

**GST authorities must avoid a blinkered view while adjudicating/assessing the tax liability of the taxpayer**

The Hon'ble Karnataka High Court in ***M/s. Orient Traders v. the Deputy Commissioner of Commercial Taxes (Audit) [Writ Petition No. 2911 of 2022 (T-RES) dated December 16, 2022]*** has permitted the assessee to make the necessary changes to its Form GSTR 3B returns for the months of July, 2017 and March, 2018 and held that, allowing the assessee to make such changes, would not cause any prejudice to the Revenue Department nor would it upset the chain of credit under the Goods and Services Tax ("**GST**") scheme. Further held that, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

**Facts:**

M/s Orient Traders ("**the Petitioner**") is engaged in the supply of machinery, mechanical appliances, parts and its erection, commissioning and installation.

The Petitioner submitted its GST Returns in **Form GSTR-3B** for the Financial Year 2017-18. The Revenue Department ("**the Respondent**") issued a notice to the Petitioner on January 20, 2021 calling for books of accounts in order to conduct a Desk Audit and thereafter, an Audit Enquiry was issued on July 12, 2021 under Section 65(6) of the CGST Act read with Rule 101(4) of the Central Goods and Services Rules, 2017 ("**the CGST Rules**").

While reviewing the returns, the Petitioner noticed that certain inadvertent errors and mistakes were made while filing its returns, wherein, the Petitioner had claimed the Input Tax Credit ("**ITC**") under wrong column, and due to oversight and inadvertence the Petitioner had considered the import Integrated Goods and Services Tax ("**IGST**") pertaining to July 2017 as local IGST and import IGST pertaining to March 2018 as local Central Goods and Services Tax ("**CGST**") and State Goods and Services Tax ("**SGST**"). This error resulted in a mismatch

between the **Form GSTR-3B** and **Form GSTR-2A** due to which the Respondent stated that the ITC which had accrued to the Petitioner was liable to be disallowed.

The Petitioner had sought permission to rectify these errors by submitting a revised input table on July 29, 2021 but the same was rejected by the Respondent. Thereafter, a Show Cause Notice was issued on January 17, 2022 ("**the Impugned SCN**") by the Respondent under Section 73(1) of the CGST Act, proposing to disallow the ITC due to such errors.

Being aggrieved, this petition has been filed.

**Issue:**

Whether the Petitioner can be allowed to rectify its GST returns filed for the months of July, 2017 and March, 2018?

**Held:**

The Hon'ble Karnataka High Court in ***Writ Petition No. 2911 of 2022 (T-RES)*** held as under:

- Stated that, the introduction of GST required a major overhaul of the indirect tax regime, including the number and formats of statutory returns that were to be filed and that it was expected that dealers across the country would take a reasonable amount of time to readjust to the new system.
- Noted that, the Petitioner entered certain figures in the wrong column of its Form GSTR-3B returns for the months of July 2017 and March 2018 i.e. during the very first Financial Year after the introduction of GST.
- Observed that, the ITC which is admittedly available to the Petitioner has been entered under the wrong column due to errors which are entirely bona fide and inadvertent therefore, a lenient view is required to be taken, particularly since the tax periods involved relate to the very first year of the GST regime.

- Opined that, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the CGST Act.
- Further noted that, the Respondent were aware of the actual figures and error committed by the Petitioner, but has chosen to selectively ignore the IGST import amounts reflected in the ICEGATE portal of the Customs Department for all the months, except those in which the errors have been committed.
- Held that, the Petitioner is entitled for the limited relief of being permitted to make the necessary changes to its **Form GSTR-3B** return for the months of July 2017 and March 2018, particularly, since doing so would not cause any prejudice to the Respondent nor would it upset the chain of credit under the GST scheme.
- Set aside the the Impugned SCN.
- Directed the Respondent, to permit the Petitioner to carry out the corrections online by reopening the portal for a limited period.

**Relevant Provisions:**

**Section 65 of the CGST Act:**

*“Audit by tax authorities.*

*(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.*

*(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.*

*(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.*

*(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:*

*Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.*

*Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.*

*(5) During the course of audit, the authorised officer may require the registered person,-*

*(i) to afford him the necessary facility to verify the books of account or other documents as he may require;*

*(ii) to furnish such information as he may require and render assistance for timely completion of the audit.*

*(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.*

*(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.”*

#### **Section 73 of the CGST Act:**

*“Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts-*

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.*

*(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.*

*(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own*

*ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.*

*(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any*

*amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.”*

**Rule 101 of the CGST Rules:**

*“Audit-*

*(1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or part thereof or multiples thereof.*

*(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.*

*(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.*

*(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.*

*(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.”*

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