HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 2859/2024

M/s Ashoka Fabricast Pvt. Ltd., Having Its Registered Office At Khetan Admin Block R. No. 1 & 2, A-220-221, Industrial Area (Ext.) Phase II, Bagru, Jaipur Through Its Director Shri Its Director Arvind Khetan S/o Shri Bajrang Khetan, Aged About 43 Years, R/o 1B1, Gandhi Path, P & T Colony, Shastri Nagar, Jaipur.

----Petitioner

Versus

1. Union of India represented through Union Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
2. Central Board of Indirect Taxes & Customs, Departmentof Revenue, Ministry of Finance, North Block, New Delhi- 110001 through its Chairman.
3. Commissioner, Central Goods And Service Tax, NCR Building, Statute Circle, Jaipur.
4. Assistant Commissioner, Central Goods And Service Tax Division- F, Sector- 10, Vidhyadhar Nagar, Jaipur.
5. State of Rajasthan, through its Finance Secretary, Finance Department, 1st Floor, Main Building, Government Secretariat, Janpath, Jaipur 302005.
6. Commissioner, Commercial Taxes Department (Rajasthan Goods And Service Tax Department), Kar Bhawan, Ambedkar Circle, Bhawanisingh Road, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Akshay Sharma & Mr. Dheeraj Palia
Respondent Nos.1 to 4	:	Mr. Ajay Shukla (Sr. Standing Counsel for CGST) along with Mr. Raghav Sharma and Mr. Pushpendra Badgoti
For Respondent Nos.5 & 6	:	Mr. Bharat Vyas, AAG assisted by Ms. Pratyushi Mehta

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HON'BLE MR. JUSTICE PANKAJ BHANDARI

HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

01/05/2024

1. Petitioner has filed this Civil Writ Petition *inter alia* claiming following reliefs:-

> "i. To call for the record from the office of the respondents for its kind perusal;
> ii. Issue a writ of certiorari or any other writ or writs for quashing the impugned notice dated 06.03.2023 (Annexure-5) issued by the Assistant Commissioner, Central Goods and Service Tax Audit Circle, Jaipur 'A', Jaipur and declare and same to the contrary to Section 65 read with Section 2(94) of the CGST/RGST Act, 2017 and without jurisdiction;
> iii. Declare that all the consequential proceedings initiated in pursuance of the impugned notice dated 06.03.2023 (Annexure-5) as erroneous, perverse, illegal and without jurisdiction;
> iv. Issue a writ of certiorari or any other writ or writs for quashing impugned order dated 30.11.2023 (Annexure-8) passed in pursuance of the consequential SCN dated 01.06.2023 issued for objection/audit para created in GST audit commenced after issuance of notice for conducting audit (Annexure-5) and declare the same as erroneous, perverse, without jurisdiction and contrary to Section 65(1) read with Section 2(94) of the CGST/RGST Act, 2017 and set-aside demand of tax, interest and penalty created therein;
> v. Pass any order that this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case, so as to ensure the ends of justice;
> vi. To award such further and other reliefs as the nature and circumstances of the case may require."

2. It is contended by counsel appearing for the petitioner that petitioner was served with a notice for conducting audit on

06.03.2023. Petitioner who was a registered person with the GST authorities, had applied for cancellation of his registration, which was cancelled on 16.01.2020. It is argued that Section 65 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act'), applies only to registered persons.

3. It is next contended by counsel appearing for the petitioner that since the foundation of the proceedings was contrary to the mandate of the CGST Act, any assessment order passed in pursuance thereof, deserves to be quashed. It is also contended that a Show Cause Notice was issued to the petitioner on 01.06.2023. Petitioner submitted a detailed reply to the Show Cause Notice, but the impugned order dated 30.11.2023, does not take note of the objections raised by the petitioner and it is a non-speaking order. It is further contended that since proceedings itself are contrary to law, the High Court can quash the proceedings in writ jurisdiction.

4. Counsel for the petitioner has placed reliance on "**Tvl. Raja Stores vs. The Assistant Commissioner (ST) MANU/TN/6752/2023**" wherein, learned Single Judge of the Madras High Court has held that audit can be conducted only against a registered person.

