

**IN THE HIGH COURT OF JHARKHAND AT RANCHI****W.P.(T) No. 2478 of 2021**

M/s Mahalaxmi Infra Contract Ltd. having its registered office at Ahmedabad and place of business at Lalmatia, Godda, Jharkhand through its authorized Signatory namely Valani Ketan Kumar Shambhulal R/o Bhuj, Kachchh, Gujarat

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Versus

1. Goods and Services Tax Council through the Secretary, Central Board of Indirect Taxes and Customs, New Delhi
2. The State of Jharkhand through the Commissioner of State Goods and Services Tax, Dhurwa, Ranchi
3. The Deputy Commissioner, State Taxes, West Circle, Ranchi
4. The Deputy Commissioner, State Taxes, Chirkunda Circle, Dhanbad
5. Eastern Coalfields Limited, Mahagama, Godda
6. MIPL-NKAS(JV) having its address at Dahernangi Patch, Rajmahal Area, ECL, Lalmatia, Godda through its Director
7. Joint Commissioner(Administration), Ranchi
8. Goods and Services Tax Network represented by its Chairman, New Delhi

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**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH****HON'BLE MR. JUSTICE DEEPAK ROSHAN**

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| For the Petitioner          | : M/s K. Kurmy, Nitin Pasari<br>& Sidhi Jalan, Advocates   |
| For the Respondent No.1 & 8 | : Mr. Amit Kumar, Sr. S.C.                                 |
| For the Respondent No.5     | : M/s Rajesh Lala, Kumar Nishant, Advocate                 |
| For the Respondent No.6     | : M/s Kumar Sundaram, Abhijeet Tushar,<br>& Rajarshi Singh |
| For the Respondent-State    | : Mr. Ashok Kr. Yadav, Sr. S.C.-I                          |

09/18.10.2022 Heard learned counsel for the petitioner, Respondent No.5 ECL, Respondent no. 6 MIPL-NKAS (JV), Respondent No.8 GSTN and the Respondent State. Writ petitioner approached this Court to allow it to carry out amendment in its GSTR-1 for the month of January 2019 in order to rectify its mistake of mentioning wrong GSTIN number against the invoices raised on Respondent no.5. The GSTIN number of petitioner's own joint venture, Respondent No.6 was inadvertently mentioned therein. Petitioner also sought a direction upon the respondent GSTN to allow respondent No.5 purchaser of the petitioner to avail ITC pertaining to the said transaction.

2. Petitioner is a company bearing GSTIN number 20AAGCM4615E1Z1 engaged in business of mining. It also undertakes transportation of goods for central government undertakings, including the Respondent no.5 Eastern Coalfields Limited, Central Coal Fields Limited etc. within the State of Jharkhand. In the year 2018 petitioner's company was engaged by respondent no.5 bearing GSTIN No. 20AAACE7590E3ZX for providing services in relation to removal and

re-handling of overburden from Dahernangi OC patch of Rajmahal Area. While filing its return in Form GSTR 1 for January 2019 in March 2019 i.e., within the time prescribed, according to the petitioner an inadvertent error was committed in the GSTIN of Eastern Coalfields Ltd. (GSTIN No. 20AAACE7590E3ZX ) as petitioner's employee quoted the GSTIN of one MIPL-NKAS (JV) (GSTIN No.20AAEAM0162G1Z9). Petitioner approach this Court as this mistake was realized by it only in June 2021 during final settlement of accounts with Respondent No.5, Eastern Coalfields Limited.

When the matter was taken up on 23<sup>rd</sup> June 2022, upon hearing the learned counsel for the parties including GSTCouncil, State of Jharkhand and Respondent no.5, this Court encapsulated the grievance of the petitioner and the legal issues raised for consideration of this court. The order dated 23.06.2022 is extracted here under:

*“Learned counsel for the petitioner Mr. Kartik Kurmy has submitted that while filing return in Form GSTR-1 for January 2019 in March 2019 i.e. within the time prescribed, an inadvertent error was committed in the GSTIN of Eastern Coalfields Limited (20AAACE7590E3ZX) as petitioner's employee quoted the GSTIN of one MIPL-NKAS(JV) (20AAEAM0162G1Z9).*

*2. This entry related to the Tax Invoice No. 01/2018-19, dated 17.01. 2019 issued by the petitioner which is at page 28 of the writ petition. As a result, the same was not reflected in the Form GSTR-2A of the recipient Eastern Coalfields Limited-Respondent-5. Instead, it got reflected in the Form GSTR-2A of MIPL-NKAS (JV). Extracts of the GSTR-2A concerning MIPL-NKAS (JV) is enclosed at page 62 of the writ petition. Petitioner realized this mistake only in June, 2021 during final settlement of accounts with the respondent No.5 Eastern Coalfields Limited. As a result of this inadvertent error, Eastern Coalfields Limited is not able to avail of the ITC in lieu thereof to the tune of Rs, 2,25,71,684.00/- whereas MIPL-NKAS (JV) in whose GSTR-2A such ITC is being reflected is not entitled to avail it. Though the error has no revenue effect but petitioners outstanding bills are being withheld by the respondent No. 5 on account of non-reflection of such ITC in their GSTR-2A. Moreover, petitioner can be made liable for suppression of facts; whereas MIPL-NKAS (JV) can be made liable for suppression of purchases concerning the said invoice and respondent No.5 Eastern Coalfields Limited is not able to avail the ITC.*

