M/S Universal Enterprises v. Union Of India And Another

WRIT TAX No. 1015 of 2023 | Decision: 2023-10-05 | Allahabad High Court

Neutral Citation No. - 2023:AHC:199418-DB

Chief Justice's Court

Case :- WRIT TAX No. - 1015 of 2023

Petitioner :- M/S Universal Enterprises Respondent :- Union Of India And Another Counsel for Petitioner :- Anil Prakash Mathur Counsel for Respondent :- A.S.G.I.,Krishna Agarawal,Om Prakash Mishra

Hon'ble Pritinker Diwaker,Chief Justice Hon'ble Ashutosh Srivastava,J.

1. Heard Shri A.P. Mathur, learned counsel for the petitioner, Sri Krishna Agarwal, learned counsel for revenue and Shri Om Prakash Mishra, learned counsel for the Union of India.

2. The instant writ petition has been filed assailing the order dated 25.04.2023 passed by the Joint Commissioner, Central GST, Ghaziabad whereby and whereunder the Input Tax Credit availed and further utilized by the petitioner against invoices issued without actual receipt of goods has been held to be inadmissible in terms of Section 16 of the CGST Act, 2017 read with Rule 36 of CGST rules, 2017 and the demand and recovery of input tax credit amounting to Rs. 15,64,58,361 (IGST 8,04,90,895/- +CGST Rs/ 3,79,83,733/- + SGST Rs. 3,79,83,733/-) availed and utilized on the basis of fake invoices issued by non existent suppliers without concomitant goods during the period from October 2017 to March 2022 under Section 74 (1) of the CGST Act, 2017 and UPGST Act, 2017 read with Section 20 of the IGST Act, 2017, from the petitioner along with interest under Section 50 of the CGST Act 2017 and UPGST Act, 2017 read with Section 20 of the IGST Act, 2017 has been confirmed. At the same time penalty has been imposed on the non existent suppliers under Section 122 (1)(ii) and Section 122 (1)(vii) of the CGST Act, 2017 for issuing tax invoices without actual supply of goods or services or both.

3. It is the case of the petitioner that it is a Proprietorship concern engaged in the trading of mild Steel Scrap and other items namely Bars and Rods, hot rolled of Stainless Steel and ferrous waste/scrap and ingots of iron and Steel. The Firm is duly registered under the GST Act 2017 since 19.09.2017. The petitioner availed input tax credit of Rs. 50.55 crores on the basis of goods supplied from 199 suppliers during the period October

2017 to March, 2022. The respondents were of the view that 34 suppliers of the petitioner were found suspicious and investigations were made. The petitioner was issued a Show Cause Notice on 27.07.2022 alleging that the petitioner had availed ITC to the tune of Rs. 15,64,58,361/- on the basis of invoices issued by non existent firms and why the same be not recovered from the petitioner. The petitioner filed detailed reply to the Show Cause and requested for cross examination of the persons on whose version the Department made out a case against the petitioner but the same was not allowed. It is further alleged that all principles of natural justice were sacrificed. It is vehemently argued that the petitioner had rightly claimed the Input Tax Credit on the basis of the invoices issued by the Suppliers. The presumption of the respondents that the suppliers are non existent and fictitious is without any basis and is liable to be set aside. Reliance has been placed upon the decisions reported in 2022 (59) GSTL 45 (All), 2023 (71) GSTL 141 (Chhatisgarh), 2019 (367) ELT 614 (Bom.), 2022 (57) GSTL 374 (Pat), Writ Petition (C) 3820 of 2023 (Anuj Gupta vs. Commissioner of Central Tax GST Delhi East) and connected matters decided on May, 2, 2023, 2021 (44) GSTL 228 (Telangana); 2022 (63) GSTL 305 (Pat.) and 2023 (76) GSTL 49 (2023) (8) Central 10 (All).

4. Sri Krishna Agarwal, learned counsel for the Revenue in opposition to the writ petition submits that the impugned order does not suffer from any infirmity warranting its setting aside in exercise of jurisdiction under Article 226 of the Constitution of India especially in view of an alternative remedy available to the petitioner to assail the impugned order in Appeal under Section 107 of the CGST Act, 2017.

5. We have heard the learned counsel for the parties and have perused the record.

6. From the perusal of the impugned order we find that the Assessing Authority has passed a detailed order considering the objections/reply of the petitioner filed to the Show Cause and has returned the finding that the petitioner has availed the ITC and further utilized the same against tax invoices issued by suppliers without actual receipt of the goods and has accordingly held the petitioner to be liable. There is no dispute about the legal position that availability of an alternative remedy is not an absolute bar for exercise of jurisdiction under Article 226 of the Constitution of India, where there is clear violation of the procedure established by law or in violation of the elementary principles of natural justice. However in the case at hand the impugned order is a reasoned and

speaking order passed after affording opportunity of hearing to the petitioner and considering it objection/reply.

7. The Apex Court recently in the case of State of Karnataka vs. M/s Ecom Gill Coffee Trading (Civil Appeal No. 230 of 2023 (arising from SLP Civil No. 2572 of 2022) while dealing with similar issue as raised in the instant writ petition observed that ITC can be claimed only on genuine transactions of sale and purchase. For claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer/s fails/fail to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them from the concerned dealers and on which the ITC have been claimed, the Assessing Officer is absolutely justified in rejecting such ITC claim.

8. According to the dictum of the Apex Court, the purchasing dealer, over and above the invoices and the particulars of payments, has to produce further material like the name and address of the selling dealer, details of the vehicles which has delivered the goods, payment of fright charges, acknowledgement of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers.

9. In our opinion it is not a fit case where the efficacious alternative remedy available to the petitioner can be bye passed.

10. In such view of the matter the writ petition is dismissed on the ground of alternative remedy.

Order Date :- 5.10.2023 Deepak/

(Ashutosh Srivastava,J.) (Pritinker Diwaker,CJ.)

2023-10-17T16:07:04+0530 High Court of Judicature at Allahabad