

***THE HON'BLE SRI JUSTICE SUJOY PAUL**

AND

***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+WRIT PETITION No.648 of 2024

% 11-07-2024

#M/s. Standard Chartered Bank.

...Petitioner

vs.

\$The Principal Commissioner of Central Tax & others.

... Respondents

!Counsel for the Petitioner : Sri Lakshmi Kumaran Sridharan.

^Counsel for Respondent Nos.1 to 4 : Sri B.Narayan Reddy,
Senior Counsel representing
Sri Uday Kumar Bhagwath.

<Gist :

>Head Note :

? Cases referred

1. 2023(2) TMI 64 – SC
2. 1996(81) E.L.T.3 (S.C.)
3. 2013 (9) SCC 363

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

* * * *

WRIT PETITION No.648 OF 2024

(Per Hon'ble Sri Justice Sujoy Paul)

Between:

M/s. Standard Chartered Bank.

...Petitioner

vs.

The Principal Commissioner of Central Tax and others.

... Respondents

JUDGMENT PRONOUNCED ON: 11.07.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION No.648 of 2024

ORDER: *(per Hon'ble Justice Sujoy Paul)*

This petition filed under Article 226 of the Constitution contains an interesting conundrum whether the petitioner Bank which is Registered under Sales Tax and GST regime in Maharashtra, but could not file its return in GST portal of that State because of technical glitch and filed it in the GST portal of Telangana can be saddled with demand, penalty and interest despite the fact that Bank's branch, exists in the State of Telangana. Moreso, when credit taken by petitioner was transferred to Maharashtra portal on the same day. The quagmire is about the scope and ambit of Section 140 of GST Act, 2017.

FACTS:-

2. The facts are in narrow compass and are not in dispute. The Headquarter of the petitioner's bank is in Mumbai, Maharashtra and the centralized Registration of petitioner's bank is also at Maharashtra under the Service Tax as well as under the Goods and Services Tax, 2017 (for short, the Act).

3. The Act came into being with effect from 01.07.2017 and the petitioner was entitled to enjoy the credit of Rs.1,41,26,69,646/-. The petitioner made efforts to file the Return in the official GST portal of Maharashtra, but because of technical glitch in the Maharashtra portal, his efforts went in vain. Petitioner admittedly, has a branch in Telangana and accordingly, on 18.10.2017, he filed the Returns in the portal of Telangana and took credit on the same day and transferred it on the same day to the portal of Maharashtra.

4. The petitioner was served with a pre-show cause notice on 03.09.2021 (Annexure P-16) wherein it was alleged that the credit availed by the petitioner through TRAN-I return filed by the Telangana registration is ineligible and requires to be reversed along with applicable interest and penalty. The petitioner promptly filed reply on 09.09.2021 (Annexure-P-17) and made it clear that total transitional credit of Rs.1,41,26,69,646/- was transferred to Maharashtra GST registration on the same day of filing the TRAN-1 and only the differential balance of ITC amounting Rs.2,00,000/- was available in the State of Telangana. To support the aforesaid submission, the Electronic Credit Ledger for the period July, 2017 to March, 2018 was annexed with the reply.

5. The respondents issued a show-cause notice dated 29.12.2021 and in turn the petitioner filed his detailed reply on 27.01.2022 (Annexure P-20). The respondents were not satisfied with the reply to the show-cause notice and passed the impugned Order-in-Original dated 31.10.2023, which is subject matter of challenge in this petition. By this order respondent No.2 ordered as under:

“ORDER

a) I confirm the demand of Rs.1,41,26,69,646/- (Rupees One hundred and forty one crores twenty six Lakhs sixty nine thousand six hundred and forty six only), being the irregularly availed transitioned credit through TRAN-1 in the State of Telangana under Section 140 of the CGST Act, 2017 read with Section 74 of the CTGST Act, 2017 and Rule 121 at CGST Rules, 2017.

(b) I confirm the demand of Interest on the amount mentioned at (a) above under Section 50 read with Section 74(9) of the CGST Act, 2017.

(c) I impose penalty equivalent to the amount mentioned at (a) above under Section 122(2)(b) read with Section 74(9) of CGST Act, 2017 for contravening the provisions of Section 140 of the CGST Act, 2017.”

