

**IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD**

* * *

WRIT PETITION No.2124 OF 2024

Between:

M/s. ECC Trading Private Limited.

Petitioner

VERSUS

The Additional Commissioner of Central Tax and others.

Respondents

ORDER PRONOUNCED ON : 30.01.2024

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

***THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI
+ WRIT PETITION No.2124 OF 2024**

ORDER: (*per Hon'ble Sri Justice P.SAM KOSHY*)

%Dated 30.01.2024

Between:

M/s. ECC Trading Private Limited.

Petitioner

VERSUS

The Additional Commissioner of Central Tax and others.

Respondents

! Counsel for Petitioner : Mr.M.Ramachandra Murthy

^ Counsel for Respondents : Mr.Dominic Fernandes for R-1.
Mr.N.Bhujanga Rao for R-3.
Mr.Gadi Praveen Kumar for R-2.

< GIST :

> HEAD NOTE :

? Cases referred :

¹ 2020 TIOL 1858 HC MAD GST

² 2021-TIOL-604-HC-MAD-GST

³ MANU/OR/0522/2023

⁴ MANU/JH/1003/2022

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI
Writ Petition No.2124 OF 2024

ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

The challenge in the present Writ Petition is to the order, dated 09.11.2023 passed by respondent No.1, whereby respondent No.1 has passed an order affirming the demand of Rs.2,11,69,253/- under Section 73(1) of Central Goods and Services Tax Act, 2017 (for short "the Act") and also imposed a penalty of Rs.21,16,925/- under Section 73 of the Act i.e., 10% of the demand raised by the Department.

2. The whole dispute arose on account of the error on the part of the petitioner while submitting its GST returns for the period July, 2017 i.e., at the stage when GST law was at its primitive stage upon being implemented with effect from 01.07.2017.

3. According to the learned counsel for the petitioner, in the course of submission of GST return for the period July, 2017, inadvertently while reflecting the amount of CGST and SGST Tax component, for CGST component amount of

Rs.22,96,928.12 was reflected. However, inspite of having the same figure under SGST column, the amount got wrongly typed as Rs.2,22,96,928.12, the said return was filed on 23.08.2017. Immediately, the petitioner sent an email to the respondent-authorities on 23.08.2017 i.e., on the same day, intimating them about the error that crept in the excess input credit under SGST. The petitioner also sought permission to adjust the excess amount reflected from the IGST input available.

4. Subsequently, when the petitioner submitted its Form GSTR-3B in September, 2018, the petitioner again made a mistake by reflecting the ITC reversal under the IGST instead of SGST. When the return of the petitioner was subjected to audit, the petitioner immediately brought it to the notice of the authorities about the second mistake again which has arisen so far as availing ITC reversal in IGST instead of SGST.

5. Meanwhile, respondent-authorities issued a show cause notice to the petitioner under Section 73 of the Act alleging excess availment of ITC during the period 2017-18.

The petitioner immediately entered appearance before the respondent-authorities and submitted its detailed reply on 20.10.2023 (Annexure-P17), categorically bringing to the notice of the respondent-authorities about the alleged inadvertent mistakes that occurred on the part of the petitioner initially while reflecting the SGST tax component and subsequently while availing ITC reversal for the said amount. Though a detailed reply has been filed by the petitioner before the respondent-authorities, without touching any of those contentions that the petitioner herein has raised in its reply, the respondent-authorities have in a mechanical manner passed the impugned order, dated 09.11.2023 (Annexure-P1) confirming the demand of Rs.2,11,69,253/- and also imposed penalty at the rate of 10% on the said amount. The entire reading of the impugned order would clearly reveal that none of the contentions that the petitioner has raised in its reply to the show cause notice have been dealt with and the authority concerned has passed the order in a routine manner.

6. At this juncture, learned counsel appearing for the petitioner contended that the error as has arisen in the instant case, has also occurred to various other assesseees across the Country. Similar disputes have been adjudicated by many other High Courts as well. In support of his contention, he refers to a recent decision of the High Court of Karnataka, Bengaluru Bench in W.P.No.2911 of 2022, in the case of ***M/s.Orient Traders Vs. The Deputy Commissioner of Commercial Taxes and another,*** whereby the High Court of Karnataka in paragraph Nos.11 and 12 held as under:

“11. As rightly contended by the learned Senior Counsel for the petitioner, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the Act. In the instant case, the respondents have, in the absence of a prescribed GSTR 2- A for the relevant tax periods referred to the IGST import figures reflected in the ICE GATE portal of the Customs Department for all the months except those in which the errors have been committed. This clearly indicates that the respondents are aware of the actual figures and also that there is an error committed by the petitioner, but has chosen to selectively ignore the IGST import amounts reflected in the ICE GATE portal for the tax periods in dispute, which is yet another circumstance to uphold the claim of the petitioner.

