IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 05.10.2023

1. **CWP No.8019 of 2020 (O&M)**

M/s Satyam Auto Components Pvt. Ltd. …Petitioner

Vs.

Union of India and others …Respondents

2. **CWP No.16508 of 2021 (O&M)**

M/s Hi Tech Engineers & Contractors …Petitioner

Vs.

Union of India and others …Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner(s).

Mr. Anshuman Chopra, Senior Standing Counsel,
for the respondents (in CWP-8019-2020)
and for respondent Nos.1 and 3 (in CWP-16508-2021).

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

1. This order shall dispose of CWP-8019-2020 and CWP-16508-2021 together as common questions of law and facts are involved in both the petitions. For reference, facts are being taken from CWP-8019-2020.

2. Petitioner (in CWP-8019-2020) is seeking a writ in the nature of mandamus directing the respondents to allow the petitioner to correct the details filled in Form GSTR-1 for the month of December, 2017.

3. The petitioner is a registered dealer engaged in the business of manufacturing auto parts. For the purpose of Goods and Service Tax, the petitioner is also registered with GST Department holding Registration Certificate in Form GST-REG-06 having GSTIN03AACCS2689E1ZH (Annexure P-1). Prior to the introduction of Goods and Service Tax Act, the petitioner was registered under the provisions of Punjab VAT Act, 2005 and was also registered with Central Excise Department. As per Section 37 of the Central GST Act, 2017 read with Rule 59 of the Central GST Rules, 2017, the assessee has to fill in Form GSTR-1 electronically through common portal. Form GSTR-1 would include the invoice-wise details of all inter-state and intra-state supplies made to registered persons and inter-state supplies with invoice value of more than Rs.2.5 lacs made to unregistered person. Details of export supplies are also to be furnished in Form GSTR-1.

4. For the purpose of inward supplies, Form GSTR-2 is to be filled, which has been deferred by the GST Council for the time being in view of the difficulties faced by the trade. If the time limit for furnishing details in Form GSTR-1 under Rule 61 (5) of the Central GST Rules has been extended, then Form GSTR-3B is to be furnished electronically through the common portal either directly or through a facilitation centre, as notified by the Commissioner.

5. In compliance with the provisions of the Act, the petitioner filed Form GSTR-3B and Form GSTR-1. In Form GSTR-3B only consolidated figures of outward supplies are to be furnished along with information for payment of tax. While filing Form GSTR-1 for the month of December, 2017, the petitioner has shown supplies to M/s WABCO India Ltd., which is a SEZ unit in Tamil Nadu. The petitioner had made payment of IGST on the

supplies made to it, which are detailed in Annexure P-2. Copies of Form GSTR-3B and GSTR-1 filed for the month of December, 2017 are annexed as Annexures P-3 and P-4 respectively. In the present case, the petitioner has supplied tools to M/s WABCO India Ltd., who has to further manufacture auto-parts by using those tools for its vendors. The tools so supplied by the petitioner are approved only if, the components manufactured out of it are according to the specifications of the vendors of M/s WABCO India Ltd., Therefore, it took time to approve the invoices raised by the petitioner. As per petitioner, it is for the said reason only that the petitioner applied for the refund in the months of April-May, 2019 after the invoice of the petitioner was approved. The application for refund has to be filed in Form RFD-01A along with Statement-4 as prescribed in Rule 89 (2) (e) of the Central GST Rules, 2017. As per petitioner, it had made supplies to SEZ unit on payment of Integrated Tax and was eligible for refund as the same is treated as zero rated supply as per Section 16 of the Integrated GST Act, 2017. The refund application cannot be filed without uploading Statement-4 on the Common Portal. While uploading Statement-4 on the Common Portal, the following error occurred:-

"Invoice mentioned is not a SEZ with payment of tax invoice."

6. In order to resolve the same, petitioner approached GST Help Desk and registered its complaint, which was acknowledged vide Ticket No.201905236011602. The GST Help Desk, vide its email dated 25.05.2019 (Annexure P-6) resolved the issue by stating that the petitioner has entered SEZ invoices in Table 6A (Export) instead of Tables 4A, 4B, 4C, 6B, 6C-B2B invoices in GSTR-1 due to which, it was getting the error in Form RFD-01-A. Thereafter, the petitioner tried to correct Form GSTR-1

for the month of December, 2017. However, it was not allowed to do so as the last date for revising Form GSTR-1 got expired on 31.03.2019. Petitioner again approached the GST Help Desk, whereby it was replied vide email dated 28.05.2019 (Annexure P-7) that the issue of the petitioner was not technical, but was related to law/legal and therefore, it was asked to contact CBIC for further clarification. Upon this, the petitioner contacted the CBIC for revising the Form GSTR-1, but no solution was provided, except to contact GSTN as it was a portal related problem. Thereafter, the petitioner wrote letters dated 24.09.2019, 07.11.2019, 16.12.2019 and 20.01.2020 (Annexures P-8, P-9, P-10 and P-11) to respondent No.3 for resolving the issue, as it was facing difficulty in filing the refund application. As per circular dated 31.12.2018 (Annexure P-13) issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, the time limit was prescribed that for the assessment year 2017-18, any correction in returns could be made by 31.03.2019 and not beyond that. In view of the above circular, the petitioner could not correct the Form GSTR-1 and make an application for refund.

