Court No. - 40

Case :- WRIT TAX No. - 706 of 2023

Petitioner :- M/S My Auto World (Kanpur) Pvt. Ltd.
Respondent :- Union Of India And 5 Others
Counsel for Petitioner :- Nishant Mishra,Vedika Nath
Counsel for Respondent :- A.S.G.I.,C.S.C.,Parv Agarwal,Sudarshan Singh

Hon'ble Shekhar B. Saraf,J.
Hon'ble Manjive Shukla,J.

1. Heard Mr. Amit Saxena, Senior Advocate assisted by Mr. Nishant Mishra, Mr. Yashonidhi Shukla and Ms. Vedika Nath, counsel appearing on behalf of the petitioner, Mr. Sudarshan Singh, counsel appearing on behalf of respondent No.1 and Mr. Parv Agarwal, counsel appearing on behalf of respondent Nos.2 to 4.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the action of the respondents in not adjusting the ITC appearing in GSTR-2A on GSTIN 09AAICM0811C1ZX with GSTIN 09AAICM0811C2ZW on which the petitioner has submitted returns, since the petitioner was issued two different GSTIN against one single Permanent Account Number (PAN), despite repeated requests made. By amending the writ petition, the petitioner has also challenged order dated December 12, 2023 passed by the respondent No.4 under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act’) and the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the UPGST Act’) passed during the pendency of the writ petition.

FACTS

3. The facts of the case are as under:

(a) The petitioner company is engaged in supply of TATA branded trucks in the name and style of M/s Excel Vehicles. The petitioner is also operating an Authorised Service Station for TATA Motors Ltd., for servicing of TATA branded trucks and supply of parts, components and accessories.

(b) Just Prior to the enforcement of GST regime, the petitioner was having VAT Registration No. TIN 09437521460 for its showroom. Thereafter GSTIN 09AAICM0811C2ZW was issued by the officers of SGST, Kanpur. Simultaneously, in respect of servicing activity, the petitioner was issued GSTIN 09AAICM0811C1ZX by the officers of CGST, Kanpur. The petitioner was issued third registration being GSTIN 09AAICM0811C3ZV by the officers of Central Tax, which was subsequently cancelled.

(c) Since two GSTIN were issued by the officers of the State Tax and Central Tax respectively against one single PAN, hence by letter dated June 9, 2017 the petitioner brought the same into the knowledge of the State jurisdictional authority and requested for redressal of the problem. However, no immediate action was taken.

(d) As prior to the date of enforcement of GST regime, the petitioner was approaching and the State jurisdictional authorities failed to take any action in respect of two GSTIN, hence the petitioner communicated both the GSTIN to its suppliers including TATA Motors Ltd. so that the supply of goods may not get interrupted. Consequently, TATA supplied goods i.e. high value vehicles by issuing tax invoices against GSTIN 09AAICM0811C1ZX whereas the other suppliers supplied goods by issuing tax invoices against GSTIN 9AAICM0811C2ZW. At the same time, since the portal of GSTIN 09AAICM0811C1ZX was become inaccessible, hence the petitioner furnished returns in GSTR-3B against GSTIN 9AAICM0811C2ZW, wherein the petitioner disclosed all the supplies affected by TATA and other suppliers and also claimed ITC arising on such supplies.

(e) In the meanwhile, the petitioner again requested the respondent No.6 to cancel one GSTIN and adjust the ITC taken against the GSTIN to be cancelled to another GSTIN. On the request so made, the respondent No.6 forwarded the petitioner's grievance vide email dated November 6, 2017 to info.up.gst@gmail.com pointing out that two GSTIN are running simultaneously against one PAN, the petitioner

has got supply against both GSTIN and has filed the return against GSTIN 09AAICM0811C2ZW by including the amount of purchases and credit of input tax of other GSTIN also. The respondent No.6, therefore, recommended that GSTIN 09AAICM0811C2ZW may be cancelled and GSTIN 09AAICM0811C1ZX may be continued. However, the grievance was not resolved and the petitioner made application dated March 16, 2018 before the respondent No.6 reiterating that despite requests being made on November 6, 2017 and November 28, 2017, no action has been taken in the matter.

(f) With effect from April 1, 2018, e-way bill prescribed under Rule 138 of the Central Goods and Services Tax, Rules was made mandatory and the first transaction of purchase of vehicle from TATA was made by the petitioner in the month of May 2018. It was only at that time, when the concerned employee of TATA tried to generate e-way bill by using GSTIN 09AAICM0811C1ZX, the portal did not allow generation of e-way bill. The concerned employee then informed the same to the petitioner. Immediately thereafter, the petitioner made enquiries from the State jurisdictional authorities whereupon the petitioner was advised to generate e-way bill by using the other GSTIN i.e. GSTIN 09AAICM0811C2ZW. Acting on such advice, the petitioner started generating e-way bills on GSTIN 09AAICM0811C2ZW and also communicated all suppliers including TATA to issue tax invoice against GSTIN 09AAICM0811C2ZW. Thus, from May 14, 2018 onwards the TATA is supplying goods to the petitioner against GSTIN 09AAICM0811C2ZW only.

