

[Neutral Citation No. - 2024:AHC-LKO:37282]

[AFR]

**Court No. - 19**

**Case :-** WRIT TAX No. - 128 of 2024

**Petitioner :-** M/S Rajshi Processors Raebareli Thru. Its Partner Ashok Kumar Lakhotia

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of State Tax,Lko. And 2 Others

**Counsel for Petitioner :-** Anurag Mishra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Subhash Vidyarthi,J.**

1. Heard Sri Pranjali Shukla, learned counsel for the petitioner and Sri Vikram Soni, learned Additional Chief Standing Counsel.
2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the order dated 16.07.2021 passed by the Deputy Commissioner, Commercial Tax, Division-1, Raebareli, Lucknow (B), whereby the tax liability and penalty has been imposed on the petitioner on the ground that he had been paid false input tax credit. The petitioner has also challenged the validity of an order dated 10.04.2024 passed by Additional Commissioner. Grade-2 (Appeal)-Ist, State Tax, Lucknow, whereby the Appeal bearing number GST 37/2021, filed by the petitioner, against the aforesaid order dated 16.07.2021, has been dismissed.
3. Briefly stated, the facts of the case are that the petitioner is engaged in manufacturing and sale of Aluminum Casting & Machinery Parts. The petitioner had filed GSTR 3B for the month of May, 2019, August, 2019 and December, 2019. The Deputy Commissioner, Special Investigation Branch, Commercial Tax, Lucknow had conducted a survey of the place of business on 25.02.2020. During survey it was found that the petitioner claimed to have received inward supplies worth Rs.16,39,200/-from M/s Ridhi Sidhi Enterprises (GSTIN-09FDTPD8965GIZQ), worth Rs. 17,25,160/- from M/s Siddhartha Trading Company (GSTIN-09HUCPK4270HIZF) and worth Rs. 29,78,025/- from M/s Satvik Enterprises (GSTIN-09GSRPK8763FIZV) and claimed Rs.2,95,056/-, Rs.2,63,160/- and Rs. 4,54,275/-

respectively towards I.T.C. Claim for inward supplies received from the aforesaid firms. When the survey of the aforesaid three firms was conducted by the Special Investigation Branch, Agra, it came to the light that all the aforesaid three firms were non-existent and bogus firms. Besides the place of business declared by the aforesaid three firms, no other godown or Branch was found to be in existence. The petitioner had fraudulently claimed I.T.C. benefit of Rs.10,12,491/- without any actual supply of goods, on the basis of the fake invoice issued by the aforesaid three non-existence bogus firms. The Special Investigation Branch found in the enquiry that the petitioner has knowingly claimed excessive amount towards I.T.C. in his GSTR-2A, on the basis of an auto formulated I.T.C. and had adjusted the same in the tax payable by him. Thus, the petitioner claimed a total of Rs. 15,93,491/- I.T.C. in violation of the provisions of law.

4. The adjudicating authority had issued a notice under Section 74 on 03.08.2021. The petitioner submitted his explanation alongwith the evidence, stating that it had received inward supplies worth Rs.16,39,200/- from M/s Ridhi Sidhi Enterprises, Rs. 17,25,160/- from M/s Siddhartha Trading Company and Rs. 29,78,025/- from M/s Satvik Enterprises and had claimed I.T.C. claim of Rs.2,95,056/-, Rs.2,63,160/- and Rs.4,54,275/- respectively regarding the goods received from the aforesaid three firms. In support of its claim of actual receipt of inward supplies, the petitioner had submitted invoices, copies of GR (goods receipts), e-way bill, laser and bank statements of the firms, evidence of transaction of amounts through RTGS and evidence of physical receipts of goods. The inward supplies received by the petitioner have been entered in the stock register.
5. The adjudicating authority did not accept the explanation of the petitioner because the Special Investigation Branch, Agra had found the aforesaid three firms, namely, M/s Ridhi Sidhi Enterprises, M/s Siddhartha Trading Company and M/s Satvik Enterprises to be non-existent and bogus and that the tax invoices had been issued without any actual supply of goods upon which the petitioner had fraudulently taken benefit of I.T.C. The adjudicating authority declined the benefit of

I.T.C. to the petitioner and imposed penalty on the petitioner and fixed the liability of interest also.

