HIGH COURT OF ANDHRA PRADESH : AMARAVATI

WEDNESDAY THE FOURTEENTH DAY OF AUGUST,
TWO THOUSAND AND NINETEEN

:PRESENT:
THE HON'BLE SRI JUSTICE **M.SEETHARAMA MURTI**
AND
THE HON'BLE MS JUSTICE **J.UMA DEVI**

I.A.NO: 1 of 2019
IN
W.P.NO: 8662 of 2019

Between:
M/s. Panduranga Stone Crushers, D.No. 40-9/1-18A, Beside Vasavya Mahila Mandali, Vasavya Nagar, Vijayawada – 520 010, rep by its Managing Partner, Sri Yelamanchi Jayadev Mohan Prasad, S/o. Venkata Krishna Mohan.

Petitioner
(Petitioner in WP.No : 8662 of 2019
on the file of High Court)

AND

1. The Union of India, rep .by its Secretary, Ministry of Finance, New Delhi – 110 001.
2. The Chairman, GST Council, Office of the GST Council Secretariat, Janpath Road, New Delhi.
3. The Joint Commissioner (ST), O/o. the Chief Commissioner (ST), Government of Andhra Pradesh, H.No. 5-59, Bandar Road, Spring Valley Apartments, Rajiv Bhargav Colony Rd, Edupugallu, Vijayawada – 521 151.

....Respondents
(Respondents in -do-)

COUNSEL FOR PETITIONER: Sri B.Srinivasa Rao
COUNSEL FOR RESPONDENTS 1 & 2: B.Krishna Mohan, Asst. Solicitor General
COUNSEL FOR RESPONDENT NO.3: G.P. for Commercial Tax

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in the W.P., the High Court may be pleased to permit the petitioner to rectify GSTR-3B statements for the months of August and December 2017 and January and February 2018 manually subject to the outcome of the writ petition, pending disposal of WP.No. 8662/2019 on the file of the High Court.

The Court while directing issue of notice to the Respondents herein to show cause why this petition should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

" We have heard the submissions of learned senior counsel appearing for the petitioner and of learned Assistant Solicitor General appearing for respondent nos.1 and 2. We have perused the material record.

The facts, which are discernible from the pleadings and the submissions and which are relevant for consideration at this stage of passing of an interim order, may be stated, in brief, as follows:

'For the months of July, 2017 to March, 2018 i.e., for the financial year 2017-18, the petitioner submitted GSTR-3B returns through GST portal as required under law reporting the transactions of outward taxable supplies and inward taxable supplies reporting the ultimate tax liability arising as a difference between output tax liability and input tax liability under all the three respective enactments *viz.*, IGST, CGST and SGST in terms of the annexed statements showing the input tax credit which the petitioner is entitled to every month. However, according to the petitioner, while claiming IGST input, the petitioner has inadvertently and by mistake reported IGST input tax credit in a column relating to import of goods and services instead of placing that particular amount *viz.*, IGST input tax credit in all other ITC column. Therefore, the petitioner, *inter alia*, contending that in the absence of any provision in Section 39 of GST Act, 2017 or the relevant rules, the petitioner is entitled to rectify the mistake that has crept in GSTR-3B returns.'

However, learned Assistant Solicitor General appearing for respondent nos.1 and 2, having invited our attention to the relief claimed in the writ petition and also to Section 39 (9) of the GST Act, contended that the said provision covers the present contingency because even according to the petitioner's own showing, there is a mention of incorrect particulars and hence, the petitioner has an opportunity under the proviso to the said provision to rectify the omission but the petitioner did not avail the chance to rectify or modify the returns and hence, the petitioner is not entitled to the relief claimed in the writ petition or an interim order.

Learned senior counsel appearing for the petitioner has invited the attention of this Court to the decision of Gujarath High Court in AAP and Co., Chartered Accounts through Authorised Partner vs. Union of India [C/SCA/18962/2018] reported on 24.06.2019, wherein the question considered by the learned Division Bench of that High Court is as follows:

> 'Whether the return in Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act. The aforesaid press release is valid and in consonance with Section 16(4) of the CGST Act/GGST Act only if Form GSTR-3B is a return required to be filed under Section 39 of the CGST Act/GGST Act.'

In para 31 of the said judgment, the learned Division Bench observed as follows:

> '31. It would also be apposite to point out that the Notification No.10/2017 Central Tax dated 28th June, 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3. However, the Government, on realizing its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No.17/2017 Central Tax dated 27th July, 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3.'

Finally, Gujarath High Court held in para 32 of the said judgment as follows:

> '32. Thus, in view of the above, the impugned press release dated 18th October, 2018 could be said to be illegal to the extent that its para-3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July, 2017 to March, 2018 is the last date for the filing of return in Form GSTR-3B."

Reliance is also placed on a decision in W.P.(C)No.35868 of 2018 of the High Court of Kerala at Ernakulam reported on 12.11.2018, wherein the said High Court permitted the request of transfer of tax liability from the head 'SGST' to 'IGST' notwithstanding the contention of the revenue, as it would be inequitable for the petitioners therein to suffer on the count that the transfer would take sometime. Learned senior counsel would further contend that the provision in Section 39(9) of CGST Act referred to supra would cover other contingencies like under declaration of tax etc., but does not cover rectification of clerical errors and in the case on hand, there is also no revenue implication.

Having regard to the facts and submissions, we are satisfied that a *prima facie* case is made out and that as the issues raised in the writ petition require detailed examination, this is a fit case to grant the interim order.

Accordingly, the petitioner is permitted to rectify GSTR-3B statements for the months of August and December, 2017 and January and February, 2018 manually subject to the outcome of the writ petition. It is made clear that if the petitioner submits a rectified statements for the above purpose, the respondents shall process the same in accordance with the procedure established by law."

SD/- I. NAGALAKSHMI
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Secretary, Ministry of Finance, Union of India, New Delhi – 110 001.
2. The Chairman, GST Council, Office of the GST Council Secretariat, Janpath Road, New Delhi.
3. The Joint Commissioner (ST), O/o. the Chief Commissioner (ST), Government of Andhra Pradesh, H.No. 5-59, Bandar Road, Spring Valley Apartments, Rajiv Bhargav Colony Rd, Edupugallu, Vijayawada – 521 151, Krishna District.
(1 to 3 by RPAD)
4 Two CCs to G.P. for Commercial Tax, High Court, A.P.(OUT)
5 One CC to Sri B.Krishna Mohan, Asst. Solicitor General, High Court, A.P.(OUT)
6 One CC to Sri B.Srinivasa Rao, Advocate(OPUC)
7 Two spare copies.

SAH

HIGH COURT

MSRMJ & JUDJ

DATED: 14-08-2019

NOTE: POST ON 18-09-2019

ORDER

IA.NO. 1 OF 2019
IN
WP.NO. 8662 OF 2019

DIRECTION