

M/S Harbir Singh Contractor And Another v. Union Of India And 4 Others

WRIT TAX No. 454 of 2020 | Decision: 2023-10-26 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:204392-DB

Court No. - 39

Case :- WRIT TAX No. - 454 of 2020

Petitioner :- M/S Harbir Singh Contractor And Another

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Shubham Agrawal, Sanyukta Singh

Counsel for Respondent :- A.S.G.I., Ashok Singh, Krishna

Agarwal, Ramesh Chandra Shukla

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Surendra Singh-I, J.

1. Heard Mr. Shubham Agrawal along with Ms. Sanyukta Singh, learned counsel for the petitioners; Shri Krishna Agarwal, learned counsel for Central Board of Indirect Taxes & Customs (CBIC) and Assistant Commissioner, Central GST and Shri Ashok Singh, learned counsel for Union of India, GST Council and Goods & Services Tax Network.
2. Present writ petition has been filed by petitioner no.1, primarily to seek a direction upon the respondent revenue authorities to treat the registration granted (subsequently), to the petitioner on 23.10.2017 for the activity "Manpower Supply Services", under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act') bearing registration no. 09AVKPS1666H3Z0 (hereinafter referred to as the 'new registration'), with retrospective effect from 1.7.2017 i.e the date from when the original registration was granted to the petitioner no.1 bearing registration no. 09AVKPS1666H2Z1 (hereinafter referred to as the 'old registration').
3. Challenge has also been raised to the order passed by Authority for Advance Ruling dated 17.12.2019, passed at the

instance of petitioner no.2 (M/s Vivo Mobile India Private Limited), to the extent the said authority has refused to grant benefit of Input Tax Credit (ITC) that may have arisen against the original Tax Invoices issued against old registration, during July 2017 and August 2017 as are supported by the revised Tax Invoices (for the same transactions) issued by petitioner no.1, under its new registration.

4. The facts are undisputed. Prior to enforcement of the Act, petitioner no.1 (M/s Harbir Singh Contractor) was registered under the Finance Act, 1994 (hereinafter referred to as the 'Service Tax law') for supply of "Manpower Supply Services". Upon enforcement of the Act, by virtue of operation of law namely Section 139 of the Act, the petitioner no.1 provisionally auto-migrated under the Act. At the same time, by virtue of Section 22 read with Section 25 (1) of the Act, the petitioner no.1 was obligated to seek a fresh registration under the Act. It is here that the dispute arose. For ready reference, the provision of Section 139, 22 (1) & (2) and 25(1) of the Act are quoted below:

"139. Migration of existing taxpayers.- (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

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(2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.

(3) The certificate of registration issued to a person under sub- section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24."

22. Persons liable for registration.- (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees. 1[Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.] 2[Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation.--For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

Section 25. Procedure for registration.- (1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

1 Ins. By Act 31 of 2018, sec.11(a) [w.e.f. 1-2-2019, vide G.S.R. 62(E), dated 29th January, 2019].

2 Ins. By the Finance (No.2) Act, 2019, sec.94 [w.e.f. 1-1-2020, vide G.S.R. 2(E), dated 1st January, 2020]

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Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business. 3[Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, (28 of 2005) in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.]

Explanation.--Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

4[Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.]

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction

3 Ins. By Act 31 of 2018, sec. 13(a) [w.e.f. 1-2-2019, vide G.S.R. 62(E), dated 29th January 2019] 4

Subs. by Act 31 of 2018, sec.13(b), for proviso [w.e.f. 1-2-2019, vide G.S.R. 62(E), dated 29th January,

2019]. The proviso, before substitution, stood as under: "Provided that a person having multiple business verticals in a State or Union territory may be granted a

separate registration for each business vertical, subject to such conditions as may be prescribed."

and Collection Account Number issued under the said Act in order to be eligible for grant of registration. 5[(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

6(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

7[(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

8[(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons

5 Ins. By the Finance (No.2) Act, 2019, sec. 95 [w.e.f.1-1-2020, vide G.S.R. 2(E), dated 1st January, 2020] 6 Ins. By the Finance (No.2) Act, 2019, sec. 95 [w.e.f.1-1-2020, vide G.S.R. 2(E), dated 1st January, 2020]

7 Ins. By the Finance (No.2) Act, 2019, sec. 95 [w.e.f.1-1-2020, vide G.S.R. 2(E), dated 1st January, 2020] 8 Ins. By the Finance (No.2) Act, 2019, sec. 95 [w.e.f.1-1-2020, vide G.S.R. 2(E), dated 1st January, 2020]

or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation.-- For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016).]

(7) Notwithstanding anything contained in sub-section (6), a non- resident taxable person may be granted registration under sub- section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),--

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period."

