

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.15284 of 2022

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Ms. K.Rajya Lakshmi, learned counsel for the petitioner; Mr. K.Raji Reddy, learned Senior Standing Counsel for Commercial Tax appearing for respondents No.1 to 3; and Mr. Swaroop Oorilla, learned counsel for respondent No.6 i.e., GST Council.

2. By filing this writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to the respondents to allow amendments in the GSTR-1 form filed for the period January, 2018 to August, 2018 so as to correctly reflect the input tax credit as well as the output tax liability of the petitioner.

3. Petitioner is a private limited company incorporated under the Companies Act, 1956. It is engaged in the

business of manufacture and sale of passenger car tyres with a manufacturing facility in the State of Haryana. Following enactment of the Central Goods and Services Tax Act, 2017 (briefly, 'the CGST Act' hereinafter) and the related laws, petitioner got itself registered under the Goods and Services Tax (GST) regime in the State of Telangana.

4. Petitioner has been submitting its GST returns timely. During the period from January, 2018 to August, 2018 it had shown supplies to one of its distributors M/s. Bade Miyan Wheels. However, in the GSTR-1 form submitted by the petitioner for the aforesaid period, the details of the distributor were wrongly mentioned. It was a bona fide mistake whereby the name of the distributor was mentioned as M/s. Hyderabad Service Station instead of M/s. Bade Miyan Wheels. Because of the aforesaid error, the distributor – M/s. Bade Miyan Wheels, is not able to utilise the input tax credit for the said purpose which is being reflected in the GSTR-2A forms of M/s. Hyderabad

Service Station. Because of the above, the distributor had not paid amount due to the petitioner equivalent to the input tax credit because of the wrong entity which would be to the tune of Rs.11,68,456.00.

5. To enable the petitioner to rectify the mistake, a representation was submitted before respondent No.2 on 15.03.2021 with a reminder on 07.07.2021. No decision was taken by the aforesaid respondent. However, the time prescribed under the provisions of the CGST Act for rectification of errors for the returns covering the period January, 2018 to March, 2018 had expired on 31.03.2019; and for the months of April, 2018 to August, 2018 on 30.09.2019. It is in such circumstances that the related writ petition came to be filed seeking the reliefs as indicated above.

6. Though respondents have not filed counter affidavit, an objection was raised in the hearing on 18.10.2022 that in terms of Section 39(9) of the CGST Act as well as of the

Telangana Goods and Services Tax Act, 2017 (briefly, ‘the TGST Act’) which are in *pari materia*, the period for rectification of any omission or incorrect particulars is over. Reliance was placed on a decision of the Supreme Court in **Union of India v. Bharti Airtel Ltd**¹. Learned counsel for the petitioner sought for time to examine the aforesaid decision. Accordingly, the matter has been listed today. Relevant portion of the order dated 18.10.2022 reads as under:

“By filing this writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to respondent No.1 to allow the petitioner to carry out amendments in the GSTR-1 returns filed by it during the period January, 2018 to August, 2018 to correctly reflect the Input Tax Credit (ITC) to which it is entitled. In this connection, petitioner had submitted a representation on 15.03.2021 to the GST Officer, Telangana.

In the hearing today, learned counsel for respondent No.6 has referred to Section 39(9) of the Telangana Goods and Services Tax Act, 2017 and submits that as per the proviso to the aforesaid section, rectification of any omission or incorrect particulars can be allowed after due date for furnishing of the return for

¹ 2021 (54) G.S.T.L. 257 (SC)

the month of September or the second quarter following the end of the financial year. He has also placed reliance on a decision of the Supreme Court in **Union of India vs. Bharti Airtel Ltd.** (2021 (54) G.S.T.L. 257 (S.C)) wherein Supreme Court has negated a similar request on the ground that acceding to such a request would be contrary to the statutory mandate.

Learned counsel for the petitioner seeks time to go through the decision of the Supreme Court in **Union of India** (supra).

List as part-heard matter high on board on 31.10.2022.”

7. Learned counsel for the petitioner submits that petitioner had represented before the respondents for rectification of omission/incorrect particulars. However, the same was not considered by the authorities. It is under such circumstances that the present writ petition came to be filed. She has distinguished the decision of the Supreme Court in **Bharti Airtel Ltd.**, (supra) and instead submits that her case is squarely covered by the decision of the Gujarat High Court in **Siddharth Enterprises v. Nodal Officer**². She has also placed reliance on a Single

² 2019 (29) G.S.T.L. 664 (Guj.)

Bench decision of the Madras High Court in **M/s. SUN DYE CHEM v. The Assistant Commissioner (ST)** (W.P.No.29676 of 2019, decided on 06.10.2020).

8. On the other hand, Mr. Swaroop Oorilla, learned counsel for respondent No.6 has referred to sub-section (9) of Section 39 of the CGST Act and submits that legislature has consciously prescribed the limitation period to enable a taxable person to claim rectification of any omission/incorrect particulars. Once the limitation period is over, it is not open for the taxable person to continue seeking rectification of omission/incorrect particulars. He submits that while such limitation period as regards claim of the petitioner is concerned, expired on 31.03.2019 and 30.09.2019 respectively but the representations came to be filed much later on 15.03.2021 and 07.07.2021 which could not have been considered by the respondents. He therefore submits that the writ petition is thoroughly misconceived and is liable to be dismissed. Referring to the decision of the Madras High Court in **M/s. SUN DYE**

CHEM (supra), learned counsel for respondent No.6 submits that in the said decision, learned Single Judge of the Madras High Court did not consider the effect of sub-section (9) of Section 39 of the CGST Act.

