



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF NOVEMBER, 2025

BEFORE

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

WRIT PETITION NO. 22377 OF 2022 (T-RES)

BETWEEN:

HINDUSTAN CONSTRUCTION COMPANY LTD.,
106Y, 1ST FLOOR, SHRINIVAS
4TH MAIN, 7TH BLOCK
BSK III STAGE, BENGALURU - 560 085
THROUGH ITS AUTHORIZED SIGNATORY.

...PETITIONER

(BY SRI. BHARAT B. RAICHANDANI, ADVOCATE)

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
NORHT BLOCK,
NEW DELHI - 110 001.
2. STATE OF KARNATAKA
THROUGH THE SECRETARY
COMMERCIAL TAX DEPARTEMTN
COMMERCIAL TAX OFFICE-1
FIRST MAIN ROAD, GANDHINAGAR
BANGALORE - 560 009.
3. ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
DGSTO-02, NO. 642, PIONER PLAZA
1ST FLOOR, KENCHENAHALLI MAIN ROAD,





RAJA RAJESHWARI NAGAR
BENGALURU - 560 098

...RESPONDENTS

(BY SRI. PRATHIBHA, CGC FOR R1;
SRI. K. HEMA KUMAR, AGA FOR R2 AND R3)

THIS WP IS FILLED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE IMPUGNED NOTICE AND IMPUGNED NOTICE AND IMPUGNED AUDIT REPORT AS THE SAME ARE PASSED WITHOUT CONSIDERING THE PETITIONERS AMENDMENTS AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this Petition, petitioner seeks the following reliefs:

"WHEREFORE it is humbly prayed that this Hon'ble Court may be pleased to:

A. Issue a Writ of certiorari or any other appropriate Writ/order/ direction under Article 227 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality thereof to quash and set aside impugned notice and impugned audit report as in contravention to provisions of the CGST/KGST Act; Vide Annexure-A-1 bearing NO. ACCT b fe-A-2 Annexure. bearing No. ACCT (A)-26/T-No. 2022-23.

B. Issue a Writ of certiorari or any other appropriate Writ/order/ direction under Article 227 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality thereof to quash and



set aside impugned notice and impugned audit report as the same are passed without considering the petitioners amendments.

C. Issue a Writ of certiorari or any other appropriate Writ/order/ direction under Article 227 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality thereof to quash and set aside impugned notice and impugned audit report as they are levying the tax on turnover of outward supply which were never affected by the petitioners.

D. Issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, to read down the provisions of Section 37(3) of the CGST/KGST Act, 2017 shall be read down in a manner that the amendment done by the petitioner is valid, in facts and circumstances of present case; vide Annexure-A-1 bearing No. ACCT(A)-26/2022-23 30-9-2012 Dirtbeating beautiny ACCT (A)-261 T.No. 2022.23

E. Issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No. 3 by himself, his subordinates, servants and agents, pending disposal of the present petition, not to initiate any coercive action or recovery of tax, interest and penalty based on impugned notice and impugned audit report and stay the same thereof till the pendency of the present petition.

F. Pass an order granting the Petitioner the costs of this Petition.

G. For such and other reliefs as the nature and circumstances of the case may require."



2. A perusal of the material on record will indicate that the petitioner having filed returns for the period July, 2017 to March, 2018, subsequently realised that there was errors in the GSTR1 and what should have been declared as B2C instead of B2B and accordingly, made necessary corrections on 06.05.2019. It is the grievance of the petitioner that despite the petitioner being entitled to make such corrections and also having made such corrections, the respondent No. 3 has issued the impugned show cause notice under Section 73(1) of the KGST Act on the ground that the petitioner was not entitled to make such corrections and consequently, purported to initiate appropriate proceedings against the petitioner, who is before this Court by way of the present petition.

3. Per contra, CGC appearing for respondent No.1 and learned AGA appearing for respondent Nos. 2 and 3 submits that there is no merit in the petition and the same is liable to be dismissed.