5. Also, the Act introduced the concept of Input Service

Distributor (hereinafter referred to as the 'ISD'). Section 2(61)

of the Act reads as below:

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"2(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

(emphasis supplied)

6. Then, ISD may obtain a separate registration for that

particular activity, by virtue of Section 24(viii) of the Act read

with the proviso to Rule 8 of Central Goods and Services Tax

Rules, 2017 (hereinafter referred to as the 'Rules'). For ready

reference, the provisions of Section 24(viii) of the Act read as

under:

"24. Compulsory registration in certain cases- Notwithstanding anything contained in sub-section (1) of the section 22, the following categories of persons shall be required to be registered under this Act-

...

(viii) Input Service Distributor, whether or not separately registered under this Act;

..."

Rule 8 of the Rules is in the following terms:

8. Application for Registration.- (1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as the applicant) shall, before applying for—the applicant||) shall, before applying for ||) shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail

address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

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9[***]

10[Provided] that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.

(b) The mobile number declared under sub-rule (1) shall be verified through a onetime password sent to the said mobile number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.

(3) On successful verification of the Permanent Account Number, mobile number and email address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

11 [(4A) Every application made under rule (4) shall be followed by -

(a) biometric-based Aadhar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhar authentication done, of the applicant where the applicant is an individual or of such individual in relation to the applicant as notified under sub-

9 First proviso omitted G.S.R.63(E), dated 29th January, 2019 (w.e.f. 1-2-2019). First proviso, before omission, stood as under:

“Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone”.

10 Subs. by G.S.R. 63(E), dated 29th January, 2019 for “provided further” (w.e.f. 1-2-2019).

11 Subs. by G.S.R. 786(E), dated 22nd December 2020, for sub-rule (4A). Earlier sub-rule (4A) was substituted by G.S.R. 517(E), dated 20th August, 2020 (w.e.f. 1-4-2020) and inserted by G.S.R. 199(E), dated 23rd March, 2020 (w.e.f. 23-3-2020). Sub-rule (4A) before substitution by G.S.R. 786(E), dated 22nd December, 2020, stood as under:

“(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitted the application under sub-rule (), with effect from 21 st

August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, of fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.”

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section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the

Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.]

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub- rule (5) shall be issued electronically only after the said deposit.”

7. It is also admitted that ISD was not required to deposit any tax. Only interest and penalties were leviable for infractions attributable solely to the activity of distribution of ITC and filing of its returns by the ISD. The only return required to be filed on behalf of ISD was GSTR-6 being a return for distribution of ISD. For ready reference, provisions of Rule 65 of the Rules:

65. Form and manner of submission of return by an Input Service Distributor.- Every Input Service Distributor shall, on the basis of details contained in FORM GSTR-6A, and where required, after adding, correcting or deleting the details, furnish electronically the return in FORM GSTR-6, containing the details of tax invoices on which credit has been received and those issued under section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.”

8. It is also a fact that the registration for ISD and that for main/business activity of supply of goods or services had to be made on separate applications, both on Form GST REG-01.

Here both parties before the Court appear to have erred. As happens in litigation, both attribute the critical mistake and therefore the consequences, to the conduct of the other. At the

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same time, upon hearing counsel for the parties and upon perusal of the record including documents annexed to the Supplementary Counter Affidavit filed by the revenue (to which there is no rebuttal), it does appear, while filing the original Form GST REG-01 (relevant to the old registration), the petitioner no.1 described his reason to obtain that registration as "ISD". As to the other reason to obtain that registration, though the revenue disputes, a copy of the application form annexed to the Supplementary Counter Affidavit filed by the revenue itself reads - "Others (Not covered above) Specify" and the words "Documents attached", find mention below that description. Thus, that is inconclusive of any other details having been filled up by the

petitioner, to obtain registration.

9. Yet, the disclosure made by petitioner no.1 at that stage is clearly established from the document annexed as Annexure SCA-8 to the Supplementary Counter Affidavit, described as Registration Certificate on Form GST REG-06. That document pertaining to the original registration granted to the petitioner first discloses the tax-payer status to be Input Service Distributor (ISD). Yet it goes on to narrate and thus record the description of goods and services being dealt with by petitioner no.1. That part of the Registration Certificate reads as below:

“Goods Services

HSN Description HSN Description

00440060 MANPOWER RECRUITMENT AGENCY”

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10. In such facts, we are persuaded to accept the contention advanced by learned counsel for the petitioners that besides disclosing the non-business activity of ISD, the petitioner no. 1 had also disclosed his business activity of Manpower Recruitment Agency, at the stage of obtaining the original registration. In the above facts it is established from a perusal of the documents produced by the revenue, that the web portal devised and operated for the benefit of the revenue authorities by the GSTN did allow petitioner no.1 to fill up details and thus disclose to the registering authority his main/taxable business activity (also), while filling up his original registration form of GST REG-01. In fact such disclosure was made.