Contention of the petitioner:-

6. Learned Senior Counsel for the petitioner submits that the show-cause notice shows that there were technical glitches in the Maharashtra GST portal and the petitioner admittedly filed its return before due date in Telangana GST portal and transferred the credit amounting to Rs. 1,41,26,69,646/- to Maharashtra portal on

the same date. Thus, the petitioner did it under compelling circumstances and there is no prohibition under the Act for filing such return electronically in another State where branch of petitioner exists. More so, when the petitioner has not derived any undue benefit from the said act nor revenue suffered any loss. In these circumstances, the impugned order is bad in law.

7. By placing heavy reliance on Section 140(1) and (8) of the Act, learned Senior Counsel submits that a combined reading of both the provisions makes it clear like cloudless sky that there is no bar in the Act which prohibits the petitioner to submit the return in the GST portal of Telangana where the petitioner's branch admittedly exists. The learned Additional Commissioner has erred in not examining aforesaid relevant aspect and misread Section 140(1) and 140(4) of the Act. He further submits that in the instant case, there exists no disputed question of fact and only a question of law deserves to be answered. In this background, it will not be proper to relegate the petitioner to avail the Statutory remedy of appeal. Instead, this Court may decide the matter on merits. In support of his submission, he placed reliance on the judgment of the Supreme Court in ***M/s. Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Others***¹.

¹ 2023(2) TMI 64 – SC

8. Lastly, the learned Senior Counsel placed reliance on the judgment of the Supreme Court in ***Chandrapur Magnet Wires (P) Ltd. Vs. Collector of C. Excise, Nagpur***² and urged that the analogy which can be drawn from this judgment is that when the return is filed in the Telangana Portal and credit got transferred on the same day to Maharashtra portal, the department has no justifiable reason to deny the same or take action against the petitioner. By no stretch of imagination, the petitioner can be saddled to deposit the same amount with penalty and interest.

Stand of Revenue:

9. Sounding a *contra* note, learned counsel for the Revenue raised preliminary objection regarding maintainability of this Writ Petition and urged that Section 107 of the Act provides an efficacious statutory alternative remedy. The petitioner should have availed the same. However, during the course of argument, he fairly admitted that the singular question involved in this case is, indeed, a pure question of law.

10. Learned counsel for the Revenue submits that admittedly, the petitioner's centralised registration is in the State of Maharashtra. Thus, the petitioner should have filed the return on the GST portal of Maharashtra and not in Telangana. Even assuming that the

² 1996(81)E.L.T.3 (S.C.)

portal of Maharashtra had any technical glitch, the petitioner was not remediless and he should have approached the higher authorities of GST Regime of Maharashtra for redressal of his grievance. The petitioner should not have filed the return on the GST portal of Telangana, and for this reason alone, no fault can be found in the action of the respondents. Furthermore, it is submitted that a plain reading of Section 140(1)(4)(8) of the Act, it is clear that the intention of law makers is that the return should be filed in the same State where the registration exists. Thus, the petition is meritless and may be dismissed. It is further submitted that the purpose of centralise registration is to ensure that the facility is not mis-utilised by the parties.

11. Parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

FINDINGS:

Alternative Remedy:

12. In this case, the facts are not in dispute. It is admitted that the petitioner's centralised registration is in the State of Maharashtra and the petitioner is having branch in the State of Telangana. The petitioner filed return before due date in the GST portal of Telangana and credit was transferred on the same day to

the State of Maharashtra with the same Permanent Account Number.

13. The pivotal question is whether in the teeth of Section 140 of the GST Act, was there any bar or prohibition for filing return in the GST portal of Telangana where the petitioner's branch admittedly exists? Since it is a pure question of law, in view of judgment of the Supreme Court in *M/s. Godrej Sara Lee Ltd.* (supra), we are not inclined to relegate the petitioner to avail the statutory alternative remedy. Justice Dipankar Datta in *M/s. Godrej Sara Lee Ltd.* (supra), speaking for the Bench, poignantly held as under:

“8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (*State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.*) and (2000) 10 SCC 482 (*Union of India v. State of Haryana*). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. **What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.**”

(Emphasis Supplied)

14. Thus, we deem it proper to entertain this petition and not throw the petition overboard for availing the alternative remedy.

