

(2025) 04 SHI CK 1118
In the High Court Of Himachal Pradesh
Case No : CWP No.2293 Of 2024

Saluja Motors Pvt. Ltd

APPELLANT

Vs

State of H.P And Others

RESPONDENT

Date of Decision : 21-04-2025

Acts Referred:

Himachal Pradesh Police Act, 2007 — Section 143

Citation : (2025) 04 SHI CK 1118

Hon'ble Judges : Sandeep Sharma, J

Bench : Division Bench

Advocate : Onkar Jairath, M.A.Safee, Anshul Jairath, Anup Rattan, Rajan Kahol, Vishal Panwar, B.C.Verma, Ravi Chauhan

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following reliefs:-

i) Writ of mandamus or any other appropriate writ, orders or directions to the Respondent No. 2 & 3 to allow the Petitioner to rectify the GST 3B Returns filed for the month of February and March 2018;

ii) Writ of certiorari quashing order dated 29.12.2023 (Annexure P-6), passed by Respondent No. 3 whereby the Respondent No. 3 has created a demand of Rs. 35,95,799/- under the category of 'CESS' along with interest and penalty;

iii) In alternative, writ of mandamus or any other appropriate writ, orders or directions to the Respondents to allow the Petitioner to avail the credit available with him under IGST head, wrongly claimed under Cess, pertaining to 2017-18 amounting to Rs. 32,53,615/-.

2. According to the petitioner, the petitioner is a Private Limited Company having its business in the State and is duly registered with the Goods and Services Tax Department. The petitioner while availing the credit available with it under IGST

and Cess has inter-mingled the heads and availed the credit of head 'Integrated Goods and Service Tax (for short 'IGST') under the head 'Cess' and vice-versa. The wrongful availment of credit created a situation whereby the less credit had been availed under 'IGST' head and excess credit had been available under the head 'Cess'. The petitioner migrated from the erstwhile tax regime to the GST regime and got registered with the respondent authorities by availing GSTIN number. The petitioner was an authorized dealer of Ford India Pvt. Ltd. and was engaged in selling of motor cars, motor vehicles and the part thereof. Apart from this, the petitioner was also engaged in rendition of repair, reconditioning and related services of vehicles.

3. The petitioner at the time of filing GSTR-3B for the month of February, 2018 had an available balance of ITC amounting to Rs.74,76,049/- under Integrated Goods and Service Tax head and Rs.24,44,483/- under the head 'Cess' has been reflected in his GSTR-2A. The petitioner while filing return for the month of February, 2018, inadvertently availed the input tax credit of IGST under Cess and the ITC of Cess under IGST, whereby credit of one head was availed in other and of the other was availed under former head. In other words, due to the inter-mingling of heads, there was availment of excess credit under the Cess head and on the other hand, there was short availment of credit under IGST head.

4. The petitioner had availed excess credit in 'Cess' amounting to Rs. 50,31,566/- but also availed less credit under IGST head amounting to Rs.50,31,566 Further, in the month of March 2018, the petitioner again made an inadvertent clerical mistake while filing the periodical GSTR-3B of March 2018, whereby the total credit available in GSTR-2A of the petitioner under 'Cess' was Rs.20,66,710/- and the actual credit availed by the petitioner was Rs.2,06,710/-, resulting into short claim of credit amounting to Rs.18,60,000/- under 'Cess'. Therefore, the net excess credit claim under 'Cess' at the end of the financial year of the petitioner came out to be Rs.31,71,566/-[Rs.50,31,566 - Rs.18,60,000 (less availed)].

5. On the one hand, the petitioner took less credit under the IGST head i.e. Rs.50,31,566/- and on the other hand, the petitioner took excess credit amounting to Rs.31,71,566/. As the petitioner had availed credit amounting to Rs. 31,71,566/- under the 'Cess', the petitioner took credit amounting to Rs. 16,60,846/- as an approximate balance of short availed input tax credit under IGST in the return filed for the month of March 2019.