*3. The manner in which a registered person can discover any such error or omission and rectify it as per Section 37 (3) has not yet been notified. Substituted Rules 59 and 60 have also not been notified, as a result, the forms on filling of which by Respondent No. 5 i.e., GSTR-2, the petitioner might have noticed the error and sought amendment, could not be undertaken. The Form GSTR-2 and GSTR-1A are yet to be notified. In the absence of notification of such rules, petitioner supplier was not in a*

position to discover the error as there is no scope for such error being corrected by the recipient in Form GSTR-2 which would lead to auto correction of GSTR-1A. The GSTR-1 form are in operation since 1<sup>st</sup> July 2017 but in absence of the notification of the procedure in terms of section 37 (3) or 38 (3) & (4) and the relevant substituted rules 59 (3) & (4) and 60 (1), petitioner has not been able to make correction in the error in the Form GSTR-1 submitted in March, 2019.

4. Learned counsel for the petitioner has referred to the counter affidavit of the respondent No.1 GST-council at para 6 as per which details filled in the GSTR-1 can be edited and saved multiple times by the taxpayer before the same is submitted and signed digitally. However, no changes can be made after the submission of GSTR-1. Learned counsel for the petitioner has also referred to the following judgments;

1. *M/s. Sun Dye Chem Vs. The Commissioner of State Tax*, reported in 2020-VIL-523-MAD (Madras High Court).

2. *Pentachle Plant Machineries Pvt. Ltd. Vs. Office of the GST Council & Others* reported in 2022 U.P.T.C.[VOL.110]-442 (Madras High Court)

5. Mr. Rajesh Lala, learned counsel for the respondent No.5 has not disputed the fact that Form GSTR-2A for the relevant period does not reflect the ITC for the amount Rs.2,25,71,684.00/- to which respondent No.5 is entitled in lieu of purchases made against the Invoice No. 01/2018-19, dated 17.01.2019. That is the reason respondent No. 5 has withheld the final bill due to the petitioner. Petitioner has been communicated such error by a letter dated 30th January, 2021.

6. Mr. Salona Mittal, learned counsel for the State has submitted that any such rectification in Form GSTR-1 would have been done by the petitioner within the time limit prescribed under Section 37(3) of the JGST Act. Form GSTR-1 in column no. 9 provides for amendment of such errors or incorrect entries pertaining to invoice credit notes, debit notes as also GSTIN number which the petitioner has failed to avail. However, learned counsel for the State is not in a position to inform as to whether such ITC inadvertently reflected in the Form GSTR-2A of MIPL-NKAS (JV) has been availed by him or not.

7. Learned counsel for the State has further submitted that noticing of error is not dependent on statutory form, therefore absence of the GSTR- 2 or GSTR- 1A form being notified would not come to the aid of petitioner. He further submits that the whole argument of the petitioner that respondent No. 5 would not avail of ITC as it was not reflected in its GSTR-2A does not hold good, in view of the decision rendered by the Hon'ble Supreme Court in the case of *Union of India Vs. Bharti Airtel Ltd. and others*, reported in (2021) 54 GSTL 257 SC. He submits that at best the present dispute is inter se between the petitioner and the respondent No.5

8. In such circumstances, we deem it proper to direct impleadment of MIPL-NKAS (JV) through its Director as party respondent No.6 in this writ petition.

9. Learned counsel for the petitioner is allowed to

*make such addition in the array of respondents during course of the day. Learned counsel for the petitioner undertakes to effect Dasti service of notice on respondent No.6. Requisites for the purpose be filed by Monday. Office is directed to serve draft of notice upon respondent No. 6 by 04.07.2022 on learned counsel for the petitioner. After effecting Dasti service of notice on respondent No. 6, an affidavit to that effect be filed within one week thereafter by the petitioner.*

*10. Matter be listed on 20.07.2022.*

*11. Respondent No. 6 would enter appearance by the date fixed and if so advised, file their counter-affidavit also specifically indicating as to whether they have availed ITC wrongly reflected in their GSTR-2A of March 2019 of the value as indicated hereinabove. The respondent No. 6 would also indicate as to whether they have been subjected to any show cause for suppression of purchases by the tax authorities.*

*12. Learned counsel for the petitioner would enclose the instant order with the Dasti Service.*

