assessee to proceed further in accordance with law - Held, yes [Para 6] [In favour of assessee]

(NR)

FACTS

- The Competent Authority visited the business premises of the assessee and recovered a sum of Rs. 10.14 lakhs from it on the premise that certain input tax credit was not allowable and there was some difference in stock.
- The assessee filed a writ petition challenging the action of the Competent Authority and sought directions to the Competent Authority to frame the assessment or the provisional assessment at the earliest.
- The revenue submitted that there should not any difficulty in directing the concerned authority to frame the assessment at the earliest.

HELD

- Having regard to the facts and circumstances of the case, the Competent Authority should at the earliest frame the assessment in accordance with law.
- Let this exercise be completed within a period of three months from the date of receipt of the order. Once the assessment is framed, it shall be open for the assessee to thereafter proceed further in accordance with law. [Para 6]

Ms. Vaibhavi K. Parikh *for the Petitioner.* **Ms. Maithili Mehta**, AGP Govt. pleader *for the Respondent.*

ORAL ORDER

Justice J.B.Pardiwala, J. - Rule returnable forthwith. Ms. Maithili Mehta, the learned AGP waives service of notice of rule for and on behalf of the respondents.

2. By this writ-application, the writ-applicant has prayed for the following reliefs:—

7. (a) direct the Department to return the sum of Rs. 10,14,036/collected during the course of spot visit carried out by the Department on 04.04.19;

(b) alternatively, direct the Department to frame the assessment or provisional assessment pursuant to the spot visit carried out on 04.04.19 after affording reasonable opportunity to the petitioner to furnish submissions along with relevant documentary evidences;

(c) pending the admission, hearing and final disposal of this petition, direct the Respondents to return the sum of Rs. 10,14,036/collected during the course of spot visit carried out on 04.04.19;

(d) any other and further relief deemed just and proper be granted in the interest of justice;

(e) to provide for the cost of this petition.

3. It appears from the materials on record that the writ-applicant seeks to challenge the action of the respondent no.2 in collecting the amount of Rs. 10,14,035/under the coercion as alleged. During the course of spot visit carried out by the Department on 04/04/2019 under the provisions of the Central Goods and Service Tax Act, 2017 [for short The CGST Act, 2017], the amount referred to above was recovered on the premise that certain Input Tax Credit was not allowable and that there was some difference in the stock. It is the case of the writ-applicant that the amount, which came to be recovered from him, is without any authority of law or without following any due procedure in that regard.

4. Mr. Tushar Himani, the learned senior counsel appearing for the Writ-applicant very fairly submitted that he is seeking a very limited relief at this point of time. Mr. Himani made a fervent appeal to this Court to direct the department to frame the assessment or the provisional assessment at the earliest.

5. Ms. Maithili Mehta, the learned AGP appearing for the respondents also fairly submitted that there should not any difficulty in directing the concerned department to frame the assessment at the earliest.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, more particularly, the grounds of challenge which have been raised in the memo of writ-application, we are of the view that the respondents should at the earliest frame the assessment in accordance with law.

Let this exercise be completed within a period of three months from the date of receipt of this order. Once the assessment is framed, it shall be open for the writ-applicant to thereafter proceed further in accordance with law.

7. With the above, this writ-application is disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.

One copy of this order shall be furnished to Ms. Maithili Mehta, the learned AGP for its onward communication.

s.k. jain

*In favour of assessee.