IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 6th DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No.16175 OF 2022(T-RES)

BETWEEN:

M/S WIPRO LIMITED INDIA
COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956
REGISTERED OFFICE AT:
DODDAKANELLI SARJAPUR ROAD
BENGALURU – 560 035.
REP BY VENKATRAMAN E
GENERAL MANAGER
CORPORATE TAXATION
R/AT BLOCK D3, FLAT 401
L AND T SOUTH CITY
BANGALORE – 560 076.

…PETITIONER

(BY SRI. G. SHIVADASS, SENIOR COUNSEL FOR
PRASHANTH SABARISH SHIVADASS, ADVOCATE)

AND:

1 . THE ASSISTANT COMMISSIONER OF CENTRAL TAXES
BENGALURU SOUTH, SOUTH DIVISION - 8
RANGE DSD-8, KORAMANGALA
BENGALURU – 560 034.

2 . THE GOODS AND SERVICES TAX COUNCIL
THROUGH ITS SECRETARIAT
OFFICE AT 5TH FLOOR, TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI - 110 001

3 . UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)
NO.137, NORTH BLOCK,
NEW DELHI - 110 001

4 . THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENGALURU – 560 001.

5. M/S. ABB GLOBAL
INDUSTRIES AND SERVICES PRIVATE LIMITED
COMPANY INCORPORATED UNDER
COMPANIES ACT, 1956
REGISTERED OFFICE AT SY NO. 104
AND 10618, 5TH , 6TH AND 7TH FLOOR.
BRIGADE MANGNU, WING A &B
KODIGEHALLI, AMRUTHAHALLI VILLAGE
BENGALURU NORTH TALUK, YELAHANKA HOBLI
BENGALURU URBAN – 560 091.
(AMEENDED BY COURT ORDER DATED: 16.12.2022)

…RESPONDENTS

(BY SRI. JEEVAN.J.NEERALGI., ADVOCATE FOR R-1 TO R-3
SRI. HEMA KUMAR., AGA FOR R-4
SRI. SANDEEP HUILGOL, ADVOCATE FOR R-5)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT R-1 TO ALLOW THE PETITIONER ACCESS TO THE GST PORTAL IN ORDER TO THE RECTIFY FORM GSTR-1 UPLOADED BETWEEN FY 20417-18 AND 2018-19 WITH RESPECT TO THOSE INVOICES ISSUED TO THE RECIPIENT SO AS TO ENABLE THE RECIPIENT TO TAKE CREDIT TO THE TAX PAID BY THE PETITIONER NOTWITHSTANDING THE TIME LIMIT PRESCRIBED IN SECTION 16(4) OF THE CGST ACT AND ETC.,

THIS W.P. COMING ON FOR FURTHER HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this petition, petitioner has sought for the following reliefs:-

> *" a) To issue order(s), directions, writ(s) in the nature of mandamus, directing Respondent No.1 to allow the petitioner access to the GST portal in order to the rectify form GSTR-1 uploaded between FY 2017-18 and 2018-19 with respect to those invoices issued to the Recipient so as to enable the recipient to take credit of the tax paid by the petitioner notwithstanding the time limit prescribed in Section 16(4) of the CGST Act.*
>
> *b) In the alternative, to issue, orders(s) directions, writ(s) in the nature of mandamus, directing Respondent No.1 to respond and consider the request made by the Petitioner vide letter dated: 06.09.2021 enclosed in Annexure-D.*
>
> *c) To issues order(s), directions, writ(s), or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstance of the case in the interest of justice."*

2. Heard learned Senior counsel for the petitioner, learned counsel for respondents 1 to 3 – revenue, learned AGA for the 4th respondent as well as learned counsel for the 5th respondent and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner invites my attention to the Circular bearing No.183/15/2022-GST dated 27.12.2022 in order to point out that the petitioner as well as the 5th respondent would be entitled to the benefit of the directions issued in the said Circular with regard to the errors committed in the Invoices and the relevant forms of both the petitioner and 5th respondent and as such, the present petition deserves to be disposed of in terms of the said Circular.

4. Per contra, learned counsel for the respondents-revenue submits that the said Circular is not applicable insofar as the petitioner and 5th respondent are concerned and that there is no merit in the petition and the same is liable to be dismissed.

5. In order to appreciate the rival contentions, it is necessary to extract the said Circular, which reads as under:-

Circular No. 183/15/2022-GST
F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
*****

New Delhi, Dated the 27th December, 2022

To,
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)/
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 – reg.

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the ***financial years 2017-18 and 2018-19****, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such*

as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during ***FY 2017-18 and FY 2018-19****.*

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the CGST Act, hereby clarifies as follows;

Sl No.	***Scenario***	***Clarification***
a	*Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.*	*In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.*
b	*Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.*	*In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.*
c.	*Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.*	*In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.*
d.	*Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.*	*In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.* *In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be*

		disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) that he has received the goods or services or both;

iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, tot he supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx .

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

6. As rightly contended by the learned Senior counsel for the petitioner, a perusal of the Invoices at Annexure-C will indicate that while supplies are made by the petitioner to the 5th respondent – M/s.ABB Global Industries and Services Private Limited, the GSTIN Number mentioned in the Invoices has been incorrectly shown as that of ABB India Limited, which is a completely different and independent juristic and legal entity from the 5th respondent herein. Under these circumstances, having regard to the language employed in the Circular, which

contemplates rectification of the bonafide and inadvertent mistakes committed by the persons at the time of filing of Forms and submitting Returns, in the peculiar and special facts and circumstances of the instant case, I am of the considered opinion that the error committed by the petitioner in showing the wrong GSTIN number in the Invoices which was carried forward in the relevant Forms as that of ABB India Limited instead of the 5th respondent i.e., M/s.ABB Global Industries and Services Private Limited, is clearly a bonafide error, which has occurred due to bonafide reasons, unavoidable circumstances, sufficient cause and consequently, the aforesaid Circular would be directly and squarely applicable to the facts of the instant case.

7. A perusal of the aforesaid Circular also indicates that the procedure to be followed in such cases has been prescribed at paragraph-4. In addition to the Circular, the petitioner has also filed an Affidavit satisfying the conditions stipulated in paragraph – 4.1.1 of the Circular, enclosing the details of the Invoices issued by the petitioner to the 5th respondent. The 5th respondent has filed statement of

objections setting out the facts admitting, accepting and re-enforcing the claim of the petitioner with regard to the discrepancies / mismatch in mentioning of the GSTIN Number.

8. Under these circumstances, I am of the considered opinion that it would be just and proper to dispose of this petition directing the respondents 1 to 3 – revenue to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner, 5th respondent and their transactions for the years 2017-18, 2018-19 and 2019-20. It is also necessary to state that though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, I am of the view that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.

9. In the result, I pass the following:-

ORDER

(i) Petition is hereby disposed of directing the respondents 1 to 3 to take necessary steps in relation to the petitioner and 5th respondent for the assessment years 2017-18, 2018-19 and 2019-20 in terms of the Circular No. bearing No.183/15/2022-GST dated 27.12.2022.

(ii) The respondents 1 to 3 are hereby directed to consider the request made by the petitioner vide letter at Annexure-D dated 06.09.2021 and proceed further in accordance with law and in terms of the Circular dated 27.12.2022 as expeditiously as possible.

Sd/-
JUDGE

Srl.