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

% *Date of Decision: 26.09.2022*

\+ **W.P.(C) 5680/2022 & CM Appl.32411/2022**

SWASTIK PLASTICS ......Petitioner

Through: Mr Rajesh Jain with Mr Virag Tiwari, Mr Ramashish and Mr K.J. Bhatt, Advs.

versus

COMMISSIONER OF DGST ......Respondent

Through: Mr Satyakam with Mr Alok Raj, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/Hybrid Hearing (as per request]

RAJIV SHAKDHER, J. (Oral):

1. This writ petition came up for hearing for the first time on 05.04.2022, when after hearing the counsel for the parties, we had *inter alia* recorded the following:

> *"2. This writ petition is directed against the order dated 11.03.2022, passed by the Assistant Commissioner, Delhi under Section 74 of the Delhi Goods and Services Tax Act, 2017.*
> *3. Apart from anything else, Mr Rajesh Jain, who appears on behalf of the petitioner, says that the impugned order has been passed by, one, Mr Chunni Lal Roy, who was also the officer who carried out the investigation and search and seizure at the petitioner's premises located at Patparganj, East Delhi, Delhi.*
> *3.1. For this purpose, our attention has been drawn to the document appended on page 51 of the case file. This is a document dated 23.08.2021, and authorizes inspection/search and seizure qua the petitioner's premises.The authorization has*

> *been made in favour of Mr Chunni Lal Roy, who, as indicated above, has passed the impugned order dated 11.03.2022.*
> *4. Issue notice.*
> *4.1. Mr Satyakam accepts notice on behalf of the respondent.*
> *5. Mr Satyakam says that he will revert with instructions, on the next date of hearing.*
> *5.1. In case instructions are received to resist the petition, counter-affidavit will be filed before the next date of hearing.*
> *6. Prima facie, according to us, there would be a likelihood of bias, if the person, who carried out the search and seizure operation, is also empowered to conduct the adjudication proceedings.*
> *6.1. In these circumstances, for the moment, the operation of the impugned order dated 11.03.2022 is stayed.*
> *7. List the matter on 11.05.2022."*

2. The matter, as indicated above, was listed on 11.05.2022, when liberty was given to the counsel for the parties to file their written submissions.

2.1 However, interim order dated 05.04.2022 was made absolute during the pendency of the writ petition, and CM No.16906/2022 was, accordingly, disposed of.

3. Mr Satyakam, who appears on behalf of the respondent, had indicated to us that the respondent/revenue would like to revisit its position, and perhaps bring it in line with the position adopted by the Central Government *vis-à-vis* central tax.

4. Accordingly, the matter was posted for hearing today i.e., 26.09.2022.

5. Mr Satyakam, in the meanwhile, has filed a copy of the Circular dated 20.09.2022, which bears the following title: "*Modification of Guidelines for Tax Authorities for Inspection, Search and Seizure dated 01.12.2020.*"

5.1 The directions/clarifications issued by this Circular are set forth in paragraphs (i) to (iv) of the aforesaid Circular.

6. The petitioner, in this case, had raised an issue concerning jurisdiction, right at the very outset.

6.1 In these circumstances, we are of the view, that the respondent/revenue will have to commence *de novo* proceedings, bearing in mind the modification Guidelines given in the aforementioned Circular i.e., the Circular dated 20.09.2022.

7. Accordingly, the impugned order dated 11.03.2022 is set aside.

7.1 The logical *sequitur* would be, that a fresh show cause notice will have to be issued, bearing in mind the aforementioned Circular dated 20.09.2022.

8. The writ petition is disposed of in the aforesaid terms.

9. The pending interlocutory application shall stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 26, 2022/pmc