

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.12.2021
Pronounced On	16.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.17109 & 17111 of 2021

and

W.M.P.Nos.18134 & 18137 of 2021

M/s.Progressive Stone Works,
Represented by its Proprietrix
Aurosathyakala,
No.58/9, Irumbai Village,
Vanur T.K.Villupuram District 605 111,
Thindivanam Circle.

.. Petitioner in both W.Ps.

Vs.

1. The Joint Commissioner (ST),
Government Buildings, Fort Road,
Bharathiyar Salai,
Vellore 632 001.
2. The Deputy State Tax Officer,
136,137 Second Floor,
Nehru Street, (State Bank up stair)
Thindivanam.
3. The State Tax Officer,
136,137, Second Floor,
Nehru Street, (State Bank up stair),
Thindivanam.

... Respondents in both W.Ps.

Prayer in both W.Ps. : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records on the files of the 3rd respondent in 33BAMPK4409C1Z2/2017-2018, 2018-2019 dated 10.07.2020

For Petitioner
in both W.Ps. : Mr.J.Arasi Ponmalar

For Respondents
in both W.Ps. : Mr.Richardson Wilson
Addl.Govt.Pleader.

C O M M O N O R D E R

The petitioner has challenged the respective Assessment Orders in these writ petitions for the Assessment Years 2017-18 and 2018-19. There is difference in the ITC claimed by the petitioner in its GSTR-2B and the information captured in the GSTR-2A as compared to the GSTR 1 of the supplier for the respective Assessment years. The demand has been worked out as Rs.8,21,123/- and Rs.3,53,519/- for the Assessment Year 2017-18 and Assessment Year 2018-19 respectively.

2. On behalf of the petitioner, the learned counsel for the petitioner would submit that the Central Board of Indirect Taxes and Customs had issued a clarification on 04.09.2018 bearing Circular No.125/44/2019-GST, wherein paragraph No.2.3 clarified as follows:

" 2.3. In view of the difficulties being faced by the claimants of refund, it has been decided that the refund claim shall be accompanied by a print-out of Form GSTR-2A of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon Form GSTR-2A as an evidence of the account of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which Form GSTR-2A may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's Form GSTR-1 was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in Form GSTR-2A of the relevant period submitted by the claimant."

3. The learned counsel for the petitioner has also placed reliance on the press release of the Government of India dated 18.10.2018. The relevant portion from the said Circular reads as under:

"4. It is clarified that the furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to

avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between Form GSTR-2A and Form GSTR-3B conducted before the due date for filing of return in Form GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.'

4. The learned counsel for the petitioner has also placed reliance on another clarification vide Circular dated 18.11.2019 bearing Circular No.125/44/2019-GST. A specific reference was made to para 36 which reads as under:

'36.Applicants of refunds of unutilized ITC i.e. refunds pertaining to items listed at (a), (c) and (e) in para 3 above, shall have to upload a copy of Form GSTR-2A for the relevant period (or any prior or subsequent period(s) in which the relevant invoices have been auto-populated) for which the refund is claimed. The proper officer shall rely upon FORM GSTR-2A as an evidence of the accountal of the supply by the corresponding supplier(s) in relation to which the input tax credit has been availed by the applicant. Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure - B along with the application for refund claim. Such availment of ITC will be subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules inserted vide Notification NO.49/2019-CT dated 09.10.2019. The applicant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said format for enabling the proper officer to determine the same. Self-certified copies of invoices in relation to which the refund of ITC is being claimed and which are declared as eligible for ITC in Annexure-B, but which are not populated in Form GSTR-2A, shall be uploaded by the applicant along with the application in Form GST RFD 01. It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are

available in Form GSTR-2A of the relevant period uploaded by the applicant.''

5. The learned counsel for the petitioner further submits that by another press release on 04.03.2018, it has been clarified as under:-

(iv) No automatic reversal of credit: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier of supplier not having adequate assets etc.

6. It is therefore submitted that credit availed on the strength of invoices issued by the supplier under the provisions of the Goods and Service Tax Act, 2017 cannot be denied as input tax credit was availed on the strength of the invoices on which tax charged by the supplier of the petitioner.

