

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.362 of 2023

M/s Ruchi Infocom Private Limited

.....Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s).

For Petitioner(s) : Mr. T.K. Deb, Advocate.

For Respondent(s) : Mr. Karnajit De, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Whether Fit for Reporting: YES

Order

14/09/2023

Heard Mr. T.K. Deb, learned counsel for the petitioner and Mr. Karnajit De, learned Additional Government Advocate for the respondents-State.

2. The petitioner has approached this Court for quashing of the impugned order dated 16.03.2023 [Annexure-15], passed by the respondent No.3-Additional Commissioner of State Tax (Appellate Authority), on the ground that the same has been passed in violation of principles of natural justice. By order dated 16.03.2023, the appellate authority has rejected the Appeal Case No.33/Ch-UDP/2022. Petitioner has also sought quashing of the adjudication order dated 18.11.2021 passed by the respondent No.4-Superintendent of State Tax, Charge-Udaipur, Government of Tripura under Section 74 of the Tripura State Goods and Services Tax Act, 2017 [hereinafter referred to as 'Act of 2017'], confirming the demand raised in the show cause notice and holding the petitioner liable to pay the tax amount of Rs.11,88,811.00 along with penalty of equivalent amount and interest as per

provisions of Section 50(3) of the Act of 2017 i.e. the total amount of Rs.34,47,552.00.

3. Petitioner company is registered under the Act of 2017. It is running business in dealing with various works and services such as laying of gas pipelines and other works contract. Petitioner was also registered under TVAT Act, 2004. It is also dealing with laying of underground PE Pipelines and above ground GI installations for CGD at Agartala for Tripura Natural Gas Company Limited (hereinafter referred to as 'TNGCL').

4. It is the case of the petitioner that it had submitted VAT returns in Form-X under TVAT Act, 2004 for the 4th quarter from 01.01.2016 to 31.03.2016 and paid the tax liability of Rs.2,01,218.00 during the said quarter and the excess amount paid by the petitioner was Rs.5,91,200.00 [Annexure-2]. Thereafter, it again submitted the VAT returns for the 1st quarter from 01.04.2016 to 30.06.2016 and paid the tax liability of Rs.1,19,260.00 and an excess amount of Rs.71,556.00 was also paid by it [Annexure-3]. For the 2nd quarter from 01.07.2016 to 30.09.2016, the tax liability of Rs.1,69,775.00 was paid with an excess amount of Rs.1,73,420.00 [Annexure-4]. For the 3rd quarter from 01.10.2016 to 31.12.2016, petitioner paid the tax liability of Rs.2,26,841.00 and according to the petitioner, an excess amount of Rs.3,09,525.00 was paid [Annexure-5].

5. Petitioner claims to have made a request vide letter dated 02.06.2017 to respondent No.4 to undertake assessment for the FY 2014-15, 2015-16 and 2016-17. According to the petitioner, it was entitled to claim refund of the excess amount. However, it appears that petitioner carried

forward the excess amount, said to have been paid during the VAT regime, in Form TRAN-1 as transitional credit under Section 140(1) of the Act of 2017 and included the amount of Rs.11,88,811.00 in respect of which, respondent No.4 issued the Notice under Section 61 of the Act of 2017 on scrutiny of his returns for the FY 2017-18 finding discrepancies for the tax period July, 2017 to March, 2018 in his GSTR-3B return for the FY 2017-18. Petitioner was asked to explain the reasons. Such notice was issued on the basis of an enquiry report dated 20.05.2021 sent by the Inspector of Taxes, Udaipur, Gomati to the respondent No.4, where it was reported that ITC declared at serial No.21 & 20 in Form X and Form XB under TVAT Rules, 2005 as on 30th June, 2017 were not available. The ITC claimed in Form GST TRAN-1 was Rs.11,88,811.00 [Annexure-8]. Petitioner replied through letter dated 18.06.2021 stating that the Transitional ITC was claimed against the excess amount of VAT paid by the petitioner during the VAT period of 2015-16 and 2016-17. The said amount was claimed, as it was deducted from the bill of the petitioner company as Tax Deducted at Source (TDS) by TNGCL against execution of works contract. Petitioner company clarified that the transitional credit VAT TIN 16111752136 and the statement in tabular form showed total sales, VAT payable, works contract tax paid by the principal employer-TNGCL and excess amount paid by the petitioner company totaling Rs.11,88,811.00.

