A.F.R.

Neutral Citation No. - 2024:AHC:43502

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 1

WRIT TAX NO. 777 of 2022

M/S SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED

v.

STATE OF U.P. AND OTHERS

WITH

WRIT TAX NO.660 of 2023

M/S SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED

v.

STATE OF U.P. AND OTHERS

For the Petitioner : **Sri M.P. Devnath, Sri Nishant Mishra and Sri Abhishek Anand, Advocates**

For the Respondents : **Sri Rishi Kumar, Additional Chief Standing Counsel**

Last heard on March 4, 2024
Judgement on March 12, 2024

HON'BLE SHEKHAR B. SARAF, J.

1. M/s Samsung India Electronics Private Limited (hereinafter referred to as the "Petitioner") has preferred the instant writ petitions under Article

226 of the Constitution of India challenging the order of the Additional Commissioner, Grade – 2 (Appeal) – I, Commercial Tax, NOIDA.

2. The facts and submissions made in the instant writ petitions bearing Writ Tax Nos. 777 of 2022 and 660 of 2023 are similar except for the relevant period and refund amount in question and hence, they are being taken up together.

FACTS

3. The factual matrix leading up to the instant writ petitions has been laid down below:

a. The petitioner is a company engaged in the export of Information Technology design and software development services pertaining to mobile devices ("IT Services") to its overseas holding company, namely, M/s Samsung Electronics Company Limited, Korea (hereinafter referred to as the "SEC Korea") in terms of prevalent service agreement dated January 1, 2019. Such export of IT services is made by the Petitioner under Letter of Undertaking (hereinafter referred to as the "LOU") without payment of IGST which constitutes zero rated supply as per Section 16 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act, 2017")

b. For rendering IT Services to SEC Korea, the Petitioner procures various inputs, input services, and capital goods and accordingly avails ITC of the CGST, SGST, and IGST paid thereon, in accordance with the applicable provisions of the GST laws.

c. The Petitioner had filed a refund claim of unutilised ITC of CGST, SGST, and IGST paid on various inputs and input services for the period of April 2019 to June 2019. After due consideration by the Department, said refund claim amounting to Rs.6,36,69,447/- was sanctioned by the Department barring for an amount of Rs.7,500/-

on the ground of claiming refund of unutilised ITC on invoices missing in the GSTR-2A returns.

d. The Petitioner then filed for the refund of the unutilised ITC of CGST, SGST, and IGST paid on various inputs and input services, for the period of July – September, 2019 amounting to Rs.7,46,52,231/- and October – December, 2019 amounting to Rs.8,20,59,875/-. Against the aforesaid refund applications, deficiency memos under FORM GST-RFD-03 and later show cause notices were issued by the Department proposing to reject the refund for the aforesaid periods.

e. Thereafter, the Petitioner filed a reply to the show cause notices and attended personal hearing, after which the Department partially allowed the refund and rejected a portion of the demand on the ground that the specific goods are capital goods, and not inputs vide orders dated April 28, 2021 and November 8, 2021.

f. Thereafter, the Petitioner filed appeals against the aforesaid orders dated April 28, 2021 and November 8, 2021. The said appeals were rejected vide orders dated October 25, 2021 and February 24, 2023.

g. Aggrieved by the order dated October 25, 2021, the Petitioner preferred the Writ Tax No.777/2022 before this Court and aggrieved by the order dated February 24, 2023, the Petitioner preferred the Writ Tax No. 660/2023 before this Court.

CONTENTIONS OF THE PETITIONER

4. Sri M.P. Devnath, learned counsel appearing on behalf of the Petitioner has made the following submissions:

a. The Department has adopted an inconsistent approach in dealing with the refund applications of the Petitioner, despite the fact that

each of the refund applications arise out of the same set of facts and circumstances, which is grossly incorrect in law.

b. It is imperative to mention that for the subsequent and prior periods, except the period from July 2019 to March 2020, the refund claims have duly been sanctioned to the Petitioner on the same facts and circumstances only.

c. It is a settled position of law that the Department cannot take contrary stand and adopt an inconsistent approach while dealing with the same set of facts as well as legal background. Reliance in this regard is placed on the judgments of the Hon'ble Supreme Court in **Birla Corporation Ltd. v. CCE** reported in **2005 (186) ELT 266 (SC)**, **Indian Oil Corporation Ltd. v. Collector of C. Ex., Baroda** reported in **2006 (202) ELT 37 (SC)**, and **Boving Fouress Ltd. v. Commissioner of Central Excise, Chennai** reported in **2006 (202) ELT 389 (SC)**.