3. By the instant order, MIPL-NKAS (JV) was impleaded as Respondent number 6 and asked to file counter affidavit, specifically stating whether they have availed ITC wrongly reflected in their GSTR-2A of March 2019 of the value indicated here in above. It was also asked to indicate as to whether they have been subjected to any show-cause for suppression of purchases by the tax authorities. Respondent No.6 appeared on notice and filed a counter affidavit. The stand of the Respondent No.6 as reflected in its counter affidavit are incorporated in the order dated 20<sup>th</sup> July 2022. It denied having availed such ITC wrongly reflected in its GSTR-2A. By the said order, upon consideration of the stand of the Respondent No.6 also, this court came to the opinion that all the three parties i.e., Petitioner, Respondent No.5 and 6 should appear before the Joint Commissioner, Administration ( Head Quarters), with the relevant records including their books of accounts and returns of the said period. The Joint Commissioner Administration ( Head Quarters) was therefore impleaded as Respondent No.7 and directed to carry out this inquiry and undertake due diligence with the concerned parties within a period of three weeks. Parties were directed to cooperate and produce all other relevant records called for by the Joint Commissioner Administration (Head Quarters) for the aforesaid purpose. The order dated 20.07.2022 is also extracted here under for easy reference:

*Reference may be made to the order dated 23rd June 2022. Respondent no.6 has entered appearance thereafter and filed a counter affidavit. The statements*

made at paragraphs-5 to 7 of the counter affidavit of respondent no.6 are extracted hereunder as they explain the position of the respondent no.6 so far as the reflection of ITC in their GSTR-2A of March 2019 is concerned :

“5. That the petitioner M/s Mahalaxmi Infra Contract Private Limited and one M/s NKAS Services Pvt. Ltd. agreed to form a joint venture in order to join their forces to obtain best result from the combination of their individual resources of technical and management skills, finance and equipment for the benefit of an upcoming project and in order to submit the bid for work of “Hiring of HEMM for removal of 200.00 L.Cum OB and extraction of coal 70.00 L.Te at Dahernangi Path at Rajmahal Area” vide a joint venture agreement dated 26.09.2014.

6. That subsequent to submission of all the requisite documents as per the NIT, the work order for the work mentioned above was issued by the Eastern Coalfields Limited in the favour of the answering respondent vide work order dated 10.06.2015.

7. That the annual return of the answering respondent further show that the invoice in question, i.e. Invoice no.01/2018-19 dated 17.01.2019 has never been raised on the answering respondent and no benefit of the same has ever been availed / utilized / enjoyed by the answering respondent.”

The petitioner harps upon the plea of the inadvertent error which, according to him, should be allowed to be corrected by filing revised GSTR-1 for January 2019 filed in March 2019. Time limit for doing so under Section 37(3) was up to 20th October 2019. It is evident that any such correction, if allowed in GSTR-1 of the petitioner, would lead to correction by auto-population in GSTR-2A of respondent no.5. Under the provisions of Section 38(1) even respondent no.5 was required to undertake due diligence and validate entries made in the GSTR-2A and to check whether the relevant invoice is reflected in that or not. GSTR-3B of respondent no.5 is not on record to show whether it had claimed ITC of equivalent value paid by them in lieu of the tax invoice no.01/2018-19 dated 17th January 2019 issued by the petitioner. Any such correction in GSTR-1 by the petitioner would also entail auto-correction in the GSTR-2A of respondent no.6. The responsibility of filing proper forms is not only upon the supplier but also upon the purchasers and respondent no.6 in whose GSTR-2A the inadmissible ITC is reflected for the said period. Apparently, all these three parties have not undertaken due diligence at the time of filing of returns or GSTR-1 or checked the entries in GSTR-2A. Petitioner is assessed under respondent no.3 the Deputy Commissioner, State Taxes, West Circle, Ranchi while respondent no.5 is assessed under respondent no.4 the Deputy Commissioner, State Taxes, Chirkunda Circle, Dhanbad. Both fall under the jurisdiction of Joint Commissioner of Administration, Headquarters at Ranchi. Respondent no.6 is also assessed under respondent no.3.

Therefore, let the Joint Commissioner

*Administration (Headquarters), Ranchi be impleaded as respondent no.7 by the learned counsel for the petitioner during course of the day.*

*Learned counsel for the State Mr. Salona Mittal, A.C. to Sr. S.C.-I accepts notice on behalf of the newly added respondent.*

*In view of the aforesaid circumstances, we are of the opinion that all the three parties- petitioner, respondent nos.5 and 6 should appear before the Joint Commissioner Administration (Headquarters) with the relevant records including their books of accounts and returns of the said period. The Joint Commissioner Administration (Headquarters), Ranchi may, if necessary, call for the relevant records for the period in question from the office of the respondent nos.3 and 4 to undertake this inquiry.*