6. The case of the petitioner was taken up for the Audit under Section 65 of the Act and the petitioner was served with a notice for conducting the audit for the year 2017-18 issued by the Deputy Commissioner State Taxes and Excise, Mandi, District Mandi, H.P. The audit proceedings were commenced on 31. 12.2022 and concluded with Final Audit Report dated 22. 07.2023 whereby the petitioner was confronted with certain discrepancies including the fact that the petitioner had claimed excess credit under 'Cess' as compared to the credit available for availment and hence, was directed to pay the excess availed 'Cess'

credit along with interest and penalty.

7. The further case of the petitioner is that respondent No. 3 proceeded with its action in furtherance of the Final Audit Report and issued a summary of show cause notice in Form GST DRC-01 dated 11.08.2023 whereby, inter-alia, demand of Rs.31,67,808/- was proposed to be made from the petitioner under 'Cess' on account of excess claim of credit, without considering the fact that it was not actually claimed in excess, rather this was credit of IGST inadvertently claimed under the 'Cess' head.

8. The petitioner duly contested the show cause notice by filing a detailed reply dated 09.09.2023 contesting the various demands. It was submitted that the petitioner had not availed any excess credit of 'Cess' and in fact, it had taken less credit if overall effect of IGST and Cess is taken into consideration. It was also submitted that the alleged excess claim had occurred due to clerical mistake whereas it was not an actual case of excess claim with an intent to take excess credit.

9. It is also the case of the petitioner that respondent No. 3 proceeded with adjudication proceedings and vide impugned order dated 29.12.2023 has confirmed the demand of excess availed credit of 'Cess' to the tune of Rs.35,95,799/- along with interest and penalty as applicable under the Act. Respondent No. 3 recognized this fact in the impugned order that there was less claim of input tax credit of 'IGST' if there was excess claim of input tax credit of 'Cess', yet the respondent confirmed the demand of excess claimed 'Cess'. The respondent did not consider this aspect that the petitioner is entitled to input tax credit under 'IGST' earlier availed under Cess and, therefore, no demand is sustainable as no loss to Government exchequer has been caused by the petitioner. The respondents vide impugned order has created a demand of excess availed credit of cess whereas, it is not a case of excess availment of credit but a case of bonafide mistake occurred while manually filing the statutory return of the relevant period and thereby the petitioner has not caused any loss to the Government exchequer and aggrieved by the impugned order, the petitioner has filed the instant petition.

10. Since the factual matrix of the case with regard to the proceedings is not disputed, therefore, we would straightaway proceed to the contention as raised by the petitioner to the effect that the action of the respondents was absolutely illegal on the ground of non-compliance of the provisions of the Act and he has strenuously argued that the show cause notice can be issued under Section 73(1) or 74(1) of the Act and as per Rule 142(1) of the Rules, the proper officer is required to issue, along-with the notice under Section 74, a statement thereof electronically in form GST DRC-01, whereas, in the present case, the proper officer has only issued summary of show cause notice, but the main notice has never been issued. If the captioned notice is treated as one under Section 74(1), then no summary has been issued. Thus, the captioned notice is incomplete and not in accordance with provisions of law and hence not sustainable. Both the

notice and summary thereof, are required to be issued under Section 74 read with Rule 142. Thus, the impugned demand is liable to be dropped on this ground alone.

11. The respondents have not disputed the fact that they have only issued a summary of show cause notice, but have not issued a statement in form GST DRC-01, but would vehemently argue that along-with the notice, the complete audit report has been furnished to the petitioner, therefore, no prejudice has been caused to the petitioner and the petition is liable to be dismissed.

12. We have heard learned counsel for the parties and have also gone through the record carefully.

13. No doubt the notice was required to be issued under Section 73(1) or 74(1) of the Act by the proper officer after issuing a summary of notice along-with main show cause notice to the petitioner. However, the issue herein is whether the supply of the audit report would be substantial compliance of the procedure?

14. Learned counsel for the petitioner would argue that once the statutory rules provide that an act must be done in a prescribed manner and in no other way, then the conditions of rules and prescribed procedure must be satisfied and there must be application of mind. Meaning thereby, once methodology for doing a particular act is provided under the statute, Rules, regulations, instructions etc. then, such act must be done in the manner and way prescribed alone and in no other way. In support of his submissions, he has placed reliance on the judgments of this Court passed in CWP No.4632 of 2024 titled as Ajaydeep Bindra vs. State of H.P and others, decided on 26th March, 2025 and CWP No.231 of 2025 titled as Vishal Sharma vs. State of H.P. and others, decided on 1st April, 2025.

