Santosh Kumar Gupta (Mahan Polymers) v. Commissioner, Delhi GST

Legality of a Section 67 search authorisation, and whether ITC reversed under pressure during the search must be re-credited.

Date of Order: December 5, 2023
Case Law No: GIB-DHC-2023-19
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

On 18.10.2022 the Delhi GST authorities searched the petitioner's business premises and godown. During the search, which began at about 4 pm, his statement was recorded at 11.30 pm and he reversed ITC of Rs 22,14,226 on the ground that certain suppliers' registrations were cancelled. He said it was done under duress, that no acknowledgment in FORM GST DRC-04 was issued, and that the authorisation in FORM GST INS-01 was mechanical.

Final Verdict

The Court held that the authorisation was valid: the form needs only a mention of the reasons, and the detailed reasons were recorded in the file and need not be shared before the search. The search had found ITC of Rs 2.39 crore from suppliers whose registrations were cancelled. On the reversal, **the Court found it not difficult to accept that the petitioner found the circumstances intimidating**, since there was no admission of liability or acknowledgment that the invoices were fake, the search ran late into the night, no DRC-04 was issued and no adjudication was pending.

The Department was directed to re-credit Rs 22,14,226 to the electronic credit ledger. The Department remains free to protect the Revenue, including by orders under Section 83 or Rule 86A, if the conditions are met.

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