

Shivam Iron Store Through Proprietor ... vs Union Of India & Anr. on 8 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision 8

+ W.P.(C) 4528/2025, CM APPL. 20936/2025 & CM APPL. 20937/2025

SHIVAM IRON STORE THROUGH PROPRIETOR JAGDISH RAI BANSAL

.....Petitio

Through: Mr. Prabhat Kumar and Mr. Utkars Kumar, Advs.

versus

UNION OF INDIA & ANR.

.....Respon

Through: Mr. Akash Vajpai, Adv. for UOI.
Mr. R. Ramachandran, Sr. SC with
Prateek Dhir, Adv. (M:9868211477)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- M/s Shivam Iron Store through Proprietor Shri Jagdish Rai Bansal under Article 226 of the Constitution of India inter alia assailing the impugned Order-in-Original bearing no. 288/CGST/ADC(SKJ)/2024-2025 dated 3rd February, 2025 passed by Respondent No. 2- Additional Commissioner, CGST Delhi- West, pursuant to the show cause notice dated 24th July, 2024.

3. The allegation against the Petitioner is in respect of availment of fraudulent Input Tax Credit (hereinafter, 'ITC') and passing of ITC through various other entities/ firms.

4. An investigation was conducted by the officers of Respondent No. 2.

During the search conducted on 30th November 2022 by the officers of Respondent No. 2 at the premises of the Petitioner, documents and records were inspected and cash amounting to Rs. 72,00,000/- was also seized from the Petitioner.

5. The Petitioner was also arrested following the search and seizure but was granted bail by the concerned Magistrate. The Petitioner had challenged the said seizure of the sum of Rs. 72,00,000/-

by way of filing of a writ petition i.e. W.P.(C) 16677/2023 titled 'Jagdish Bansal, Proprietor, M/S Shivam Iron Store v. Union of India & Anr.' . In the said matter, the Coordinate Bench of this Court had disposed of on 26th February, 2024 and observed as under:

"4. A search and seizure operation was carried out at the premises of the petitioner (i.e. the residential premises as well as shop of the petitioner) on 30.11.2022 and cash in a sum of Rs. 65,00,000/- and Rs. 7,00,000/- was seized from the residential premises and office of the petitioner respectively.

5. Reference may be had to the judgment of this Court in K.M. Food Infrastructure Pvt. Ltd. vs. Director General (DGGI) 2024: DHC:1081-DB wherein in similar circumstances this Court while interpreting provision of Section 67 of the Central Goods and Services Tax Act 2017 (herein referred to as) has held that 'cash' is clearly excluded from the definition of the term 'goods' and would fall with the definition of 'money' as defined in Section 2 (75) of the Act. This Court has further held that since cash is not goods, it could not have been seized under the provision of the Act, as seizure is limited to the goods liable for confiscation.

6. The ratio of the said judgments squarely applied to the facts of the present case. Accordingly, we hold that there is no justification for resumption of cash and its continued retention by the respondents. Accordingly, the petition is allowed and respondents are directed to forfeit/remit the said cash seized from the premises of the petitioner to the petitioner along with interest. It is however clarified that respondents are not precluded from taking any action or instituting any other proceedings under the Act in accordingly with law."

6. The show cause notice was, thereafter, issued and hearing notices were also issued. The Petitioner was fully aware of the show cause notice proceedings and had filed a reply dated 17th December, 2024. In the meantime, hearings were also fixed in the show cause notice.

7. The grievance of the Petitioner was that the Relied Upon Documents (hereinafter, 'RUDs') were not supplied to the Petitioner and, therefore, he had sent various emails dated 20th November, 2024, 3rd December, 2024, 5th December, 2024, 6th December, 2024 and 8th December, 2024 requesting the same. The Petitioner had also requested for the virtual link to join the proceedings before the adjudicating authority.

8. The case of the Petitioner is that the impugned Order-in-Original has been passed without hearing the Petitioner and the demand of penalty to the tune of Rs. 25,75,04,496/- has been imposed on the Petitioner.

9. Ld. Counsel for the Petitioner submits that the Petitioner had in fact appeared before the concerned adjudicating authority.

10. Mr. R. Ramachandran, ld. Sr. Counsel for the Respondents , on the other hand, submits that the RUDs have already been given to the Petitioner as is clear from the letter dated 19th July, 2024. The list of RUDs are also mentioned at page 373 which are a bundle of documents running into 66 documents.