15. Obviously, there can be no quarrel with the aforesaid propositions of law. But, here we are dealing with a case where the petitioner is basically complaining of violation of principles of natural justice, whereby the second show cause notice has not been issued to him in terms of GST DRC-01.

16. The moot question, in the present case, is whether the petitioner is fully aware of the case that it is required to meet and is being taken by surprise by not making it aware of the adverse material or the case it has to meet or is it only that the petitioner has tried to take advantage of a technical defect.

17. We have no doubt in our mind that the petitioner is fully aware of the case that it is required to meet as the complete copy of audit report has been made available to it and the same reads as under:-

Para No.

Discrepancies

Remarks para 1

20.1

Excess availment of ITC in GSTR3B vis a vis as available in GSTR 2A amounting to Rs. 25,99,876/-

During the course of Audit, it has been observed that RTP had availed following excess Cess of Rs. 25,99,876/- during the period July, 2017 to March, 2018, viz-a-viz as available in GSTR 2A:

Cess Availed as per GSTR-3B 2,24,25,864/-

Cess Available as per GSTR-2A 1,98,25,988/-

Difference 25,99,876/-

Auditee is liable to pay/reverse the excess GST Input Tax Credit availed in GSTR 3B viz-a-viz as available in GSTR 2A as the same has been availed in contravention of the provision of Section 16 of the HP GST Act,2017 which is recoverable under Section 74 of the HP GST ACT,2017 along with interest under Section 50 of the Act and along with penalty under Section 74 of the Act.

Type

IGST

CGST

SGST

CESS

Tax

-

-

-

25,99,876

Interest

-

-

-

23,01,424

Penalty@25 %

-

-

-

6,49,969

Total

-

-

-

55,51,269

After submission of reply by RTP the Cess is recalculated to be payable as:

Type

IGST

CGST

SGST

CESS

Tax

-

-

-

23,04,432

Interest

-

-

-

20,39,896

Penalty@25 %

-

-

-

5,76,108

Total

-

-

-

49,20,436

21

TRAN 1 Credit / ITC Availed in 2017-18

TRAN-1, VAT Returns and Balance sheets 2015-16,
2016-17 & 2017-18

Desk Review

TRAN 1 Credit is Rs. 6348336 & ITC Availed
2017-18, is Rs 84825703 as per GSTR9.

Para

Discrepancies

Remarks para 3

21.1

Excess availment of ITC in TRAN-I

amounting to Rs. 27,30,182/-

During the course of audit, it was observed that auditee had availed ITC of Rs. 63,48,336/- in TRAN-I under Section 140. While going through the record as submitted by the auditee it has been observed that auditee has availed following ITC which is in contravention of Section 140(3) and which is liable to be reversed along with applicable interest and penalty

under Section 74 of the Act:

Sr no

Particulars

Relevant Provision

Total Availed

CGST ITC

Liable to be Reversed

1

Total Tran -1 ITC Availed

63,48,336

a

Invoices not available / provided

140(3) (iii)

3,62,975

b

Invoices older than 30/06/2016

140(3) (iv)

5,23,548

c

Invoices older than 30/06/2016 + Invoices not in the name of Saluja

- Himachal Pradesh (Solan / Mandi)

140(3) &

140(3) (iv)

2,40,419

d

Invoices not in the name

of Saluja - Himachal Pradesh (Solan / Mandi)

140(3)

2,52,670

e

CST ITC Not Allowed

140(3) &

Explanation 1

7,04,750

f

Cess (MV Cess & Infra Cess) ITC Not Allowed

140(3) &

Explanation 1

6,45,820

Total

27,30,182

The auditee is therefore, required to reverse/pay the above said ITC along with interest and mandatory penalty as calculated below:

Type

IGST

CGST

SGST

CESS

Tax

-

27,30,182

-

-

Interest

-

26,10,653

-

-

Penalty@ 25%

-

6,82,546

-

-

Total

-

60,23,381

-

-

a) Against Rs. 3,62,975/- TRAN ITC having HSN other than 8703, RTP has submitted the invoices regarding the ITC availed in TRAN-1 but could not provide the same in excel, the detailed stock which was outstanding as on

