

21.01.2025
Item No.27
gd/ssd

MAT/1983/2023
PIONEER COOPERATIVE CAR PARKING
SERVICING AND CONSTRUCTION SOCIETY LIMITED
VS
STATE OF WEST BENGAL AND ANR.
IA NO: CAN/1/2023

Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul,
Mr. Dev Kr. Agarwal
..for the Appellant.

Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order passed by the learned Single Bench in WPA 22096 of 2023 dated 26.9.2023.

2. The appellant filed the writ petition praying for issuance of a Writ of Certiorari to quash the order passed by the respondent no.2 dated 5.6.2023 by which a summary order under Section 73(9) of the CGST Act, 2017/WBGST Act, 2017 was passed specifying the amount of tax, interest and penalty payable by the appellant. The appellant also prayed for issuance of a Writ of Mandamus to hold that the retrospective amendment of Rule 61 of the WBGST Rules, 2017 and the omission of Rule 61(6) of the said Rules as unconstitutional.

3. The learned Single Bench noting that the appellant has challenged the constitutional validity of

the retrospective amendment of the said Rules directed exchange of affidavits.

4. So far as the merits of the order passed by the adjudicating authority, the appellant was granted liberty to file a statutory appeal.

5. Aggrieved by such order, the appellant has preferred the present appeal.

6. Mr. Shroff, learned advocate appearing for the appellant, on instruction, would submit that the appellant's endeavour to establish that the order passed by the adjudicating authority, namely, respondent no.2 dated 5.6.2023 is erroneous and one of the contentions on which the appellant sought to demonstrate that the said order was erroneous is by contending that the Rule 61 of the Rules could not have been amended retrospectively and the Rule 61(6) of the Rules could not have been omitted.

7. However, today before us the learned advocate appearing for the appellant submitted that the appellant does not press for the prayer with regard to the constitutionality of the Rule 61 of the WBGST Rules, 2017 and the court may test the correctness of the adjudication order passed by the respondent no.2 dated 5.6.2023 in this appeal.

8. Pursuant to directions issued earlier, the appropriate authority of the respondent have filed their affidavit which was taken on record.

9. We have elaborately heard the learned advocate appearing for the appellant and the learned senior advocate appearing for the State.

10. Initially, a notice in ASMT-10 was issued on 21.6.2022 pointing out certain discrepancies in the returns filed by the appellant for the financial year 2017-18 and the appellant was directed to pay tax, interest and any other amount arising from such discrepancies and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 by 21.7.2022. In continuation of the said notice an attachment to the summary was sent to the appellant dated 5.6.2023 which was impugned in the writ petition giving the details of the discrepancy detected during scrutiny involving short payment of taxes, excess claim of ITC, ITC reversible if availed, ITC payable etc. The appellant furnished their reply on 20th July, 2022 and uploaded the same in the portal.

11. The appellant contended that they are rendering parking collection services primarily to the Indian Railways and they paid licence fees including GST to the Railway Department but the Railway Department did not file the return in GSTR-1 within time. A reconciliation statement was submitted by the appellant regarding the GST liability.

12. As per the reconciliation statement, the appellant claimed ITC to the tune of CGST

Rs.10,46,903.00 and SGST Rs.10,46,903.00 in the GSTR-3B. In the GSTR-2A the ITC claimed was Rs.38,11,987.06 for CGST and Rs.38,11,987.06 for SGST and by way of the reconciliation the appellant claimed balance input tax credit of Rs.27,65,084.06 for CGST and Rs.27,65,084.06 for SGST which they had not claimed in the GSTR-3B.

13. The appellant had adjusted the input tax credit towards outward tax liability for reconciliation but which was not allowed by referring to Section 16(4) of the Act. The adjudicating officer also observed that in the reconciliation statement filed by the appellant ITC to the tune of Rs.30,15,875.66 has been adjusted with outward tax liability which is not shown in the GSTR-2A and, therefore, it cannot be availed by the appellant as per Section 16(4) of the Act.

14. With regard to the claim made by the appellant that they have voluntarily paid Rs.6,20,322.00 as per the GSTR-9 was not supported by any document and it was not reflected in GST BO portal.

15. Therefore, the reconciliation statement submitted by the appellant was found to be not accepted.

16. The appellant referred to a Press Release dated 3.7.2019. This, according to the adjudicating

authority, the Press Release is not applicable to the appellant.

17. The appellant also relied upon a Circular No.183 dated 27.12.2022 which deals with discrepancies between the amount of ITC availed by the appellant in his returns in FORM GSTR-3B and the amount of ITC available in FORM GSTR-2A.

18. The adjudicating authority on considering the said submission held that the appellant having not availed ITC in FORM GSTR-3B to discharge his outward liability which he has declared in his GSTR-9/GSTR-9C and, therefore, the Circular No.183 is not applicable.

19. The learned advocate appearing for the appellant submitted that at the relevant time i.e. for the financial year 2017-18 though the FORM in GSTR-3 which provided for the official monthly return, the time limit for filing the same was never notified or in other words the said FORM never stood activated and the intending taxpayer could not have filed the FORM in GSTR-3 at the relevant time.

