HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 3559/2020
CNR: RJHC010159692020 | URN: CW / 7806U / 2020

M/s. Ravi Infrabuild Projects Pvt. Ltd., Through Its Director Shri Narayan Singh Rao, Age About 60 Years 'aa' Class Contractor 95, Sector No. 11 Hiran Magri Udaipur.

----Petitioner

Versus

1. Union Of India, Through Ministry Of Finance (Department Of Revenue) Central Board Of Indirect Taxes And Customs, New Delhi.
2. Assistant Commissioner, Central Goods And Service Tax Division - B Block 4B, 4Th Floor, Lic India Reti Stand Divisional Office Sub City Centre, Udaipur.

----Respondents

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Connected With

D.B. Civil Writ Petition No. 4756/2020
CNR: RJHC010234652020 | URN: CW / 11014U / 2020

Mewar Chamber Of Commerce And Industry, Mewar Chamber Bhawan, Nagori Garden, Bhilwara, 311001 (Rajasthan), Through Its Hon'y Secretary, Shri R.k. Jain S/o Shri Umarv Singh Jain Aged About 54, Resident Of R.c. Vyas Colony, Bhilwara 311001 (Rajasthan)

----Petitioner

Versus

1. Union Of India, Through Its Secretary Department Of Revenue, Ministry Of Finance North Block, New Delhi.
2. Goods And Service Tax Council, Through Its Secretary, 5Th Floor, Tower Ii, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi-110 001.
3. Chief Commissioner, Office Of The Chief Commissioner, Central Goods And Service Tax, Jaipur Zone, New Central Revenue Building, Statue Circle, C Scheme, Jaipur-302005
4. Commissionerate, Cgst And Central Excise Udaipur, 142 B, Sector 11, Hiran Magri, Udaipur 313001.
5. Commissionerate-Rgst, Commissioner Of Commercial Taxes, Kar Bhawan, Jaipur

----Respondents

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D.B. Civil Writ Petition No. 9835/2021

CNR: RJHC010426732021 | URN: CW / 17989U / 2021

M/s Blue Phosphate Ltd., Having Its Registered Office At F-6, 1St Floor, Vidhya Vihar Road, Devali, Udaipur (Raj.) Gstin 08Aadcd3006B1Ze Through Zafar Ullah Khan S/o Barkat Ullah Khan Aged 58 Years Whole Time Director M/s Blue Phosphate Ltd.

----Petitioner

Versus

1. Union Of India, Through Ministry Of Finance (Department Of Revenue), Central Board Of Indirect Taxes And Customs, New Delhi.

2. Superintendent Cgst Range-V, Udaipur, 4A, Lic Building, 4Th Floor, Reti Stand Circle, Sector 11, Hiran Magri, Udaipur, Rajasthan.

----Respondents

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For Petitioner(s)	:	Mr. Ayush Goyal for Mr. Vinay Kothari Mr. Pranjul Mehta
For Respondent(s)	:	Mr. Bharat Vyas, ASG through VC with Mr. Vaibhav Bhansali Mr. Rajvendra Saraswat Mr. Jitesth Kumar Suthar Mr. Rishabh Dadhich

HON'BLE MR. JUSTICE ARUN MONGA

HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order(Oral)

Reportable

27/10/2026

Per: Arun Monga, J

1. The present bunch of petitions seeks, *inter alia*, two-fold relief: (i) quashing of Rule 36(4) of the Central Goods and Services Tax Rules, 2017, ("the CGST Rules") and (ii) quashing of the impugned notices dated 06.02.2020 and the consequential proceedings arising therefrom,

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alleging the same to be arbitrary and contrary to Sections 16, 37 and 42 of the Central Goods and Services Tax Act, 2017 ("the CGST Act").

