



NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

WPT No. 67 of 2022

Judgment reserved on 25.03.2022

Judgment delivered on 04.05.2022

- Mahendra Sponge & Power Limited, Registered Office at Plot No. 76 and 77, Phaseh Siltara Industrial Area, Siltara, Raipur, Chhattisgarh through its Authorized Signatory Shri Kamlesh Ghosh, S/o Late Shri S.K. Ghosh, aged about 51 years, R/o Sai Nagar, Opp. Agricultural College, Raipur, Chhattisgarh

-----Petitioner

VERSUS

- Assistant Commissioner, State Tax (SGST), Circle-9, Raipur, Civil Lines, Raipur, Chhattisgarh

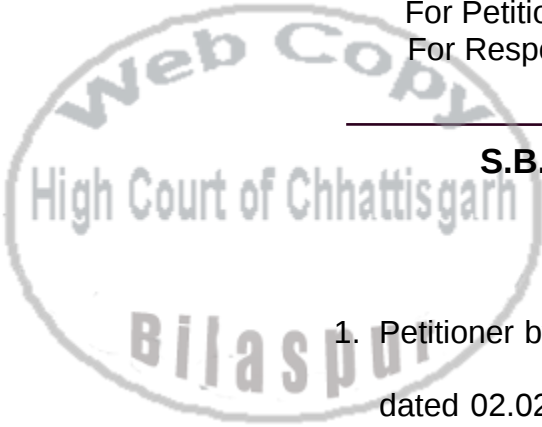
-----Respondent

For Petitioner : Mr. Bhisma Ahluwalia, Advocate
For Respondent : Mr. Sandeep Dubey, Dy. Adv. Gen. with
Ms. Ruchi Nagar, Dy. Govt. Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Order

1. Petitioner by this writ petition has challenged the impugned order dated 02.02.2022 passed by appropriate authority under Section 73(9) of Chhattisgarh Goods and Services Tax Act, 2017, making demand under the "DRC-07".
2. Mr. Bhisma Ahluwalia, learned counsel for petitioner would submit that the petitioner is engaged in the business of manufacturer of iron and steel goods, avails the facilities of Input Tax Credit (ITC) under the CGST/ SGST laws. Petitioner is continuously depositing its output tax liabilities making payment through its cash ledger and credit ledger as mentioned under Section 49 of the CGST Act. Respondent issued notice under Section 61 r/w Rule 99(1) in Form GST ASMT-10 dated





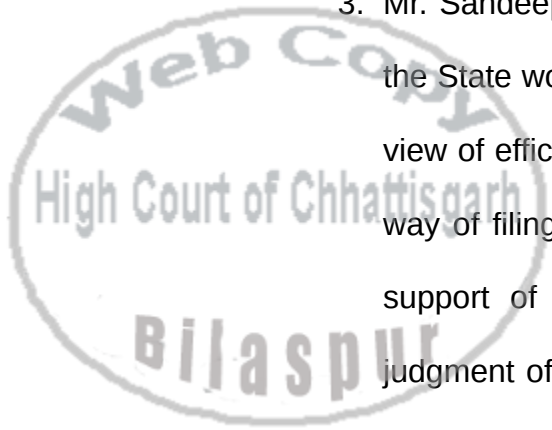
11.08.2021 mentioning that during scrutiny some discrepancies were noticed and excess credit of ITC of Rs. 27,54,730/- was availed by the petitioner during the period from 01.04.2019 to 31.03.2020. Respondent has failed to provide details of excess claim of Input Tax Credit (ITC). On 11.10.2021, Respondent issued DRC-01 making proposal of payment of Rs. 85,15,273/- for the aforesaid period without specifying any allegations or details of excess ITC availed. Thereafter, respondent issued Show Cause Notice under Section 73 of the CGST/ SGST without giving details. Petitioner made an application pointing out that the notice was not proper and detailed show-cause notice be issued to petitioner. Petitioner, thereafter, filed petition bearing WPT No 221/2021. Upon hearing, notices were issued to respondent/ Department and they deliberately not submitted their reply to the writ petition and passed impugned order. Writ petition is still pending. The Respondent-department without giving proper opportunity of hearing, passed the impugned order and the result of illegal adjudication will follow the illegal recoveries and may also lead to attachment of bank accounts and debiting electronic credit ledger of the petitioner. Referring to the provisions under Section 49, 37 read with Rule 59; Section 38 read with Rule 60 and Section 42 of CGST/ SGST Act, he submits that the mechanism provided under the aforementioned provisions of verifying credits are for the purpose of converting the same from provisional to final was never put in place by the Government. GSTR-2 and GSTR-3 have been kept suspended during the entire period after implementation of the new regime by the Government. The DRC-01 dated 11.10.2021 is not a show-cause notice as it does not contain all allegations and





charges based upon which demand of tax is proposed. No charges have been framed against the petitioner. The notice under Section 73 issued only reflects the provisions of the Section and it does not mention any charges against the petitioner. The order dated 02.02.2022 is in violation of principles of natural justice. Reasonable and proper opportunity of hearing is not provided to put-forth its objection. He places his reliance upon the case of **CCE v. Brindavan Beverages (P) Ltd.** reported in **2007 (213) ELT 487 (SC)**, **Siemens Ltd v. State of Maharashtra** reported in **2007 (207) ELT 168 (SC)** in support of his contentions.

