

## Concealment of facts is enough to deny any relief in exercise of extra-ordinary discretionary jurisdiction – Delhi HC

3 December 2021



## Summary

The Delhi High Court (HC) observed that the petitioner did not disclose the letter through which it had sought release of seized cash from residential premises of its Director. The letter clearly states that petitioner has discharged the tax liability voluntarily and has requested the respondents to not issue any show cause notice in relation to search and seizure. Therefore, the case of coercion being set up by petitioner is an afterthought. No plea of coercion was raised before filing of present petition. Therefore, the HC held that there is concealment of facts and the same is enough to deny any relief to petitioner in exercise of the extra-ordinary discretionary jurisdiction of this Court under Article 226 of Constitution of India.

### Facts of the case

- The petitioner<sup>1</sup> had challenged the seizure of cash from the residential premises of its Director. The petitioner further challenged the letter issued by the Revenue, whereby the bank was directed to release the said amount, however, only for payment of government dues<sup>2</sup>.
- The petitioner claimed that a sum of INR 94,65,316, deposited with the Revenue, has been erroneously recovered from the petitioner without proper adjudication.
- The petitioner further prayed for a direction to the Revenue to determine the tax, interest, or penalty due from the petitioner and appropriate the said amount of INR 94,65,316 paid by the petitioner against the amount so found due.

### Delhi HC observations and ruling<sup>3</sup>:

- **Concealment of facts:** The petitioner has apparently set up a false case of panchnama not being served. The copy of panchnama produced clearly bear the acknowledgement of the Director of petitioner company and his wife. Therefore, there is concealment of facts and the same

is enough to deny any relief to petitioner in exercise of the extra-ordinary discretionary jurisdiction of this Court under Article 226 of Constitution of India.

- **Issues of academic importance:** The power to seize cash may not be adjudicated in the present case because the amount seized was released in favour of the petitioner. For condition of the release of amount, it has been observed that the petitioner had deposited INR 60.66 lakh with respondent towards its balance tax, interest and penalty outstanding. The issue is, therefore, only of academic importance.
- **Case of coercion is an afterthought:** The letter clearly states that petitioner has discharged the tax liability voluntarily and has requested the respondents to not issue any show cause notice in relation to search and seizure. Therefore, the case of coercion being set up by petitioner is an afterthought. No plea of coercion was raised before filing of present petition.
- **Benefit of restriction of penalty availed:** As per the provisions<sup>4</sup>, the petitioner can upon making voluntary deposit of tax, interest and penalty avail the benefit of reduction of

<sup>1</sup> Vijay Steelcon Pvt Ltd

<sup>2</sup> WP(C) 13034/2021

<sup>3</sup> dated 18 November 2021

<sup>4</sup> Section 74(5) of CGST Act

penalty to only 15% of tax. The petitioner had availed such remedy and accordingly search and seizure activities were closed. The petitioner cannot turn around and challenge the said proceedings.

### Our comments

The Apex Court<sup>5</sup> had earlier held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

The Karnataka HC<sup>6</sup> had also held that suppression of material and vital facts serves to be a legitimate ground to dismiss a writ petition under Article 226 of the Constitution of India, as no discretion can be exercised in favour of a petitioner who has concealed substantial facts from the Court. Thus, it is imperative that due caution is exercised by the taxpayers before approaching the writ courts to avoid dismissal of the writs and enhance the chances of the case being considered on merits.

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<sup>5</sup> K.D. Sharma v. SAIL

<sup>6</sup> Sri Ananthaswamy v. State of Karnataka

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