

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7912 OF 2024

Aberdare Technologies Pvt Ltd & Anr

...Petitioners

Versus

Central Board of Indirect Taxes & Customs & ors ...Respondents

Mr. Rahul Sarda i/b Mr. Akshay Pawar for Petitioners.

Mr. Siddharth Chandrashekhar a/w Mr. Saket Ketkar for Respondent No.1.

Ms S.D.Vyas, Addl GP a/w Mr. M. M.Pabale, AGP for Respondent Nos.2 & 3.

CORAM : K. R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 29th JULY 2024

PC. :

1 On 1st July 2024, the following order came to be passed:

"1. Mr. Chandrashekhar states that he shall appear for Respondent No.1. Ms. Vyas at the request of this Court agrees to appear for Respondent Nos.2 and 3. As regards Respondent No.4, Mr. Sarda, on instructions, states have been served some time in May 2024.

2. Petitioner has filed GST returns within time but after some time in December 2023, realised that there were certain errors with no loss of Revenue to the State. The time prescribed under Section 39(9) of CGST Act states the rectification of such omission or incorrect particulars have to be made on or before 30th day of November, following the end of the financial year to which such details pertained. Mr. Sarda states that because they had missed the deadline, Petitioner made a request in writing to the concerned authorities to permit rectification which has not been granted.

3. Ms. Vyas in fairness informed the Court that there is a judgment of this Court in Writ Petition No.15368 of 2023 pronounced on 14th December 2023, Star Engineers (I) Pvt. Ltd. vs. Union of India & Ors. where the Court has held that if there is no loss of Revenue, amendment / rectification of the Form GSTR-1 should be permitted even if it is made after 30th November. Ms. Vyas requests the matter be stood over by atleast three weeks to enable her to take instructions and file a response affidavit, if advised.

4. Respondents shall file an affidavit-in-reply and serve a copy thereof upon Petitioner's Advocate by 19th July 2024.

5. Stand over to 22nd July 2024.”

2 There is no dispute that there were certain errors with no loss of revenue to the State in the GST returns filed. Paragraphs 7 to 23 of ***Star Engineers (I) Pvt Ltd. Vs. Union of India & ors.***¹ reads as under:

“7. Mr. Raichandani, learned Counsel for the petitioner would submit that it was arbitrary for the Deputy Commissioner of State Tax to reject the request of the petitioner to amend or rectify the Form GSTR-1 filed by the petitioner for the period July 2021, November 2021 and January 2022, either Online or by manual means. It is contended that it is not in dispute and as clear from the impugned letter, that there was no loss of revenue to the Government exchequer, however, on a pure technical ground the provisions of GSTR Portal prohibited any adjustment post the due date, the petitioner's request has been rejected. It is submitted that such technicalities ought not to defeat the requirement of justice. In support of his submissions, Mr. Raichandani has placed reliance on the decision of Madras High Court in *M/s. Sun Dye Chem Vs. Assistant Commissioner (ST) & Ors.*; decision of learned Single Judge of the Madras High Court in the case of *Pentacle Plant Machineries Pvt. Ltd. Vs. Office of GST Council & Ors.*; decision of the Division Bench of Orissa High Court in *Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs and Ors.*, the decision of Jharkhand High Court in *Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council and ors.* It is submitted that each of these decisions have taken a view that an inadvertent error on the part of the assessee if takes place in filing the details leading to the mismatch of credit, the assessee ought not to be prejudiced from availing the credit, which they otherwise legitimately are entitled to and to that effect the rectification of error ought to be permitted. Accordingly, in such cases a relief was granted to the petitioner. It is, thus, Mr. Raichandani's submission that the prayer of the petitioner that it be permitted to amend or rectify the Form GSTR-1 for the period in question ought to be granted.

8. On the other hand, Ms. Vyas, learned Counsel for the Revenue while not disputing the factual matrix would submit that no fault can be found in the impugned communication as the provisions of the GST Act itself would not permit the State Tax Officer to accept the request as made by the petitioner for amendment / rectification of Form GSTR-1 which was filed by the petitioner for the period in question. Ms. Vyas has also fairly stated that if the request as made by the petitioner is to be accepted, there is no loss of revenue whatsoever to the public exchequer.

