DELHI SALES TAX CASES

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HIGHLIGHTS

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"Taxation is the price we pay for a civilized society. However, the principles of fairness, equity, and justice must govern how taxes are levied, collected, and enforced. The challenge lies in ensuring that the burden of taxation is distributed justly, while safeguarding the rights of taxpayers and promoting economic prosperity for all"

Editor- in- Chief
Kumar Jee Bhat, Advocate

Sales Tax Bar Association (Regd.)
Knowledge, Diffusion & Promotion Section
Trade & Taxes Department, 2nd Floor, Bikrikar Bhawan, New Delhi-110002

DELHI
SALES TAX CASES

Containing important decisions of the Supreme Court of India, High Courts, Sales Tax Appellate Tribunal, Other Appellate and Revisional Authorities, Notifications, Circulars, Articles, etc.

Editor-in-Chief
Kumar Jee Bhat, Advocate

Assisted by
Rahul Chauhan

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2023-2024

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THE KNOWLEDGE, DIFFUSION & PROMOTION SECTION

of

THE SALES TAX BAR ASSOCIATION (REGD.)

FROM THE DESK OF EDITOR-IN-CHIEF (EDITOR'S NOTE)

Dear Readers,

Welcome to the latest issue of GST Journal. It is with great pleasure that we present this edition, which is filled with insightful articles, in-depth analyses, and the latest updates in the ever-evolving realm of Goods and Services Tax (GST).

The field of GST is marked by its dynamic nature, reflecting ongoing changes in legislation, compliance requirements, and technological advancements. Our goal is to provide you with a comprehensive resource that not only informs but also empowers you to navigate the complexities of GST with confidence.

In this issue, we delve into several pertinent topics:

1. **Legislative Updates**: Keeping you abreast of the latest amendments and their implications for businesses and tax professionals.

2. **Case Studies**: Offering practical insights from real-world applications and challenges faced by businesses in GST compliance.

3. **Expert Opinions**: Featuring perspectives from leading industry experts and tax professionals on current trends and future directions.

We believe that continuous learning and staying updated are crucial in the ever-changing landscape of GST. As we navigate through these complex times, the importance of a robust and transparent tax system cannot be overstated. Our commitment is to support you with reliable information and practical guidance, helping you stay compliant and competitive.

We extend our heartfelt gratitude to our contributors, reviewers, and readers for their unwavering support and dedication. Your feedback is invaluable to us, and we encourage you to share your thoughts and

suggestions to help us improve continuously. I tried my best to complete this volume besides my mother's illness and yesterday her demise. I feel contended of having done my duty and requested the printer to print it for issuing to my fraternity.

Thank you for your continued readership. We hope you find this issue of GST Journal both informative and engaging. I will fail in my duty by not mentioning the name of Rahul Chauhan and Mukesh ji in helping me to complete the volume.

Happy reading!

Sincerely,

KUMAR JEE BHAT
ADVOCATE.
Editor-in-Chief

"We gained our freedom at a great cost. Every Indian, therefore, has to use his liberties to constantly question the actions of those in power because democracy gives no tickets to free meals. It is for us to assert and guard liberty and not be complacent about any encroachment."

— Justice S. Ravindra Bhat

The best lawyers are the ones who are well acquainted with history, politics, economics and other social and scientific developments around them. A lawyer must be capable of dealing with a simple civil suit as well as disputes relating to intellectual property right, from issues of constitutional importance to IT related crimes. A lawer is not a mere representative before the court. Simply knowing a statute will not help you in the long run. Your clients may expect you to be aware about different facets of business, society or even sports. A lawyer needs to be an all-rounder, a leader and a changemaker.

— NV Ramana, *Chief Justice of India*

Judicial independence is important as the 'essence' of Rule of law, which embeds both "decisional autonomy" and "institutional autonomy" (Freedom from the pressure form the State) Rule of law means that the 'parameters of decision making and discretion' remain always circumscribed by the Constitution and demands respect for constitutional conventions.

— Prof. (Dr.) Upendra Baxi

"The role envisaged in the Constitutional scheme for the court, is to be a gatekeeper (and a conscience keeper)to strictly check the entry of restrictions into the temple of Fundamental Rights. The role of the court is to protect Fundamental Rights limited by lawful restrictions and not to protect restrictions and make the rights residual privileges"

— V. Ramasubramanian J.
in Kaushal Kishore vs State of Uttar Pradesh (2023)4 SCC 1


SALES TAX BAR ASSOCIATION (REGD.)
FELICITATES
Hon'ble Dr. Justice S. Muralidhar, Former Chief Justice, Orissa High Court
Sh. A.S. Chandhiok, Sr. Advocate, Former ASG of India
Sh. Jivesh Bihari Kaushik, Advocate, Delhi High Court
On Friday, 1st Sept., 2023 at 1:00 PM
Venue: Sales Tax Bar Association (Regd.), 2nd Floor, Vyapar Bhawan, New Delhi
RAKESH KR. AGGARWAL
GAURAV GUPTA
SURESH AGRAWAL
SANJAY GARG

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The writ petition is hereby allowed;

The impugned offending words, "or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier" appearing in Rule 89(4C) of the Central Goods and Services Tax Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-Central Tax (F.No.CBEC- 20/06/04/2020-GST) dated 23.03.2020 is declared ultra vires the provisions of the Central Goods and Services Tax Act, 2017 and the

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IN THE SUPREME COURT OF INDIA

[Hon'ble Mr. Justice M.R. Shah and Hon'ble Mr. Justice C.T. Ravikumar, JJ.]

Civil Appeal Nos. 345-350 of 2012

Anil Minda and Ors. ... Appellants

Vs.

Commissioner of Income Tax ... Respondent

Decided On: 24.03.2023

SEARCH AND SEIZURE – BLOCK ASSESSMENT – LIMITATION - WHETHER THE DATE OF LAST PANCHNAMA DRAWN IN A SEARCH CASE OR THE POST AUTHORIZATION WILL BE RELEVANT DATE FOR STARTING POINT OF LIMITATION–

Held *– The date of the punchnama last drawn would be relevant date for considering the period limitation.*

For Appellant/Petitioner/Plaintiff	:	Rakesh Gupta, Adv., Ambhoj Kumar Sinha, AOR and Somil Aggarwal, Adv.
For Respondents/Defendant	:	N. Venkatraman, A.S.G., Raj Bahadur Yadav, AOR, Rekha Pandey, Sansriti Pathak, Vishkha, Shetty Udai Kumar Sagar and H.R. Rao, Advs.

Case Category:

Direct Taxes Matters - Matters Under Income Tax Act, 1961

JUDGMENT

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 14.09.2010 passed by the High Court of Delhi at New Delhi in ITA No. 582 of 2009 and other allied appeals, by which the Division Bench of the High Court has allowed the said appeals preferred by the Revenue and set aside the orders passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'ITAT') holding that the assessment orders passed in the case of the respective Assessees were time barred as the assessments were not completed within two years from the end of the month in which the last authorisation for search Under Section 132 of the

Income Tax Act, 1961 (hereinafter referred to as the 'Act') was issued, the respective Assessees have preferred the present appeals.

2 . For the sake of convenience, the facts arising out of the impugned judgment and order passed by the High Court in ITA No. 582/2009 are narrated, which in nutshell are as under:

2.1 That the two warrants of authorization Under Section 132(1) of the Act for carrying out the search at bank locker with Canara Bank, Kamla Nagar were issued on 13.03.2001 and 26.03.2001. Warrants which were executed on 13.03.2001 were executed on various dates, which are as under:

1.	13.03.2001	1st Authorization/search warrant issued
2.	19.03.2001, 20.03.2001, 26.03.2001, 27.03.2001, 28.03.2001 11.04.2001	Panchnama drawn/executed and search completed in regard to 1st search warrant

2.2 During the execution of the search warrants dated 13.03.2001, the Income Tax authorities got the information about a locker belonging to the Assessee in a bank. Therefore on 26.03.2001, second authorization was issued for searching the said locker and the same was executed on 26.03.2001 itself. Therefore, the first authorization came on 13.03.2001 was for search at the office and residence of the Assessee and it continued for some time and culminated only on 11.04.2001 and the second search authorization dated 26.03.2001 came to be executed on the same date and the Panchnama was drawn on 26.03.2001.

2.3 Thereafter, notice Under Section 158BC for filing block assessment was issued. The Assessee filed his return and the assessment was completed by passing assessment order in April, 2003. Similar assessment orders were passed in case of other Assessees. The Respondents - Assessees filed appeals challenging the assessment orders, inter alia, on the ground that the assessment was time barred. According to the Assessees, limitation of two years as prescribed Under Section 158BE of the Act, which was to be computed when Panchnama in respect of the second authorization was executed, i.e., on 26.03.2001. Since that Panchnama was drawn on 26.03.2001, two years period as prescribed Under Section 158BE(b) of the Act came to an end by March, 2003 and the assessment order was passed in April, 2003, which according to the Assessee was thus time barred. On the other hand, the plea of the department was that since the last

Panchnama through related to search authorization dated 13.03.2001 was executed on 11.04.2001, limitation of two years was to be computed from that date and therefore the assessment was passed was well within the prescribed limitation.

2.4 The CIT(A) dismissed the appeals. However, the ITAT allowed the appeals and held that the respective assessment orders were barred by limitation since the Panchnama with respect to last authorization was drawn on 26.03.2001. Against the order passed by the ITAT setting aside the assessment orders on the ground that the same were beyond the period of two years, the Revenue preferred the present appeals before the High Court. By the impugned common judgment and order, the Division Bench of the High Court has allowed the said appeals and has set aside the order passed by the ITAT by holding that as the last Panchnama though related to search authorization dated 13.03.2001 was executed on 11.04.2001, limitation of two years was to be computed from 11.04.2001. The impugned common judgment and order passed by the High Court is the subject matter of present appeals.

3 . Dr. Rakesh Gupta, learned Counsel has appeared on behalf of the Appellants - Assessees and Shri Balbir Singh, learned ASG has appeared on behalf of the Revenue.

3.1 Learned Counsel appearing on behalf of the respective Assessees has vehemently submitted that in the facts and circumstances of the case, the High Court has erred in holding that the respective assessment orders were within the period of two years and therefore not barred by limitation.

3.2 It is submitted that in the present case the last authorization was on 26.03.2001 and therefore as per Explanation 2 to Section 158BE of the Act the last authorization would be the starting point of limitation. It is submitted that therefore even if the first authorization dated 13.03.2001 was executed on a later date i.e., on 11.04.2001, that would be of no consequence and for the purpose of reckoning the limitation period, the first authorization is irrelevant and it is the “last of the authorization” which has to be kept in mind. It is submitted that in the present case, the last authorization is dated 26.03.2001 which was executed on the same date and therefore the period of two years is to be counted from that date.

3.3 Learned Counsel appearing on behalf of the respective Assessees has relied upon the decision of the Karnataka High Court in the case of C. Ramaiah Reddy v. Assistant Commissioner of Income Tax, MANU/

KA/1803/2010 : (2011) 244 CTR 126 (Karn.) (para 47) in support of his submission.

4. Shri Balbir Singh, learned ASG appearing on behalf of the Revenue has vehemently submitted that as per Explanation 2 of Section 158BE of the Act, when it is a case of search, period of limitation is to be counted from the date on which the last Panchnama was drawn. It is submitted that in the present case, the last Panchnama on conclusion of the search was drawn on 11.04.2001 and therefore the limitation period of two years would start from 11.04.2001. It is submitted that if the submission on behalf of the Assessees is accepted, in that case, the Explanation 2 to Section 158BE would become nugatory and redundant.

4.1 It is further submitted by the learned ASG appearing on behalf of the Revenue that Explanation 2 to Section 158BE has been specifically inserted with a view to give last of the Panchnama as the starting point of limitation. It is submitted that the time for completion of the block assessment Under Section 158BC/158BE is the conclusion of search/ drawing of last Panchnama which will be relevant and not the dates of issuance of various authorizations. It is submitted that in a given case where number of authorizations are issued and relevant material/s is/are collected during the search on different dates on the basis of the different authorizations, ultimately the assessment proceedings would be on the basis of the entire material collected during the search and on the basis of the Panchnama drawn. It is submitted that therefore the date on which the last Panchnama was drawn is the relevant date for the purpose of block assessment. In support of his submission, Shri Balbir Singh, learned ASG has heavily relied upon the decision of this Court in the case of VLS Finance Limited and Anr. v. Commissioner of Income Tax and Anr., MANU/ SC/0481/2016 : (2016) 12 SCC 32 (paragraphs 26 to 28).

5. Having heard learned Counsel for the respective parties, the short question which is posed for the consideration of this Court is, whether the period of limitation of two years for the block assessment Under Section 158BC/158BE would commence from the date of the Panchnama last drawn or the date of the last authorization?

6 . While considering the aforesaid issue, Section 158BE which provides for time limitation for commencement of block assessment is required to be referred to, which is as under:

Section 158BE

Time Limit for Completion of Block Assessment

(1) The order Under Section 158-BC shall be passed--

(a) within one year from the end of the month in which the last of the authorisations for search Under Section 132 or for requisition Under Section 132-A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997;

(b) within two years from the end of the month in which the last of the authorisations for search Under Section 132 or for requisition Under Section 132-A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997. (2) The period of limitation for completion of block assessment in the case of the other person referred to in Section 158-BD shall be--

(a) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997; and

(b) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

[Explanation 1.--In computing the period of limitation for the purposes of this section,--

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the Assessee to get his accounts audited Under Sub-section (2-A) of Section 142 and ending on the day on which the Assessee is required to furnish a report of such audit under that Sub-section; or

(iii) the time taken in reopening the whole or any part of the

proceeding or giving an opportunity to the Assessee to be reheard under the proviso to Section 129; or

(iv) in a case where an application made before the Settlement Commission Under Section 245-C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order Under Sub-section (1) of Section 245-D is received by the [Principal Commissioner or Commissioner] Under Sub-section (2) of that section, shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in Subsection (1) or Sub-section (2) available to the Assessing Officer for making an order Under Clause (c) of Section 158-BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.]

[Explanation 2.--For the removal of doubts, it is hereby declared that the authorisation referred to in Sub-section (1) shall be deemed to have been executed,--

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition Under Section 132-A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.]

7 . In the present case, the first authorization was issued on 13.03.2001 which ultimately and finally concluded and/or culminated into Panchnama on 11.04.2001. However, in between there was one another authorization dated 26.03.2001 with respect to one locker and the same was executed on 26.03.2001 itself and Panchnama for the same was drawn on 26.03.2001. However, Panchnama drawn with respect to authorization dated 13.03.2001 was lastly drawn on 11.04.2001. As observed and held by this Court in the case of VLS Finance Limited (supra), the relevant date would be the date on which the Panchnama is drawn and not the date on which the authorization/s is/are are issued. It cannot be disputed that the block assessment proceedings are initiated on the basis of the entire material collected during the search/s and on the basis of the respective

Panchnama/s drawn. Therefore, the date of the Panchnama last drawn can be said to be the relevant date and can be said to be the starting point of limitation of two years for completing the block assessment proceedings.

8. If the submission on behalf of the respective Assessees that the date of the last authorization is to be considered for the purpose of starting point of limitation of two years, in that case, the entire object and purpose of Explanation 2 to Section 158BE would be frustrated. If the said submission is accepted, in that case, the question which is required to be considered is what would happen to those material collected during the search after the last Panchnama. It cannot be disputed that there may be number of searches. Thus, the view taken by the High Court that the date of the Panchnama last drawn would be the relevant date for considering the period of limitation of two years and not the last date of authorization, we are in complete agreement with the view taken by the High Court.

9. In view of the above and for the reasons stated above, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

IN THE SUPREME COURT OF INDIA

[Hon'ble Mr. Justice Krishna Murari and Hon'ble Mr. Justice V. Ramasubramanian, JJ.]

Special Leave Petition Civil Diary No. 34646/2022

Date of Order: 02.01.2023

Assistant Commissioner of Income Tax and Ors. ... Appellants

Vs.

Godrej And Boyce Manufacturing Co. Ltd. ... Respondent

REASSESSMENT – WHETHER A SANCTION U/S 151 OF THE I.T. ACT, 1962 CAN BE GRANTED ON A POINT, ALREADY CONSIDERED BY PR. COMMISSIONER IN HIS REVISIONAL ORDER U/S 263.

Held – *NO – Where the High Court already allowed the petition holding that when Pr. CIT had already accepted the explanation of the assessee and rejected the Audit Objection – Approval for re-assessment and notice U/s 148 and the order passed thereafter were quashed and set aside –*

The Supreme Court has dismissed the Special Leave Petition filed by the Department.

ORDER

We have heard Mr. Balbir Singh, learned ASG at length. Delay condoned.

We are not inclined to interfere with the judgment and order impugned in this petition. The special leave petition accordingly stands dismissed. Pending application(s), if any, shall stand disposed of.

IN THE HIGH COURT OF BOMBAY
[Hon'ble Mr. Justice K.R. Shriram and Hon'ble Mr. Justice N.R. Borkar, JJ.]

