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Neutral Citation No. - 2025:AHC:42270

Judgement reserved on 28.02.2025

Judgement delivered on 24.03.2025

Court No. - 10

Case :- WRIT TAX No. - 1287 of 2024

Petitioner :- M/S Solvi Enterprises

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1285 of 2024

Petitioner :- M/S Solvi Enterprises

Respondent :- Additional Commissioner Grade-2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1288 of 2024

Petitioner :- M/S Solvi Enterprises

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1289 of 2024

Petitioner :- M/S Solvi Enterprises

Respondent :- Additional Commissioner Grade-2, (Appeal)- 5 And
Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

And

Case :- WRIT TAX No. - 1282 of 2024

Petitioner :- M/S Solvi Enterprises

Respondent :- Additional Commissioner Grade 2 And 3 Others

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C., Manish Trivedi

HON'BLE PIYUSH AGRAWAL, J.

1. Since the similar issues are involved in aforesaid writ petitions, the same are being decided together by this common judgment.
2. For convenience, the facts of the Writ Tax No.1287 of 2024 is being delineated here-in-below:
3. Heard Sri Aditya Pandey, learned counsel for the petitioner, and Sri RS. Pandey, learned Additional Chief Standing Counsel for the State-respondents as well as Sri Manish Trivedi, learned counsel appearing for the respondent-Bank.
4. By means of this writ petition, the following prayer has been made:-

“I. Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 20.10.2023 passed by the respondent no.1 in Appeal No.GST – AD091222030324L/2022 F.Y. 2018-19, under the provisions of Section 74 of the U.P.G.S.T./C.G.S.T. Act (Annexure No.1 to the writ petition).

II. Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 12.09.2022 passed/issued by the respondent no.2 (Annexure no.4 to the writ petition).

III.

IV.”

5. Learned counsel for the petitioner submits that the petitioner is a registered dealer, which is engaged in the business of sale and purchase of scraps etc., against which, proceedings under Section 74 of the UPGST Act were initiated by the respondent no.2 for the

tax period December, 2018-19, F.Y. 2018-19 vide notice DRC-01 dated 29.07.2022 to which a detailed reply was submitted by the petitioner, however, without considering the same, the impugned order dated 12.09.2022 was passed in violation of Section 75 (4) of the UPGST/CGST Act. Being aggrieved by the said order, an appeal was filed by the petitioner, which was dismissed vide impugned order dated 20.10.2023.

6. Learned counsel for the petitioner submits that the petitioner purchased the goods from a registered dealer namely M/s. Radhey International (hereinafter referred to as “the seller”), vide tax invoice dated 06.12.2018, which was generated by the seller from the GST Portal.
7. He further submits that the authorities have power under the Act for cancelling the registration with retrospective effect, but in the case at hand, the date of transaction in question is of 06.12.2018 and whereas the registration of the selling dealer has been cancelled with effect from 29.01.2020.
8. The transaction in question is fully covered by the statutory documents prescribed under the Act. He further submits that merely at the subsequent stage, if the selling dealer was not found in a disclosed place of business, or registration has been cancelled, the petitioner cannot be held responsible for the same. He further submits that the selling dealer filed its return therefore, GSTR-2A was auto generated, showing the transaction are genuine. He prays for allowing the writ petition.
9. *Per contra*, learned Standing Counsel supports the impugned order and submits that the petitioner has failed to bring on record any cogent material about the actual physical motion of the goods and therefore, the impugned order has rightly been passed.

- 10.** In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court passed in the case of *State of Karnataka Vs. Ecom Gill Coffee Trading Private Limited, 2023 LiveLaw (SC) 187* as well as judgments of this Court passed in *Writ Tax No. 128 of 2024 (M/s Rajshi Processors Raebareli Thru. Its Partner Ashok Kumar Lakhotia Vs. State of U.P. Thru. Prin. Secy. Deptt. Of State Tax, Lko and 2 Others)* and *Writ Tax No.1421 of 2022 (M/s Shiv Trading Vs. State of U.P. and 2 others)*. The judgment of *Shiv Trading (supra)*, decided on 28.11.2023 was challenged before the Hon'ble Apex Court by way of filing S.L.P. (c) No.3345 of 2024, which has been dismissed vide order dated 12.02.2024. He prays for dismissal of the aforesaid writ petitions.
- 11.** To the said submission, learned counsel for the petitioner submits that the case of *M/s Ecom Gill Coffee (supra)* is not applicable in the present case as therein, the seller was not registered and had not filed his return, nor GSTR-2A was generated; whereas in the case in hand, the selling dealer was a registered dealer at the time of transaction took place and auto generated GSTR-2A was populated which shows the transaction in question is genuine.
- 12.** Further, the judgment relied upon by the learned Standing Counsel on *M/s. Rajshi Processors Raebareli (supra)* is also distinguished by stating that the proceedings were initiated after being survey conducted at the place of the petitioner i.e. the purchaser in which certain discrepancies in documents were found, on that basis, further, the place of the seller was inspected which was found not in existence.
- 13.** Upon hearing the parties, the Court has perused the records.

