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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE HIRDESH

ON THE 13th OF JUNE, 2023

**AGRAWAL AND BROTHERS, A PARTNERSHIP
FIRM, THROUGH ITS PARTNER OM PRAKASH
AGRAWAL, R/O 46, T.I.T. ROAD, RATLAM
(MADHYA PRADESH)**

.....PETITIONER

(SHRI ABHINAV MALHOTRA, LEARNED COUNSEL FOR THE PETITIONER.)

**UNION OF INDIA, WESTERN RAILWAY
DIVISION DRM OFFICE, RATLAM THROUGH
1. GENERAL MANAGER, O/O DO BATTI ROAD,
SHASTRI NAGAR, RATLAM (MADHYA
PRADESH)**

**OFFICE OF THE SUPERINTENDENT, CGST AND
CENTRAL EXCISE, RANGE-I DIVISION
2. RATLAM, MITRA NIWAS ROAD, RATLAM
(MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI H.Y. MEHTA, LEARNED COUNSEL FOR THE RESPONDENT NO.1.
SHRI PRASANNA PRASAD, LEARNED COUNSEL FOR THE RESPONDENT
NO.2.)***

This petition coming on for orders this day, JUSTICE VIVEK

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RUSIA passed the following:

[1] The petitioner has filed the present petition seeking direction to respondent No.2 to return the amount of Rs.13,38,544/- to the petitioner.

The facts of the case in short are as under:

[2] The petitioner is a firm engaged in supplying and distributing iron and steel metal scrap. Respondent No.1 conducted an e-auction dated 12.08.2017 for the sale of iron and steel material scraps. The petitioner's bid was found highest and declared the H1 bidder for the lot bearing No.621708013RTM. The petitioner purchased 228 metric tons of scrap MST silver P and C (ORDBG) in a total consideration of Rs.51,97,142/- including the GST of Rs.9,35,486/-.

[3] Section 16 of the CGST Act, 2016 allows adjustment of tax paid at the time of purchase that the amount of output tax and only the balance liability of tax is liable to be paid to the Government. The petitioner claimed an input tax credit of Rs.9,35,486/- against the purchase made from respondent No.1.

[4] According to the petitioner, in the month of October 2018 the petitioner came to know that respondent No.1 had committed default in reporting the entries with respect to the purchase made in the e-auction of the petitioner on 12.08.2017, by not reporting the auction sales invoice duly paid by the petitioner in the return under GSTR-1 due to which the auction sale invoice was not reflected in the petitioner's GSTR-2A. The petitioner sent several representations to respondent

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No.1 however, vide letter dated 20.10.2018 respondent No.1 certified the auction sale made by the petitioner on 12.08.2017 and full payment in respect of the auction sale value including GST.

[5] Respondent No.2 issued a demand notice dated 05.02.2020 to the petitioner demanding input tax with interest, the petitioner submitted a reply on 12.02.2020. In order to avoid the cancellation of GSTIN due to non-payment of the GST charges, the petitioner agreed to repay the requisite GST charges on aforesaid entries for the year 2017-18 under protest. The petitioner paid the amount of Rs.6,69,274/- as CGST, Rs.6,69,274/- as SGST i.e. in total Rs.13,38,545/- including interest and now approached this Court by way of a writ petition seeking the return of aforesaid amount from the respondent No.1.

[6] After notice, respondent No.1 filed a short reply by submitting that respondent No.1 had deposited the amount of GST on 12.09.2017 through bankers cheque No.007618 dated 13.09.2017 against the auction of scrap in favour of the petitioner. It is further submitted that respondent No.1 deposited the GST amount through GST utility invoice No.1701WR/30055629 dated 14.09.2017. Respondent o.1 has admitted that inadvertently the amount of GST was deposited in the GST No.23AAIFA875GIZ1 instead of 23AAIFA8751ZI. Respondent No.1 had also admitted that the petitioner stood as H-1 bidder and paid consideration of Rs.51,97,143/-.

