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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14380 of 2024

Nivriya India Private Limited
versus
Assistant Commissioner of State Tax,
Berhampore Charge & Ors.

Mr. Akshat Agarwal
For the petitioner.

Mr. Anirban Ray, Ld.GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. D. Sahu
... For the State.

Mr. Kaushik Dey
Mr. Tapan Bhanja
... For the Customs authorities.

Mr. Ranjan Kumar Sinha
Ms. Smita Das De
... For Union of India.

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondents to allow the petitioner to rectify GSTR 1, for the months of October, 2022 and November, 2022 in respect of five export invoices.

2. It is the petitioner's case that the petitioner is engaged in the business as supplier of minerals and other allied products and in usual course had exported such minerals and other allied products to other countries.

3. In the instant case, five several export invoices and

filing of form GSTR-1 forms subject matter of issue in the present writ petition.

4. According to the petitioner after causing export of the minerals under five several invoices, with payment of IGST, the petitioner while filling up Form GSTR 1, for the period October, 2022 and November, 2022 due to inadvertence had marked the supplies as "*without payment of IGST*" instead of "*with payment of IGST*" though the other details as was required to be filled up had been correctly noted. According to the petitioner, Form GSTR 3B also showed corresponding correct figure. This fact was not within the knowledge of the petitioner until the time hereinafter mentioned.

5. The petitioner had since filed an application under form GST RFD-01 for the period October, 2022 and November, 2022 which had been partly allowed by an order dated 6th July, 2023. It is at this stage the petitioner having realised that the partial refund was by reasons of inadvertent error committed in connection with filing up GSTR-1 had made a representation on 18th December, 2023 and on 19th March, 2024, seeking permission to rectify the details of the five several export invoices.

6. In response to the same, by orders dated 19th

December, 2023 and 27th March, 2024, the State respondents had adequately clarified that it was beyond the competence of their office to permit the petitioner to access the portal for effecting necessary corrections since, the State respondents have no control over the common portal.

7. Taking note of the aforesaid and the stand taken by the Customs authorities as reflected in their communication dated 18th March, 2024 wherein the Superintendent of Customs had clearly clarified that there had been apparent mistake in filling of the GSTR 1, this Court by an order dated 19th August, 2024 had directed the State respondents to disclose their stand whether the petitioner had genuinely committed mistake in filling up GSTR 1, having regard to the form GSTR 3B filed by the petitioner for the same period.

8. On 3rd September, 2024, the State respondents did not question the intent of the petitioner, rather it was submitted that the State respondents have no control over the common portal to rectify the mistake. This Court taking into consideration the aforesaid submissions and also noting that the respondent no. 3, GSTN was not represented in Court, had directed the petitioner to communicate

the aforesaid order to the GSTN authorities.

9. Pursuant to the aforesaid, the petitioner had duly communicated the aforesaid order dated 3rd September, 2024 to the respondent no.3. An affidavit of service to that effect has been filed in Court, which is taken on record.

10. Despite service, none appears on behalf of the respondent no.3, GSTN.

11. Mr. Agarwal, learned advocate appearing on behalf of the petitioner by placing before this Court the judgment delivered in the case of ***Abdul Mannan Khan v. The Goods and Services Tax Council & Ors.***, on FMA 142 of 2022, on 31st March, 2023, by the Division Bench of this Court, presided over by the Hon'ble the Chief Justice, would submit that in identical set of facts the Hon'ble Division Bench had permitted the assessee to correct the mistake in form GSTR-1. He submits that the petitioner having paid IGST should not be denied of its right to take credit, which it is legitimately entitled to. He prays that similar relief as granted in the case of ***Abdul Mannan Khan*** (supra) should be afforded to the petitioner.

12. The learned advocates appearing on behalf of

the respondents do not dispute the genuineness of the mistake committed by the petitioner.

13. Having heard the learned advocates appearing for the respective parties and having taken note of the fact that there is no objection as regards the claim made by the petitioner that the Form GSTR 1 was filed by reasons of a genuine mistake and such mistake had come to light for the first time when the order of part refund was issued on 6th July, 2023, i.e. much prior to the last date for correcting the return filed in Form GSTR 1 in terms of proviso to Section 37(3) of the said Act, however, since, the petitioner's refund application was partly allowed the petitioner had been prevented from rectifying the error as there is no scope available to rectify such error on the portal. It, however, appears to be a case of genuine mistake, having regard to the stand taken both by the State respondents as also by the customs authorities.

14. I find that the Hon'ble Division Bench in the case of ***Abdul Mannan Khan*** (supra) had been pleased to observe as follows:

> **"***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.*
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> *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 31s t 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.

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.***"**

15. Having regard thereto, by following the judgment delivered by the Hon'ble Division Bench in ***Abdul Mannan Khan*** (supra), I direct the petitioner to resubmit corrected GSTR 1 Form manually with a further direction upon the respondent no.3, to receive the same provided the same is submitted within three weeks from the date. The respondent no.3 is directed to receive the same manually and

would facilitate uploading of the details in the web portal.

16. The aforesaid direction is being issued by proceeding on the premise that the assessee should not be prejudiced from availing the benefit which it is otherwise legitimately entitled to, by taking note of the stand of the State respondents and the customs authorities.

17. Having regard to the above once, the Form GSTR1 is filled up, follow up steps would also be taken by the State respondents so that the petitioner can avail the credit in respect of five several export invoices as detailed in the writ petition, to which it is legitimately entitled to.

18. The petitioner is also directed to clear all taxes along with payment of interest as may be determined by the respondents for availing the above benefit.

19. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)