Writ Petition No. 3555 of 2019

Godrej and Boyce Manufacturing Co. Ltd. ... Appellants

Vs.

Assistant Commissioner of Income Tax, Circle 14 (1)(2) and Ors. ... Respondent

Decided On: 13.01.2022

REASSESSMENT – SANCTION FOR REOPENING OF ASSESSMENT WHETHER TO BE ACCORDED MECHANICALLY.

Held *– NO – If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.*

The SLP dismissed.

For Appellant/Petitioner/Plaintiff : Percy Pardiwalla, Senior Advocate and Atul K. Jasani

For Respondents/Defendant : Suresh Kumar

Case Category:

Direct Taxes Matters - Matters Under Income Tax Act, 1961

DECISION

1. Petitioner had filed its return of income for Assessment Year 2012-2013 on 26th November 2012 declaring total income at Rs. 5,23,81,63,452/- and book profit under Section 115JB of the Income Tax Act, 1961 (the said Act) of Rs. 9,85,40,05,783/-. The assessment was completed under Section 143(3) of the said Act dated 20th March 2015 determining the total income at Rs. 5,37,56,77,667/- and the tax is calculated on the book profit under Section 115JB of the said Act of Rs. 10,07,45,28,003/-.

2 . After the assessment was completed and the assessment order was passed, the Principal Commissioner of Income Tax - 14 issued a notice dated 29th June 2016 under Section 263 of the said Act for Assessment Year 2012-2013 and it reads as under:

.....

> 2 . In the instant case, return of income for A.Y. 2012-13 was filed on 26.11.2012 declaring Total Income of Rs. 5,23,81,63,542/- and book profit of Rs. 9,85,40,05,783/-. Further, order u/s. 143(3) of the Act, was passed on 23.03.2015 determining the total income of Rs. 5,37,56,77,667/- under the normal provisions of the Act.
>
> 3 . On perusal of the records it is observed that the assessee has debited an amount of Rs. 43,02,00,000/- on account of Diminution in the value of investment in a subsidiary. The diminution in the value of investment is adjusted where the loss (the difference between the purchase price and the value as on the valuation date) is booked in accounts and this loss is a notional loss as no sale has taken place and the asset continues to be owned by the company.
>
> 4. As per Income tax Act-1961, there is no provision to recognize a decline in the value of investments. Only if the investment is disposed of, the profit/loss on account of the same is recognized. In the instant case, the assessee company has added back this deduction under normal provisions of the Act but the same was not added while computing income under MAT provisions u/s. 115JB of the Act. Hence, the Assessing Officer has erred while making addition in the assessment order.

.....

3 . Petitioner responded by a letter dated 21st July 2016 through its Chartered Accountants and explained to the Principal Commissioner

of Income Tax - 14 as to why his opinion that there was an error in the assessment order passed under Section 143(3) of the said Act was erroneous. After considering the reply and also a personal hearing, the Principal Commissioner of Income Tax - 14 passed an order dated 18th August 2016, which reads as under:

> .....
>
> In connection with the above, I am directed to inform that the proceedings initiated u/s. 263 of the I.T. Act in the above case for the A.Y. 2012-13 are dropped.
>
> Further, I am directed to request that Revenue Audit may accordingly be informed that the objection raised is not accepted and may be requested to withdraw the objection on the basis of facts of the case which is different than that of the judicial pronouncement relied upon by the audit party.
>
> .....

4. Subsequently, petitioner received a notice under Section 148 of the said Act stating that the Jurisdictional Assessing Officer has reasons to believe that petitioner's income for Assessment Year 2012-2013 has escaped assessment. On petitioner's request, reasons were provided as also the approval granted under Section 151 of the said Act by the Principal Commissioner of Income Tax - 14. Two grounds have been raised in the reasons. One is regarding fair value of land/transferable development rights relating to 24,872.83 sq. mtrs. of land and the second one is the diminution in the value of investment in a subsidiary and debit by petitioner from the profit and loss account an amount of Rs. 43,02,22,000/-.

5. As could be seen from what is noted by us earlier, the second point in the reasons for reopening has already been considered by the Principal Commissioner of Income Tax - 14 when he wished to review the assessment order under Section 263 of the said Act and the Principal Commissioner of Income Tax - 14 has also passed an order directing the proceedings initiated under Section 263 of the said Act to be dropped and the Revenue Audit to be accordingly informed that the objection raised was not accepted. Notwithstanding this order passed by the Principal Commissioner of Income Tax - 14, a notice is issued under Section 148 of the said Act and one of the ground is the same point which was directed to be dropped by the Principal Commissioner of Income Tax - 14 and the same Principal Commissioner of Income Tax - 14 has accorded the approval under Section 151 of the said Act on 30th March 2019. Therefore,

this only shows that there has been total non application of mind by the Principal Commissioner of Income Tax - 14 while according the approval. If the Principal Commissioner of Income Tax - 14 had only applied his mind and considered all documents including his own order passed on 18th August 2016, he would not have granted the approval for the reasons as recorded. Mr. Suresh Kumar submitted that there are two reasons for reopening which are distinct. One is regarding the fair market value of land/transferable development rights and the other regarding diminution in the value of investment in a subsidiary and both can be segregated. It is true that both are totally different points but the fact, which is indisputable, is how could the Principal Commissioner of Income Tax - 14 grant approval for reopening relying on the reasons one of which is on an issue which the Principal Commissioner of Income Tax - 14 himself has passed an order saying that the objection raised was not correct.

6. Mr. Pardiwalla relied on judgment of this Court in German Remedies Ltd. Vs. Deputy Commissioner of Income-Tax MANU/MH/0861/2005 : [2006] 287 ITR 494 (Bom) to submit that to grant or not to grant approval under Section 151 of the said Act to reopen an assessment is coupled with a duty and the commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Mr. Pardiwalla submitted that such power cannot be exercised casually, in a routine and perfunctory manner.

7. We have to note that in the affidavit in reply also respondents admit that the PCIT is required to accord approval on reasons recorded by the Assessing Officer after having satisfied himself that such reasons were on the basis of the technical information in possession. As held in German Remedies Ltd. (Supra) to grant or not to grant approval under Section 151 of the said Act to re-open an assessment is coupled with a duty and the Commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Such power cannot be exercised casually, in a routine and perfunctory manner. We have to observe that if only the PCIT had read the file, he would not have been satisfied with the reasons.

8 . In the circumstances, on this ground alone, without going into the other grounds, which Mr. Pardiwalla raised for quashing the notice as well as the order on objections, the petition is allowed in terms of prayer clause - (a), which reads as under:

(a) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order

or direction under Article 226 of the Constitution of India calling for the records of the petitioner's case and after examining the legality and validity thereof quash and set aside the notice dated 30th March 2019 (Exhibit A) issued by respondents under Section 148 of the Act seeking to reopen the assessment for the assessment year 2012-13; and order rejecting objections (Exhibit X) dated 1st November 2019.

9. Petition disposed.

IN THE SUPREME COURT OF INDIA

[Hon'ble Mr. Justice A. S. Bopanna and Hon'ble Mr. Justice Hima Kohli JJ.]

Ratnambar Kaushik ... Petitioner

V.

Union of India ... Respondent

December 5, 2022

Section(s): Central Goods and Services Tax Act, 2017, ss. 132(1)(a), 132(1)(h), 132(1)(k), 132(1)(l), 132(5); Code of Criminal Procedure, 1973, s. 439

Favouring: Assessee, person

GOODS AND SERVICES TAX – OFFENCES AND PROSECUTION – EVASION OF TAX – BAIL – PETITION SEEKING BAIL – ALLOWED SUBJECT TO CONDITIONS TO BE IMPOSED BY TRIAL COURT – CENTRAL GOODS AND SERVICES TAX ACT (12 OF 2017), S. 132(1)(A), (H), (K), (L), (5) – CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974), SECTION 439

Facts

The High Court has dismissed the application filed by the petitioner hereunder under section 439 of the Code of Criminal Procedure seeking bail in the proceedings for the offence alleged against him under section 132(1)(a), (h), (k) and (l) read with section 132(5) of the Central Goods and Services Tax Act, 2017.

Held

In considering the application for bail, it is noted that the petitioner was arrested on July 21, 2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under section 132(1)(l)(i), the punishment provided is, imprisonment which

may extend to five years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial court.

Present for petitioner	:	Anirban Bhattacharya.
Present for the respondent	:	Balbir Singh, Additional Solicitor General and Arijit Prasad, Senior Advocate, (Rupender Sinhmar, Naman Tandon, Samarvir Singh, Prasenjit Mohpatra, Shyam Gopal, Prahlad Singh and Mukesh Kumar Maroria, Advocates, with them)

ORDER

1. The petitioner is before this court, assailing the order dated October 21, 2022, passed by the High Court of Judicature at Rajasthan, Bench at Jaipur in S. B. Criminal Miscellaneous Bail Application No. 12475 of 2022*. Through the said order the High Court has dismissed the application filed by the petitioner hereunder under section 439 of the Code of Criminal Procedure** seeking bail in the proceedings for the offence alleged against him under section 132(1)(a), (h), (k) and (l) read with section 132(5) of the Central Goods and Services Tax Act, 2017***

2. Heard Shri Mukul Rohatgi, Shri C. S. Vaidyanathan, Shri Maninder Singh learned senior counsel for the petitioner and Shri Balbir Singh learned Additional Solicitor General for the respondent. In that light, we have perused the petition papers as also the counter-affidavit filed on behalf of the respondent.

3. The gist of the allegations against the petitioner in the prosecution initiated against him is that the petitioner had clandestinely transported raw unmanufactured tobacco brought from Gujarat by 7 trucks weighing

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* Reported as Ratnambar Kaushik v. Union of India [2023] 108 GSTR 1 (Raj).
** For short “Cr. P. C.”.
*** For short “GST”.

90,520 kgs. It is alleged that raw tobacco was cleared in the name of M/s. Maa Ambey Enterprises, Bakoli from M/s. Arihant Traders, Kheda, Gujarat, but the said trucks went to Patparganj Area to M/s. Galaxy Tobacco in Delhi. It is further alleged that the said quantity of unmanufactured tobacco has been apparently used in the clandestine manufacture and supply of chewing tobacco without payment of leviable duties and tax. The petitioner contends that even if the tax is levied at 28 per cent., the value would be around Rs. 10,30,824. However, as per the case of the respondent, the total tax/duty and cess involved would be Rs. 15,57,28,345. The said contention has been raised on the basis of the projected manufacture of zarda pouches from the said quantity of unmanufactured tobacco. Thus on the projected number of pouches, the tax amount if taken into consideration, would be to that extent. It is further contended on behalf of the respondent that in the course of the investigation it has also come to light, apart from the 7 trucks, 287 more trucks loaded with raw unmanufactured tobacco has been transported as per the details obtained from the toll/RFID data of NHAI, which shows the movement of the trucks.

4. Insofar as the allegations made against the petitioner are concerned, learned senior counsel for the petitioner while rebutting the same would contend that at this juncture, such allegations made by the respondent against the petitioner are far-fetched. Even if one accepts as correct, the allegation on which the proceedings is predicated, wherein 90,520 kgs. of raw/unmanufactured tobacco in 7 trucks is taken note of, the GST, if reckoned, comes to only Rs. 1,93,26,020. It is contended that the sum of Rs. 11,04,34,400 shown as cess by the respondent is even without the proof of manufacture of zarda and it has been done only to indicate the projected value of more than Rs. 15 crores. Learned senior counsel for the petitioner therefore disputed the allegations and contended that such allegations have been made only to allege cognizable and non-bailable offence against the petitioner so as to deny bail and take him into custody.

5. Though allegations and counter-allegations are made, at this stage, it would not be necessary for us to advert to the details of the rival contentions, since the matter in any event is at large before the trial court and any observations on merits herein would prejudice the case of the parties, therein. However, for the limited purpose of answering the prayer for the grant of bail, the contentions are taken note of. It is no doubt true, that an allegation is made with regard to the transportation of unmanufactured tobacco and it is alleged that such procurement of unmanufactured tobacco is for clandestine manufacture and supply of zarda without payment of leviable duties and taxes. Though it is further contended that in the process of the investigation, the transportation of a larger quantity of unmanufactured tobacco weighing about 35,57,450 kgs.

is detected, these are all matters to be established based on the evidence, in the trial.

6. In considering the application for bail, it is noted that the petitioner was arrested on July 21, 2022 and while in custody, the investigation has been completed and the charge sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to five years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner.

7. Hence, it is directed that the petitioner be released on bail subject to the conditions to be imposed by the trial court, which among others, shall also include the condition to direct the petitioner to deposit his passport. Further, such other conditions shall also be imposed by the trial court to secure the presence of the petitioner to diligently participate in the trial. It is further directed that the petitioner be produced before the trial court forthwith, to ensure compliance of this order.

The special leave petition is allowed accordingly.

Pending applications, if any, shall stand disposed of.

IN THE BOMBAY HIGH COURT

[Hon'ble Mr. Justice K. R. Shiriram and Hon'ble Mr. Justice A. S. Doctor JJ.]

Writ Petition (L) No. 17591 of 2022.

Sheetal Dilip Jain ... Petitioner

v.

State of Maharashtra and Others ... Respondent

September 20, 2022.

Section(s): Maharashtra Goods and Services Tax Act, 2017, s. 73

Favouring: Assessee

GOODS AND SERVICES TAX – NOTICE OF DEMAND – SHOW-CAUSE NOTICE MINIMUM PERIOD OF 30 DAYS TO BE GRANTED TO PAY TAX OR FILE REPLY NOTICE GIVING SEVEN DAYS' TIME – NOT SUSTAINABLE – MAHARASHTRA GOODS AND SERVICES TAX ACT (43 OF 2017), S. 73

Facts

Maharashtra Goods & Services Tax – Section 73(8) permits a person chargeable with tax a period of 30 days from the issuance of show cause notice to make payment of such tax along with interest, if he does not wish to make payment, then within the 30 days he could file a reply to the show cause notice. This period cannot be reduced to seven days by Assessing Authority – Petition allowed with the cost of Rs. 10000/-.

By the court

Such orders without application of mind are being passed contrary to the basic provisions of the Act and the Rules framed thereunder. These acts and omissions of officers add to the already overburdened dockets of the court. The Central Board of Indirect Taxes and Customs and the Chief Commissioner could hold some kind of training or orientation session to educate its officers on the prevailing law and rules framed thereunder and also explain to them what "principles of natural justice" mean. This would ensure that otherwise meritorious cases are not defeated on technicalities. It is also necessary that the authorities must be mindful of the grave prejudice that is caused to the assessees on account of such patently illegal orders. Authorities must be sensitive to this fact. The observations have been only made keeping in mind the larger picture and the problems that the citizens of this country have to face.

Present for petitioner	:	Rahul C. Thakar instructed by C. B. Thakar
Present for respondent-State	:	Ms. Jyoti Chavan with Himanshu Takke, Additional Government Pleaders Ms. Anagha Prashant Kand, State Tax Officer (C-812), (Girgaon-705), Nodal-II, Mumbai

JUDGMENT

1. One of the primary grievance raised in the petition, in which an order dated March 10, 2022 is impugned, is that when a notice under section 73 of the Maharashtra Goods and Services tax Act, 2017 is issued, minimum 15 days time to reply should be given.

2. Ms. Chavan, in fairness, states that the period of seven days given in the notice dated March 2, 2022 to respond by March 9, 2022, issued to the petitioner is contrary to what the MGST Rules, 2017 prescribes. According to Ms. Chavan, minimum 15 days should have been given. Mr. Thakar states that no time is prescribed, but since under section 73(8) of the MGST Act, a period of 30 days of issue of show-cause notice is given to a person chargeable with tax under sub-section (1) or sub-section (3) of section 73 to pay the amount, the show-cause notice should provide minimum 30 days to file a reply.

3. We are in agreement with Mr. Thakar because section 73(8) of the MGST Act in terms permits a person chargeable with tax under sub-section (1) or sub-section (3) a period of 30 days from issuance of the show-cause notice to make payment of such tax along with interest payable under section 50. If he does not wish to make payment, then within the 30 day period he could file a reply to the show-cause notice. This statutory period cannot be arbitrarily reduced to seven days by assessing officer. In our view, this is also understanding of the Department because in the impugned order itself in paragraph 1 it is stated as under :

> "A show-cause notice/statement referred to above was issued to you under section 73 of the Act for reasons stated therein. Since, no payment has been made within 30 days of the issue of the notice by you ; therefore, on the basis of documents available with the Department and information furnished by you, if any, demand is created for the reasons and other details attached in annexure."
>
> (emphasis supplied)

4. On instructions from the officer concerned, Ms. Chavan, in fairness, states that the order is erroneous because in the show-cause notice only seven days was given to reply to the notice and on the eighth day the impugned order came to be passed. Therefore, the question of not paying within 30 days of the issue of the notice will not arise. Hence, Ms. Chavan has instructions to withdraw the impugned order dated March 10, 2022. Ordered accordingly.

