IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14149 OF 2024

Adj Utility APPS Pvt.Ltd. ...Petitioner
Versus
Union of India And Ors. ...Respondents

Mr. Arun Jain i/b. Mr.Kartik Vig, for the Petitioner.

Ms. Shruti D. Vyas, Addl. GP a/w. Mr.Aditya R. Deolekar, AGP for Respondent Nos. 2,5,6.

Mr. Ram Ochani a/w. Ms. Sangeeta Yadav, for Respondent Nos. 3 & 4.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

DATE: 18 MARCH 2026

P.C.

1. This Petition under Article 226 of the Constitution of India has been filed seeking the following substantive reliefs:

> (a) that this Hon'ble Court be pleased to issue a Writ of Declaration or a writ in the nature of Declaration or any other appropriate writ, order or direction under Article 226 of the Constitution of India declaring Notification No. 56/2023-C.T. dated 28.12.2023 [Exhibit "A"] issued by the Respondent No. 1 and Notification No. 56/2023-S.T. dated 16.01.2024 [Exhibit "B"] issued by the Respondent No. 2 as ultra vires of Section 168A of the CGST/MGST Act;
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> (b) that this Hon'ble Court be pleased to read down the amendment made to proviso to Section 37(3) of the CGST/MGST Act extending time limit for making rectification under Section 37(3) of the CGST/MGST Act till 30th November of the succeeding year from 01.10.2022 onwards to be effective from 01.07.2017;
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> (c) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the Show Cause Notice bearing No.

Mumbai-LTU-541/LTU-04/GST Audit/ADJ/ADT-02/2024-25/B-114 dated 28.05.2024 read along with Form GST DRC-01 bearing Ref. No. ZD270524057619Z dated 28.05.2024 issued by the Respondent No. 6 for the period 2019-20 [Exhibit "C"], and Order bearing No. Mumbai-NOD-E-1204/LTU-04/GST-Audit/DRC-07/ADJ/2024-25/B-239 dated 26.08.2024 read along with Form GST DRC-07 bearing Ref. No.ZD270824071252D dated 26.08.2024 passed by the Respondent No. 6 for the period 2019-20 [Exhibit"D"], to the extent adverse to the Petitioner;

(d) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No. 6 by himself, his subordinates, servants and agents to forthwith:

(i) withdraw/cancel the Show Cause Notice bearing No. Mumbai-LTU-541/LTU-04/GST Audit/ADJ/ADT-02/2024-25/B-114 dated 28.05.2024 read along with Form GST DRC-01 bearing Ref. No. ZD270524057619Z dated 28.05.2024 issued by the Respondent No. 6 for the period 2019-20 [Exhibit "C"], and Order bearing No. Mumbai- NOD-E-1204/LTU-04/GST-Audit/DRC-07/ADJ/2024-25/B-239 dated 26.08.2024 read along with Form GST DRC-07 bearing Ref. No.ZD270824071252D dated 26.08.2024 passed by the Respondent No. 6 for the period 2019-20 [Exhibit "D"], to the extent adverse to the Petitioner;

(ii) allow the Petitioner to adjust the excess integrated tax paid of Rs. 2,82,46,364/- against the alleged ineligible Input Tax Credit of Rs. 2,07,70,396/-demanded in the impugned order;

(e) that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to, by an interim order and injunction, stay the operation of the Order bearing No. Mumbai-NOD-E-1204/LTU-04/GST-Audit/DRC-07/ADJ/2024-25/B-239 dated 26.08.2024 read along with Form GST DRC-07 bearing Ref. No.ZD270824071252D dated 26.08.2024 passed by the Respondent No. 6 for the period 2019-20 [Exhibit "D"];

2. The Petitioner, in the present Petition *inter alia*, challenges the legality and validity of the order dated 26th August 2024 (hereinafter referred to as the "Impugned Order") passed by Respondent No. 6 for the period 2019–2020, to the extent that it denies adjustment of excess Integrated Goods and Services Tax (hereinafter referred to as "IGST") amounting to Rs.2,82,46,364/- paid by the

Petitioner on account of an inadvertent and bona fide mistake against the ineligible Input Tax Credit (hereinafter referred to as "ITC") of Rs.2,04,24,467/-. It is the Petitioner's contention that Respondent No. 6 has denied such adjustment on the ground that the correction was made in October 2020, which was beyond the due date prescribed for making amendments in respect of transactions pertaining to Financial Year 2019–2020.