*For the aforesaid purpose, let the petitioner, respondent nos. 5 and 6 all appear through their authorized representatives with all relevant records, books of accounts and the returns filed for that period on 28th July 2022 before respondent no.7. The Joint Commissioner Administration (Headquarters) shall carry out this inquiry and undertake due diligence with the concerned parties within a period of three weeks. Parties should cooperate and produce all other relevant records called for by the Joint Commissioner Administration (Headquarters) for the aforesaid purpose. Let the outcome of the exercise be brought to the notice of this Court by way of an affidavit filed by the respondent Joint Commissioner Administration (Headquarters), Ranchi within a week thereafter.*

*The matter be listed on 7th September 2022.*

Such exercise was conducted by the Respondent No.7 and brought on record through a counter affidavit filed by Respondent No. 2 to 4 on 19.09.2022 i.e., the State respondents. The conclusion recorded by the Joint Commissioner of State Tax Respondent No.7 in its report dated 27<sup>th</sup> August 2022, has also been incorporated in the order dated 21<sup>st</sup> September 2022, and reads as under:

*“On discussion and study of written submission of 5 petitioner and respondent no. 5 and 6, it is concluded that M/S Mahalaxmi Infra Contract Ltd. while filing the returns in GSTR-I for the month of Jan, 2019, committed mistake by uploading the details of the invoices quoting the GSTIN of M/S MIPL-NKAS(JV) instead of M/S Eastern Coalfields Ltd. M/S Eastern Coalfields Ltd. utilised the input tax credit as per books of accounts despite the input tax credit was not reflecting in auto populated GSTR-2A. Later on realising the mistake it reversed input tax credit in the month of May, 2022 through GSTR3B returns.*

*The input tax credit in auto populated GSTR-2A was available for M/S MIPL-NKAS(JV), but it did not utilise the same. Hence M/S Eastern Coalfields Ltd. deserved the input tax credit but due to mistake in filing of GSTR-I by M/S Mahalaxmi Infra Contract Ltd. for the month of Jan, 2019, M/S Eastern Coalfields Ltd. could not*

*get the benefits of input tax credit. Since the GSTN portal does not allow amendments of the returns after filing of annual return GSTR-9, hence the only recourse left is that GSTN portal allows M/S Mahalaxmi Infra Contract Ltd. to amend GSTR-1 for the month of Jan, 2019 and allows to amend GSTR-9 for the financial year 2019-20 as well.*

4. On consideration of the report it appeared that there was no mis-utilization of ITC by any of the parties. The issue remained essentially a matter of correction in the returns. Since such correction could be carried out through GSTN portal, this Court thought it proper to implead GSTN through its chairman as Respondent No.8. Learned counsel for the Respondent No.1 Goods and Service Tax Council Mr. Amit Kumar duly accepted notice on behalf of GSTN and undertook to obtain instruction on this issue. GSTN has filed an affidavit yesterday.

Learned counsel for the GSTN has submitted that the details filed in GSTR-1 can be edited and saved multiple times by taxpayer before the same is submitted and signed digitally. Further the GST portal allows taxpayer to preview the GSTR-1 before submitting the same to verify the added records. Petitioner has acknowledged ticking the acknowledgment check box that they have reviewed the details of preview and information furnish is correct and they were aware that no changes can be made after submission of GSTR-1. It is only thereafter that the taxpayer ticks the button whereby submission of GSTR-1 is made to the GSTN Portal. There is a responsibility cast upon the supplier to verify the GST registrations to avoid showing of credit in GSTR- A of wrong GSTIN. Learned counsel for the respondent GSTN has referred to Section 37 (3) of the CGST Act which provides that a registered person who has furnished the details under subsection (1) for any tax period and which have remained unmatched under Section 42 or section 43, shall , upon discovery of any error or omission there in, rectify such error or omission in such manner as may be prescribed and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period. Learned counsel for the respondent GSTN further submits that proviso to Section 37(3) makes it clear that no rectification of error or omission in respect of the details furnished under sub section (1) shall be allowed after furnishing of the return under Section 39 for the month of September, following the end of the financial year to which the such details pertain, or furnishing of the relevant annual return, whichever is

earlier. It is submitted that the system allows amendment of all records declared in GSTR-1 as per the time line mentioned under Section 37(3) of the CGST Act 2017. The petitioner did not exercise the option to amend / rectify the mistake by making such correction in subsequent GSTR-1 return up to September 2019. The original invoice in this case is reported in financial year 2018-19. Therefore no amendment is allowed of invoices pertaining to FY 2018-19 after the due date for furnishing the details under Section 37(1) of the CGST / SGST act. Learned counsel for the Respondent GSTN has, in particular referred to the stand of the respondent GSTN as contained in para 6 of the counter affidavit. GSTN has stated that the portal has been designed in accordance with the provisions of CGST / SGST Act and Rules made thereunder and there are no arbitrary restrictions imposed on the portal. Allowing amendments in GSTR-1 at this belated stage shall carve out an exception not only raising potential technical issues in the system, but also leading to complications in settlement of payments across the state governments. In substance GSTN has conveyed that correction of GSTR-1 return by the petitioner at this stage could be barred under Section 37(3) of the act, and it may create difficulties in technical issues in working of the GSTN Portal.

