

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15368 OF 2023

Star Engineers (I) Pvt. Ltd.

...Petitioner

Versus

1. Union of India

2. State of Maharashtra

3. Deputy Commissioner of State Tax-GST.

...Respondents

Mr. Bharat Raichandani with Mr. Prathamesh Gargale, for the Petitioner.

Mrs. Shruti D. Vyas, Additional Govt. Pleader, for the State.

**CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.**

RESERVED ON : DECEMBER 8, 2023

PRONOUNCED ON : DECEMBER 14, 2023

ORAL JUDGMENT (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India essentially challenges a communication dated 27 September 2023 issued by the respondent-Deputy Commissioner, State Tax, whereby on an application of the petitioner for seeking approval to modify / amend FORM GSTR-1 for financial year 2021-2022 dated 11 September 2023, the petitioner has been informed that such a

request for amendment of Form GSTR-1 cannot be approved considering that the matter is time barred and accordingly, the petitioner's application would stand rejected. At the outset it would be necessary to extract the communication which reads thus:

“Office of the
Dy. Commissioner of State Tax,
Pune_LTU_505, Large Tax Prayers
Unit-I,
Cabin No.422, 4th Floor,
GST Bhavan, Airport Road
Yerwada, PUNE-411006
Tel. 26609032
Email-dcgste605@gmail.com

To.
M/s. Star Engineers(I) Private Limited,
54/2,D-11 Block MIDC-Chinchwad,
Pune-411019, Maharashtra,
GSTN: 27AAHCS6334BIZI

No:DCST /LTU-1 /E-506 /Star Engineers/ 27AAHCS6334BIZI/
23-24/B-252 Pune DT.27/09/2023

Subject: Regarding Application for seeking approval to modify /
amend From GSTR-1 for FY2021-22.
Reference : Your application on dated 11/09/2023.

With reference to the above subject, you have requested for correction in Form GSTR-1 of FY 2021-22 namely for the months of July 2021, November 2021 and January 2022 on account of human error committed by your Company wherein, inadvertently, GSTINs of “Ship to” parties were reported in GSTR-1 instead of “Bill to” party-Bajaj Auto Limited.

From the evaluation of facts and supporting thereof, through there does not appear to be any loss of revenue to the Government exchequers, however, provisions under the GST Act prohibits any additional modifications or adjustments post the due date.

Therefore, the request of the Company for amendment of GSTR-1 now for sales transactions pertaining to FY 2021-22 is not approval considering the matter is time-barred and thus, your application stands rejected.

PANDITRAO DHOKALE
Dy. Commissioner of State Tax
Pune LTU 505
LTU-1, PUNE”

(emphasis supplied)

2. The relevant facts are required to be noted:

The petitioner is engaged in designing, developing, manufacturing and supplying wide range of electronic components for industrial purpose. It is the petitioner’s case that it is a regular supplier to Bajaj Auto Limited (**BAL**) and delivers its products based on varying delivery terms as specified in the purchase orders received from BAL.

3. The petitioner contends that during the financial year 2021-2022 the petitioner had carried out delivery of the goods to several third-party vendors and simultaneously invoices were generated “Bill-to-Ship-to-Model” in line with the instructions received from BAL. During the said period, the company had correctly issued the e-invoices and credit notes in favour of BAL by appropriately citing its GST identification number (“GSTIN”). However, at the time of filing of Form GSTR-1 for the period July 2021, November 2021 and January 2022, inadvertently GSTIN of

third parties to whom shipment was delivered, was reported instead of declaring GSTIN of BAL.

4. The petitioner contends that BAL was made aware of such error, post the due date of correction in Form GSTIN-1 for the financial year 2021-22 by one of the vendors to whom the goods were shipped, as the transaction was notified in Form GSTR-2B. In pursuance thereto, the petitioner tried to rectify the invoices in question to address the error, however, as the mistake came to the notice of the petitioner in the month of November 2022, GST Portal did not allow any modification in Form GSTR-1 pertaining to the period of July 2021, November 2021 and January 2022.

