

Messrs Vishnu Aroma Pouching Pvt Ltd vs Union Of India on 7 May, 2019

Author: Harsha Devani

Bench: Harsha Devani, Bhargav D. Karia

C/SCA/5629/2019

IA ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019

In

R/SPECIAL CIVIL APPLICATION NO. 5629 of 2019

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MESSRS VISHNU AROMA POUCHING PVT LTD Versus UNION OF INDIA

===== Appearance:

MR PARESH M DAVE for the PETITIONER(s) No. for the RESPONDENT(s) No. MR
N I R Z A R S D E S A I f o r t h e R E S P O N D E N T (s) N o .

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI and HONOURABLE MR.
JUSTICE BHARGAV D. KARIA Date : 07/05/2019 IA ORDER (PER :
HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this application the applicants [original petitioners] seek the following reliefs:

"(A) That this Hon'ble Court may be pleased to permit the petitioners to file manually
GSTR-3B for August 2017 with correct and true details and the respondents may be
directed to accept and acknowledge such GSTR-3B manually filed by the petitioners
for August 2017;

(B) That this Hon'ble Court may be pleased to direct the respondents to give effect to
the details contained in GSTR-3B for August 2017 filed manually and be further
pleased to direct the respondents to indicate discharge C/SCA/5629/2019 IA ORDER
of the petitioner's GST liability for August 2017 in the electronic liability register as
contemplated under Rule 88(2) of the CGST Rules, 2017;

(C) Any other further relief as may be deemed fit in the facts and circumstances of the
case may also please be granted."

2. It is the case of the petitioners in the petition that for August 2017, the total tax liability of the petitioner was Rs.128,63,47,508/□and that the petitioners have discharged this liability partly by paying tax in cash and partly by paying tax through the legally availed Input Tax Credit (ITC). It is asserted in the petition that the petitioners have paid tax liability of Rs.87,62,55,084/□and Rs.26,88,56,662/□from its account in HDFC Bank; whereas, the tax liability of Rs.14,12,35,762/□has been paid by utilizing ITC in the petitioners' credit ledger. The petitioner has paid Rs.87,62,55,084/□vide challan dated 19.09.2017 and a further sum of Rs.26,88,56,662/□on the same day, but by a separate challan. A challan identification number is generated by the collecting bank, which is indicated in the challans, as laid down under sub□rule (6) of Rule 87 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the "CGST Rules").

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3. It is further the case of the petitioners that the entire tax liability of August 2017, having been discharged by 19.09.2017, the petitioners proposed to furnish GSTR□3B on 20.09.2017; but the common portal was not running properly due to heavy load because millions of registered persons were trying to upload their returns and the common portal, which was introduced only in July 2017, was not capable of taking such a huge load. Consequently, the petitioners' efforts to upload GSTR□3B on 20.09.2017 failed. On the next day, that is, on 21.09.2017, the system crashed. Due to this unfortunate turn of events, the system accepted the petitioners' GSTR□3B on 21.09.2017, but the information and details in all the columns of this return were shown as "zero" despite the fact that the tax liability for the month in question had been duly paid by the petitioner.

4. Since the GSTR□3B was uploaded on the common portal in the above manner, the requirement of sub□rule (2) of Rule 88 of the CGST Rules, viz., indicating the Unique Identification Number relating to discharge of liability in the corresponding entry in the electronic liability register, has not been made in the system which operates on its own, that is, the petitioners C/SCA/5629/2019 IA ORDER have no access to make any entry in the system and consequently, not in the electronic liability register maintained under Rule 85 of the CGST Rules.

5. The petitioners, therefore, immediately informed the concerned Assistant Commissioner in□charge of its unit about the payment and discharge of its liability for August 2017 and also about the inability to correct the GSTR□3B return submitted on the GSTN portal. The petitioners were advised to approach the Help Desk forum to sort out the issue. Thereafter, the petitioners, time and again, made representations to the concerned officers, however, despite eighteen months having been passed and since there was no progress, the petitioners were constrained to file the captioned petition.

6. In this case, notice was issued in the petition on 18.03.2019, making it returnable on 27.03.2019. Thereafter, the petition came to be adjourned from time to time on five occasions and lastly, it has been listed today before this Court.

7. Despite the fact that notice was issued way back on 18.03.2019 and thereafter, the matter was adjourned from time to time to enable the learned C/SCA/5629/2019 IA ORDER senior standing

counsel to obtain instructions in the matter, till date, no affidavit in reply has been filed on behalf of the respondents.

8. However, upon oral instructions from the officers who were present in the court room, Mr. Nirzar Desai, learned senior standing counsel for the respondents, denied that the petitioner has paid the amount of Rs.114.51 crores (rounded off) in cash, as averred in the petition.

9. A perusal of the record of the case reveals that despite the petitioners, having made various representations to the respondents, only three replies were received so far. By a letter dated 10.9.2018, the petitioners were informed that steps were being taken to refer the matter to the GSTN; by a letter dated 28.08.2018, the petitioners were informed to follow the instruction/guideline mentioned in para 3 of the Circular No.26/26/2017-GST dated 29.12.2017; and lastly, by a letter dated 07.03.2019, the petitioners were informed that they have already been requested to follow the instruction/guideline mentioned in para 3 of the Circular No.26/26/2017-GST dated 29.12.2017 by the Deputy Commissioner by a letter dated 28.08.2018. However, in none of the replies, the respondents have taken a stand that the C/SCA/5629/2019 IA ORDER petitioners have not paid the amount, as stated by them. Besides, despite such a long time having elapsed, no affidavit in reply has been filed on behalf of the respondents and immense prejudice is being caused to the petitioners due to such delay. Under the circumstances, in the absence of proper response on the part of the respondents, the Court is of the view that the petitioners, who have been diligently prosecuting the matter all throughout, should not be made to suffer, and hence, are entitled to the grant of interim relief as prayed for in paragraph 5(A) of the application.

10. For the foregoing reasons, the application, succeeds and is, accordingly, allowed. The petitioners are permitted to file manually GSTR-3B for August 2017 with correct and true details and the respondents are directed to accept and acknowledge such GSTR-3B manually filed by the petitioners for August 2017. The application stands disposed of accordingly.

(HARSHA DEVANI, J) (BHARGAV D. KARIA, J) PRAVIN KARUNAN