7. Upon notice of the petitioner, reply on behalf of respondent No.2 has been filed, wherein it has been admitted that vide email dated 25.05.2019, the GST help desk had provided its resolution that tax payer (petitioner) had entered the SEZ invoices in table 6A (Export) instead of table 4A, 4B, 4C, 6B, 6C-B2B invoices in GSTR-1, due to which, the petitioner received error in RFD-01A. The petitioner did not rectify the mistake within the stipulated time i.e. 31.03.2019 as per circular dated 31.12.2018 (Annexure P-13). It is further stated that the petitioner himself committed error in Form GSTR-1 for the month of December, 2017 and the

mistake cannot be relegated to technical aspect of GST portal. As per circular dated 31.12.2018 (Annexure P-13), the mistake committed by the petitioner cannot be corrected. The claim for refund can be processed only for the valid return in Form GSTR-3B and GSTR-1 and thereafter, the amount can be electronically credited to the bank account of the petitioner mentioned in the registration particulars. The petitioner had an opportunity to correct the Form GSTR-1, which was filed in the month of December, 2017, in time, but he failed to do so.

8. A separate reply has been filed on behalf of respondent No.3, wherein it is stated that the procedure for making amendments in GSTR-1 has been clearly explained in Circular No.37/11/2018-GST dated 15.03.2018 issued by the CBIC. Moreover, Section 37 of the Central GST Act, 2017 provides for furnishing data related to outward supply in the Form GSTR-1 to be filed electronically on the common portal. Further, any amendment in Form GSTR-1 can be done as per Section 39 of the CGST Act in the prescribed manner. As per Section 54 (1) of the Central GST Act, 2017, an application for refund has to be filed before the expiry of two years from the relevant date pertaining to the period post December, 2017. It is further stated that CBIC has issued instructions for amending or rectifying the details of GSTR-1, which were widely publicized. As per the procedure prescribed by the Act, the amendment/correction of GSTR-1 has to be made by the petitioner himself and not by the department. The petitioner approached respondent No.3 vide letter dated 24.09.2019, which was much after the expiry of time limit for filing GSTR-1 or its subsequent amendments. The mistake can be corrected or revised in the next month's return. The time limit to amend Form GSTR-1 was extended from

September 2017 to March, 2018. Hence, the correction cannot be made now, as it is beyond the period prescribed by the CBIC circular.

9. Petitioner filed replication to the reply filed by respondent No.2, wherein it is again reiterated that it was a mistake committed by the petitioner in entry as well as invoice wrongly and the valid claim of refund has been denied only on technicalities. Section 37 (3) of the Central GST Act, 2017, allows a person to rectify any error or omission, but the respondents have not allowed the petitioner rectify and correct Form GSTR-1 (Annexure P-14).

10. Heard, learned counsel for the parties.

11. Reference, at this stage, can be made to the judgment passed by the High Court of Madras in ***M/s Sun Dye Chem vs. The Assistant Commissioner (ST) and another,*** W.P. No.29676 of 2019 (decided on 06.10.2020), wherein the Court was examining the issue with regard to grant of permission to correct the Form GSTR-1 for the periods from August, 2017 to December, 2017. In that case, an error was committed while filing the details relating to the credit. After examining Sections 37 and 38 of the Central GST Act, 2017, the writ petition was allowed by granting permission to the petitioner to re-submit Form GSTR-3B with correct distribution of credit between IGST, SGST and CGST within a period of four weeks. This judgment was, thereafter, followed by the High Court of Orissa in ***M/s Shiva Jyoti Construction vs. The Chairperson, Central Board of Excise & Customs and others,*** W.P. (C) No.18217 of 2017 and petitioner (therein) was permitted to file correct Form-B2B under GSTR-1 for the period from September, 2017 and March, 2018. Those Forms were to be received manually and the Department was to facilitate the uploading of those details

in the web portal. The said direction was to be carried out within a period of four weeks.

12. In the facts of the present case as well, on account of technical grounds, the application for correction of Form GSTR-1 has been dismissed by the respondent-department. Moreover, the time of revising the Form GSTR-1 got expired on 31.03.2019 and the petitioner had approached GST Help Desk. Without making correction in Form GSTR-1, the petitioner could not get refund under the Central GST Act, 2017.

13. Keeping in view the above discussion, the petitioner(s) are permitted to re-submit the corrected Form GSTR-1 for the aforesaid period. The respondents can receive the application(s) manually and thereafter, the corrected Forms and details will be uploaded by the Department on the web portal. The directions given by this Court be carried out within a period of four weeks.

14. Both the petitions i.e. CWP-8019-2020 and CWP-16508-2021 stand allowed accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

05.10.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No