IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No.2911 OF 2022 (T-RES)

BETWEEN:

M/S ORIENT TRADERS
NO.163, SP ROAD, CITY MARKET,
BENGALURU-560 002.
REPRESENTED BY ITS PROPRIETOR,
ILYAS NISARALI ADENWALA.

...PETITIONER

(BY SRI. VIKRAM HUILGOL., SENIOR COUNSEL APPEARING FOR SRI. SYED KHANRUDDIN., ADVOCATE)

AND:

1 . THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES
(AUDIT)-3, 4, DGSTO-3,
ROOM NO.225, BMTC BUILDING,
2ND FLOOR, SHANTINAGAR,
BENGALURU-560027.

2 . JOINT COMMISSIONER OF COMMERCIAL TAXES
DGSTO-03,
BENGALURU-560027.

...RESPONDENTS

(BY SRI.HEMA KUMAR., AGA)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTING THE R1 TO ALLOW THE PETITIONER TO RECTIFY THE GST RETURNS FILED FOR THE MONTHS OF JULY,2017 AND MARCH 2018 AND ETC.

THIS W.P. COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this petition, petitioner has sought for the following reliefs:-

> *" i) Issue a Writ of Mandamus, directing the Respondent No.1 to allow the Petitioner to rectify the GST returns filed for the months of July, 2017 and March, 2018;*
>
> *ii) Consequently, Issue a Writ of Certiorari, quashing the Audit Report dated: 27.08.2021 bearing reference No. 3207/27.08.2021 issued by the 1st Respondent; (Annexure-C) and*
>
> *iii) Pass such other order/Writ/Direction/s as this Hon'ble Court deems fit to grant under the facts and circumstances of this case, in the interest of justice and equity."*

2. The material on record discloses that the petitioner is engaged in the supply of machinery, mechanical appliances, parts etc., as well their erection, commissioning and installation. The petitioner had duly submitted its GST Returns in Form GSTR 3-B for the Financial Year 2017-18 (for short, "the FY"). On 20.01.2021, the 1st respondent issued a notice to the petitioner calling for books of accounts in order to conduct a Desk Audit and directed the petitioner's attendance on

12.02.2021. In response to the said notice, the duly authorised representative of the petitioner, appeared before the 1st respondent on various dates and produced the books of accounts and records for verification. Thereafter, the 1st respondent issued an Audit Enquiry dated 12.07.2021 under Section 65(6) of the Karnataka Goods and Services Tax Act, 2017 (for short, the "KGST Act") read with Rule 101(4) of the Karnataka Goods and Services Rules, 2017, calling upon the petitioner to file its response within seven days.

2.1 The petitioner duly filed its response to the observations made in the audit enquiry. In doing so and while reviewing the returns that it had filed, the petitioner noticed that certain inadvertent errors and mistakes were made while filing its returns for the FY 2017-18. More specifically, the petitioner noticed that it had claimed Input Tax Credit (for short "ITC") relating to imports under integrated Goods and Services Tax, (for short "IGST') in July 2017 and March 2018 due to oversight and inadvertence in Column No. 4A(5) instead of claiming it under Column No. 4A(1). The error committed by the

petitioner meant that it had inadvertently considered import IGST pertaining to July 2017 as local IGST and import IGST pertaining to March 2018 as local CGST and SGST. This error in entering the figures in the wrong column resulted in a mismatch between the GSTR-3B and GSTR-2A forms, due to which, the 1st respondent-DCCT observed in its audit report that the ITC which had accrued to the Petitioner was liable to be disallowed.

2.2 In its reply dated 29.07.2021, the petitioner had sought permission to rectify these errors by submitting a revised input table but the same was rejected by the 1st respondent-DCCT. Based on the audit report dated 27.08.2021, the show cause notice dated 17.01.2022 was issued under Section 73(1) of the KGST and CGST Acts, *inter alia*, proposing to disallow the ITC pertaining to the above mentioned errors committed by the petitioner, aggrieved by which, the petitioner is before this Court by way of the present petition.

