IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.12382 of 2020

Deepa Traders ... Petitioner

Vs

1. Principal Chief Commissioner of GST & Central Excise
   26/1, Uthamar Gandhi Road, Nungambakkam,
   Chennai, Tamil Nadu – 600 034.

2. Superintendent of GST
   Ward II – A, Central Excise, Coimbatore.

3. Goods and Services Tax Network (GSTN),
   East Wing, 4th Floor, Word Mark,
   1 Aerocity, New Delhi – 110 037.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondents to enable the Petitioner to rectify the clerical errors in the details uploaded by the Petitioner in its GSTR 1 forms for the year 2017-18 by amending the Forms.

For Petitioner : Ms.Sriharini
for Mr.Adithya Reddy

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel -R1 & R2

O R D E R

The petitioner is a dealer under the provisions of the Central Goods and Services Tax Act, 2017 (in short 'Act') in metal and steel scrap. The prayer is for a mandamus directing the respondents to enable the petitioner to rectify clerical errors in the details uploaded by it in Form GSTR -1 for the period 2017-18 and cause amendment of the Forms.

2. The petitioner has, in respect of the returns for a few months during the period 2017-18, admittedly, committed certain errors. The errors are of following nature.

i) Recipients GSTIN/name has been wrongly mentioned.

ii) The invoice number/date have been wrongly mentioned.

iii) Supply details were correctly supplied in GSTR 3 and tax duly remitted. However, some of the invoice wise details have been omitted to be reported in Form GSTR 1.

iv) IGST was inadvertantly remitted under the heads SGST and CGST.

3. The aforesaid errors are attributed to inadvertant carelessness on the part of a part-time accountant then employed by the petitioner. The petitioner would also state that the errors had been occasioned during the initial months of implementation of Goods and Services Tax and thus it had also no knowledge

of the conditions fully to meet the demands of the system. It was the unfamiliarity with the procedures and the newness in the system itself that had resulted in the commission of these errors.

4. It was only in December, 2019 that the petitioner states that these errors came to light on account of the customers bringing the same to its attention. Admittedly, no details of such reports by the customers have been placed on file, though the averment figures at paragraph Nos. 5 and 6 of the affidavit of the petitioner. At paragraph 7, the petitioner states that immediately on coming to know of the errors, an attempt was made to rectify the returns only to find that there was no mechanism set out under the Act or in the portal to enable the same.

5. To be noted, that the petitioner has averred that the tax liability has been met in full based on the turnover reported and it is only the correction of the errors that is sought, to enable proper reconciliation of the petitioner's returns and annexures with those of the third parties.

6. Though a counter has been filed, the above contentions reproduced as per paragraphs 5 to 8 of the affidavit filed in support of the Writ Petition, have not really been disputed.

7. Mr.Srinivas, learned Senior Standing Counsel appearing for the respondents would very fairly not raise any dispute on the sequence of events as

set out above. He would however argue that there is no mechanism available as on date to issue mandamus as sought for.

8. In this regard, he draws attention to the provisions of Section 37 of the Act coming under Chapter IX of the Act under the head 'Returns' – Furnishing details of outside suppliers. The two provisos under Section 37(3) deal with rectification of details, and set out a categoric time frame within which rectification must be effected.

9. For clarity, Section 37(3) and the two provisos thereunder are extracted below:

> *37. Furnishing details of outward supplies.—*
>
> *(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:*
>
> *Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.*
>
> *Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the*

month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019

10. Thus, and admittedly with the extension of time granted under the second proviso, the petitioner has missed the bus for rectification, as on 20.04.2019. The Writ Petition has been instituted on 02.09.2020 and has been pending since then.

11. The fact remains that this Court has taken a view in very similar circumstances as in the present case, in the case of *Sun Dye Chem V. Assistant Commissioner* (2021 (44) GSTL 358) reiterated in *Pentacle Plant Machineries Pvt. Ltd. V. Office of the GST Council, New Delhi* (2021 (52) GSTL 129) to the effect that those petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assessee. The errors committed are clearly inadvertant and, the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fasion by the petitioner and connected assessees.

12. The aforesaid decisions of this Court have been accepted by the revenue on the facts and circumstances of those cases, which remain similar to present matter as well.