9. Submissions made by learned counsel for the parties have been considered.

10. As can be seen from the above, facts are not in dispute. What is in controversy is the entitlement of the petitioner at this stage to claim rectification of omission/incorrect particulars in the GSTR-1 form filed by the petitioner for the period January, 2018 to August, 2018.

11. Section 39 of the CGST Act as well as the TGST Act deals with furnishing of returns. As per sub-section (1) thereof, every registered person other than an input service distributor or a non-resident taxable person etc., for every calendar month or part thereof, furnish a return electronically of inward and outward supplies of goods and

services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed. Sub-section (9) provides that if after furnishing such return a registered person discovers any omission or incorrect particulars other than as a result of scrutiny, audit etc., he shall rectify such omission or incorrect particulars in such form and in such manner as may be prescribed, subject to payment of interest etc. The proviso says that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year to which such details pertain or the actual date of furnishing of relevant annual return, whichever is earlier. In other words, such rectification could be carried out after the due date for furnishing of return up to the following month of September.

12. Insofar the Gujarat High Court decision in **Siddharth Enterprises** (supra) is concerned, there is no dispute to the

proposition that denial of credit of tax/duty paid under existing enactments would amount to violation of Articles 14 and 300A of the Constitution of India. Unutilized credit is a vested right and property in terms of Article 300A of the Constitution of India. Question is whether such right can be exercised at any given point of time or would stand extinguished after the limitation provided by the statute itself. The said question has to be examined in the light of the petitioner furnishing incorrect particulars while filing GSTR-1 form.

13. Insofar decision of the Madras High Court in **M/s. SUN DYE CHEM** (supra) is concerned, we find from a deliberation thereon that Madras High Court proceeded on the basis that the consequential GSTR-2A form rectifying such omission/incorrect particulars was yet to be notified. Further, learned Single Judge of the Madras High Court did not examine the limitation introduced by the statute under sub-section (9) of Section 39 of the CGST Act to rectify omission/errors in GSTR-1 form.

14. In **Bharti Airtel Ltd.**, (supra) Supreme Court after analysing the various decisions summed up its conclusions as under:

“46. We need not multiply the authorities referred to in the concerned judgments, and cited before us, as in our opinion, these decisions have not dealt with the cardinal aspect of statutory obligation fastened upon the registered person to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules, which are primary documents and source material on the basis of which self-assessment is done by the registered person including about his eligibility and entitlement to get ITC and of OTL. Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment. Non performance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigor to the returns filed by the registered person in Form GSTR-3B.

47. Significantly, the registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Thus, it is not a case of denial of availment of ITC as such. If at all, it is only a postponement of availment of ITC. The ITC amount remains intact in the electronic credit ledger, which can be availed in the subsequent returns including the next financial year. It is a different matter that despite the availability of funds in the electronic credit ledger, the registered person opts to discharge OTL by paying cash. That is a matter of option exercised by the registered person on which the tax authorities have no control, whatsoever, nor they have any role to play in that regard. Further, there is no express provision permitting swapping of entries effected in the electronic cash ledger *vis-a-vis* the electronic credit ledger or vice versa.

48. A priori, despite such an express mechanism provided by Section 39(9) read with Rule 61, it was not open to the High Court to proceed on the assumption that the only remedy that can enable the assessee to enjoy the benefit of the seamless utilization of the input tax credit is by way of rectification of its return submitted in Form GSTR-3B for the relevant period in which the error had occurred. Any unilateral change in such return as per the present dispensation, would have cascading effect on the recipients and suppliers associated with the concerned transactions.

There would be complete uncertainty and no finality could ever be attached to the self-assessment return filed electronically. We agree with the submission of the appellant that any indulgence shown contrary to the statutory mandate would not only be an illegality but in reality, would simply lead to chaotic situation and collapse of tax administration of Union, States and Union Territories. Resultantly, assessee cannot be permitted to unilaterally carry out rectification of his returns submitted electronically in Form GSTR-3B, which inevitably would affect the obligations and liabilities of other stakeholders, because of the cascading effect in their electronic records.

49. As noted earlier, the matching and correction process happens on its own as per the mechanism specified in Sections 37 and 38, after which Form GSTR-3 is generated for the purposes of submission of returns; and once it is submitted, any changes thereto may have cascading effect. Therefore, the law permits rectification of errors and omissions only at the initial stages of Forms GSTR-1 and GSTR-3, but in the specified manner. It is a different dispensation provided than the one in pre-GST period, which did not have the provision of auto-populated records and entries.”

15. Thus, Supreme Court was of the view that the law provides for rectification of errors and omissions in the specified manner. Beyond the statutorily prescribed

period, an assessee cannot be permitted to carry out rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records. Supreme Court considered the mechanism provided by Section 39(9) of the CGST Act and thereafter took the view that allowing the assessee to carry out rectification of errors and omissions beyond the statutorily prescribed period would lead to complete uncertainty and collapse of the tax administration. While delivering the above judgment, Supreme Court took note of the fact that GSTR-2A form for rectification of omissions or incorrect particulars became operational from September, 2018.

16. That being the position, we are not inclined to accede to the request made by the petitioner as the issue is squarely covered by the decision of the Supreme Court in **Bharti Airtel Ltd** (supra).

17. Accordingly, the writ petition is dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

31.10.2022
vs