4. The issue/question has to whether the petitioner/taxpayer/assessee would be entitled to make corrections in the GSTR3B, came up for consideration before this Court in the case of ***Orient Traders vs. Deputy Commissioner of Commercial Taxes (Audit) 3, 4 DGSTO-3, (2023) 3 Centax 63(Kar)*** wherein, it is held as under:

"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."



5. A similar view was taken by this Court in the case of ***Wipro Limited India vs. Assistant Commissioner of Central Taxes, Bengaluru South and Others, 2023 SCC OnLine Kar 144***

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

"a) To issue order(s), directions, writ(s) in the nature of mandamus, directing Respondent No.1 to allow the petitioner access to the GST portal in order to the rectify form GSTR-1 uploaded between FY 2017-18 and 2018-19 with respect to those invoices issued to the Recipient so as to enable the recipient to take credit of the tax paid by the petitioner notwithstanding the time limit prescribed in Section 16(4) of the CGST Act.

b) In the alternative, to issue, orders(s) directions, writ(s) in the nature of mandamus, directing Respondent No.1 to respond and consider the request made by the Petitioner vide letter dated: 06.09.2021 enclosed in Annexure-D.

c) To issues order(s), directions, writ(s), or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstance of the case in the interest of justice."

2. Heard learned Senior counsel for the petitioner, learned counsel for respondents 1 to 3 – revenue, learned AGA for the 4th respondent as well as learned counsel for the 5th respondent and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material



on record, learned Senior counsel for the petitioner invites my attention to the Circular bearing No.183/15/2022-GST dated 27.12.2022 in order to point out that the petitioner as well as the 5th respondent would be entitled to the benefit of the directions issued in the said Circular with regard to the errors committed in the Invoices and the relevant forms of both the petitioner and 5th respondent and as such, the present petition deserves to be disposed of in terms of the said Circular.

4. Per contra, learned counsel for the respondents-revenue submits that the said Circular is not applicable insofar as the petitioner and 5th respondent are concerned and that there is no merit in the petition and the same is liable to be dismissed.

5. In order to appreciate the rival contentions, it is necessary to extract the said Circular, which reads as under:-

**"Circular No. 183/15/2022-GST
F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,
The Principal Chief Commissioners/ Chief
Commissioners/
Principal Commissioners/ Commissioners of Central
Tax (All)/
The Principal Directors General/ Directors General
(All)
Madam/Sir,

*Subject: Clarification to deal with difference in Input Tax
Credit (ITC) availed in FORM GSTR-3B as compared to*



that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 – reg.

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the financial years 2017-18 and 2018-19, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons.

Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions



specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the CGST Act, hereby clarifies as follows;

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) that he has received the goods or services or both;

iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with



section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icaai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been



made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)



6. As rightly contended by the learned Senior counsel for the petitioner, a perusal of the Invoices at Annexure-C will indicate that while supplies are made by the petitioner to the 5th respondent – M/s.ABB Global Industries and Services Private Limited, the GSTIN Number mentioned in the Invoices has been incorrectly shown as that of ABB India Limited, which is a completely different and independent juristic and legal entity from the 5th respondent herein. Under these circumstances, having regard to the language employed in the Circular, which contemplates rectification of the bonafide and inadvertent mistakes committed by the persons at the time of filing of Forms and submitting Returns, in the peculiar and special facts and circumstances of the instant case, I am of the considered opinion that the error committed by the petitioner in showing the wrong GSTIN number in the Invoices which was carried forward in the relevant Forms as that of ABB India Limited instead of the 5th respondent i.e., M/s.ABB Global Industries and Services Private Limited, is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the aforesaid Circular would be directly and squarely applicable to the facts of the instant case.

7. A perusal of the aforesaid Circular also indicates that the procedure to be followed in such cases has been prescribed at paragraph-4. In addition to the Circular, the petitioner has also filed an Affidavit satisfying the conditions stipulated in paragraph – 4.1.1 of the Circular, enclosing the details of the Invoices issued by the petitioner to the 5th respondent. The 5th respondent has filed statement of objections setting out the facts admitting, accepting and reenforcing the claim of the petitioner with regard to the discrepancies / mismatch in mentioning of the GSTIN Number.



