2024 TAXONATION 1941 (ALLAHABAD)

# ALLAHABAD HIGH COURT

**No.- Writ Tax No. - 886 of 2023**

**Anil Ricemill-Appellant**

**Versus**

**State Of U.P. And 2 Others-Respondent**

**Coram: Hon'ble Piyush Agrawal, J.**

**Date of order: 14/08/2024**

**Decision-In Favour of Revenue**

**Held That:** The petitioner challenged orders imposing tax and penalty for wrongly availing input tax credit. The court upheld the orders, finding that the petitioner failed to prove the genuineness of the transactions through sufficient documentation, such as transportation details and payment of freight. The petitioner's reliance on previous judgments was overruled due to the specific requirements for proving input tax credit eligibility.

**Appearance:**

**Pranjal Shukla For the Petitioner**

**C.S.C. For the Respondent**

**Case referred/cited :-**

1. M/s LGW Industries Limited & Ors Vs. Union of India & Ors. [2021 TAXONATION 11 (CALCUTTA)]
2. State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited [2023 TAXONATION 445 (SUPREME COURT)]
3. Aastha Enterprises versus The State of Bihar [2023 TAXONATION 1250 (PATNA)]
4. M/s Shiv Trading Vs. State of U.P. and 2 others [2023 TAXONATION 1748 (ALLAHABAD)]

**JUDGMENT**

1. Heard Sri Pranjal Shukla, learned counsel for the petitioner and Sri Ravi Shankar Pandey, learned ACSC for the State-respondents.

2. By means of this writ petition, the petitioner has assailed the order dated 31.01.2023 passed by the Additional Commissioner- Grade- 2 (Appeal-I), Commercial Tax Bareilly as well as the impugned order dated 24.08.2021 passed by the Deputy Commissioner, Commercial Tax, Division-1, Shahjanjhapur.

3. Brief facts of the case are that the petitioner is a proprietorship firm in the name and style of M/s Anil Rice Mill, having GSTIN No.09AADFA9148G1ZC, which is engaged in the business of reselling and purchase of Peanut, Galla and Paddy. Thereafter, the respondents issued a show cause notice under Section 74 of the Goods and Service Tax Act, 2017 for the month of June, July, August and September, 2020-21 to the petitioner for availing wrong input tax credit to which the petitioner submitted his reply, but not being satisfied from the same, the respondent no.3 passed the order dated 24.08.2021 and imposed the tax upon the petitioner, amounting to Rs. 20,31,775/- and penalty of equal amount as well, against which the petitioner preferred an appeal, which has also been rejected by the impugned order dated 31.01.2023. Hence the writ petition.

4. Learned counsel for the petitioner submits that the petitioner after due purchase of goods through proper invoice, made the payment through banking channel. He further submits that on the basis that the selling dealer have not shown the said purchases in its returns or not deposited tax, the action cannot be taken against the petitioner. He further submits that being a purchaser, the petitioner cleared the bill, in which tax was charged, therefore, the benefit of input tax credit cannot legally be denied to the petitioner. He further submits that the input tax credit under the GST regime is being brought with intention to avoid cascading effect and once the tax has been charged on the bill, which was paid by the petitioner through banking channel, the benefit of input tax credit cannot legally be denied. He next submits that the petitioner has rightly discharged his liability of tax by paying the tax charged on the bills raised by the selling dealer and if the selling dealer have not deposited the tax so charged from the petitioner, the selling dealer shall be penalized and not the petitioner. He further submits that in the event, amount of input tax credit, rightly claimed by the petitioner, is being recovered that would amount to double taxation, which is not the spirit of GST regime.

5. In support of his claim, learned counsel for the petitioner has relied upon the judgement of this Court passed in the case of **the Commissioner of Central Excise Customs & Service Tax Vs. M/s Juhi Alloys Ltd.** (Central Excise Appeal No. 21 of 2014), decided on 15.01.2014 as well as placed reliance upon the judgment of Calcutta High Court passed in the case of **M/s LGW Industries Limited & Ors Vs. Union of India & Ors. [2021 TAXONATION 11 (CALCUTTA)] (WPA No.23512 of 2019)**. He prays for allowing the writ petition.

6. *Per contra,* Sri Ravi Shanker Pandey, learned Standing Counsel supports the impugned orders and submits that the proceedings under Section 74 of UPGST Act has rightly been initiated against the petitioner. He further submits that it has been found on verification that for the month of June, July, August and September, 2020-21, on the basis of forged tax invoices, the benefit of Rs. 20,31,775/- as ITC has been availed by the petitioner. He further submits that the benefit of input tax credit cannot be accorded in the event, non-fulfilment of such conditions as enumerated therein. He further submits that without acutal physical movement of goods or genuineness of transaction, the input tax credit cannot be availed.

7. Shri Pandey further submits that if the petitioner wants to avail the ITC, he is duty bound to prove beyond any reasonable doubt and establish that actual transaction took place and merely furnishing the details of tax invoices, e-way bills, GR is not sufficient. The petitioner was required to give details i.e. vehicle number which were used for transportation of goods, payment of freight charged, acknowledgement of taking delivery of goods and payment etc. He further submits that the petitioner was required to prove and establish beyond doubt the actual physical movement of goods and genuineness of transportation by furnishing details as has already been stated above and in the event of such details are not furnished, the benefit of input tax credit cannot be accorded. He prays for dismissal of this writ petition.

