



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 389 of 2023

M/S Safecon Lifescience Private Limited

.....Petitioner(s)

Versus

Additional Commissioner Grade 2 And Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Suyash Agarwal, Sr. Advocate
Counsel for Respondent(s)	:	C.S.C.

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri R.R.Agarwal, learned senior counsel assisted by Sri Suyash Agarwal, learned counsel for the petitioner and learned ACSC.

2. Present writ petition has been filed seeking quashing the order dated 20.12.2022 passed by the Additional Commissioner, Grade-2 (Appeal)- II State Tax, Agra, respondent no.1 as well as the order dated 12.1.2022 passed by the Deputy Commissioner, Commercial Tax, Agra, respondent no.2.

3. Learned counsel for the petitioner submits that the petitioner is engaged in trading and manufacturing business, mainly of all kinds of medicines/ pharma products on wholesale basis. He further submits that the petitioner purchased medicines/ pharma products from M/s Unimax Pharma Chem, Purana Taluka Bhiwandi, Thane and at the time of supply it was in existence and duly registered with the GST department as well as Drug License Holder. He further submits that the transaction of purchases made by the petitioner from the Maharashtra Party for the tax period April, 2021 which was against the Tax Invoice dated 30.4.2021 and E-way bill and transport bilty of M/s Vinay Road Lines Pvt. Ltd. He further submits that the whole payments of purchases were made through banking channel and the supplier also submitted his GSTR-1 and GSTR-3B within the time on GST Portal after making due tax on the turnover made by the supplier.

4. Learned senior counsel for the petitioner further submits that the

respondent no.2 issued show cause notice under section 74 of the UPGST Act on the ground that the petitioner has claimed ITC through GSTR-3B for the tax period April, 2021 on the purchase made from M/s Unimax Pharma Chem which has itself got its registration cancelled as such the petitioner has incorrectly claim ITC. He further submits that the petitioner submitted a detailed reply to the show cause notice which has been rejected by the respondent no. 2 on the ground that the recipient purchaser can claim the ITC only when the supplier has deposited the collected tax with the department as per Section 16(2)(c) of the Act. He further submitted that the respondent no. 2 has recorded incorrect finding that the petitioner has not made actual purchases and there was a difference in the bill reflected in GSTR-2A and the bill disclosed by the petitioner.

5. Learned senior counsel further submits that feeling aggrieved by the order passed by the respondent no.2 the petitioner preferred an appeal which has also been dismissed on 20.11.2022 by the respondent no.2 on the ground that the supplier M/s Unimax Pharma Chem in the month of March, 2021 made purchases from different firms who did not deposit the tax, therefore, it claimed forged ITC He further submits that the appellate authority has erred in holding that the purchases made by the supplier from the different firms who did not deposit tax on sales made by them to the M/s Unimax Pharma Chem as such the petitioner cannot claim ITC on the supply made by M/s Unimax Pharma Chem. He further submits that the petitioner has made the payment of Tax as per tax invoices to the supplier and the supplier has deposited the tax as reflected in GSTR-3B, therefore, no adverse inference can be drawn by making RITC to the ITC claimed by the petitioner.

6. Learned senior counsel further submits that specific arguments were raised before the authority which was noticed but no finding has been recorded. He further submits that all materials were produced before the authority and are available before the first appellate authority and the appellate authority as well, have been filed before this Court. He further submits that the movement of goods were duly supported by the purchase invoice, selling dealer tax invoice, e-way bill, purchase order, transport bilty and the payments were made through banking channel. He further

submits that not only this the GSTR return was filed and supplies were done which is also reflected in GSTR-1A as well as in GSTR-2A. Further the same has also been reflected in GSTR-3B on the portal of the petitioner. He further submits that until and unless the tax is paid, GSTR-3B will not reflect.

7. He further submits that a circular has been issued on 13.12.2023 which specifically provides that under section 74 of the CGST Act proceedings can only be initiated if there is a case of fraud or willful mis-statement or suppression of fact to evade payment of tax and in absence thereof proceedings under section 74 of the Act cannot be initiated. In support of his arguments he has relied upon a judgment of this Court in Writ Tax No. 743 of 2023 **M/s Khurja Scrap Trading Company vs. Additional Commissioner Grade 2 (Appeal) and another** (2025: AHC 151783).

8. Per contra, learned ACSC supports the impugned order. He further submits that supplying dealer of the petitioner M/s Unimax Pharma Chem has shown purchases from the firm whose registration has been cancelled much before, therefore, once supplying dealer purchase is doubted and it could not be proved on record, the benefit of ITC cannot be accorded to the petitioner. Hence the proceeding has rightly been initiated against the petitioner.

9. After hearing the learned counsel for the parties the Court has perused the record.

10. Record shows that notice under section 74 of the Act was issued to the petitioner on the basis of some information being received from the office of Pr. Chief Commissioner, Central Intelligence Unit, Central Excise & Central Tax Vadodara Zone that M/s Unimax Pharma Chem from whom purchases have been made by the petitioner has wrongly been shown and on the said premise proceedings were initiated.

11. The record further shows the petitioner submitted its specific reply on all points bringing on record the material of actual movement of goods, payment of tax through banking channel as well as filing of return which was reflected in GSTR-3B of both - petitioner and supplier but no weightage was given on order under section 74 of the Act was passed on

13.10.2021. Specifically taking all grounds in appeal which were noticed in the impugned order but neither any weightage was given nor any material was brought to rebut the same while rejected the appeal. The petitioner has specifically brought on record all materials with regard to movement of goods, payment through banking channel. Further returns filed by the petitioner and the supplier were brought on record and GSTR-3B was also reflected on the portal showing payment of tax. This vital materials have neither been disbelieved/ reversed nor any cogent material rebutting the same have been brought on record.

