IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.NO.7762 OF 2021
AND
WMP.NO.8297 OF 2021

[Video Conferencing]

V.Pradeep Kumar
Proprietor: M/s.Accurate Enterprises
No.2 Bowden Street, Cooks Road
Otteri, Chennai – 600 081.

...Petitioner

-Vs.-

The Deputy Commissioner of GST & Central Excise
Thiru Vi Ka Nagar Division
Chennai North Commissionerate
Chennai – 600040.

...Respondent

Prayer :-
Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in Order-in-Original-01/2021 (GST), quash the order dated 10.02.2021 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.Rajnish Pathiyil,
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned order dated 10.02.2021 passed by the respondent holding that the petitioner was not entitled for Input Tax Credit for a sum of Rs.33,23,950/- on account of mismatch between the registered CGSTIN number of the petitioner and GSTIN number mentioned in the invoices raised by the supplier M/s.Bharti Telemedia Limited, towards the supply of Direct To Home [DTH] boxes quoting the petitioner's provisional registration number viz., GSTIN : 33AQBPP7805M1ZL which was effective from 26.06.2017.

2.It is the case of the petitioner that the aforesaid provisional registration was given to the petitioner on 26.06.2017 in FORM GST REG-25 just few days before the GST was implemented with effect from 01.07.2017 and thereafter, the petitioner was allotted the permanent GSTIN under Rule 10(1) of the GST Rules, 2017 in FORM GST REG-06 bearing number 33AQBPP7805M2ZK.

3.It is the case of the petitioner that the supplier by mistake kept raising invoices on the petitioner by specifying the provisional GSTIN granted to the petitioner on 26.06.2017 while the petitioner correctly filed the returns under GSTR-1 quoting the final registration number viz., 33AQBPP7805M2ZK . It is submitted that the petitioner was in the business only upto September 2018, for a period of 13 months after the GST Act came into force with effect from 01.07.2017. The specific case of the petitioner is that even as per the respondent, the denial of credit is only on account of the mismatch between the two GSTIN numbers i.e., provisional GSTIN and final GSTIN, in the returns filed by the petitioner and the invoices raised by the supplier, namely, M/s.Bharti Telemedia Limited quoting the provisional GSTIN registration number of the petitioner.

4.It is further submitted that there is no loss to the revenue merely because there was a mistake committed on the part of the supplier in quoting the provisional GSTIN number in the invoice. It is submitted that the mismatch between the TIN number in GSTR 3B and the information which gets auto populated in the petitioners GSTR 2A cannot be a basis to deny the Input Tax Credit on the supplies effected by the supplier, when indeed there is no other dispute that the supplier had indeed paid GST on the supplies effected to the petitioner under the provisions of CGST and IGST Act, 2017. It is therefore prayed that the impugned order has to be set aside.

5.Opposing the prayer in this writ petition, the learned Senior Standing Counsel for the respondent submits that the petitioner has got an alternate remedy before the Appellate Commissioner under Section 107 of CGST Act, 2017 and therefore, on this limited ground alone the writ petition is liable to be dismissed. On merits, the learned Senior Standing Counsel submits that as per Rule 36 of CGST Rules, 2017, to avail the Input Tax Credit, the petitioner has to satisfy the mandatory requirement stipulated therein and since the petitioner has been unable to satisfy the same, the impugned order cannot be disturbed.

6.The learned Senior Standing Counsel for the respondent also referred to Rule 46 of the CGST Rules, 2017 and stated that the tax invoice on the strength of which the Input Tax Credit is available if it has complied with the requirements of the said Rules and since the Input Tax Credit invoice raised by the supplier did not match with the returns filed by the petitioner under GSTR 1, the question of allowing the Input Tax Credit cannot be countenanced.

7.By way of rejoinder, learned counsel for the petitioner submits that the issue is now covered by an order of the Division Bench of this Court rendered in W.A.No.2203 of 2021, in the case of Commissioner of GST and Central Excise v. M/s.Bharat Electronics Limited, dated 18.11.2021, wherein at paragraph 12, it has been held as follows:

> "12.Thus, there seems to be a consistent view that if there is substantial compliance, denial of Input Tax Credit which is a beneficial scheme and framed with the larger public interest of bringing down the cascading effect of multiple taxes ought not be frustrated on the ground of technicalities. In view of the above, we are inclined to affirm the order of the learned Single Judge in directing the petitioner/respondent to enable the respondent herein to file a revised Form TRAN-1, by opening of the portal and that such exercise is to be completed within a period of 8 weeks from the date of issue of this order."

8.Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent. Perused the impugned order and the provisions of the CGST Act, 2017 and CGST Rules, 2017.

9.The facts are not in dispute as is evident from the reading of the impugned order and the show cause notice issued to the petitioner on 21.10.2020. The dispute has arisen on account of the Input Tax invoices referring to the petitioner's provisional GSTIN, which perhaps is on account of the fact that the petitioner failed to intimate the supplier that the provisional GSTIN had been substituted with a permanent GST registration No.33AQBPP7805M2ZK in Form GST REG-06.

10.The impugned order also does not dispute that the 2 numbers i.e., provisional GSTIN given to the petitioner in Form GST REG-25 bearing number GSTIN No.33AQBPP7805M1ZL and permanent GSTIN number in Form GST REG-06 bearing registration number 33AQBPP7805M2ZK belong to the petitioner. Though there is a minor breach of the provisions of the Act at the suppliers end, such mistakes cannot be construed seriously against the person who is eligible to avail Input Tax Credit for discharging ultimate tax liability under the provisions of the respective GST Acts of 2017 and the rules made thereunder.

11.The procedure under the Rules are intended to implement the Act and the purpose of the Act is only to collect the tax and to pass on the incident of tax to the recipient to avail Input Tax credit, so that there is no cascading effect of the ultimate tax.

12.Considering the fact that there is no dispute regarding the payment of tax by supplier on the supplies effected to the petitioner, the question of denying Input Tax credit to the petitioner cannot be sustained. After all the procedures are nothing but handmaids of Justice and not mistress of law as held by the Hon'ble Supreme Court in Commissioner of Sales Tax v. Auriya Chambers of Commerce reported in AIR 1956 SC 1556 and State of Gujarat v. Ramprakash P Puri reported in (1969) 3 SCC 156.

13.In this connection, the decision of the Hon'ble Supreme Court in M/s.Unichem Laboratories Ltd v. Commissioner of Central Exercise reported in (2002) 7 SCC 145 = (2002) 145 ELT 502 is also invited, wherein it was held that it is no part of the duty of the department to recover tax which is not due to the department. The petitioner has made out a good case for interference. Though the petitioner is otherwise required to approach the Appellate Authority under Section 107 of CGST Act, 2017, as there are no disputed question of facts involved, I am inclined to allow the Writ Petition, as only a limited question of law is referred and requires to be answered in the affirmative in favour of the petitioner.

14.This Writ Petition thus stands allowed with consequential relief to the petitioner. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pgp

To

The Deputy Commissioner of GST & Central Excise
Thiru Vi Ka Nagar Division
Chennai North Commissionerate
Chennai - 600040.

+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.66459

W.P.No.7762 of 2021

MT(CO)
RLP(21/02/2022)