11. Not only petitioner no.1 made such disclosure, it is also an undisputed fact that the revenue authorities acted on the same inasmuch as they issued notice on 18.11.2019 to petitioner no.1, seeking to cancel his original registration solely for the reason of non-filing of the monthly return on the Form GSTR-3B. For ready reference, the contents of that notice reads as below:

“Reference Number: YD010509193A0011 Date:18-Nov-2019

To

GSTIN: 09AVKPS1666H2Z1

Name: HARBIR SINGH

Address: F-20, Site-IV Industrial

Area, Greater Noida, Gautam

Buddha Nagar, 201310

Notice to return defaulter u/s 46 for not filing returnable

Financial Tax Period/s

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Year

2017-18 JUL-2017, AUG-2017, SEP-2017, OCT-2017, NOV-2017, DEC- 2017, JAN-2018, FEB-2018, MAR-2018

2018-19 APR-2018, MAY- 2018, JUN-2018, AUG-2018, SEP- 2018, OCT-2018, NOV-2018, DEC- 2018, JAN-2019, FEB-2019, MAR-2019

2019-20 APR-2019, MAY- 2019, JUN-2019, JULY-2019, AUG- 2019, SEP-2019

Type of Return GSTR-3B

1. Being a registered taxpayer, you are required to furnish return/s for the supplies made or received and to discharge resultant tax liability for the aforesaid tax period/s by due date. It has been noticed that you have filed the said return/s till date.
2. You are, therefore, requested to furnish the said return/s within 15 days failing which the tax liability will be assessed u/s 62 of the Act, based on the relevant material available with this office. Please note that in addition to tax so assessed, you will also be liable to pay interest and penalty as per provisions of the Act.
3. Please note that no further communication will be issued for assessing the liability.
4. The notice shall be deemed to have been withdrawn in case the return/s referred above, is filed by you before issue of the assessment order.

DESIGNATION: SUPERINTENDENT

C:GAUTAM BUDDHA NAGAR > D: DIVISION I GAUTAM BUDDHA NAGAR > R: RANGE - 5

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS"

12. In the context of the Act, the monthly return on the Form GSTR-3B is mandated to be filed in terms of Rule 61 of

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the Rules. For ready reference, provisions of Rule 61 of the

Rules reads as below:

"61. Form and manner of furnishing of return.- (1) Every registered person, other than a person referred to in section 14 of the Integrated Cools and Services Tax Act, 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the common portal either directly through a Facilitation Centre notified by the Commissioner.

(2) Part A of the return under sub-rule (1) shall be electronically generated on the basis of Information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods..

(3) Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fines or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in Part B of the return in FORM GSTR- 3.

(4) A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub- section (6) of section 49, may claim such refund in Part B of the return in FORM GSTR-3 and such return shall be deemed to be an application filed under section 54.

(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 or in FORM GSTR-2 under section 38 has been extended, the return specified in sub-section (1) of section 39 shall in such manner and subject to such conditions as the Commissioner may by notification, specify, be furnished in FORM GSTR-38 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that where a return in FORM GSTR-38 is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in FORM GSTR-3.

*(6) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-38, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the twentieth day of the month succeeding such tax period:

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Provided that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in FORM GSTR- 3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in FORM GSTR-3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty fourth day of the month succeeding such month."

13. Thus, Form GSTR-3B is the form for monthly return, required to be filed by every registered person except persons referred to Section 14 of the Integrated Goods and Services Tax Act, 2017 or Input Service Distributor (ISD). That coupled with the statutory liability of ISD to file return on Form GSTR-6 and 6A under Rule 65 of the Rules, it is crystal clear that at the stage of issuance of notice dated 18.11.2019, the revenue authorities were of the opinion that petitioner no.1 was not entitled to continuance of his registration for business activity (and not ISD), for reason of not filing his monthly returns for business/taxable activity of "Manpower Supply

Service". It is undoubtable, that in absence of any legal requirement on a ISD to file its monthly return on Form GSTR-3B , the ISD registration could never be cancelled for reason of not filing such returns. Here reference may be made to provisions of Sections 4, 6, 39, 44 and 45 of the Act. They read as below:

4. Appointment of officers.- (1) The Board may, in addition to the officers as may be notified by the Government under section 3,

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appoint such persons as it may think fit to be the officers under this Act. (2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.- (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub- section (1),-

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

39. Furnishing of returns.- "(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.

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(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return: Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed.

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(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him."