5. Learned counsel for the petitioner has drawn the attention of this Court to the provisions of Section 37 subsection (3) in particular and section 42 and 43 of the CGST. Act. Learned counsel for the petitioner has also referred to the provisions of Rule 70 and 71 of the CGST Rules 2017. Learned Counsel for the petitioner has also referred to the amendment carried out in Section 37(3) by the Finance Act 2022 by which the expression “and which have remained unmatched under Section 42 or 43” have been omitted. It is submitted that the amendment has been notified through notification no.19/2022 dated 28.09.2022 w.e.f. 01.10.2022 only prospectively, by the CBIC (Department of Revenue), Ministry of Finance. By the instant amendment the Rules 69 to 77 and 79 have been omitted and Forms GSTR-1A, GSTR-2 and GSTR-3 have also been omitted. These amendments have been notified for the first time by the notification dated 28.09.2022 w.e.f. 01.10.2022. Therefore, these amendments do not have any bearing on the case of the petitioner which relates to filing of GSTR-1 for January 2019 in March 2019. Relying upon the aforesaid provisions of the CGST Act and the Rules as it existed prior to the amendments, it is submitted that the



mechanism for discovery of any such error or omission to rectify the return as per section 37 (3) had not been notified. As a result, the forms on filing of which by Respondent No.5 i.e., GSTR-2, the petitioner might have noticed the error and sought amendment, could not be undertaken. The form GSTR-2 and GSTR-1A were also not notified. In the absence of notification of such rules, at the relevant point of time petitioner supplier was not in a position to discover the error as there is no scope for such error being corrected by the recipient in form GSTR-2, which would lead to auto correction of GSTR-1A. The GSTR-1 form are in operation since 1<sup>st</sup> July 2017, but in absence of the notification of the procedure in terms of section 37 (3) or 38 (3) and (4) and the relevant substituted rules 59 (3) and (4) and 61, petitioner had not been able to make correction in the error in the form GSTR-1 submitted in March 2019. It was only during final settlement of accounts with Respondent No.5 Eastern Coalfields limited that Petitioner realized its mistake in June 2021 and thereafter approached this Court in the present writ petition on 9<sup>th</sup> July 2021. It is submitted that the mechanism for matching, reversion and reclaim of input tax credit or matching, reversion and reclaim of reduction in output tax liability under section 42 and 43 of the CGST Act could not be undertaken. It is further submitted that by notification no.18/2022 dated 28.09.2022 issued by CBIC (Department of Revenue), Ministry of Finance the amendments made by the Finance Act, 2022 in the CGST Act have been notified w.e.f. 01.10.2022 whereby Sections 42 and 43 have been omitted. The same operates prospectively and has no bearing in the case of the petitioner. Learned counsel for the petitioner has further referred to the mechanism conceived under Rule 70 and 71 of the CGST Rules and submits that the relevant form GST MIS-1 and GST MIS-2 were not notified. These rules have now been omitted w.e.f. 01.10.2022 by the notification no.19/2022 dated 28.09.2022 and would be prospectively applicable. As such, the system conceived under the GST regime to communicate any mismatch in claim of input tax credit in respect of any tax period through the common portal at the relevant point of time had not been put into place. Therefore, the time bar conceived under Section 37 (3) had not come to operate. The stand of GSTN that rectification of such GSTR-1 at this stage could be time barred under Section 37(3) of the CGST Act, has no backing of law. Learned counsel for the petitioner has submitted that in such a case the correction of return GSTR-1 by the petitioner or claim of

ITC by the Respondent no.5 against the invoice in question i.e., Tax Invoice No. 1/ 2018-19 dated 17<sup>th</sup> January 2019 is not barred by delay, nor is it going to create any additional tax burden or liability. The whole exercise of correction of the relevant GSTIN number in GSTR-1 form of the petitioner relating to January 2019, submitted in March 2019, the consequent reflection of such ITC in GSTR- 2A of respondent no.5 and deletion of such ITC from the return of respondent no.6 in GSTR-2A would be revenue neutral. The State Exchequer would not be denuded of any tax as a result of such exercise.

Relying upon decisions of the other High Court such as in the case of *Nodal Officer, Jt. Commissioner, IT Grievance Vrs. Das Auto Centre [2022 (56) GSTL 257 (Cal. ) of the Calcutta High Court, para 6 & 7]*; in the case of *Chep India Private Limited Vrs. Union of India & others [ Writ Petition no. 1075 of 2021 of High Court on Bombay, para 3]*; in the case of *Hans Raj Sons Vrs. Union of India [2020(34) GSTL 58 (P&H) paragraph 6 and 7 of Punjab and Haryana High Court]* and also in the case of *Jigar Cars Pvt. Ltd. Vrs. Union of India [2021 (50) GSTL 113 (Guj.) para 8 of the Gujarat High Court]*, learned counsel for the petitioner submits that such correction in form GSTR-1 for the relevant period can be either made electronically through the GSTN portal or if it presents some technical difficulties on the part of GSTN, petitioner may be allowed to submit the rectified form manually also, as has been allowed by these jurisdictional High Courts.

