

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 602 OF 2024**

Anvita Associates ... Petitioner
Versus
Union of India (thr. Revenue Secretary) & Ors. ... Respondents

Mr. Deepak Bapat a/w. Sonali Bapat for the Petitioner.
Ms. Shruti D. Vyas, Addl. G. P. a/w. Ms. P. J. Gavhane, AGP for
Respondent- State.
Ms. Sangeeta Yadav for Respondent No.3.

**CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.**
DATED: 15th January, 2024

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1. We have heard Mr.Bapat, learned Counsel for the Petitioner and Ms.Vyas, learned Counsel for Respondent-State.
2. This Petition seeks several reliefs in the context of the GST returns which were filed by the Petitioner in FORM-GSTR-01. The issue as raised by the Petitioner is in regard to the supply that has been made to Respondent No.5- Mahindra Logistics ("Mahindra Logistics"). It appears from what has been stated in the Petition that the Petitioner during the year 2017-18 to 2021-22, had supplied manpower and transport service to Mahindra Logistics, who also stand registered under the Central Goods and Services Tax Act, 2017. It is the Petitioner's case that Mahindra Logistics had paid to the Petitioner Rs. 26,59,00,087/-, which was short of 27,05,105/-. The case of the Petitioner is that such short payment of the said amount was on account of the fact that the Petitioner had inadvertently not disclosed 14 sales invoices in FORM-GSTR-01 filed for the period of 2017-18 and hence the said invoices were not reflected in FORM-GSTR-2A of Mahindra Logistics. Due to this, ITC of

Rs.18,74,998/- was denied to Mahindra Logistics, and considering the amount of interest thereon at Rs.8,30,107/-, Mahindra Logistics is not paying an amount of Rs.27,05,105/- to the Petitioner.

3. Correspondence ensued between the parties stating that the ITC could not have been disallowed to Mahindra Logistics on the ground of non-reflection of the invoices in FORM-GSTR-2A of Mahindra Logistics. The Petitioner hence requested Mahindra Logistics that it be paid Rs.27,05,105. It contended that, despite the Petitioner clarifying the position in regard to the inadvertent error in the Petitioner's return as filed under FORM-GSTR-01, Mahindra Logistics is not willing to accept the case of the Petitioner and make payment of such amount to the Petitioner.

4. It is for such reasons that the Petitioner has contended that, on such inadvertent error, despite the tax already being paid as output tax, subsequently the same was also recovered from Mahindra Logistics, causing prejudice to the Petitioner. However, due to such systemic issues the Petitioner is not in a position to recover the amount of Rs.27,05,105/- from Mahindra Logistics. On such backdrop, the Petitioner is before the Court by filing this Petition. The prayers in the Petition are also required to be noted which read thus:-

“(a) That this Hon'ble Court may please quash the first proviso to sub-section (3) to Section 37 of the CGST and SGST Act;

(b) That this Hon'ble Court may please direct the GST Departments for not invoking Section 16(2)(c) of the CGST Act against the recipients of goods and services, before ascertaining that the output tax shown in the said invoice issued by the supplier is not actually paid by him into Government Treasury in cash or through utilisation of ITC.

(c) That this Hon'ble Court may please direct the Respondent No.5 to pay the Petitioner the amount of Rs.27,05,105 and the interest thereon from the date on which it was withheld till it is paid to Petitioner, at a rate which this Hon'ble Court may decide as appropriate.

- (d) *That this Hon'ble Court may please direct the Proper Officer of the GST Department to pay the Respondent No.5 the amount recovered from it by invoking Section 16(2)(c) of the CGST and SGST Act along with interest thereon at a rate which this Hon'ble Court may decide as appropriate.*
- (e) *That the Petitioner craves leave to add, alter or amend or delete any of the forgoing submissions, grounds or averments in the present petition as and when required;*
- (f) *This Hon'ble Court be pleased to grant any such further and equitable reliefs as the nature and circumstances of the case may require;*
- (g) *This Hon'ble Court be pleased to grant the cost for this Petition."*

5. Mr. Bapat has drawn our attention to the decision of a co-ordinate bench of this Court in the case of ***Star Engineers (I) Pvt. Ltd. Vs. Union of India & Ors.*** in Writ Petition 15368 of 2023, decided on 14th December 2023. In such decision this Court had occasion to consider the issue of limitation as prescribed under Section 37 read with section 39 of the CGST Act in the context of a bonafide and inadvertent error taking place on the part of the assessee in filing the GST returns. Considering such provisions and interpreting the intention behind such provisions, this Court has taken the view that, in the event there is an inadvertent error/mistake, the same is required to be recognized by the department and in cases where there is no loss of revenue to the Government, rectification of such errors need to be permitted by the department. The observations in that regard are clear as made in paragraph 12, 13, 14, 20, 21 & 22 of the said decision. On such observations, the Division Bench directed the Respondents to permit the Petitioner to amend/rectify the FORM-GSTR-01 for the period in question, either through online or manual means, within a period of four weeks from the date of the said order.

6. In our opinion, the situation is not too different in the present case. There appears to be an inadvertent error on the part of the petitioner in filing

return in FORM-GSTR-01 and due to such defective return being filed, the Petitioner contends that it is not in a position to recover the amount from Mahindra Logistics.

7. In our opinion, the appropriate course of action for the Petitioner is to file an Application for rectification of the returns which were filed in FORM-GSTR-01 and, more particularly, considering the observations as made by the Division bench in *Star Engineers (I) Pvt. Ltd.* (Supra), and after an order is passed on the Rectification Application, the inter-se issue between the Petitioner and Mahindra Logistics can be taken up by the Petitioner and appropriate claim can be raised subject to the outcome of the Rectification Application.

8. We accordingly dispose of this Petition with liberty to the Petitioner to approach the department by filing a Rectification Application so as to seek rectification of FORM-GSTR-01 for the period in question, which is permitted to be filed either through online or manual means within a period of four weeks from today. If such an Application is made, let the same be decided in accordance with law by the appropriate officer of the department.

9. Needless to observe that depending on the decision that may be taken on the Rectification Application, the Petitioner has all remedies against the department or against Mahindra Logistics, as the law may permit.

10. We expressly keep open all contentions of the parties including the legal contentions of the Petitioner on the challenge to the vires of the provisions.

11. The Petition, accordingly, stands disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)