

The High Court of Madhya Pradesh : Bench At Indore

DIVISION BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA &
HON'BLE MR. JUSTICE AMAR NATH (KESHARWANI)

WRIT PETITION No. 21074 of 2021

Between:-

M/S R.K. MODI AND SONS THR. PARTNER MR.
HITESH M. MODI S/O SHRI MADHUSUDAN MODI 54
M.G. ROAD (MADHYA PRADESH)

.....PETITIONER

AND

1. UNION OF INDIA THR. MINISTRY OF FINANCE 3RD
FLOOR JEEVAN DEEP BUILDING SANSAD MARG
NEW DELHI - 110001

2. ASSISTANT COMMISSIONER CGST (PREVENTIVE
BRANCH) UJJAIN OFFICE OF THE COMMISSIONER
CGST AND CENTRAL EXCISE, 29, BHARATPURI,
ADMINISTRATIVE AREA, UJJAIN (M.P.) Ph: 0734-
2527097 EMAIL cex_gwl.hqrsp@rediffmail.com

3. DEPUTY COMMISSIONER (REVENUE) CGST AND
CENTRAL EXCISE. OFFICE OF THE COMMISSIONER ,
CGST AND CENTRAL EXCISE, 29 BHARATPURI,
ADMINISTRATIVE AREA, UJJAIN (M.P.) Ph: 0734-
2527097 EMAIL cex_gwl.hqrsp@rediffmail.com

.....RESPONDENTS

Indore, dated 20.04.2022

Shri Aditya Goyal, learned counsel for the petitioner.

Shri Prasanna Prasad, learned counsel for respondents

No.2 & 3.

With the consent, Writ Petition is finally heard.

ORDER

As per Vivek Rusia, J:

The petitioner has filed the present writ petition under Article 226 of the Constitution of India being aggrieved by the reversal of Input Tax Credit (ITC) of Rs.39,93,286/- from DRC-03 dated 28.01.2020 (Annexure-P/1) followed by demand notice dated 18.06.2021 passed by respondents No.2 & 3.

02. The facts of the case in short are as under: -

2.1. The petitioner is a partnership firm engaged in the business of manufacturing wholesale *beedi*. The petitioner had declared the ITC pertaining to the financial year 2017 – 18 and 2018 – 2019 by filing Form GSTR 3B prescribed under Section 39 of Central Goods & Service Tax Act, 2017 (in short CGST Act). Admittedly, the aforesaid form was submitted beyond the time limit prescribed under Section 16(4) of the CGST Act. The Input Tax Credit (ITC), so availed was reversed on 28.01.2020 under protest. The petitioner submitted a representation on 19.02.2020 to the respondents by submitting that the aforesaid reversal was not voluntarily, but under protest.

2.2. According to the petitioner, the respondents did not pass any speaking order and served an impugned demand notice dated 18.06.2021. According to the petitioner, it was a genuine hardship and beyond the reasonable control of the petitioner for filing the GSTR 3B relating to the financial year 2018 – 19 within time. However, returns were filed on 06.01.2020 with an applicable late

fee, therefore, the rigor of Section 16(4) would not apply in the case of the petitioner.

03. Learned counsel appearing on behalf of the petitioner submits that once the petitioner has filed the return after payment of applicable late fee under Sections 47 & 50 of the CGST Act which in fact allows the taxpayer to file the return beyond the due date then such a return should have been accepted without applying the provision of Section 16(4) of the CGST Act. However, learned counsel fairly admits that the petitioner is not challenging the constitutional validity of Section 16(4) of the CGST Act in this petition, but some other assesseees have challenged the constitutional validity of the aforesaid provision. It is further submitted that the provision of Section 16(4) is procedural in nature, and respondents should not take away the right of filing of return with a late fee. There should be a scope of application of mind and consideration of non-filing of return within time while applying Section 16(4) of the CGST Act. The provision of Section 16(4) should not defeat a substantial claim of ITC which is otherwise allowable under the provisions CGST Act.

04. It is further submitted that the petitioner should not be relegated to the adjudicating authority as well as the appellate authority as admittedly the petitioner has availed the Input Credit, but there was a delay in submission of the return. Hence, a writ of mandamus be issued to the respondents directing them to permit the petitioner to submit the return with a late fee and grant the

refund of Rs.39,93,286/-. In support of the aforesaid contention, learned counsel for the petitioner placed reliance upon a judgment delivered by the Division Bench of this Court in the case of *M/s Bharat Heavy Electricals Limited v/s CEC, Bhopal (MP) reported in 2015 SCC OnLine MP 5687*, wherein the Division Bench of this Court has considered the provisions of Rule 57G(1) of the Central Excise Rules. The Division Bench has found that entries made in the documents are maintained under RG – 23 A Part – I & Part – II. Even though in Part – I the entry is made showing the date of taking availment of MODVAT credit within the stipulated period of six months, but Part – II, as the date was beyond six months, the facility of MODVAT cannot be extended as assesseees have not shown availing the benefit in accordance with the requirement of the Rules. The Division Bench has further held that when the assessee was entitled to avail the MODVAT credit under Rule 57A merely because of the time fixed in making the entry in Part – II of RG – 23 A and only because of some error in making the entry, denial of benefit cannot be permitted. Learned counsel for the petitioner submits that the same principle applies here. The petitioner has admittedly claimed the input of CGST then merely because of delay in filing the return under Section 16(4) of the CGST Act, the petitioner cannot be held entitled to take the ITC.

05. Shri Prasanna Prasad, learned counsel for respondents No.2 & 3 submits that the present writ petition is not maintainable under Article 226 of the Constitution of India as the petitioner is

having an alternative and efficacious remedy by filing an appeal before the appellate authority. It is further submitted that during the pendency of the writ petition, a show-cause notice dated 17.02.2022 has been issued to the petitioner by the Deputy Commissioner (Prev.) CGST & Central Excise, Ujjain. The petitioner, to the reasons best known to him, has not challenged the validity of the show-cause notice. Now the petitioner is required to approach the competent authority along with a reply to the show-cause notice. It is further submitted that the petitioner is not challenging the constitutional validity of Section 16(4) of the CGST Act, therefore, the authorities are bound to act in accordance with law. Hence, no fault can be founded unless the provision is there in the statute.

06. We have heard learned counsel for the parties and perused the record.

07. Admittedly, the petitioner has filed a return beyond the prescribed limit, therefore, the entries have been reversed under section 16(4) of the CGST Act. In the show-cause notice, the respondents have alleged that the notice i.e. petitioner has willfully filed the return on a later date than the due date of filing of GSTR 3B for the financial year 2018 – 19 to accommodate ITC, therefore, it is a matter of adjudication whether there was any willful delay on the part of the petitioner to submit the return or not ? Now the show-cause notice has been issued, therefore, the petitioner is required to file a return to the show-cause notice before the

competent authority. No case for interference is made out in the matter.

In view of the above, the Writ Petition stands dismissed.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

Ravi