3. Heard learned Senior counsel appearing for the petitioner and learned AGA for the respondents – State.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submitted that the errors that were committed in filing of the Returns occurred during the nascent stages of the Goods and Services Tax regime, which was brought into force with effect from 01.07.2017 and that there was a quantum change in the indirect tax regime, which required the filing of number of Returns in new and different formats and that, accordingly, minor and inadvertent errors, such as those committed by the petitioner were entirely *bona-fide* and in such circumstances, a lenient view is warranted, particularly since rectification of errors at this stage will not cause any loss of revenue nor will there be any cascading effect that will upset the scheme of GST.

4.1 Learned Senior Counsel also submits that for the FY 2017-18 furnishing of returns through Form GSTR-3B was only a stop-gap measure until the Government operationalised the statutory returns under Forms GSTR 2, 2A and 3 as prescribed under the GST Act and that the auto fill facility/auto-setter mechanism that auto populates

details into Form GSTR 3B and GSTR 2B was only made available from 04.09.2020 and prior to that, dealers had to manually enter the GST payable into the GST Portal, which was ridden with technical and electronic glitches.

4.2 Lastly, he submits that the details of the IGST relating to imports are readily available on the ICE-GATE portal maintained by the Customs Department, Government of India and that the authorities have, in fact, referred to the same in the absence of GSTR 2-A for all the months except July 2017 and March 2018 i.e., the months in which the errors have been committed. It is submitted that while adjudicating upon the liability of the petitioner, the Revenue is required to look beyond the Returns filed and take a more holistic view having regard to the books of accounts, other statutory forms such as ICE-GATE, etc. He submits that if the authorities were to do the same, it would be clearly apparent that petitioner has only committed a *bona fide* error and that, in fact, it is eligible to claim the disputed amount of ITC.

5. Per contra, learned AGA for the respondents in addition to reiterating the various contentions urged in the statement of objections submit that the petitioner cannot now, at this belated stage, be permitted to rectify the errors that it has made in view of Section 39(9) of the CGST / KGST Act. He also places reliance on a recent judgment of the Hon'ble Apex Court in the case of ***Union of India v. Bharti Airtel Ltd.,& others - (2021) 13 SCALE 301,*** wherein the Apex Court has rejected the plea of the assessee therein to revise its returns beyond the statutory period prescribed under Section 39(9) of the Act. Further, he contends, that no mechanism exists to enable the petitioner to correct its returns at such a belated stage and as such, the petition is liable to be dismissed.

6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. There can be no dispute regarding the fact that the introduction of GST required a major overhaul of the indirect tax regime, including the number and formats of statutory returns that were to be filed and that it was

expected that dealers across the country would take a reasonable amount of time to readjust to the new system. In the instant case, the petitioner appears to have entered certain figures in the wrong column of his GSTR 3-B returns for the months of July 2017 and March 2018 i.e,, during the very first financial year after the introduction of GST. The copies of the returns submitted / filed by the petitioner clearly demonstrate and evidence the innocuousness of the errors committed by the petitioner.

8. A perusal of the same makes it apparent that ITC, which is admittedly available to the petitioner has been entered under the wrong column; the material on record also discloses that the said errors are entirely *bona fide* and inadvertent and that a lenient view is required to be taken, particularly since the tax periods involved relate to the very first year of the GST regime.

9. It is relevant to state that the judgment of the Apex Court in ***Bharti Airtel's case*** *(supra)* cannot be made applicable to the facts of the case. In the said case, the Apex Court observed that allowing the assessee therein to

revise its returns at a belated stage would lead to a cascading effect on the chain of dealers under GST. It was also observed that there is no revenue loss to the assessee and that denial of permission to revise its returns would only result in a delay in availing ITC. However, the facts of the present case are entirely different; in fact, there cannot be said to be any cascading effect since the petitioner only seeks to shift the ITC already claimed from one head to another, which is not disputed by the respondents.

10. Further, in the impugned show cause notice, the Revenue has proposed to deny the ITC claimed by the petitioner, which will undoubtedly lead to a serious revenue loss, unlike in the case of ***Bharti Airtel***, where ITC availment was merely postponed as a result of the judgment. It is therefore clear that no reliance can be placed upon the said judgment by the respondents as sought to be contended by them.

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.

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.

Sd/-
JUDGE

Bmc/Srl.