9. Having heard learned Counsel for the parties and having perused

1 2023 SCC Online Bom 2682

the record, there is much substance in the contention as urged on behalf of the petitioner. At the outset we are required to note that insofar as filing of GST returns are concerned, the provisions of Sections 37, 38 and 39 of the Central Goods and Services Tax / Maharashtra Goods and Service Tax, 2017 (for short 'CGST / MGST, 2017') are attracted. Section 37 provides for furnishing details of outward supplies. Section 38 provides for furnishing details of inward supplies. Section 39 provides for furnishing of returns. Sub-section (3) of Section 37 provides that 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. The proviso below sub-section (3) stipulates 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. It would be necessary to note the provisions of Section 37 which reads thus:-

Section 37 Furnishing details of outward supplies

37. (1) Every registered person, other than an Input Service Distributor; a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed :

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period :

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein :

Provided also that any extension of time limit notified by the Commissioner of central tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under subsection (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the

month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(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 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, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.]

Explanation.—For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period."

10. We may also observed that Section 38 provides for communication of details of inward supplies and input tax credit which in sub-section (1) mandates that the details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed. Sub-section (2) provides for the ingredients of auto-generated statement.

11. Section 39 provides for furnishing of returns under which it is clearly provided that a return is required to be furnished electronically indicating the inward and outward supplies of goods and services or both, input tax credit availed, tax payable, tax paid or such other particulars in such form and manner, and within such time, as may be prescribed. Sub-section (9) although provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after 30th day of November following the end of financial year to which such details pertain, or the actual date

of furnishing of relevant annual return, whichever is earlier. Sub-section (10) provides for extension of time in the event the assessee has not furnished the return for one or more previous tax period or has not furnished the details of outward supplies as per sub-section (1) of section 37 in the said tax period. Sub-section (9) and (10) of Section 39 are required to be noted which read thus:-

"Section 39. Furnishing of returns -

*(1) -(7)******

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars 6[in such form and manner as may be prescribed], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the 7[thirtieth day of November] following 8[the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods 9[or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period."

12. Having considered the statutory ambit of Section 37, 38 and 39, we are of the clear opinion that the provisions of sub-section (3) of Section 37 read with Section 38 and sub-sections (9) and (10) of Section 39 need to be purposively interpreted. We cannot read sub-section (3) of Section 37 to mean that the assessee would be prevented from placing the correct position and having accurate particulars in regard to all the details in the GST returns being filed by the assessee and that there would not be any scope for any bonafide, and inadvertent rectification / correction. This would pre-supposes

that any inadvertent error which had occurred in filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of sub-section (3) of Section 37 read with the provisions of sub-section (9) of Section 39 read de hors the provisos.

13. In our opinion, the proviso ought not to defeat the intention of the legislature as borne out on a bare reading of sub- section (3) of Section 37 and sub-section (9) of Section 39 in the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake. Any contrary interpretation of sub-section (3) of Section 37 read with sub-sections (9) and (10) of Section 39 would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect. This is necessarily required to be borne in mind when considering the cases of inadvertent human errors creeping into the filing of GST returns.

14. Applying such principles to the facts of the present case, in our opinion, the State Tax Officer had all materials before it which went to show that there was nothing illegal and / or that what had happened at the end of the petitioner was that the invoices generated by the petitioner under the bill-to-ship-to-model for delivery of goods to third party vendors of BAL of which input tax credit for the invoices in question, were not availed by BAL due to error of credit not being reflected in the GSTR-1, as the petitioner had mentioned GSTIN of third party instead of GSTIN of BAL. This is also accepted by the State Tax Officer in the impugned communication.

15. As a result of the above discussion, in our opinion, the State Tax officer ought to have granted the petitioner's request to rectify / amend the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means.

16. We also find that the petitioner's reliance on the decision as noted by us is quite apposite. In Sun Dye Chem Vs. Assistant Commissioner (supra), learned Single Judge of the Madras High Court considered a similar case wherein an error was committed by the petitioner in filing of details relating to credit. The error was to the effect that what should have figured in the CGST/SGST column was inadvertently reflected in the IGST column. It was not the case of the department that the error was deliberate and was intended to gain any undue benefit by the petitioner and in fact, by reason of the error, the customers of the petitioner were denied credit which they claim to be legitimately entitled to. It was also an error which was not initially noted by the petitioner, and on account of the error, the customers of the petitioner would be denied credit which they claimed to be legitimately entitled to, owing to the fact that the credit stands reflected in the wrong column. It is in these circumstances, after

examining the relevant provisions which we have already discussed, the learned Single Judge observed that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing credit which they are otherwise legitimately entitled to. The Court observed that an error committed by the petitioner is an inadvertent human error and the petitioner should not be prevented from rectifying the same and accordingly, allowed the petition.

