

(2019) 12 JH CK 0270

Jharkhand High Court

Case No: Writ Petition (T) No. 2246 Of 2019

Shree Nanak Ferro Alloys Pvt. Ltd

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Dec. 18, 2019

Acts Referred:

- Central Goods And Services Tax Act, 2017 - Section 49(3), 49(4), 49(5), 77, 77(1)
- Integrated Goods And Services Tax Act, 2017 - Section 19, 19(2)
- Central Goods & Services Tax Rules, 2017 - Rule 92, 92(1)

Hon'ble Judges: H. C. Mishra, J; Deepak Roshan, J

Bench: Divison Bench

Advocate: Sumeet Gadodia, Ratnesh Kumar

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioner Company and learned counsel for the CGST & Central Excise.

2. The petitioner is aggrieved by the letter dated 26.04.2019, issued by the respondent No.2, as contained in Annexure-7 to the writ application,

whereby the petitioner Company has been saddled with the liability to pay the short paid IGST, amounting to Rs.41,98,642/-, along with due interest

within a period of one week, failing which, appropriate action under the Provisions of the Central Goods & Services Tax Act, 2017, and the Rules

framed there under, was to be initiated against the petitioner for recovery of the IGST amount along with due interest.

3. The petitioner is a company registered under the provisions of the Central Goods & Services Tax Act, 2017, (herein after referred to as the 'CGST

Act'), and the Integrated Goods and Services Tax, Act, 2017, (herein after referred to as the 'IGST Act'). The dispute relates to the month of

September, 2017, i.e., soon after the implementation of the aforesaid Acts, wherein the petitioner filed its GSTR-1, showing his total Integrated Tax

liability for that month at Rs.74,51,127/-, the Central Tax liability to be Rs.2,68,470/-, and State Tax liability for Rs.2,68,470/-. Subsequently, the

petitioner submitted its GSTR- 3B, in which the Integrated Tax liability was shown to be Rs.32,52,484.58/- as against the actual liability of

Rs.74,51,127/-, and Central Tax liability was shown to be Rs.44,67,113.71/- as against the actual liability of Rs.2,68,470/-. In other words, in the liability

shown under the IGST there was a deficient liability amounting to Rs.41,98,642.42/-, whereas in the CGST the excess was shown to the tune of

Rs.41,98,643.71/-, and the tax was also paid accordingly. This remained unnoticed for a period of about one year, and subsequently by letter dated

01.11.2018, as contained in Annexure-3 to the writ application, the petitioner Company was informed that in course of audit by CERA, it was

observed after the scrutiny of GSTR-I and GSTR-3B filed by the petitioner, that the petitioner had short paid Integrated tax to the tune of

Rs.41,98,842/- and accordingly, the petitioner was asked to make the payment along with the interest.

4. The said letter was replied by the petitioner Company by letter dated 19.11.2018, as contained in Annexure-4 to the writ application, whereby it was

informed that the Company had actually paid the amount of the IGST of Rs.41,98,643/-, but inadvertently it was paid under the head of CGST, instead

of IGST, and as such it was not a case of short payment, rather, it was the case of payment of IGST under a different head. It was also stated in the

letter that this mistake had occurred in the early phase of implementation of the GST, and accordingly, the adjustment of the said amount may be made

in the appropriate head. The said request of the petitioner Company was not exceeded to, and by letter dated 26.04.2019, as contained in Annexure-7

to the writ application, the petitioner was again asked to deposit the IGST amounting to Rs.41,98,642/- along with interest thereon, which letter is under

challenge in the present writ application.

5. It is submitted by learned counsel for the petitioner that actually there was no short payment of tax by the petitioner, rather, the payment of tax was made under the wrong head in CGST, in which there was no liability of that amount. The tax was paid well within time and the mistake had occurred due to the fact that it was the early phase of the implementation of the GST regime. Learned counsel submitted that it was only a bona fide mistake on part of the petitioner, inasmuch as, in their return GSTR-3B, the petitioner Company had inadvertently classified the transaction to be the intra-State supply, whereas it was actually an inter-State supply. It is submitted by learned counsel that in reply to the letter dated 19.11.2018, a detailed reply had been given to the petitioner Company by the respondent No.2, which has been brought on record by Annexure-6 to the writ application, in which it is stated that while filing GSTR-1, the Company was aware about the nature of the outwards supply at the time of supply itself, regarding its nature being inter-State. However, while filing GSTR-3B, the stand which was correctly taken in GSTR-1 had now been changed and accordingly, the tax and interest liabilities of the petitioner were there, for the reasons detailed in the said letter. In the said letter, it is also shown that for making the deposit of the tax under the CGST head, the amount of Rs.43,61,043/- was deposited by the petitioner in its electronic cash ledger, in cash, and thereafter from the same electronic cash ledger the tax was paid under the CGST head. It is submitted by learned counsel for the petitioner that had there been any otherwise intention of the petitioner Company, the petitioner would not have deposited the cash in its electronic cash ledger for making the payment of IGST, as the same amount could have been utilised by the petitioner in the electronic cash ledger to be used for IGST head as well.