5. We are constrained to note that such orders without application of mind are being passed contrary to the basic provisions of the Act and the Rules framed thereunder. These acts/omissions of respondents' officers is adding to the already overburdened dockets of the court. Valuable judicial time is wasted because such unacceptable orders are being passed by respondents' officers. The officers do not seem to understand or appreciate the hardship that is caused to the general public. In this

case, the petitioner could afford (we have assumed) to spend on a lawyer and approach this court but for every petitioner, we would hazard a guess, atleast ten would not be able to afford a lawyer and approach the court and their registrations may get cancelled by the very same officers who have passed such patently illegal orders.

6. In this case, in our view, it will only be fit and proper that respondents are saddled with costs. The respondents shall pay a sum of Rs. 10,000 as donation to PM Cares Fund and this amount shall be paid within two weeks from the date this order is uploaded. The account details are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

7. A copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could at least hold some kind of training and/or orientation session/course, etc., to apprise and educate its officers on the prevailing law and rules framed thereunder and also explain to them what “principles of natural justice” mean. This would in fact be in the interest of the authorities, because this would then ensure that otherwise meritorious cases are not defeated on technicalities. It is also necessary that the authorities must be mindful of the grave prejudice that is caused to the assessees on account of such patently illegal orders. Authorities must be sensitive to this fact and the impact and consequences that their orders have on the public.

8. We would hasten to clarify that the observations above should not be taken as observations personally against the officer concerned, but have been only made keeping in mind the larger picture and the problems that the citizens of this country have to face. If only the officers are efficient and accountable, the Government’s vision of ease of doing business in India may fructify.

The petition disposed.

IN THE CALCUTTA HIGH COURT
[Hon'ble Mr. Justice T. S. Sivagnanam and Hon'ble Mr. Justice Hiranmay Bhattacharyya JJ.]

Ideal Unique Realtors Private Limited And Another ... Appellant

v.

Union of India and Others ... Respondent

April 22, 2022.

Favouring: Assessee, person

GOODS AND SERVICES TAX — AUDIT — IF THERE IS IRREGULARITY IN AVAILMENT OF CREDIT, APPROPRIATE PROCEEDINGS SHOULD BE INITIATED AND AFTER DUE OPPORTUNITY TO ASSESSEES, TAKEN TO LOGICAL END — FROM 2018 FOR SAME TRAN–1 ISSUE ASSESSEES REPEATEDLY SUMMONED, ISSUED NOTICES, ETC. — SPOT MEMOS COMMUNICATED TO ASSESSEES WITH COMMUNICATIONS ALSO FOR VERY SAME PURPOSE — DIFFERENT WINGS OF SAME DEPARTMENT ISSUING NOTICES AND SUMMONS TO ASSESSEES WITHOUT TAKING EARLIER PROCEEDINGS TO LOGICAL END — COMMUNICATIONS DATED MARCH 22, 2021 DID NOT REFER TO ANY EARLIER PROCEEDINGS INITIATED AGAINST ASSESSEES — SPOT MEMOS QUASHED AND ADDITIONAL ASSISTANT DIRECTOR TO CONSIDER REPLIES SUBMITTED BY ASSESSEES, AFFORD ASSESSEE OPPORTUNITY OF PERSONAL HEARING AND TAKE DECISION ON MERITS IN ACCORDANCE WITH LAW.

Facts

The appellant's/writ petitioners challenged the jurisdiction, the Senior Audit Officer in issuing two communications both dated March 22, 2021 enclosing a memo called as "spot memo". The appellants questioned the action of the respondent in the writ petition, firstly, on the ground that there is no jurisdiction for the Audit Department to issue such a notice and the Central Excise Revenue cannot conduct audit of records of a private entity apart from stating that the appellants have pointed out that for the self-same reason three earlier proceedings were commenced firstly by CGST Department, Park Street Division, Kolkata vide letter dated May 15, 2018 for which the appellants had submitted their reply on June 15, 2018 along with the documents called for. For the very same purpose, the Director General of Goods and Services Tax, DGGI, Kolkata, Zonal Unit had issued summons dated July 11, 2018 for which the appellants had submitted their reply on July 24, 2018. Thereafter, DGGI issued notice dated November 15, 2019 and thereafter another notice dated November 18, 2019 was issued by the fifth respondent and summons dated January 2, 2020 for which the appellants have responded and submitted the requisite documents.

The question would be whether the appellants can be dealt with in such a fashion by the Respondents - Department. From the records placed before us, we find that none of the proceedings initiated by the Department has been shown to have been taken to the logical end. If, according to the Respondents - Department, there is an irregularity in the availment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

Held

Therefore, on that ground, we are of the view that the spot memos, which have been furnished along with the communications dated March 22, 2021 cannot be enforced. However, we make it clear that the issue whether CERA audit can be conducted against a private entity as contended by the appellants is not gone into as this court is of the view that it is too premature for the court to give a ruling on the said issue. This is more so because the authorities have not taken forward the proceedings, which they have initiated earlier from May, 2018.

Therefore, it is appropriate for the concerned authority to take the proceedings to the logical end after affording an opportunity of personal hearing to the appellants.

For the above reasons, the writ appeal is allowed to the extent indicated. The spot memos enclosed with the communications dated March 22, 2021 are quashed and there will be a direction to the fifth respondent, namely, Additional Assistant Director, DGGI, Kolkata, Zonal Unit to consider the reply submitted by the appellants dated January 14, 2020 along with the earlier reply given by the appellants dated June 15, 2018 and July 24, 2018. The authorised representative of the appellants shall be afforded an opportunity of personal hearing and a decision be taken on merits and in accordance with law.

Present for the Appellants	:	Sandip Choraria, Rajarshi Chatterjee and Himangshu Kr. Ray
Present for the Respondent	:	Vipul Kundalia, Sukalpa Seal and Anurag Roy for respondent Nos. 2 and 3.

JUDGMENT

1. T. S. Sivagnanam J.—This intra court appeal is directed against the order dated November 22, 2021 in W. P. A. No. 15695 of 2021 (Ideal

Unique Realtors Private Limited v. Union of India). The appellants/writ petitioners challenged the jurisdiction of the seventh respondent, the Senior Audit Officer/SSCA-FAP-4 in issuing two communications both dated March 22, 2021 enclosing a memo called as “spot memo”. The appellants questioned the action of the seventh respondent in the writ petition, firstly, on the ground that there is no jurisdiction for the Audit Department to issue such a notice and in this regard, places reliance on the decision of the High Court of Bombay in Kiran Gems Private Limited v. Union of India reported in [2021] 87 GSTR 250 (Bom) ; [2021] SCC OnLine Bom 98. This decision was relied on for the proposition that the Central Excise Revenue Audit (CERA) cannot conduct audit of records of a private entity apart from stating that the appellants have pointed out that for the self-same reason three earlier proceedings were commenced firstly by CGST Department, Park Street Division, Kolkata vide letter dated May 15, 2018 for which the appellants had submitted their reply on June 15, 2018 along with the documents called for. For the very same purpose, the Director General of Goods and Services Tax, DGGI, Kolkata, Zonal Unit had issued summons dated July 11, 2018 for which the appellants had submitted their reply on July 24, 2018. Thereafter, DGGI issued notice dated November 15, 2019 and thereafter another notice dated November 18, 2019 was issued by the fifth respondent and summons dated January 2, 2020 for which the appellants have responded and submitted the requisite documents.

2. The appellants appeared before the authority in response to the sum mons on January 14, 2020 and stated to have submitted the requisite documents. In spite of the same, the Superintendent, Range III, Park Street Division, CGST and CX, Kolkata South Commissionerate had issued two communications dated March 22, 2021 enclosing two spot memos.

3. The question would be whether the appellants can be dealt with in such a fashion by the respondents-Department. From the records placed before us, we find that none of the proceedings initiated by the Department has been shown to have been taken to the logical end. If, according to the respondents-Department, there is an irregularity in the availment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

4. We find that such a procedure had not been adopted in the instant case and the appellants appears to have been dealt with in a most unfair manner in the sense that from the year 2018 for the very same TRAN-1 issue the appellants have repeatedly been summoned, issued notices, etc.

The spot memos, which have been communicated to the appellants along with the communications dated March 22, 2021 is also for the very same purpose.

5. Thus, it is not clear as to why different wings of the very same Depart ment have been issuing notices and summons to the appellants without taking any of the earlier proceedings to the logical end.

6. Therefore, on that ground, we are of the view that the spot memos, which have been furnished along with the communications dated March 22, 2021 cannot be enforced. However, we make it clear that the issue whether CERA audit can be conducted against a private entity as contended by the appellants is not gone into as this court is of the view that it is too premature for the court to give a ruling on the said issue. This is more so because the authorities have not taken forward the proceedings, which they have initiated earlier from May, 2018.

7. Therefore, it is appropriate for the concerned authority to take the proceedings to the logical end after affording an opportunity of personal hearing to the appellants.

8. From the records placed before us, we find that there is no allegation against the appellants that they have not cooperated with the Department in not responding to the summons issued earlier. Conveniently, the communications dated March 22, 2021 issued by the Superintendent, Range III, Park Street Division, CGST and CX does not refer to any of the earlier proceedings, which have been initiated against the appellants.

9. For the above reasons, the writ appeal is allowed to the extent indicated. The spot memos enclosed with the communications dated March 22, 2021 are quashed and there will be a direction to the fifth respondent, namely, Additional Assistant Director, DGGI, Kolkata, Zonal Unit to consider the reply submitted by the appellants dated January 14, 2020 along with the earlier reply given by the appellants dated June 15, 2018 and July 24, 2018. The authorised representative of the appellants shall be afforded an opportunity of personal hearing and a decision be taken on merits and in accordance with law.

The appeal along with connected application are disposed of.

No costs.

12. Urgent photostat certified copy of this order, if applied for, be

furnished to the parties expeditiously upon compliance of all legal formalities.

Hiranmay Bhattacharyya J.—I agree.

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
[Hon'ble Shri Justice Sheel Nagu & Hon'ble Shri Justice Hirdesh]

Writ Petition No. 20600 Of 2020

BETWEEN:-

M/S Kia Motors India Private Ltd.
Authorized Signatory Prachi Trehan
Aged 29 Asst. Manager (Legal)
Sy. No. 134-151 Penukonda Dist. Anantapur
(Andhra Pradesh) ... Petitioner

And

1. The State of Madhya Pradesh Thr.
   Principal Secretary Law and Legislative Affairs Vallabh
   Bhawan Bhopal (M.P.) (Madhya Pradesh)
2. Commissioner (GST) State Tax
   Indore Indore (Madhya Pradesh)
3. Appellate Authority And Joint
   Commissioner State Tax Bhopal (Madhya Pradesh)
4. State Tax Officer Anti Evasion Bureau
   State Tax Office Bhopal (Madhya Pradesh)
5. The Union of India Through its Secretary
   Ministry of Finance
   North Block, New Delhi (Delhi) ... Respondents

On 1st of May, 2023

E-WAY BILL – WHETHER E-WAY BILL OF A DEMO-VEHICLE TRANSPORTED IN THE STATE OF MADHYA PRADESH WHICH IS NOT FOR SALE – IS NECESSARY OR NOT –

Held *– Yes - Bare perusal of the relevant statutory rule i.e. Rule 138(1)(ii) makes it clear that the causing of movement of a goods exceeding*

the value of Rs.50,000/- even for the reasons other than supply, makes it incumbent upon the supplier to inform about the supply of goods in Form-A GST, EWB-01 electronically on the common portal alongwith other information as required.

Section 129 of CGST Act – Rule 138 of CGST Rules

Present for Petitioner : Shri Himanshu Khemuka, Advocate

Present for Respondent : Shri A.D. Bajpai - Govt. Advocate and
Shri Pushpendra Yadav - Assistant Solicitor General

This petition coming on for admission this day, JUSTICE SHEEL NAGU passed the following:

ORDER

This petition filed under Article 226 of the Constitution of India assails the order passed by Appellate Authority (Joint Commissioner, State Tax, Bhopal Division) on 23.12.2019 vide Annexure P-5, partly allowing the appeal of petitioner-assessee by reducing the tax levied from Rs.8,40,000/- to Rs.5,40,000/- and the corresponding penalty from Rs.8,40,000/- to Rs.5,40,000/- while setting aside the Cess of Rs.6,60,000/- and penalty of Rs.6,60,000/-.

2. The sole argument of petitioner is that the demo vehicle was transported in the State of Madhya Pradesh not for sale and therefore, was not exigible to GST.

3. Learned counsel for petitioner has taken this Court to the definition of the term “supply” vide Section 7 of GST Act to contend that bringing of demo vehicle into the State of Madhya Pradesh would not render the transaction exigible to GST since no financial consideration is involved in the absence of sale or purchase. Learned counsel has also drawn the attention of this Court to CBDT circular dated 07.07.2017 (Annexure P-6) and dated 22.11.2017 (Annexure P- 7).

4. On the other hand, learned counsel for the respondent/State has relying upon the provisions of Section 129 of GST Act and Rule 138 of GST Rules contends that movement of goods exceeding the value of Rs.50,000/-, even if they do not qualify the definition of supply become exigible to GST.

5. Section 129 of GST Act and Rule 138 of GST Rules are reproduced below for ready reference and convenience:

"Section 129 - Detention, seizure and release of goods and conveyances in transit.— (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment penalty equal to the fifty per cent. of the value of the goods or two hundred percent. of the tax payable on such goods whichever is higher, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) [***]

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detaining or seizure specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).

(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt copy of the order passed under sub-Section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section(3): Provided that the convyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fifteen days]89 may be reduced by the proper officer.

Rule 138 - Information to be furnished prior to commencement of movement of goods and generation of e-way bill .-

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees —

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal.

Explanation 1.***
Explanation 2.***
(2) ****
(2A) ***
(3) ****
Explanation 1. ***
Explanation 2.***
(4) ****
(5) ****
(5A) ***
(6) ****

(7) ****
(8) ****
(9) ****
(10) ****
(11) ****
(12) *****

(emphasis supplied)

5.1. Bare perusal of the relevant statutory rule i.e. Rule 138(1)(ii) makes it clear that the causing of movement of a goods exceeding the value of Rs.50,000/- even for the reasons other than supply, makes it incumbent upon the supplier to inform about the supply of goods in Form-A GST, EWB-01 electronically on the common portal alongwith other information as required.

6. It is not disputed at the Bar that no such information as mandatory in Rule 138(1) of GST Rules, was given by the petitioner supplier.

7. In view of the above, it is obvious that in the absence of information given, the entry of demo car into the State of Madhya Pradesh renders it exigible to GST.

8. This Court does not find any fault or jurisdictional error in the order of appellate authority dated 23.12.2019. Therefore, this writ petition stands dismissed sans cost.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice Vibhu Bakhru and Hon'ble Mr. Justice Amit Mahajan]

W.P.(C) 5698/2023 & CM APPL. 22331/2023

SRG Plastic Company ... Petitioner

Versus

The Commissioner Delhi Goods and Services Tax Trade and Tax Department & Ors. ... Respondents

Date of Order : 02.05.2023

REFUND – REJECTION OF REFUND APPLICATION BY PROPER OFFICER FOR NEITHER PROVIDING RELEVANT DOCUMENTS NOR APPEARING BEFORE THE CONCERNED OFFICER. THE PETITIONER HAVING FILLED ALL THE REQUIRED DOCUMENTS UNDER RULE 89 OF CGST RULES, 2017, WHETHER REJECTION WAS JUSTIFIED.

Held – NO –The petitioner shall furnish all documents available with the petitioner, as sought for by the Proper Officer, within a period of three weeks. The Proper Officer is requested to adjudicate the petitioner's claim as expeditiously as possible and preferably within a period of four weeks.

Present for Petitioner : Mr. Rakesh Kumar, Adv.

Present for Respondent : Mr. Rajeev Aggarwal, ASC.

O R D E R

1. Issue notice.

2. Mr. Rajeev Aggarwal, learned counsel for the respondent accepts notice.

3. The petitioner has filed the present petition impugning an order dated 09.11.2022 / 21.11.2022, whereby the petitioner's appeal against an order dated 07.03.2022, passed by the Proper Officer, was rejected.

4. By the said order dated 07.03.2022, the Proper Officer had rejected the petitioner's refund for an amount of ₹ 4,99,880/-, inter alia, on the ground that the petitioner had not provided the relevant documents and had not appeared before the concerned officer.

5. It is the petitioner's case that he had filed all documents as required under Rule 89 of the Central Goods and Services Tax Rules, 2017 (hereafter '**the Rules**') and therefore, was not required to provide any further documents.

6. He also relies on the Circular No. 125/44/2019 – GST dated 18.11.2019, in support of the aforesaid contention.

7. Undeniably, if an application for refund is accompanied by all relevant documents as prescribed under Rule 89 of the Rules, the said application cannot be rejected as incomplete and is required to be processed. However, that does not preclude the concerned officer from calling upon the applicant to furnish any other relevant documents that he considers necessary for processing the application for refund.

8. In the aforesaid circumstances, we are unable to accept that the petitioner was not required to submit the documents as sought for by the Proper Officer.

9. Considering that the petitioner had provided most of the relevant documents as also the fact that if the Appellate Tribunal was constituted, the petitioner would be entitled to seek an opportunity to furnish the

relevant documents before the Tribunal; this Court considers it apposite to set aside the impugned order and remand the matter to the Proper Officer to adjudicate the petitioner's claim for refund afresh.