Show Cause Notice:

15. The relevant portion of show cause notice dated 29.12.2021 reads as under:

“2. M/s. Standard Chartered Bank, Hyderabad availed input tax credit of Rs.141,26,69,646/- through Table 5 (a) of TRAN-1 return filed by them on 18.10.2017. On being pointed out during the course of preliminary scrutiny of said TRAN-1 return by the officers of Hyderabad Audit-I Commissionerate, the tax payers vide their letter dated 19.07.2018, have submitted that they were not registered in the State of Telangana under Service tax regime as **they have centrally registered in Maharastra. It was further informed that as they could not file TRAN-1 return in Maharashtra due to technical glitch faced on GST portal, they have filed the same in Telangana and availed the closing balance of Cenvat credit amounting to Rs.141,26,69,646/- which was appearing in their Service Tax return for the period ending 30.06.2017.** It may be noted that post availment of said credit at Hyderabad, M/s Standard Chartered have transferred an amount of Rs.141,24,69,646/- on the same day through Table 8 of Tran-1 to their Mumbai Branch having GSTIN 27AABCS4681D1ZE keeping Rs.2,00,000/- with Telangana Unit. However, in terms of the provisions of Section 140 of CGST Act, 2017 and rules made there under, tax payers who are registered under existing law are only eligible to avail the carry forward amount of CENVAT credit of eligible duties available in the return relating to the period ending the day immediately preceding the appointed day. **As M/s Standard Chartered were not registered in the State of Telangana under the existing law, it appears they are not eligible to avail any carry forward credit of eligible duties.** In this regard, provisions of Section 140 of CGST Act, 2017 enabling the transitional arrangements for input tax credits from existing law to Goods and Service Tax are re-produced as under.”

(Emphasis Supplied)

16. A microscopic reading of this para makes it clear that it was an admitted fact in the show cause notice itself that the petitioner

faced problem in filing return electronically because of technical glitch in the GST portal of Maharashtra. For this reason and considering the last date of filing return, the petitioner filed the return in the Telangana GST portal.

17. In the impugned order, respondent No.2 reduced in writing the basic stand of the petitioner in the shape of bullet points. The relevant portion reads as under:

“Reply to show cause notice:

13. M/s Standard Chartered Bank had submitted their reply to the show cause notice vide their letter dated 27th January 2022 which was received in this office on 22nd February 2022 submitted inter alia that:

- That the premises on which the SCN issued is incorrect as it is based on the assumption that M/s SC India's Telangana branches were not registered under Service Tax and hence, transfer of transitional credit to Telangana GST Registration is in contravention with the GST Law.
- That they have contested the allegation of avilment of Tran-1 of Telangana which is in contravention of Section 140 of CGST Act, 2017 on the grounds that they were not registered under service tax law and they did not file any return for the period July 2017 in the State of Telangana.
- That they held Centralised Service Tax Registration and branches located in Telangana were part of the centralised registration which is appearing as additional places of business.
- That they have enclosed the Service Tax Registration Certificate in Form ST-2 evidencing that their branches are registered.
- That they have enclosed PAN India List of GST Registrations.
- That the GST Registration Certificate of Maharashtra and Telangana PAN number is same and covered under the Centralized Registration.
- That they have not contravened the provisions of Section 140(8) of the CGST Act, 2017.

- That they have availed the transitional credit in the State of Telangana due to technical glitches faced by them while filing Tran-1 in Maharashtra.
- That they had no option in circumstances of technical glitches faced by them at Maharashtra but to avail the credit in another state and then transfer the same to Maharashtra again.
- That it is evident from the Electronic Credit Ledger that M/s SCB India has not utilized the credit in Telangana State and in fact the credit was debited from ECL on the very same day and hence, they had not availed credit irregularly in the State of Telangana.
- That there was no irregular availment of credit, interest under Section 50 read with Section 74(1) of CGST Act 2017 can't be recovered and contest that the demand is not tenable; imposition of penalty does not arise at all.
- That the SCN has erred on facts and liable to be set aside.
- That they wish to be heard in person and requested to drop the proceedings.”