2. Since the issues arising for consideration in all the petitions are similar, they have been heard together and are being decided by this common order. For the sake of brevity, the facts have been noticed from D.B. Civil Writ Petition No. 3559/2020, titled *M/s. Ravi Infrabuild Projects Pvt. Ltd. V. Union of India and Anr.*

3. The petitioner is a company registered under the Companies Act, 2013, having its registered office at Udaipur, Rajasthan. It is an 'AA' Class Government Contractor engaged in the construction of roads and other infrastructure projects, primarily for Government and Governmental agencies. The petitioner is registered under the Goods and Services Tax regime in the State of Rajasthan and avails Input Tax Credit ("ITC") on inward supplies in accordance with the applicable provisions of law.

3.1 Rule 36(4) of the CGST Rules was inserted *vide* Notification dated 09.10.2019, restricting the availment of ITC in respect of invoices or debit notes not uploaded by suppliers under Section 37(1) of the CGST Act, to 20% of the eligible credit reflected in the uploaded invoices or debit notes. Subsequently, *vide* Notification dated 26.12.2019, the said limit was reduced to 10% with effect from 01.01.2020.

3.2 Pursuant to the aforesaid amendment, the respondents issued Form GST DRC-01A dated 06.02.2020, calling upon the petitioner to reverse ITC amounting to Rs. 1.22 crores on the ground of mismatch between the ITC availed by it and the amounts reflected in GSTR-2A. The petitioner was also called upon to furnish its submissions by 13.02.2020, in response to which it submitted a detailed reply on the same date, explaining the reasons for the alleged mismatch. The

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petitioner has assailed the action of the respondents, along with the constitutional validity of the amendment to Rule 36(4) of the CGST Rules.

4. The respondents have filed a reply. They state that Rule 36(4) of the CGST Rules has been introduced as a policy measure in exercise of the powers conferred under Sections 16 and 164 of the CGST Act and is not open to challenge merely because it may not be favourable to a particular taxpayer. It is stated that fiscal and economic legislation warrants greater judicial deference, as the legislature is best placed to determine the appropriate measures for regulation of tax credit. A preliminary objection has also been raised regarding the absence of any material establishing that the director of the petitioner-company was authorised to institute the present writ petition.

4.1 It is the case of the respondents that Rule 36(4) derives its authority from Section 16 of the CGST Act, which permits availment of ITC subject to prescribed conditions and restrictions, read with Section 164 of the CGST Act. They state that the restriction has not been introduced under Section 43A and that the non-notification of the said provision does not affect the validity of Rule 36(4). It is further stated that Sections 37 and 42 operate in the context of filing and matching of returns, whereas Rule 36(4) independently permits availment of ITC, subject to prescribed limits, even where the supplier has not uploaded the relevant details. The respondents also maintain that the restriction was introduced pursuant to the GST Council's recommendations to curb fraudulent availment of ITC and protect revenue.

4.2 The respondents state that ITC is a statutory concession and not a vested or indefeasible right, and that the legislature is competent to prescribe conditions and limitations governing its availment. It is also

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submitted that the restriction is neither arbitrary nor discriminatory, as it applies uniformly to all similarly situated taxpayers and, in any event, permits availment of ITC to the extent of 20%, subsequently reduced to 10%, even where the supplier has not uploaded the relevant details. They deny that the recipient has no control over the supplier's compliance and contend that the recipient can ensure such compliance through commercial arrangements.

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5. Learned counsels for the petitioners submit that Rule 36(4) of the CGST Rules is *ultra vires* Section 16 of the CGST Act, as the petitioner has fulfilled all the conditions prescribed under Section 16(2) for availment of ITC, and the said provision does not contemplate any restriction based on the failure of a supplier to upload invoice details. It is contended that such a restriction, which is not envisaged under the parent statute, cannot be imposed through delegated legislation. In this regard, reliance is placed upon the decision of the Hon'ble Supreme Court in **Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.**[1], wherein it was held that rules framed for implementing a statute cannot travel beyond the scope of the parent enactment.

