



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 19966/2023

Tata Motor Limited

----Petitioner

Versus

Union of India & Ors.

----Respondents

CONNECTED WITH

D.B. Civil Writ Petition No. 19967/2023

Tata Motors Limited

----Petitioner

Versus

Union of India & Ors.

----Respondents

For Petitioner(s) : Mr. Tushar Jarwal.
Mr. Nitin Jain.
Mr. Pranav Bansal.
For Respondent(s) : Mr. R.D.Rastogi Sr.Adv. cum ASG with
Mr. Dinesh Yadav.

**HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE ASHUTOSH KUMAR
Order**

18/12/2023

1. These petitions have been filed by the petitioner aggrieved of the Orders in Original dated 30/10/2023 and 31/10/2023 in respective writ petitions.

2. Following reliefs have been claimed in the writ petitions:

(C.W.No.19966/2023)

"a. this Hon'ble Court be pleased to issue a Writ or Certiorari or any other appropriate writ, order or direction in the nature of Certiorari or any other writ, order or direction of like nature, under Article 226 of the Constitution of India calling for record of the Petitioner's case leading to passing of the impugned Order dated 30.10.2023 (Annexure 1) for Financial years 2017-18 & 2018-19 and after examining its legality and propriety thereof, quash and set aside the impugned Order dated



30.10.2023 (Annexure 1) raising a demand of Rs.100,08,15,002/- along with applicable interest and penalty;

b. this Hon'ble Court be pleased issue a Writ / order / direction declaring Section 15(3)(b)(ii) of the Central Goods and Services Tax Act, 2017 as unconstitutional for being violative of Article 14, 19(1)(g) and 265 of the Constitution of India or in the alternative issue a Writ / order /direction reading down Section 15(3)(b)(ii) of the Central Goods and Services Tax Act, 2017 to hold that in the present facts and circumstances the Petitioner is under no obligation to prove compliance with Section 15(3)(b)(ii) of the CGST Act;

c. this Hon'ble Court be pleased to issue a Writ/order/direction declaring Notification No.13/2022-Central Tax dated 5 July 2022 and Notification No.09/2023-Central Tax dated 31 March 2023 are ultra-vires the provisions of the CGST Act being incapable of being issued under Section 168A of the CGST Act;

d. In the alternative, direct the Appellate Authority to accept & unconditionally hear the appeal to be filed by the Petition against impugned Order dated 30.10.2023 (Annexure.1) passed by the Respondent No.4 without insistence of any deposit (including 10%) of the disputed tax liability and also exclude the time period from the day of filing until the date of disposal of the present Writ Petition by the Hon'ble High Court from the limitation period prescribed for filing an appeal under Section 107 of the CGST / RGST Act and; and/or

e. Issue an ad-interim order staying the operation of the Impugned Order dated 30.10.23 till disposal of the writ petition;

f. For such further relief(s) and other relief, as the Hon'ble Court may deem fit, proper and appropriate in the nature and circumstances of this case."

(C.W.19967/2023)

"a. this Hon'ble Court be pleased to issue a Writ or Certiorari or any other appropriate writ, order or direction in the nature of Certiorari or any other writ, order or direction of like nature, under Article 226 of the Constitution of India calling for record of the Petitioner's case leading to passing of the impugned Order dated 31.10.2023 (Annexure 1) for Financial years 2017-18 & 2018-19 and after examining its legality and propriety thereof, quash and set aside the impugned Order dated 31.10.2023 (Annexure 1) raising a demand of Rs. 69,19,47,577/- along with applicable interest and penalty;

b. this Hon'ble Court be pleased issue a Writ / order / direction declaring Section 15(3)(b)(ii) of the Central





Goods and Services Tax Act, 2017 as unconstitutional for being violative of Article 14, 19(1)(g) and 265 of the Constitution of India or in the alternative issue a Writ / order /direction reading down Section 15(3)(b)(ii) of the Central Goods and Services Tax Act, 2017 to hold that in the present facts and circumstances the Petitioner is under no obligation to prove compliance with Section 15(3)(b)(ii) of the CGST Act;

c. In the alternative, direct the Appellate Authority to accept & unconditionally hear the appeal to be filed by the Petitioner against impugned Order dated 31.10.2023 (Annexure 1) passed by the Respondent No.4 without insistence of any deposit (including 10%) of the disputed tax liability and also exclude the time period from the day of filing until the date of disposal of the present Writ Petition by the Hon'ble High Court from the limitation period prescribed for filing an appeal under Section 107 of the CGST / RGST Act and; and/or

d. Issue an ad-interim order staying the operation of the Impugned Order dated 31.10.2023 till disposal of the writ petition;

e. For such further relief(s) and other relief, as the Hon'ble Court may deem fit, proper and appropriate in the nature and circumstances of this case."

3. A perusal of the above reliefs claimed would reveal that the petitioner has questioned the validity of Section 15(3)(b)(ii) of the Central Goods and Services Tax Act, 2017 ('the Act, 2017') and in the alternative sought direction to the appellate authority to accept & unconditionally hear the appeal to be filed by the petitioner against the impugned Order in Original dated 30/10/2023 and 31/10/2023 without insistence of any deposit (including 10%) of the disputed tax liability.

4. Learned counsel for the petitioner *inter alia* made submissions that similar nature writ petition questioning the validity of the provisions of Section 15(3)(b)(ii) of the Act is pending consideration before this Court being *Hindustan Unilever Limited vs. Union of India :D.B.Civil Writ Petition No.13617/2023*.



