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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.03.2024

% W.P. (C) 438/2024

JETIBAI GRANDSONS SERVICES INDIA PVT
LTD

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sahil Yadav, Advocate (through VC).

For the Respondents: Mr. Bhagvan Swarup Shukla, CGSC with Ms
Sunita Shukla, Advocate for UOI.
Mr. Harpreet Singh, SSC with Mr. Jatin Kumar
Gaur & Ms. Suhani Mathur, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a declaration that the reversal of the input tax credit by the respondents on 22.07.2021 is illegal and petitioner seeks refund of input tax credit amounting to Rs 19,65,00,000/-.

2. A preliminary objection is raised by the respondents on the ground that petitioner had earlier filed a petition being *WP (C) 10647/2021* claiming exactly the same relief. However, said petition was unconditionally withdrawn on 29.10.2021 and as such the present



petition would be barred applying the principle of *resjudicata* and *issue estoppel*.

3. This is disputed by learned counsel for the petitioner, who submits that said petition was withdrawn though unconditionally however petitioner had clarified that he would not wish to press for refund till the investigation was completed. He submits that the investigation is now completed and as such the petitioner has filed the subject petition.

4. We are informed that the investigation has found the petitioner culpable and liable and show cause notice has been issued to the petitioner.

5. We may refer to order dated 29.10.2021 in *WP (C) 10647/2021* which reads as under:-

“Present Writ Petition has been filed with the following prayers:

“(a) Issue a writ, order or direction in the nature of declaration to declare the reversal of input tax credit by the Respondent on 22.07.2021 illegal as the same has been made under force and coercion on the date of search conducted at residential premises of the director and made under the signature of the director who is not authorized for the same; and/or

(b) Issue a writ, order or direction in the nature of mandamus to the Respondents to refund the input tax credit amounting to Rs.19,65,00,000/-, which has been reversed on 22.07.2021 with interest @ 7% per annum from the date of payment till date of refund;and/or

(c) Issue a writ, order or direction in the nature of mandamus to direct the Respondents to restrain from coercing the Petitioner to make any payment without issuing notice under Section 74(1) of the



Central Goods and Services Tax Act, 2017 and follow the procedure therein; and/or

(d) Issue a writ, order or direction in the nature of mandamus to the Respondents to provide copy of panchnama with regard to search which was conducted at the office premises of the Petitioner on 20.07.2021 and/or 21.07.2021 as also that of residential premises; and/or

(e) Issue a writ, order or direction in the nature of mandamus to the Respondents to provide the DSC / digital signatures of the directors of the Petitioner; and/or

(f) Issue a writ, order or direction in the nature of mandamus to the Respondents to provide the copies of documents that have been seized under the provisions of Section 67(5) of the Central Goods and Services Tax Act, 2017; and/or

(g) Grant cost of the petition; and”

Learned counsel for the petitioner on instructions states that he wishes to withdraw the present writ petition unconditionally. He also clarifies that the petitioner does not wish to press for refund or reversal of input tax credit till the investigation is complete.

Learned counsel for the respondents states that the petitioner has not complied with the directions passed by this Court on 24th September, 2021 wherein the petitioner’s director Mr.Tarun Jain was directed to join investigation.

This Court is of the view that if Mr.Tarun Jain has not joined the investigation, the respondents are at liberty to take action in accordance with law.

The statement made by learned counsel for petitioner is accepted by this Court & petitioner is held bound by the same and accordingly, the present petition is dismissed as withdrawn. It is clarified that no liberty has been given to the petitioner.”

6. In the said petition, the prayers that have been made by the petitioner are as under:-

“(a) Issue a writ, order or direction in the nature of declaration to declare the reversal of input tax credit by the Respondent on 22.07.2021 illegal as the same has been made under force and coercion on the date of search



conducted at residential premises of the director and made under the signature of the director who is not authorized for the same; and/or

b) Issue a writ, order or direction in the nature of mandamus to the Respondents to refund the input tax credit amounting to Rs.19,65,00,000/-, which has been reversed on 22.07.2021 with interest @12% per annum from the date of payment till date of refund; and/or

c) Grant cost of the petition; and”

7. We note that the prayers in the present petition are identical to prayer (a) & (b) of the prayer in *WP (C) 10647/2021*.