10. The petitioner shall furnish all documents available with the petitioner, as sought for by the Proper Officer, within a period of three weeks from today.

11. The Proper Officer is requested to adjudicate the petitioner's claim as expeditiously as possible and preferably within a period of four weeks thereafter.

12. It is clarified that this Court has not expressed any view on the merits of the petitioner's claim, which shall be considered on its own merits.

13. The petition is disposed of in the aforesaid terms.

14. Pending application is also disposed of.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
[Hon'ble Mr. Justice J.B. Pardiwala, J.]

R/Special Civil Application No. 5568 of 2021

Gopi Enterprise ... Appellants

Vs.

Union of India ... Respondent

Decided On: 30.03.2022

WHETHER ANY LIABILITY WITH RESPECT TO TAX CAN BE FIXED WITHOUT ANY ASSESSMENT PROCEEDINGS I.E. ISSUANCE OF SHOW CAUSE NOTICE U/S 73 OR 74 OF THE ACT AND AN OPPORTUNITY OF BEING HEARD TO THE ASSESSEE, AND THEREAFTER THE FINAL ORDER IS PASSED.

Held – NO – For the aforegoing reasons, we quash and set aside the impugned communication dated 13.11.2020, Annexure - D, Page-25, reserving the liberty for the respondents to initiate fresh proceedings in accordance with law so far as the alleged liability of the writ applicants under the Act is concerned.

For Appellant/Petitioner/Plaintiff : Kuntal A. Parikh

For Respondents/Defendant : Nikunt K. Raval

Nature of Issue Involved:

ITC Claim

ORDER

J.B. Pardiwala, J.

1 . By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

"(a) That this Honourable Court be pleased to issue a Writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the letter, dated 13.11.2020 annexed as Annexure D passed by the Respondent No. 2; and

(b) That this Honourable Court be pleased to issue a Writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the action of blocking of input tax credit by the Respondent No. 2; and

(c) This Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, direction or order directing the Respondents to unblock/release the input tax credit; and

(d) Pending notice, admission and final disposal of this Petition, this Hon'ble Court by way of ad-interim and/or interim relief be pleased direct the respondent authorities to unblock/release the input tax credit; and

(e) Ex parte ad-interim relief in terms of Prayer 9(d) be granted; and

(f) For Costs; and

(g) That this Honourable Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case."

2 . The writ applicant No. 1 is a partnership firm registered under the Partnership Act. The writ applicant No. 2 is one of the partners of the firm. The firm is engaged in the business of supply of home appliances. The writ applicants are here before this Court aggrieved by two fold action on the part of the respondent No. 2. First, blocking of the ITC credit and secondly, passing an order dated 13.11.2020 raising a demand of Rs. 61,47,499/- (Rupees Sixty One Lac Forty Seven Thousand Four Hundred Ninety Nine) towards tax.

3 . Today, when the matter was taken up for further hearing, Mr. Nikunt Raval, the learned Standing Counsel appearing for the respondent No. 2 submitted that the electronic credit ledger, which was blocked, has now been unblocked.

4. Mr. Kuntal Parikh, the learned counsel appearing for the writ applicants would submit that the unblocking of the ITC credit would not bring to end the dispute. He would submit that the impugned letter dated 13.11.2020, Annexure-D, Page-25, is nothing but, a final assessment order passed without any assessment proceedings. In such circumstances, Mr. Parikh would submit that although, the ITC credit might have been unblocked yet the department may now straight way proceed to recover the amount mentioned in the letter.

5 . To a certain extent, Mr. Kuntal Parikh, the learned counsel appearing for the writ applicants is right. If any liability is to be fixed with respect to payment of tax, it has to first start with issuance of a show cause notice under Section 73 or Section 74 of the Act as the case may be. Thereafter, full fledged assessment proceedings are to be undertaken wherein the assessee is given an opportunity of hearing and thereafter, the final order is passed. In the case on hand, it appears that although, the subject matter was unblocking of the ITC credit yet, the final liability has also been fixed.

6. For the aforegoing reasons, we quashed and set aside the impugned communication dated 13.11.2020, Annexure - D, Page-25, reserving the liberty for the respondents to initiate fresh proceedings in accordance with law so far as the alleged liability of the writ applicants under the Act is concerned.

7. With the aforesaid, this writ application stands disposed of.

8. Direct service is permitted.

ALLAHABAD HIGH COURT
HIGH COURT OF JUDICATURE AT ALLAHABAD
[Hon'ble Mr. Justice Saumitra Dayal Singh

Case : Writ Tax No. - 258 of 2022
Court No. - 38

M/s Shanu Events vs State Of U P And 2 Others ... Petitioner

Vs.

State Of U P And 2 Others ... Respondent

5 August, 2022

E-WAY BILL – WHETHER AN INADVERTENT ERROR IN AN E-WAY BILL MENTIONING THE PLACE OF SHIPMENT TO "KUMBHA MELA HARIDWAR, UTTARAKHAND" THE WORDS "MADHYA PRADESH" WERE FILLED UP AND PIN CODE OF KATRI, MP WAS FILLED. PROMPTED BY SUCH FAULT ON FILING DETAILS, SOFTWARE GENERATED THE VALIDITY PERIOD OF THE E-WAY BILL TO ONE DAY OCCASIONED SOLELY BY THAT OCCURANCE, GOODS WERE SEIZED, TAX AND PENALTY DEMANDED.

Held – In absence of any allegation or material found of ill-intent on part of the assessee to transport the goods for the purposes of sale, the imposition of tax and demand of penalty is wholly unfounded. The goods are old. The breach was technical and not real.

Counsel for Petitioner : Tanmay Sadh, Aishwarya Pratap Singh

Counsel for Respondent : C.S.C.

Order

Hon'ble Saumitra Dayal Singh,J.

1. Heard Shri Tanmay Sadh, learned counsel for the petitioner and Shri Neeraj Kumar Singh, learned Standing Counsel for the State.

2. Present petition has been filed by the petitioner against the order of the appellate authority dated 5.3.2021 in appeal no. 05/2021 for A.Y. 2020-21 (U.P.) arising from proceeding under Section 129(3) of the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as the Act). By that order, the first appeal authority has dismissed the appeal and confirmed the order dated 28.12.2020 imposing tax Rs. 2,16,000/- and equal amount of penalty, totaling Rs. 4,32,000/- on the petitioner.

3. Present petition has been entertained and is being decided upon exchange of affidavits as no Tribunal has been constituted till date.

4. Having heard learned counsel for the parties and having perused the record, it transpires, there is no doubt to the fact that the petitioner is an event management firm having its head office at Katni, Madhya Pradesh. It is also not in dispute that the petitioner was awarded some contract at Kumbh Mela, Haridwar, in the State of Uttarakhand. For that purpose, it was transporting LED panels on truck bearing registration no. HR-55-V-5014. While in transit through State of U.P., the vehicle was stopped for inspection. It was found accompanying with the e-way bill disclosing

transportation of LED panels from the petitioner's place of business at Katni to the petitioner's other place of business at Haridwar, Uttarakhand.

5. Perusal of the e-way bill reveals, the petitioner made an inadvertent error in applying for the e-way bill. After mentioning the place of shipment to "Kumbh Mela, Haridwar, Uttarakhand", the words "Madhya Pradesh - 483501" were filled up. The address having been thus wrongly filled up and the pin code having been filled up of Katni, Madhya Pradesh, the software was forced to commit an error by filling up the destination of transportation to 100 kms thought it should have auto-generated that field, at about 1000 kms. Prompted by that, the software then generated the validity period of the e-way bill to one day. It thus expired on 24.12.2020. Occasioned solely by that occurrence, goods were seized, tax and penalty demanded.

6. In view of such facts, there appears no doubt to the genuineness of the explanation furnished by the assessee that the mistake was inadvertent. Once the assessee had disclosed the place of shipment at Haridwar, Uttarkhand, there survived no occasion to fill up the place of destination at Madhya Pradesh with the pin code of the petitioner's office at Katni, Madhya Pradesh. Clearly, the mistake was bonafide as sometime occurs.

7. In absence of any allegation or material found of ill-intent on part of the assessee to transport the goods for the purposes of sale, the imposition of tax and demand of penalty is wholly unfounded. The goods are old. The breach was technical and not real.

8. In view of the above, the order dated 28.12.2020 passed under Section 129(3) of the Act and the appeal order dated 5.3.2021 found to be perverse and are set aside. Let the amount of security and penalty that may have been deposited by the petitioner-assessee, may be returned to it, in accordance with law.

9. Accordingly, the present petition is allowed.

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[Shri Diwan Chand, Member (A) and Shri M. S. Wadhwa: Member (J)]

Appeal Nos.216/ATVAT/16-17
Assessment Period: 3rd Quarter 2011-12
(Default Assessment of Tax, Interest & Penalty)

M/s Sai Ram Enterprises,
3133/2, Ranjeet Nagar,
Delhi-110008 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi. ... Respondent

Date of Order: 28.06.2018

STATUTORY FORMS – C FORM – CLAIM OF EXEMPTION OF CONCESSIONAL RATE OF TAX WHETHER THE CLAIM OF CONCESSIONAL RATE OF TAX CAN BE REJECTED IF BILLS OF 2ND QRT. ARE CLUBBED IN "C" FORMS ISSUED FOR 3RD QTR.

***Held** – NO – It is not the case of revenue that "C" Form presented is not genuine nor is the case of revenue that the transaction reflected in "C" form are not genuine. Accordingly, appeal allowed and the matter is remanded back to the VATO to reframe the assessment in accordance with legal position stated above.*

Present for the Appellant : Sh. Rakesh Kumar Aggarwal, Adv.,

Present for the Respondent : Sh. CM Sharma, Govt. Counsel

ORDER

1. This order shall dispose of the above noted appeals filed by the Appellant challenging the impugned orders dated 16.09.2016 passed by VATO, hereinafter called the Objection Hearing Authority (in short the OHA).

2. Facts of the case briefly stated are that the appellant is doing trading of cosmetic goods. VATO ward-102 passed a default assessment order dated 31.03.2016 and created a demand of Rs.2,70,922/- for 2nd quarter 2011-2012 under CST Act for non-filing of statutory forms.

3. Aggrieved with the default assessment orders the appellant preferred objections and during the course of hearing before Ld. OHA had

submitted that clubbing of 2nd quarter bills of Rs. 2,43,381/- in 3rd quarter 'C' form does not invalidate the claim of the appellant and the exemption of concessional rate of tax cannot be denied to the appellant solely on this ground alone. The appellant has also cited judgment of this Tribunal in case of M/s Indian Petrochemicals Corporation Limited Vs CST, Delhi Appeal No.48/STI/04-05 on 12.10.2006.

4. The Ld. Objection Hearing Authority rejected the objections vide orders dated 16.09.2016 by observing as under:-

> "Rule.12(1) of Central Sales Tax (Registration & Turnover) Rules, 1957 provides that a single declaration form may cover all transactions of sale, which take place in quarter of financial year between the same two dealers. Therefore, in the light of Rule 12(1), since the C-form for these four bills was received in 3rd quarter but the bills belonged to IInd quarter, the exemption as sought by the dealer cannot be allowed in the IInd quarter. Now, missing C forms of Rs.232806/- is to be taxed @ 10.5% under CST with interest."

5. Aggrieved with the impugned orders the appellant has come in appeal before the Tribunal and assailed these on the following grounds:-

(i) That the objection hearing authority has erred in law and on facts while passing the impugned order.

(ii) That the impugned order is illegal, unwarranted and uncalled for.

(iii) That the rejection of exemption at concessional rate of tax to the amount of Rs.2,43,381/- in 2nd quarter is not as per law.

(iv) That the C Form has been rejected solely on technical ground.

(v) That the Central sale and C Form has not been disputed.

(vi) That Rule 12(1) of Central Sales Tax (Registration and Turnover) Rules, 1957 is directory and not mandatory.

(vii) That it is settled law that rule of procedure is not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice.

(viii) That it is settled law that denial of concessional rate of taxation

conferred' under the statute by prescribing a requirement under the Rules having the force of defeating the object of the statute cannot be considered to be either reasonable or justifiable.

(ix) That it is settled law that the ultimate requirement was the actual production of the C Forms as such to establish the genuineness of the transactibn and the fact that it satisfied the category of sales entitled to concessional rate of tax as prescribed in law.

(x) That the Ld OHA has not considered and appreciated the judgment of this Hon'ble Tribunal in case of M/s Indian Petrochemicals Corporation Limited vs CST, Delhi in Appeal No.48/STT/04-05 decided on 12.10.2006.

(xi) That the interest levied to the amount of Rs.17,991/- is not as per law. Interest cannot be imposed when the C forms have been received by the appellant.

6. We have heard Sh R K Aggarwal, Adv., Ld Counsel for the Appellant and Sh C M Sharma, Adv., Ld Counsel for the Revenue and gone through the record of the case.

7. Ld Counsel for the Revenue supporting the impugned orders has submitted that the 'C' forms filed covered transactions of 2 Quarters and has been rejected correctly and the decision cited by the Appellant are not applicable as the facts are distinguishable. In the case of M/s Indian Petrochemicals Corporation Ltd Vs Commissioner of Sales Tax, Delhi (Appeal No.48 /STT/ 04-05, Appeal No.433/STT/ 03-04 Assessment year 1996-97 & 1997-98 (Central) Order dated 12/10/2006, the monetary limit imposed was violated whereas in the present case the 'C' form issued for one quarter contains the transaction of another quarter. Further, in the cited case the sales and form in the said ruling were duly verified and found genuine by the revenue whereas in the present case, there is no such verification report etc in existence and no proof of genuineness of transaction.

8. In the case of M/s Indian Petrochemicals Corporation Ltd where the C Form was rejected on the ground that the total amount of the bills exceed the monetary limit prescribed in this regard, the Tribunal allowing the appeal of the appellant held as under:

"In the light of the law laid down in the aforesaid authority and other rulings relied upon by the appellant's counsel, we are of the view that

when no defect whatsoever in the transaction has been pointed out and when the C forms have been verified, then we do not see any reason to deprive the petitioner the benefit of concessional rate of tax on the sole ground that the forms comprised the transaction in excess of the monetary limit. Even otherwise, the Hon'ble Supreme Court in State of Bombay and Others V. United India Motors Ltd. reported in 4 STC 133, our own High Court in the case of Kirloskar Electric Company Ltd. V. Commissioner of Sales Tax reported in 83 STC page 485 and similarly various other High Courts have held "that the State is entitled to tax which is legitimately due to it only and that it is expected of the Revenue to ensure that correct tax as ordained by the State by other assessable person no more no less."

9. In the light of the aforesaid discussions and the law on the points, we are of the view that though the monetary limit of the C form at the relevant time was Rupees one lakh only, still in view of the genuineness of the transaction certified by the Revenue, we find that such limit imposed is only a directory requirement and does not affect the legality and validity of the two C forms in question. We, therefore, hold that the petitioner shall be entitled to the concessional rate in respect of the two C Forms mentioned in the order; the Ld. Assessing Authority shall give effect to this order and reduce the tax liability accordingly.

9. Ld Counsel for the Revenue has tried to distinguish this case on the ground that in that case the transactions had bene verified and the genuineness of the transactions was not in question and that in that the issue was of exceeding the monetary limit while in the instant case the issue was of 2nd quarter bills having been clubbed and claimed in the C Form issued for the 3rd quarter.

10. We do not find any force in the submission of the Revenue. In our considered view the ratio of the aforesaid decision of the Tribunal that requirement under the rules was a directory one and it did not affect the legality or validity of the C Form applies to the facts of the case and the issue of genuineness of the transactions in question is not there. Authorities below have denied to grant the concessional rate of tax only on the ground that C Form for the 3rd quarter also contained the bills for the 3rd quarter and this cannot be allowed in view of the provisions of the CST Rules. It is—ribt the case of the Revenue that C Form presented is not genuine nor is the case of the Revenue that the transactions reflected in the C Form are not genuine. Accordingly the appeal is allowed and the matter

is remanded back to the VATO to reframe the assessment in accordance with legal position stated above. Appellant should appear before the VATO on' 30.07.2018.

11. Order announced in the open court.

12. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
[B.V. Nagarathna and Ujjal Bhuyan, JJ]

Petition(s) for Special Leave to Appeal (C) No(s). 22814/2023

(Arising out of impugned final judgment and order dated 20-07-2023 in WP(C) No. 15685/2022 passed by the High Court of Delhi at New Delhi)

Commissioner of Trade and Taxes Delhi ... Petitioner(S)

Versus

Ramky Infrastructure Limited ... Respondent(S)

(IA No.209077/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 20-10-2023

This petition was called on for hearing today.

