

### **Department Instructed to refund for the payment made during the search proceedings**

The Hon'ble Punjab and Haryana High Court in *M/s Parsvnath Traders v. Principal Commissioner, CGST and Another [CWP No.10923 of 2021 dated July 27, 2023]* held that the deposited amount which was collected from assessee during the search proceedings is to be refunded along with interest @ 6% per annum from the date of deposit till the refund amount is released in his favour.

#### **Facts:**

M/s. Parsvnath Traders ("**the Petitioner**") is engaged in the business of trading different types of chemicals. The Petitioner, in the normal course of business purchases from M/s Royal Sales Corporation, Rohtak ("**the Supplier**") during the Financial Years ("**the FYs**") 2018-19 and 2019-20.

The Petitioner paid GST on the purchases and availed Input Tax Credit ("**ITC**") for INR 60.89 lacs and INR 1.25 crore for both the FYs.

Revenue Department ("**the Respondent**") searched the premises of the supplier on February 03, 2021 and it was found that the premises of the firm were locked and no business activities were going on, after that the son of the Supplier deposited a sum of INR 16 lacs vide Form GST DRC-03 as a token of acceptance regarding fake purchases.

The Respondent investigated the premises of the Petitioner on February 05, 2021 and alleged that the Petitioner had bogus invoices from the supplier without receiving the goods and had illegally availed ITC.

The Petitioner was forced to deposit a sum of INR 20 lacs vide Form DRC-03 and later an additional amount of INR 30,70,216 vide Form DRC-03 was also forced to deposit on the same day.

The Petitioner contended that oral as well as written requests were made to the Respondent to supply copy of Panchnama and statements recorded, but the same were not supplied. The Respondent did not issue any Show Cause Notice (“**the SCN**”), and no order determining the tax liability had been passed. Further, the Petitioner requested to refund the amount of INR 50,70,216 (Rs.20.00,000 + Rs.30,70,216), which were forcefully deposited, but the prayer made by the Petitioner was rejected by order dated May 18, 2021 (“**the Order**”) which was communicated through e-mail.

The Petitioner challenged the action of the Respondent on the ground that the amount of INR 50,70,216 was taken without the issuance of any SCN or passing any adjudication order and without following the procedure prescribed by law.

Aggrieved by the Order, the Petitioner filed a writ before the Hon’ble Punjab and Haryana High Court to set aside the order for refund of INR 50.70 lacs.

The Respondent filed a joint reply by way of an affidavit stating evasion of tax and wrong availment of ITC on the basis of fake transactions. Further, it was submitted that the Petitioner’s payments were voluntary and amounted to an admission by the Petitioner that it had received fake invoices from the supplier and availed ITC on the strength of such invoices.

The Respondent submitted that since the payment of the amount of INR 50.70 lacs had been made at two different points of time by the Petitioner and was voluntarily made vide FORM DRC-03, therefore, there was neither any requirement of issuing a under Section 74(1) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) nor the Petitioner was entitled to any refund of the amounts so paid.

**Issue:**

Whether the deposited amount which the Petitioner made during the course of the investigation, is to be considered as voluntary deposit of amount?

**Held:**

The Hon'ble Punjab and Haryana High Court ***CWP No.10923 of 2021*** in held as under:

- Relied upon the judgement of ***Century Knitters (India) Ltd. And Others v. Union of India and others [CWP No.10750 of 2012]*** wherein Punjab and Haryana High Court held that unless and until demand was finalised and existing, no crystalised liability was existing against the Petitioner and the revenue could not retain any amount in the absence of specific statutory provisions and the refund of the amount so recovered was ordered.
- Opined that, the self-ascertainment which is contemplated under Section 74(5) of the CGST Act is in the nature of 'self-assessment' and amounts to a determination by it which is unconditional.
- Further held, no crystalised liability was shown to exist against the Petitioner and no SCN had been issued to it either at that time or even till now.
- Directed that, that the Respondent to refund the amount along with interest of 6 % per annum from the date of deposit till its realisation.

*(Author can be reached at [info@a2ztaxcorp.com](mailto:info@a2ztaxcorp.com))*

***DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.***