8. *Under these circumstances, I am of the considered opinion that it would be just and proper to dispose of this petition directing the respondents 1 to 3 – revenue to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner, 5th respondent and their transactions for the years 2017-18, 2018-19 and 2019-20. It is also necessary to state that though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, I am of the view that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.*

9. *In the result, I pass the following:-*

ORDER

(i) Petition is hereby disposed of directing the respondents 1 to 3 to take necessary steps in relation to the petitioner and 5th respondent for the assessment years 2017-18, 2018-19 and 2019-20 in terms of the Circular No. bearing No.183/15/2022-GST dated 27.12.2022.

(ii) The respondents 1 to 3 are hereby directed to consider the request made by the petitioner vide letter at Annexure-D dated 06.09.2021 and proceed further in accordance with law and in terms of the Circular dated 27.12.2022 as expeditiously as possible."



6. So also in the case of ***Aberdare Technologies Pvt. Ltd. vs. Central Board of taxes and Customs (2024) 21 Centax 227 (Bom.)*** held as under:

"-On 1st July 2024, the following order came to be passed:

"1. Mr. Chandrashekhar states that he shall appear for Respondent No.1. Ms. Vyas at the request of this Court agrees to appear for Respondent Nos.2 and 3. As regards Respondent No.4, Mr. Sarda, on instructions, states have been served some time in May 2024.

2. Petitioner has filed GST returns within time but after some time in December 2023, realised that there were certain errors with no loss of Revenue to the State. The time prescribed under Section 39(9) of CGST Act states the rectification of such omission or incorrect particulars have to be made on or before 30th day of November, following the end of the financial year to which such details pertained. Mr. Sarda states that because they had missed the deadline, Petitioner made a request in writing to the concerned authorities to permit rectification which has not been granted.

3. Ms. Vyas in fairness informed the Court that there is a judgment of this Court in Writ Petition No.15368 of 2023 pronounced on 14th December 2023, Star Engineers (I) Pvt. Ltd. v. Union of India & Ors. where the Court has held that if there is no loss of Revenue, amendment / rectification of the Form GSTR-1 should be



permitted even if it is made after 30th November. Ms. Vyas requests the matter be stood over by atleast three weeks to enable her to take instructions and file a response affidavit, if advised.

4. Respondents shall file an affidavit-in-reply and serve a copy thereof upon Petitioner's Advocate by 19th July 2024.

5. Stand over to 22nd July 2024."

2. There is no dispute that there were certain errors with no loss of revenue to the State in the GST returns filed. Paragraphs 7 to 23 of Star Engineers (I) (P.) Ltd. v. Union of India 2023 SCC Online Bom 2682/[2023] 157 taxmann.com 285/[2024] 81 G.S.T.L. 460/102 GST 33 (Bom.) reads as under:

"7. Mr. Raichandani, learned Counsel for the petitioner would submit that it was arbitrary for the Deputy Commissioner of State Tax to reject the request of the petitioner to amend or rectify the Form GSTR-1 filed by the petitioner for the period July 2021, November 2021 and January 2022, either Online or by manual means. It is contended that it is not in dispute and as clear from the impugned letter, that there was no loss of revenue to the Government exchequer, however, on a pure technical ground the provisions of GSTR Portal prohibited any adjustment post the due date, the petitioner's request has been rejected. It is submitted that such technicalities ought not to defeat the requirement of justice. In support of his submissions, Mr. Raichandani has placed reliance on the decision of Madras High