7. It is submitted that the mistake committed by the supplier in not properly uploading the information in their GSTR-1 would not come in the legitimate way of availing input tax credit to the petitioner. It is further submitted that the department has been adopting the discriminatory treatment between domestic and integrated supply of Goods and Services and this impugned orders are liable to be quashed. It is further submitted that by clarification in Circular No.125/44/2019-GST dated 18.11.2019, refunds are being given in the case of reports claim refund under Rule 89 of the respective CGST Rules under similar circumstances whereas in the case of domestic supplier, no such discussion has been given and therefore the result is in unfair discrimination. Attention was also drawn to Rules 58 & 59 of CGST respective Rules under the respective enactments which read *pari-materia*.

8. The learned Additional Government Pleader for the respondent submits that the demand has been confirmed based on a proper show cause notice issued to the petitioner and therefore the challenge to the impugned Assessment Orders in these writ petitions are devoid of merits.

9. He further submits that the petitioner has an alternate remedy under Section 107 of the CGST and SGST Act and therefore the petitioner should work out the remedy before the Appellate

Commissioner in terms of the above provisions of the Act. He therefore submits that though the credit availed it can be utilised only if there is an evidence of payment of tax and returns were filed by the suppliers in GSTR-1 which would get captured in the GSTR-2A and merely because the petitioner has made a claim on their returns in GSTR-3B, the petitioner is entitled to the credit availed in the GSTR-3B.

10. It is submitted that the credit availed in GSTR-3B is only the provisional and subject to a proper reconciliation of the data in GSTR-2A and therefore the petitioner cannot claim credit on the invoice which were not declared by the supplier in GSTR-1.

11. By way of re-joinder, the learned counsel for the petitioner submits that the problem on account of the mis-match between the datas captured in GSTR-1 of the supplier, GSTR-3B of recipient on the strength of the invoices and GSTR-2A is not new.

12. It is submitted that even in the context of Tamil Nadu Value Added Tax, 2006, a dispute arose on account of the mismatch between the datas captured by the department in their web-portal and the credit availed by the dealers while in terms of relevant returns under the TNVAT Act, 2006 read with 2007 rules and that the issue was finally resolved by this Court in case of JKM Graphics Solutions Pvt., Ltd., Vs Commercial Tax Officer, Vepery Assessment Circle, Chennai, (2017) 99 VST 343 (Mad).

13. The learned counsel for the petitioner has also brought to the notice of this Court to a recent clarification of the Secretary to the Commercial Department, dated 24.02.2021 Circular No.5 of 2021 by the Commissioner of Commercial Taxes.

14. The learned counsel for the petitioner also submitted that Section 42 of the CGST has not been fully implemented and therefore the impugned orders cannot be sustained.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. I have also perused the circulars cited by the learned counsel for the petitioner.

16. The petitioner has challenged the impugned order demanding a sum of Rs.17,53,171 /-being the difference in the ITC availed in Form GSTR-3B which was auto populated in Form GSTR-2A.

17. The GST enactments and the rules made thereunder are a complete code by themselves. The provisions in the GST Rules have been well thought of and have been drafted using the vast experience gained under the erstwhile MODVAT Rules under the erstwhile Central Excise Rules, 1944 and its subsequent avatars under the Cenvat Credit Rules, 2001, 2002 and later under 2004 and under the various VAT enactments and the VAT Rules made thereunder.

18. The respective State and Central GST Rules, 2017 have incorporated rules in such a manner that there is hardly any scope for any leakage of revenue. However, still loophole are scouted to get over the law to evade tax.

19. Most of the difficulties faced in the implementation of GST law was are on account of the technical glitches as returns and forms are system driven and returns are filed electronically. The information contained therein are supposed to get captured and auto populated at the end customer/recipient of goods or services.

20. As far as the supplier of Goods and Services is concerned, the supplier is required to file a monthly return Form GSTR-1 under Rule 59(1) of the State CGST Rule, 2017. This form is to be uploaded electronically by the due date on the common portal by the supplier either directly or through Facilitation Centre notified by the Commissioner.