3. Without delving into the detailed issues raised in the present Petition, the relevant facts necessary for adjudication of the present Petition are set out hereinbelow:

(i) The Petitioner is a Private Limited Company incorporated under the provisions of the Companies Act, 2013, and is, inter alia, engaged in providing digital utility solutions to small and medium businesses (merchants), enabling them to record credit transactions and collect receivables through its trademark application "Khatabook".

(ii) On 1st February 2019, the Petitioner entered into an agreement with Kyte Technologies Inc., USA, for providing software development services, which qualify as "zero-rated supply".

(iii) On 31st August 2019, the Petitioner raised an invoice for the month of August 2019 under a Bond without payment of IGST. The said services qualify as "export of services" within the meaning of Section 2(6) of the IGST Act and constitute zero-rated supply under Section 16 of the IGST Act.

(iv) On 20th December 2019, while filing Form GSTR-3B for November 2019, the Petitioner inadvertently paid IGST amounting to Rs.2,82,46,364/- in respect of the invoice dated 31st August 2019. Thereafter, the Petitioner filed Form GSTR-1 for the period October to December 2019 on 21st February 2020.

(v) On 30th November 2020, the Petitioner effected corrections in Form GSTR-1 for October 2020, specifically to rectify the excess IGST payment of Rs.2,82,46,364/- which had been made inadvertently by the Petitioner.

(vi) On 27th February 2021, the Petitioner filed Forms GSTR-9 and GSTR-9C for the Financial Year 2019–2020, wherein the Petitioner adjusted the excess IGST of Rs.2,82,46,364/- against ineligible ITC of Rs. 2,04,24,467/-. On the same date, the Petitioner also filed a refund claim for the said period.

(vii) It is the Petitioner's contention that the total IGST payable on zero-rated supplies amounted to Rs.4,39,92,270/-. However, the Petitioner claimed a refund of only Rs.1,57,45,907/-, being the difference between Rs. 4,39,92,270/- and Rs.2,82,46,364/-, the latter having been adjusted against the ineligible ITC of Rs.2,04,24,467/-.

(viii) Accordingly, the Petitioner did not claim a refund of Rs.2,82,46,364/- paid inadvertently in respect of the invoice dated 31st August 2019, issued under bond, as the said amount had already been adjusted against the ineligible ITC.

(ix) On 19th April 2021, the State Tax Officer issued a Show Cause Notice to the Petitioner, inter alia, calling upon the Petitioner to show cause as to why the refund claim of Rs.1,57,45,907/- should not be adjusted against the alleged GST liability of Rs.2,95,88,081/-, purportedly arising from excess ITC availed by the

Petitioner.

(x) In response, the Petitioner, by its reply dated 4th May 2021, submitted that there was no excess availment of ITC, as the Petitioner had inadvertently made an excess IGST payment of Rs.2,82,46,364/-, which had already been adjusted against the ineligible ITC. The said explanation was accepted, and by order dated 27th May 2021, the refund of Rs.1,57,45,907/- was sanctioned by the State Tax Officer.

(xi) Subsequently, on 28th May 2024, pursuant to an audit, another Show Cause Notice of even date was issued by Respondent No. 6, disputing the adjustment of excess IGST amounting to Rs 2,82,46,364/- against ineligible ITC of Rs.2,04,24,467/-. Adjudication proceedings were thereafter conducted, culminating in the passing of the Impugned Order dated 26th August 2024 by Respondent No.6.

4. It is this Impugned Order that the Petitioner seeks to challenge by way of the present proceedings. By the Impugned Order, Respondent No. 6 has denied the adjustment of excess IGST amounting to Rs.2,82,46,364/- paid inadvertently by the Petitioner, against the ineligible ITC of Rs.2,04,24,467/-.

5. The denial is premised on the ground that, under Section 37(3) of the CGST Act, any rectification or amendment of transactions reported in returns cannot be carried out beyond the due date prescribed, i.e., September following the end of the relevant financial year. Respondent No. 6 has held that since the rectification was undertaken in October 2020, beyond the prescribed time limit for Financial Year 2019–2020, the same cannot be permitted.

6. Learned Counsel Mr. Arun Jain appeared on behalf of the Petitioner. Ms. Shruti Vyas, learned Additional Government Pleader, along with Mr. Aditya R. Deolekar, AGP, appeared for the Respondent–Department. Learned Counsel Mr. Ram Ochani, along with Ms. Sangeeta Yadav, appeared for Respondent Nos. 3 and 4.