12. Once actual movement of goods as well as payment of tax by the respondent authorities have been proved by the petitioner to which no rebuttal has been brought on record at any stage, proceedings under section 74 of the Act cannot be justified.

13. The order of the first appellate authority has been passed only on the basis of the information sent by office of the Pr. Chief Commissioner, Central Intelligence Unit, Central Excise & Central Tax Vadodara Zone with closed eyes. The information sent by the Central Intelligence Unit must be verified by the authority before using the same against the registered dealer.

14. The record shows that the allegations were made against M/s Unimax Pharma Chem from whom purchases were made, that its registration was cancelled earlier. However, no finding has been recorded that M/s Unimax Pharma Chem, who sold the goods in question to the petitioner was involved in any irregularity. The total quantity purchased by M/s Unimax Pharma Chem was sold to the petitioner and no finding has been recorded that the alleged parties which supplied goods to M/s Unimax was the only sale made to it. The record does not confirm that M/s Unimax Pharma Chem made sale only to the petitioner. It is the duty of the officers to verify facts with all angles before being used against the registered dealer. Record further shows that the report used against the petitioner has neither been provided to the petitioner nor material used against the petitioner was ever provided which ought to be provided to the petitioner.

15. GST regime has been brought by the Central Government for ease of business in the country but the revenue officers are bent upon to act against the very theme/ intend of it. When it was noticed by the Government that under the garb of Section 74 of the Act various dealers are being harassed, issued a circular dated 13.12.2023 where it has specifically been stated that proceedings under section 74 of the Act can be initiated if there is a fraud or willful mis-statement or suppression of fact to evade payment of tax and not otherwise.

16. This Court had an occasion to consider such facts which is identical to the facts of the present case in **M/s Khurja Scrap Trading Company** (supra). Relevant paragraph nos. 11,12 and 13 of the said judgment is quoted below:

"11. Further, paragraph nos. 3.2 & 3.3 of the circular dated 13.12.2023 read as under:-

"3.2 In this regard, section 74 (1) of CGST Act reads as follows:

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.

3.3. From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice. "

12. On perusal of the aforesaid paragraphs, it is apparent that proceedings under section 74 can only be invoked when there is a fraud, wilfull mis-statement or suppression of fact to evade tax on the part of the taxpayer. Since the benefit of this circular has been given in view of the judgement of the Apex Court in Suraj Impex (India) Private Limited (supra) and the judgement of this Court in S/s Agrawal

Rolling Mills (supra), strict compliance of the circular is required by the State authorities. The record shows that no finding has been recorded at any stage that there is a fraud or willful mis-statement or suppression of fact to evade payment of tax.

13. The record further shows that at the time when the transaction took place, the selling dealer, i.e., M/s Unique Trading Company, was duly registered. The record further shows that the selling dealer has duly uploaded GSTR – 1/1FF and GSTR 3-B. Once, at the time of when transaction took place, the selling dealer was registered, no adverse view should have been taken against the petitioner as held by this Court in Solvi Enterprises (supra) and R.T. Infotech (supra). "

17. Record shows that neither any finding with regard to fraud has been noticed nor mis-statement nor suppression of fact has been recorded at any stage.

18. Section 11-A of the of the Central Excise Act, 1944 is having analogous provision to Section 74 of the UPGST Act. The Apex Court in the case of **Continental Foundation Joint Venture Holding, Nathpa, H.P. vs. Commissioner of Central Excise, Chandigarh-I** [(2007) 10 SCC 337] had an occasion to consider the expression 'suppression', 'wilful misstatement' and has held as under:

11. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence mens rea.

12. The expression 'suppression' has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was

not correct.

13. Factual position goes to show the Revenue relied on the circular dated 23.5.1997 and dated 19.12.1997. The circular dated 6.1.1998 is the one on which appellant places reliance. Undisputedly, CEGAT in Continental Foundation Joint Venture case (supra) was held to be not correct in a subsequent larger Bench judgment. It is, therefore, clear that there was scope for entertaining doubt about the view to be taken. The Tribunal apparently has not considered these aspects correctly. Contrary to the factual position, the CEGAT has held that no plea was taken about there being no intention to evade payment of duty as the same was to be reimbursed by the buyer. In fact such a plea was clearly taken. The factual scenario clearly goes to show that there was scope for entertaining doubt, and taking a particular stand which rules out application of Section 11A of the Act.

14. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful.

19. The Apex Court has clearly stated that incorrect statement, unless made with the knowledge that it was not correct, would will not be a ground of wilful misstatement or suppression and no inference can be drawn if full information has been disclosed without intent to evade payment of tax.

20. In the case in hand the authorities have neither recorded any findings of fraud nor wilful misstatement nor suppression of fact to evade payment of tax, therefore, the proceedings under section 74 of the Act out not to have been initiated against the petitioner.

In view of the above discussions as well as judgment of the Apex Court and this Court, the impugned order dated 20.12.2022 passed by the

Additional Commissioner, Grade-2 (Appeal)- II State Tax, Agra, respondent no.1 as well as the order dated 12.1.2022 passed by the Deputy Commissioner, Commercial Tax, Agra, respondent no.2 cannot be sustained and are hereby quashed.

14. The writ petition succeeds and is allowed.

(Piyush Agrawal,J.)

September 9, 2025
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