6. Petitioner was again served an email on 23.09.2021 vide GSTIN No.ZD160921000503W stating that it has not paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed and he has utilized the amount paid through the aforementioned application as intimation of voluntary payment for the reasons detailed therein. In Form GST

DRC-01, a show cause notice under Section 74(1) of the Act of 2017 [Annexure-10] was issued to the petitioner company. Thereafter, the petitioner sought personal hearing by requesting for a date between 15th and 20th October, 2021 in view of the Durga Puja festival [Annexure-11]. Respondent No.4 had asked the petitioner to furnish reply by 07.10.2021 or appear on 05.10.2021 at 11.30 at the office of the respondent No.4. Thereafter, the adjudication order dated 18.11.2021 was passed under Section 74 of the Act of 2017 and a summary of the order was also issued in Form GST DRC-07 which states that while filing GST Form TRAN-1 on 23.12.2017 against SGST for Rs.11,88,811.00 in the year 2017-18, the verification of transitional credit claim for the year 2017-18 of the aforesaid taxpayer was undertaken by the Inspector of State Tax and the scrutiny of the returns revealed that the taxpayer had filed GST Form TRAN-1 by which it sought to carry forward ineligible ITC amounting to Rs.11,88,811.00. The adjudication order at Annexure-13, therefore, imposed tax as against the ineligible ITC amounting to Rs.11,88,811.00 along with the applicable interest amounting to Rs.10,69,930.00 at the rate of 24% p.a. as per Section 50(3) of the Act of 2017 and penalty equivalent to the tax amount i.e. Rs.11,88,811.00 under Section 74 of the Act of 2017 totaling Rs.34,47,552.00.

7. Petitioner being aggrieved, approached the appellate authority by presenting his memo of appeal in Form GST APL-01 [Annexure-14]. The appellate authority i.e. respondent No.3-Additional Commissioner of State Tax has, by the appellate order dated 16.03.2023, rejected the appeal, *inter alia*, holding as under :

“The case was fixed for hearing on 18.11.2022. The presenting officer Sri K.R. Das is present. Sri Vipin C Gandhi, MD, authorized person on behalf of the firm is also present.

Brief facts:

The firm Ruchi Infocom Private Limited (here the appellant), 14 Tara Niwas, Sarojini Road, Vile Parle(W), Mumbai-400056 is registered under GST Act, 2017 and its nature of business is works contract. The firm was also registered under TVAT Act, 2004 and was indulged in **“providing consumer connectivity works for laying of underground PE pipelines and above ground GI installations for CGD at Agartala for Tripura Natural Gas Company Limited”**. The appellant have submitted returns in form X under TVAT Act, 2004 which were filed periodically during the VAT regime and scrutinizing the TVAT returns in **Form X** it is noticed that the firm did not have any local/ intra-state /re-sale during the period 2016-17 and 2017-18 (up to 30th June, 2017) and the tax was adjusted on the basis of TDS issued in different periods from Tripura Natural Gas Company Ltd. Shilpa Nigam Bhawan, Khejurbagan, Agartala, Tripura-799006.

The firm Ruchi Infocom Private Limited (here the appellant) had filed TRAN-1 dt. 23.12.2017 and claimed ITC of an amount of Rs.11,88,811.00 which was disallowed by the respondent as ineligible ITC claim in TRAN-1 and subsequently issued demand order u/s 74 of TSGST Act, 2017. Aggrieved with the demand the appellant filed an appeal under Section 107 of the Tripura State Goods and Services Tax Act, 2017 on 17.02.2022 against the order No.ZD161121000230K dated 18.11.2021 passed by the Superintendent of State Tax, Charge-Udaipur, Gomati Tripura.