14. It is not in dispute that the purchase was made by the petitioner from the firm, which was duly registered under the GST Act at the time when the transaction was made.
15. For deciding the issue in hand, Sections 16 & 74 of the GST Act, 2017 will be relevant, which reads as follows:-

“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;

(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 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;

(c) subject to the provisions of section 41, 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 instalments,

the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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 (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 invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

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 sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (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 sub-section (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 sub-section (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 sub-section (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 thereunder.

(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 sub-section (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 sub-section (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.

Explanation 1. For the purposes of section 73 and this section,?

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2. For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

- 16.** The perusal of the contents of above-quoted Section 16 of the GST Act, 2017 shows that the input tax credit can be claimed only on the fulfilment of conditions mentioned therein. It also clarifies that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both.
- 17.** The contents of above-quoted Section 74 of the GST Act, 2017 provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of fact.
- 18.** Further, the Rule 36 of the GST Rules, 2017 provides for document and condition required for claiming input tax credit, which reads as under:-

"Rule 36. Documentary requirements and conditions for claiming input tax credit.-

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document and the relevant information, as contained in the said document, is furnished in FORM G.S.T.R.-2 by such person:

[Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, G.S.T.I.N. of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

[(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished by the suppliers under sub-section (1) of Section 37 [In FORM G.S.T.R.-01 or using the invoice furnishing facility] shall not exceed [5 per cent] of the eligible credit available. In respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of Section 37 [In FORM G.S.T.R.-01 or using the invoice furnishing facility] under sub-

[Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM G.S.T.R.-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the

said months in accordance with the condition above:]

[Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in Form G.S.T.R.-3B for the tax period June 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulatively adjustment of input tax credit for the said months in accordance with the condition above:]”

19. Perusal of the contents of afore-quoted Rule 36 of the GST Rules, 2017 provides that the required documents for claiming input tax credit should be made available and the same may be reflected in GSTR-3B.
20. From the afore-quoted Sections 16 & 74 of the GST Act, 2017 as well as Rule 36 of the GST Rules, 2017, it is clear that the provisions as provided, certain benefit of input tax credit to the registered person should be provided on the fulfilment of conditions as well as documents required to be provided therein.
21. Furthermore, Section 74 of the GST Act, 2017 provides the power to the State-authorities to proceed against the registered dealer if I.T.C. has wrongly availed or utilized by reason of fraud or wilful misstatement of fact or by means of fraud, and upon the adjudication, can recover the same.
22. In the case in hand, the proceedings were initiated against the petitioner under Section 74 of the GST Act, 2017 as the registration of the seller dealer has been cancelled on subsequent date i.e. with effect from 29.01.2020, thus, the date of transaction was admittedly took place prior to it i.e. on 06.12.2018.
23. Further, the record shows that the GST authorities are empowered to cancel the registration from the date of inception of proceedings, but the authorities in their wisdom cancelled the registration of the seller on a subsequent date i.e. with effect from 29.01.2020.

24. It is not the case of the Revenue that at the time when the transaction took place, the selling dealer was not registered and was not having valid registration under the GST Act.
25. The record shows that the supplier has filed its returns i.e. GSTR-01 and GSTR-3B. It is a matter of common knowledge that after filing of GSTR-01, an auto populated window would be open for filling the GSTR-3B for payment of tax and GSTR-2A can be viewed by the purchaser of the goods in question. Once the said form was generated and the said fact has not been disputed by the authorities below while passing the impugned order, the authorities have failed to consider the fact that GSTR-3B & GSTR-2A, as prescribed under the Act, which was auto populated to which not a single word has been whispered in the impugned orders. On the contrary, an observation has been made against the petitioner that he had failed to bring on record any cogent material that the seller has deposited the tax.
26. At the time when the transaction took place, the purchaser i.e. the petitioner and the seller both were registered, however, at the subsequent time, the seller was found non-existing and the registration of the seller has not cancelled retrospectively i.e. from the date of transaction.
27. The judgment of *M/s Rajshi Processors (supra)*, cited by the Revenue, has been passed on the pretext that the supplier was non-existing dealer and its registration was cancelled from the date of its inception, but in the case in hand, registration of the selling dealer has been cancelled w.e.f. 29.01.2020, which shows that the transaction took place on 06.12.2018 and on the said date, the selling dealer was having valid registration. Thus, on the said facts, the judgment passed in the *M/s Rajshi Processors (supra)* is of no aid to the Revenue.