For Petitioner(s) : Mr. N.Venkataraman, A.S.G.
Mr. Rupesh Kumar, Adv.
Mr. Lalit Mohan, Adv.
Mr. Anmol Chandan, Adv.
Ms. Vishakha, Adv.
Ms. Priyanka Das, Adv.
Ms. Sarita Gautam, Adv.
Dr. Arun Kumar Yadav, Adv.
Mr. Shreekant Neelappa Terdal, AOR

For Respondent(s) : Mr. Rajesh Jain, Adv.
Mr. Virag Tiwari, Adv.
Mr. K.J. Bhat, Adv.
Mr. Ramashish, Adv.
Mr. Avadh Bihari Kaushik, AOR

UPON hearing the counsel the Court made the following

O R D E R

Having regard to the peculiar facts of this case, we are not inclined to interfere with the judgment and order impugned in this petition.

The special leave petition is, hence, dismissed.

Pending application(s), if any, shall stand disposed of.

(Radha Sharma)
Court Master (Sh)

(Malekar Nagaraj)
Court Master (Nsh)

IN THE SUPREME COURT OF INDIA

[Devinder Kumar Jain and Anil R. Dave, JJ]

Civil Appeal Nos. 7637 of 2009, 3088 and 6823 of 2010

Ranbaxy Laboratories Ltd. ... Appellants

Versus

Union of India (UOI) and Ors. ... Respondent

Decided On: 21.10.2011

INTEREST ON DELAYED REFUNDS - WHETHER THE LIABILITY OF THE REVENUE TO PAY INTEREST UNDER SECTION 11BB OF THE ACT COMMENCES FROM THE DATE OF EXPIRY OF THREE MONTHS FROM THE DATE OF RECEIPT OF APPLICATION FOR REFUND OR ON THE EXPIRY OF THE SAID PERIOD FROM THE DATE ON WHICH THE ORDER OF REFUND IS MADE?

Held - Liability of the Revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund was made. Hence, appeal filed by the Assessee was allowed and appeal filed by the Revenue were dismissed.

Editor's Note – The judgment has been referred in the latest case of grant of interest of refund in Writ Petition No. 15684/2022 and VAT Appeal No. 31/2023, March 2023.

Counsels for Appearing Parties	:	Arijit Prasad, B.K. Prasad, Anil Katiyar, Krishna Mohan Menon, Advs.
For M.P.	:	Devanath, Adv., Tarun Gulati, Shruti Sabharwal, Shashi Mathews, Kishore Kunal and Praveen Kumar, Advs.

JUDGMENT

Devinder Kumar Jain, J.

1. The challenge in this batch of appeals is to the final judgments and orders delivered by the High Court of Delhi in W.P. No. 13940/2009 and the High Court of Judicature at Bombay in Central Excise Appeal Nos. 163/2007 and 124 of 2008. The core issue which confronts us in all these appeals relates to the question of commencement of the period for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944 (for short 'the Act'). In short, the question is whether the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made'

2. As aforesaid, in all these appeals the question in issue being the same, these are being disposed of by this common judgment. However, in order to appreciate the controversy in its proper perspective, a few facts from C.A. No. 6823 of 2010 may be noted. These are as follows:

> The Appellant filed certain claims for rebate of duty, amounting to Rs. 4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central Excise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the Appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, Appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate.

3. A show cause notice was issued to the Appellant on 5th July 2005, proposing to reject their claim for interest on the ground that rebate had been sanctioned to them within three months of the receipt of order of the Commissioner (Appeals) dated 30th September, 2004. Upon consideration of the reply submitted by the Appellant, relying on Explanation to Section 11BB of the Act, the Assistant Commissioner rejected the claim.

4. Against the said order, the Appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the

appeal and directed the Assistant Commissioner to compute and pay the interest to the Appellant. Aggrieved by the said direction, the Assistant Commissioner filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short 'the Tribunal'). However, the appeal was dismissed by the Tribunal on the ground that it did not have jurisdiction to deal with a rebate claim. Feeling aggrieved, the Assistant Commissioner filed a revision application before the Joint Secretary, Ministry of Finance, Govt. of India who vide his order dated 30th July 2009 set aside the order passed by the Commissioner (Appeals) and held that the appellant was not entitled to interest under Section 11BB of the Act.

5. Being dissatisfied with the said order, the Appellant filed a writ petition in the High Court of Delhi. Relying on the decision of this Court in *Union of India and Anr. v. Shreeji Colour Chem Industries* MANU/SC/8040/2008 : (2008) 9 SCC 515, by the impugned order, the High Court has affirmed the decision of the revisional authority and held that the Appellant is not entitled to interest under Section 11BB of the Act. Hence, in the lead case the Assessee is in appeal before us. However, in the connected appeals, the High Court of Judicature at Bombay having affirmed the decisions of the Tribunal, upholding the claim of the Assessee for interest under Section 11BB of the Act, the revenue is the Appellant.

6. Learned Counsel appearing for the Assessee contended that the language of Section 11BB of the Act is clear and admits of no ambiguity, in as much as the revenue becomes liable to pay interest at the prescribed rate on refunds on the expiry of three months from the date of receipt of application under Section 11B(1) of the Act and such liability continues till the refund of duty. Learned Counsel urged that reliance on the decision of this Court in *Shreeji Colour Chem Industries* (supra) by the Delhi High Court in rejecting the claim for interest is misplaced. It was contended that the said judgment deals with two kinds of interest, viz. (i) equitable interest because of delayed refunds and (ii) statutory interest payable under Section 11BB of the Act. According to the learned counsel in terms of the latter, the judgment supports the assessee's claim, but the High Court has erroneously applied the principle laid down for payment of equitable interest. According to the Learned Counsel, the said decision clearly holds that an Assessee is entitled to interest under the said Section after the expiry of three months from the date of receipt of application for payment of refund. In support of the claim, Learned Counsel commended us to the order passed by this Court in *Union of India v. U.P. Twiga Fiber Glass Ltd. 2009* (243) E.L.T. 27 (S.C.), whereby the appeal preferred by the revenue against the decision of the Allahabad High Court has been dismissed. In

the said decision, following the decision of the Rajasthan High Court in *J.K. Cement Works v. Assistant Commissioner of Central Excise and Customs* MANU/RH/0066/2004 : 2004 (170) E.L.T. 4, the Allahabad High Court had held that the relevant date for the purpose of determining the liability to pay interest under Section 11BB of the Act is with reference to the date of application, laying claim for refund and not the actual determination of refund under Section 11B(2) of the Act. To bolster the claim, Learned Counsel placed strong reliance on a number of Circulars on the point, issued by the Department of Revenue, Ministry of Finance, Govt. of India, clarifying that with the insertion of new Section 11BB of the Act, the department had become liable to pay interest under the said Section if the refund applications were not processed within three months from the date of receipt of refund applications.

7. Mr. Arijit Prasad, Learned Counsel appearing for the revenue, on the other hand, submitted that since in the present cases no refunds were sanctioned under Section 11B of the Act, the provisions of Section 11BB of the Act were not attracted. In the alternative, it was submitted that the refund orders having been sanctioned within three months of the passing of orders by the appellate authority, interest under the said Section was not payable.

8. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under:

> 11B. Claim for refund of duty.-(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in Section 12A as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty and interest if any, paid on such duty had not been passed on by him to any other person:
>
> > Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such

application shall be deemed to have been made under this Sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of Sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under Clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made there under or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

(4)...

(5)...

Section 11BB, the pivotal provision, reads thus: 11BB. Interest on delayed refunds.-

If any duty ordered to be refunded under Sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under Sub-section (2) of section 11B in respect of an application under Sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

> Explanation: Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under Sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said Sub-section (2) for the purposes of this section.

9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under Sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under Sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See: Cape Brandy Syndicate v. Inland Revenue Commissioners(1921) 1 K.B. 64 an d Ajmera Housing Corporation and Anr. v. Commissioner of Income Tax MANU/SC/0623/2010 : (2010) 8 SCC 739

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted 'automatically' for any refund sanctioned beyond a period of three months. The Circular reads thus:

Circular No. 670/61/2002-CX : MANU/EXCR/0051/2002,
dated 1-10- 2002

F. No. 268/51/2002-CX.8

Government of India

Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding

I am directed to invite your attention to provisions of Section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection, Board would like to stress that the provisions of Section 11BB of Central Excise Act, 1944 are attracted

automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX : MANU/EXCR/0032/1998, dated 2-6-98 (MANU/SC/1643/1998 : 1998 (100) E.L.T. 16) wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/ rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed.

(Emphasis supplied)

12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.

13. We, thus find substance in the contention of Learned Counsel for the Assessee that in fact the issue stands concluded by the decision of this Court in *U.P. Twiga Fiber Glass Ltd.* (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in MANU/RH/0066/2004 : 2004 (170) E.L.T. 4 vide Para 33:

> A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for

> the purpose of determining the liability to pay interest is not the determination under sub-section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non- payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference.

The special leave petition is dismissed. No costs.

14. . At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the Assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.

16. As a sequitur, C.A. No. 6823 of 2010, filed by the assessee is allowed and C.A. Nos. 7637/2009 and 3088/2010, preferred by the revenue are dismissed. The jurisdictional Excise officers shall now determine the amount of interest payable to the Assessees in these appeals, under Section 11BB of the Act, on the basis of the legal position, explained above.

The amount(s), if any, so worked out, shall be paid within eight weeks from today.

17. However, on the facts and in the circumstances of the cases, there will be no order as to costs.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[M.R. Shah, C.T. Ravikumar; JJ]

CIVIL APPEAL NO. 359 OF 2023
(Arising out of SLP (C) No. 19295/2022)

The State of Punjab ... Petitioner

Versus

Shiv Enterprises & Ors. ... Respondent

January 16, 2023

SHOW CAUSE NOTICE – MAINTAINABILITY OF WRIT – THE HIGH COURT HAS MATERIALLY ERRED IN ENTERTAINING THE WRIT PETITION AGAINST THE SHOW CAUSE NOTICE AND QUASHING AND SETTING ASIDE THE SAME. HOWEVER, AT THE SAME TIME, THE ORDER PASSED BY THE HIGH COURT RELEASING THE GOODS IN QUESTION IS NOT TO BE INTERFERED WITH AS IT IS REPORTED THAT THE GOODS HAVE BEEN RELEASED BY THE APPROPRIATE AUTHORITY.

Central Goods and Services Tax, 2017; Section 130 - Observing that it was “premature” on the part of the High Court to quash a show-cause notice issued under Section 130 of the Central Goods and Service Tax Act by invoking Article 226 jurisdiction, the Supreme Court set aside an order passed by the Punjab and Haryana High Court.

Constitution of India, 1950; Article 226 - It was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under section 130 of the CGST Act was issued. Therefore, High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same.

(Arising out of impugned final judgment and order dated 04-02-2022 in CWP No. 18392/2021 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) : Ms. Nupur Kumar, AOR
Mr. Divyansh Tiwari, Adv.

For Respondent(s) : Mr. Sandeep Goyal, Adv.
Mr. Pawanshree Agrawal, AOR
Ms. Vidisha Swarup, Adv.
Ms. Shubhangi Negi, Adv.

O R D E R

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.02.2022 passed by the High Court of Punjab and Haryana at Chandigarh in Writ Petition No. 18392 of 2021, by which the High Court has set aside the order of detention of the goods/vehicle dated 30.08.2021 issued by the Office of Assistant Commissioner State Tax, Mobile Wing, Chandigarh-2 and also the notice dated 14.09.2021 issued under Section 130 of the CGST Act, 2017, the State has preferred the present appeal.

3. We have heard learned counsel appearing for the respective parties at length.

4. From the notice dated 14.09.2021, it can be seen that the original writ petitioner was called upon to show cause within 14 days from the receipt of the said notice, as to why the goods in question and the conveyance used to transport such goods shall not be confiscated under the provisions of Section 130 of the Punjab GST Act, 2017 and IGST Act, 2017 and CGST Act, 2017 and why the tax, penalty and other charges payable in respect of such goods and the conveyance shall not be payable.

5. In the show cause notice, there was a specific allegation with respect to evasion of duty, which was yet to be considered by the appropriate authority on the original writ petitioner's appearing before the appropriate authority, who issued the notice. However, in exercise of powers under Article 226 of the Constitution of India, the High Court entertained the writ petition against the show cause notice and set aside the show cause notice under Section 130 of the Act by observing in para 29 as under:-

> "29. From the pleadings on record, it is clear that there is no allegation that the petitioner has contravened any provision of the Act or the rules framed thereunder much less with an intent to

> evade payment of tax. It is also not the case of the State that the petitioner did not account for any goods on which he is liable to pay tax under the Act or that he supplied any goods liable to tax under the Act without having applied for registration or that he supplied or received any goods in contravention of any of the provisions of the Act. From the perusal of show cause notice issued to the petitioner under Section 130, the case alleged against the petitioner is that of wrongful claim of input tax credit. The petitioner or for that matter any registered person shall be entitled to tax credit of input tax on any supply of goods or services, only when he shall is able to show that the tax in respect of such supply has been paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply. Needless to reiterate any person can claim input tax credit under the provisions of the 2017 Act only if the same has been actually paid to the Government. Thus, the action of the respondents in initiating proceedings under Section 130 on the basis of show cause notice dated 14.09.2021 cannot be sustained.

Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.

6. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent-herein (original writ petitioner), on the aforesaid ground alone, we set aside the impugned judgment and order passed by the High Court to the extent quashing and setting aside the notice dated 14.09.2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice. It will be for the respondent-herein - original writ petitioner to file a reply to the said show cause notice within a period of four weeks from today and thereafter the appropriate authority to pass an appropriate order in accordance with law and on its own merits.

7. All the contentions/defences which may be available to the respondent-original writ petitioner are kept open to be considered by the appropriate authority in accordance with law and on its own merits.

8. The present appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

IN THE COURT OF ALLAHABAD AT ALLAHABAD
[Pritinker Diwaker and Saumitra Dayal Singh, CJ. J]

Case :- WRIT TAX No. - 551 of 2023

Mohini Traders ... Petitioner

Versus

State of U.P. and Another ... Respondent

Date of Order : 3 May, 2023

NATURAL JUSTICE – OPPORTUNITY OF BEING HEARD – THE OBJECTION OF THE PETITIONER WAS THAT THE PETITIONER WAS COMPLETELY DENIED OPPORTUNITY OF ORAL HEARING BEFORE THE ASSESSING AUTHORITY. IT HAS BEEN POINTED OUT; THE ASSESSING AUTHORITY HAD AT THAT STAGE ITSELF CHOSEN TO NOT GIVE ANY OPPORTUNITY OF HEARING TO THE PETITIONER BY MENTIONING "NA" AGAINST COLUMN DESCRIPTION "DATE OF PERSONAL HEARING". THE REVENUE WOULD CONTEND, THE PETITIONER WAS DENIED OPPORTUNITY OF HEARING BECAUSE THE PETITIONER HAD TICK MARKED THE OPTION 'NO' AGAINST THE OPTION FOR PERSONAL HEARING (IN THE REPLY TO THE SHOW-CAUSE-NOTICE), SUBMITTED THROUGH ONLINE MODE.

Held *– Once it has been laid down by way of a principle of law that a person / assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.*

Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms.

The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.

Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required.

Counsel for Petitioner : Vishwjit

Counsel for Respondent : C.S.C

Order

1. Heard Sri Vishwjit, learned counsel for the assessee and Sri Ankur Agarwal, learned counsel for the revenue.

2. Challenge has been raised to the order dated 21.10.2022 passed by the Assistant Commissioner, State Tax, Sector-6, Aligarh for the tax period April 2018, whereby demand in excess to Rs. 5 crores has been raised against the present petitioner.

3. Solitary ground being pressed in the present petition is, the only notice in the proceedings was issued to the petitioner on 20.05.2022 seeking his reply within 30 days. Referring to item no. 3 of the table appended to that notice, it has been pointed out, the Assessing Authority had at that stage itself chosen to not give any opportunity of hearing to the petitioner by mentioning “NA” against column description “Date of personal hearing”. Similar endorsements were made against the columns for “Time of personal hearing” and “Venue where personal hearing will be held”. Thus, it is the objection of learned counsel for the petitioner, the petitioner was completely denied opportunity of oral hearing before the Assessing Authority.

4. Relying on Section 75(4) of the U.P. GST Act, 2017 (hereinafter referred to as the ‘Act’) as interpreted by a coordinate bench of this Court in Bharat Mint & Allied Chemicals Vs. Commissioner Commerical Tax & 2 Ors., (2022) 48 VLJ 325, it has been then asserted, the Assessing Authority was bound to afford opportunity of personal hearing to the petitioner before he may have passed an adverse assessment order. Insofar as the assessment order has raised disputed demand of tax about Rs. 6 crores, the same is wholly adverse to the petitioner. In absence of opportunity of hearing afforded, the same is contrary to the law declared by this Court in Bharat Mint & Allied Chemicals (supra). Reliance has also been placed on a decision of the Gujarat High Court in M/S Hitech Sweet

Water Technologies Pvt. Ltd. Vs. State of Gujarat, 2022 UPTC (Vol. 112) 1760.

5. On the other hand, learned counsel for the revenue would contend, the petitioner was denied opportunity of hearing because he had tick marked the option 'No' against the option for personal hearing (in the reply to the show-cause-notice), submitted through online mode. Having thus declined the opportunity of hearing, the petitioner cannot turn around to claim any error in the impugned order passed consequently.