Court in M/s. Sun Dye Chem v. Assistant Commissioner (ST) & Ors.; decision of learned Single Judge of the Madras High Court in the case of Pentacle Plant Machineries Pvt. Ltd. v. Office of GST Council & Ors.; decision of the Division Bench of Orissa High Court in Shiva Jyoti Construction v. The Chairperson, Central Board of Excise & Customs and Ors., the decision of Jharkhand High Court in Mahalaxmi Infra Contract Ltd. v. Goods and Services Tax Council and ors. It is submitted that each of these decisions have taken a view that an inadvertent error on the part of the assessee if takes place in filing the details leading to the mismatch of credit, the assessee ought not to be prejudiced from availing the credit, which they otherwise legitimately are entitled to and to that effect the rectification of error ought to be permitted. Accordingly, in such cases a relief was granted to the petitioner. It is, thus, Mr.Raichandani's submission that the prayer of the petitioner that it be permitted to amend or rectify the Form GSTR-1 for the period in question ought to be granted.

8. On the other hand, Ms. Vyas, learned Counsel for the Revenue while not disputing the factual matrix would submit that no fault can be found in the impugned communication as the provisions of the GST Act itself would not permit the State Tax Officer to accept the request as made



by the petitioner for amendment / rectification of Form GSTR-1 which was filed by the petitioner for the period in question. Ms. Vyas has also fairly stated that if the request as made by the petitioner is to be accepted, there is no loss of revenue whatsoever to the public exchequer.

9. Having heard learned Counsel for the parties and having perused the record, there is much substance in the contention as urged on behalf of the petitioner. At the outset we are required to note that insofar as filing of GST returns are concerned, the provisions of Sections 37, 38 and 39 of the Central Goods and Services Tax / Maharashtra Goods and Service Tax, 2017 (for short 'CGST / MGST, 2017') are attracted. Section 37 provides for furnishing details of outward supplies. Section 38 provides for furnishing details of inward supplies. Section 39 provides for furnishing of returns. Sub-section (3) of Section 37 provides that 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. The proviso below sub-section (3) stipulates 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. It would be necessary to note the provisions of Section 37 which reads thus:-

Section 37 Furnishing details of outward supplies

37. (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed :

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period :

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein :



Provided also that any extension of time limit notified by the Commissioner of central tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under subsection (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(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 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 sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.]

Explanation.—For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period."

10. We may also observed that Section 38 provides for communication of details of inward supplies and input tax credit which in sub-section (1) mandates that the details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed. Sub-section (2) provides for the ingredients of auto-generated statement.

11. Section 39 provides for furnishing of returns under which it is clearly provided that a return is required to be furnished electronically indicating the inward and outward supplies of goods and services or both, input tax credit availed, tax payable, tax paid or such other particulars in such form and manner, and within such time, as may be prescribed. Sub-section (9) although



provides for rectification of any omission or incorrect particulars, the proviso therein precludes the assessee from any such rectification or omission or incorrect particulars being allowed after 30th day of November following the end of financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier. Subsection (10) provides for extension of time in the event the assessee has not furnished the return for one or more previous tax period or has not furnished the details of outward supplies as per sub- section (1) of section 37 in the said tax period. Sub-section (9) and (10) of Section 39 are required to be noted which read thus:-

"Section 39. Furnishing of returns -

*(1) -(7)******

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub- section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars 6[in such form and manner as may be prescribed], subject to payment of interest under this Act:



Provided that no such rectification of any omission or incorrect particulars shall be allowed after the 7[thirtieth day of November] following 8[the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods 9[or the details of outward supplies under subsection (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period."

12. Having considered the statutory ambit of Section 37, 38 and 39, we are of the clear opinion that the provisions of sub-section (3) of Section 37 read with Section 38 and sub-sections (9) and (10) of Section 39 need to be purposively interpreted. We cannot read subsection (3) of Section 37 to mean that the assessee would be prevented from placing the correct position and having accurate particulars in regard to all the details in the GST returns being filed by the assessee and that there would not be any scope for any bonafide, and inadvertent rectification / correction. This would



pre- supposes that any inadvertent error which had occurred in filing of the returns, once is permitted to be rectified, any technicality not making a window for such rectification, ought not to defeat the provisions of sub-section (3) of Section 37 read with the provisions of sub-section (9) of Section 39 read de hors the provisos.

