HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11362-2020
Date of decision: 16.02.2023

M/s. Raghbir Singh Govt. Contractor ....Petitioner

Vs.

State of Haryana and others ....Respondents

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

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Mr. Sourabh Goel, Senior Standing Counsel
for respondents No, 1, 3 and 5.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

The petitioner is seeking writ of certiorari for declaring the amendment dated 09.10.2019 (Annexure P-7) amending Rule 61 of the Central GST Rules, 2017 with retrospective effect from 01.07.2017 as to be *ultra vires* to the provisions of Section 39 of the Central GST Act, 2017 and also contradictory to the notification dated 10.09.2018 (Annexure P-5) with a further prayer to issue a writ in the nature of mandamus directing respondent No. 4 to unblock the credit of Rs.95,50,660/- , being not satisfying the conditions of Rule 86A.

In the present writ petition, the petitioner has challenged the Central Government notification dated 09.10.2019 (Annexure P-7) amended Rule 61 which provides that in cases where the time limit for furnishing of details in Form GSTR-1 or Form GSTR-2 has been extended, the return specified in Section 39 be furnished in Form GSTR-3B electronically through the common portal either directly or through Facilitation Centre. It further provides that where return in Form GSTR-3B has been furnished by a person then such person shall not be required to file return and Form GSTR-3. The said amendment has been enforced with retrospective effect i.e. from 01.07.2017.

As per the petitioner, due to several changes made in the initial period, the petitioner faced lots of difficulties to determine its output liability as the Irrigation Department did not approve and clear the bills in time as the department was not sure about the deduction of TDS and became the reason for deferring the payment for the work done by the contractee in the financial year 2017-18. Since the petitioner was not getting figures of its output liability which could have been set off with the inputs available, the petitioner filed monthly GSTR-3B as NIL for the financial year 2017-18 (Annexure P-9) as well as for the financial year 2018-19 to avoid late fee. Subsequently, the petitioner claimed its total input tax credit in the month of August 2019 in Form GSTR-3B. The petitioner annexed copies of GSTR-3B from August 2019 to December 2019 (Annexure P-10). Thereafter, the petitioner filed annual returns for the year 2017-18 in Form GSTR-9 (Annexure P-11) mentioning the correct details such as inward/output supplies, taxes paid and ITC availed during the year. The month wise details of ITC auto populated in GSTR 2A for the financial year 2017-18 (Annexure P-12) and financial year 2018-19 (Annexure P-13) have been annexed.

Thereafter, on 28.01.2020 the ITC of Rs.95,50,660/- (IGST - Rs.44,54,927/- and HGST - Rs.50,95,733/-) was blocked by the respondent No.4 as evident from the screenshot (Annexure P-14) which was taken from the common GST portal of the petitioner. The details of the block credit is also annexed as Annexure P-15. Petitioner was served a notice (Annexure P-16) via email to explain the huge difference of Rs.14069945 between the GSTR 3B and GSTR 2A for the period of July 2019 to September 2019. Meanwhile, the petitioner filed its reconciliation statement in Form GSTR 9C as the turnover for the year F.Y. 2017-18 exceeded Rs.2 crores.

Thereafter, respondent No. 3 served mismatch notice dated 19.03.2020 (Annexure P-17) directing the petitioner to explain the difference in liability reported in GSTR 3B and GSTR 1 filed for the period October 2019 to December 2019. The petitioner made a request to unblock its credit to the Superintendent (AE), CGST Commissionerate, Rohtak via an email dated 13.07.2020 (Annexure P-18).

In the present case, notice of motion was issued on 07.08.2020. Written statement dated 14.01.2021 has been filed on behalf of respondents No. 1, 3 and 4. Replication has also been filed by the petitioner to the written statement filed on behalf of respondents No. 1, 3 and 4. On 16.02.2023 when the case was taken up for hearing, learned counsel for the petitioner has referred to the notification dated 02.11.2021 whereby as per Rule 86A of the CGST Rules, 2017, the input tax credit ledger cannot be blocked for more than one year. In the present case, the ledger was blocked on 28.01.2020 (Annexure P-15) and almost 3 years have gone by but the ledger has not yet been unblocked.

Learned counesl for the petitioner restricts his prayer only to unblocking of the credit ledger and further states that challenge to the vires of Rule 61 of the Central GST Rules, 2017 (Annexure P-7) and notification dated 10.09.2018 (Annexure P-5) be kept open. His prayer appears to be reasonable.

A perusal of the notification dated 02.11.2021 issued by Govt. of India Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs shows that the Department has laid down guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017. The detailed guidelines have been issued whereby powers under Rule 86A can be exercised by the Officers on the monetary limits prescribed under Rule 3.1. Rule 3.4.2 deals with the period for which the credit can be blocked, which reads as under:-

> "The restriction imposed as per sub-rule (1) of rule 86A shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. In other words, upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person."

Since the guidelines are very clear that after one year, the registred person would be able to debit input tax credit so disallowed. This petition, at this stage is being disposed of by giving direction to the respondents to unblock the credit ledger of the petitioner which has been blocked vide Annexure P-14 and P-15 as period of 3 years have expired on 28.01.2023 after the credit ledger was blocked on 28.01.2020 (Annexure P-15). However, challenge to the vires of Rule 61 of the Central GST Rules, 2017 (Annexure P-7) and notification dated 10.09.2018 (Annexure P-5) shall remain open.

(RITU BAHRI)
JUDGE

16.02.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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