d. The Department has travelled beyond the scope of show cause notices. The show cause notices and the refund rejection orders had rejected the refund on the ground that the specific goods are not consumed in the process of provision of output service and hence cannot be treated as inputs. However, the impugned orders dated October 25, 2021 and February 24, 2023, have proceeded on a completely different ground and have held that the expenses incurred on specific goods were required to be capitalised in the books of accounts as per Accounting Standard 10, and hence, the same are covered under the ambit of capital goods in terms of Section 2(19) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act, 2017"). The Respondent No. 2 has therefore clearly travelled beyond the scope of the show cause notices, which is clearly impermissible in law. Reliance is placed on the judgments of the Hon'ble Supreme Court in **Reckitt**

& Colman of India Ltd. v. Collector of Central Excise reported in **(1997) 10 SCC 379** and **Commissioner of Central Excise, Bangalore v. M/s Brindavan Beverages (P) Ltd. and others (Appeal (Civil) 3417-3425 of 2002)**.

e. The Department has gone beyond the settled principles of law that if an allegation or ground is not made at the time of issuance of show cause notice, the authority cannot go beyond the scope of show cause notice to create a new ground at the later stage of adjudication. However, it is apparent and abundantly clear in the instant case that the Respondent No. 2 has completely travelled beyond the scope of show cause notices while adjudicating the issues on the principles of Accounting Standards which is not applicable to the facts and circumstances of the instant case. Neither the same was ever highlighted in the show cause notice nor in the order issued by the Respondent No. 3.

f. It is an admitted and undisputed fact that the specific goods have not been capitalised by the Petitioner. Upon a reading of the definition of the 'input' and 'capital goods', it is abundantly clear that the goods, which are not capitalised in the books of account and are intended to be used in course or furtherance of a business, would qualify as 'input'. In effect, as per the CGST Act, 2017, the only distinction between inputs and capital goods is that capital goods are the goods value of which has been capitalised in the books of account of the person claiming credit.

g. The Petitioner has not capitalised the value of specific goods in its books of account because the specific goods procured by it were used for the purpose of R & D, software development, and validation thereof, which includes, *inter alia*, development of project, testing and validation of the output results. The Petitioner used these specific goods for undertaking research, design, and

development related activities. Since the specific goods were procured by the Petitioner specifically for the purpose of software development and the validation thereof, the Petitioner did not capitalise these goods in its books of accounts. The Petitioner followed the capitalisation method based on use of goods and given that specific items became redundant after completion and validation of software and were discarded thereafter, the said goods were not capitalised in the books and accordingly, the Petitioner availed ITC on such goods by treating them as inputs. Therefore, the Petitioner has clearly treated the specific goods as 'inputs'.

h. It is further submitted that the capitalisation of assets cannot depend upon any straight jacket formula. The question of capitalisation has to be seen and analysed, keeping in mind the use case of the given industry. Goods which can be capital goods for one industry can be input for other industry. The Supreme Court in **Tata Engineering & Locomotive Company Ltd. v. State of Bihar** reported in **1994 (74) ELT 193 (SC)** held that tyres, tubes, and batteries would constitute inputs as they are essential and necessary for producing the goods in which it has been used. The Supreme Court held that no vehicle could operate or work, nor can it be said to have been produced unless tyres, tubes, and batteries are fixed to it, hence, these items would be inputs. Similarly, the specific goods in question are inputs because they are put for use for providing the services of R & D, software development, and validation thereof.

i. Without prejudice, the Petitioner further submits that the impugned orders dated October 25, 2021 and February 24, 2023, have erred in questioning the applicability of Accounting Standards under GST laws. Accounting Standards are applied to present Financial Statements reliably and the applicability of Accounting Standards

on companies is governed by the Companies Act, 2013. Further, the financial statements of a company are required to comply with the Accounting Standards and deviation from the same is required to be disclosed along with financial effects thereof. The consequences of failure to comply with the provisions of the Accounting Standards are also contained in the Companies Act, 2013. Hence, GST authorities cannot be permitted to question the applicability and compliance of Accounting Standards as the same is beyond their jurisdiction. As long as financial statements stood prepared and audited in accordance with the provisions of Companies Act, 2013 and there were no questions raised by the relevant officers under Companies Act, 2013, the GST authorities were to regard that all expenses stood correctly recorded in the books of accounts.

j. In view of the aforesaid submissions, it is prayed that the impugned orders dated October 25, 2021 and February 24, 2023 passed by the Respondent No. 2 are patently illegal, devoid of jurisdiction and have been passed in a colourable exercise of power, and hence are liable to be set aside.

