Item No. 09

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 31.03.2023

DELIVERED ON: 31.03.2023

CORAM:

THE HON'BLE ACTING CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

FMA 142 of 2022
with
I.A. NO. CAN 1 of 2021

Abdul Mannan Khan
vs.
The Goods and Services Tax Council & Ors.

Appearance:-

Mr. Debanuj Basu Thakur
Mr. Atish Chakraborty

... for the appellant

Mr. Anirban Ray, Ld. G.P.
Mr. T. M. Siddiqui
Mr. D. Ghosh
Mr. N. Chatterjee

... for the State

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Acting Chief Justice T.S.SIVAGNANAM)

1. This intra-Court appeal filed on behalf of the writ petitioner is directed against the order dated 4th January, 2021 passed in WPA 236 of 2020. The appellant had filed the writ petition challenging the decision of the GSTN Authorities rejecting the request for amendment of the GSTR-1 Form for the financial year 2017-2018 on the ground that such amendment can be done only on the due date of filing of Form GSTR-1 of March 2019 (30th April, 2019). The learned Single Bench had dismissed the writ petition stating that the period of limitation for rectification has since been expired, no direction can be issued. Aggrieved by the same, the appellant has approached this Court and filed the present appeal.

2. We have heard the learned advocates for the parties at length.

3. We need not labour much as to what relief the appellant would be entitled to. In the instant case, we are guided by two judgments of the Division Bench, one is of the Jharkhand High Court and the other one is of the High Court of Orissa. In the case of *M/s. Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council through the Secretary, Central Board of Indirect Taxes and Customs, New Delhi reported in 2022-VIL-735-JHR*, the Court considered an identical issue and granted relief to the assessee in the following terms :

> 13. Having gone through the decisions cited in support by learned counsel for the petitioner and that the instant case does not present any additional tax impact, or loss of revenue for the State Exchequer and, in fact, such correction of relevant returns in case of the petitioner i.e., GSTR-1, GSTR-2A in case of the respondent no.5 and 6 would allow the respondent no.5 to rightly avail the ITC against the tax paid

under Tax Invoice number 1/2018-19 dated 17th January, 2019 issued by the petitioner, we are of the considered view that interest of justice would be served if the petitioner is allowed to make the necessary correction in GSTR-1 form for January 2019. Such correction, if does not entail technical difficulties by the GSTN, may be allowed to be made online by GSTN by opening the portal for a limited period upon due communication to the petitioner and respondent no.5 and 6 as it would reflect corresponding correction in their GSTR-2A form for the relevant period. If such a course is not possible to be done online for technical reasons, the GSTN could allow the petitioner to make such corrections through manual mode. Let such correction be allowed to be made within a period of 8 weeks from the date of receipt of this order."

4. Identical issue was also considered by the High Court of Orissa in the case of *M/s. Y. B. Construction Pvt. Ltd., Bhubaneswar vs. Union of India & Ors. in W.P. (C) No.12232 of 2021*. In the said decision the Court took note of the decision of the High Court of Madras in the case of *M/s. Sun Dye Chem vs. The Assistant Commissioner (ST) & Ors. in W.P. No.29676 of 2019*. The following paragraphs of the decision in the case of *M/s. Sun Dye Chem (supra)* would be useful for deciding the case on hand.

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 assesses 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.
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> 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."

22. The Hon'ble Division Bench of the High Court at Orissa after taking note of the decision in *M/s. Sun Dye Chem (supra)* permitted the petitioner before it to re-submit the correct GSTR-1 Form and to enable the petitioner to do so and a direction was issued to the respondent to receive the same manually and once the forms are received manually, the Department will facilitate uploading of those details in the web portal and a time frame was also fixed for carrying out the directions. The underlying principle based on which such direction was issued in the aforementioned judgments is that the assessee should not be prejudiced from availing the credit which they are otherwise legitimately entitled.

23. Therefore, we are of the view that appropriate directions have to be issued in the case on hand so that the appellant would be entitled to avail the credit which he is legitimately entitled to.

24. In the light of the above, the appeal stands **allowed** and the order passed in the writ petition is set aside and the writ petition stands disposed of by directing the appropriate respondent to permit the appellant to file corrected GSTR-1 Form manually and the appropriate authority of the respondent department is directed to receive the forms manually and requisite details shall be uploaded in the web portal of the department within a period of six weeks from the date of such manual forms are submitted. Consequently, the connected application stands disposed of.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

RP/AN(AR.CT.)