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W.P.No.11526 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.11526 of 2023

M/s.Akshaya Building Solution,
Represented by its Partner,
Mr.K.Senthilkumar,
No.1/106A2 SengatuThottam,
Sangothipalayam, Kaniyur,
Coimbatore, Tamil Nadu – 641 659.

... Petitioner

Vs.

The Assistant Commissioner of CGST & Central Excise,
Coimbatore – IV Division,
D.No.1441, Elgi Building,
Trichy Road,
Coimbatore – 641 018.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in C.No.V/84/01/2021-GST RFD and Order-in-Original Sl.No.01/2022-GST dated 06.01.2022 and quash the same and further direct the respondent to permit the petitioner to rectify and upload the GSTR-1 statement in GST Portal for the period Aug 2017, Nov 2017, Dec 2017 & Jan 2018 which involves ITC Credit of Rs.23,39,613/-.



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For Petitioner : Mr.K.Thyagarajan
For Respondent : Mr.Rajnish Pathiyil
Senior Panel Counsel

ORDER

This writ petition has been filed challenging the impugned order dated 06.01.2022, seeking a direction to the respondent to permit the petitioner to rectify the uploaded GSTR-1 statement in GST portal for the periods August 2017, November 2017, December 2017 and January 2018 which involves Input Tax Credit to a sum of Rs.23,39,613/-.

2. The case of the petitioner is that they have committed an inadvertent error while filing the GSTR-1 Statement in GST portal for the periods August 2017, November 2017, December 2017 and January 2018 which involves Input Tax Credit to a sum of Rs.23,39,613/-.

3. Mr.K.Thyagarajan, learned counsel for the petitioner would submit that the petitioner could not file the revised GSTR-I statement during the relevant period, since the time extended by the Government got expired. Though the petitioner has filed a representation before the respondent, without considering the same, the impugned order came to be passed. Hence, the present writ petition is filed.



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4. In response, learned Senior Panel counsel for the respondent would submit that they had issued the notification *vide* Order No.02./2018-Central Tax on 31.12.18, whereby, opportunities were provided to all the assesseees to make corrections in the earlier returns if they found errors. However, the same were not availed by the assesseees. That is the reason why the impugned order came to be passed against the petitioner. Therefore, even though opportunities were provided to the petitioner, they failed to avail those opportunities. He pointed out that the reasons provided by the petitioner in the affidavit are not genuine and cannot be relied on. Hence, he prayed for dismissal of the writ petition.

5. *Per contra*, the learned counsel for the petitioner would submit that they were not aware of the notification dated 31.12.2018. Therefore, they were not in a position to file any corrected GSTR-1 statement in time and had they known about the said notification, certainly they would have filed the rectification application. However, subsequently the petitioner had submitted its representation before the department on 19.01.2021 and in response, the respondent has passed a speaking order in Sl.No.01/2022-GST dated 06.01.2022, rejecting their representation.



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6. Heard both sides and also perused the materials available on record.

7. In the present case, it is pointed out that there is a mistake inadvertently committed by the petitioner while filing the GSTR-1 statement for the periods August 2017, November 2017, December 2017 & January 2018. Further, the petitioner was not able to avail the opportunities provided by the respondent to rectify the GSTR-1 statement due to the reason that they were not aware of the notification dated 31.12.2018.

7.1 Earlier, the petitioner had filed a Writ Petition in W.P.No.935 of 2021 before this Court praying for a writ of mandamus to direct the respondent to correct the GSTR statement for the periods August 2017, November 2017, December 2017 and January, 2018. This Court dismissed the writ petition with liberty to the petitioner to file a representation before the respondent.



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7.2 Subsequently, the petitioner has made a representation dated 19.01.2021, before the respondent and thereafter filed the present writ petition. During the pendency of the Writ Petition, the respondent had passed the impugned order dated 06.01.2022 rejecting the representation of the petitioner. Since the impugned order was passed without considering the representation made by the petitioner, the same is challenged in the present petition.

8. This Court in similar case in W.P.No.12382 of 2020 dated 09.03.2023 has allowed the petitioner to file the corrected GSTR-1 statement and upload the rectified GSTR-1 in GST portal. The relevant portions are extracted hereunder:

"8. In this regard, he draws attention to the provisions of Section 37 of the Act coming under Chapter IX of the Act under the head -Returns- ? Furnishing details of outside suppliers. The two provisos under Section 37(3) deal with rectification of details, and set out a categorical time frame within which rectification must be effected.



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9. For clarity, Section 37(3) and the two provisos thereunder are extracted below:

37. Furnishing details of outward supplies.?

(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 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:

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,



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2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019

10. Thus, and admittedly with the extension of time granted under the second proviso, the petitioner has missed the bus for rectification, as on 20.04.2019. The Writ Petition has been instituted on 02.09.2020 and has been pending since then.

11. The fact remains that this Court has taken a view in very similar circumstances as in the present case, in the case of Sun Dye Chem V. Assistant Commissioner (2021 (44) GSTL 358) reiterated in Pentacle Plant Machinerics Pvt. Ltd. V. Office of the GST Council, New Delhi (2021 (52) GSTL 129) to the effect that those petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assessee. The errors committed are clearly inadvertant and, the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fasion by the petitioner and connected assessees.



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12. The aforesaid decisions of this Court have been accepted by the revenue on the facts and circumstances of those cases, which remain similar to present matter as well.

13. Paragraphs 4 to 8 of the decision in the case of *Pentacle Plant Machineries Pvt. Ltd. (supra)*, where reference is made to *Sun Dye Chem (supra)* are extracted below in the interests of completion of narration:~

~.....

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



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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 petitioner 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



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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-2A 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



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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 assessee 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



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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.

14. In light of the consistent view taken by the Court and in deference to the position that such matters, where an expansive view of the issue is called for, are few and far between, as on date, this Court is inclined to accept the prayer of the petitioner and issues mandamus to the respondents to do the needful to enable uploading of the rectified GSTR 1. Let the parties ensure that this exercise is completed within a period of six (6) weeks from today."

9. By following the same, this Court also directs the respondent to permit the petitioner to upload the rectified GSTR-1 statement within a period of four weeks from the date of receipt of a copy of this order.

9.1 Further, this Court directs the respondent to immediately upload



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the rectified GSTR-1 statement within a period of one week from the date of uploading the rectified GSTR-1 statement by the petitioner. Thereafter, the respondent is provided two weeks time, so as to enable the petitioner to get Input Tax Credit to a sum of Rs.23,39,613/-.

Accordingly, the writ petition stands disposed of. No costs.

22.11.2023

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Internet:Yes

Index : Yes / No

Speaking order/Non-Speaking order

Neutral Citation : Yes / No



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KRISHNAN RAMASAMY, J.

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To:

The Assistant Commissioner of CGST & Central Excise,
Coimbatore – IV Division,
D.No.1441, Elgi Building,
Trichy Road,
Coimbatore – 641 018.

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