44. Annual return. - (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year:

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

Explanation. For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st January, 2020 and the annual return

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for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.

45. Final return.- Every registered person who is required to furnish a return under sub-section(1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.”

14. Clearly, the undischarged legal obligation under Section 46 of the Act, for which a compliance notice, could be issued, is one that may exist on a registered person other than a ISD. Necessarily, that liability may arise only with respect to filing of returns for the main/business activity, and no other.

15. Then, it is also a fact, upon such notice being issued, petitioner no.1 initially sought rectification in his original registration. However, since the software enabled and dependent procedural law did not permit such a correction to be made, he sought a fresh registration specifically and only with respect to “Manpower Supply Services”. Here, it may also be noted, it is not the case of the revenue that the assessee had more than one vertical business as may have allowed him to obtain multiple registrations (with respect to main/business activity), at the relevant time.

16. In fact, originally, under the proviso to Section 25 of the Act, multiple registrations were permissible only in the event of more than one vertical business existing against a single PAN registration. Later, with effect from 01.02.2019, that proviso was amended to allow (for the first time), multiple registrations to arise in the event of more than one business horizontal existing. However, the present is a case where original registration was granted prior to that amendment.

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Clearly and undisputedly, petitioner no.1 had only one

business vertical.

17. As to the present facts, it is undisputed, petitioner no.1 was neither having more than one business vertical nor he was in need to distribute any amount of ITC that may have arisen to him. Yet, Tax Invoice were issued and the amounts of tax realized by him against the old/ISD registration, without delay.

18. It is also unambiguously clear that on principle, a ISD was not required or permitted (in law), to either issue Tax Invoice or deposit any amount towards tax. Tax Invoice could be issued and Tax deposit could arise only against a registration granted to a person other than a ISD, with respect to taxable business. The registration as a ISD being a registration granted to a facilitation office of a recipient of taxable goods or service, it could not be utilized for any taxable business transaction with a third party, by a registered person/supplier. That secondary registration is only a facilitation provided to allow an otherwise registered person, having more than one business vertical (and now more than one business horizontal), to adjust ITC arising (to it), at different business/business places, towards payment of tax or utilization of ITC on services, not in strict proportion to the business activity of every business vertical or horizontal.

19. Thus, by way of example, in a case where recipient a business has ten registrations inside a State, a further registration as ISD may be obtained by a registered person, to allow such a registered person to adjust ITC on services arising at one or any business or at place, against another. It is

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with respect to that optional and non-mandatory facilitation, that obligations exist on the ISD to file its due return disclosing utilization/adjustments of ITC. Violations or infringement of that obligation would invite levy of interest and penalties. However, no tax could be charged or deposited against the ISD registration for the main business activity against supply of goods or services or both. That liability is referable only to the registration granted qua the duly and separately registered main/business activity giving rise to

issuance of Tax Invoices and therefore the ITC.

20. However, contrary to the law, such fact occurrence took place in the present case. The original registration was granted primarily with respect to ISD, yet the petitioner no.1 not only mentioned the same on its Tax Invoices but also charged and deposited tax against that registration. At both levels i.e. at the stage of grant of registration and at the level of charge and deposit of tax, an error occurred at the instance of petitioner no.1, insofar as it may have wrongly mentioned its ISD registration number on its Tax Invoices and charged tax from petitioner no.2. Yet, such mistakes were compounded and owned by the revenue authorities who allowed the tax amount Rs. 1,44,97,066/- to be deposited against that ISD registration, contrary to the mandate of the statutory law.

21. As discussed above, not only the original registration Form filled by petitioner no.1 disclosed the main taxable business activity but the revenue authorities also noted that main activity as "Manpower Supply Services" in the registration records maintained by them, at that time.

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22. Then, the revenue authorities acted on that knowledge and issued the notice dated 18.11.2019, to cancel the original registration issued to petitioner no.1, solely for the reason of non-filing of the monthly returns on Form GSTR-3B. If the revenue authorities were treating petitioner no.1 to be a ISD only, they could not have issued any notice to cancel the original registration of petitioner no.1 for non-filing of the monthly return on the Form GSTR-3B. It is so, because under the mandate of law, a ISD could never file a monthly return. It could only file a return for Input Service Distribution, on Form GSTR-6 and Details of Supplies Auto-Drafted Form GSTR-1, on GSTR-6A.