3. Mr. Sandeep Dubey, learned Dy. Advocate General representing the State would submit that the writ petition is not maintainable in view of efficacious alternate remedy available to the petitioner by way of filing an appeal under Section 107 of GST Act, 2017. In support of his contentions, he placed his reliance upon the judgment of Hon'ble Supreme Court passed in **Civil Appeal No. 5121/2021** between **The Assistant Commissioner of State Tax and others v. M/s Commercial Steel Limited** dated 03.09.2021. He further contended that the respondent upon detecting discrepancies on scrutiny of return submitted by petitioner has issued notice in Form GST ASMT-10 under Rule 99(1) of the GST Act, 2017 dated 11.08.2021. In the said notice, the reason for issuance of notice is specifically mentioned of difference of ITC of Rs. 27,54,730.75/-. The petitioner did not submit any explanation, whatsoever, to the notice under Form GST ASMT-10 dated 11.08.2021 and therefore the show-cause notice issued under Section 73 of CGST/ SGST Act on 11.10.2021 mentioning

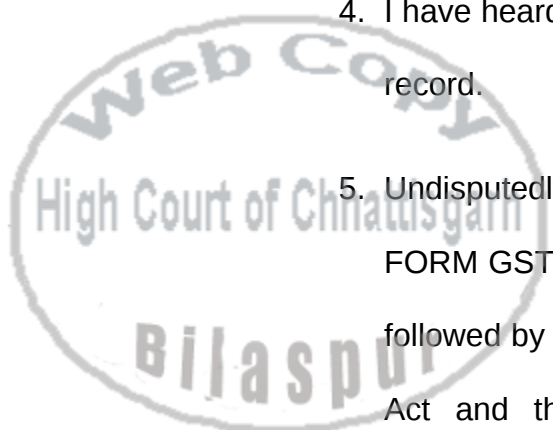




the details of difference of tax with interest along with summary show-cause notice in Form GST DRC-01 under Rule 100(2) and Rule 142(1)(a) mentioning difference of 3B & 2A. Petitioner instead of participating in the proceedings has sought time seeking adjournment of hearing *vide* order dated 20.10.2021. Again, the petitioner has forwarded the letter seeking for detailed show-cause notice. In the notice, reasons for issuance of notice have been specifically mentioned. He contended that as this writ petition is filed challenging the final order on notice under Section 73 of CGST/ SGST, the remedy available now to the petitioner is to file an appeal under Section 107 of GST Act, 2017.

4. I have heard learned counsel for the parties and also perused the record.

5. Undisputedly, upon scrutiny, notice under Section 61, notice in FORM GST ASMT-10 was issued to the petitioner on 11.08.2021 followed by show-cause notice under Section 73 of CGST/ SGST Act and the respondent authority by impugned order had determined the tax liabilities, interest and penalty upon the petitioner under Section 73(9) of CGST/ SGST Act and made demand of the amount mentioned therein. Section 107 of the GST Act, 2017 provides for appeal to appellate authority against the order of adjudicating authority. The order impugned is passed by adjudicating authority, hence, the order is to be assailed before the appellate authority under Section 107 of GST Act, 2017. Petitioner is having statutory alternate remedy of challenging the impugned order. The petitioner instead of availing the statutory remedy available to it of filing appeal under Section 107 of GST Act, 2017 has filed this writ petition. The grounds





raised in this writ petition, very well be considered by the appellate authority and as held by Hon'ble Supreme Court in the aforementioned rulings ie. **M/s Commercial Steel Limited (supra)** the existence of an alternate remedy is not an absolute bar but the discretionary jurisdiction under Article 226 of the Constitution can be exercised only in exceptional circumstances like:

- (i) a breach of fundamental rights;
- (ii) a violation of principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the *vires* of the statute or delegated legislation.

6. In the case at hand, respondent issued notice under Section 61 of GST Act, calling explanation upon the discrepancies found by the authority to which the petitioner did not reply, thereafter, show-cause notice under Section 73 of CGST/SGST along with the summary of show-cause notice dated 11.10.2021 was also issued.

7. In the facts of the case, this Court is of the opinion that no exceptional circumstances as mentioned above are available for entertaining this writ petition.

8. For the foregoing reasons, writ petition being devoid of any substance which is liable to be and is hereby dismissed accordingly. However, petitioner will be at liberty to take recourse to the appropriate remedy available to it under Section 107 of the GST Act, 2017 for redressal of its grievance.

Sd/-
(Parth Prateem Sahu)
Judge