5. Further submissions have been made that a bare look at the Orders in Original passed by the respondent would reveal that the same relate to imposition of tax demand as a result of adjustment (decrease) in total turnover in GSTR 9C due to issuance of credit notes to the customers/dealers by the petitioner and the same is primarily on account of failure of the petitioner to produce evidence such as debit entries in the Electronic Credit Ledger / Books of Accounts of its dealers to establish reversal of Input Tax Credit ('ITC').

6. Submissions have been made that petitioner had produced CA Certificates indicating the credit notes issued to the dealers and reversal of ITC by them, however, the authority, on coming to the conclusion that the petitioner has not submitted the supporting evidence like debit entries in Electronic Credit Ledger / Books of Accounts, did not accept the contention in this regard and has raised the demand.

7. Vehement submissions were made that Section 43 of the Act had provided for a mechanism for matching the credit notes issues with the corresponding reversal undertaken by the recipients, however, the same was not made functional and ultimately came to be omitted by the Finance Act 2022, in absence whereof the petitioner could not be directed to produce or prove that the recipient has reversed the ITC and consequently the same could not form the basis for passing of the orders impugned.

8. Submissions have also been made that passing of the two orders by issuing two show cause notices has resulted in double taxation, which is *ab initio* void.



9. Learned ASG, to whom advance copy of the petitions was supplied, made vehement submissions that the orders impugned are appealable and there is apparently no reason to bypass the said remedy. It was emphasized that the petitioner first has to make out a case pertaining to validity of the provisions of Section 15(3)(b)(ii) of the Act on the settled parameters, which the petitioner has failed and, therefore, the petitioner is required to avail the alternative remedy of appeal.

10. Submissions have been made that entire effort is to bypass the requirement of pre-deposit, which aspect is reflected from one of the prayers made in the petition, though alternatively.

11. It was submitted that even in the pending writ petition questioning the validity of the provisions of the Act, no interim order has been granted by the coordinate bench and, therefore, the petitioner cannot seek stay qua the demand, which on filing of the appeal with pre-deposit leads to automatic dismissal of rest of the demand.

12. The issue raised qua the merit of the orders passed/adequacy of the material placed regarding reversal of ITC can very well be examined by the appellate authority and this Court cannot be called upon to prematurely adjudicate the said issue.

13. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

14. The coordinate bench of this Court in the case of Hindustan Unilever Ltd. (supra) *inter alia* on the aspect of issue involved which is similar to present writ petitions, observed as under:-





"The petitioner raises an issue with regard to absence of proper mechanism of matching of credit note of supplier with the ITC reversal by the recipient. It appears that earlier there was a provision under Section 43 of the CGST Act / RGST Act obligating the matching exercises to be undertaken by the department. That provision later on has been omitted.

Learned counsel for the petitioner would submit that it is not practically possible for the petitioner to submit certificate after obtaining the same from the recipient as proof of reversal of credit by the recipient, in order to avail reduction of tax liability. Instead it is for the department to undertake the matching exercise and the claim of reduction in tax liability should not be made dependent upon production of any certificate or proof of reversal of ITC by the recipient.

We find that the validity of the provision is being challenged more on the ground of workability. For the present we find that in the absence of their being any statutory obligation cast on the respondent to undertake matching exercise, if the petitioner is willing to claim reduction in tax liability, proof of reversal by the recipient is to be provided by the supplier. In the present case, the petitioner has challenged the validity of the provision more on the grounds of difficulty in collecting such certificate / proof from the recipient. Even according to the petitioner he has been able to collect such certificate / proof in some cases.

This matter is required to be considered on the next date of hearing.

Though we are not granting any interim order at this stage, learned counsel for Union of India is directed to place before the Court appropriate suggested mechanism."

15. A perusal of the above would reveal that the coordinate bench was of the opinion that the provision was being questioned on the ground of workability/difficulty in collecting certificate/proof from the recipient regarding reversal of ITC and, therefore, called upon the Union of India to place before it appropriate suggested mechanism. Subsequent thereto, on two occasions time has been granted, however, the mechanism is yet to be placed before the Court.

16. In view of the observations of coordinate bench of this Court, which, while elaborately hearing the present writ petitions, this Court also felt about the issue being that of lack of/providing a





mechanism with regard to the subject matter of the demand raised and sought to be disputed by the petitioner only.

17. So far as the challenge laid to the authority, while passing the order not appropriately considering the material produced seeking to substantiate the reversal of ITC by the recipient/requirement indicated by the respondents and the inability of the petitioner to produce the same is concerned, the said aspect can very well be examined by the appellate authority in statutory appeal, which may be filed by the petitioner in accordance with law.

18. In that view of the matter, following the observations made in the case of Hindustan Unilever Ltd.(supra), wherein, interim order was not granted by the coordinate bench and the learned ASG was directed to place before the Court appropriate suggested mechanism, issue notice of the writ petition to the respondents.

19. As the respondent no.1 is represented by learned ASG, notice be issued to respondent nos. 2, 3 & 4, returnable on 22/1/2024.

20. Connect with DBCWP No. 13617/2023.

21. It is expected of the counsel for the Union of India to comply with the directions issued in the case of Hindustan Unilever Ltd. (supra) pertaining to placing before the Court appropriate suggested mechanism with utmost expedition.

(ASHUTOSH KUMAR),J

(ARUN BHANSALI),J

14 & 15-baweja/-