20. In this regard, Notification No.12 of 2019-CT dated 7th March, 2019 and Notification No.28 of 2019-CT dated 28th June, 2019 were referred to.

21. To test the correctness of the submissions we have gone through the statutory provisions. Section 39 deals with furnishing of returns and such return

has to be furnished electronically in such form and manner, within such time as may be prescribed.

22. The Rule which was invoked at the relevant point of time was Rule 61 and under sub-rule (1) the return which was required to be filed under Section 39(1) was the return in FORM GSTR-3.

23. As could be seen from the Notification No.12 of 2019-CT dated 7th March, 2019 and Notification No.28 of 2019-CT dated 28th June, 2019 the time limit for furnishing details of the return under sub-section (1) of Section 39 for the months of July, 2019 to September, 2019 was to be subsequently notified in the Official Gazette.

24. However, this was not notified and once again by the second Notification No.28 of 2019 the details of returns for the months of July, 2019 to September, 2019 was to be subsequently notified in the Official Gazette which continued to remain unnotified.

25. In such situation, it has to be seen as to whether the assessee can be left remediless.

26. In our view, if the assessee has complied with the requisite conditions under the provisions of the Act and Rules and is lawfully entitled to the input tax credit, the same should not be denied on technicalities.

27. Section 44 of the Act deals with annual returns which states that every registered person other

than an input tax distributor, a person paying tax under Section 51 or Section 52 shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically within such time and in such form and in such manner as may be prescribed.

28. Prima facie, we are of the view that the word “reconciliation” used in the statute could lead to the meaning that there can be a rectification of any error which might have occurred when the taxpayer files his return in FORM GSTR -3B.

29. Sub-rule (1) of Rule 80 of 2017 Rules states that every registered person, other than those referred to in the second proviso to Section 44, an Input Service Distributor, a person paying tax under Section 51 or Section 52 etc. shall furnish an annual return for every financial year as specified under Section 44 electronically in FORM GSTR-9 on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner. The proviso under sub-rule (1) deals with the person paying tax under Section 10 who is required to file annual return of GSTR-9A. FORM GSTR-9 is the form prescribed for annual return which

is an elaborate form where the taxpayer is required to furnish all particulars including the reconciliation statement.

30. It is not in dispute that the appellant has filed FORM GSTR-9.

31. In such circumstances, can the adjudicating authority totally ignore the said annual return while considering the claim of the assessee for input tax credit. More or less an identical issue was considered by this court in Ankit Kumar Agarwal, Proprietor of business namely Ambika Trading Company v. The Assistant Commissioner of State Tax, Taltala Charge & Ors. in MAT 939 of 2024 dated 21.5.2024.

32. After considering the facts of the said case, the court held that if GSTR-9 which was filed within the time permitted is not considered, the assessee's right would be seriously prejudiced. It is no doubt true that in the said decision which was held that the decision should not be treated as a precedent. Nonetheless, the court considered the effect of GSTR-9 which being an annual return which could be filed within the extended period of limitation on account of various notifications issued by the Government.

33. In Sri Shanmuga Hardwares Electricals v. State Tax Officer in [2024] 159 taxmann.com 756 (Madras) the learned Single Bench took into

consideration the submission of the assessee that he is eligible for ITC by referring to the GSTR-2A and GSTR-9 returns and, therefore, the assessing officer was directed to examine those returns regardless the fact that the claim did not reflect in the GSTR-3B.

34. In our view, the adjudicating authority ought to have considered the effect of GSTR-9 and the particulars furnished therein rather than to say that what was claimed in the annual return was not reflected in the return filed under GSTR-3B. This would be the proper manner in which the case had to be dealt with otherwise the purpose of filing an annual return in terms of Section 44(1) of the Act read with Rule 80 would become redundant.

35. Therefore, we are convinced that the matter has to be readjudicated afresh after considering the GSTR-9 the annual return filed by the appellant in FORM GSTR-9.

36. However, on facts it is for the appellant/assessee to establish that they voluntarily paid Rs.6,20,322.00 at the time of filing the GSTR-9 since the adjudicating authority has recorded that no document was furnished to support such claim and it is not reflected in the GST BO portal.

37. The learned advocate appearing for the appellant submitted that they have got the necessary

acknowledgement for payment which they will produce before the adjudicating authority.

38. For the above reasons, the appeal is allowed. The order impugned in the writ petition, namely, the order passed adjudicating authority dated 5.6.2023 is set aside.

39. Consequently, the writ petition is allowed and the matter stands remanded to the adjudicating authority, namely, the Assistant Commissioner of Revenue to take into consideration the appellant's GSTR-9 return, examine all aspects and take a fresh decision on merits and in accordance with law.

40. We make it clear that the direction issued to the adjudicating authority should not be misconstrued considering the merits of the matter but only on the ground that the taxpayer should not be disadvantage having not been able to file the return in GSTR-3 on account of the fact that it was not notified and, therefore, for the relevant financial year the adjudicating authority shall consider the annual return filed in GSTR-9.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)