
[2024] 160 taxmann.com 297 (Bombay)[05-02-2024]

GST : Where assessee made bona fide error in Form DRC-03 regarding financial year for ITC reversal under new GST regime, causing no loss of revenue to government, Revenue Department was directed to permit assessee to amend forms to reflect correct financial year

■■■

[2024] 160 taxmann.com 297 (Bombay)**HIGH COURT OF BOMBAY****Rajesh Real Estate Developers (P.) Ltd.****v.****Union of India****G.S. KULKARNI AND FIRDOSH P. POONIWALLA, JJ.****WRIT PETITION (L) NO. 3736 OF 2024****FEBRUARY 5, 2024**

Returns - Furnishing of - Rectification of returns – Assessee real estate developer, under new GST scheme, which offered concessional rates without Input Tax Credit, was required to reverse ITC pertaining to unsold units – Assessee in compliance with new scheme, reversed ITC through DRC 03 Forms, but inadvertently mentioned year as Financial Year 2019-20 instead of Financial Year 2018-19 for some forms – Despite submitting details and explanations confirming compliance with conditions outlined in Notification No. 3/2019 and reversal of Input Tax Credit / making GST payments pertaining to unsold units, along with submission of Form DRC 03, and requesting consideration of these payments for financial year 2018-19, Final Audit Report was issued to assessee, demanding payment along with interest– Revenue Department issued Show Cause Notice demanding payment with interest, acknowledging assessee's payments but contenting that payments made via Form DRC 03 were for financial year 2019-20, thereby refusing to recognize them for Financial Year 2018-19 – Assessee's request to amend/rectify genuine mistake in Form DRC 03 was denied by Revenue Department, stating unavailability of amendment facility for Form DRC 03 on GST portal. – HELD : High Court recognized bonafide mistake made by assessee in mentioning wrong financial year - Bona fide inadvertent errors in furnishing details in GST return need to be recognized and ought to be permitted to be corrected by Revenue Department when, in such cases, Revenue Department is aware that there is no loss of revenue to Government – Revenue was directed to permit assessee to amend forms to reflect correct financial year [Section 39, read with section 37 of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017] [In favour of assessee]

Circulars and Notifications : Notification No.3/2019, dated 29th March 2019**CASE REVIEW**

*Star Engineers (I) Pvt.Ltd. v. Union of India and Ors. in Writ Petition No.15368 of 2023 (para 18) followed.***JUDGMENT**

Firdosh P. Pooniwalla, J. - Rule. Rule made returnable forthwith.**2. Heard finally by consent of the parties.**

3. Petitioner No. 1 is a Real Estate Developer registered with GST Department *Vide* Notification No. 3/2019 dated 29th March 2019 a new scheme was introduced for the real estate sector. Under the new scheme, for affordable housing properties effective GST rate is 1% without Input Tax Credit ("ITC") and for residential properties outside affordable segment effective GST rate is 5% without ITC, as opposed to the old regime (*i.e.* before 1st April 2019) whereunder the GST rate for affordable and residential properties other than affordable were 8% and 12% respectively. For under construction projects, developers were given an option to choose old rates (effective rate of 8% or 12% with ITC) or new rates without ITC. This option was only for under construction projects and had to be exercised within a prescribed time limit. However, in case where a promoter or builder did not exercise the option in the prescribed form, it would be deemed that the builder had opted for new rates in respect of ongoing projects. For new projects, only new rates were applicable and there was no option for availing ITC.

4. With effect from 1st April 2019, the developer paying tax under new regime, in terms of Notification No. 3/2019 dated 29th March 2019, was required to reverse ITC pertaining to unsold units as on 31st March 2019 of outgoing projects as per Rule 42 of the CGST Rules, 2017 ("CGST Rules"). In case, the developer had already utilised ITC pertaining to unsold units before 29th March 2019, the developer was required to make payment in cash.

5. The new GST scheme for realtors intended to disallow the developers to claim ITC on unsold units post 31st March 2019 or for future projects as under the new scheme a unit sold post 31st March 2019 was to be sold at the concessional rate of GST. Thus, it is the case of Petitioner No. 1 that it would be immaterial as to for which period Petitioner No. 1 had reversed the ITC or made payment of GST for such ITC utilised on unsold units as on 31st March 2019.