6. Learned counsel for the petitioner Mr. Kartik Kurmy has relied upon the case of *Sambhaji & others Vrs. Gangabai & others [(2008) 17 SCC 117, para 10 to 15]* in support of the proposition that the procedure prescribed under the CGST Act and the rules referred upon by the respondent GSTN should not be construed as mandatory, as it is always subservient to and in aid to justice. No person has a vested right in any course of procedure. Learned counsel for the petitioner has also placed reliance on the case of *Union of India Vrs. Bharti Airtel Ltd. [2021(54) GSTL 257 (SC) para 33]* in support of the submission that the common portal is only a facilitator to feed or retrieve such information. The primary source for assessment or filing of returns is in the form of the agreements, invoices / challans, receipt of the goods and services and books of accounts, which are maintained by the assessee manually / electronically. It is submitted that since the common portal is only a facilitator, technical issues in its opening would not come into the way of

correction of any errors in case it is not barred by law. Relying upon the case of *Price Waterhouse Coopers Private Limited Vrs. Commissioner of Income Tax, Kolkata-I and another [(2012) 11 SCC 316, para 13, 15, 16]* it is further submitted that in that the Hon'ble Supreme Court has acknowledged that it is possible that even the assessee could make a silly mistake which could be a *bona fide* and inadvertent error while submitting its return. In that case the Apex court did not find any concealment of income or furnishing of inaccurate particulars deliberately on the part of the assessee. Therefore the imposition of penalty on the assessee was set aside.

7. Learned counsel for the respondent State submits that the concerned joint Commissioner Administration (Headquarters) has already conducted the exercise as directed by this Court by an order dated 20<sup>th</sup> July 2022 and also opined that since M/s Eastern Coalfields limited deserve the input tax credit, but due to mistake in filing of GSTR-1 by the petitioner for the month of January 2019, it could not avail of the benefits of ITC and that the GSTN portal does not allow amendments of the returns after filing of annual return GSTR-9, hence the only recourse left is that GSTN portal allows the petitioner to amend GSTR-1 for the month of January 2019 and allows to amend GSTR-9 for the financial year 2019-20 as well.

8. Learned counsel for the respondent no.5 Eastern Coalfields submits that if such correction is allowed in the GSTR-1 of the petitioner relating to January 2019, the relevant ITC could be reflected in the GSTR-2A of the respondent no.5 and would enable it to avail the ITC to which it is entitled. He however submits that ITC availed by the Respondent no.5 has been reversed but it had entailed payment of interest thereon which Respondent no. 5 may be allowed to claim from petitioner. Learned counsel for the respondent no.6 submits that respondent no.6 has neither claimed the ITC wrongly reflected in its GSTR-2A on account of wrong entry in the GSTR-1 for January 2019 by the petitioner against one tax invoice nor is entitled to claim that ITC. It is not going to lose any tax or benefit of ITC on account of such correction.

9. We have considered the rival stand of the parties in detail and as borne out from the pleadings on record. The chronology of facts have been narrated in the foregoing paragraphs of this order. The orders passed earlier at relevant stages have also been extracted here in above

to facilitate a considered resolution of the issue raised by the petitioner herein. For the purposes of appreciating the issue at hand the provisions of section 37, section 38, section 39 and sections 42 and 43 (as it existed prior to the omission under Finance Act, 2022 as notified w.e.f. 01.10.2022 under notification no.18/2022 dated 28.09.2022 of CBIC [(Department of Revenue) Ministry of Finance, Government of India] of the CGST Act are quoted here under:

**CHAPTER IX  
RETURNS**

**37. Furnishing details of outward supplies.— (1)**

*Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:*

*Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:*

*Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:*

*Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.*

*(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.*

*(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:*

*Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.*

[Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019]

Explanation: For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

**38. Furnishing details of inward supplies.**— (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a non resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

*Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:*

*Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.*

(3) *The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.*

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such

error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

### **39. Furnishing of returns**

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

*Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.*

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section(3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

*Provided that every registered person furnishing return under the proviso to sub-section(1) shall pay to the Government, in such form and manner, and within such*

time, as may be prescribed,-

- a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or
- b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed:

*Provided further that every registered person furnishing return under sub-section(2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both , tax payable, and such other particulars during a quarter, in such form and manner and within such time, as may be prescribed.*

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) [Where] any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars [in such form and manner as may be prescribed], subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after [the thirtieth day of November] following [the end of the financial year to which such details pertain], or the actual date of furnishing of relevant annual return, whichever is earlier.

