

2024:BHC-OS:1878-DB



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2429 OF 2021

M/s. Railroad Logistics (India) Pvt. Ltd. ... Petitioner

Versus

The Union of India & Ors. ... Respondents

Ms. Deepali Kamble a/w Avinash Poddar, for the Petitioner.

Ms. Jyoti Chavan, Addl., G. P. for State.

Ms. Sangeeta Yadav, for Respondent Nos. 1, 5, 6, 7, 9 & 10.

Mr. Makarand Bakare i/b JMB Partners, for Respondent Nos. 8, 11 & 12.

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CORAM: G. S. KULKARNI &

FIRDOSH P. POONIWALLA, JJ.

DATED: 15 January, 2024

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Oral Judgment (Per G. S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition filed under Article 226 of the Constitution of India has prayed for the following reliefs:

“a. That this Honourable Court be pleased to issue a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India allowing it to amend its form GSTR-1 for the period from April 2018 to March 2019 which involves Input Tax Credit of Rs.25,11,084/-.

b. For ad-interim relief in terms of prayer clause (a) above;

c. For costs of this Petition

d. For such and other relief as the nature and circumstances of the case any require.”

Page 1 of 7  
15 January, 2024

**Kiran Kawre**

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3. Thus, the primary prayer of the petitioner is that the respondents need to permit the petitioner to amend its form GSTR-01 for financial year 2018-19 so that its client is able to claim the Input Tax Credit.

4. The facts are :- The petitioner claims to be registered under the Central Goods and Service Tax Act 2017 on 1 July 2017. The petitioner contends that the petitioner made an inadvertent error in submitting the GST number of Mahindra & Mahindra (Rajasthan) in its form GSTR-1 instead of correct GST number of Mahindra & Mahindra (Orissa).

5. On 10 November 2020 Mahindra & Mahindra (Orissa) received intimation in form DRC-01A on the ground of ‘MISMATCH IN GSTR-2A AND GSTR-3B for financial year 2018-19’. On 18 December 2020 the petitioner filed a letter to the GST Authorities apprising them of the situation with a request to allow the petitioner to amend its form GSTR-1 for financial year 2018-19.

6. Thereafter, on 28 December 2020 Mahindra & Mahindra (Orissa) also received a show cause notice along with form DRC-01. In the wake of such notices being issued to the petitioner’s customers, the petitioner on 16 January 2021 filed a reminder letter to the GST Authorities to look into the matter,

however, no action was taken. In these circumstances, the petitioner is before the Court for the prayers as noted by us above.

Page 2 of 7  
15 January, 2024

**Kiran Kawre**

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SPEAKING13-WPL-2429-2021.DOC

7. The contention as urged on behalf of the petitioner is to the effect that in the absence of enabling matching provision as prescribed in Section 42 and 43 of the CGST Act Rule 2017 (for short "CGST Act) the petitioner needs to be allowed to amend its form GSTR-1 for Financial year 2018-19. The petitioner has referred to the provisions of Section 37(3) and 38(5) to contend that the said provisions of the CGST Act cannot be an impediment for the petitioner to correct an inadvertent error and which would not cause any loss of revenue to the exchequer. It is also the petitioner's contention that the statute nowhere restrict other State in claiming the credit of the eligible IGST as ultimately the tax has been collected by the Central Government on intra-State supplies.

8. Mr. Poddar, learned counsel for the petitioner in supporting such contentions has drawn our attention to the decision of this Court in *Star Engineers India Pvt. Ltd. Vs. Union of India*<sup>1</sup> wherein in similar circumstances a coordinate Bench of this Court of which one of us (G. S. Kulkarni, J.) was a member had granted the prayers of the petitioner therein, by directing the respondents to permit the petitioner to amend/rectify the Form GSTR-1 on the ground that there was an inadvertent error on the part of the petitioner which ought to have been

permitted to be rectified. In rendering such decision, the Court had also considered the decisions of the different High Courts which

were in *M/s. Sun Dye Chem Vs. The Assistant Commissioner (ST) and Ors.* of **1**

Writ Petition No. 15368 of 2023 judgment dated 14<sup>th</sup> December 2023.

Page 3 of 7  
15 January, 2024

**Kiran Kawre**

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**SPEAKING13-WPL-2429-2021.DOC**

the Madras High Court, in *Shiv Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs and Ors.* of the Orissa High Court, and in *Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council and Ors.* of the Jharkhand High Court. The Court also examined the provisions of Section 37, 38 and 39 of the Central Goods and Service Tax Act as also the Maharashtra Goods and Services Tax Act. It was held that the bar of limitation ought not to prevail when the issue was of a bona fide and inadvertent error on the part of the assessee, which should be permitted to be rectified, so as to also keep the record of the revenue clear from any mistakes which are bonafide and which have occurred in filing of the returns. The relevant observations in that regard are required to be observed which reads thus:-

“12. Having considered the statutory ambit of Section 37, 38 and 39, we are of the clear opinion that the provisions of sub-section (3) of Section 37 read with Section 38 and sub-sections (9) and (10) of Section 39 need to be purposively interpreted. We cannot read sub-section (3) of Section 37 to mean that the assessee would be prevented from placing the correct position and having accurate particulars in regard to all the details in the GST returns being filed by the assessee and that there would not be any scope for any bonafide, and inadvertent rectification / correction. This would pre-supposes that any inadvertent error which had occurred in filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of sub-section (3) of Section 37 read with the provisions of sub-section

(9) of Section 39 read de hors the provisos.