5. Counsel appearing for the respondents-Union of India as well as learned Additional Advocate General appearing for the State have vehemently opposed the present writ petition. It is contended that Section 29(3) of the CGST Act specifically provides that cancellation of registration shall not affect the liability of a person to pay tax and other dues under this Act or to

discharge any obligation under this Court or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

6. A harmonious interpretation has to be drawn while reading Section 65 of the CGST Act, which provides that the audit can be undertaken for any registered person for such period, at such frequency and in such manner as may be prescribed.

7. It is argued that assessment order has been passed for the financial years 2017-2018, 2018-2019 and 2019-2020 and at that relevant time, petitioner was a registered person. It is also contended that after conducting audit, a show cause notice under Section 73 of the CGST Act was given to the petitioner. His reply was taken into consideration and principles of natural justice were followed and thereafter, assessment order dated 30.11.2023 was passed. It is also contended that petitioner has not filed any writ petition after issuance of the notice to initiate audit on 06.03.2023 and has approached the Court after passing of the assessment order. It is also contended that appeal lies against the assessment order. Petitioner has fraudulently availed the ITC and thereafter, had applied for cancellation of his registration. A person who has committed fraud on the exchequer cannot avail the benefit under the writ jurisdiction. It is contended that under Section 35 of the CGST Act, a registered person is required to maintain his accounts and records, and an audit is merely to ascertain whether some amount is outstanding towards the registered person. With regard to judgment cited by counsel for

the petitioner, it is contended that it is not having any persuasive value. The High Court in that case had directed the Authorities to proceed under Section 73 and 74 of the CGST Act, whereas in the present matter, proceedings under Section 73 and 74 of the CGST Act has already taken place and assessment order has been passed.

8. We have considered the contentions.

9. The main thrust of the argument of counsel for the petitioner is that Authorities can undertake audit of a registered person only. In this regard, it is argued by counsel for the petitioner that registration was cancelled on 16.01.2020. At the time of cancellation, the Authority should have calculated any outstanding amount and if there was any outstanding amount, the same should have been cleared before issuing the cancellation order.

10. We have perused Section 65(1) of the CGST Act which reads as under:-

> "(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed."

11. Section 29(3) of the CGST Act pertains to cancellation of registration. Section 29(3) of the CGST Act clearly mandates that the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation. Thus Sub-Section (3) of Section 29

of the CGST Act makes it adequately clear that even after cancellation, if any tax liability subsists, the registered person is required to pay the tax. Section 65(1) of the CGST Act also authorizes the Authority to undertake audit of any registered person for such period.

12. Admittedly, the petitioner was a registered person for the period for which the assessment order has been passed and notice dated 06.03.2020 to initiate audit has been issued. It is also pertinent to note that after audit, show cause notice was issued under Section 73 of the CGST Act and a detailed reply was filed by the petitioner and only thereafter, an assessment order has been passed against the petitioner.

13. Considering the above, we do not find any error in the proceedings initiated by respondents as registered person under Section 65 of the CGST Act would include those who were registered for the period for which audit was undertaken. The petitioner, who has fraudulently availed the ITC and has thereafter, applied for cancellation of registration, is not entitled for any relief from the Court.

14. Counsel appearing for the petitioner has done his best, but we are not inclined to entertain the present writ petition and the same is accordingly, dismissed with a cost of Rs.25,000/-. Stay application stands disposed.

15. Petitioner is directed to deposit the cost of Rs.25,000/- with the Rajasthan High Court State Legal Services Authority, Jaipur Bench within four weeks.

16. Copy of this order be sent to Secretary, Rajasthan State Legal Services Authority, Jaipur Bench for information. In case cost is not deposited, Secretary RSLSA to intimate the Office. After receiving the information from the Office of Secretary, RSLSA, Office is directed to list the matter before this Court.

17. Petitioner would be free to avail the remedy to file an appeal as provided under the Act.

18. Any order passed by this Court would not affect the merits of the case before the Appellate Authority.

(SHUBHA MEHTA),J (PANKAJ BHANDARI),J