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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5224/2018

MAURIA UDYOG LTD ..... Petitioner

Through : Mr. Y.S. Kumar, Adv.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Gigi C. George, Adv. with Mr. Vikrant Goyal, Adv. for R-1/UOI.
Mr. Harpreet Singh, Sr. Standing Counsel for R-2,3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **31.10.2018**

The petitioner seeks a direction to allow credit for a specified amount along with interest which it claims it is legally entitled to.

The brief facts are that the petitioner who is the manufacturer and exporter of LPG cylinders, valves, regulators, etc, had to comply with the provisions of the Central Goods and Service Tax (CGST) Act, 2017 (hereafter "Act"). The Act repeals the previously existing legal regime with respect to the payment of service tax. However, transitional provisions such as Section 140(3) envisioned the change over from the existing service tax and other indirect tax regimes to the new taxation environment. Under the erstwhile service tax regime, for the period on and after 1st July, 2017, credits that were to accrue and the benefit of which assessees could claim became the subject matter of certain rules, clarifications and administrative circulars. One of these was an amendment to the Service Tax Rules, 1994, carried out on 22.06.2017, which came immediately before coming into the force of GST regime. It would be relevant here to notice that a second proviso to Rule 7(2) mandated that assessees were to submit their return – for the period 1st April, 2017 to 30th June, 2017, in either Form ST-3 or ST-3C. Proviso was inserted to Rule 7B(1) to the following extent:

> *"Provided that the revised return for the period from the lst day of April, 2017, to the 30th day of June, 2017, shall be submitted within a period of forty five days from the date of submission of the return under rule 7."*

The petitioner had filed its return – in compliance with the amended rules, which continued to remain in force after coming into force of the Act. By virtue of transitional provisions, especially the amendments noticed above, the petitioner filed its transitional return in ST-3 on 11.08.2017. As it was notified with eleven errors, it sought revision of the returns in terms of the 22.06.2017 Circular [proviso to Rule 7B(1)] on 12.08.2017.

On 28.09.2017, the Central Board of Excise and Customs issued certain circulars with respect to the transitional credit arising out of the payment of service tax on reverse charge basis after 30.06.2018 and by 5th/6th July, 2017. The material portion of this circular is extracted below:

> *"2.1 I am directed to refer to certain instances of assessee who had chosen to wait till 5th/6th July, 2017 to make the payment of service tax on reverse charge basis. instead of paying the same by 30-6-2017. These cases would be ones where the service was received before 1-7-2017 and payment for the value of the service was also made before 1-7-2017. Since the input tax credit in cases of payment under reverse charge would be available only after payment of service tax, these assessees had doubts as to whether the details of credit should be included in the return in Form ST-3 or in Form OST TRAN-1.*
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> *2.2 The matter has been examined. In such cases, details of credit arising as a consequence of payment of service tax on reverse charge basis after 30th June 2017 by 5th/6th July 2017, the details should be indicated in Part I of Form ST-3 in entries, 13.1.2.6. 13 2.2.6 and 13 3.2.6. Linked entries should be made in Part H of Form ST-3. In case the return has already been filed by or after the due date, these details should be indicated in the revised return. the time for filing of which is 45 days from the date of filing of the return.*
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> *2.3 It is necessary to give compliant assessees who had filed their ST 3 return by the due date or some days later. an immediate and viable window in which a revised return can be tiled consequent to the issue of this instruction. Hence all ST3 returns for the period 1-4-2017 to 30-6-2017 which have been tiled upto and inclusive of the 3pt day of August 2017, shall be deemed to have been tiled on 31-8-2017. This will give all such assessees some more days to file a revised return, if necessitated. Once details of such credit are reflected in the ST-3, the assessee may proceed to fill in the details in Form GST TRAN-I. It may be noted that as on date, GST TRAN-l can be filed upto 31-10-2017 and can also be revised."*

It is contended by the petitioner that when it sought to take advantage of the last circular of 28.09.2017 by revising its ST-3 returns on 04.10.2017, the respondents rejected its attempt, claiming that the revised return for the selected period have already been filed and that the petitioner was therefore, not permitted to revise the previously filed return by seeking to take advantage of the September, 2017 Circular.

It is submitted on behalf of the petitioner that the objective of the circular of 28.09.2017 was to grant relief to those assessees who had filed returns and were also claiming transitional credit out of payment of service tax on reverse charge basis. It is submitted that since the petitioner filed the return within the broad description of this circular, the mere circumstance that it had sought revision on an earlier occasion – in compliance with the proviso to Rule 7B(1) (freshly inserted on 22.06.2017) would not have precluded the opportunity to revise its return.

The respondent-Revenue urges that the plain terms of 22.06.2017 amendments permitted only one opportunity to the assessees to revise their returns. Having availed of it, the petitioner could not claim that and the credits in respect of reverse charge basis, were to be processed pursuant to the circular of 28.09.2017. It was submitted that besides the e-portal created for this purpose, would not accept the revision claims made.

It is evident that the petitioner's grievance is concerned with the changes that accrued in the wake of the introduction of the GST regime. Perhaps, foreseeing the upheaval, the rule making authority contemplated and provisioned partly for this kind of unsettling effect, enabling assessees to file the returns in the first instance by an extended period and revised it within 45 days [by amending proviso Rule **7**B(1)] and by also prescribing the appropriate time limits by the other amendment – again on 22.06.2017. On a plain reading of this circular alone, undoubtedly, the Revenue's position would be correct. However, the position altered as a consequence of this circular/clarification issued on 28.09.2017. For the first time, the question of credits vis-à-vis reverse charges was the specific subject matter of the clarification which by paras 2.3 enabled assessees to approach the Revenue.

This Court is conscious that filing a revised return would be a provision which enables an assessee to revise his or her returns and should be construed strictly and not a charter to repeatedly amend the returns once filed. That interpretation would not apply in the facts of this case, having regard to the special circumstances i.e. the upheaval which entities had to undergo. Necessarily, it mean that the existing accounting methods had to be preserved and projected into those required by the new regime and the set of rules and regulations framed by the authorities. The Circular of 28.09.2017, therefore, requires to be interpreted in its own terms and not as limiting the opportunity granted to the assessees, provided they approach and seek the necessary relief within the prescribed time or any reasonable time having regard to the circumstances.

Given that the reasonableness in such case is contextual *inter alia*, the assessee cannot seek revision beyond the prescribed tax period or periods in question.

In view of the discussion, the Court is of the opinion that the petitioner is entitled to relief. A direction is issued to the respondents to take on record and process originally filed returns on 04.10.2018 which the petitioner attempted/sought to file and process it in accordance with law within 4 weeks.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

OCTOBER 31, 2018/akv