6. Having hearing learned counsel for the parties and having perused the record, Section 75(4) of the Act reads as under :

> "An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

7. We find ourselves in complete agreement with the view taken by the coordinate bench in Bharat Mint & Allied Chemicals (supra). Once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.

8. Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms. Here, we note, the impugned order itself has been passed on 25.11.2022, while reply to the show-causenotice had been entertained on 14.11.2022. The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.

9. Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required.

10. Accordingly, the present writ petition is allowed. The impugned order dated 25.11.2022 is set aside. The matter is remitted to the respondent no.2/Assistant Commissioner, State Tax, Sector-6, Aligarh to issue a fresh notice to the petitioner within a period of two weeks from today. The petitioner undertakes to appear before that authority on the next date fixed such that proceedings may be concluded, as expeditiously as possible.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 7248/2023 & CM APPL. 28227/2023

Advance Systems ... Petitioner

versus

The Commissioner of Central Excise And CGST ... Respondent

Date of Decision: 07th July, 2023

WHETHER A REFUND CLAIM WILL BE DISALLOWED BY MERELY STATING THAT THE SUPPORTING DOCUMENTS WERE NOT COMPLETE "WHEN THE CLAIM WAS ALLOWED BY THE APPELLATE AUTHORITY?

Held – No

Present Through	:	Mr. Siddharth Malhotra, Adv.
Respondent Through	:	Mr. Atul Tripathi, Sr.SC with Mr. Amresh Kumar Jha & Mr. V.K. Attri, Advs.

Vibhu Bakhru, J.

1. The petitioner has filed the present petition, inter alia, praying as under:

> "(i) Issue a writ in the seeking writ of mandamus and/ or any other appropriate writ, directing the respondent department to sanction the refund claims filed by the Petitioner under. Refund Application dated 20.02.2023 (Reference no. AAA070223060035R) for the amount of Rs. 7,45,296/- for the period January, 2021 to March, 2021 and Refund Application dated 20.02.2023 (Reference No.

AA070223060088G) for the amount of Rs. 9,74,094/- for the period April, 21 to Sept,21, along with the applicable interest as per the provisions of the Central Goods and Service Tax Act, 2017 and rules made thereunder;

(ii) Issue writ of mandamus, directing the Respondent Department to allow Form GST PMT-03 with respect to the amount of Rs.31,640/- for the period January, 2021 to March, 2021 and Rs.22,482/- for the period April, 2021 to September, 2021

(iii) Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant relief to the petitioner."

2. The petitioner claims refund of Input Tax Credit (hereafter 'ITC'), in respect of certain exports made under Letter of Undertaking (hereafter 'LUT').

3. The petitioner's claim for refund relates to exports effected during the period January, 2021 to September, 2021.

4. The petitioner had filed two applications pertaining to the said Zero Rated Supplies under Section 54(3)(i) of the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act').

5. The respondent had acknowledged the receipt of the said claims, however, the said acknowledgment was not uploaded online and was not processed.

6. Although the petitioner filed the applications for refund (in Form GST RFD-01) on 20.04.2022; the respondent did not process the same within the stipulated period.

7. After much delay, on 19.05.2022, the respondent issued a Show Cause Notice proposing denial of refund claimed by the petitioner on several grounds.

8. The petitioner sought time to respond to the said Show Cause Notice. However, the respondent rejected the petitioners claim in terms of Orders-in-Original (two in number) dated 17.06.2022. The petitioner appealed the said orders before the appellate authority.

9. The appellate authority examined the petitioner's challenge to the Orders-in-Original (two in number), bearing nos.: ZT0706220299219 and

ZU0706220299086, both dated 17.06.2022 as well as the petitioner's claim for the refund of ITC.

10. The appeals were disposed of by Orders-in-Appeal dated 31.01.2023. The appellate authority partly allowed the petitioner's claim for refund to the extent of ₹7,45,296/- instead of ₹7,76,936/- as claimed by the petitioner for the period, January, 2021 to March, 2021 and further allowed the petitioner's claim to the extent of ₹9,74,094/- instead of ₹9,96,576/- as claimed by the petitioner, for the period, April, 2021 to September, 2021.

11. Notwithstanding that the petitioner had succeeded before the appellate authority, the respondent failed and neglected to process its claim for refund.

12. The petitioner had, once again, filed the claim for refund on the basis of the Orders-in-Appeal dated 31.01.2023. According to the respondent, the said application was deficient as it was not accompanied by an undertaking to the effect that the petitioner would refund the sanctioned amount along with interest in case it is found that the requirements of Section 16(2)(c) of the CGST Act read with Section 42(2) of the CGST Act, were not complied with in respect of the amount refunded.

13. It is material to note that the deficiency memo did not specifically indicate the said deficiency. It merely stated that "supporting documents attached are incomplete". Undisputedly, the petitioner had provided the copy of the Orders-in-Appeal on the basis of which it claimed the refunds.

14. In view of the above, clearly, there was no requirement to furnish any further documents to substantiate the petitioner's claim.

15. We are also of the view that the petitioner was not required to make repeated applications for refund after it had prevailed in its appeals before the appellate authority. The appellate proceedings are a continuation of the petitioner's applications for refund and, therefore, the Orders-in-Appeals were required to be implemented.

16. Mr. Atul Tripathi, learned Counsel appearing for the respondent states that, notwithstanding, that the petitioner had prevailed in its appeal, it was required to submit an online request. He submits that in terms of the circular dated 03.10.2019, a person prevailing in its claim for refund in appeal or in any other forum, is required to file a fresh application in form GST RFD-01.

17. He further submits that the said form is, once again, required to be accompanied by all relevant documents including undertaking and declaration.

18. We are unable to accept that it is open for the respondent to raise any deficiency memo after a tax payer has succeeded in appellate proceedings. Undisputedly, the petitioner had filed its application in the requisite form (GST RFD-01) along with the necessary declarations and undertaking.

19. The respondent had examined the said refund and had denied the same on certain grounds, which were subject matter of appellate proceedings. After the petitioner had succeeded in its appellate proceedings, there is no question of the respondent now raising any deficiency or once again requiring the petitioner to furnish any undertaking or declaration which it had already done at the initial stage.

20. We are unable to accept that a taxpayer is required to make repeated applications for seeking a refund. Once a tax payer has made a claim for refund, the same is required to be processed in accordance with law. If the refund is rejected for any reason and the said party prevails before the appellate authority, it is not open for the respondents to desist from processing the claims on any such technical grounds. The circular dated 03.10.2019 sets out a convenient procedure for moving the concerned authorities, and must be construed as such.

21. Thus, a tax payer may file a fresh online application to trigger the processing of its refund, however, it is not open for the respondents to raise further deficiency memos regarding the same.

22. We are also unable to accept that the petitioner's refund can be withheld merely on the ground that the respondent proposes to review the Orders-in-Appeal dated 31.01.2023. However, it is clarified that the disbursement of the refund in favour of the petitioner would not preclude the respondents from availing their remedies against the Orders-in-Appeal in accordance with law.

23. In view of the above, the petition is allowed. The respondent shall forthwith sanction the refund claim as preferred by the petitioner to the extent as accepted by the appellate authority along with applicable interest in accordance with the provisions of the CGST Act.

24. The respondent shall also process the petitioner's request furnished in Form GST-PMT-03 in accordance with law.

25. All pending applications also stand disposed of.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 6556/2020

Megicon Impex Pvt Ltd ... Petitioner

versus

Commissioner of Central Goods and Services Tax Delhi West & Ors. ... Respondents

6 February, 2023

REFUND – LIMITATION – WHETHER THE APPLICATION FOR REFUND COULD BE REJECTED FOR WANT OF LIMITATION WHEN HON'BLE SUPREME COURT HAD EXTENDED THE SAME VIDE ORDER IN SUO-MOTO WP NO. 3

Held – NO.

Present for Petitioner	:	Mr. Rajesh Mahna, Mr. Akshay Bhatia & Ms. Sonia Sharma, Advs.
Present for Respondent	:	Mr. Harpreet Singh, Sr. SC with Ms. Suhani Mathur & Mr. Akshay Saxena, Advs.

O R D E R : 06.02.2023

1. The petitioner has filed the present petition, inter alia, impugning an order dated 24.07.2020 passed by the adjudicating authority and an order dated 27.08.2020, passed by the Appellate Authority [Additional Commissioner of Central Tax (Appeals)], rejecting the petitioner's appeal against the order dated 24.07.2020.

2. The impugned order dated 24.07.2020 indicates that the petitioner's application for refund was rejected on the ground that it was filed beyond the period of two years as stipulated under Section 54(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the Act"). Paragraph 3.5 of the said impugned order reads as under:

> "3.5 It is observed that the party has filed refund application for the period of February, 2018 on 29.04.2020 for an amount of Rs. 67,35,077/- The earlier application for the same period was for an

amount of Rs. 92,65,473/-. Thus, amending the same by reducing in by Rs 25,30,396/-. A deficiency memo was issued to the party on 13.05.2020 for clarifying the deficiencies, which arose during verification of refund application. The party had submitted their refund application on 25.05.2020 for the period of February, 2018 for Rs. 6607432/- after rectification of deficiencies."

3. The petitioner had appealed the impugned order dated 24.07.2020 before the Additional Commissioner of Central Tax (Appeals). However, the said appeal was rejected as the Appellate Authority had concluded that the impugned order dated 24.07.2020 was passed in accordance with law and warranted no interference.

4. The learned Counsel appearing for the parties have drawn attention to a notification dated 05.07.2022, whereby the period commencing from 01.03.2020 to 28.02.2022, was directed to be excluded for computing the period of limitation, for filing a refund application under Sections 54 or Section 55 of the Act.

5. It is apparent that the said notification was issued in view of the order passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020: In Re: Cognizance For Extension of Limitation*.

6. In view of the above, the impugned orders cannot be sustained as the benefit of the relaxation in the period of limitation has not been accorded to the petitioner.

7. The respondents are directed to forthwith process the petitioner's application for refund in accordance with law.

8. The petition is disposed of in the above terms.

IN THE ANDHRA PRADESH HIGH COURT

[C. Praveen Kumar and A. V. Ravindra Babu JJ.]

Writ Petition Nos. 3905 and 3795 of 2021 .

Sarojini Engineering Works Private Limited

Versus

Commercial Tax Officer, Dwarakanagar Circle, Visakhapatnam And Others

September 29, 2022.

WHETHER AN APPEAL CAN BE REJECTED ON THE GROUND OF LIMITATION WHEN THE ORDER HAS BEEN PASSED WITHOUT GIVING AN OPPORTUNITY OF BEING HEARD?

Held – *Since the delay in filing appeal was explained and reasons were accepted, but the order was passed without condoning the delay. As the orders of assessment was claimed to have passed without giving an opportunity of hearing, non service of Show Cause Notice, the orders under challenge were set aside and directed to deal with them in accordance with law.*

Section(s): Andhra Pradesh Value Added Tax Act, 2005, s. 31
Favouring: Matter remanded/remitted

Cases referred to :

Assistant Commissioner v. Glaxo Smith Kline Consumer Health Care Limited [2020] 77 GSTR 342 (SC) (paras 16, 19, 20)

Chandra Kumar (L.) v. Union of India [1997] 105 STC 618 (SC) ; [1997] 228 ITR 725 (SC) (para 12)

Electronics Corporation of India Limited v. Union of India [2019] 7 GSTR-OL 48 (T&AP) (paras 5, 12, 13, 14, 16, 17, 18)

Kerala Education Bill [1957], In re [1958] AIR 1958 SC 956 (para 12)

M. P. Steel Corporation v. Commissioner of Central Excise [2015] 80 VST 492 (SC) (paras 4, 8)

Minerva Mills Ltd. v. Union of India [1980] AIR 1980 SC 1789 (para 12) Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited [2017] 5 SCC 42 (para 17)

Panoli Intermediate (India) P. Ltd. v. Union of India [2015] 326 ELT 532 (Guj) [FB] (paras 14, 16, 17, 18)

Phoenix Plasts Company v. Commissioner of Central Excise (Appeal-I) [2014] 25 GSTR 325 (Karn) (paras 17, 18)

Raja Mechanical Company P. Ltd. v. Commissioner of Central Excise [2012] 15 GSTR 1 (SC) (para 19)

Resolute Electronics Pvt. Ltd. v. Union of India [2015] 32 GSTR 435 (T&AP) (para 14)

Star Enterprises v. Joint Commissioner [2016] 41 STR 20 (AP) (para 14)

Present for Petitioner	:	S. Dwarakanath, Senior Counsel, and K. V. J. L. N. Sastry
Present for Respondent	:	The Government Pleader for Commercial Tax.

ORDER

The order of the court was made by

1. C. Praveen Kumar J.—As both the writ petitions are interconnected, the same are disposed of by this common order.

2. Assailing the assessment order No. 63500, dated March 31, 2017, for the year 2012-13 under the CST Act, passed by the first respondent, as barred by limitation and the same came to be passed without giving any opportunity to the petitioner, W. P. No. 3905 of 2021 came to be filed.

3. While W. P. No. 3795 of 2021 came to be filed, seeking issuance of writ of mandamus to set aside the impugned assessment order No. 116695, dated March 15, 2018 for the year 2013-14 under the CST Act, passed by the first respondent, as barred by limitation and without giving any opportunity to the petitioner.

4. Since the facts in both the cases are similar in nature, it would be appro priate to refer to the facts in W. P. No. 3905 of 2021 by taking it as a lead petition, which are as under :

(a) The petitioner herein is an assessee on the rolls of the first respondent, doing business in manganese ore. The petitioner, is a registered dealer under Andhra Pradesh Value Added tax Act, 2005 (for short, “the APVAT Act”) and Central Sales tax Act, 1956 (for short, “the CST Act”). It is stated that the international exports are exempt under section 5(1) of the CST Act, subject to production of documentary evidence namely purchase order of the foreign buyer, proof of export and receipt of consideration in foreign exchange. In respect of inter-State sales against “C” forms, the turnover is liable to be taxed at two per cent., provided the entire declarations are filed, covering the turnover. In respect of transit sales, they are exempt under section 6(2) read with section 3(b) of the CST Act, provided “E1” forms from the first inter-State sales and “C” forms from the buyers are filed.

(b) While things stood thus, the first respondent passed an adverse order for the year 2012-13 levying tax at 14.5 per cent. on the entire turnover, on the ground that the petitioner has failed to produce the documentary evidence in support of his claim for exemption towards exports and transit sales and “C” forms for concessional

rate of tax. The said order which was passed on March 31, 2017 was served on to the petitioner on May 5, 2017. Because of ill-health and hospitalization, the petitioner could not take any steps to challenge the same within the time prescribed under section 31 of the APVAT Act. However, on December 4, 2018, the petitioner preferred an appeal before the second respondent, wherein, he claimed that the exports turnover do not relate to the sales of the foreign country but sales to SEZ units within India, which are also not liable to tax, provided form-I declarations are given by SEZ units, for the transit sales as well. The said appeal was filed with a delay of 540 days. Though, reasons given for filing the appeal with a delay, were accepted, the appellate authority rejected the appeal on the ground that he has no authority or jurisdiction to condone the delay. Challenging the same, the petitioner filed an appeal before the APVAT appellate Tribunal at Visakhapatnam vide T. A. No. 207 of 2019 questioning the rejection of the appeal by the second respondent. The said appeal was also dismissed on the ground that though delay in filing is explained and is acceptable but the same cannot be condoned beyond a period of thirty (30) days, when the provisions of the Limitation Act, are not applicable, in view of the judgment of the honourable Supreme Court in M. P. Steel Corporation v. Commissioner of Central Excise [2015] 80 VST 492 (SC). Now, the present writ petition is filed challenging the original order of assessment itself, as barred by limitation and that the order came to be passed, without giving an opportunity of hearing before confirming the liability.

5. Sri S. Dwarakanath, learned senior counsel for the petitioner, mainly submits that though the petitioner has filed an appeal before the second respondent and thereafter approached APVAT Appellate Tribunal, seeking to condone the delay, there is no bar to challenge the order passed by the assessing authority on March 31, 2017. He relied upon a Full Bench judgment of the combined High Court in Electronics Corporation of India Limited v. Union of India [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018 in support of his plea. He further submits that the order passed by the primary authority on merits does not get merged with the order passed by the appellate authority since the appeal came to be rejected on the ground of delay itself. He further submits that the order passed by the primary authority is also violative of principles of natural justice as the same came to be passed without giving an opportunity of hearing to the petitioner.

6. No counter is filed by the respondents in spite of granting time. In fact, learned Government Pleader for Commercial Tax, appearing for the respondents would contend that since the issue involves legal aspects, the same can be decided without a counter as well. Learned Government Pleader would contend that since the orders of the appellate authority as well as the APVAT Appellate Tribunal have become final, the question of challenging the order passed by the assessing authority, nearly four years after passing of the order, cannot be entertained. According to him, if applications of this nature are entertained, there will not be any end to the litigation. He further submits that in the grounds of appeal filed before the second respondent, the issues relating to limitation was also raised, but, having regard to the order passed by the appellate authority, rejecting the appeal itself, though not on merits, but on the ground of delay, the findings of the assessing authority get merged with the order of the appellate authority which was confirmed by the Tribunal.