6. Learned counsel for the petitioner has further drawn our attention towards Section 77 of the CGST Act, as also Section 19 of the IGST Act, to show that under Section 77(1) of the CGST Act, if a registered person who has paid the Central tax, as in the case of the petitioner, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be inter-State supply, shall be entitled to the refund of the tax amount so paid, and in the similar manner, it is provided under Section 19(2) of the IGST Act, that the registered person, who has paid Central tax, as in the

case of the petitioner, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not

be liable to pay interest on the amount of the Integrated tax payable. Drawing our attention towards these provisions, learned counsel for the petitioner

submitted that under Section 77(1) of the CGST Act, the petitioner was fully entitled to get the refund of the CGST paid by him wrongly, and at the

same time was not liable to pay any interest, under the provision of Section 19(2) of the IGST Act.

7. Learned counsel for the petitioner has further pointed out that under Rule 92 of the Central Goods & Services Tax Rules, 2017, (herein after

referred to as the 'CGST Rules'), there is provision of making adjustments, and accordingly the tax wrongly paid under the CGST head could be

adjusted under the IGST head as well, which facility was wrongly denied to the petitioner Company. Learned counsel submits that the petitioner is also

ready to make payment of tax under IGST head if so directed, within a week, and to claim the refund of the tax paid by him under the CGST head, or

claim the adjustment thereof against their future liabilities, but learned counsel submits that in no case interest is payable by the petitioner Company.

8. Learned counsel for the CGST, on the other hand, has opposed the prayer, and has drawn our attention towards the letter dated 05.04.2019, as

contained in Annexure-6 to the writ application, from which it is shown to us that GSTR-1 was submitted by the petitioner rightly, showing the supply

to be the inter-State supply and also rightly showing the Integrated tax liability thereon at Rs. 74,51,127/-, the Central tax liability as Rs.2,68,470/-, as

also the State tax liability of the same amount, i.e., Rs. 2,68,470/-. It is submitted by the learned counsel for the CGST that filing of the form GSTR-1

clearly indicated that the petitioner was fully aware of the nature of the supply that it was inter-State supply made by the petitioner, and accordingly,

the GSTR-3B was filed by the petitioner intentionally showing their liability under the IGST to be only Rs.32,52,485/- and also wrongly showing CGST

liability to be Rs.44,67,114/- for the reasons best known to the petitioner.

9. Learned counsel for the CGST has further submitted that there is no provision for transfer / adjustment / utilization of paid tax from one head to the

other head and accordingly, the submission of the petitioner could not be acceded to. Learned counsel has also drawn our attention towards Article

269-A of the Constitution of India, to show that though it is the Central Government which realises the tax under the IGST head, but it also includes

the proportion of the tax of the State to which it may be applicable, and accordingly, it is submitted by learned counsel that by the extra payment of

CGST, though the tax was paid in the coffer of the Central Government, but the concerned State was denied of its proportion in the tax deposited by

the petitioner, and accordingly, the liability of the interest shall be made out.

10. Learned counsel for the CGST has also drawn our attention towards Section 49(3) of the CGST Act, to show that the amount available in the

'electronic cash ledger' may be used for making any payment towards tax or other dues under the provisions of this Act, i.e., only under the CGST

head, and there is no such provision as is available for 'electronic credit ledger' under Section 49(4) and (5), for using that ledger for payment of the

tax either in the IGST head or CGST head or even in the State head. It is submitted by learned counsel that since in the present case, the payment

was made through 'electronic cash ledger' and not through 'electronic credit ledger', there cannot be any adjustment of the tax paid by the petitioner,

from CGST to IGST head.

11. Learned counsel for the CGST further submits that Section 77 of the CGST Act, or Section 19 of the IGST Act, shall not be applicable in the case

of the petitioner, due to the wordings of these provisions, which show the bona fides of the registered person who pays the tax, and the cases where

the tax is paid under the wrong head deliberately, as in the case of the petitioner Company, which filed the GSTR-1 correctly, and GSTR-3 B changing

the stand deliberately, these provisions shall not apply.

12. Learned counsel for the CGST also submitted that even Rule 92 of the CGST Rules, is not applicable in case of the petitioner, inasmuch as, these

Rules for adjustment of the amount is applicable against the outstanding demand under the Act, or any existing law. It is submitted that this Rule

cannot be made applicable for the adjustment of the liability of tax under the IGST Act, inasmuch as, the said law was not existing on the date of

coming into force of the CGST Rules, or CGST Act, as both these Acts have been enacted on the same day. Learned counsel accordingly, concluded

that there can be no case of adjustment of the CGST amount deposited by the petitioner, to IGST head, and in view of the fact that under the IGST

head the Central Government also receives the tax on behalf of the State, and the concerned State has been deprived of its portion of tax, the interest

is also liable to be levied from the petitioner Company.

13. Having heard learned counsels for both the sides, we think it appropriate to quote some of the necessary provisions which have been referred to,

by learned counsels for the parties. Section 49 (3) and (4) of the CGST Act reads as follows:-

“49. Payment of tax, interest, penalty and other amounts.-

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other

amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within

such time as may be prescribed.