**42. Matching, reversal and reclaim of input tax credit.—**

(1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the “recipient”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the —supplier) in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the

discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) *The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.*

(5) *The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.*

(6) *The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.*

(7) *The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.*

(8) *A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.*

(9) *Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:*

*Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.*

(10) *The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.*

**43. Matching, reversal and reclaim of reduction in output tax liability.**— (1) The details of every credit note relating to outward supply furnished by a registered person (hereafter in this section referred to as the “supplier”) for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereafter in this section referred to as the “recipient”) in his valid return for the same tax period or any subsequent tax period; and

(b) for duplication of claims for reduction in output tax liability.

(2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in such manner as may be prescribed, to the supplier.



(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A supplier in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.

(10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

10. The relevant Rules 59, 60 and Rules 70, 71 (as it existed prior to the amendments under notification no.19/2022 dated 28.09.2022 w.e.f. 01.10.2022 by the CBIC [(Department of Revenue) Ministry of Finance, Government of India] which have material bearing on this issue are also extracted hereunder:

#### **CHAPTER VIII RETURNS**

**[59. Form and manner of furnishing details of outward**

**supplies.-** (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

[Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.]

[Provided further that a registered person may furnish such details, for the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021.]

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

(4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the-

(a) invoice wise details of all -

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(b) consolidated details of all -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the -

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously.]

[(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months];

(b) a registered person, required to furnish return for every quarter under the proviso to subsection (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under

section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.]

**[60. Form and manner of ascertaining details of inward supplies.**-(1)The details of outward supplies furnished by the supplier in **FORM GSTR-1** or using the **IFF** shall be made available electronically to the concerned registered persons (recipients) in Part A of **FORM GSTR-2A**, in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal, as the case may be.

(2)The details of invoices furnished by an non-resident taxable person in his return in **FORM GSTR-5** under rule 63 shall be made available to the recipient of credit in Part A of **FORM GSTR 2A** electronically through the common portal.

(3)The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under rule 65 shall be made available to the recipient of credit in Part B of **FORM GSTR 2A** electronically through the common portal.

(4)The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in **FORM GSTR-7** shall be made available to the deductee in Part C of **FORM GSTR-2A** electronically through the common portal.

(5)The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in Part C of **FORM GSTR 2A** electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of **FORM GSTR-2A** electronically through the common portal.

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in **FORM GSTR-2B**, for every month, electronically through the common portal, and shall consist of –

(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1**, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the previous month to the due date of furnishing of **FORM GSTR-1** for the month;

(ii) the details of invoices furnished by a non-resident taxable person in **FORM GSTR-5** and details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** and details of outward supplies furnished

by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,-

(a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;

(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-

(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;

(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.]

**70. Final acceptance of input tax credit and communication thereof.**-(1) The final acceptance of claim of input tax credit in respect of any tax period, specified in sub-section (2) of section 42, shall be made available electronically to the registered person making such claim in FORM GST MIS-1 through the common portal.

(2) The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.

**71. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit.**-(1) Any discrepancy in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of section 42 and the details of output tax liable to be added under sub-section (5) of the said section on account of continuation of such discrepancy, shall be made available to the recipient making such claim electronically in FORM GST MIS-1 and to the supplier electronically in FORM GST MIS-2 through the common portal on or before the last date of the month in which the matching

*has been carried out.*

*(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.*

*(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.*

*(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.*

*Explanation: For the purposes of this rule, it is hereby declared that –*

*(i) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;*

*(ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.*

11. It is also necessary to refer to the amendment carried out by the Finance Act 2022 in section 37 (3) which is to the following effect:-

*“Any registered person, who has furnished the details under sub-section (1) for any tax period shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period”.*

By the said Amendment, the expression “and which have remained unmatched under Section 42 or section 43” been omitted. However this amendment has been notified only w.e.f. 01.10.2022 vide notification no.18/2022 dated 28.09.2022 by CBIC (Department of Revenue) Ministry of Finance, Government of India. A bare perusal of provisions of Section 37 (3) would show that a registered person who has to furnish details of its outward supplies in the returns under sub section (1) for any tax period and which have remained unmatched under Section 42 and 43 (as it existed on the Statute prior to 01.10.2022), shall upon discovery of any error or omission there in rectify such error or omission in such manner as may be prescribed and shall pay the tax and interest, if any, in case there is short payment of tax on account of such error or omission in the return to be furnished for such tax period. Such form GSTR-1 is required to be filed by the supplier furnishing details of its outward supplies, the details of the invoices raised by the petitioner and

the tax paid by the recipient. The provisions of CGST Act and JGST Act so far as the consideration of issue at hand are same. In fact, amendment in the nature of Finance Act, 2022 as notified w.e.f. 01.10.2022 has not yet been carried out in JGST Act to omit the expression “and which have remained unmatched under Section 42 or 43” under Section 37(3). Therefore, the said provision still remains on the statute.

