

Madras High Court: Allows rectification of GSTR-1 to avail credit in absence of enabling provision

The Hon'ble Madras High Court in the case of **M/s. Sun Dye Chem v. The Assistant Commissioner [W.P. No. 29676 of 2019 dated November 6, 2020]** has held that absence of enabling provision cannot jeopardize taxpayer from availing credit that they are entitled to, while allowing them to rectify and correct Form GSTR-1 for the period August 2017 to December 2017 and redistribute the credit available from Integrated Goods and Services Tax ("**IGST**") column to Central Goods and Services Tax ("**CGST**") and State Goods and Services Tax ("**SGST**") fields.

Facts:

The M/s. Sun Dye Chem ("**Petitioner/Assessees**") filed the monthly return for the period August 2017 to December 2017 in the GST portal in Form GSTR-3B. The returns were accompanied by annexures in Form GSTR-1 that reflected CGST, SGST and IGST. There was however, an inadvertent error in reporting in Form GSTR-1 in regard to the outward supplies and as a result, Intra-state sales had been erroneously reported as inter-state sales.

The error was noticed by the Petitioner when its customers brought to its notice the fact that the tax credit has been reflected in the IGST column instead of CGST/SGST columns posing a difficulty to the customers to avail the said credit.

The Petitioner submitted a request for amendment of Form GSTR-1 that came to be rejected on August 12, 2019 on the ground that there was no provision to grant the amendment sought, in any event, not after March 31, 2019 as **Notification No. 71/2018-Central Tax dated December 31, 2018** had extended the time for submission of the amended GSTR-1 till March 31, 2019, for the period 2017-18. The Petitioner was thus unable to correct the error.

Issue:

Whether the Petitioner be permitted rectify Form GSTR-1 for the period August 2017 to December 2017 and redistribute the credit available from the IGST column to the CGST and SGST fields?

Held:

The Hon'ble Madras High Court in ***W.P. No.29676 of 2019, dated November 6, 2020*** held as under:

- A registered person who files a return under Section 39(1) of the CGST Act involving intra-State outward supply is to indicate the collection of taxes customer-wise in monthly return in Form GSTR-1 and the details of tax payment therein are auto populated in Form GSTR -2-A of the buyers. Any mismatch between Form GSTR-1 and Form GSTR-2A is to be notified by the recipient by way of a tabulation in Form GSTR-1A. Admittedly, Forms in GSTR-2A and GSTR-1A are yet to be notified as on date. The statutory procedure contemplated for seamless availment is, as on date, unavailable.
- The Hon'ble Court observed, that the Petitioner in this case has committed an error in filing of the details relating to credit. What should have figured in the CGST/SGST column has inadvertently been reflected in the IGST column. It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the Petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column. It is for this purpose, to ensure that the suppliers do not lose the benefit of the credit, that the present writ petition has been filed.
- Admittedly, the March 31, 2019 was the last date by which rectification of Form – GSTR 1 may be sought. However, and also admittedly, the Forms, by filing of which the Petitioner might have noticed the error and sought amendment, viz. GSTR-2A and GSTR-1A are yet to be notified. Had the requisite Forms been notified, the mismatch between the details of credit in the Petitioner's and the supplier's returns might well have been noticed and appropriate and timely action taken. The error was noticed only later when the Petitioners' customers brought the same to the attention of the Petitioner
- Held that, in the absence of an enabling mechanism, Assessee should not be prejudiced from availing credit that they are otherwise legitimately entitled to. The error committed by the Petitioner is an inadvertent human error and the Petitioner should be in a position to rectify the same, particularly in the absence of an effective, enabling mechanism under statute. The Petitioner is permitted to re-submit the annexures to Form GSTR-3B with the correct distribution of credit

between IGST, SGST and CGST and the respondents shall take the same on file and enable the auto-population of the correct details in the GST portal.

To know “**How to correct GST credit coming in wrong head of GSTR 2A or availed wrongly in GSTR 3B**” kindly watch the video by CA Bimal Jain-
<https://www.youtube.com/watch?v=FBsrWjmLLt8&t=13s>

Relevant Provisions:

Section 37 of the Central Goods and Service Tax Act, 2017 (“CGST Act”):

“37. Furnishing details of outward supplies.- (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

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

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon

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discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation.—For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.”

Section 38 of the CGST Act:

“38. Furnishing details of inward supplies - (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 verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a nonresident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner.

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.”

Section 39 of the CGST 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 and manner 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, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(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 Central tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under subsection (1) or subsection (2) or subsection (3) or subsection (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.

(8) Every registered person who is required to furnish a return under subsection (1) or subsection (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 subsection (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.”

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