8. Admittedly, the scheme of input tax credit is being introduced with an object to avoid cascading effect of tax. The purchasing dealer can avail the input tax credit on tax paid on its purchase whereas manufacturer can avail the same on purchase of its raw material used for manufacturing or selling of its final product which will avoid double taxation. The benefit of concession / I.T.C. under the tax statute can be availed only on fulfilment of certain conditions or restrictions as stipulated under the Act. In the event of breach of any of the conditions as enumerated under the Act, no benefit can be conferred to the dealer.

9. Before proceeding further, it will be appropriate to extract the relevant provision of U.P. G.S.T. Act :-

***Section 16 :- Eligibility and conditions for taking input tax credit;***

*1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

*(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-*

*(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

*[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]40*

*(b) he has received the goods or services or both.*

*[EXPLANATION.-For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-*

*(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

*(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]41;*

*(c) subject to the provisions of [section 41 or section 43A]42, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and*

*(d) he has furnished the return under section 39:*

*Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:*

*Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed: Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

*(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (Act No. 43 of 1961), the input tax credit on the said tax component shall not be allowed.*

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [Omitted]43 debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

*[PROVIDED that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]"*

On perusal of the aforesaid section, it is clear that every registered dealer can claim the benefit of input tax credit only on fulfilment of certain conditions as enumerated under the Act. Section 16 (2) further provides that no registered dealer shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless the conditions mentioned therein is fulfilled. In other words, Section 16 specifically provides the registered dealer to fulfil the conditions as provided therein for availment of input tax credit.

10. Further Section 74 of UP GST Act is extracted hereunder:

***Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts:***

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts*

*to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

*(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in subsection (10) for issuance of order.*

*(3) Where a notice has been issued for any period under subsection (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under subsection (1), on the person chargeable with tax.*

*(4) The service of statement under sub-section (3) shall be deemed to be service of notice under subsection (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made there under.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under subsection (1)pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

*(11) Where any person served with an order issued under subsection (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.*

On perusal of said section, it is clear that determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts empowers to issue notice that tax has not been paid or short paid or erroneously refunded or input tax credit has wrongly been availed or utilized by any reason or wilful misstatement or suppression of fact. Upon adjudication the assessee is required to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

11. Thus on brief reading of the aforesaid two sections, it is evident that in the event of wrong availment of input tax credit, the proceedings can be initiated against the registered person or registered dealer but at the same time, restrictions has been imposed upon the authorities that without putting notice to the dealer, no adjudication proceeding can be initiated.

12. In the case in hand, the petitioner has only brought on record the tax invoices, e-way bills, and payment through banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner.

13. The Apex Court in the case of **State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited [2023 TAXONATION 445 (SUPREME COURT)]** (Civil Appeal No. 230 of 2023, decided on 13.03.2023), while considering the pari materia of section 70 of the Karnataka Value Added Tax Act, 2003, where the burden was upon the dealer to prove beyond doubt its claim of exemption and deduction of ITC, has observed as under:

*9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.*

In the said judgement Hon'ble the Apex Court has held that primarily burden of proof for claiming the input tax credit is upon the dealer to furnish the details of selling dealer, vehicle number, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. to prove and establish the actual physical movement of the goods. Further by submitting tax invoice, e-way bill, GR or payment details is not sufficient.

14. Patna High Court in the case of ***M/s Astha Enterprises (supra)*** has held as under :-

*"9. .... It was held that the dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. It was also held that to sustain a claim of Input Tax Credit on purchases, the purchasing dealer would have to prove and establish the actual physical movement of the goods and genuineness of transactions, by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC."*

15. Similarly, this Court in the case of the ***Commissioner Commercial Tax Vs. M/s Ramway Foods Ltd. (supra)*** has held that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the dealer fails to prove the actual physical movement of goods, the benefit cannot be granted.

16. This Court while dismissing the Writ Tax No.1421/2022 **(M/s Shiv Trading Vs. State of U.P. and 2 others), [2023 TAXONATION 1748 (ALLAHABAD)]** ***decided on 28.11.2023*** justified the proceedings initiated under Section 74 of U.P.G.S.T. Act as the petitioner thereof failed to discharge its onus to prove and establish beyond doubt actual transaction of physical movement of goods as well as genuineness of transaction,

17. Against the said judgment the petitioner therein preferred an Special Leave to Appeal (C) No(s). 3345 of 2024 before the Hon'ble Apex Court, which has been dismissed by order dated 12.02.2024.

18. Further, aforesaid judgments cited by the learned counsel for the petitioner i.e. ***M/s Juhi Alloys Ltd. (supra)*** & ***M/s LGW Industries Limited*** are of no aid to the petitioner in the instant writ petition in view of the law laid down by the Hon'ble Apex Court in the case of ***M/s Ecom Gill Coffee Trading Private Limited (supra)*** as well as of this Court in the case **M/s Shiv Trading (supra),** which has been confirmed by the Hon'ble Apex Court in ***Special Leave to Appeal (C) No.3345 of 2024***.

19. In view of the facts as stated above, no interference is called for by this Court in the impugned orders.

20. The writ petition fails and is ***dismissed,*** accordingly. No order as to costs.