5. In such circumstances, the invoices submitted by the petitioner did not appear in BAL's Form GSTR-2B but instead inadvertently appeared in vendor's Form GSTR-2B. Resultantly, BAL was unable to claim Input Tax Credit ("ITC") for those invoices and consequently at the time of processing the payment of the petitioner for the month of March 2023, BAL reduced the amount equivalent to the GST amount, *interalia* stating that BAL had not claimed the said invoices for ITC as same were not appearing in Form GSTR-2B, as GSTIN of a third party was given instead of BAL. Consequently BAL debited the mismatched amount to the petitioner's account.

6. It is in such circumstances, the petitioner approached the Deputy Commissioner of State Tax by its letter dated 11 September 2023 *inter alia* contending that the petitioner has fulfilled its tax obligation in relation to the supplies made to BAL during the financial year 2021-22, which indicated that all the required taxes associated with the transactions involving BAL have been appropriately and duly paid by the petitioner to the Government and that the petitioner had also complied all GST Regulations. It was contended that post identification of the inadvertent error made during filing of Form GSTR-1, petitioner has taken proactive steps and secured confirmation from the respective third party companies, confirming the non-availment of ITC at their end. Accordingly, it was contended that what had occurred was merely a procedural error at the petitioner's end and in fact, the petitioner is suffering a double prejudice as though the petitioner had deposited GST with the Government, the credit of payment is held up for want of reflection of the ITC in Form GSTR-2B, which is causing serious financial hardship to the petitioner. The petitioner therefore, requested the said officer that the petitioner be allowed to rectify Form GSTR-1 to correctly reflect the particulars which will resolve the whole issue. In support of such submission, the petitioner relied on various decisions

of the High Court which were supporting petitioner's request for such rectification being permitted. The petitioner's request, however, was rejected by the impugned order as noted by us above. It is in these circumstances, the petitioner has filed the present petition assailing such order passed by the Deputy Commissioner.

7. Mr. Raichandani, learned Counsel for the petitioner would submit that it was arbitrary for the Deputy Commissioner of State Tax to reject the request of the petitioner to amend or rectify the Form GSTR-1 filed by the petitioner for the period July 2021, November 2021 and January 2022, either Online or by manual means. It is contended that it is not in dispute and as clear from the impugned letter, that there was no loss of revenue to the Government exchequer, however, on a pure technical ground the provisions of GSTR Portal prohibited any adjustment post the due date, the petitioner's request has been rejected. It is submitted that such technicalities ought not to defeat the requirement of justice. In support of his submissions, Mr. Raichandani has placed reliance on the decision of Madras High Court in **M/s. Sun Dye Chem Vs. Assistant Commissioner (ST) & Ors.**¹; decision of learned Single Judge of the Madras High Court in the case of **Pentacle Plant**

¹ 2020 TIOL 1858 HC MAD.GST

Machineries Pvt. Ltd. Vs. Office of GST Council & Ors.²; decision of the Division Bench of Orissa High Court in **Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs and Ors.**³, the decision of Jharkhand High Court in **Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council and ors.**⁴ It is submitted that each of these decisions have taken a view that an inadvertent error on the part of the assessee if takes place in filing the details leading to the mismatch of credit, the assessee ought not to be prejudiced from availing the credit, which they otherwise legitimately are entitled to and to that effect the rectification of error ought to be permitted. Accordingly, in such cases a relief was granted to the petitioner. It is, thus, Mr.Raichandani's submission that the prayer of the petitioner that it be permitted to amend or rectify the Form GSTR-1 for the period in question ought to be granted.

8. On the other hand, Ms. Vyas, learned Counsel for the Revenue while not disputing the factual matrix would submit that no fault can be found in the impugned communication as the provisions of the GST Act itself would not permit the State Tax Officer to accept the request as made by the petitioner for amendment /

² 2021-TIOL-604-HC-MAD-GST

³ MANU/OR/0522/2023

⁴ MANU/JH/1003/2022

rectification of Form GSTR-1 which was filed by the petitioner for the period in question. Ms. Vyas has also fairly stated that if the request as made by the petitioner is to be accepted, there is no loss of revenue whatsoever to the public exchequer.