(g) On the basis of audit objection, the Superintendent issued letter dated November 3, 2022 alleging ITC availed in excess. In reply, the petitioner stated the circumstances in which purchases from TATA prior to May 14, 2018 were booked under GSTIN 09AAICM0811C1ZX whereas the returns were filed and ITC was availed under GSTIN 09AAICM0811C2ZW. The petitioner was then served with DRC-01A dated February 1, 2023 directing the petitioner

to pay the amount of excess ITC of Rs.94,43,61,127/- along with interest under Section 50 of the CGST Act and penalty under Section 122 of the CGST Act, failing which show cause notice shall be issued under Section 73(1) of the CGST Act.

(h) The petitioner then made a detailed representation before the respondent No.3, with copies to the respondent No.4, Commissioner State Tax and Deputy Commissioner of CGST & SGST, Kanpur, reiterating the circumstances in which purchases from TATA prior to May 14, 2018 were booked under GSTIN 09AAICM0811C1ZX whereas the returns were filed and ITC was availed under GSTIN 09AAICM0811C2ZW. The petitioner, in its representation, once again requested that all purchases made by the petitioner on PAN No.AAICM0811 may be ordered to be regularized so that the benefit of ITC reported against GSTIN 09AAICM0811CIZX, to which the petitioner is entitled to, is made available to the petitioner.

(i) Since despite the earlier emails dated June 9, 2017 and November 6, 2017 and the representation dated February 23, 2023, no action was taken by the respondents to remedy the situation, the petitioner approached this Court for adjustment of ITC by filing the present writ petition.

(j) During the pendency of the writ petition, show cause notice dated November 17, 2023 was issued and the impugned order dated December 12, 2023 was passed by the respondent No.4 for demand and recovery of Rs.94,43,54,157/-on GSTIN 09AAICM0811C2ZW. The petitioner has also brought on record letter dated April 16, 2024 issued by the respondent No.6 wherein respondent no. 6 has certified that a total ITC of Rs.97,46,48,073.60/- for same period is appearing in GSTR-2A of GSTIN 09AAICM0811CIZX. Thus, the ITC available in GSTR-2A of GSTIN 09AAICM0811C1ZX is in excess of what demanded by the respondent No.4 in the impugned order against GSTIN 09AAICM0811C2ZW.

SUBMISSION OF THE PETITIONER

4. Counsel on behalf of the petitioner has made the following submissions:

(a) The Board has issued Circular No.183/15/2022-GST, wherein the Board in Para 3(d) and 4 has directed the field officers to allow the benefit of ITC, even if the suppliers have declared supply with wrong GSTIN of the recipient. The case of the petitioner is on a higher footing, as the supplier TATA has declared supply with correct GSTIN 09AAICM0811C1ZX of the recipient of the petitioner, but since two GSTIN were issued to the petitioner, hence the ITC appearing in GSTIN 09AAICM0811C1ZX is liable to be adjusted in GSTIN 09AAICM0811C2ZW on which demand has been made by alleging excess availment of ITC.

(b) Counsel on behalf of the petitioner has also relied upon a judgment of this Court in Writ-Tax No.1185 of 2022 (**M/s. Santosh Kumar v. Additional Commissioner and others**, decided on October 11, 2023] wherein this Court after applying the aforesaid Circular has set aside the orders under challenge and directed the authorities to pass a fresh order after complying with the procedure specified in the aforesaid Circular.

SUBMISSION OF THE RESPONDENTS

5. Counsel appearing on behalf of the respondents has no objection to the aforesaid proposition and submits that the matter may be remitted to the authority concerned for decision afresh in terms of the Circular No.183/15/2022-GST.

ANALYSIS

6. We have considered the submissions of the counsel appearing on behalf of both the parties and are of the view that Circular No.183/15/2022-GST would apply in the present case. Furthermore, the judgment in the case

of **M/s. Santosh Kumar (supra)** is on similar factual matrix and we agree with the said judgment.

7. In light of the above, the impugned order dated December 22, 2023 is quashed and set aside with a direction upon the respondent No.4/Joint Commissioner, CGST & Central Excise, Kanpur to pass a fresh order in terms of the Circular No.183/15/2022-GST.

8. Accordingly, the writ petition is allowed.

(Manjive Shukla, J.) (Shekhar B. Saraf, J.)

Order Date :- 18.9.2024
Rakesh