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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5041/2019 & CM APPL. 22278/2019

M/S MATRIX CELLULAR (INTERNATIONAL) SERVICES
LIMITED Petitioner

Through: Mr. J.K. Mittal, Mr. Chetan Uppal
and Ms. Vandana Mittal, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur and
Mr. Ankit Singh, Advocates for R-3.
Mr. Vinod Diwakar, CGSC with
Mr. Sayandeep Pahari, Advocate for
R-1.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% 28.11.2019

1. The Petitioner has preferred this petition to seek a declaration with regard to the action of Respondent No. 4 as the Additional Commissioner (Respondent No. 2), being arbitrary and malicious, illegal and motivated, allegedly by deliberate concealment of material facts. Action is sought to be taken against Respondent No. 4 who is impleaded in his personal capacity. The Petitioner seeks quashing of the impugned show cause Nos. 04/2019-20 dated 23.04.2019, issued by the Respondent No. 2.

2. The case of the Petitioner is that the Petitioner filed its revised ST-3 return on 26.09.2017 raising the input tax credit from 'Nil' to Rs. 4,39,44,304/-. The Petitioner was issued a notice on 23.03.2018 by the Respondents, which reads as follows:

“Sir,

Please refer to the TRAN-1 and revised TRAN-1 filed by you on GST Portal. While scrutiny of the same, it has been observed by the department that there was a Nil opening balance of CENVAT Credit in the month of April, 2017 and there was a closing balance of Rs. 4,39,44,304/- on 30.06.2017 and the same was filed as TRAN-1 by you.

In this connection, you are requested to submit the following documents for verification to this office within 7 days of receipt of this letter.

1. Month wise Purchase Invoices in respect of Inputs w.e.f. 01.04.2016 to 30.06.2017 alongwith a chart showing details of Invoices, description of Service, Value of Invoices, Cenvat availed.

2. Month wise Purchase Invoices in respect of Capital Goods w.e.f. 01.04.2016 to 30.06.2017 alongwith a chart showing details of invoices, description of Capital Goods, Value of Invoices, Cenvat availed.

3. Electronic Credit Ledger, Electronic Cash Ledger and Electronic Liability Register for the month of July, 2017.”

3. The Petitioner sent its response thereto, providing the relevant information. On 02.08.2018, another notice under Rule 121 of the CGST Rules , 2017 was issued to the Petitioner, which reads as follows:

“You may be aware that in terms of section 140 (8) of the CGST Act, 2017 where a registered person having centralized

registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed, provided that if the registered person furnished his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or revised return where the credit has been reduced from that claimed earlier.

However, it is noticed that you have claimed an amount of Rs. 4,39,44,537/- as per the revised return for the period April to June, 2017 filed on 26.09.2017, whereas the closing balance of Cenvat credit of service tax in original return filed on 13.08.2017 was Rs. 1,93,04,270/- only. Therefore, differential amount of Rs. 2,46,40,267/- has been wrongly carried forward in the electronic credit ledger under GST through TRAN-1 statement, which may please be reversed immediately & compliance may be reported within 7 days of receipt of this letter.

Please note that if no information is received by the stipulated date, necessary action will be initiated under Section 73 or 74 of the GST Act, 2017, r/w rule 121 of the GST Rules, 2017.”

4. The Petitioner yet again sent its response on 21.08.2018. Another reply was sent by the Petitioner on 29.08.2018 in pursuance of a meeting held with the Respondents on 21.08.2018. The Petitioner was again issued a notice on 31.01.2019 after examining the Petitioner's earlier replies sent on 21.08.2018 and 20.11.2018, to which the Petitioner again replied on 25.02.2019. Finally, the impugned show cause notice No. 4/2019-20 has been issued to the Petitioner on 23.04.2019 under Section 73 of the Central

Goods and Services Tax Act. At this stage, the Petitioner has preferred the present writ petition.

5. The grievance of the Petitioner is that in respect of the earlier notices issued by the Respondents, no final determination has been made or communicated to the Petitioner. On each occasion, the Petitioner has submitted its replies which have been ignored while issuing impugned show cause notice.

6. The Respondents have filed their counter affidavit. It is pointed out by Mr. Harpreet Singh, learned Senior Standing Counsel for the Respondent, that the earlier notice had been issued under Rule 121 of the CGST Rules 2017, which empowers the Respondents to verify the amount of credit under Rule 117 (3), and also entitles the Respondents to initiate proceedings under Section 73 or, as the case may be, under Section 74 in respect of any credit wrongly availed, whether wholly, or partly. Mr. Harpreet Singh has pointed out that the replies submitted by the Petitioner from time to time were duly taken note of and considered while issuing the impugned show cause notice. In this regard, he has drawn our attention particularly to paragraph 4 of the show cause notice which reads as follows:

“And whereas it has been claimed that they did not avail Cenvat credit of service tax paid under RCM on imported/local services, capital goods during Feb. 2017 to June 2017 received in their Centralized business premises located in various States, and hence such unavailed Cenvat credit was taken in the revised service tax return for the period April to June 2017 filed on 26.09.2017 and an amount of Rs. 4,39,44,537/- (excluding Cess) was admissible for transition in GST through Tran-1 as detailed

below:

Amount in INR

<i>Month</i>	<i>Service tax</i>	<i>SB Cess (non-creditable)</i>	<i>KK Cess</i>	<i>Total</i>	<i>Remarks</i>
<i>Feb 17</i>	<i>37,43,883</i>	<i>1,33,709</i>	<i>1 33,709</i>	<i>40,11,300</i>	<i>Original return for Feb & March 17 filed on 24.04.17 was revised on 22.07.17 (post GST) but no credit claimed therein</i>
<i>March 17</i>	<i>1,60,56,794</i>	<i>5,73,457</i>	<i>5,73,457</i>	<i>1,72,03,708</i>	
<i>April 17</i>	<i>57,45,907</i>	<i>2,05,211</i>	<i>2,05,211</i>	<i>61,56,329</i>	-
<i>May 17</i>	<i>82,11,799</i>	<i>2,93,279</i>	<i>2,93,279</i>	<i>87,98,356</i>	-
<i>June 17</i>	<i>89,07,055</i>	<i>3,18,109</i>	<i>3,18,109</i>	<i>95,43,273</i>	-
<i>Total (import RCM)</i>	<i>4,26,65,438</i>	<i>15,23,764</i>	<i>15,23,764</i>	<i>4,57,12,006</i>	-
<i>Other RCM</i>	<i>5,36,898</i>	-	-	-	-
<i>CVD (CG)</i>	<i>7,42,201</i>	-	-	-	-
<i>Total Tran-1 Credit</i>	<i>4,39,444,537 (Actual amount in Tran-1 Rs. 4,39,44,304</i>	-	-	-	<i>Amount shown as additional credit in the month of June 2017 of revised return for April-June' 17 on 26.09.17</i>

4.1. Without prejudice to the provisions of Section 140(8), *ibid*, restricting transition credit in GST to Centralised registered persons (separately registered in each State & eligible for credit post GST) as per the balance carried forward in the original return filed within 3 months subject to reduction of credit if made in the revised return, **the averments made by them were also examined.**

It is noted that they filed original ST-3 return covering the months Feb and March 2017 (return for October 16 to March 17) on 24.04.2017 (due date 25.04.17) and then revised the same after GST on 22.07.2017 in which Cenvat credit was revised from Rs. 1,20,84,849/- (excluding Cess) to Rs. 1,37,73,239/- (excluding Cess), But the additional Cenvat credit of Rs. 1,98,00,677/- for Feb. & March 2017 now claimed in the revised return for April-June 2017 filed on 26.09.17 was neither claimed in revised return for the said months filed on 22.07.17 nor in the original return for April-June 2017 filed on 13.08.17.

4.2. It is also noted that they have been availing Cenvat credit of service tax paid under RCM in cash as is evident from the relevant data extracted from the revised return for the period October 16 to March 17 (covering Feb & March 17) filed on 22.07.17 and original return for the period April-June 2017 filed on 13.08.17 (along with data as per revised return for April-June 17 filed on 26.09.17) as under:

Amount in INR

Month	Service Tax payable under RCM (excluding Cess)	Payment made in cash for S.tax under RCM (including KK Cess & SB Cess)	Cenvat credit of S. Tax under RCM & others taken (excluding Cess)	Cenvat credit utilized (excluding Cess)	Closing Balance	Remarks
Feb 17	89,74,707	1,02,45,934	1,41,07,557	1,41,07,557	Nil	As per revised return
March	1,65,77,403	1,79,43,587	1,37,73,239	1,37,73,2	Nil	

17				39		filed on 22.07.17
April to June 2017	2,39,46,285	2,77,98,689	4,77,66,719	4,77,66,719	Nil	As per original return filed on 13.08.17
April to June 17	2,39,46,285	2,77,98,689	9,17,14,255	4,77,66,719	4,39,44,537	As per revised return filed on 26.09.17

The above data and analysis clearly establish that they have taken Cenvat credit as admissible to them during the relevant period but have filed revised return for April to June 2017 to claim ineligible credit of Rs. 4,39,44,537/- (excluding Cess) attributing the same pertaining to the period from Feb 2017 to June 2017, which is not only found to be inadmissible under Section 140(8), ibid, as discussed and without prejudice to the said legal provisions also not otherwise admissible to them in view of the omissions and commissions discussed above.”

(emphasis supplied)

7. Mr. Harpreet Singh submits that the Respondents have merely followed the statutory scheme of first making inquiries, and premised on the information gathered, to issue the Show Cause Notice under Section 73 of the Act.

8. Having heard learned counsels, we are of the view that there is no merit in this petition. The position is not as the one projected by the Petitioner,

namely, rampant issuance of notices, one after another, without considering the fact that the earlier notices issued to Petitioner had been replied. The Respondents have followed the statutory scheme. The earlier notices were only to make inquiries, and it is only the impugned show cause notice which is a Substantive Show Cause Notice to show cause as to why the amount Rs. 4,39,44,304/-, allegedly wrongly carried forward in the GST electronic credit ledger in GST TRAN-1 statement, should not be recovered under Section 73 of the Act along with interest, and why penalty should not be imposed upon the Petitioner.

9. In our view, there is no jurisdictional error in issuance of the impugned show cause notice. The matter is at the stage of the examination of the Petitioner's response to the show cause notice. We are, therefore, of the view that no interference is called for at this stage by this Court. We leave it to the Petitioner to raise its pleas before the Respondents and to avail of its statutory remedies under the law if, and when, the occasion arises. We make it clear that we have not expressed any opinion on the merits of the case of either party.

10. We, therefore, dismiss this petition.

VIPIN SANGHI, J

SANJEEV NARULA, J

NOVEMBER 28, 2019

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