CONTENTIONS OF THE RESPONDENTS

5. Learned Additional Chief Standing Counsel appearing on behalf of the respondents has made the following submissions:

a. The principle of *res judicata* does not apply in matters of taxation and merely because refund claims have been sanctioned previously, does not mean that the refund claims for subsequent period will also be sanctioned.

b. It is clear that the Petitioner while preparing its financial statements has not adhered to the Accounting Standards. Specific goods have not been capitalised by the Petitioner in accordance with Accounting Standard 10.

ANALYSIS AND CONCLUSION

6. I have heard the learned counsels appearing on behalf of the parties and perused the materials on record.

7. Taxation serves as the cornerstone of governmental revenue, facilitating the provision of public services and infrastructure. Essential to this system is consistency, ensuring that similar factual and legal circumstances are met with uniform treatment. Inconsistencies can erode public trust, undermine compliance, and ultimately compromise the integrity of the tax system. Consistency in taxation entails the application of standardized rules and principles to taxpayers confronting analogous factual and legal circumstances. This uniformity is fundamental to fostering fairness, transparency and predictability within the tax regime. The absence of consistency can breed perceptions of inequity and arbitrariness, eroding taxpayer compliance and faith in the tax systems' integrity.

8. The Petitioner in the instant case has put forth a compelling argument, contending that the approach adopted by the Department in dealing with similar facts and circumstances lacks consistency. Upon a careful consideration, this Court finds itself in agreement with the Petitioner's assertion. It is evident that refund claims arising from precisely similar facts and circumstances for previous and subsequent assessment periods were duly sanctioned. However, a stark deviation from this precedent is observed in the treatment of refund claims for the periods of July-September 2019 and October-December, 2019, which have been inexplicably withheld by the Department. This sudden change in the Department's stand is not only inconsistent but also irrational. The principle of consistency dictates that when faced with identical factual and legal circumstances, the treatment should remain uniform. In this instance, the Department's decision to withhold refund claims for the aforementioned periods, despite having sanctioned similar claims in the past and subsequently in the future, lacks cogent rationale.

9. When taxpayers find themselves in analogous factual and legal circumstances, tax authorities must apply consistent treatment to avoid perceptions of unfairness. Inconsistencies in addressing comparable factual circumstances can lead to distrust in the fairness of the tax system and compromise compliance. Taxation departments must adhere to consistent interpretations and applications of tax laws and regulations. This adherence ensures that taxpayers are treated equitably under the law and prevents arbitrary decision-making by tax authorities. Such consistency also fosters predictability and certainty.

10. The crux of the matter lies in the undeniable fact that the factual and legal circumstances surrounding the refund claims for July-September 2019 and October-December 2019 are indistinguishable from those of previous assessment periods and also the subsequent assessment periods for which the refunds have been approved. The Department's failure to provide a valid justification for this disparate treatment further underscores the inconsistency and irrationality of its actions. Moreover, such inconsistencies create uncertainty and confusion among taxpayers, leading to potential disputes and litigation. In the absence of clear and consistent guidelines, taxpayers may find it challenging to navigate the tax system, resulting in increased compliance costs and administrative burdens. Taxpayers have a legitimate expectation that similar factual and legal circumstances will be met with uniform treatment, and any deviations from this principle undermine the credibility and legitimacy of the actions taken by tax authorities.

11. The inconsistency and irrationality displayed by the Department in withholding refund claims for July-September 2019 and October-December 2019, despite having sanctioned similar claims in the past and in the future are indefensible.

12. The Supreme Court has upheld the doctrine of consistency on numerous occasions and held that Revenue cannot take a different stand

when facts are almost identical. In **Birla Corpn. Ltd. v. CCE (supra)**, the Supreme Court held has follows:

> *"5. In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd. [(2001) 130 ELT 193 : (2001) 42 RLT 800 (cegat)] cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary."*

13. Similarly, reference can also be made to **Indian Oil Corporation Ltd. v. CCE (supra)**, relevant paragraph of which is extracted below:

> *"9. Since the point involved in the present case is identical to the point involved in Hindustan Petroleum Corpn. Ltd. [(2000) 124 ELT 323 (Tri)] and the Department having accepted the principle laid down in Hindustan Petroleum Corpn. Ltd. [(2000) 124 ELT 323 (Tri)] the Department cannot be permitted to take a different stand in the present appeals."*

14. In **Bharat Sanchar Nigam Ltd. And Anr. v. Union of India and others** reported in **(2006) 3 SCC 1**, the Supreme Court held that even though *res judicata* does not apply to tax matters, where facts and law are same, no authority can generally be permitted to take a different view. Relevant paragraph is extracted below:

> *"20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless*

> *there is a new ground urged or a material change in the factual position. The reason why the courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction."*

15. What emerges from the aforementioned judgments of the Supreme Court is that the principles of consistency is sacrosanct in taxation matters. The Supreme Court has consistently emphasized that Revenue cannot take a different stand when facts are almost identical. These judgments underscore the significance of consistency in tax administration and the need for tax authorities to adhere to established principles and precedents. The arbitrary withholding of refund claims for specific periods, despite past precedents and the absence of any material change in circumstances, is contrary to the principles of fairness and equity.