23. The fact that such notice requiring filing of monthly return on GSTR-3B was issued (for the reason noted above), makes it plain that the revenue authorities could read and see the business activity conducted by petitioner no.1, of "Manpower Supply Service". That assumption is unavoidable,

in the present facts. Since that was a taxable service, the revenue authorities were of the further opinion that non-filing of the monthly returns for such activity amounted to violation of Section 46 of the Act. It led to issuance of notice to furnish returns by petitioner no.1, treating him to be a person who may have failed to file such return. By specifying the type of return defaulted by petitioner no.1 as Form GSTR-3B, the revenue authorities left no doubt in the matter as to their perception of the nature of violation allegedly committed by the petitioner no.1 i.e. a registered person who had failed to file monthly return with respect to its main/business activity. Yet, in absence of the ISD registration being active or valid for 21

main/taxable business activity, petitioner no. 1 was not enabled to file his monthly returns on Form GST 3B.

24. The mistake with respect to grant of ISD registration, that forms the first error in the chain of errors noted above, may be described as mistake apparent on record. Under the erstwhile law where decisions to issue notice etc., were made only upon due application of mind, to the facts disclosed on paper upon due application of human intelligence, the procedure to offer correction was simple and direct. At present, under the Act, machine processes have been designed including auto-populated and auto-generated Forms, reports, etc., by the GSTN, ostensibly to eliminate avoidable human errors and to improve administrative efficiency. Under the present Act, by virtue of section 146, a digital common portal has been created by the GSTN to provide amongst others facilitation of registration; payment of tax; furnishing of returns; computation and settlement of integrated tax; issuance of electronic way bill etc. Then under the Rules framed under the Act, enabling provisions exist regarding intimation of composition levy (Rule 3), validity of composition levy (Rule 6), application for registration (Rule 8), Verification of registration and approval (Rule 9), issuance of registration certificate (Rule 10), furnishing of bank account details (Rule 10A), Adhar identification for registered persons (Rule 10B),

grant of registration to a person supplying online information and database access or retrieval services from a place outside India to non-taxable online recipient (Rule 14), extension of period of operation by casual taxable person and non resident taxable person (Rule 15), Assignment of unique identification number to certain special entity (Rule 17), amendment of registration (Rule 19), application for cancellation of registration (Rule 20), revocation of cancellation of registration (Rule 23), migration of persons registered under the existing law (Rule 24), physical verification of business premises in certain cases (Rule 25), manner of claiming credit in special circumstances (Rule 40), transfer of credit on sale, merger, amalgamation, lease or transfer of a business (Rule 41), transfer of credit on obtaining separate registration for multiple places of business within a State or union territory (Rule 41A), manner of issuance of invoice (Rule 48), maintenance of record by owner or operator of godown or warehouse and transporters (Rule 58), form and manner of furnishing details of outward supplies (Rule 59), form and manner ascertaining details of inward supplies (Rule 60), form and manner of furnishing return (Rule 61), manner of opting for furnishing quarterly returns (Rule 61A), form and manner of submission of statement and returns (Rule 62), form and manner of submission of return by a non-resident taxable person (Rule 63), form and manner of submission of return by an input service distributor (Rule 65), form and manner of submission of return by a person required to deduct tax at source (Rule 66), form and manner of submission of statement of supplies through an e-commerce operator (Rule 67), annual returns (Rule 80), final returns (Rule 81), details of inward supplies of persons having unique identity number (Rule 82), provisions relating to goods and services tax practitioners (Rule 83), examination of goods and services tax practitioners (Rule 83A), surrender of enrolment of goods and

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services tax practitioner (Rule 83B), maintenance of electronic

liability register (Rule 85), maintenance of electronic credit ledger (Rule 86), maintenance of electronic cash ledger (Rule 87), identification number for each transaction (Rule 88), manner of dealing with difference in liability reported in statement of outward supplies and that reported in return (Rule 88C), application for refund of tax, interest, penalty, fees or any other amount (Rule 89), acknowledgement (Rule 90), Refund of tax to certain persons (Rule 95), refund of integrated tax paid on goods or services exported out of India (Rule 96), export of goods or services under bond or letter of undertaking (Rule 96A), manual filing and processing (Rule 97A), provisional assessment (Rule 98), form and manner of application to the authority for advance ruling (Rule 104), form and manner of appeal to the appellate authority for advance ruling (Rule 106), manual filing and processing (Rule 107A), appeal to the appellate tribunal (Rule 110), tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day (Rule 117), revision of declaration in form GST Tran-1 (Rule 120A), information to be furnished prior to the commencement of movement of goods and generation of e-way bills (Rule 138), Document and devices to be carried by a person in-charge of a conveyance (Rule 138A) and facility for uploading information regarding detention of vehicle (Rule 138D).