13. Paragraphs 4 to 8 of the decision in the case of *Pentacle Plant Machineries Pvt. Ltd.* (supra), where reference is made to *Sun Dye Chem* (supra) are extracted below in the interests of completion of narration:-

> *'.....*
>
> *4. The counter filed by respondents 1 and 3 i.e. GST Council and Central GST Commissionerate states at para-8 that all the five invoices contain the name and GSTIN of the purchaser of Andhra Pradesh.*
> *5. Had the requisite statutory Forms been notified, this error would have been captured in the GSTR-2 return, an online form, wherein the details of transactions contained in the GSTR-3 return would be auto-populated and any mismatch noted. Likewise, had the GSTR-1A return been notified, the mismatch might have been noticed at the end of the purchaser/recipient. However, neither Form GSTR-2 nor Form GSTR-1A have been notified till date. No doubt, the time for modification/amendment of a GSTR-3B return was extended till the 31st of March 2019, which benefit the petitioner did not avail since it was unaware that a mistake had crept into its original returns.*
>
> *6. The revenue does not dispute the position that Forms GSTR-2 and 1A are yet to be notified. It also does not dispute the position that goods have reached the intended recipient. However, the credit claimed on the basis of accompanying invoices has been denied solely on account of the mismatch in GSTR number. It is only on 15.07.2019 when the recipient notified the petitioner of the rejection of the credit, seeking amendment of the return, and threatening legal action, that the petition came to be aware of the mismatch.*
>
> *7. In Sun Dye Chem (supra), the error related to distribution of credit as between IGST/CGST/SGST, which posed a difficulty to the recipient in the matter of availment. I have*

taken a view noticing that the error arose out of inadvertence, that such bonafide mistakes must be permitted to be corrected, stating at paragraphs 17 to 21 as follows:

> 17. A registered person who files a return under Section 39(1) involving intra-State outward supply is to indicate the collection of taxes customer-wise in monthly return in Form GSTR-1 and the details of tax payment therein are auto populated in Form GSTR -2-A of the buyers. Any mismatch between Form GSTR-1 and Form GSTR-2A is to be notified by the recipient by way of a tabulation in Form GSTR-1A. Admittedly, Forms in GSTR-2A and GSTR-1A are yet to be notified as on date. The statutory procedure contemplated for seamless availment is, as on date, unavailable.
>
> 18. Undoubtedly, the petitioner in this case has committed an error in filing of the details relating to credit. What should have figured in the CGST/SGST column has inadvertently been reflected in the ISGT column. It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column. It is for this purpose, to ensure that the suppliers do not lose the benefit of the credit, that the present writ petition has been filed.
>
> 19. Admittedly, the 31st of March 2019 was the last date by which rectification of Form – GSTR 1 may be sought. However, and also admittedly, the Forms, by filing of which the petitioner might have noticed the error and sought amendment, viz. GSTR-2A and GSTR-1A are yet to be notified. Had the requisite Forms been notified, the mismatch between the details of credit in the petitioner's and the supplier's returns might well have been noticed and

> appropriate and timely action taken. The error was noticed only later when the petitioners' customers brought the same to the attention of the petitioner.
>
> 20. In the absence of an enabling mechanism, I am of the view that assessees should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the petitioner is an inadvertent human error and the petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute.
>
> 21. This writ petition is allowed and the impugned order set aside. The petitioner is permitted to re-submit the annexures to Form GSTR-3B with the correct distribution of credit between IGST, SGST and CGST within a period of four weeks from date of uploading of this order and the respondents shall take the same on file and enable the auto-population of the correct details in the GST portal. No costs.

8.To summarise, since Forms GSTR-1A and GSTR-2 (erroneously mentioned as GSTR-2A in para-17 of order dated 06.10.2020 in WP.No.29676 of 2019) are yet to be notified, the petitioner should not be mulcted with any liability on account of the bonafide, human error and the petitioner must be permitted to correct the same.

14. In light of the consistent view taken by the Court and in deference to the position that such matters, where an expansive view of the issue is called for, are few and far between, as on date, this Court is inclined to accept the prayer of the petitioner and issues mandamus to the respondents to do the needful to enable uploading of the rectified GSTR 1. Let the parties ensure that this exercise is completed within a period of six (6) weeks from today.

15. This Writ Petition is allowed in the above terms. No costs.

09.03.2023

Index : Yes
Speaking Order
Neutral Citation : Yes
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To

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DR.ANITA SUMANTH,J.

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