16. Another ground taken in the instant dispute by the Petitioner revolves around the difference between input and capital goods. Under Section 2 of the CGST Act, 2017 "capital goods" are defined as goods value of which is capitalized in the books of account of the person claiming ITC and are used in the course or furtherance of business. On the other hand, "input" is defined as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. The distinction between inputs and capital goods lies in whether the value of the goods is capitalized in the books of account of the taxpayer claiming ITC. Capital goods, by

virtue of their nature, are intended for long-term use in the business and are typically subject to capitalization. Inputs, however, are goods used in the day-to-day operations of the business and are not subject to capitalization. In the instant case, specific goods procured by the Petitioner for R & D, software development, and validation directly contributed to the provisions of IT services exported to SEC Korea. These goods were not capitalized in the books of account, as they were deemed redundant after the completion and validation of software projects. The Petitioner's assertion aligns with the definition of inputs provided under the CGST Act, 2017 which includes any goods used or intended to be used in the course or furtherance of business. Moreover, the Supreme Court's decision in ***Tata Engineering & Locomotive Company (supra)*** underscores the principle that goods essential for producing a final product qualify as inputs. In the instant case, the specific goods used for R & D and software development are essential for providing IT services, and therefore, qualify as inputs under the CGST Act, 2017.

17. It is also apparent that the Department in the instant case has travelled beyond the show cause notice by taking a completely contrary stand. The issuance of a show cause notice entails the obligation on the authority to meticulously delineate specific allegations or concerns prompting its issuance. The principles of natural justice demands that the recipient be accorded a fair and impartial opportunity to respond to the allegations or concerns raised in the show cause notice. This includes the right to be heard, the right to present evidence or arguments in their defence and the right to present evidence or arguments in their defence and also the right to a reasoned decision based on the merits of the case. Any attempt by the issuing authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the show cause notice would constitute a violation of the principles of natural justice. Such actions would not only undermine the recipient's right to a fair hearing but also erode trust in the integrity and impartiality of the adjudicatory process. The issuance of a

show cause notice marks the initiation of a dialogue between the authority and the recipient, providing an avenue for the latter to present their perspective and defend against any allegation made. This process is rooted in the principle that individuals or entities should be given an opportunity to be heard before any adverse action is taken against them. By formally notifying the recipient of the grounds for initiating action, the authority is compelled to provide a coherent and substantiated basis for its actions, thereby fostering transparency in decision-making processes.

18. In **Ramlala v. State of U.P. and others** reported in **2023 SCC OnLine (All) 2479** this Court propounded that a person must be accorded a fair chance to put up his case and therefore the authorities cannot traverse beyond the show cause notice. Relevant paragraphs are extracted herein:

> *"9. The principle that emerges from the above judgments is patently clear that a show cause notice is required to provide details of the nature of the offence and the grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalise the noticee on grounds that were not stated in the show cause notice.*
>
> *10. The rationale for not allowing the respondents from going beyond the realm of the show cause notice is that the petitioner has to be given a chance to put up his case with regard to the said show cause notice. In the event, a particular case is made out in the show cause notice and the order passed subsequently is beyond the said show cause notice, the same would amount to violation of the principles of natural justice, as the petitioner would not have been aware of the new grounds or new factual elements and could never have placed his case for the above before the authority concerned. It is in this background that the Supreme Court in umpteen judgments has laid down the law that an order passed by an authority cannot go beyond the scope of the show cause notice. In fact, the Supreme Court in the case of The Board of High School*

and Intermediate Education, U.P. v. Kumari Chitra Srivastava, (1970) 1 SCC 121 has categorically stated that the principles of audi alteram partem are required to be followed even if the same is burdensome in nature. Justice S.M. Sikri in his inimitable style stated as follows: "Principles of natural justice are to some minds burdensome but this price - a small price indeed - has to be paid if we desire a society governed by the rule of law."