Ground of Appeal:

The appellant in their submission urged that the credit as claimed in TRAN-1 should be granted; interest and penalty as demanded by the assessing authority should be dropped and deleted.

Observation:

From the SCN vide no.ZD160921000503W dt. 23.09.2021 it would appear that the respondent had intimated the appellant about the discrepancies observed during verification of documents that “VAT amount/deduction amount paid through Challan/deduction certificate with VAT return cannot be claimed as Transitional Credit so the Tax, Penalty & Interest should be paid through Voluntary Payment-DRC-03” and the appellant was liable to pay Rs.11,88,811.00 (as the amount was disallowed as ineligible ITC claim) along with interest of Rs.10,69,930.00 and penalty Rs.11,88,811.00. The SCN was issued u/s 74 of GST Act, 2017.

Sec. 74 of GST Act, 2017:

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax require him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon u/s 50 and a penalty equivalent to the tax specified in the notice.

Whereas in the present case the respondent had served the SCN on 23.09.2021 for the findings in connection with the financial year 2017-18 and opportunity to reply and physical appearance was also provided.

Report regarding wrong availing of credit was also served along with the SCN to the appellant where it is mentioned that return not available during verification.

As the facts been intimated by the SCN and the detail statement of discrepancies the appellant could have appeared along with the copies of returns for the relevant period at the office of the respondent but no such information is available in the records as per the submissions made by the appellant though the appellant has submitted photocopies of return copies in their submissions in this court as such the documents could have verified by the respondent.

Whereas mere report on the basis of non available records and documents could not give authority to the respondent to create order u/s 74 of GST Act, 2017.

In the present case the issue of dispute is ineligible ITC and disallowing TRAN credit migrated from the TVAT return Form X and Form XB under TVAT Act, 2004 and the appeal made is as such regarding disapproving the order No.ZD161121000230K dated 18.11.2021 passed by the Superintendent of State Tax, Charge-Udaipur, Gomati Tripura.

Sec 140: Transitional arrangements for input tax credit.

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his credit ledger, the amount of CENVAT credit (of eligible duties) carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law (within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the circumstance (i) where the said amount of credit is not admissible as input tax credit under this ACT,

See 140(3) mandates that a registered person who was not liable to be registered under the existing law or who was engaged in manufacturing of exempted goods or provision of exempted services or who was providing works contract service and was availing of the benefit of notification No.26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible in respect of inputs held in stock and inputs contained in semi-finished or finished goods within such time and in such manner as may be prescribed subject to conditions mentioned in clauses (i), (ii), (iii), (iv) and (v) of Section 140(3).

Sec 17(5) (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

The appellant indulged in **“providing consumer connectivity works for laying of underground PE pipelines and above ground GI installations for CGD at Agartala for Tripura Natural Gas Company Limited”** and comes under the ambit of sec 17(6) where it is stated that pipelines laid outside factory premises does not include plant and machinery as described in sec 17(5) (c).

Hence the Appellant will not be entitled to avail the ITC of GST paid on goods and services used for construction as per the provision laid out in section 17(5) (c) and 17(5) (d) of the CGST Act, 2017.

It is pertinent to mention that in the present case the appellant has claimed State Tax as Transitional Input Tax credit whereas there is no record of local purchase of taxable commodities during the tax period 2016-17 and 2017-18 nor any reflection of tax credit carry forwarded in the returns submitted by the appellant for the tax periods 2016-17 and 2017-18.

In view of the above, after careful examination of the entire facts and circumstantial evidence, I find no merit in the appeal and thus, the appeal filed by the appellant is quashed and set aside.

The appeal stands disposed in the above terms.

Inform all concerned accordingly.”

Petitioner has, *inter alia*, taken a number of grounds to assail the impugned order. One of the grounds taken is lack of personal hearing during the appellate proceedings before passing of the final order dated 16.03.2023. On merits, the petitioner has also submitted that it was entitled to transition the TDS amount of Rs.11,88,811.00 available under the VAT regime as input tax credit through TRAN-1. The said credit was on account of excess tax deducted during the VAT regime as TDS.