6. Petitioner No. 1 had not availed option to pay GST under the old regime. In the circumstances, Petitioner No. 1 was entitled to concessional rate of tax without ITC for new projects and unsold units of existing projects post 1st April 2019. Further, Petitioner No. 1 was required to reverse ITC, in terms of the said Notification No. 3/2019, pertaining to unsold units as on 31st March 2019 as per Rule 42 of the CGST Rules. By the following DRC 03 Forms, Petitioner No. 1 had reversed ITC in the following manner.

<i>Sr.No.</i>	<i>Date of DRC 03</i>	<i>ARN</i>	<i>Amount</i>
1.	02.082022	AD270822001276A	13,482,448/-
2.	26-8-2022	AD270822025540B	30,480,886/-
3.	01-9-2022	AD270922000492B	15,647,968/-

7. With respect to DRC 03 dated 2nd August 2022, Petitioner No. 1 had correctly shown that the reversal was made for Financial Year 2018-19. Further, for DRC 03 dated 26th August 2022 and 1st September 2022, Petitioner No. 1 had inadvertently shown the year as Financial Year 2019-20, instead of Financial Year 2018-19.

8. It is the case of the Petitioners that this was a *bonafide* clerical error and that the narration in the said DRC 03 Forms substantiated that the same was Financial Year 2018-19. It is further the case of the Petitioners that, in Financial Year 2019-20, Petitioner No. 1 was not entitled to avail of any ITC, and had not availed of any ITC, and consequently, there could not be any question of reversal of ITC for Financial Year 2019-20.

9. It is further the case of the Petitioners that audit was conducted on the records of Petitioner No. 1 for the period 2018-19. During the course of the audit, Petitioner No. 1 was informed that it was liable to reverse ITC of Rs. 29,030,949/- under Rule 42 of the CGST Rules as per the said Notification No. 3/2019. It was further alleged that Petitioner No. 1 had short paid liability under Reverse Charge Mechanism of Rs. 4,76,570/-.

10. Petitioner No. 1, by a letter dated 18th October 2022, informed the Department that it had complied with the conditions laid down in Notification No. 3/2019 and had reversed ITC/made payment of GST pertaining to unsold units on 31st March 2019 as per Rule 42 of the CGST Rules. Details of Form DRC 03 were also submitted by Petitioner No. 1. It was submitted that all payments were made for the Financial Year 2018-19, and, accordingly, requested the Department to consider the same for the said period.

11. Without considering the request of Petitioner No. 1, Final Audit Report dated 7th November 2023 was issued to the Petitioner No. 1 demanding Rs. 2,95,07,519/- [Rs.29,030,949/- + Rs. 4,76,570/-] along with interest.

12. The Petitioner again, by a letter dated 1st December 2023, submitted that it had complied with the conditions laid down in Notification No. 3/2019 and had accordingly reversed ITC/made payment of GST pertaining to unsold units as on 31st March 2019 as per Rule 42 of the CGST Rules. Details of the payment were again shared with Respondent No. 3 and Respondent No. 3 was requested to consider the said payment as pertaining to Financial Year 2018-19 and, accordingly, drop the demand.

13. However, without considering the said submissions of Petitioner No. 1, Show Cause Notice dated 20th December 2023 was issued by Respondent No. 3 advising Petitioner No. 1 to pay the duty of Rs. 2,95,07,519/- along with interest on or before 29th January 2024, failing which an Order-in-Original would be issued under section 73 of the CGST Rules. The said Show Cause Notice acknowledged the payment made by Petitioner No. 1 but contended that the payments made through Form DRC 03 were for financial year 2019-20 and refused to consider the same for the Financial Year 2018-19.

14. Thereafter, the Petitioner, by a letter dated 22nd December 2023, which was emailed on 23rd December 2023, requested Respondent No. 3 to allow the Petitioner No. 1 to amend/rectify the *bonafide* mistake made by it in Form DRC 03 in mentioning the Financial Year.