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the

Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.”

Section 77 of the CGST Act reads as follows:-

“77. Tax wrongfully collected and paid to Central Government or State Government.” (1) A registered person who has paid the

Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an

intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner

and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is

subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the

case may be, the Central tax and the Union territory tax payable.â€

Section 19 of the IGST Act reads as follows:-

â€œ19. Tax wrongfully collected and paid to Central Government or State Government.â€" (1) A registered person who has paid integrated

tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted

refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by

him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the

amount of integrated tax payable.â€

Rule 92 (1) of the CGST Rules reads as follows:-

â€œ92. Order sanctioning refund. - (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-

section (5) of section 54 is due and payable to the applicant, he shall make an order in Form GST RFD- 06 sanctioning the amount of

refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6)

of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount

refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any

existing law, an order giving details of the adjustment shall be issued in Part A of Form GST RFD-07.â€

14. Coming to the facts of the present case, we find that admittedly, the petitioner Company had discharged their tax liability under the IGST head, but

inadvertently or otherwise, the petitioner deposited the amount under the CGST head. It is not the case that the petitioner Company has concealed the

transaction or has committed any fraud in discharging its tax liability. It is a plain case in which the tax has been paid by the petitioner to the Central

Government, but not under the IGST head, rather under the CGST head. The contention of learned counsel for the CGST is that there was some ulterior motive behind the deposit of tax under the CGST head, which is evident from the fact that the petitioner had filed its GSTR-1 in which the tax liability was correctly shown, showing the supply to be the inter-State supply, but the stand was changed in the form GSTR-3B. From the letter dated 05.04.2019, issued by the respondent No.2 as contained in Annexure-6 to the writ application, it is apparent that for discharging his liability of tax, the petitioner had deposited cash in its electronic cash ledger, as admitted in the letter itself. Had there been otherwise intention on the part of the petitioner, the same cash could have been deposited by the petitioner in the electronic cash ledger used to deposit the tax under the IGST head, but it is the claim of the petitioner that inadvertently due to the fact that it was the initial stages of the GST regime, the cash was deposited in the electronic cash ledger of CGST head. There appears to be substance in the submission of learned counsel for the petitioner, inasmuch as, by deliberately depositing the cash in the electronic cash ledger for the CGST head, at the place of IGST head, possibly no benefit was going to be derived by the petitioner Company. In that view of the matter, we are not in a position to doubt the bona fides of the petitioner Company, that due to the initial stage of the CGST regime, there might be some confusion, and the cash was wrongly deposited in the wrong electronic cash ledger.

15. That being the position, though we find from the plain reading of Section 49 (3) and (4) of the CGST Act, that learned counsel for the CGST may be right in his contention that under Section 49 (3) of the CGST Act, the 'electronic cash ledger' may be used for making the payment of the tax and the other liabilities under this Act only, i.e., CGST Act, and there is no provision of cross utilization of the fund as in case of 'electronic credit ledger' under Section 49 (4) of the CGST Act, but Section 77(1) of the CGST Act, read with Section 19(2) of the IGST Act, clearly lay down that a registered person who has paid the Central tax, treating the transaction to be intra-State supply, as in the case of the petitioner, but which turns out to be inter-State supply, is entitled to the refund of the amount of tax so paid, under Section 77 (1) of the CGST Act, and at the same time such person

cannot be saddled with the liability of interest in view of the provision of Section 19 (2) of the IGST Act. The contention of the learned counsel for the CGST that these provisions are for the persons acting bona fide, may also be accepted, but there is nothing on the record of this case to show that the petitioner Company had not acted bona fide, particularly in view of the fact that the transaction relates to the early stages in which the GST regime had been implemented, and there might be some confusion prevailing at that initial stage. In that view of the matter, we do not find any plausible reason whatsoever, to deny the petitioner Company the benefit of the provisions of Section 77 (1) of the CGST Act, read with Section 19(2) of the IGST Act.

16. We are not entering into the question whether the amount deposited by the petitioner wrongly under the CGST head could be adjusted under the IGST head, as learned counsel for the petitioner has very fairly conceded that the petitioner can deposit the amount of tax within a week and shall either claim the refund of the amount wrongly deposited under the CGST head, or the same may be adjusted against their future liabilities under the CGST head.

17. In that view of the matter, we direct the petitioner Company to deposit the amount of Rs. 41,98,642/-, under the IGST head within a period of 10 days from today, towards the liability of September, 2017. The petitioner shall not be liable to pay any interest on the said amount. The petitioner shall also be entitled to get the refund of the amount of Rs.41,98,644/- deposited by them under the CGST head, or they may get the amount adjusted against their future liabilities, in accordance with law, as they may choose.

18. Consequently, the letter dated 26.04.2019, issued by the respondent No.2, as contained in Annexure-7 to the writ application, saddling the petitioner Company with the liability to pay the short paid IGST, amounting to Rs.41,98,642/-, along with interest, is hereby, quashed.

19. This writ application is accordingly, allowed, with the directions and observations as above.