13. In our opinion, the proviso ought not to defeat the intention of the legislature as borne out on a bare reading of sub- section (3) of Section 37 and sub-section (9) of Section 39 in the category of cases when there is a bonafide and inadvertent error in furnishing any particulars in filing of returns, accompanied with the fact that there is no loss of revenue whatsoever in permitting the correction of such mistake. Any contrary interpretation of sub-section (3) of Section 37 read with sub-sections (9) and (10) of Section 39 would lead to absurdity and / or bring a regime that GST returns being maintained by the department having incorrect particulars become sacrosanct, which is not what is acceptable to the GST regime, wherein every aspect of the returns has a cascading effect. This is necessarily required to be borne in mind when considering the cases of inadvertent human errors creeping into the filing of GST returns.

14. Applying such principles to the facts of the present case, in our opinion, the State Tax Officer had all materials before it which went to show that there was nothing illegal and / or that what had happened at the end of the petitioner was that the invoices generated by the petitioner under the bill-to-ship-to-model for delivery of goods to third party vendors of BAL of which input tax credit for the invoices in question, were not availed by BAL due to error of credit not being reflected in the GSTR-1, as



the petitioner had mentioned GSTIN of third party instead of GSTIN of BAL. This is also accepted by the State Tax Officer in the impugned communication.

15. As a result of the above discussion, in our opinion, the State Tax officer ought to have granted the petitioner's request to rectify / amend the Form GSTR-1 for the period July 2021, November 2021 and January 2022, either through Online or manual means.

16. We also find that the petitioner's reliance on the decision as noted by us is quite apposite. In Sun Dye Chem v. Assistant Commissioner (supra), learned Single Judge of the Madras High Court considered a similar case wherein an error was committed by the petitioner in filing of details relating to credit. The error was to the effect that what should have figured in the CGST/SGST column was inadvertently reflected in the IGST column. It was not the case of the department that the error was deliberate and was intended to gain any undue benefit by the petitioner and in fact, by reason of the error, the customers of the petitioner were denied credit which they claim to be legitimately entitled to. It was also an error which was not initially noted by the petitioner, and on account of the error, the customers of the petitioner would be denied credit which they claimed to be legitimately entitled to, owing to the fact that the credit stands reflected in the wrong column. It is in these circumstances, after examining the relevant provisions which we have already discussed, the learned Single Judge observed that in the absence of an enabling mechanism, the assessee should not be prejudiced from availing credit which they are otherwise legitimately entitled to. The Court observed that an error committed by the petitioner is an inadvertent human error and the petitioner



should not be prevented from rectifying the same and accordingly, allowed the petition.

17. A similar view was taken in the Pentacle Plant Machineries Pvt. Ltd. (supra) which also followed the decision in Sun Dye Chem (supra).

18. We also note that the Division Bench of the Orissa High Court in Shiva Jyoti Construction (supra) was considering the case wherein the petitioner had prayed for a relief that the petitioner be permitted to rectify the GST returns filed in September 2017 and March 2018 which was filed inadvertently in Form-B2B instead of Form B2C as was wrongly filed under the GSTR-1 in order to get input tax credit benefit by a third party namely M/s. Odisha Construction Corporation Ltd. The last date for filing of return was 31 March 2019 and the rectification should have been carried out by 13 April 2019. The petitioner contended that an error came to be noticed after the said third party held up the running bill amount of the petitioner by informing it of the error on 21 January 2020. The petitioner contended that thereafter it was making a request to the department to correct the GSTR-1 form, but it was not allowed. It is in these circumstances, the Court considering the fact that in permitting the petitioner to rectify such error, there was no loss of revenue whatsoever to the department, that it was only about the ITC benefit which was to be given to the customer of the petitioner, failing which a prejudice would be caused to the petitioner. The Division Bench referring to the decision in Sun Dye Chem (supra) granted the prayer of the petitioner for setting aside the letter of rejection as impugned in the proceedings and permitting the petitioner to resubmit the corrected returns in Form - B2B under GSTR-1 for the period in question.