19. In **Associated Switch Gears and Projects v. State of U.P. and others** reported in **2024:AHC:12780**, this Court espoused on the importance of show cause notice. Relevant paragraphs are extracted below:

"8. The significance of adhering to the confines of a show cause notice lies in upholding the rule of law and preventing arbitrary exercises of power. Any action taken by an authority beyond the scope defined in the notice risks transgressing the boundaries of legality and procedural fairness. Such overreach not only undermines the legitimacy of the authority but also compromises the rights of the individuals or entities involved, potentially leading to legal challenges and erosion of public trust. Moreover, the issuance of a show cause notice imposes a duty on the part of the authority to meticulously outline the specific allegations or concerns prompting its issuance. This requirement fosters transparency and accountability, as the recipient is entitled to a clear understanding of the charges against it, enabling it to formulate an informed response. Any attempt by the authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the notice would violate this principle of specificity, depriving the recipient of a fair opportunity to address the accusations leveled against it.

9. The issuance of a show cause notice represents a pivotal juncture in administrative proceedings, demarcating the boundaries within which any authority can exercise its powers. By adhering to the confines of the notice, authorities uphold principles of fairness,

> *accountability, procedural regularity, and legal certainty essential for the legitimacy and effectiveness of governance systems. Any attempt to transcend these limits not only violates the rights of the individuals or entities involved but also undermines the rule of law and public trust in the institutions tasked with upholding it. Thus, this Court holds that, adhering to the show cause notice is not merely a procedural formality, but a mandatory requirement, beyond the scope of which, no action can be taken. Adherence to the show cause notice is a fundamental safeguard against arbitrary exercises of power, ensuring that authority remains tethered to the principles of justice and the rule of law."*

20. It is evident in the instant case that the Department has deviated from the show cause notice, and as such any order passed by it running contrary to the grounds taken in the show cause notice, cannot be sustained. Issuance of the show cause notice represents a pivotal juncture in legal or administrative proceedings, demarcating the boundaries within which any authority can exercise its powers. Adhering to the confines of the show cause notice upholds principles of fairness, accountability, procedural regularly, and legal certainty essential for the legitimacy and effectiveness of the governance systems. Any attempt to transcend these limits not only violates the rights of the individuals or entities involved but also undermines the rule of law and public trust in the institutions tasked with upholding it. Therefore, adherence to the show cause notice is not merely a procedural formality but a mandatory requirement, beyond the scope of which, no action can be taken.

21. Principles emerging from the aforesaid discussion have been summarised below:

a. While the principle of *res judicat*a does not apply to taxation matters, it is incumbent upon authorities to take a consistent approach when dealing with similar factual and legal circumstances. The principle of consistency states that when faced with analogous factual and legal circumstances, the treatment

should remain uniform. Taxpayers have a legitimate expectation that similar factual and legal circumstances will be met with uniform treatment, and any deviations from this principle undermine the credibility and legitimacy of the actions taken by tax authorities.

b. When facts and circumstances in a subsequent assessment year are the same, no authority, whether quasi-judicial or judicial can generally be allowed to take a contrary view. The arbitrary withholding of refund claims for specific periods, despite past precedents and the absence of any material change in circumstances, is contrary to the principles of fairness and equity.

c. Capital goods, are intended for long-term use and are typically subject to capitalization. However, inputs, are goods used in the day-to-day operations of the business and are not subject to capitalization.

d. While issuing a Show Cause Notice, it is incumbent upon the Department to clearly outline the specific allegations or concerns against the recipient. In no case, the Department can be allowed to traverse beyond the confines of the Show Cause Notice, since the same will trample upon the recipient's right to defend itself. Any attempt by the issuing authority to expand the scope of inquiry or introduce new allegations beyond those articulated in the show cause notice would constitute a violation of the principles of natural justice. Such actions would not only undermine the recipient's right to a fair hearing but also erode trust in the integrity and impartiality of the adjudicatory process. Any action taken beyond the confines of the Show Cause Notice, is void ab initio and cannot be sustained.

22. In light of the aforesaid, it is evident that the impugned orders dated October 25, 2021 and February 24, 2023 are palpably erroneous, and cannot

be sustained. Accordingly, let there be a writ of certiorari issued against the orders dated October 25, 2021 and February 24, 2023 passed by the Respondent No. 2. The said orders are hereby quashed and set aside.

23. The writ petitions bearing Writ Tax No.777 of 2022 and Writ Tax No.660 of 2023 are, accordingly, allowed. Consequential reliefs to follow. There shall be no order as to the costs.

24. An urgent photostat-certified copy of the order, if applied for, should be readily made available to parties upon compliance with requisite formalities.

Date :12.03.2024
Kuldeep

(Shekhar B. Saraf,J.)