5.1 Learned counsels further submit that Rule 36(4) is contrary to Sections 37 and 42 of the CGST Act, which already provide for a statutory mechanism for uploading, matching and rectification of discrepancies in the details of outward and inward supplies. It is contended that the said mechanism was kept in abeyance due to the lack of technical preparedness on the part of the Government, and in the absence of an effective matching mechanism, the restriction on availment of ITC is impermissible. They further submit that Section 43A,

[1] 2018 (4) SCC 669

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inserted by the Central Goods and Services Tax (Amendment) Act, 2018, which provides for a procedure governing availment and verification of ITC, had not been notified at the relevant time. Consequently, the restrictions contemplated therein could not have been introduced through Rule 36(4) or the corresponding circular. It is also contended that the restriction is unreasonable and arbitrary, particularly when the statutory mechanism for matching credits had not been implemented.

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5.2 Learned counsels lastly submit that ITC, upon fulfilment of the conditions prescribed under Section 16(2), constitutes an accrued right which cannot be taken away on account of the supplier's failure to upload the relevant invoice details. It is further contended that the restriction under Rule 36(4) penalises *bona fide* recipients for defaults attributable to their suppliers, over whom they have no control, thereby treating compliant taxpayers at par with defaulting taxpayers and violating Articles 14, 19 and 300A of the Constitution of India.

6. *Per contra*, learned counsels for the respondents oppose the petition on the lines of the reply noted above. They submit that Rule 36(4) has been validly introduced in exercise of the powers conferred under Sections 16 and 164 of the CGST Act and constitutes a policy measure intended to regulate availment of ITC and curb fraudulent claims. They contend that ITC is a statutory concession subject to prescribed conditions and restrictions, and that the impugned provision is neither arbitrary nor unconstitutional.

7. In the aforesaid backdrop, we have heard learned counsels for both the parties and perused the record.

8. It so transpires that the present writ petition was filed way back in the year 2020, followed by **D.B. Civil Writ Petition No. 9835/2021**

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in the year 2021, wherein the respective show cause notices were also issued and the vires of the provision was challenged.

9. On a query put to learned counsels appearing for the respective parties as to whether any assessment orders have been passed in the absence of any interim stay on further proceedings, none of them is in a position to ascertain the exact position.

10. Be that as it may, the nature of the order which we propose to pass would have no bearing on further proceedings in case the same have already culminated in finality. The petitioners would, however, be at liberty to challenge the assessment orders in accordance with law, in case any adverse view has been taken against them. Conversely, in case a favorable order has been passed, nothing further would survive for consideration.

11. Reverting now to the challenge laid before us to the vires of Rule 36(4), we are informed that as many as three High Courts in the country have dealt with the same issue upheld the rule, ibid and the matter is no longer *res integra*.

12. Learned counsels for the respondents have also relied upon judgments rendered by various High Courts. The relevant portion of the judgment rendered by the Hon'ble Gauhati High Court in **M/s High Tech Ecogreen Contractors LLP vs. The Joint Director & Ors.**[2]*,* is reproduced hereinbelow: -

(xxxx….xxxx….xxxx)

"28. We have taken note of the argument of the counsel for the petitioner that sub-rule (4) of Rule 36 of the CGST Rules became constitutionally valid with the enforcement of Section 16(2)(aa) of the CGST Act, i.e. from 01.01.2022 but cannot be termed as valid for the period prior to that, but for rejection only.

Sub-section (1) of Section 164 of the CGST Act enables the Government to make rules for carrying out the provisions of the said Act. Sub-section (2) of Section 164 clarifies that the Central Government may make rules for all or any of the matters which by CGST Act are required to be or may be prescribed without prejudice to the generality of the provisions of sub-section (1) of Section 164. It means that provisions of sub-section (2) of Section 164 are not restrictive of sub-

[2] WP (C) 4787/2024

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Section (1) and after careful scrutiny of the CGST Act, we have no doubt in our mind that Rule 36 or in particular sub-rule (4) of Rule 36 is framed as per the objects of the CGST Act and falls within the scope of general power conferred by sub-section (2) of Section 164 of the said Act.

29. It is also to be noticed that the petitioner, in its reply filed before the Additional Commissioner, pursuant to the show-cause notice, took a specific plea that it availed the input tax credit as per sub-rule (4) of Rule 36 which demonstrates that, on the one hand, the petitioner is relying on a provision of a Rule to justify its action of availing input tax credit, on the other hand, is challenging the validity of the said provision of the Rule which, in our view, cannot be permitted.