(Emphasis Supplied)

18. The highlighted bullet points show that it was pointed out that electronic credit ledger establishes that M/s.SCB India has not utilised the credit in Telangana State and in fact, the credit was debited from ECL on the very same day and hence, as per the stand of the petitioner, they have not availed credit in the State of Telangana.

19. Respondent No.2 rejected the stand of the petitioner mainly on the ground that the petitioner's centralised registration is in the State of Maharashtra and that nothing prevented the petitioner to file the return electronically in the portal of the same State.

20. It is apposite to refer to the relevant sub-sections of Section 140 of the Act on which learned counsel for the parties placed reliance during the course of argument:

“Section 140: Transitional arrangements for input tax credit-

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:--

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) here the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

(2) and (3) ...

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,--

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or

services, in accordance with the provisions of sub-section (3).

(5) to (7) ...

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law."

(Emphasis Supplied)

21. Section 140 (1) of the Act envisages that a registered person other than a person opting to pay taxes under Section 10 shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit. Undisputedly, the registration number/Permanent Account Number of the petitioner is same nationwide. Thus, sub-section (1) of Section 140 does not permit the respondents to arrive at a conclusion that the petitioner was obliged to file return electronically only in the GST portal of Maharashtra.

22. Sub-section (4) of Section 140 of the Act is relied upon by the learned counsel for the respondents, but we do not see any relevance of this provision for deciding the present issue.

23. So far as sub-section (8) of Section 140 of the Act is concerned, it is apposite to mention that a registered person having centralised registration under the existing law (Service Tax Law) has obtained a registration under the Act, such person shall be allowed to take in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day i.e., 01.07.2017.

24. Admittedly, the petitioner had registration under the existing law i.e., Service Tax Law and also got himself registered under the Act. The last *proviso* to sub-section (8) of Section 140 of the Act leaves no room for any doubt that the credit may be transferred to any of the registered person having same Permanent Account Number for which the centralised registration was obtained under the existing law. The filing of return in the GST portal of Telangana and transfer of credit is squarely covered and permissible under the last *proviso* to sub-section (8) of Section 140.

25. During the course of hearing, learned counsel for the Revenue could not establish that there exists any prohibition/bar in filing the return through electronic mode in GST portal of Telangana where petitioner's branch admittedly exists. The petitioner derived any undue benefit by filing return in the GST portal of Telangana and transferring the credit on the same day and the Revenue suffered any loss because of aforesaid action of the petitioner.

26. Pertinently, the respondents did not dispute the stand of the petitioner that because of technical glitch in the GST portal of Maharashtra, the petitioner was constrained to file return in the GST portal of Telangana. This is also not the stand of the Revenue that during the relevant time, GST portal of Maharashtra was functional and yet, the petitioner had chosen to file return in the GST portal of Telangana.

27. Needless to emphasise that it was the duty of the Department to keep their portal functional. If the portal was not functional or having technical glitch and because of that the petitioner was compelled to file return in the portal of Telangana, the petitioner cannot be saddled with demand, interest and penalty. In other words, the Department cannot take benefit of its own wrong. In

Devendra Kumar v. State of Uttaranchal³, the Supreme Court held that a person having done wrong cannot take advantage of his own wrong. In such a case, the legal maxim '*Nullus Commodum Capere Potest De Injuria Sua Propria*' applies.

28. In view of foregoing discussion, we are of the opinion that the very foundation of show cause notice itself is bad in law and the assumption of respondent No.2 that return could not have been filed in the GST portal of Telangana is not flowing from Section 140 of the Act. Therefore, the impugned action founded upon such notion is bad in law and deserves interference.

29. Resultantly, the Writ Petition is allowed by setting aside the impugned show cause notice dated 03.09.2021 and Order-in-Original dated 31.10.2023 issued by respondent No.2. There shall be no order as to costs. Miscellaneous applications pending, if any, shall stand closed.

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 11.07.2024

Note:

L.R. is marked.

B/o. TJMR

³ 2013 (9) SCC 363