13. In our opinion, the proviso ought not to defeat the intention of the legislature as borne out on a bare reading of sub-section (3) of Section 37 and sub-section (9) of Section 39 in the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake. Any contrary interpretation of sub-section (3) of Section 37

Page 4 of 7  
15 January, 2024

Kiran Kawre

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SPEAKING13-WPL-2429-2021.DOC

read with sub-sections (9) and (10) of Section 39 would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect. This is necessarily required to be borne in mind when considering the cases of inadvertent human errors creeping into the filing of GST returns.

14. Applying such principles to the facts of the present case, in our opinion, the State Tax Officer had all materials before it which went to show that there was nothing illegal and / or that what had happened at the end of the petitioner was that the invoices generated by the petitioner under the bill-to-ship-to-model for delivery of goods to third party vendors of BAL of which input tax credit for the invoices in question, were not availed by BAL due to error of credit not being reflected in the GSTR-1, as the petitioner had mentioned GSTIN of third party instead of GSTIN of BAL. This is also accepted by the State Tax Officer in the impugned communication.

16. We also find that the petitioner's reliance on the decision as noted by us is quite apposite. In Sun Dye Chem Vs. Assistant Commissioner (supra), learned Single Judge of the Madras High Court considered a similar case wherein an error was committed by the petitioner in filing of details relating to credit. The error was to the effect that what should have figured in the CGST/SGST column was inadvertently reflected in the IGST column. It was not the case of the department that the error was deliberate and was intended to gain any undue benefit by the petitioner and in fact, by reason of the error, the customers of the petitioner were denied credit which they claim to be legitimately entitled to. It was also an error which was not initially noted by the petitioner, and on account of the error, the customers of the petitioner would be denied credit which they claimed to be legitimately entitled to, owing to the fact that the credit stands reflected in the wrong column. It is in these circumstances, after examining the relevant provisions which we have already discussed,

the learned Single Judge observed that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing credit which they are otherwise legitimately entitled to. The Court observed that an error committed by the petitioner is an inadvertent human error and the petitioner should not be prevented from rectifying the same and accordingly, allowed the petition.

17. A similar view was taken in the Pentacle Plant Machineries Pvt. Ltd. (supra) which also followed the decision in Sun Dye Chem (supra).

19. The Division Bench of the Jharkhand High Court in Mahalaxmi Infra Contract Ltd. (supra) has taken a similar view wherein the Division Bench after considering the rival contentions and the

Page 5 of 7  
15 January, 2024

Kiran Kawre

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SPEAKING13-WPL-2429-2021.DOC

scheme of the legislation, allowed the petition considering the fact that there was no loss of revenue, if such rectification as prayed for by the petitioner was to be granted.

20. On the interpretation of the provisions as made by us and the common thread running through the decisions as noted above, it would lead us to observe that the GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain.

21. We may also observe that the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and bonafide. There was not an iota of an illegal gain being derived by the assessees. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assessees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.”

9. Ms. Jyoti Chavan, learned Additional Government Pleader would not dispute that the present case also is a case of an inadvertent error on the part of the petitioner, wherein the tax has already been paid. She would also fairly state that the decision of this Court in Star Engineer India Pvt. Ltd. (supra) considered a

similar situation.

10. Having heard learned counsel for the parties and having perused the record, we find ourselves in agreement with the contentions as raised on behalf of the petitioner that the petitioner in the present case had subsequently become aware of such mistakes in filing of its return, after notices were issued to Mahindra and Mahindra (Orissa). The notices were issued purely on the mistakes which had happened at the petitioner's end in submitting the returns

Page 6 of 7  
15 January, 2024

**Kiran Kawre**

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SPEAKING13-WPL-2429-2021.DOC

in form GSTR-01 in which the mismatch had occurred in the GST in numbers as noted hereinabove. It appears to be not in dispute that this is not a case where any loss of revenue would be caused to the department as already tax has been paid.

11. In these circumstances, we find that once a bona fide mistake of such nature has occurred, it needs to be rectified and more particularly, considering the observations as made by this Court in *Star Engineer India Pvt. Ltd.* (supra) as there is no loss of revenue, in the event such rectification is permitted to the petitioner.

12. We, accordingly, dispose of this petition by directing the respondents to permit the petitioner to amend and rectify form GSTR-1 for the period in

question for financial year 2018-19, either through online or manual means, within a period of four weeks from the date a copy of this order is placed before authorities.

13. All contentions of the parties in that regard are expressly kept open. 14. Needless to observe that once the rectification takes place, respondent No.5 consequently would be entitled to claim Input Tax Credit. 15. Rule is made absolute in the above terms.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI, J.)

Corrected as per speaking to minutes of order dated 1 February 2024.

Page 7 of 7  
15 January, 2024

**Kiran Kawre**

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