28. Further, the judgment of *Shiv Trading (supra)* wherein the reliance has also been placed upon the judgment of *Ecom Gill Coffee Trading Private Limited (supra)*, decided on 28.11.2023 was challenged before the Hon'ble Apex Court by way of filing S.L.P. (c) No.3345 of 2024, which has been dismissed and the order dated 28.11.2023 was confirmed vide order dated 12.02.2024. In the said judgment, the finding of GSTR-3B was not taken care of and therefore, the said judgment on facts of the present case is of no aid to the respondents.
29. This Court in the case of *M/S Rama Brick Field Vs. Additional Commissioner Grade-2 and 2 others (Writ Tax No. 909 of 2022)*, in paragraph nos. 8, 9 & 10 has held as under:-

“8. It is not in dispute that the petitioner has opted for compounding which has been accepted by the respondent authorities for a period of 1.10.2017 to 21.3.2019. The disputed purchase as shown by the petitioner from Rohit Coal Trader pertains to May 2018 to June 2018, which falls under the aforesaid period of composition. The petitioner in support of his contention has adduced evidence such as tax invoice, e-way bill, G.R., payment receipts etc. to show that the purchases have been made from the registered dealer. It is also admitted that the registration of Rohit Coal Traders has been cancelled vide order dated 24.10.2019 in other words at the time of transaction in question, the seller i.e. Rohit Coal Traders was registered firm under the G.S.T. Act. It has been argued on behalf of petitioner that Rohit Coal Traders has filed his return for A.Y. 2018-19 ie. GSTR-1 and GSTR-3B. It is a matter of common knowledge that after filing of GSTR -1, an auto pop up window would be opened for filing of Form GSTR 3 B for payment of tax and form GSTR 2 A can be viewed by the purchaser of goods in question. Once the said form was generated and the said fact has not been disputed by the authorities below while passing of the impugned order, which goes without saying that at the time of transaction, purchaser and supplier both were registered. However at the

subsequent time if the seller i.e. Rohit Coal Trader was found non- existence, the proceeding can be initiated but the authorities has failed to consider the fact that GSTR returns as prescribed under the Act was filed by the seller to which not a single word has been whispered while passing the impugned order. On the contrary an observation has been made that the petitioner has failed to bring on record any cogent material to show that Rohit Coal Traders has deposited the tax and therefore proceedings were held to be justified.

9. Under the GST regime all details are available in the portal of GST department. The authorities could have very well verified as to whether after filing of GSTR-1 and GSTR 3 B how much tax has been deposited by the selling dealer i.e. Rohit Coal Traders but the authorities have failed to do so. Thus looking to the said facts, the impugned orders cannot be sustained in the eyes of law.

10. In view of the facts as stated above, the writ petition succeeds and is allowed. The impugned orders are set aside. The matter is remanded to the first appellate authority, who shall pass a fresh order in accordance with law, expeditiously, preferably within a period of two months from the date of producing a certified copy of this order, without granting any unnecessary adjournment to the parties.”

- 30.** Once the seller was registered at the time of the transaction in question, no adverse inference can be drawn against the petitioner. Further, the record shows that the registration of the selling dealer was cancelled retrospectively i.e. w.e.f. 29.01.2020 and not from its inception which goes to show that the transaction between petitioner and seller was registered and having valid registration in his favour.
- 31.** That under the GST regime, all details are available in the GST Portal and therefore, authorities ought to have been verified the same as to whether the filing of GSTR-1A and GSTR-3B, how much tax has been deposited by the seller, but the authorities have failed to do so.

32. Thus, looking to the above facts and circumstances of the cases, the matters require re-consideration.
33. Accordingly, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.
34. The writ petitions are **allowed**. The matter is **remanded** to the authority concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of two months from the date of production of certified copy of this order.
35. Any amount deposited by the petitioner pursuant to the impugned orders, shall be subject to the outcome of the fresh orders to be passed by the authority concerned.

Order Date :-24.03.2025

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)