

**HIGH COURT OF TRIPURA
AGARTALA**

WP (C) 507 OF 2022

Sri Jahar Sur Chowdhury Vrs. The Union of India & 5 Ors.

Present:

For the petitioner(s) : Mr. H. Sarkar, Advocate.

For the respondent (s) : Mr. D. Bhattacharya, G.A.
Mr. K. De, Addl. G.A.
Mr. P.Datta, Advocate.
Mr. B. Majumder, DySGI.

REPORTING : YES

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR.JUSTICE ARINDAM LODH**

04.04.2023

Order

Heard Mr. H. Sarkar, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned G.A. assisted by Mr. K. De, learned Addl. G.A.; Mr. Bidyut Majumder, learned DySGI and Mr. P. Datta, learned counsel appearing for the respondents.

The present writ petition has been filed by the petitioner challenging the legality and validity of the order passed by the Additional Commissioner, Respondent No.2 in Appeal No.70/GHY(A)/Addl. Commr./CGST-AGT/2022, dated 30.03.2022 (Annexure-11) to the writ petition whereby and whereunder the imposition of penalty passed by the Assistant Commissioner, Respondent No.3 vide order No.05/GST/TR-1/AGT/2020-21, dated 06.01.2021, has been justified under Clause(a) of Sub-Section (1) of Section 129 of the CGST Act,2017 and Tripura SGST Act,2017. It is urged that the adjudicating authority, i.e. the respondent no.3 imposed penalty under Section 74 of CGST Act, 2017 which is contradictory and is a clear violation of principle of natural justice as the

authority knows that before filing of annual return no assessment could be made under Sub-Section 10 of Section 74 of CGST Act, 2017.

Fact of the case is that the petitioner while filing return for the month of July, 2019 he has claimed Rs.63,93,317.00 as ITC in GSTR-3B but ITC available in GSTR-2A was of Rs.13,33,407.00 because of the reason that there was accumulated ITC for previous period and ITC availed in the month of July,2019 only on the basis of system reconciliation statement that was showing unclaimed ITC and there was no mala fide intention behind this. Soon after the matter came to the knowledge of the petitioner, he reconciled purchase record on the basis of inward supply invoices and reversed the excess claim of ITC before issuance of Notice by GST Department and the petitioner further averred that at the time of reversal of ITC of Rs.47,36,977.00 the same was posted in the outward GST liability in the month of January,2020 and that was discharged utilizing available ITC in the ledger.

Mr. Sarkar, learned counsel appearing for the petitioner contended that the respondent no.3 passed the order under Section 74 of the CGST Act, 2017 does not rely in this case and against that order the petitioner preferred appeal before the appellate authority. The appellate authority after hearing the matter held that the order of the adjudicating authority for imposition of penalty under Clause (a) of Sub-Section (1) of Section 129 of the CGST Act, 2017 and Tripura SGST Act, 2017 is justified. So, the order is clear violation of Section 74(2) & (10) of the CGST Act, 2017 and TSGST Act, 2017.

Mr. Datta, learned counsel appearing for the respondent nos. 3 and 5 has drawn our attention to the statement made in the counter affidavit wherein it is stated that – *“till June,2019, the petitioner used to avail almost same amount of Input Tax Credit he accrued through his Inward Tax Invoices. But, in the month of July,2019, he availed Rs.47,36,977/- as*

Input Tax Credit in excess to GST paid by him to his suppliers for that month. His GST liability (outward) for that month was Rs.7273200/- and as per inward tax invoices, he could have only availed Rs.2434387/- (Rs.2121157 +156615+156615) as Input Tax Credit. Had he not availed such excess Input Tax Credit of Rs.47,36,977/- he would have paid the such amount from cash ledger.

Further, through the letter dt. 06.12.2019, the departmental officer communicated the petitioner that he has availed excess ITC in the month of July, 2019. Since the petitioner, on self assessment basis, without having tax invoices, wrongly shown the eligible Input Tax Credit in excess of Rs.47,36,977/- in compare to the tax invoices available to him, he did not reverse such amount on his own before any communication from departmental officer, the departmental officer initiate the investigation proceeding in section 74 of the CGST Act,2017 and also though the above said letter, the departmental officer asked him to reverse such Input tax credit with due interest under section 50 of the CGST Act, 2017 and penalty at the rate 15% under Section 74 of the CGST Act,2017.”

Having considered the facts and circumstances of the case of the petitioner and the submission put forwarded by learned counsel of the respondents, this court finds a clear contradiction in between the two orders i.e. the order dated 06.01.2021 passed by the respondent no.3, the adjudicating authority and the order dated 30.03.2022, passed by the respondent no.2, the appellate authority. Therefore, Section 74 of the CGST Act, 2017 will not apply in this case since no case has been made out in the show cause notice as well as in the impugned orders which are under challenge and the same are liable to be set aside and quashed.

Accordingly, the impugned order dated 06.01.2021, passed by the respondent no.3 as well as the order dated 30.03.2022, passed by the respondent no.2 are hereby set aside and quashed.

The matter is remanded back to the respondents authority concerned to decide afresh in accordance with law.

The writ petition, accordingly, stands allowed and disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