7. In so far as the violation of principles of natural justice is concerned, learned Government Pleader would contend that a perusal of the assessment order, would show that though the petitioner has received a showcause notice, he did not file any objections and did not contest the matter and hence he cannot now turn around and say that no opportunity of personal hearing was given before passing the assessment order.

8. Before proceeding further, it is to be noticed that the second respondent as well as the APVAT Appellate Tribunal while rejecting the appeal, filed by the petitioner, on the ground of delay categorically held that though the appellant/writ petitioner has got genuine reasons in filing the appeal beyond the condonable period, but, the Act does not permit admission of the appeal filed beyond the period. It would be appropriate to extract the relevant portion of the order passed by the APVAT Appellate Tribunal, which is as under :

> “(c) As seen from the delay condonation petition the appellant has furnished the proof that appellant has got paralysed from 2016 and hence he was unable to look after the business. Though the appellant has got genuine reasons in filing the appeal beyond the condonable period, but whatsoever grounds may be the Act does not permit to admit the appeal if filed beyond the condonable period. The action of the ADC is restricted by the provisions stated supra and here the Limitation Act of 1963 is also not applicable to the present case as held by the honourable apex court in case of

M. P. Steel Corporation v. Commissioner of Central Excise reported in [2015] 80 VST 492 (SC) that the Limitation Act, 1963 applies only to courts and not to quasi-judicial Tribunals. It is only when a suit, appeal or application of the description in the schedule is to be filed in a court under a special or local law that the provision gets attracted. The 1963 Act including section 14 would not apply to appeals filed before a quasijudicial Tribunal such as the Collector (Appeals) mentioned in section 128 of the customs Act, 1962".

9. Even, the appellate Deputy Commissioner in his order categorically states that the appellant was not able to file appeal due to medical reasons, which are mentioned therein, but as the authority has no power to con done the delay, the appeal was rejected. From the two orders referred to above, it is very much clear that the reasons given by the petitioner for not filing the appeal due to medical reasons were accepted but since they are powerless to condone the delay beyond a particular period, appeals came to be rejected.

10. Keeping this factual aspect in the background, we shall now proceed to deal with the issue as to whether a writ petition would lie ?

11. It is no doubt true that the assessment order, which was passed on March 31, 2017, came to be challenged in the appeal before the second respondent with a delay and before the APVAT Appellate Tribunal. The second respondent as well as the Tribunal rejected the appeals on the ground of delay as stated supra. Thereafter, the present writ petition came to be filed questioning the order passed by the authority, raising grounds which go to the root of the matter.

12. A Full Bench of the composite High Court for the State of Telangana and the State of Andhra Pradesh in Electronics Corporation of India Limited v. Union of India [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018, after referring to the judgments of (i) The Kerala Education Bill 1957, In re reported in AIR 1958 SC 956 ; (ii) Minerva Mills Ltd. v. Union of India reported in AIR 1980 SC 1789 ; and (iii) L. Chandra Kumar v. Union of India reported in [1997] 105 STC 618 (SC) ; [1997] 228 ITR 725 (SC) ; [1997] 3 SCC 261, held that writ jurisdiction conferred upon the High Court under article 226 of the Constitution of India is part of the inviolable basic structure of the Constitution and any law which seeks to take away or restrict the jurisdiction of the High Court under article 226 of the constitution of India must be held to be void.

13. In Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018, the Full Bench dealt with a similar situation, where the orders-in-original dated October 21, 2014 which was appealable under section 35 of the Act of 1944, had to be filed within 60 days ordinarily and the appellate authority was empowered to condone delay only for 30 days thereafter, provided sufficient cause was shown. In the said case, the petitioner-company filed appeals impugning the order-in-original dated October 21, 2014, long after the prescribed period, i. e., on February 2, 2016 along with an application to condone the delay. Vide order dated May 31, 2016, the Commissioner of appeals dismissed the appeals on the ground that the delay cannot be condoned beyond the period of limitation. Thereupon, the petitioner-company preferred an appeal before the jurisdictional Customs, Excise and Service Tax Appellate Tribunal. Vide order dated January 3, 2017, the Tribunal confirmed the order of the Commissioner of appeals. Left with no other option, the petitioner therein filed writ petition before the High Court assailing the order-in-original dated October 21, 2014. Similar objection, as raised in the present case came to be advanced before the Full Bench of the High Court. Dealing with the same, the Full Bench of combined High Court, held as under (paras 11,13 and 14, pages 53 and 54 in 7 GSTR-OL):

> "10. At this stage we may note, with due respect, that absence of challenge to the orders of the appellate authority and the Tribunal in the circumstances obtaining cannot be a factor for non-suiting the petitioner-company. It must be kept in mind that dismissal of the appeals by the appellate authority and, thereafter, by the Tribunal, was only on the ground of limitation and not on the merits of the matter. A decision based purely on technicalities would not be binding on the writ court on the strength of the principle of res judicata. Further, as the fate of the appeals, be it before the appellate authority or the Tribunal, was already sealed owing to the limitation prescribed under section 35(1) of the Act of 1944, they were, in reality, no longer effective appellate remedies available to the petitioner-company. Failure to challenge the said orders would therefore not impact the maintainability of the present writ petitions filed only against the orders-in-original.

12. As the remedy of appeal to the Commissioner (Appeals) is provided under section 35(1) of the Act of 1944, invocation of such remedy would invariably be subject to the restrictions prescribed in the statute. However,

the fundamental issue is whether, when such an appellate remedy stands foreclosed against an order-in-original because the appeal is time-barred in terms of the limitation prescribed in the statute, the said order-in-original would also be immune to judicial review by this court in exercise of its extraordinary writ jurisdiction under article 226 of the Constitution.

13. In our considered opinion, the constitutional power of judicial review vesting in this court under article 226 cannot be whittled down or be made subject to statutory restrictions and parameters prescribed in the context of the remedies provided thereunder. It is only by way of self-imposed restraints that this court sometimes refuses to exercise its discretionary jurisdiction under article 226 of the Constitution in a given case." 14. The Full Bench in Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [FB] also referred to the Full Bench judgment of Gujarat High Court in Panoli Intermediate (India) P. Ltd. v. Union of India reported in [2015] 326 ELT 532 (Guj) where identical issue came up for consideration. In para 25, the court held as under (page 57 in 7 GSTR-OL) :

> "25. In the result, the reference is answered holding that the decisions in Resolute Electronics Pvt. Ltd.'s case [2015] 32 GSTR 435 (T&AP) and Star Enterprises' case [2016] 41 STR 20 (AP), do not constitute good law. A writ petition would lie against an order-in-original, against which an appeal was filed and dismissed as time-barred or no appeal had been preferred as it would have been time-barred, provided sufficient grounds are made out warranting exercise of the power of judicial review under article 226 of the Constitution. In this regard, it would also not be necessary for the writ petitioner to assail the orders, if any, dismissing his appeals as time-barred, be it by the appellate authority or the Tribunal, in the event he chose to invoke such appellate remedies. The writ petitions shall be placed before the appropriate court for further consideration on merits in the light of the observations made supra. The reference stands answered accordingly."
>
> Thus, is urged that in the given set of circumstances, a writ petition would lie.

15. The learned senior counsel for the petitioner further submits that the assessment order came to be passed without giving an opportunity of hearing and that even otherwise the said order is passed beyond the period of limitation except for the month of March, 2013. Though, the order

impugned states that there was no response to the show-cause notice issued, the learned senior counsel for the petitioner strenuously contends that the said show-cause notice was never served on him and only the order passed by assessing authority on March 31, 2017 was served on him in the month of May, 2017. Since the issue of limitation, which is now pleaded to be a mixed question of fact and law and as no counter is forthcoming disclosing the dates as to when the assessments for every month came to be filed and also as to the person responsible for passing the order with delay, pleads that it would be just and proper to remand the matter back to the assessing authority to deal with the point raised namely delay in passing the assessment order.

16. The learned Government Pleader for Commercial Tax, appearing for the respondents relied upon a judgment of the honourable Supreme Court in Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited [2020] 77 GSTR 342 (SC) ; [2020] SCC Online (SC) 440 to contend that the Full Bench judgment of the combined High Court in Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [2018] 3 ALD 321 (HC) ; MANU/AP/0150/2018 and the judgment of the Gujarat High Court in Panoli Intermediate [2015] 326 ELT 532 (Guj) were held to be at fault by the honourable Supreme Court and as such, no relief can be claimed basing on the said judgment.

17. In order to appreciate the same, it would be appropriate to refer to the relevant paras of the said judgment, which are as under (pages 369-371 in 77 GSTR) :

> "14. A priori, we have no hesitation in taking the view that what this court cannot do in exercise of its plenary powers under article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to article 226 of the Constitution. The principle underlying the rejection of such argument by this court would apply on all fours to the exercise of power by the High Court under article 226 of the Constitution.
>
> 15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. [2019] 7 GSTR-OL 48 (T&AP) [FB] (), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) P. Ltd. v. Union of India [2015] 326 ELT 532 (Guj) and also of the Karnataka High Court in Phoenix Plasts Company v.

Commissioner of Central Excise, (Appeal-I), Bangalore [2014] 25 GSTR 325 (Karn). The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction-by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this court in Oil and Natural Gas Corporation Limited [2017] 5 SCC 42. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. . . .

18. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such."

18. From the judgment of the honourable Supreme Court referred to above, it very clear that the Full Bench decision of the composite High

Court in Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018, which has agreed with the view taken by the Full Bench of Gujarat High Court in Panoli Intermediate (India) P. Ltd. [2015] 326 ELT 532 (Guj) and also of the Karnataka High Court in Phoenix Plasts Company v. Commissioner of Central Excise, (Appeal-I), Bangalore reported in [2014] 25 GSTR 325 (Karn) ; [2013] 298 ELT 481 (Karn), was held to have proceeded on a fallacious premise, with regard to its jurisdiction under articles 226 and 227 of the Constitution of India. The court held that it is not a matter of taking away the jurisdiction of High Court.

19. At this stage, it would be appropriate to refer to paragraph No. 19 of the judgment in Glaxo Smith Kline Consumer Health Care Limited [2020] 77 GSTR 342 (SC) ; [2020] SCC Online (SC) 440. After referring to the facts of the said case and the findings given by the High Court, the honourable Supreme Court in last four lines of the said paragraph held as under (page 372 in 77 GSTR) :

> "Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on September 24, 2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

In paragraph No. 20 of the said judgment, the court while dealing with the argument of the respondent namely, having failed to assail the order passed by the appellate authority, dated October 25, 2018, rejecting the application for condonation of delay, the assessment order passed by the Assistant Commissioner, dated June 21, 2017, stood merged, was not accepted, in view of the exposition of the apex court in Raja Mechanical Company P. Ltd. v. Commissioner of Central Excise, Delhi [2012] 15 GSTR 1 (SC); [2012] 12 SCC 613. The honourable Supreme Court held that, it is well settled that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order.

20. From the judgment of apex court in Glaxo Smith Kline [2020]77 GSTR 342 (SC) ; [2020] SCC Online (SC) 440, it is very clear that the request of the petitioner therein came to be rejected mainly on the ground

of inability to file an appeal within the prescribed time was not properly substantiated or explained. Further, the court also observed that the order of the High Court does not indicate violation of principles of natural justice or noncompliance of statutory requirements in any manner. The court also held that the order of assessment does not get merged with the order rejecting the request to condone the delay.

21. That being the position, in the instant case, the appellate authority as well as VAT Tribunal, categorically held that there was sufficient cause for preferring the appeal with delay, but, as they have no power to extend the period of limitation, rejected the appeals. Apart from that, it is also urged that, the assessment order came to be passed without giving an opportunity of hearing and there is no material to show that the show-cause notice was served on the petitioner. Since, the delay in filing the appeals was explained and the reason given by the petitioner was accepted, but the delay was not condoned due to limitation prescribed under the Act and as the assessment order is said to have passed without giving an opportunity of hearing, more particularly, the non-service of show-cause notice, we feel that it is a fit case where the matter requires reconsideration.

22. Accordingly, the writ petitions are disposed of setting aside the orders under challenge, in both the writ petitions and the matters are remanded back to the assessing authority to deal with the same afresh in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

IN THE ANDHRA PRADESH HIGH COURT
[C. Praveen Kumar and Tarlada Rajasekhar Rao JJ.]

Writ Petition Nos. 11194 , 11198 , 11206 , 11263 ,
17275 , 28836 , 30292 of 2021.

Sembcorp Energy India Limited ... Petitioner

Versus

State of Andhra Pradesh and Others ... Respondent

August 26, 2022.

CAN A BENEFIT WHICH ACCRUES BY WAY OF LEGISLATION BE DENIED OR ENTAILED, MORE SO WHEN IT IS CLARIFICATORY IN NATURE AND HAS TO BE MADE RETROSPECTIVE?

Held *– NO – the law does not compel a man to do things which he could not possibly perform.*

The existence of alternative remedy is not a complete bar to the maintainability for a writ petition, more so when the GST Tribunal is not yet constituted.

Cases referred to :

Assistant Commissioner of State Tax v. Commercial Steel Limited [2021] 93 GSTR 1 (SC) (paras 15, 17)

Commissioner of Income-tax v. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC) (para 43) Commissioner of Income-tax v. Gotla (J. H.) [1985] 156 ITR 323 (SC) (para 43) Commissioner of Income-tax v. Vatika Township P. Ltd. [2014] 367 ITR 466 (SC) (para 44)

Commissioner of Customs v. Frontier Aban Drilling (India) Limited [2010] 254 ELT 63 (Mad) ; MANU/TN/0035/2010 (para 33)

Govt. of India v. Indian Tobacco Assn. [2005] 7 SCC 396 (para 44)

Kaliamurthi (T.) v. Five Gori Thaikkal Wakf [2008] 9 SCC 306 (para 45)

PVR Limited v. State of Telangana [2019] 9 TMI 641 ; MANU/TL/0306/2019 (para 32)

R. B. Jodha Mai Kuthiala v. Commissioner of Income-tax [1971] 82 ITR 570 (SC) (para 42) Vijay v. State of Maharashtra [2006] 6 SCC 289 (para 44)

Wipro Limited v. Union of India [2013] 61 VST 194 (Delhi) (para 31)

Present for Petitioner	:	Raghavan Ramabhadran
Present for Respondent 1	:	The Addl. Advocate-General-II
Present for Respondent 2 & 3	:	Suresh Kumar Routhu, Senior Standing Counsel for CBIC

JUDGMENT

The judgment of the court was delivered by

1. C. Praveen Kumar. J.—Heard Sri Raghavan Ramabhadran, learned counsel for the petitioner, learned Special Government Pleader for Com- mercial Tax, for respondent No. 1 and Sri Suresh Kumar Routhu,

learned senior standing counsel for the Central Board of Indirect Taxes and Cus- toms (for short, "CBIC") for respondent Nos. 2 and 3.

2. The issues involved in all the seven (7) writ petitions are one and the same. It is to be noted that W. P. Nos. 11194, 11206 and 11263 of 2021 came to be filed against the order of the Additional Commissioner, (GST Appeals) and W. P. Nos. 11198, 17275, 28836 and 30292 of 2021 are filed against the order of the Deputy Commissioner of Central Tax.

3. W. P. No. 11194 of 2021, which is filed, against order-in-Appeal No. GUN-GST-000-APP-001-20-21 GST, dated April 30, 2020, wherein the order rejecting refund was upheld, is taken as a lead petition for the pur- pose of deciding the issues involved.

4. In a nut-shell, the facts in issue, are that there was a memorandum of understanding for the purpose of supply of power between India and Bangladesh. The petitioner participated in the tender process floated by the Bangladesh Power Development Board (for short, "BPDB") and was awarded contract by BPDB, pursuant to which, a letter of intent for pur- chase of 250MW electricity power, was issued on August 7, 2018. There- after, the petitioner entered into a power purchase agreements (PPAs) with BPDB and started supplying electricity/electrical energy to BPDB in accord- ance with the Indian Electricity Act, 2003 and the Rules and Regulations made thereunder. The Central Electricity Regulatory Commission, which is a statutory body under section 76 of the Electricity Act, 2003, framed Regu- lations and Guidelines on Cross Border Trade of Electricity (Guidelines for Import/Export (Cross Border) of Electricity, 2018). Necessary guidelines to that effect were issued on December, 2018. As per the regulations, the participating entities in India, proposing to engage in cross-border trade of electricity with neighbouring countries, shall first obtain approval of desig- nated authority appointed by the Central Electricity Authority. The material on record show that the petitioner, after obtaining approval from the Central Electricity Authority, Ministry of Power, Government of India, entered into power purchase agreement, with a unit in Bangladesh. It is needless to mention that the electricity to be supplied by the petitioner to BPDB would be as per the dispatch schedule provided by BPDB and then injected to the transmission grid at the interconnection point located in Andhra Pradesh. Reading meters would be installed at the place, where the electricity generated is injected into inter-State transmission line, so as to record the quantum of electricity that has been supplied by the petitioner to BPDB. The injected electricity would then get transmitted from the inter- connection point to Bohrompur sub-station, West Bengal, India, which

is the “delivery point” through an Inter-State transmission line. From the said point, the electricity would be transmitted to Bangladesh through the cross-border transmission line, between Bohrompur sub-station, India and Bheramara sub-station, Bangladesh :

(a) The material on record further indicates that regional energy account (REA) report is being issued on monthly basis by the Southern Regional Power Committee, which is a unit of Central Electricity Authority of Government of India, indicating the number of units of electricity trans- mitted by each supplier of electricity to a particular recipient. The report also identifies the destination to which electricity is supplied by the petitioner.

