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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 88 OF 2023

Unique Speciality Chemicals

... Petitioner

Versus

Deputy Commissioner of State Tax (E-103)

... Respondents

Mr. Ishaan V. Patkar a/w Mr. Durgesh G. Desai a/w M/s. Alaksha Legal for the Petitioner

Mrs. Jyoti Chavan, Addl. G.P. a/w Mr. Himanshu Takke, A.G.P. for the State

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 30 January, 2024

P.C.

1. This Petition under Article 226 of the Constitution of India is filed praying for the following reliefs:

A. that the Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the Impugned Order dated 29 July 2022 being "Exhibit A" to the Petition;

B. that pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to stay the operation of the Impugned Order dated 29 July 2022 being "Exhibit A" to the Petition;

C. Ad-interim reliefs in terms of prayer clauses (B) above,

D. For costs of this petition; and

E. For such other order as the Hon'ble Court may deem fit to pass in light of the facts and circumstances of the case."

2. The relevant facts need to be noted. The case of the Petitioner is that in relation to the E-way bill in question, the taxable value of the E-way bill was Rs.3,081.60. However, the Petitioner had mistakenly punched the HSN Code

in the “Taxable Value” column of the E-way bill which is “34049090” and, therefore, the system calculated the GST of Rs.61,28,836.20, which according to the Petitioner, resulted in a tax demand which is 1817 times what was really due and payable. The total demand with interest and liability was 3870 times than what was actually payable. It is the case of the Petitioner that there was no mismatch in credit since the same is reversed voluntarily much before the notice was issued on 11th March 2022, being show cause notice in Form DRC-01A, but the mis match was between the GST payable as per E-way bill and the returned figures in the GSTR-3B.

3. On 19th May 2022, a show cause notice was issued to the Petitioner reiterating the contents of the pre show cause notice. On 13th June 2022, the Petitioner filed its reply to the show cause notice submitting all material showing that there was an error in the E-way bill and that it was an inadvertent mistake. All the relevant documents were also submitted to show that the Petitioner had already reversed inward tax credit. Thus, the e-way bill, documents relevant to the mistake and other invoices from the customer with their E-way bills were all submitted for consideration of the Designated Officer in reply to the show cause notice. The Petitioner submitted additional documents as also submissions on the E-way Bill on 27th June 2022.

4. It is the case of the Petitioner that, despite all such material being furnished, the details of which are set out in the Petitioner’s letter dated 27th June 2022 addressed to the Designated Officer, the Designated Officer proceeded to pass an order on 29th July 2022, being an order in DRC-07, simplicitor recording that the information provided by the dealer is not tallying with scrutiny parameters, and hence, the office prepared the Order as per the details as set out. Being aggrieved by the said order, the Petitioner is before this Court.

5. Mr.Patkar, the learned counsel for the Petitioner, submitted that this is a clear case where there is a ex-facie mistake on the part of the Petitioner in mistakenly punching the wrong tariff code and thus it ought to have been taken into consideration by the Designated Officer in passing the impugned order.

6. He submits that the impugned order is a mechanical order passed without application of mind, as it does not address issues as categorically raised by the Petitioner before the Designated Officer. It is submitted that the principles in this regard are quite settled that in the event a bonafide error takes place, and there is no loss of revenue to the department, such mistakes cannot be prejudicial to the department and the same can be permitted to be rectified in supporting such contentions. Mr.Patkar has referred to the decision of this Court on *in the case of Star Engineers (I) Pvt. Ltd. vs. Union of India and Ors. in Writ Petition No.15368 of 2023.*

7. On the other hand, Ms.Chavan, Additional G.P., would not dispute that the Petitioner's reply to the show cause notice explained the inadvertent error and that the same should have been considered by the Designated Officer in passing the impugned order. She would fairly submit that, in the event there is a bonafide mistake the principles of law as laid down by this Court cannot be disputed, and an opportunity can be made available to the Petitioner to rectify such mistakes.

8. We have heard the learned counsel for the parties and perused the documents on record. There is much substance in the contention raised on behalf of the Petitioner. It appears that there is a clear error in the punching and because of which the system calculated a tax amount which was certainly not commensurate with the actual E-way bill when the tax amount was only Rs.3081/-.

9. Considering these issues, an appropriate decision could have been taken by the Designated Officer in consultation with the higher authorities. Be that as it may, now the proceedings are before us, hence, following the principles as discussed in the decision of this Court in *Star Engineers (I) Pvt. Ltd.* (Supra), we are of the opinion that the Petitioner needs to be permitted to correct the bonafide mistakes, more particularly considering that there is no loss of revenue to the Department.

10. In the aforesaid circumstances, we deem it appropriate to dispose of this Petition in terms of the following order:

ORDER

- a. The Impugned Order dated 29th July 2022 passed under the Maharashtra Goods and Services Tax Act, 2017 is quashed and set aside.
- b. Petitioner shall approach the Department with an application to permit the Petitioner to correct the error in the punching of the tariff code, either electronically or manually within three weeks from today.
- c. The Department is directed to accept such corrections as may be presented by the Petitioner.
- d. After such corrections are permitted to be undertaken, the Department shall consider the Returns filed by the Petitioner as per law.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)