17. A similar view was taken in the Pentacle Plant Machineries Pvt. Ltd. (supra) which also followed the decision in Sun Dye Chem (supra).

18. We also note that the Division Bench of the Orissa High Court in Shiva Jyoti Construction (supra) was considering the case wherein the petitioner had prayed for a relief that the petitioner be permitted to rectify the GST returns filed in September 2017 and March 2018 which was filed inadvertently in Form-B2B instead of Form B2C as was wrongly filed under the GSTR-1 in order to get input tax credit benefit by a third party namely M/s. Odisha Construction Corporation Ltd. The last date for filing of return was 31 March 2019 and the rectification should have been carried out by 13 April 2019. The petitioner contended that an error came to be noticed after the said third party held up the running bill amount of the petitioner by informing it of the error on 21 January 2020. The petitioner contended that thereafter it was making a request to the department to correct the GSTR-1 form, but it was not allowed. It is in these circumstances, the Court considering the fact that in permitting the petitioner to rectify such error, there was no loss of revenue whatsoever to the department, that it was only about the ITC benefit which was to be given to the customer of the petitioner, failing which a prejudice would be caused to the petitioner. The Division Bench referring to the decision in Sun Dye Chem (supra) granted the prayer of the petitioner for setting aside the letter of rejection as impugned in the proceedings and permitting the petitioner to resubmit the corrected returns in Form - B2B under GSTR-1 for the period in question.

19. The Division Bench of the Jharkhand High Court in Mahalaxmi Infra Contract Ltd. (supra) has taken a similar view wherein the Division Bench after considering the rival contentions and the scheme of the legislation, allowed the petition considering the fact that there was no loss of revenue, if such rectification as prayed for by the petitioner was to be granted.

20. On the interpretation of the provisions as made by us and the common thread running through the decisions as noted above, it would lead us to observe that the GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain. The diversity, in which the traders and the assesseees in our country function, with the limited expertise and resources they would have, cannot be overlooked, in the expectation the present regime would have in the traders / assesseees

complying with the provisions of the GST Laws. There are likely to be inadvertent and bonafide human errors, in the assessee adopting themselves to the new regime. For a system to be understood and operate perfectly, it certainly takes some time. The provisions of law are required to be alive to such considerations and it is for such purpose the substantive provisions of sub-section (3) of Section 37 and sub-section (9) of Section 39 minus the proviso, have permitted rectification of inadvertent errors.

21. We may also observe that the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and bonafide. There was not an iota of an illegal gain being derived by the assessee. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assessee. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.

22. It is considering such object and the ground realities, the law would be required to be interpreted and applied by the Department. This necessarily would mean, that a bonafide, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government. Such freeplay in the joint requires an eminent recognition. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Such approach would also foster the interest of revenue in the collection of taxes.

23. In the aforesaid circumstances, we have no manner of doubt that the petition is required to be allowed. It is accordingly allowed by the following order:-

ORDER

(I) The respondents are directed to permit the petitioner to amend / rectify the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means within a period of four weeks from today.

(II) Petition stands disposed of in the above terms. No costs."

3 The facts of this case before us is almost identical in as much as, there is no loss to revenue if, petitioner is permitted to amend the GST returns filed.

4 In the circumstances, we direct respondents to open the portal within

one week from the date of this order being uploaded and inform petitioner to enable them to amend / rectify Form GSTR-1 and GSTR-3B within one week. If the portal is not opened for whatever reasons, petitioner shall file application to amend / rectify Form GSTR-1 and GSTR-3B manually and respondent nos.2 and 3 are directed to accept and process the same in accordance with law. If these respondents are going to take a stand contrary to petitioner's interest, they shall give notice to petitioner atleast five working days in advance and give personal hearing.

5 Petition disposed.

(JITENDRA JAIN, J.)

(K. R. SHRIRAM, J.)