8. Mr. T.K. Deb, learned counsel for the petitioner, has referred to Section 140(1) of the Act of 2017 and submitted that the petitioner, being a registered company, is entitled to take in its electronic credit ledger, credit of the amount of Value Added Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day i.e. 01.07.2017, furnished by it under the existing law i.e. the TVAT Act in the manner as is prescribed under the Act of 2017 i.e. in Form TRAN-1. It is submitted that the petitioner has, therefore, bona fide sought transition of the available TDS amount in excess, as eligible ITC to the electronic credit ledger as transitional credit from the previous regime. Learned counsel for the

petitioner has relied upon a decision dated 09.01.2023 of the Jharkhand High Court, rendered in the case of *M/s Subhash Singh Choudhary v. The State of Jharkhand & others* in *W.P.(T) No.2404/2020* and another connected matter. Relying upon the said judgment, he submits that the learned Division Bench of the Jharkhand High Court has held that the legislature in its wisdom has provided for migration of unadjusted credit amount of VAT and allow migration of TDS amount under the GST regime, as otherwise the said unadjusted TDS amount would have become refundable to the assessee immediately after repeal of the aforesaid JVAT Act. Therefore, the legislature instead of providing refund of unadjusted TDS and entry tax to the assessee, provided a mechanism to enable the assessee to migrate the aforesaid credits under the GST regime for its adjustment against its output tax liability. This was to avoid the cumbersome process of asking assessee to claim refund of the amount of unadjusted TDS, Entry Tax and Input Tax Credit instead providing, *inter alia*, to allow the assessee to migrate the said amount under the GST regime as facilitation for adjustment against output tax liability. It is in this context that the proviso to Section 140(1) of the Act of 2017 is required to be interpreted. It is submitted that the petitioner has only carried forward the unadjusted TDS amount as eligible ITC to the GST regime as transitional credit under Section 140(1) of the Act of 2017.

9. Mr. Deb, learned counsel for the petitioner, has also sought to draw the attention of this Court to certain forms submitted under the TVAT Act, 2004 i.e. Annexure-2 relating to the last quarter of FY 2015-16 and other returns for the 1st, 2nd and 3rd quarter of the FY 2016-17 in order to submit that each of these returns showed payment of excess amount as TDS deducted by

the TNGCL. As such, these amounts were available as excess Value Added Tax to the credit of the petitioner which either could have been refunded or carried forward to the GST regime as transitional credit. This aspect of the matter has not been duly considered by the respondent authorities while not only denying the claim, but imposing penalty of the equivalent amount of tax on allegations of fraud and willful misstatement and suppression of fact and wrongful availment of ITC by the petitioner under Section 74(1) of the Act of 2017. Apart from that, interest liability under Section 50(3) has also been imposed upon the petitioner company. The impugned order, therefore, suffers from non-application of mind, denial of principles of natural justice and also incorrect application of the provisions of Section 140(1) of the Act of 2017 under Chapter XX – “Transitional Provisions” dealing with migration of existing taxpayers.

10. Learned counsel for the petitioner has, however, not been able to overcome the legal hurdle raised on behalf of the respondents relying upon Section 17(5) of the Act of 2017 as per which, input tax credit shall not be available in respect of the enumerated items i.e. in the petitioner’s case under Section 17(5) (c) i.e. “works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service”. It is not the case of the petitioner that the input service provided by the petitioner was to be further supplied for works contract service at the end of the TNGCL. Learned counsel for the petitioner has also however not been able to rebut the submission of learned Additional Government Advocate for the respondents-State relying upon Para 15 of the same decision in the case of *M/s Subhash Singh*

Choudhary (supra) wherein, in respect of the proviso to Section 140(1) of the JGST Act, it has been held that the term used in the proviso namely ‘not admissible as input tax credit’ could only mean that if there is an expressed prohibition under the GST Act for claiming input tax credit, then the benefit of transitional credit would not be available. Para 15 thereof is extracted hereunder:

“15. It is in the aforesaid context that the proviso to Section 140(1) of the JGST Act is required to be interpreted. Proviso to Section 140(1) of the JGST Act provides that a registered person shall not be allowed to tax credit where the said amount of credit is not admissible as input take credit under the GST Act. It was contended by the Respondents that since TDS was in the nature of output tax, it was not admissible as input tax credit under the GST Act and, hence, cannot be allowed to be migrated.

