

TAX INFO

Dated 03/08/2022

Latest update on GST Law: **Demand notice was set aside, with liberty to the Department to trigger the process under Section 75, once outcome of the pending appeal lodged by the petitioner has come as given in judgement by Delhi High Court.**

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Name of Petitioner	M/s. AG Enterprises
Name of Respondent	Commissioner Of GST, New Delhi
Court	Delhi High Court
Date of Judgement	06/07/2022
Appeal No.	W.P.(C) 9629/2022 & CM No.28733/2022

Brief Facts of the Case Law:

The petitioner had sought a refund of Rs. 12,71,426/-. The adjudicating authority concluded that the refund was founded on forged ITC claim and the same had to be rejected. A show-cause notice (SCN) issued earlier i.e., SCN dated 08.02.2021, has already been adjudicated by the concerned authority, via the order dated 12.05.2022. An appeal has been lodged on 26.05.2022 against such adjudication order.

However, impugned demand notice dated 14.06.2022 has been issued in consonance with the provisions of Section 75(4) of the Act. Hence, the petitioner preferred this appeal.

Decision of the Court:

It is clear that once the petitioner's refund claim was rejected on the ground that it was founded on forged ITC, the petitioner would be liable to pay tax, interest and perhaps also penalty, in the event the adjudication order is sustained. The fact that an appeal has been preferred by the petitioner, which is pending adjudication persuades to hold that, at this stage, the impugned demand notice is premature.

In the event the appeal was to be dismissed, it would then be open to the revenue to take recourse to Section 75 of the Act.

Therefore, the impugned demand notice dated 14.06.2022 was set aside, with liberty to the Department to trigger the process under Section 75 of the Act, once clarity is attained with regard to the outcome of the pending appeal lodged by the petitioner.

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