15. However, Respondent No. 3, by an email dated 10th January 2024, refused Petitioner No. 1's request to amend Form DRC 03 and informed Petitioner No. 1 that there was no such facility to amend Form DRC 03 on the GST portal and, accordingly, directed Petitioner No. 1 to again pay the dues or reverse the ITC for the Financial Year 2018-19 and claim refund of ITC reversed inadvertently for the Financial Year 2019-20.

16. Being aggrieved by the said actions of the Respondents, the Petitioners have filed the present Petition.

17. In our view, the facts narrated above clearly show that the Petitioner No. 1 has made a *bonafide* mistake in Form DRC 03 dated 26th August 2022 and 1st September 2022. Petitioner No. 1 had inadvertently shown the year as Financial Year 2019-20 instead of Financial Year 2018-19. As correctly submitted by Petitioner No. 1, the fact, that there was a *bonafide* mistake, was clear from the narration in the said Form DRC 03. Further, as rightly submitted by Petitioner No. 1, in Financial Year 2019-2020, Petitioner No. 1 was not entitled to avail of any ITC and had not availed of any ITC, and, consequently, there was no question of ITC for Financial Year 2019-20 being reversed by Petitioner No. 1.

18. The Division Bench of this Court, in *Star Engineers (I) Pvt.Ltd. vs. Union of India and Ors.* in Writ Petition No. 15368 of 2023 (of which one of us, G.S.Kulkarni, J., was a member), has held that a *bonafide* inadvertent error in furnishing details in a GST return need to be recognised, and ought to be permitted to be corrected by the Department, when, in such cases, the Department is aware that there is no loss of revenue to the Government. This Court further held that such free play in the joints requires an eminent recognition and that the Department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Paragraphs 20 to 22 of the said Judgment read as under:

"20. On the interpretation of the provisions as made by us and the common thread running through the decisions as noted above, it would lead us to observe that the GST regime as contemplated under the GST Law unlike the prior regime, has evolved a scheme which is largely based on the electronic domain. The diversity, in which the traders and the assesseees in our country function, with the limited expertise and resources they would have, cannot be overlooked, in the expectation the present regime would have in the traders/assesseees complying with the provisions of the GST Laws. There are likely to be inadvertent and *bonafide* human errors, in the assesseees adopting themselves to the new regime. For a system to be understood and operate perfectly, it certainly takes some time. The provisions of law are required to be alive to such considerations and it is for such purpose the substantive provisions of sub-section (3) of Section 37 and sub-section (9) of Section 39 minus the proviso, have permitted rectification of inadvertent errors.

21. We may also observe that the situation like in the present case, was also the situation in the proceedings before the different High Courts as noted by us above, wherein the errors of the assessee were inadvertent and *bonafide*. There was not an iota of an illegal gain being derived by the assesseees. In fact, the scheme of the GST laws itself would contemplate correct data to be available in each and every return of tax, being filed by the assesseees. Any incorrect particulars on the varied aspects touching the GST returns would have serious cascading effect, prejudicial not only to the assessee, but also to the third parties.

22. It is considering such object and the ground realities, the law would be required to be interpreted and applied by the Department. This necessarily would mean, that a *bonafide*, inadvertent error in furnishing details in a GST return needs to be recognized, and permitted to be corrected by the department, when in such cases the department is aware that there is no loss of revenue to the Government. Such freeplay in the joint requires an eminent recognition. The department needs to avoid unwarranted litigation on such issues, and make the system more assessee friendly. Such approach would also foster the interest of revenue in the collection of taxes."

19. Applying the ratio of the aforesaid judgment, in the present case also, since the error made by the Petitioner No. 1 is a *bonafide* error, the Department is required to be directed to permit Petitioner No. 1 to rectify the said error. In these circumstances, we have no doubt that this Petition is required to be allowed.

20. Accordingly, we pass the following orders:

- a. The Respondents are directed to permit Petitioner No. 1 to amend Form No. DRC 03 dated 26th August 2022 and 1st September 2022 to reflect the year as Financial Year 2018-19 instead of Financial Year 2019-20, either through online or manual means within a period of four weeks from the date of intimation of this order.
- b. Rule is made absolute in the aforesaid terms.
- c. Petition is disposed of.
- d. In the facts and circumstances of the case, there will be no order as to costs.

■ ■