9. Having heard learned Counsel for the parties and having perused the record, there is much substance in the contention as urged on behalf of the petitioner. At the outset we are required to note that insofar as filing of GST returns are concerned, the provisions of Sections 37, 38 and 39 of the Central Goods and Services Tax / Maharashtra Goods and Service Tax, 2017 (for short '**CGST / MGST, 2017**') are attracted. Section 37 provides for furnishing details of outward supplies. Section 38 provides for furnishing details of inward supplies. Section 39 provides for furnishing of returns. Sub-section (3) of Section 37 provides that 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. The proviso below

sub-section (3) stipulates 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. It would be necessary to note the provisions of Section 37 which reads thus:-

Section 37 Furnishing details of outward supplies

37. (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 central tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated

the details under subsection (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 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:

[Provided further that the 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, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.]

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.

10. We may also observed that Section 38 provides for communication of details of inward supplies and input tax credit

which in sub-section (1) mandates that the details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed. Sub-section (2) provides for the ingredients of auto-generated statement.

11. Section 39 provides for furnishing of returns under which it is clearly provided that a return is required to be furnished electronically indicating the inward and outward supplies of goods and services or both, input tax credit availed, tax payable, tax paid or such other particulars in such form and manner, and within such time, as may be prescribed. Sub-section (9) although provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after 30th day of November following the end of financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier. Sub-section (10) provides for extension of time in the event the assessee has not furnished the return for one or more previous tax

period or has not furnished the details of outward supplies as per sub-section (1) of section 37 in the said tax period. Sub-section (9) and (10) of Section 39 are required to be noted which read thus:-

“Section 39. Furnishing of returns -

(1)

.. ..

(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) 5[Where] any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (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 6[in such form and manner as may be prescribed], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the 7[thirtieth day of November] following 8[the end of the financial year to which such details pertain], 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 9[or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period]”

12. Having considered the statutory ambit of Section 37, 38 and 39, we are of the clear opinion that the provisions of sub-section (3) of Section 37 read with Section 38 and sub-sections (9) and (10) of Section 39 need to be purposively interpreted. We cannot read sub-section (3) of Section 37 to mean that the assessee would be prevented from placing the correct position and having accurate particulars in regard to all the details in the GST returns being filed by the assessee and that there would not be any scope for any bonafide, and inadvertent rectification / correction. This would pre-supposes that any inadvertent error which had occurred in filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of sub-section (3) of Section 37 read with the provisions of sub-section (9) of Section 39 read *de hors* the provisos.

13. In our opinion, the proviso ought not to defeat the intention of the legislature as borne out on a bare reading of sub-section (3) of Section 37 and sub-section (9) of Section 39 in the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake. Any contrary interpretation of sub-

section (3) of Section 37 read with sub-sections (9) and (10) of Section 39 would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect. This is necessarily required to be borne in mind when considering the cases of inadvertent human errors creeping into the filing of GST returns.

14. Applying such principles to the facts of the present case, in our opinion, the State Tax Officer had all materials before it which went to show that there was nothing illegal and / or that what had happened at the end of the petitioner was that the invoices generated by the petitioner under the bill-to-ship-to-model for delivery of goods to third party vendors of BAL of which input tax credit for the invoices in question, were not availed by BAL due to error of credit not being reflected in the GSTR-1, as the petitioner had mentioned GSTIN of third party instead of GSTIN of BAL. This is also accepted by the State Tax Officer in the impugned communication.

15. As a result of the above discussion, in our opinion, the State Tax officer ought to have granted the petitioner's request to rectify / amend the Form GSTR-1 for the period July 2021,

November 2021 and January 2022, either through Online or manual means.

