

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.29676 of 2019

M/S.SUN DYE CHEM

Rep by its Partner Mr. N.Prabaharan

No.126/1002 KNK Road, Erode,

Tamil Nadu- 638003.

.. Petitioner

.Vs.

1. The Assistant Commissioner (ST)
Tirupur Rural Circle- II, Kumaran Road,
Tirupur- 641601.

2. The Commissioner of State Tax,
State of Tamil Nadu, Ezhilagam, Chepauk,
Chennai-5.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Mandamus, to direct the 1st Respondent to Permit the Petitioner to correct the Form GSTR-1 for the periods from August 2017 to December 2017 which involves ITC Credit of Rs.29,88,372/-.

For Petitioner : Mr.K.Thyagarajan

For Respondents: Mr.ANR Jaya Prathap
Government Advocate

O R D E R

The petitioner is a partnership firm, a registered dealer in terms of the provisions of the Tamil Nadu Goods and Service Tax Act, 2017 (in short 'Act'). Regular returns of turnover are being filed computing the tax payable after setting off Input Tax Credit (ITC) as against the output tax liability. The ITC claimed is the cumulative amount of Central (CGST), State (SGST) and Intra-state (IGST).

2. Monthly returns were filed for the period August 2017 to December 2017 in the GST portal in Form GSTR-3B. The returns were accompanied by annexures in Form GSTR-1 that reflected the total credit in regard to the transactions - CGST, SGST and IGST. There was however, an inadvertent error in reporting the

credit in Form GSTR-1 in regard to the outward supplies and Intra-state sales had been erroneously reported as inter-state sales, as a result the CGST and SGST credit was reflected in the IGST column.

3. The error was noticed by the petitioner when its customers brought to its notice the fact that the tax credit has been reflected in the IGST column instead of CGST/SGST columns posing a difficulty to the customers to avail the said credit.

4. The petitioner submitted a request for amendment of Form GSTR-1 that came to be rejected on 12.08.2019 on the ground that there was no provision to grant the amendment sought, in any event, not after 31.03.2019 as Notification 71/2018 had extended the time for submission of the amended GSTR-1 till 31.03.2019, for the period 2017-18. The petitioner was thus unable to correct the error.

5. The petitioner has therefore, come up with the present writ petition seeking a mandamus directing the Assistant Commissioner (ST)/R1 to permit it to correct Form GSTR-1 for the period August 2017 to December 2017 and redistribute the credit available from the IGST column to the CGST and SGST fields.

6. The respondents in their common counter, refer to Sections 37, 38 and 39 relating to the furnishing of details of outward and inward supply and filing of returns, as well as the procedure to be followed in this regard. They argue that the time for amendment of the details of outward supply stood extended only till 31.03.2019. The petitioner however approached the Officer only on 16.08.2019 seeking rectification of the errors occasioned during the period between October and December 2017. The officer was thus handicapped and could not grant the relief as sought for in the absence of an enabling provision. Furthermore, any move to amend the timelines stipulated under statute could only be done by the Government as per Section 164 of the Act, upon recommendation of the GST Council.

7. I have heard learned counsel in detail. The scheme for filing of Returns and is set out under Chapter IX of the Act and the procedure for availment of credit relating to outward and inward supplies, in Sections 37 and 38, respectively. Section 37 is extracted in full below:

37. Furnishing details of outward supplies.- (1)
Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish,

electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following

the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation.--For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

8. Section 37(1) states that every registered person other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of Sections 10, 51 or 52 shall electronically furnish details of onward supply of goods or services before the 10th of every month succeeding the tax period in question and Rule 59(1) of the Tamil Nadu Goods and Service Tax Rules 2017 ('Rules) corresponding to Section 37 (1) prescribes the format as Form GST 1.

9. The aforesaid details are also to be communicated to the recipient in the manner prescribed. Section 37(2) states that every registered person (recipient) who has been communicated the details (in terms of Section 38(3), relating to any modification, deletion or inclusion by the recipient of the forms or details pertaining to inward supplies of input service distributor under Section 38(4)), shall either accept or reject the details so communicated within a stipulated period and if accepts the same, the details furnished under Section 37(1) shall stand amended accordingly.

10. Rule 59(2) sets out the details that are to stand included in GSTR-1 including (i) invoice details of all inter and intra-state supplies effected to registered persons (ii) inter-state supplies of value more than two and a half lakh rupees effected to unregistered persons (iii) consolidated details of (i) and (ii) as aforesaid and (iv) debit and credit notes, if any, issued in respect of the aforesaid invoices. Rule 59(3) stipulates that the details of outward supplies furnished by the supplier shall be made available/communicated to the concerned registered persons/recipients in Form GSTR-2-A, 4-A and 6-A after the due date of filing Form GSTR-1.