30. In view of above discussion, we conclude that Rule 36 of CGST Rules and in particular sub-Rule (4) of Rule 36 derives power from Section 16 of the CGST Act as well as from the general powers conferred by the CGST Act.

31. Another simple reason for not accepting the contention of the learned counsel for the petitioner that sub-rule (4) of Rule 36 derives power from sub-section (4) of Section 43A is that since Section 43A has not been enforced at any point of time till its omission vide Finance Act, 2022, with effect from 01.10.2022, it is impossible to conclude that a rule or sub-rule derives power from a provision which has never been enforced.

In other words, when a provision of an Act never comes into operation, it cannot be treated as a source of power of a provision of a rule.

32. In view of above discussions, we do not find any merit in the challenge of the petitioner to the validity of sub-rule (4) of Rule 36 of CGST Rules. Hence, the writ petition is dismissed, being devoid of any merit.

33. Before parting, we are compelled to observe that the petitioner has laid challenge to sub-rule (4) of Rule 36 of CGST Rules only with the intention to bypass statutory remedy of appeal which the petitioner can prefer under Section 112(1) of the CGST Act read with Rule 110 of CGST Rules because if the petitioner was aggrieved by sub-rule (4) of Rule 36, he could have challenged the validity of the same immediately after passing of the order dated 31.03.2023 by the Additional Commissioner instead of filing an appeal before the Commissioner (Appeals). Such course cannot be appreciated.

34. Be that is it may, we make it clear that this order will not come in the way of the petitioner to avail statutory alternative remedy available to it for challenging the orders dated 31.03.2023 and 12.02.2024 passed by the respondent Nos.2 and 3, i.e. Additional Commissioner and Commissioner (Appeals), respectively, in accordance with law."

13. Similarly Madras High Court in **M/s. L. & T Geostructure LLP vs. Union of India**[3] and Kerala High Court in **Nahasshukoor Vs. Assistant Commissioner & Ors.**[4], also upheld the sub Rule (4) of Rule 36 of the CGST Rules which is assailed in the instant petition.

14. Having gone through the judgments cited before us by learned counsel for the respondents, we are in respectful agreement with the view taken therein and see no reason to take a contrary view. As regards the challenge to the show cause notices, the same is primarily founded on the challenge to the vires of Rule 36(4). Since the said

[3] W.P Nos. 5978 and 5983 of 2020
[4] W.A. No. 1853 of 2023

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challenge has failed before us, we are not persuaded to quash the show cause notices. The petitioners are at liberty to avail the appropriate remedies by appearing before the competent authorities and placing whatever material they wish to rely upon, in case further proceedings have not been undertaken after the institution of the present writ petitions.

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15. What further dissuades us from granting any indulgence at the stage of mere issuance of show cause notices is the judgment rendered by the Hon'ble Supreme Court in the case of **M/s Trillion Lead Factory Private Limited Vs. Superintendent of Central Tax**[5], relevant of which is reproduced hereinbelow:-

(xxxx….xxxxx….xxxx)

"It is trite law that no writ lies against an issuance of show cause notice and such writ petition would not be maintainable. This position has been explained to by this Court in the case of Secretary, Ministry of Defence and Ors. Vs. Prabhash Chandra Mirdha, (2012) 11 SCC 565 and in the judgment of Commr. of Central Excise Commissionerate Vs. M/ Krishna Was (P) Ltd. in Civil Appeal No. 8609/2019 disposed of on 14.11.2019 vide Paragraph-2"

16. In view of the aforesaid discussion and the judgments noticed hereinabove, we find no merit in the challenge to the constitutional validity of Rule 36(4) of the CGST Rules. The challenge to the show cause notices also does not warrant interference at this stage. Accordingly, with the observations made hereinabove, the present bunch of writ petitions stand disposed of.

17. All pending applications also stand disposed of.

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

Crt_3 (2040)
D-A/13-15
Devanshi Upadhyay

[5] Special Leave to Appeal (Civil) No. 7101/2026

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