12. In the instant case it appears that on account of an inadvertent error, the entry relating to Tax Invoice No. 01/2018- 19 dated 17<sup>th</sup> January 2019 could not be reflected in the GSTR-1 filed by the petitioner against the GSTIN of Eastern Coalfields Limited (GSTIN No. 20AAACE7590E3ZX). Instead it was quoted in the GSTIN of Respondent No.6 MIPL-NKAS (JV) [GSTIN No.20AAEAM0162G1Z9] which was not the recipient of such supplies. Though, Respondent No.5 availed of such input tax credit *bona fide* believing that it had paid the taxes against such invoices, but on realizing the same reversed the entries in May 2022 as the same were not reflected in his GSTR-2A return for the said period. The said entries, though reflected in the GSTR-2A of Respondent No. 6 inadvertently, were not availed by Respondent No.6 and rightly so, as it had not received any such supplies against the tax invoice in question. It further appears that the mechanism conceived under substituted Rule 59 specifically, sub rule (3) and (4) and Rule 60 (1) having not put into place by notification of form GSTR-2 and GSTR-1A the petitioner could not discover such error in the absence of GSTR-2 being available to be filed by the recipient Respondent No.5. In the absence of notification of such forms GSTR-2 and GSTR-1A the Respondent No.6 could also not submit the relevant form GSTR-2 indicating such incorrect entries in its GSTR-2A due to incorrect entries in GSTR-1 by the petitioner. Since the mechanism provided for matching of details of inward supply furnished by a registered person or outward supply not being rightly declared by the supplier in his returns GSTR-1, not being place, such discrepancy could not be communicated to petitioner. The relevant form GST-MIS 1 and GST-MIS 2 as conceived under section 70 and 71 read with section 42 (prior to its omission under notification no.19/2022 and 18/2022 vide notification dated 28.09.2022 of CBIC) also having not been prescribed, the online mechanisms for discovery and correction of such mistake either by the supplier or by the recipient or both, could not take place. Petitioner therefore, appears to have a valid reason in not being able to rectify the entries in the GSTR-1

returns of March 2019 in the returns of September 2019 to be filed by 20th of October 2019 or the date of filing of the annual return, whichever is earlier. The error apparently came to the notice of the petitioner only during finalization of the accounts with respondent no.5 who had also by that time detected availment of ITC in lieu of the Tax Invoice No. 1/2018-19 dated 17<sup>th</sup> January 2019, though not reflected in its GSTR-2. Petitioner approached this court immediately thereafter on 9<sup>th</sup> July 2022 seeking a direction upon the respondent GSTN to allow it to rectify returns. The detailed structured mechanism conceived under the JGST Act and the rules framed thereunder having not been put into place, the online portal did not permit such correction by any aggrieved registered person on its own. Therefore, the necessity for such an aggrieved registered person to approach this court under Article 226 of the Constitution of India. It is not in dispute that such incorrect entries in GSTR-1 by Petitioner for the period January 2019 filed in March 2019 were not going to entail any additional tax impact. The rectification exercise would remain revenue neutral. Such TRAN I forms have been allowed to be filed online or manually in cases where TRAN-1 forms were not filed within the time prescribed by certain registered persons/ assesseees. The judgment relied upon by the learned counsel for the petitioner are to that effect.

13. Having gone through the decisions cited in support by learned counsel for the petitioner and that the instant case does not present any additional tax impact, or loss of revenue for the State Exchequer and, in fact, such correction of relevant returns in case of the petitioner i.e., GSTR-1, GSTR-2A in case of the respondent no. 5 and 6 would allow the respondent no.5 to rightly avail the ITC against the tax paid under Tax Invoice number 1/ 2018-19 dated 17<sup>th</sup> January 2019 issued by the petitioner, we are of the considered view that interest of justice would be served if the petitioner is allowed to make the necessary correction in GSTR-1 form for January 2019. Such correction, if does not entail technical difficulties by the GSTN, may be allowed to be made online by GSTN by opening the portal for a limited period upon due communication to the petitioner and respondent no.5 and 6 as it would reflect corresponding correction in their GSTR-2A form for the relevant period. If such a course is not possible to be done online for technical reasons, the GSTN could allow the petitioner to make such corrections through manual mode. Let such correction be allowed to be made within

a period of 8 weeks from the date of receipt of this order.

14. Writ petition is allowed in the manner and to the extent indicated here. It is left open for the Respondent No.5 to claim interest from the petitioner over the ITC which it had to reverse owing to error in filing of GSTR-1 in March 2019 by the petitioner by not mentioning the GSTIN of Respondent no. 5 in respect of the Tax Invoice No. 1/2018-19 dated 17.01.2019.

**(Aparesh Kumar Singh, J.)**

**(Deepak Roshan, J.)**