16. We also find that the petitioner's reliance on the decision as noted by us is quite apposite. In **Sun Dye Chem Vs. Assistant Commissioner** (supra), learned Single Judge of the Madras High Court considered a similar case wherein an error was committed by the petitioner in filing of details relating to credit. The error was to the effect that what should have figured in the CGST/SGST column was inadvertently reflected in the IGST column. It was not the case of the department that the error was deliberate and was intended to gain any undue benefit by the petitioner and in fact, by reason of the error, the customers of the petitioner were denied credit which they claim to be legitimately entitled to. It was also an error which was not initially noted by the petitioner, and on account of the error, the customers of the petitioner would be denied credit which they claimed to be legitimately entitled to, owing to the fact that the credit stands reflected in the wrong column. It is in these circumstances, after examining the relevant provisions which we have already discussed, the learned Single Judge observed that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing

credit which they are otherwise legitimately entitled to. The Court observed that an error committed by the petitioner is an inadvertent human error and the petitioner should not be prevented from rectifying the same and accordingly, allowed the petition.

17. A similar view was taken in the **Pentacle Plant Machinerics Pvt. Ltd.** (supra) which also followed the decision in *Sun Dye Chem* (supra).

18. We also note that the Division Bench of the Orissa High Court in **Shiva Jyoti Construction** (supra) was considering the case wherein the petitioner had prayed for a relief that the petitioner be permitted to rectify the GST returns filed in September 2017 and March 2018 which was filed inadvertently in Form-B2B instead of Form B2C as was wrongly filed under the GSTR-1 in order to get input tax credit benefit by a third party namely M/s. Odisha Construction Corporation Ltd. The last date for filing of return was 31 March 2019 and the rectification should have been carried out by 13 April 2019. The petitioner contended that an error came to be noticed after the said third party held up the running bill amount of the petitioner by informing it of the error on 21 January 2020. The petitioner contended that thereafter it was making a request to the department to correct the GSTR-1 form, but it was not allowed. It is

in these circumstances, the Court considering the fact that in permitting the petitioner to rectify such error, there was no loss of revenue whatsoever to the department, that it was only about the ITC benefit which was to be given to the customer of the petitioner, failing which a prejudice would be caused to the petitioner. The Division Bench referring to the decision in *Sun Dye Chem (supra)* granted the prayer of the petitioner for setting aside the letter of rejection as impugned in the proceedings and permitting the petitioner to resubmit the corrected returns in Form – B2B under GSTR-1 for the period in question.

19. The Division Bench of the Jharkhand High Court in **Mahalaxmi Infra Contract Ltd. (supra)** has taken a similar view wherein the Division Bench after considering the rival contentions and the scheme of the legislation, allowed the petition considering the fact that there was no loss of revenue, if such rectification as prayed for by the petitioner was to be granted.

20. On the interpretation of the provisions as made by us and the common thread running through the decisions as noted above, it would lead us to observe that the GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain.

The diversity, in which the traders and the assesseees in our country function, with the limited expertise and resources they would have, cannot be overlooked, in the expectation the present regime would have in the traders / assesseees complying with the provisions of the GST Laws. There are likely to be inadvertent and bonafide human errors, in the assesseees adopting themselves to the new regime. For a system to be understood and operate perfectly, it certainly takes some time. The provisions of law are required to be alive to such considerations and it is for such purpose the substantive provisions of sub-section (3) of Section 37 and sub-section (9) of Section 39 minus the proviso, have permitted rectification of inadvertent errors.

21. We may also observe that the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and bonafide. There was not an iota of an illegal gain being derived by the assesseees. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assesseees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.

22. It is considering such object and the ground realities, the law would be required to be interpreted and applied by the Department. This necessarily would mean, that a bonafide, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government. Such freeplay in the joint requires an eminent recognition. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Such approach would also foster the interest of revenue in the collection of taxes.

23. In the aforesaid circumstances, we have no manner of doubt that the petition is required to be allowed. It is accordingly allowed by the following order:-

ORDER

(I) The respondents are directed to permit the petitioner to amend / rectify the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means within a period of four weeks from today.

(II) Petition stands disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G.S. KULKARNI, J.]