

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.227 of 2024

M/s Sheuli Rebber Estate

.....Petitioner(s);

Versus

The Union of India & others

.....Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Pranabindu Chakraborty, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mr. Paramartha Datta, Advocate,
Mr. T. Debbarma, Advocate.

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

Order

20/03/2024

Heard Mr. Somik Deb, learned senior counsel for the petitioner and Mr. Paramartha Datta, learned counsel for the respondent-CGST.

2. Petitioner has a Registration No. GSTIN 16ABOFS6236K1ZM under the CGST Act, 2017 for trading rubber products. On account of a mismatch between GSTR-2A and GSTR-3B submitted by the petitioner for the period 01.09.2023 till 13.09.2023, he has been served with a notice on 26.02.2024 [Annexure-5] to pay/reverse the ineligible ITC under Section 74 of CGST Act, 2017 [Act of 2017, *for short*] that he has availed along with applicable interest and penalty on or before 05.03.2024 failing which action would be taken against him as per provisions of law.

3. Petitioner in so many paragraphs of the writ petition has contended that the statement showing invoice numbers with relevant details of invoice value, taxable value, CGST, SGST paid and filing date and period of GSTR-1/5

pertaining to these transactions with respondent No.4 are annexed as Annexure-2. The details of Form GSTR-2B of respondent No.4 is also available on the CGST portal. Petitioner has also reflected the details of his transactions strictly in tune with Rule 61(5) of the CGST Rules in Form GSTR-3B for the month of September, 2023 [Annexure-4]. Apparently, for the reason that respondent No.4, who is the selling dealer, has not deposited the tax paid by the petitioner, the impugned notice dated 26.02.2024 at Annexure-5 has been issued against him. Petitioner is a bonafide purchasing dealer who has paid the taxes against the invoices raised by the respondent No.4, and in bonafide belief that respondent No.4 has deposited the tax dues, claimed the ITC admissible to him. The GST Registration of respondent No.4 has been cancelled after these transactions with the petitioner. Respondent No.3 – the Superintendent (Anti-Evasion), CGST, Agartala, without scrutinizing whether the selling dealer i.e. respondent No.4 is responsible for non-deposit of tax dues in relation to the transaction in the government exchequer, has issued this notice for reversal of the ineligible ITC availed by the petitioner along with interest and penalty.

4. Mr. Somik Deb, learned senior counsel for the petitioner, has relied upon certain judgments in support of his submission that the writ petition is maintainable to examine whether issuance of such a notice for reversal of ITC even though admissible to the petitioner along with interest and penalty is proper in the eye of law. The judgments cited in support of his submission are as under:

(a) *Tarapore and Company v. State of Jharkhand and Others* reported in [2020] 74 GSTR 340 (Jharkhand);

(b) *D.Y. Beathel Enterprises v. State Tax Officer (Data Cell), (Investigation Wing), Tirunelveli* reported in [2021] 91 GSTR 300 (Mad);

(c) *LGW Industries Limited and Others v. Union of India & Others* reported in [2023] 112 GSTR 16 (Cal).

5. Mr. Paramartha Datta, learned counsel for the CGST, has strongly opposed the prayer. He submits that the instant notice is in the nature of an intimation under Section 74(5) of the Act of 2017 to enable the assessee/registered taxpayer to deposit or reverse the ineligible ITC along with interest and penalty before any formal proceeding under Section 74(1) is initiated for fraudulently availing inadmissible ITC. The petitioner is supposed to either make payment of the amount or reverse the ineligible ITC with interest and penalty or to make his submissions in Part B of the requisite Form GST DRC-01A in terms of Rule 142(2A) so that the assessing authority can examine whether the petitioner has voluntarily deposited the tax dues or reversed the ineligible ITC or his objection to such intimation is proper in the eye of law. After submission of such details of partial payment or objection in Part B of Form GST DRC-01A that proceedings under Section 74(1) could be initiated if the assessing officer is not satisfied.

6. We have considered the submission of learned counsel for the parties and taken note of the pleadings from the record including the impugned intimation/notice dated 26.02.2024 [Annexure-5] issued by respondent No.3 – Superintendent (Anti-Evasion), CGST, Agartala and also gone through relevant provisions of the Act of 2017 and the Rules framed thereunder. We have also perused the decisions rendered by different jurisdictional High Courts cited above by the petitioners.

7. Whether the transactions were bonafide or not and whether the selling dealer i.e. respondent No.4 whose registration has been subsequently cancelled is responsible for non-deposit of tax leading to availment of ineligible ITC by the petitioner is not to be gone into by this Court at this stage. The scheme of the GST Act contemplates a pre-adjudication notice for which intimation under Section 74(5) of the Act of 2017 is issued in Form GST DRC-01A read with Rule 142(1A) upon the assessee/tax payer containing the communication of details of any tax, interest and penalty chargeable upon the person under sub-section (1) of Section 73 or sub-section (1) of Section 74. This intimation is in Part A of Form GST DRC-01A. Petitioner has not enclosed any notice indicating initiation of proceedings under Section 74(1) for wrongful availment of ITC by the proper officer, if the petitioner has not paid or short paid or erroneously refunded or wrongly availed ITC or utilized it by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax. Learned counsel for the respondent-CGST has also submitted that the impugned notice is in the nature of an intimation to the petitioner to reverse the ineligible ITC along with interest and penalty as ascertained before any proceedings are initiated under Section 74(1) of the Act of 2017. In such circumstances, as per the scheme of Section 74(1), particularly provisions of Section 74(5) read with Rule 142 (1A) and 142 (2A), petitioner being the person referred to in the impugned notice is required to either make partial payment of the amount communicated to him or if he desires to file any submission or objection against the proposed liability, he may do so in Part B of Form GST DRC-01A.

8. As such, this Court is of the considered view that petitioner may either make the necessary deposit or reverse the ineligible ITC along with interest and penalty or file his objection(s) in Part B of Form GST DRC-01A. Needless to say, upon submission of such reply by the petitioner, the adjudicating officer would examine whether the objections are tenable on facts and in law before initiating a proceeding under Section 74(1) of the Act of 2017 taking into consideration the relevant documents relied upon by the petitioner. In case the adjudicating officer is of the view that the issue can be resolved after due notice to the selling dealer i.e. respondent No.4, he may also issue such intimation to the selling dealer so that the dispute as to whether the petitioner has rightly availed eligible ITC after making payment of the tax dues to the selling dealer or whether the selling dealer has failed to deposit the tax paid by the petitioner with the government exchequer can be decided.

9. With these observations, the writ petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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