11. It is also submitted by ld. Sr. Counsel for the Respondents that the impugned Order-in-Original clearly records that the Petitioner did not appear in the proceedings at all.

12. It is further submitted by Mr. R. Ramachandran, ld. Sr. Counsel that only noticees 1, 8, 10, 11, 12, 14, 19, 23 & 24 had appeared before the adjudicating authority. Ld. Sr. Counsel also submits that the Petitioner is running four separate firms and this fact has also been mentioned in the impugned Order-in-Original and the show cause notice.

13. The Court has considered the matter. The impugned Order-in-Original dated 3rd February, 2025 is an appealable order under Section 107 of the Central Goods and Service Tax Act, 2017 to the appellate authority.

14. It has been noticed by the Court that in almost every order of the adjudicating authority instead of availing of the appellate remedy, Petitioners choose to come by way of a writ petition under Article 226 of the Constitution of India by raising issues of jurisdiction or issues of non-compliance of natural justice.

15. While there can be no doubt that the Court is fully empowered to entertain such writ petitions, the same cannot become the everyday practice. Moreover, it would depend on the facts of each case.

16. In the present case, the Court has perused the emails which have been shown by the ld. Counsel with enormous vehemence. These emails would in fact show that there are no details provided of the RUDs that are missing. The Petitioner is merely making requests for supply of the RUDs.

17. In the said emails, a blanket statement has been made by the Petitioner that RUDs have not been given. In fact, the record would show that the RUDs have been furnished to the Petitioner by way of a CD which is also evident from page no. 368 of the paperbook. The relevant of the said page reads as under:

"57. Copies of all the relied-upon-documents, as per the enclosed RUD List, are attached to this show Cause Notice.

Enclosed: - PDF of RUDs are attached in CD as detailed in list of RUDs."

18. In this communication issued by the GST Department, the enclosure is clearly mentioned as 'PDF of RUDs are attached in CD as detailed in the list of RUDs'. The list of RUDs supplied to the Petitioner, is also available on record and is extracted below for the sake of ready reference:

Signing Date:09.04.2025 19:53:00

19. Against this particular document which is on record, the emails of the Petitioner are absolutely ambiguous and cryptic as to which RUDs are not available with the Petitioner. The emails also merely ask for a virtual link for joining the proceedings before the adjudicating authority which was duly provided by the GST Department on 5th December, 2024.

20. After this email correspondence, the Petitioner chooses to file a reply on 17th December, 2024 terming it as a 'Preliminary Reply' to the show cause notice.

21. Clearly, the intention of the Petitioner was not to participate in the show cause proceedings with diligence. The grounds etc., which have been stated in the reply have been considered in the impugned Order-in-Original which captures the reply of the Petitioner at paragraph 51.1 of the impugned Order- in-Original.

22. In this view of the matter, this Court is of the opinion that the Petitioner having been supplied with all the RUDs and having had an opportunity to file a reply, chose not to appear in the personal hearing before the adjudicating authority, when the final hearing took place. Therefore, these actions of the Petitioner cannot result in raising a grievance today in respect of the RUDs. The prayer in this writ petition are as under:

"a) Issue a writ of Certiorari or any other appropriate writ or order thereby quashing the show cause notice dated 24.07.2024 and consequently order dated 03.02.2025; in or alternative issue a writ of Certiorari or any other appropriate writ or order thereby directing the respondents to supply relied upon documents and· give a personal hearing in adjudication and thereafter pass an speaking order.

b)Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice and to meet the ends of justice."

23. In view of the fact that all the RUDs have been supplied and adequate notice for hearing has been given to the Petitioner, there is no violation of principles of natural justice. There is also no jurisdictional error.

24. Considering the same, this Court is of the opinion that the Petitioner ought to avail of its remedies in accordance with law under Section 107 of the CGST Act.

25. Ld. Counsel for the Petitioner submits that if the Petitioner is relegated to the appellate authority, the pre-deposit would have to be made under Section 107 of the CGST Act and since Rs.70 lakhs of the Petitioner is already lying with the GST Department which has not been returned, the appeal may be considered without a pre-deposit.

26. Let this prayer be made before the concerned appellate authority itself which shall consider the same in accordance with law.

27. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 8, 2025 dj/ck