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By Nidhi, Advocate



Judgment No.: 135
Dt.: 28-05-2024



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Judgment Deals With

Section/Rule	Section 44
Authority	Calcutta High Court
Case Name	Ambika Trading Company VS The Assistant Commissioner of State Tax
Dated	21 st May, 2024

Brief Facts of the Case:

The appellant by letter dated 13.09.2018 addressed to the officer concerned gave a clarification stating that they have filed GSTR-3B return for the period from October 2017 to March 2018, which does not include both Input and Output Cess and they have filed GSTR-1 for the month of October 2017, which does not include Cess but have filed GSTR-1 for November, 2017 to March, 2018, which includes Cess. The appellant submitted a statement of Cess with all the Input, Output and carried forward amounts for the kind consideration of the officer.

Subsequently, another communication was sent on 10.02.2020 bringing to the notice of the department certain information as contained in GSTR Form-9. The appellant stated that during preparation of data for GSTR9, it was noticed by him they have inadvertently missed certain output GST liability on account of Compensation Cess from GSTR-3B returns for the relevant financial year and has also missed equivalent amount of Input tax credit of Cess for such supplies.

While filing GSTR-9, they have corrected the error by showing the exact amount of compensation Cess payable by them during the said period as could be seen from Table 4A of GSTR-9. The appellant have shown the actual amount of ITC on compensation Cess in GSTR-9 return filed by them as can be seen from Table 6B of the said GSTR-9.

However, in the pre show cause notice, intimation, which was given on 06.09.2022, the authority was not inclined to do so on the ground that the GSTR-3B was not rectified within the time permitted.

Once again, the appellant submitted representation but however, adjudicating authority in order

dated 15.12.2023 maintained the same stand.

The short issue, which falls for consideration is whether the annual return filed by the appellant in GSTR-9 for the financial year 2017-18 can altogether be ignored.

Contention of the Petitioner:

The appellant stated that the error was unintentional as GST was a new tax at the relevant time and he is a small assessee and there was no revenue loss to the Government as the entire exercise was revenue neutral and also there was no gain to the appellant by showing incorrect figures in their returns as they have sufficient balance of Input Tax Credit for the same.

Therefore, the error was not unintentional, it was without any ulterior motive and mens rea or intent to evade tax.

Findings & Decision of the Court:

GSTR-9, being an annual return filed within the extended period of limitation viz. , upto 7th February, 2020 on account of various notifications issued by the Government due to the Covid pandemic.

Therefore, if the GSTR-9, which was filed within time, is not considered, the assessee's rights would be greatly prejudiced.

The entire matter is revenue neutral.

Thus, considering the peculiar facts and circumstances of the case making it clear that this order should not be treated as a precedent, the matter was remanded back to the adjudicating authority i.e. the Assistant Commissioner, State Tax, to afford an opportunity of personal hearing, examine the annual return filed in GSTR-9 and proceed to take a fresh decision on merits and in accordance with law.

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