In our opinion, the aforesaid restrictive interpretation sought to be given to the proviso is beyond the scheme of transitional provision. On the contrary, a harmonious interpretation is to be given to the proviso and the term used in the proviso, namely, ‘not admissible as input tax credit’ could only mean that if there is an express prohibition under the GST Act for claiming input tax credit, then the benefit of transitional would not be available. Section 17(5) of the JGST Act contains provisions prohibiting availment of input tax credit under the GST Act and, in our opinion, the interpretation of the proviso would be to restrict the migration of credit, if the credit pertains to the transactions which are prohibited under Section 17(5) of the JGST Act in which no input tax credit is available. Any contrary interpretation given to the proviso would have an effect of nullifying and/or setting at naught the real object of the transitional provision.”

11. Mr. Karnajit De, learned Additional Government Advocate for the respondents-State, has referred to Section 17(5) of the Act of 2017 which contains provisions prohibiting availment of ITC under the GST regime. He has also referred to the Counter Affidavit filed by them in rebuttal to the statements and the grounds taken in the writ petition. It is submitted that respondent No.4 has issued three reminders to the petitioner in respect of the assessment for the VAT period covering 2016-17 to 2017-18 (Up to June, 2018). He has further

drawn our attention to the notice dated 20.05.2021 issued under GST ASMT-10 [Annexure-7] after scrutiny of the returns of the petitioner, which detected a discrepancy as regards the transitional credit taken by the petitioner in Form TRAN-1 and its availment. Since petitioner failed to explain those discrepancies, a proper show cause notice was issued on 23.09.2021 under Section 74(1) of the Act of 2017 and a summary of show cause notice (GST DRC-01) was also issued containing the calculation in tabular form. Petitioner was asked to furnish documents by 07.10.2021 and the date of hearing was fixed on 05.10.2021. However, the petitioner, instead of appearing before the adjudicating authority on the date fixed, sought an adjournment. He appeared on the adjourned date i.e. 16.11.2021 and again sought 30(thirty) days' more time for taking necessary action. Thereafter, the adjudicating authority had no reason to adjourn the proceedings further. The adjudication order holding the petitioner liable for tax, penalty and interest was thereafter imposed. It is submitted that the grounds taken by the petitioner before the appellate authority have been duly considered and rejected by the appellate authority in view of the specific provisions under sub-clauses (i) & (ii) of Section 140(1) and Section 17(5) (c) of the Act of 2017, since the contract services admittedly entered into between the petitioner and TNGCL related to supply for construction of immovable property (other than plant and machinery), and that such input service was not to be used for further supply of works contract service. As such, no grounds have been made out by the petitioner for interference in the adjudication order and the appellate order. Therefore, the writ petition deserves to be dismissed.

12. We have considered the submission of learned counsel for the parties at length and taken note of the pleadings in the writ petition and also the supporting documents. We have also gone through the Counter Affidavit of the respondents-State and the Rejoinder Affidavit filed thereto.

13. The case of the petitioner, as is borne out from the conspectus of facts taken note of in the previous paragraphs, is of transition of and availment of excess amount of TDS under the VAT regime as transitional credit under the GST regime in terms of Section 140(1) of the Act of 2017. It is not in dispute that the petitioner has been providing the service of laying of gas pipelines to the TNGCL. VAT returns for the respective period i.e. last quarter of 2015-16 and three quarters of 2016-17 have been annexed in support of the plea that petitioner was entitled to excess TDS amount deducted by TNGCL; either for refund purposes or to carry forward as transitional credit under Section 140(1) of the Act of 2017. Petitioner has, by filing TRAN-1 on 23.12.2017 in fact carried forward the amount of Rs.11,88,811.00 as transitional credit believing it to be eligible ITC under the VAT regime on account of excess TDS deducted from the bills of the petitioner company by the service recipient i.e. TNGCL. However, in this regard, it is relevant to refer to the provisions of Section 140(1) which deals with transitional credit and is contained under Chapter XX dealing with transitional provisions, extracted hereunder:

“ 140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax, if any, carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date:

Provided further that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of the Central Sales Tax Act, 1956 which is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

Provided also that an amount equivalent to the credit specified in the second proviso shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.”