7. At the outset, learned counsel for the Petitioner submitted that the excess payment of IGST was a bona fide and inadvertent error on the part of the Petitioner, and therefore, the Petitioner was entitled to rectify the same. It was contended that Respondent No.6, without considering the submissions made on behalf of the Petitioner, rejected the adjustment solely on the ground that the rectification was carried out beyond the prescribed due date.

8. Learned counsel for the Petitioner also submitted that in the present Petition Notification No. 56/2023-C.T. dated 28th December 2023 issued by Respondent No. 1, and Notification No. 56/2023-S.T. dated 16th January 2024 issued by Respondent No. 2 have also been challenged on the ground that these are ultra vires Section 168A of the CGST/MGST Act.

9. On behalf of the Respondent–State, Ms. Shruti Vyas, learned Additional Government Pleader, submitted that the Petitioner has an alternative remedy available under law of filing an appeal against the Impugned Order dated 26th August 2024, and therefore, the present Petition ought not to be entertained.

10. Having heard the learned counsel for the parties and having perused the papers and proceedings, we are of the view that several factual aspects require

detailed examination, particularly in relation to the adjustment of excess IGST amounting to Rs.2,82,46,364/- stated to be paid inadvertently by the Petitioner and its adjustment against ineligible ITC of Rs.2,04,24,467/-.

11. In our view, these issues can be raised by the Petitioner before the Appellate Authorities, where the Petitioner can raise all contentions in detail. The Appellate Authority would be in a position to render comprehensive findings after proper appreciation of facts and law and adjudicate on the adjustment of excess IGST amounting to Rs.2,82,46,364/- against ineligible ITC of Rs.2,04,24,467/-. The Appellate Authorities also at the time of adjudication would consider the principles laid down by the Court in Star Engineers I Pvt. Ltd. vs Union of India[1], (wherein one of, us, G.S. Kulkarni J was a member), in which it has held that where inadvertent and bona fide errors were there on the part of the assessee and there was not an iota of illegal gain being derived by the assessee, the assessee's request to amend/rectify Form GSTR-1 could not be rejected. Relevant paragraphs of the aforesaid decision are reproduced below-

> "12. Having considered the statutory ambit of Sections 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 bona fide, and inadvertent rectification/correction. This would presuppose 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 dehors the provisos.
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> 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 bona fide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is

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no loss of Revenue whatsoever in permitting the correction of such mistakes 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 retties 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 requited 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 if 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 v. CST', 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 prejudiçed 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 (P) Ltd. case? which also followed the decision in Sun Dye Chem case (supra).

18. We also note that the Division Bench of the Orissa High Court in Shiva Jyoti Construction case was considering the case wherein the petitioner had prayed for a relief that the petitioner be permitted for rectify the GST returns filed in September 2017 and March 2018 which was filed inadvertently in Form B2B instead of Form B2Cuas was wrongly filed under the GSTR I 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 31-3-2019 and the rectification should have been carried out by 13-4-2019; The petitioner contended that an error camerto be noticed after the said third party held up the running bill amount of the petitioner by informing it of the error on 21-1-2020. 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 tin pormitting 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 case' 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. Case has taken a simitar 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 assessees 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/ assessees complying with the provisions of the GST laws. There are likely to be inadvertent and bona fide human errors, in the assessees 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 subsection (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 bona fide. There was not an iota of an illegal gain being derived by the assessees. 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 assessees 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 bona fide, inadvertent error in furnishing details in a GST return needs to be recognised, 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."

12. Accordingly, we are of the view that no interference is warranted in the present proceedings filed under Article 226 of the Constitution of India, in the facts of the present case as the Petitioner can avail more efficacious alternative remedy of filing an Appeal. The Petition is therefore disposed of in the following terms:

ORDER

(i) The Petitioner is at liberty to file an appropriate appeal against the Impugned Order dated 26th August 2024 before the Commissioner of State Tax (Appeals) / appropriate authority under the CGST Act within a period of **six (6) weeks** from the date this Order is made available to the parties.

(ii) All contentions of the parties, including the challenge to Notification No. 56/2023-C.T. dated 28th December 2023 and Notification No. 56/2023-S.T. dated 16th January 2024, are kept open to be urged in the aforesaid appeal.

(iii) The Commissioner (Appeals) shall grant a personal hearing to the Petitioner before passing any order.

(iv) All contentions of the parties are expressly kept open.

(v) In the facts and circumstances of the case, if the Petitioner files the appeal within a period of six (6) weeks from today, the same shall be considered on its own merits and without raising any objection on limitation, as the Petitioner was bona fide prosecuting the present Petition and would be entitled to the benefit of Section 14 of the Limitation Act, 1963.

(vi) The Writ Petition is disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**