25. At the same time, machines and machine processes are what humans make them to be. As discussed above, it remained from the GSTN while designing the portal to ensure that a ISD registration may arise only for distribution of ITC

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against a pre-existing and separate business registration i.e. the registration for “Manpower Supply Services” only. This much is plain that no ISD registration could ever arise unless there pre-existed other registration/s for main/business activity/activities of supply and sale of goods and/or service. Second, it also remained from the GSTN to ensure that no Tax Invoice may have been generated against a ISD registration. Third, another mistake appears to have been committed at the

end of GSTN in allowing tax to be deposited against ISD registration. Last another mistake occurred in allowing notice on GSTR-3A to be generated on 18.11.2019, against a ISD registration for reason of non-filing of the monthly returns of Form GSTR-3B. Ideally and functionally, these incongruities and anomalies should have been flagged by the GSTN Portal to be addressed by the superior human/intelligence. Yet, in absence of an enabling procedure existing, that correction was never made.

26. Being unable to file his monthly returns and upon new registration being granted, petitioner no.1 made a claim for refund of the Input Tax Credit lying in deposit against the ISD/ original registration. That claim was rejected by means of Refund Rejection Order dated 18.10.2018 which was made subject matter of appeal at the instance of petitioner no.1. That appeal came to be allowed vide order dated 25.03.2019 passed by Additional Commissioner (Appeals), CGST, NOIDA.

Relevant to our discussion, at that stage, the appeal was pressed as below:

"The appellant is a proprietorship firm engaged in the business of providing the Man Power Supply Service

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and was registered with Service Tax. On introduction of GST Act, he applied for registration and Registration No. 09AVKPS166GH2Z1 (hereinafter referred to as GSTIN) was allotted to him. To discharge his tax liability, he deposited Rs. 1,44,97,066/- (CGST and SGST) in electronic cash ledger on 22.08.2017 and 25.09.2017 vide three challans. When appellant tried to file Returns, he was unable to file and then it came to his notice that the registration was granted under Input Service Distributor (ISD) category. The appellant tried and communicated various times with the jurisdictional department and GSTN but the issue was not resolved. He again obtained a fresh registration No. 09AVKPS1660H3Z0 dated 23.10.2017 under proper category and started tax payment onward. For amount lying in Electronic Cash Ledger the appellant filed a refund claim of Rs. 1,44,97,066/- as per Section 54 of the CGST Act, 2017 on 12.12.2017 with the department on common portal with ARN No. AA091217028183C. The adjudicating authority rejected the claim on the ground that the appellant has neither deposited the tax to the Government exchequer during the period July 17 to August 17 nor filed the returns for the period.

Being aggrieved the appellant filed the present appeal on the following grounds: (i) The appellant has honestly paid tax liability for the period within the prescribed due dates but he (appellant) was unable to file the returns because the registration was granted under ISD category. Under the ISD category a taxpayer is not required to pay any tax through electronic cash ledger, and tax payer cannot pay any tax on GST portal as tax payment is not permitted for an ISD taxpayer."

27. Upon hearing the parties, the appeal authority made the following pertinent observation:

“ 5. I have carefully gone through the facts and records of the case as well as submission made personal hearing. I find that the appellant was a regular tax payer with Service Tax department. On applying for registration under GST Act, he was granted the registration under category. He deposited the due tax on 22.08.17 and 25.09.17. When appellant tried to file the Returns, he was unable to file the same and then it came to his notice that the registration was granted under Input Service Distributer (ISD) category. On perusal of the Registration Certificate (GST-REG-06) copy submitted by the appellant, I found that there is no reference in the certificate that under which category it has been issued. It

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is a fault of the system that if there is scope of payment of tax under ISD category, then no deposit should had been accepted under that category. The appellant tried and communicated various times with the jurisdictional department and GSTN but the issue was not resolved. The appellant provided the evidences of such communication. The GSTN was in its initial stage and there was no clarification on such e of issues. I find that the appellant cannot be blamed for such fault on behalf of GSTN. I find that there was no option with the appellant but to get a fresh registration under proper category for tax payment and filing of returns and claim for refund for the amount lying in their electronic ledger.

6. The appellant obtained a fresh registration on 23.10.2017 under service provider category and started tax payment onward. For amount lying in Electronic Cash Ledger the appellant filed a refund claim of Rs. 1,44,97,066/- as per Section 54 of the CGST Act, 2017 on 12.12.2017. The adjudicating authority rejected the claim. I find the adjudicating authority erred in holding that the appellant has neither deposited the tax to the Government exchequer during the period July 17 to August 17 and nor filed the returns for the period. On the perusal of evidences of communication of the appellant with the department, I find that the appellant made all efforts to deposit the tax in proper head and file the returns. But he couldn't as it was not possible. It was a responsibility of the department to resolve the issue. The appellant should not be suffered for such default of the department.