19. *The Division Bench of the Jharkhand High Court in Mahalaxmi Infra Contract Ltd. (supra) has taken a similar view wherein the Division Bench after considering the rival contentions and the scheme of the legislation, allowed the petition considering the fact that there was no loss of revenue, if such rectification as prayed for by the petitioner was to be granted.*

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 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.

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."

3. The facts of this case before us is almost identical in as much as, there is no loss to



revenue if, petitioner is permitted to amend the GST returns filed.

4. In the circumstances, we direct respondents to open the portal within one week from the date of this order being uploaded and inform petitioner to enable them to amend / rectify Form GSTR-1 and GSTR-3B within one week. If the portal is not opened for whatever reasons, petitioner shall file application to amend / rectify Form GSTR-1 and GSTR-3B manually and respondent nos.2 and 3 are directed to accept and process the same in accordance with law. If these respondents are going to take a stand contrary to petitioner's interest, they shall give notice to petitioner atleast five working days in advance and give personal hearing.

5. Petition disposed.

7. The said judgment of the Bombay High Court (*supra*) was confirmed by the Apex Court as hereunder:

"Delay condoned.

We are not inclined to interfere with the impugned judgment which is, in fact, just and fair, as there is no loss of revenue. Hence, the present special leave petition is dismissed. The petitioner, Central Board of Indirect Taxes and Customs, must re-examine the provisions/timelines fixed for correcting the bonafide errors. Time lines should be realist as lapse/defect invariably is realized when input tax credit is denied to the purchaser when benefit of tax paid is denied. Purchaser is not at fault, having paid the tax amount. He suffers because he is denied benefit of tax paid by him. Consequently, he has to make double payment. Human errors and mistakes are



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normal, and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. Software limitation itself cannot be a good justification, as software are meant ease compliance and can be configured. Therefore, we exercise our discretion and dismiss the special leave petition. Decisions of the High Courts in Bar Code India Limited v. Union of India and others¹ and Yokohama India Private Limited v. State of Telangana², prima facie, do not lay down good law in this regard. Ratio therein may be examined in another case. Pending application(s), if any, shall stand disposed of"

8. So also the Calcutta High Court, Orissa High Court, Madras High Court and Punjab and Haryana High Court have expressed similar views in the following judgments which are as follows:

1) *Star Engineers (I)(P.) Ltd vs. Union of India* (2023) 157 taxmann.com 285 (Bombay)

2) *Sun Dye Chem vs Assistant Commissioner (ST), Tirupur* 2021 (44) G.S.T.L.358(Mad.)

3) *Shiva Jyoti Construction vs. Cairpeson, Central Board of Excise & amp; Customs* (2023) 147 taxmann.come 511 (Orissa)

4) *Y.B.Constructions Pvt. Ltd. vs. Union of India* (2023) 4 Centax 200 (Ori)



5) *Abdul MannanKhan vs. Goods and Service Tax Council (2023) 6 Centax 75 (Cal.)*

6) *Pentacle Plant Machineries Pvt. Ltd. vs. Office of the GST Council, New Delhi 2021 (52) G.S.T.L. 129 (Mad)*

7) *Satyam Auto Components (P.) Ltd. vs. Union of India (2024) 158 taxmann. com 360 (Punjab & Haryana)*

9. In view of the aforesaid facts and circumstances, I am of the considered opinion that having regard to the fact that the sole ground on which the respondent No. 3 purports to initiate proceedings against the petitioner by issuance of the impugned show cause notice by alleging that the petitioner was not entitled to make such corrections, the impugned show cause notice and all further proceedings pursuant thereto deserve to be quashed.

10. In the result, I pass the following:

ORDER

i) Writ Petition is ***allowed***.



ii) The impugned notice at Annexure-A1 dated 04.11.2022 and all further proceedings pursuant thereto are hereby quashed.

iii) The respondents are directed to accept the Returns filed by the petitioner together with necessary corrections and proceed further in accordance with law.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BSV
List No.: 2 SI No.: 2