12. In view of the aforesaid facts and circumstances, I am of the considered opinion that the petitioner is entitled for the limited relief of being permitted to make the necessary changes to its

GSTR 3-B returns for the months of July 2017 and March 2018, particularly, since doing so would not cause any prejudice to the respondents-Revenue nor would it upset the chain of credit under the GST scheme and liberty is to be reserved in favour of the revenue to proceed with the impugned show cause notice dated 17.01.2022 after permitting the petitioner to make the necessary amendments to its GSTR 3-B Returns for the above tax periods.”

While making the said observations, the High Court has also passed the following directions:

“13. In the result, I pass the following:-

ORDER

- (i) The petition is hereby partly allowed.
- (ii) The respondents are hereby directed to permit the petitioner to make necessary corrections to the GSTR-3B for the months of July-2017 to March-2018.
- (iii) The respondents are further directed to permit the petitioner to carry out the said corrections online by reopening the portal for a limited period to be notified to the petitioner.
- (iv) Due to technical glitches/defects, if it is not possible for the respondents to permit such corrections online or on the portal, respondents are hereby directed to permit to carry out such corrections via manually/physically.
- (v) Till the respondents comply with the directions issued above, they shall not take precipitative steps pursuant to the show-cause notice dated 17.01.2022.
- (vi) It is made clear that the above order is in the peculiar facts and circumstances of the case, particularly since the tax periods involved relate to the first year of introduction of GST and this order shall not be treated as a precedent nor have any precedential value for any purpose whatsoever.”

7. Similar view has also been taken by the Bombay High Court in W.P.No.15368 of 2023, in the case of **Star Engineers (I) Pvt. Ltd. Vs. Union of India and Others**, wherein again the Bombay High Court referred to a series of decisions of similar nature that arose from Madras High Court in the case of **M/s.Sun Dye Chem Vs. Assistant Commissioner (ST) & Ors.**¹ and also that of **Pentacle Plant Machinerics Pvt. Ltd. Vs. Office of GST Council & Ors.**². Further, the Bombay High Court took note of similar decisions, rendered by the Orrisa High Court in **Shiva Jyoti Construction Vs. The Chairperson, Central Board of Excise & Customs and Ors.**³ and the decision rendered by the Jharkhand High Court in **Mahalaxmi Infra Contract Ltd. Vs. Goods and Services Tax Council and Ors.**⁴; and relying upon those judgments the Bombay High Court, in paragraph Nos.20 to 22, has held as under:

“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

¹ 2020 TIOL 1858 HC MAD GST

² 2021-TIOL-604-HC-MAD-GST

³ MANU/OR/0522/2023

⁴ MANU/JH/1003/2022

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 assesseees 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 assesseees. 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 assesseees. 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.”

The Bombay High Court while concluding made the following orders, which, for ready reference, is reproduced hereunder:

“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.”

8. There is yet another decision by the Kerala High Court in W.P.(C).No.14096 of 2019, dated 07.03.2022 wherein the High Court taking the same view held as under:

“11. As far as the GST regime is concerned, the period between 2017 and 2020 ought to be regarded as the nascent period of legislation. Admittedly several glitches had occurred even from the part of the Department. The said period was regarded by the courts as a ‘trial and error phase’ as far as implementation of the statute was concerned. The taxpayers were also in a state of confusion, during those periods. Unfamiliarity with the new regime caused formidable and unprecedented difficulties. As observed by the High Court of Delhi in Brand Equity Treaties Limited and Others v. Union of India and Others (MANU/DE/1009/2020), these problems

could be attributed either to the failure of the system maintained by the Department or even on the inexperience of the assessee in the ways and means provided by the new regime. The court went on to observe that the Department, which ought to have come to the rescue of the taxpayers, especially during the nascent stage of its legislation, has failed in respect of the petitioner to provide succor for the difficulty faced by it.

...

...

15. In view of the above, I set aside Ext.P7 and direct the competent amongst the respondents to facilitate revising of form GST TRAN-1 submitted by the petitioner on 01-09-2017 and to file form GST TRAN-2 by making necessary arrangements on the web portal. If in case the same is not possible, to permit the manual filing of such returns by the petitioner, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of the judgment.”

9. In view of the aforesaid series of decisions rendered by various High Courts across the Country and also taking note of the fact that the impugned order being totally silent about the contentions and submissions made by the petitioner in its reply to the show cause notice; we are inclined to interdict the impugned order and setting aside the same further remitting the matter back to respondent No.1 for reconsideration of the submissions of the petitioner that were raised in its reply to the show cause notice and to pass orders afresh. It is directed that respondent No.1 may grant fresh personal hearing to the

petitioner. In order to avoid further delay, we are directing the petitioner to remain present before the authority concerned on 27.02.2024, for which there would not be any necessity of issuance of a fresh notice by the authority concerned.

10. Since the matter is being remitted back upon the impugned order being set-aside, the petitioner would be permitted to make fresh submissions in support of its contentions on the said date and the authority concerned is expected to take a decision on its own merits by taking into consideration the entire factual matrix of the case and also considering the decisions rendered by the various High Courts on similar set of facts.

11. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J**January 30, 2024.***BMS*