The sub-clause (i) to the proviso of Section 140(1) clearly states that no registered company shall be allowed to take credit in the circumstances where the said amount of credit is not admissible as input tax credit under this Act i.e. GST Act. Sub-clause (ii) thereof also provides that such amount of credit won't be admissible where the company has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date. What is not admissible to be availed as ITC is provided under Section 17(5) which is extracted hereunder:

“17. (5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a) motor vehicles and other conveyances except when they used-

(i) for making the following taxable supplies, namely:-

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both:-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre;
 - (iii) rent-a-cab, life insurance and health insurance except where –
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession.
 - (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
 - (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
- Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;
- (e) goods or services or both on which tax has been paid under section 10;
 - (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
 - (g) goods or services or both used for personal consumption;
 - (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
 - (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.”

Sub-clause (c) of Section 17(5) deals with the case of the petitioner and stipulates that input tax credit shall not be available in respect of the works contract service when supplied for construction of immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Petitioner, in the instant case, not only seems to have carried forward the excess TDS amount as transitional credit believing it to be eligible ITC; though excepted under Section 17(5) (c), but also seems to have availed it since upon scrutiny of its returns, such discrepancy was found in the

notice issued under GST ASMT-10 under Section 61 of the Act of 2017 followed by the notice under Section 74(1) of the Act of 2017. These provisions of the Act of 2017 permit of no exception.

14. Learned appellate authority has duly considered the facts and the legal issues involved and also the plea raised by the petitioner, and rightly come to a decision that since the appellant indulged in providing consumer connectivity works for laying of underground PE pipelines and above ground GI installations for CGD at Agartala for TNGCL, it came under the ambit of Section 17(5) (c), since it did not include “plant and machinery” as per Section 17(6), where it is stated that pipelines laid outside factory premises does not include plant and machinery as described in Section 17(5) (c).

As such, the appellate authority rightly held that the petitioner company is not entitled to avail the ITC of GST trade on goods and services used for construction as per Section 17(5) (c) and Section 17(5) (d) of the Act of 2017. The appellate authority has also found that though the appellant has claimed state tax as transitional input tax credit, but there is no record of local purchase of taxable commodities during the tax period 2016-17 and 2017-18, nor any reflection of tax credit carried forward in the returns submitted by the appellant for the tax period 2016-17 and 2017-18.

15. We have also scrutinized the memo of appeal filed in Form GST APL-01 [Annexure-14] in respect of the grounds now sought to be urged by the petitioner. However, as is apparent from perusal of the Form GST APL-01, the appellant has only raised three grounds – grant of credit availed in TRAN-1; drop in interest and drop in penalty with a prayer to amend, modify or change

the ground of appeal during the course of hearing. No such grounds of denial of principles of natural justice during adjudication proceedings has been raised even before the appellate authority or before us in this writ petition. Section 74(1) of the Act of 2017 provides for imposition of tax and penalty equivalent to the tax amount plus interest if the charges leveled under it are found to be true and proved, both the adjudication authority and the appellate authority have found that the petitioner had not only wrongly transitioned ineligible ITC from the VAT regime, but had also availed it; therefore it was a clear willful misstatement on the part of the petitioner, as ignorance of law cannot be pleaded in such matters.

16. As such, this Court does not find any grounds made out to interfere in the adjudication order dated 18.11.2021 [Annexure-13] and the order of the appellate authority dated 16.03.2023 [Annexure-15].

17. Writ petition is, therefore, dismissed. Pending application(s), if any, shall stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

Pijush/

PULAK BANIK Date: 2023.09.22
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