IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.1022 of 2020

Pentacle Plant Machineries Pvt. Ltd.,
Represented by its Director C.V.Ganapati,
No.8/4, 1st Street, Union Carbide Colony,
Old Pallavaram, Chennai-600 117.

…Petitioner

Vs

1. Office of the GST Council,
   Secretariat, 5th Floor, Tower-II,
   Jeevan Bharathi Building,
   Janpath Road, Connaught Place,
   New Delhi-110 001.

2. Office of the Assistant Commissioner (ST),
   Pallavaram Assessment Circle,
   117, Station Road, Chrompet, Chennai-600 044.

3. Office of the Superintendent of Central Tax,
   Devanaipeta Central GST Range, Rajahmahendravaram Div.,
   SriNagar, Morampudi, Rajahmahendravaram – 533 107.

4. Office of the Superintendent,
   Central Goods & Service Tax,
   Range V, Renukoot,
   Renukoot, U.P.

… Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to direct the Respondents to rectify the mistake in mentioning in the wrong GST number of Uttar Pradesh vide GSTIN.09AABCH8954L1ZY instead of correct GST number of Andhra Pradesh vide GSTIN-37AABCH8954L1ZZ in Form GSTR-1 for the month of February, 2018 filed by the Petitioner and to enable M/s.HES Infra Pvt. Ltd., Andhra Pradesh to avail the Input Tax Credit.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.A.P.Srinivas (for R1, R3 & R4)
Senior Standing Counsel
Mr.ANR.Jaya Prathap (for R2)
Government Advocate

O R D E R

Heard Mr.Joseph Prabakar, learned counsel for the petitioner, Mr.A.P.Srinivas, learned Senior Standing Counsel for R1, R3 and R4 and Mr.ANR. Jayaprathap, learned Government Advocate for R2.

2. The petitioner seeks a mandamus directing the respondents to rectify the mistake in its GSTR-1 return, wherein it has, instead of the GST number of the purchaser in Andhra Pradesh, mentioned the GST number of the purchaser in Uttar Pradesh.

3. The petitioner, engaged in the manufacture of Construction Equipment, is registered with State GST Authority/R2 and files returns in terms of the provisions of the Central Goods and Services Tax Act, 2017 (in short 'CGST Act'). The issue that arises in this matter is substantially covered by my decision in the case of Sun Dye Chem Vs. The Assistant Commissioner (ST) [2020 VIL 524 (Mad)].

4. The counter filed by respondents 1 and 3 i.e. GST Council and Central GST Commissionerate states at para-8 that all the five invoices contain the name and GSTIN of the purchaser of Andhra Pradesh.

5. Had the requisite statutory Forms been notified, this error would have been captured in the GSTR-2 return, an online form, wherein the details of transactions contained in the GSTR-3 return would be auto-populated and any mismatch noted. Likewise, had the GSTR-1A return been notified, the mismatch might have been noticed at the end of the purchaser/recipient. However, neither Form GSTR-2 nor Form GSTR-1A have been notified till date. No doubt, the time for modification/amendment of a GSTR-3B return was extended till the 31st of March 2019, which benefit the petitioner did not avail since it was unaware that a mistake had crept into its original returns.

6. The revenue does not dispute the position that Forms GSTR-2 and 1A are yet to be notified. It also does not dispute the position that goods have reached the intended recipient. However, the credit claimed on the basis of accompanying invoices has been denied solely on account of the mismatch in GSTR number. It is only on 15.07.2019 when the recipient notified the petitioner of the rejection of the credit, seeking amendment of the return, and threatening legal action, that the petition came to be aware of the mismatch.

7. In Sun Dye Chem (supra), the error related to distribution of credit as between IGST/CGST/SGST, which posed a difficulty to the recipient in the matter of availment. I have taken a view noticing that the error arose out of inadvertence, that such bonafide mistakes must be permitted to be corrected, stating at paragraphs 17 to 21 as follows:

> 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.
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> 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.
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> 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.
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> 20. In the absence of an enabling mechanism, I am of the view that assessees 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.'

8.To summarise, since Forms GSTR-1A and GSTR-2 (erroneously mentioned as GSTR-2A in para-17 of order dated 06.10.2020 in WP.No.29676 of 2019) are yet to be notified, the petitioner should not be mulcted with any liability on account of the bonafide, human error and the petitioner must be permitted to correct the same.

9.Taking the same view in this case as well, this writ petition is allowed. No costs. Both learned counsel for the respondents, Mr.Srinivas as well as Mr.Jaya Prathap, would concur on the position that it is for the Assessing Officer/R2 to give effect to this order, and a direction is thus issued to R2 to enable amendment to GSTR-1 with all consequences thereto, within a period of eight (8) weeks from today.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1. Office of the GST Council,
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Central Goods & Service Tax,
Range V, Renukoot,
Renukoot, U.P.

+1cc to Mr.Joseph Prabakar, Advocate, S.R.No.11493
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.11241
+1cc to the Special Government Pleader, S.R.No.11061.

W.P. No.1022 of 2020

PMK(CO)
BE(26/07/2021)