8. Order dated 29.10.2021 in *WP (C) 10647/2021* clearly records that petitioner had withdrawn the writ petition unconditionally. Further, the Court also recorded that no liberty was granted to the petitioner while the petition was being dismissed.

9. Reliance placed by learned counsel for the petitioner on the judgment in the case of *Sarva Shramik Sanghatana (KV) vs State of Maharashtra (2008) 1 SCC 494* is misplaced.

10. Reference may also be have to *Sarva Shramik Sanghatana* wherein the Supreme Court has held that :-

“13. We are of the opinion that the decision in Sarguja Transport case (supra) has to be understood in the light of the observations in paragraphs 8 & 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the first writ petition the Bench is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient bench, then if he withdraws it he should not be



allowed to file a second writ petition unless liberty is given to do so. In other words, bench-hunting should not be permitted.

14. It often happens that during the hearing of a petition the Court makes oral observations indicating that it is inclined to dismiss the petition. At this stage the counsel may seek withdrawal of his petition without getting a verdict on the merits, with the intention of filing a fresh petition before a more convenient bench. It was this malpractice which was sought to be discouraged by the decision in Sarguja Transport case (supra).”

11. Another decision of Supreme Court in *Sarguja Transport Service vs STAT (1987) 1 SCC 5* wherein the Supreme Court explained the said decision and held that the principle underlying Order 23 Rule 1 CPC should be extended to Writ Petition in the interest of administration of justice not only ground of resjudicata but on the ground of public policy and to discourage litigants from indulging in the bench hunting tactics. The Supreme Court noticed that very often when the arguments are advanced and parties are of the view that the Court is not agreeing with them, they seek to withdraw the petition, so that they can file a second petition before a more suitable or convenient bench. The Supreme Court discouraged the said move on the ground of bench hunting.

12. However, in *Sarva Shramik Sanghatana (supra)* the Supreme Court noticed that in that case application had been made for withdrawal on a bonafide ground where the respondents therein had called for a meeting for amicable settlement.

13. In the instant case, we note that there was no such offer made



by the respondents calling for petitioner to come for an amicable settlement. It appears that at the time of hearing of the matter when the bench was not agreeing with the petitioner, petitioner unconditionally sought to withdraw the petition. Our abovesaid observation is being made keeping in view the last line of the last paragraph of the order where the Court had specifically clarified that no liberty has been granted to the petitioner is clearly indicates that when the bench were not agreeing with the petitioner, petitioner sought to unconditionally withdraw the petition. Further, this Court has also noticed that the director of the petitioner was not joining investigation and as such, the department was constrained to take the coercive steps.

14. Reference may also be had to the decision of the Supreme Court in *Bhanu Kumar Jain vs Archana Kumar (2005) 1 SCC 787* wherein the Supreme Court referred to the decision in *Hope Plantations Limited vs Taluk Land Board, Peermade and Another 1999 (5) SCC 590* and explained the principle of resjudicata which was based on the public policy in order to put an end to litigation.

15. In view of the above, we are of the view that the petitioner having unconditionally withdrawn the earlier petition and liberty being specifically declined to the petitioner, the petitioner is precluded from filing the present petition seeking the same relief which was earlier withdrawn by the petitioner. No doubt petitioner had withdrawn the proceedings pending investigation. However the said qualification would have only applied in case the investigation had



exonerated the petitioner. In the instant case, the investigation has found petitioner culpable and accordingly, a show cause notice has been issued to the petitioner which is pending adjudication.

16. In view of the above, we note that the present petition is barred on the principle of the issue of *estoppel* and as such the petition is not maintainable and same is consequently dismissed.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 18, 2024/sk