6. The petitioner filed an appeal against the aforesaid order of the adjudicating authority.
7. The appellate authority found that in his explanation submitted before the adjudicating authority, the petitioner had produced GR No. 213/dated 13.05.2019, 694/dated 21.08.2019, 695/dated 21.08.2019 and 1363/dated 15.12.2019 issued by M/s Goyal Goods Carry Corporation, Daresi No. 2, Agra as evidence for transport of goods from Agra to Raebareli. The adjudicating authority found that GR No. 213/dated 13.05.2019 and 1363/dated 15.12.2019 had been issued on a similar format, whereas GR No. 694/dated 21.08.2019 and 696/dated 21.08.2019 had been issued on a different format, whereas all of those have been issued by the same transport company and it had no other branch. The GSTIN-09AJBPG5336KIZ5 and phone number 6395078684 was mentioned at the transport built. GST is payable on transport services. When an enquiry was conducted on the basis of GSTIN number mentioned on the transport Bilty, the GSTIN was found to be not valid as per the information available on the common portal. The phone number mentioned on the transport Bilty, was found to be in use of some lady at Kasganj. From the aforesaid facts, it appears that the Bilties had been attached with the explanation of the petitioner to somehow show the real inward supply by making adjustments. The adjudicating authority found that the alleged supplier firms were non-existence and the Bilties had been produced merely to establish transactions with non-existing firms. No goods were transported from Agra to Raebareli and the transactions were paper transactions only.
8. The appellate Authority found that keeping in view the aforesaid facts, there was no reason for making any interference in the order passed by the adjudicating authority.
9. While assailing the validity of the aforesaid orders, the learned counsel for the petitioner has submitted that the petitioner had actually received inward supplies which is established from the records produced before the adjudicating authority. The supplier firms were having valid GSTIN

registration when the petitioner had received the supplies. In case GSTIN registration of the firm is cancelled subsequently, the petitioner cannot be penalized for the same. Learned counsel for the petitioner has further submitted that the GST registration of the aforesaid three firms was cancelled on their own request.

- 10.** The learned counsel for the petitioner has drawn attention of this Court towards the provisions of Section 16(2) of the GST Act, 2017 which provides as follows:

"16(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37:]

(b) he has received the goods or services or both.

[Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or Section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

**11. Rule 36 of GST Rules, 2007 provides as follows:**

**"Rule 36. Documentary requirements and conditions for claiming input tax credit.-**

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document and the relevant information, as contained in the said document, is furnished in FORM G.S.T.R.-2 by such person:

[Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, G.S.T.I.N. of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

[(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished by the suppliers under sub-section (1) of Section 37 [In FORM G.S.T.R.-01 or using the invoice furnishing facility] shall not exceed [5 per cent] of the eligible credit available. In respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of Section 37 [In FORM G.S.T.R.-01 or using the invoice furnishing facility] under sub-

[Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM G.S.T.R.-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input

tax credit for the said months in accordance with the condition above:]

[Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in Form G.S.T.R.-3B for the tax period June 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulatively adjustment of input tax credit for the said months in accordance with the condition above:]"

12. The learned counsel for the petitioner has submitted that for availing inputs tax credit, the petitioner was merely required to be in possession of a tax invoice or debit note issued by the supplier, receipt of goods and actual payment of tax to the Government. As per learned counsel for the petitioner, all the aforesaid three requirement of Section 16 of the GST Act, 2017 had been fulfilled by the petitioner. The documents, required to be submitted for claiming I.T.C. benefit, as mentioned in Rule 36 of GST Rules 2017, had been furnished by the petitioner.
13. Learned counsel for the petitioner has placed reliance on a **decision of Delhi High Court passed in W.P.(C) 6093/2017 (On Quest Merchandising India Pvt. Ltd. Vs. government of NCT of Delhi & Others)** alongwith some other connected matters, decided on 26.10.2017, wherein the Delhi High Court held as under:

"39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the

DVAT Act places an onerous burden on a bonafide purchasing dealer."