[7] Respondent No.2 also filed a reply by submitting that any ITC availed after 20.10.2019 for the FY 2018-19, is liable to be recovered from the taxpayer under Section 16(4) of GST Act, 2017 along with interest under Section 15 of the GST Act, 2017. On scrutiny

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of the tax payer, return such as GSTR-3B and GSTR-2A it was not revealed that they have availed the ITC of Rs.26,70,414/-. The petitioner was served with the show-cause notice dated 30.03.2022 as the petitioner wrongly availed the ITC amounting to Rs.26,70,414/-.

[8] Shri Prasanna Prasad, learned counsel for respondent No.2 submitted that now the final order has been passed by Assistant Commissioner CGST and CGS Division, Ratlam confirming the demand of ITC amounting to Rs.9,34,096/- wrongly filed by the petitioner together with the interest of Rs.4,04,451/- however, demand for recovery of Rs.17,38,572/- has been dropped. In addition to the above, a penalty of Rs.10,000/- was also imposed.

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

[9] The petitioner deposited the amount of GST as well as interest under protest to the respondent GST hence, there is no recovery of GST against the petitioner. The only dispute is whether the petitioner is liable to suffer for the fault committed by respondent No.1. There is an admitted mistake on the part of respondent No.1 Railway that the amount of GST was deposited in GST No.23AAIFA875GIZ1 instead of 23AAIFA8751ZI. It is a settled law that no one cannot be made to suffer for the fault of another. Since this deposit of GST was not reflected in the account of the petitioner, therefore, a show cause notice was issued and the petitioner had to pay the GST to the department with interest again in order to avoid the cancellation of GSTIN, therefore, he is entitled to seek the return of Rs.13,38,544/- from the respondent No.1.

[10] The senior DFM / RTM sent a letter to the Commissioner GST and Excise Duty Office, Ralam and requested that if the amount of

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Rs.9,35,486/- has been received, the same be refunded as it was wrongly deposited against the GST No.23AAIFA875GIZI instead of correct GST No.23AAIFA8751ZI. The telegram letter of GST No. 23AAIFA8751ZI is reproduced hereinbelow:

No. RTM/Pay/RTM GST/2019-20/10A Office of the,
Dated 17/03/2020 Sr. Divisional finance Manager,
Ratlam.

To,
Commissioner,
GST & Excise duty office,
Mitra Niwas Raod Behind IT, office Ratlam.

Sub:- Deposit GST against purchase Scrap.

Ref:- Party letter No. Nil Dated 29/02/2020.

M/s Agrawal Brothers, RATLAM with GSTIN number - 23AAIFA87516121 deposited of Rs. 935486/- as GST amount on 21/09/2017 through Banker Cheque no 007618 dated 13/09/2017 against scrap auction sale. This office deposited the GST amount through GST utility Invoice No 1701WR/30055629 dated 14/09/2017. However, the firm later registered a complaint in this office of recovery notice received from GST authority for not depositing the above mentioned GST amount. On inquiry it was noticed that then was a mismatch in GST number, due to which the said amount may have got deposited with GST authorities against GSTIN number 23AAIFA8751GIZI rather than against GSTIN number (23AAIFA8751G1Z) of the M/s Agrawal Brother.

It is requested to please see if the Amount of Rs.935486 has been received your office as party is pressing hard for refund.

[11] The Writ Petition is **allowed**, and respondent No.1 is directed to return the amount of Rs.13,38,544/- to the petitioner within 2 months from today. Respondent No.1 shall be at liberty to submit a

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claim before the GST department as the same has been paid by the petitioner and if such claim is submitted, the competent authority of respondent No.2 shall decide the same in accordance with the law.

[12] The Writ Petition is allowed with a cost of Rs. 10,000/- in favour of the petitioner payable by the respondent No.1.

(VIVEK RUSIA)
JUDGE

Divyansh

(HIRDESH)
JUDGE