7. I find that the adjudicating authority again erred in holding that the duty liability arisen during the period July 17 to August 2017 was not discharged by them. The refund claim was filed by GSTN No. 09AVKPS1666H2Z1 (under ISD category), against whom there is no tax liability. The new registrant (GSTN No. 09AVKPS1666H3Z0) under same PAN has separate identity. The tax liability of a tax payer cannot be recovered from another tax payer. Hence, the appellant's claim of refund under GSTN No. 09AVKPS1666H2Z1 appears to be legal and proper and to be allowed.”

28. It is also a fact, the entire amount of tax deposited against the ISD/original registration lying in the Electronic Cash Ledger Rs. 1,44,97,066/- was directed to be refunded to the petitioner no.1. As a fact, it was refunded on 1.5.2019.

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Petitioner no.1 deposited the same on 6.5.2019 against his new registration. However, the revenue would contend that the said amount was adjusted against the tax demand for the month of April 2019.

29. Therefore, what we are left to deal with is not so much as to the legalities but equities. Normally, tax and equity do not go together. At the same time, it is not a charging provision that we are dealing with as may completely shut out the door for equity considerations to arise. The dispute has arisen only with respect to procedural laws.

30. In *Sangram Singh v. Election Tribunal*, AIR 1955 SC 425, while dealing with the provisions of the Criminal Procedure Code, 1973 in the conduct of trials, the Supreme Court observed as below:-

“16. Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

17. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.”

(emphasis in original)

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In *Jai Jai Ram Manohar Lal v. National Building*

Material Supply, Gurgaon, AIR 1969 SC 1267, a suit had been instituted in the name of Jai Jai Ram Manohar Lal. However, there was no legal person by that name. It was only a trade name of the proprietorship business of Manohar Lal. During pendency of the suit, Manohar Lal sought to amend the array of parties to provide for correct description of the plaintiff as “Manohar Lal Proprietor Jai Jai Ram Manohar Lal”. It was objected to by the defendant, amongst others on the ground that on the date of amendment sought, the suit was time barred. The amendment was allowed by the trial court. However, the High Court reversed the order of the trial court on the hypertechnical view that Jai Jai Ram Manohar Lal was a “non existing person”. Therefore, the amendment should not have been allowed. Reversing that decision, the Supreme Court observed as below:

“Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

From the early days, processual law has been recognized as

handmade and not mistress in the administration of justice. In
The State of Punjab and Another v. Shamlal Murari and
Another, (1976) 1 SCC 719, it was observed as under:

“..... We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the

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handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time.”

Again, it is a recognized principle in law that a
procedural law being an aid of justice may not stand in
contradiction or to defeat the very object that it seeks to
achieve which is fulfilment of the substantive law. In Saiyad
Mohammad Bakar El-Edroos v. Abdulhabib Hasan Arab and
Others, (1998) 4 SCC 343, it was observed as under:

“8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.”

31. In the present case, we find that the procedural law
brought to life by the Rules is enabled to work efficiently
through machine processes. In thus enabling the procedural
law, inadvertent machine errors have crept in. Though
unintended those are attributable to the GSTN. Unless the
processual law is made to yield to the higher requirements of
substantive law, wholly unintended and incurable injuries may
arise to the unsuspecting users of such machine processes.
Those injuries being unintended and being occasioned by the
machine errors noticed above, we unhesitatingly offer the
remedy the same.

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32. As noted above, the conduct of the parties was bonafide.
We have also reached the conclusion that initially, the
petitioner was not at fault inasmuch as a provisional
registration arose in his favour, with respect to “Manpower
Supply Services” - upon enforcement of the Act (under virtue

of Section 139 of the Act). Further, petitioner no.1 is seen to have disclosed his business activity in the original registration application as “Manpower Supply Service”, though he first disclosed his activity of ISD, by making a wrong click on the online form.

33. The error in disclosing the activity of the ISD is seen to have gone unnoticed on a mechanical and deficient machine processing made on the GSTN Portal inasmuch as, in absence of any pre-existing main/business registration, a ISD registration could never have arisen. Such mistake committed by petitioner no.1 was clearly bonafide and lacking of ill-intent inasmuch as it is not the case of the revenue that the said petitioner either had more than one business or place of business or that he had mis-utilized the original registration for any unmerited gain of ITC etc.

34. At the same time, as noted above, the revenue authorities not only permitted the petitioner to deposit tax against that ISD registration, they treated the petitioner to be a person registered for “Manpower Supply Services” inasmuch they also issued the notice dated 18.11.2019 seeking to cancel the original registration granted to petitioner no.1 for reason of his not filing the monthly returns for that activity, on Form GSTR-3B. These crucial mistakes were occasioned by and are
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attributable to the GSTN Portal alone that allowed for: ISD/original registration to arise to the petitioner No.1, in absence of any prior/existing registration for taxable/business activity; tax deposit to arise against ISD registration granted to petitioner No.1; issuance of show cause notice under section 46 of the Act for alleged non-filing of monthly returns on GSTR-3B by a ISD (that was wholly impossible in law).