30/06/2017 in the inventory.

b) Regarding the Invoices older than 30.06.2016, The RTP has quoted certain cases (writ petitions and interim orders of courts), but nothing relevant and related to the point raised, could be assessed from the said replies. c) Regarding Invoices not in name of Saluja-Himachal Pradesh (Solan/Mandi); The RTP has submitted that it was Stock transfer on F form supply from Chandigarh to Mandi, but, the same is not a valid document for the availment of TRAN ITC u/s 140(3).

d) Against the CST ITC not allowed, the RTP has submitted that CST ITC was never claimed, but, while going through the sheet submitted by RTP, there is difference of CST amount, and the same is not getting matched with the reply amount of non-inclusion of ITC by the RTP, so the same has not been considered and para stands as same.

e) Regarding the TRAN Cess ITC, as per reply of RTP same has been reversed in GSTR-3B for the month of April 2018 to the tune of Rs. 6,64,535/- which is mentioned in the IGST Head, while the TRAN ITC was availed under the CGST Head, so this amount sustained as payable as reversal.

22

ITC availed on Capital Goods to Total ITC availed

it required to be verified from RTP & Purchase invoices

Desk Review

ITC availed on Capital Goods is nil as per GSTR9.

23

Value of Goods

Sent for Job Work to Total Turnover

it required to be

verified from RTP

Desk Review

Value of Goods Sent

for Job Work is nil.

24

Late returns

Return data available on portal

Desk Review

Delay in filing of returns for the month of August & September, 2017.

Para

Discrepancies

Remarks para 6

24.1

Non-payment of Interest amounting to Rs. 4,511/- account of late submission of returns

During the Audit, it was noticed that auditee had failed to pay the interest on account of late payment of tax on net cash basis due to delay in filing of returns for the month of August & September, 2017, which is liable to be recovered under Section 50 of HPGST Act, 2017.

The auditee is therefore, required to reverse/pay the above said ITC along with interest and mandatory penalty as calculated below:

Type

IGST

CGST

SGST

CESS

Interest

-

38

3,181

1,292

Total

38

3,181

1,292

Amount payable against the para was CGST Interest: 38/- + SGST Interest: 3181/- + Cess Interest: 1292/-, while as against the same following amount has been paid by RTP in DRC-03: CGST Interest: 3,181/- + SGST Interest: 1,292/- + Cess Interest: NIL. After considering the above payment revised payment required is as follows:

Type

IGST

CGST
SGST
CESS
Interest

-

-

1,889

1,292

Total

-

-

1,889

1,292

18. Once, it is concluded that the petitioner is fully aware of the case it is required to meet, then, we have no hesitation to conclude that the petitioner is mainly using this argument as a device to stall the proceedings.

19. Even otherwise, the petitioner is required to show and establish that non-furnishing of the notice has caused it prejudice and that this has prevented it from effectively defending itself. After all, in a matter like the instant one, this Court cannot be oblivious that where the procedural and/or substantive provisions of law embody the principles of natural justice, the infraction per se does not lead to invalidity of the order passed. The prejudice must be caused to the litigant except in the case of a mandatory provision of law, which is conceived not only in individual interest, but also in public interest.

20. This issue has been considered in detail by a three Judge Bench of the Hon'ble Supreme Court of India in case titled as State of Uttar Pradesh vs. Sudhir Kumar Singh and others, AIR 2020 SC 5215, wherein, after taking into consideration the law on the subject, the Hon'ble Supreme Court has laid down the following principles:-

"39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps

because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision- maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578], who said that: (WLR p. 1595)

“... A breach of procedure...cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [(1980) 1 WLR 582] that: (WLR p. 593)

“...no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.”

In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.”

21. As observed above, the petitioner very well knows the case it requires to meet, as the same has been elaborately spelt out in the audit report and, therefore, we have no hesitation to conclude that no prejudice has been caused to the petitioner by non-issuance of the notice as the petitioner does not dispute the case against it.

22. Once that be so, this Court will not pass futile orders of setting aside or remanding the case, where there in fact no prejudice is caused to the petitioner.

23. In view of the aforesaid discussion and for the reasons stated, we do not find merit in this petition and the same is accordingly dismissed, so also the pending applications, if any.