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By Nidhi, Advocate



Judgment No.: 185
Dt.:17-10-2024



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Since the GST portal for filing Form ITC-02 was non-functional in 2017, faulting the Petitioner for not filing it electronically was unjustified. Hence, impugned order was set aside, emphasizing that procedural lapses caused by administrative failures should not be held against taxpayers.

Section/Rule	Section 18/ Rule 41
Authority	Bombay High Court
Case Name	Tikona Inifnet Private Limited VS Union Of India
Dated	08 th October, 2024
Citation	Writ Petition No. 16258 of 2023

Brief facts of the case:

The Petitioner challenges the show cause notice dated 17.08.2023 for reversing the Input Tax Credit (ITC) on the sole ground that the necessary GST ITC-02 form was not filed **by its transferor electronically but only manually** thereby allegedly breaching the provisions of Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules.

Contention of the Petitioner:

Such notice is wholly without jurisdiction, arbitrary and void, given the admitted impossibility of filing such form electronically due to serious functionality issues plaguing the department's portal.

For the period between September 2017 and November 2017, the Petitioner had correctly availed ITC. However, during the said period, the Department did not make the facility of filing Form GST ITC – 02 electronically available. Therefore, the Petitioner wrote to the Department seeking a leave to file the said Form manually. The Petitioner filed the form manually.

After almost 6 years, the Petitioner was served with the impugned SCN dated 17.08.2023 alleging

that the Petitioner had wrongly availed and utilised the ITC on the sole ground that the transfer of the said ITC had been availed by the Petitioner by filing the Form GST ITC-02 manually instead of electronically.

There is no dispute about the department's portal not being functional enough to accept the filing of Form GST ITC-02 electronically during the relevant period. Therefore, denying ITC, even though the necessary form had been filed manually, amounts to arbitrariness. The Petitioner could not be so severely prejudiced for no fault or because the department made no facilities for filing Form GST ITC-02 electronically.

There was no allegation in the impugned SCN about the Petitioner not being entitled to the ITC or that the Petitioner had not filed the prescribed form manually. The only allegation in the impugned SCN was that the prescribed form had not been filed electronically. The very basis of the impugned SCN was arbitrary, and therefore, a case was made out to quash and set aside the impugned show cause notice dated 17.08.2023.

Findings and Decision of the Court:

Pertinently, the only allegation in the impugned SCN is that the Petitioner, before availing of and utilising the IT, did not ensure that the prescribed Form GST ITC-02 was filed "electronically on the common portal" along with a request for transfer of unutilised input tax credit lying its electronic credit ledger to the transferee. Thus, the only allegation in the impugned show cause notice is about non-filing Form GST ITC-02 electronically on the department's common portal.

The allegation in the impugned SCN might have had some substance if it had been the Department's case that its common portal was fully functional and Petitioners could file Form GST ITC-02 electronically on the common portal.

As, the GST portal was nascent during the relevant time, and GST ITC-02 was not available for filing electronically. Thus, the Petitioner could be faulted for not filing Form GST ITC-02 electronically on the department's common portal.

There was no justification for issuing the impugned show cause notice. Thus, the impugned show cause notice dated 17.08.2023 was quashed and set aside.