35. To that extent, we find the genesis of the errors to be inherently and inseparably linked to the string of errors that arose later and were committed by both parties. They arose or were occasioned by the initial programming deficiency/error/lapse. It is attributable solely to the GSTN.

36. In the first place, all procedural laws are handmaid of

justice. As noticed above, they must subserve the higher substantive law. Second, increasingly, software based machine tools are being engaged to smoothen the application and compliance of procedural laws and make them more efficient to serve the ends of substantive justice. As human society moves towards increased engagement and therefore dependency on machine enabled processes to help/aid its functioning, extreme care is required to be taken by Courts, to override/correct pure machine errors or inadequacies, by direct and timely human intervention- by effectively using the more powerful and trustworthy human intelligence, in deserving facts. That deliberate/conscious effort is required to be enforced to ensure that the human society does not become a slave of technology it creates, rather, it may remain the master thereof. Unless human agencies are enabled to and they

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correct the machine errors/inadequacies, the needs of substantive justice may remain unaddressed or defeated, at the hands of imperfect/defective machine processing, whether such machine errors are innocent or arising from negligence.

37. For the present, we find, petitioner no.1 entitled to the relief such that the second registration granted to him be treated to be effective from the date 1.7.2017, on a deemed basis. In absence of lack of bonafides and in face of the established machine error that we have noted, grant of that relief has become imperative for non-negotiable justice considerations. Unless that equitable relief is granted, the demand of substantive justice would stand defeated primarily to unintended human errors reflected in imperfect machine processes employed to implement procedural laws. That equitable relief is not found barred in law. Rather, it is well deserved by the petitioner no.1. It must be granted to ensure the justice delivery system does not loose its meaning and purpose to the heartless acts of a machine.

38. As to the actual substantive relief being claimed i.e. benefit of tax deposit, made against the original/ISD registration, in view of the fact that that tax deposit had arisen

at the relevant time though under inadequate registration and in view of the further fact that the petitioner no.1 was refunded the amount on 1.5.2019 that he again deposited against his new registration on 6.5.2019, we find the petitioner no.1 is not to blame to that extent. However, that may not be enough to allow consequential benefit of ITC to arise to petitioner No.2

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under the new registration granted to petitioner No. 1 with effect from 1.7.2017.

39. The substantive relief of benefit of ITC arising to the petitioner no.2 on the sales performed by the petitioner no.1 from 1.7.2017 till 31.8.2017 would hinge on the further conduct of petitioner no.1 regarding deposit of tax on the due date while filing the return relevant to the revised Tax Invoices that came to be issued by the petitioner on 23.10.2017 i.e. upon the fresh registration being granted. If the due tax on the revised Tax Invoices had been deposited along with the return for the month of October 2017, the respondent including the GSTN shall make appropriate arrangement to allow for availment of the Input Tax Credit to petitioner no.2 against such revised Tax Invoices. If however there were delays or non-compliance to that extent, the relief being claimed by petitioner no.1 shall stand accordingly modified.

40. Consequent to that due verification, the disclosure made in GSTR-1 of petitioner no.1 for the month of October 2017 would be modified by GSTN to reflect on the corresponding GSTR-2A, relevant to petitioner no.2 for the period July to September 2017 and all consequences to arise to the petitioners. To that extent, the order passed by the Authority for Advance Ruling may not stand in the way of the petitioners.

41. If software limitations would not allow such exercise to be undertaken now, appropriate orders may be passed by respondent no.5/Assistant Commissioner, Central GST, Wegmans Business Park, Division-I, Gautam Budh Nagar,

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Greater NOIDA, Uttar Pradesh, to that effect, to overrule the

dictate of the machine and to make it abide by this declaration made. Unless that is done, the society of the inventor of the 'wheel' may be seen puzzled and carrying the 'wheel' over its collective head, without any use or purpose.

42. The above exercise may be completed as expeditiously as possible, preferably by 31.03.2024.

43. With the aforesaid observations, present petition stands allowed. No order as to costs.

44. Let a copy of this order be communicated to the Central Board of Indirect Taxes & Customs (CBIC)-respondent No. 4 for issuing necessary directions, either generally or in the particular facts of this case to remedy this and similar situations caused due to machine errors.

Order Date :- 26.10.2023 Prakhar/Faraz

(Surendra Singh-I, J.) (S.D. Singh,J.)

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2023-12-07T14:02:41+0530 High Court of Judicature at Allahabad