11. Section 37(3) of the Act provides for the rectification of an error or any omission in a return filed under Section 37 (1) and the proviso therein states that no rectification of error or omission shall be allowed after the furnishing of a return under Section 39 for the month of September following the end of the financial year to which such details pertain or the filing of an annual return, whichever is earlier. The second proviso, inserted vide S.O.6428E dated 31.12.2018 w.e.f.

31.12.2018, provides further that the rectification or omission in respect of details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September 2018 till the due date for furnishing the said details for the month of March 2019 or quarter 2019. Admittedly in the present case, the time for rectification expired, after extension thereof, on 31.03.2019.

12. Section 38 provides for details of inward services and reads thus:

38. Furnishing details of inward supplies (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

13. Section 38 states that every registered person other than an Input Service Distributor or a non-resident taxable person or one paying tax under the provisions of Sections 10, 51 or 52 shall verify, validate modify or delete the details pertaining to outward supplies and credit and debit notes communicated under Section 37(1) to prepare the details of his inward supplies and credit or debit notes in respect of such supplies that have not been declared by the supplier under Section 37(1).

14. Section 38(2) states that every registered person other than an input distributor or a non-resident taxable person or a person paying tax under the provisions of Section 10, 51 or 52 shall furnish electronically certain categories of inward

supplies of taxable goods or services or both and the credit or debit notes received in respect of such supplies within a stipulated period in the prescribed manner. The prescription is set out in Rule 60 dealing with form and manner of furnishing details of inward supplies in Form GSTR-2A.

15. Section 38(3) provides that the details of supplies modified, deleted or included by the recipient and furnished under Section 38(2) shall be communicated to the supplier in the prescribed manner. Section 38(5) deals with the mismatch of particulars provided in terms of Section 38(2) and those mentioned in Sections 42 and 43 and states that upon discovery of any error or omission the registered person shall rectify the same. The proviso states that no rectification shall be permitted after the expiry of the time beyond the financial year to which the details pertain or before the last date for furnishing of the annual return, which is earlier.

16. Section 39(1) of the TNGST Act, requiring the filing of a return in Form GSTR-3B reads as follows:

39. Furnishing of returns.- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished.

17. A registered person who files a return under Section 39 (1) involving intra-State outward supply is to indicate the collection of taxes customer-wise in monthly return in Form GSTR-1 and the details of tax payment therein are auto populated in Form GSTR -2-A of the buyers. Any mismatch between Form GSTR-1 and Form GSTR-2A is to be notified by the recipient by way of a tabulation in Form GSTR-1A. Admittedly, Forms in GSTR-2A and GSTR-1A are yet to be notified as on date. The statutory procedure contemplated for seamless availment is, as on date, unavailable.

18. Undoubtedly, the petitioner in this case has committed an error in filing of the details relating to credit. What should have figured in the CGST/SGST column has inadvertently been reflected in the ISGT column. It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column. It is for this purpose, to ensure that the suppliers do not lose the benefit of the credit, that the present writ petition has been filed.

19. Admittedly, the 31st of March 2019 was the last date by which rectification of Form - GSTR 1 may be sought. However, and also admittedly, the Forms, by filing of which the petitioner might have noticed the error and sought amendment, viz. GSTR-2A and GSTR-1A are yet to be notified. Had the requisite Forms been notified, the mismatch between the details of credit in the petitioner's and the supplier's returns might well have been noticed and appropriate and timely action taken. The error was noticed only later when the petitioners' customers brought the same to the attention of the petitioner.

20. In the absence of an enabling mechanism, I am of the view that assessee should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same,

particularly in the absence of an effective, enabling mechanism under statute.

21. This writ petition is allowed and the impugned order set aside. The petitioner is permitted to re-submit the annexures to Form GSTR-3B with the correct distribution of credit between IGST, SGST and CGST within a period of four weeks from date of uploading of this order and the respondents shall take the same on file and enable the auto-population of the correct details in the GST portal. No costs.

Sd/-

Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (ST)
Tirupur Rural Circle- II, Kumaran Road,
Tirupur- 641601.
2. The Commissioner of State Tax,
State of Tamil Nadu, Ezhilagam, Chepauk,
Chennai-5.

+1cc to the Spl. Government Pleader (Taxes), Sr.No.33113

W.P. No.29676 of 2019

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