21. The details of input supplied and tax paid thereon are to be captured in Form GSTR-1 by the supplier. These details are required to be sent to the recipients in Part A of Form GSTR-2A, Form GSTR-4A and in Form GSTR-6A as the case may be through the common portal after the due date of filing return of the Form GSTR-1.

22. The recipient is expected to compare to input tax credit availed in Form GSTR-2, Form GSTR-4 , Form GSTR-6 as the case may be on the basis of information contained in Form GSTR-2A, Form GSTR-4A or Form GSTR-6A as the case may be furnished by the supplier.

23. If there is any variance between the information furnished in Form GSTR-2A, Form GSTR-4A or Form GSTR-6A furnished by the supplier and the credit tax availed in Form

GSTR-2, the recipient is required to furnish details of inward supplies added, corrected, deleted by the recipient in Form GSTR-2, Form GSTR-4 and Form GSTR-6, in Form GSTR-1A through the common portal.

24. The supplier may accept or reject the modification in its Form GSTR-1 on receipt of Form GSTR-1A. Form GSTR-1 is required to be amended by the supplier under Sub Rule 4 to Rule 59 of the CGST Rules to the extent of modification. Sub Rule 4 to Rule 59 of the CGST Rules reads as under:

"(4) The details of inward supplies added, corrected or deleted by the recipient in his Form GSTR-2 under Section 38 or Form GSTR-4 or Form GSTR-6 under Section 39 shall be made available to the supplier electronically in Form GSTR-1A through the common portal and such supplier may either accept or reject the modifications made by the recipient and Form GSTR-1 furnished earlier by the supplier shall stand amended to the extent of modifications accepted by him."

25. The correction in Form GSTR-1 by supplier is to be automatically reflected in Form GSTR-3B at the recipient end. Thus, the final credit that can be availed by a recipient will depend on the acceptance of information supplied by recipient in Form GSTR-1A to the supplier.

26. In case, the suppliers accepts the same information in GSTR-3B will have to get automatically auto populated on the output tax paid by the supplier on the supply to the recipient. Thus, the system is fool proof and leaves no scope for any confusion.

27. In case there is a glitch, it has to be corrected in accordance with the procedure prescribed and the guidelines and circulars issued by the Central Board of Indirect Taxes as Customs.

28. In case, corrections and amendments in Form GSTR-1A of the recipient is not accepted by the supplier in its Form GSTR-1, the question of availing input tax credit on the strength of invoices alone is not enough. In case, the information is not corrected by the supplier in GSTR-1, the input tax credit availed by the recipient is liable to be paid back.

29. Though some of the circulars and clarifications issued in the context of exports have been cited by the learned counsel for the petitioner, they are not relevant in the context of availing input tax credit at the threshold stage. In any event,

these circulars are not binding this Court in terms of the decisions of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. M/s.Ratan Melting and Wire Industries, (2008) 13 SCC 1.

30. Therefore, I am refraining to make further comments on the applicability of the circulars. I am of the view, these matters are best left to be resolved before the hierarchy of the Appellate Authority prescribed under the Act.

31. Further, the Court have recognized few exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice. None of these exceptions are attracted in the facts of the present case.

32. Admittedly, the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner under Section 107 of the CGST Act, 2007. Therefore, this writ petition cannot be entertained ignoring the statutory dispensation.

33. Therefore, these writ petitions filed under Article 226 of the Constitution are liable to be dismissed. I am therefore inclined to dismiss the present writ petitions. I however give liberty to the petitioner to file a statutory appeal before the Appellate Commissioner within a period of thirty days from the date of receipt of copy of this order. If such an appeal is filed within such time, the appeal shall be numbered and taken up for hearing on its turn.

34. These writ petitions stand dismissed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rgm/kkd

To

1. The Joint Commissioner (ST),
Government Buildings, Fort Roud,
Bharathiyar Salai,
Vellore 632 001.

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RP(CO)
UMA(13/07/2022)