14. The Delhi High Court has further held in Para no. 46.06 of the aforesaid judgment as under:

"46.6 In the present case, the conditions imposed for the grant of ITC are spelt out in Sections 9 (1) and (2) of the DVAT Act and have been adverted to earlier. The claim of the purchasing dealer in the present case is not that it should be granted that ITC de hors the conditions. Their positive case is that each of them, as a purchasing dealer, has complied the conditions as stipulated in Section 9 and therefore, cannot be denied ITC because only selling dealer had failed to fulfil the conditions thereunder. More importantly, the Court finds that there is no provision in the MVAT Act similar to Section 40A of the DVAT Act. Section 40A of the DVAT Act takes care of a situation where the selling dealer and the purchasing dealer act in collusion with a view to defrauding the Revenue. In fact, the operative directions in Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra) indicate that such a measure was suggested by the State Government itself to go after defaulters, i.e. selling dealers failing to actually pay the tax. The Department there undertook to upload on its website the details of the defaulting dealers. It was further undertaken that once there was a final recovery of the tax from the selling dealer, refund would be granted to the purchasing dealer."

15. Per contra, learned Additional Chief Standing Counsel has opposed the writ petition and he has submitted that it is not a case where the I.T.C. benefit has been declined to the petitioner and subsequently the liabilities have been imposed on him merely because the registration of supplier firms was cancelled subsequently. The orders against the petitioner have been passed for the reason that he had shown false inward supply from non-existent and bogus firms and he has claimed I.T.C. fraudulently without any actual inward supplies.
16. I have considered the aforesaid facts and circumstances of the case and the submissions advanced by learned counsel for the parties.
17. Section 16 of the GST Act provides the eligibility conditions for taking input tax credit and Sub Section 2(b) provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods unless he has received the goods. **"Received the goods means the person claiming input tax credit must have actually received the goods"**. Where a person merely produces document, mentioned in Rule 36 regarding receipt of goods, he has actually not received any goods and it is established that the

transaction of goods was merely a paper transaction, without any actual supply of goods, the person will not be entitled to get the benefit of input tax credit in view of the provision contained in Section 16(2)(b) of the GST Act, 2017.

- 18.** Undisputedly, the petitioner had fulfilled the requirements and, therefore, the input tax credit was claimed and was granted to him. However, when an enquiry was conducted by the Special Investigation Branch subsequently, it came to light that the firms from which the petitioner claimed to have received inward supplies, were non-existent and bogus. Neither the firms were found on the addresses, claimed by them, nor was any godown or other premises of those firms could found. It appears that the firms were existing on paper only.
- 19.** Although, the registration of the firms existed when the petitioner claimed to have obtained inward supplies, the investigation revealed that the firm itself does not exist. In case, GSTIN registration has been obtained in the name of any non-existent firm. It being a non-existent firm, could not have made any actual supplies. Merely because the firm was registered on the date of transaction, it cannot be said that the department is bound to give I.T.C. benefit to the petitioner, even though it has been revealed later on the firm was non-existent and it could not have made any actual supplies.
- 20.** The findings of Special Investigation Branch reveal that inward supplies have been received from non-existent firm to take advantage of I.T.C., which amounts to committing fraud against the department and the public exchequer.
- 21.** It is settled law that fraud vitiates even the most solemn proceedings and the mere fact that the I.T.C. benefit had earlier been granted to the petitioner merely because the firms were registered, would not create any estoppel against the authority taking appropriate action for claiming refund of the benefit wrongly availed by the petitioner on the ground of receiving inward supplies from non-existent firms.
- 22.** The contention that no supplies had been received from the non-existent firms also finds support from the fact that the goods receipts issued by M/s Goyal Goods Carry Corporation, were on different



formats. The GSTIN mentioned in the transport Bilties was found to be not valid. The phone number mentioned in the Bilties, was also not of any transport company and it was being used by some lady at Kasganj.

- 23.** The aforesaid findings recorded by the Special Investigation Branch give rise to sufficient material to support the order passed by the adjudicating authority against the petitioner for recovery of the amount claimed by him as input tax credit and for imposing penalty and liability to pay interest thereon. The appellate authority has passed the impugned order after taking into consideration the facts and circumstances of the case and the material available on record.
- 24.** There appears no illegality in the impugned orders. The writ petition lacks merit and the same is hereby **dismissed**.

[Subhash Vidyarthi,J.]

**Order Date :- 14.5.2024**

kkv/