5. The circumstances, which made the petitioner to file the writ petition, are :

(a) Since export of electrical energy is treated as zero rated supply under section 16 of the IGST Act, 2017, the petitioner applied for refund of unutilized input-tax credit through a refund claim by filing application under form GST RFD-01A in terms of section 54 of the CGST Act, 2017 read with section 16(3) of the IGST Act, 2017.

(b) On May 17, 2019, the third respondent issued a memo, demanding the petitioner to file (1) copy of input-tax credit register ; (2) Copy of input-tax credit invoices and (3) A statement containing the number and date of shipping bills or bills of exports and the number and date of the relevant export invoices. Except for the statement containing the number and date of shipping bills or bills of export, the petitioner submitted all other documents including the regional energy account showing the units of electricity exported as demanded in the memo. In so far as non-sub- mission of the shipping bill, the petitioner addressed a letter to third respondent, stating that shipping bill will not be available and there is no requirement under the customs law, for filing of shipping bill or any similar documents showing export of electrical energy as required for physical export of tangible goods. It is stated that generation and filing of shipping bill is not possible for transmission of electricity and there is no require- ment for filing of any shipping bill or bill of export for electrical energy.

(c) On June 28, 2019, a show-cause notice was served on the petitioner, rejecting the claim for refund to an extent of Rs. 5,67,94,499,

on the ground that as the petitioner failed to submit shipping bill and export general manifest (EGM) along with refund application, evidencing delivery of electricity at Bohrompur station, the same cannot be termed as 'export of goods' under section 2(5) of the IGST Act. A detailed reply came to be filed by the petitioner on July 24, 2019 and a personal hearing was also given. On Speedbar 20, 2019, the third respondent rejected the request for the month of March, 2019. An appeal came to be filed before the second respondent reiterating the submissions.

(d) On April 30, 2020, the impugned order came to be passed upholding the order-in-original, rejecting the claim of refund on the following grounds (1) there is no provision of law, exempting the submission of ship- ping bill in respect of export of electricity and that the sanctioning authority cannot extend an exception which is not there in the law ; (2) Adjudicating authority cannot be expected to condone or overlook non-filing of shipping bill since they are not vested with such discretion power and (3) as the delivery point of electricity is in India, it cannot be said that the impugned transaction amounts to export of goods. Challenging the same, the present writ petitions came to be filed.

6. From the above, it is clear that the request came to be rejected mainly on the two grounds : (1) The shipping bill, as required under rule 89 (2)(b) of the Central Goods and Service tax Rules, 2017, is not submitted to the authorities and (2) there is no evidence to show that the power transmitted by the petitioner from Bohrompur sub-station, Murshidabad, India is the same power which reached Bheramara sub-station, Bangladesh.

7. Coming to the first issue, namely, non-submission of the shipping bills, learned counsel for the petitioner would contend that under rule 89 of the CGST Rules, 2017 application for refund of input-tax credit should be accompanied by statements containing the number and date of shipping bills or bills of export, etc. According to him, in so far as transmission of electricity is concerned, it is impossible to generate such bills, as the supply from one place to another place and from one country to another country is only through transmission lines. In other words, his argument is that shipping bill is a custom document and the same cannot be made applicable to show supply of electricity ; which is intangible in nature.

8. To substantiate that there was export of electricity, learned counsel for the petitioner submits that he has placed other documents (REA reports),

which amply establish the same. According to him, in a meeting held on February 18, 2020, with the Ministry of Power, under the Chairmanship of the Central Electrical Authority, it was decided that monthly regional energy accounts (REAs) issued by the Regional Power Committee (RPC) can be used as a document to establish proof of export in case of electricity. He also placed on record the notification dated July 5, 2022 issued by the Government of India amending rule 89 of the CGST Rules, 2017, which gives clarification as to how the export of electricity can be proved.

9. In so far as, the second issue is concerned, learned counsel for the peti tioner would contend that though in first three cases, the authorities issued show-cause notice demanding proof, for export of electricity to Bheramara sub-station, Bangladesh, but in subsequent notices issued for the months- June, 2019 to September, 2021, they realized their mistake and dropped the said issue in the notice. The very fact of dropping the demand, with regard to filing of proof in respect of export of electricity in the subsequent notices, would show that the authorities realized the impossibility in fulfilling the same and as such the same applies to earlier notices as well. The learned counsel further submits that amendment to rule 89(2) of the CGST Rules, should be given a retrospective effect as it is a beneficial Legislature.

10. A counter came to be filed by the second and third respondents, dis puting the averments made in the affidavit filed in support of the writ petition. A reading of the counter shows that the documents produced by the petitioner do not confirm export of goods, as defined in section 2(5) of the IGST Act. It is further urged that in the absence of any material showing that the energy generated by the petitioner was the same energy which was transmitted from India to Bangladesh, and in the absence of any documents evidencing the same, in terms of rule 89 of the CGST Rules, 2017, the order impugned warrants no interference.

11. In other words, the argument of Sri Suresh Kumar Routhu, learned sen ior standing counsel for CBIC, for second and third respondents, appears to be that there is no separate procedure to waive the requirement of pro- ducing shipping bills as proof of export. He further submits that some of the writ petitions filed directly before this court under article 226 of the Constitution of India without availing the alternate remedy is bad in law. He relied upon the judgments of honourable Supreme Court in support of the same. He further submits that rejection for refund is made not only on the ground of procedural violation, but also on the ground that the supply of electricity by the petitioner does not constitute export of goods,

as the delivery point is only up to a local area. Learned standing counsel further submits that the transmission of power supply by the petitioner stands established only till Bohrompur, West Bengal and not beyond that. Hence, they cannot claim any benefit of refund of input-tax credit. Learned standing counsel further submits that the petitioner has no dedicated electrical lines for transmission of electrical energy from their thermal plant to Bohrompur sub-station and has no dedicated international/cross-border transmission lines for transmission of electricity to Bangladesh. The power is transmitted pursuant to an agreement with Central Electricity Authority under the supervision of Government of India and as such, no benefit can be given for refund of input-tax credit.

12. An additional affidavit came to be filed on behalf of the second and third respondents, referring to notification dated July 5, 2022, amending rule 89 of the CGST Rules, 2017 and the said notification being published in the Gazette on July 5, 2022. Hence, submits that any relief to the petitioner can be extended only be after July 5, 2022 and the same cannot be retrospective in operation.

13. In the rejoinder filed by the petitioner, it is stated that the petitioner has not challenged the statutory provision, but only prays that rule 89 of the CGST Rules, 2017 requiring production of shipping bills as proof of export, is impossible to be fulfilled in their case, owing to its intangible nature.

14. The point that arises for consideration is, whether the authorities were right in rejecting the refund claim made by the petitioner ?

15. Before dealing with issues involved, learned counsel for the respondents raised an objection with regard to the maintainability of writ petitions. He submits that, the present writ petitions are not maintainable, as some writ petitions are filed against order-in-appeal and some are filed against order- in-original, without availing the remedy provided under the statutory provisions and approached this court directly under article 226 of the Con- stitution of India. He placed reliance on Assistant Commissioner of State Tax v. Commercial Steel Limited [2021] 93 GSTR 1 (SC) ; MANU/ SC/0872/ 2021.

16. Whereas, learned counsel for the petitioner urged that though the remedy of filing of an appeal lies before the GST Tribunal, but the same is not done, as the Tribunal is not yet constituted and that there was no effica-

cious or alternative remedy as on the date of filing of the writ petitions. It is further urged that when some of the appeals filed before the appellate authority are rejected, against which, the writ petitions are filed, no useful purpose would be served in preferring an appeal before the appellate authority again seeking the very same relief. In these circumstances, it is pleaded that filing of writ petitions directly before this court, questioning the order-in-original cannot be said to be improper or incorrect. Having regard to the above circumstances, learned counsel for the petitioner con- tends that order under challenge requires interference.

17. It is well-settled principle that this court can entertain writ petitions only in exceptional circumstances, as laid down in Assistant Commissioner's case [2021] 93 GSTR 1 (SC) ; MANU/SC/0872/2021. The existence of an alternate remedy is also not an absolute bar to the maintainability of the writ petitions. However, coming to present case, as Tribunal is not yet constituted by the GST council and as there is no efficacious remedy available to the petitioner, except approaching this court, we are of the view that the writ petitions can be entertained. Moreover, the respondents' contention that the petitioner has to approach Tribunal under section 112 of the CGST Act, when and where it is constituted, cannot be accepted as it may cause irreparable loss to the petitioner.

18. With regard to the writ petitions filed against order-in-original, this court is inclined towards the contention raised by the petitioner, wherein it is urged that when appeals of similar issues are rejected by appellate authority, it would serve no useful purpose to file the same again before the same authority, by the same party, seeking the very same relief.

19. Coming to the point for consideration and to appreciate the rival argu ments advanced, on the legal issues involved, it would be appropriate to refer section 16 of the IGST Act, 2017 which reads as under :

> "(1) 'zero rated supply' means any of the following supplies of goods or services or both, namely :--
>
> (a) export of goods or services or both ; or
>
> (b) supply of goods or services or both to a special economic zone developer or a special economic zone unit.
>
> (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services tax Act, credit of input tax may be

availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input-tax credit ; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on pay- ment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services tax Act or the rules made thereunder."

A reading of section 16(3) of the IGST Act will clearly indicate that a per- son making zero-rated supply shall be entitled to the claim under two options, mentioned in clauses (a) and (b). In so far as clause (b) is concerned, the claim would be in accordance with the provisions of section 54 of the CGST Act and the Rules made thereunder.

20. A perusal of section 54 of the CGST Act, 2017, which deal with claim for refund, would show that the petitioner is entitled to claim refund of input- tax credit. This provision nowhere refer to furnishing of shipping bill for claim of refund, which aspect is not disputed. However, the authorities only refer to rule 89(2)(b) of the CGST Rules, 2017, for production of ship- ping bills, so as to accept the claim made. A situation of this nature would not have been contemplated, at the time when rule 89 of the CGST Rules was framed and incorporated in the statute book. The transmission of elec- tricity across the border is a phenomena that has come into existence from the recent past, i. e., after incorporation of rule 89, and as such, suitable amendments ought to have been made at the time when permissions are granted for transmission of electricity to other countries.

21. Keeping this in the background, it is now to be seen (A) whether the petitioner has supplied electrical energy across the border ? and (B) whether he is entitled for refund of input-tax credit ? It is to be noted here that the petitioner has been awarded a contract for supply of power pur-

suant to a tender floated by BPDB and the letter of intent for producing 250MW of electricity power. The power purchase agreements were entered into with BPDB and the petitioner started supply of energy. Initially, the supply was from February 15, 2018 to December, 2019, but, on extension, the petitioner entered into a long term agreement with BPDB for supply of energy beginning from January 1, 2020 to July 31, 2033. The supply of elec- tricity by the petitioner is made as per the schedule, in terms of which, electricity is generated and injected into transmission grid at the intercon- nection point located in Andhra Pradesh. The reading meters at the inter- connection/injection points are erected, to record the supply of electricity by the petitioner. The injected electricity gets transmitted to Bohrompur sub-station, Murshidabad District, West Bengal (delivery point) by the Interstate transmission lines of M/s. Power Grid Corporation of India Limi- ted. From there, it reaches Bangladesh by cross-border transmission line, between Bohrompur sub-station and Bheramara sub-station of Bangla- desh, through Power Grid Company Bangladesh. The material on record also shows that the actual units of electricity supplied by the petitioner to Bangladesh is recorded in Regional Energy Account, issued on monthly basis, by Southern Regional Power Committee, which is a unit of Central Electricity Authority in India. As the supply of electrical energy, is treated as zero-rated supply, under section 16 of the IGST Act, 2017, the petitioner applied for refund of unutilised input-tax credit through a refund claim by filing applications in required forms. It is also not in dispute that the petitioner has generated electrical energy and transmitted through trans- mission lines of Power Corporation of India and the same reached Bohrompur sub-station and transmission to Bangladesh would be under the supervision of Central Electricity Authority, which is a Government of India undertaking.

22. At this stage, it is to be noted that out of seven writ petitions, three writ petitions came to be rejected on two grounds, namely :

(a) the shipping bill which is required in terms of rule 89(2) of the CGST Rules, 2017 was not submitted, and

(b) no material show that the petitioner has not exported electricity to Bangladesh, as the delivery point is only at Bohrompur in India.

whereas the other four writ petitions were rejected on the sole ground that bills were not produced by the petitioner.

23. A perusal of the above rejection orders would show that the authorities have realized the mistake committed in insisting on production

of material, evidencing export of energy to Bangladesh from the delivery point in Bohrompur, West Bengal, and for the said reason, in the subsequent orders the refund claim was rejected only on the ground that shipping bills were not produced. In other words, the subsequent show-cause notices, for the period June, 2019 to September, 2021 does not dispute export of energy to Bangladesh as the claim came to be rejected due to non-production of shipping bills only. Hence, transmission to Bangladesh by the petitioner was accepted. Therefore, the argument of Sri Suresh Kumar Routhu, learned standing counsel, that the petitioner never transmitted energy across the border cannot be accepted as it is now verifiable.

24. The next question, which falls for consideration would be with regard to rejection of refund claim for non-production of shipping bills in terms of rule 89(2)(h) of the CGST Rules, 2017, which reads, as under :

> "89(2)(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized input-tax credit under sub- section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies."

25. As stated earlier, the petitioner made multiple representations to various authorities, informing them about the difficulty in producing shipping bills for export of electricity. The said issue was also raised before regional power committee meeting, in which it was stated that REA reports made available by regional power committee on monthly basis can be used as proof of export. It would be useful to extract the relevant portion, which is as under :

> "9. After deliberations, following was concluded :
>
> (a) Total energy from a generation project may be sold through a single or more than one contracts, which may include both 'export' and 'domestic sale'.
>
> (b) Taxes are paid by the generators for various components of the inputs that are used in generation of electricity from their project. Therefore, the inputs need to be apportioned between 'exports' and 'domestic sale' for the purpose of allowing input-tax credits.

(c) Regional energy accounts (REAs) which are made available by each regional power committee (RPC) on monthly basis, provide energy scheduled under each contract from a particular generating station situated in their region. Thus, this scheduled energy as avail- able in REA can be used for proof of export of sale.

(d) However, it would be better to use the variable charge component of the bills, if available separately, for proportionating the input-tax credit between 'export' and 'domestic sale'. It would still be better to proportionate the input-tax credit on the basis of energy instead of revenue."

26. As observed earlier, rule 89 of the CGST Rules, 2017, deals with a pro cedure for claiming refund. But, requiring them to produce shipping bills, as proof of export cannot be made applicable to electricity, as it is impossible to produce shipping bill for export of electricity, since the custom law does not refer to electricity and shipping bill is a customs document. Export of electricity can only be through transmission line, but not through rail, road or water, for which, necessary documents can be made available.

27. Pursuant to repeated representations by generators of electrical energy, and their negotiations with the Central authorities from the year 2020, fructified into a notification, which came to be issued in the month of July, 2022, amending rule 89 of the CGST (Amendment) Rules, 2022, which reads as under :

"8. In the said rules, in rule 89,—

(a) in sub-rule (1), after the fourth proviso, the following Explanation shall be inserted, namely :

'Explanation.—For the purposes of this sub-rule, "specified" officer means a —"specified officer" or an—"authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006.';

(b) in sub-rule (2),—

(i) in clause (b), after the words-on account of export of goods, the words—,other than electricity shall be inserted ;

(ii) after clause (b), the following clause shall be inserted, namely :

‘(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of elec- tricity as per agreement, along with the copy of statement of sched- uled energy for exported electricity by Generation Plants issued by the regional power committee secretariat as a part of the regional energy account (REA) under clause (nnn) of sub-regulation (1) of regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity ;” ;

(c) in sub-rule (4), the following Explanation shall be inserted, namely :

“Explanation.—For the purposes of this sub-rule, the value of goods exported out of India shall be taken as—

(i) the Free on Board (FOB) value declared in the shipping bill or bill of export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017 ; or

(ii) the value declared in tax invoice or bill of supply, whichever is less.”;

(d) in sub-rule (5), for the words ‘tax payable on such inverted rated supply of goods and services’, the brackets, words and letters ‘(tax payable on such inverted rated supply of goods and services x (Net ITC’ ITC availed on inputs and input services)).” Shall be substituted ;”

28. A reading of the above amendment, inter alia, makes it clear that the petitioner herein can now prove the quantity of electricity transmitted basing on the statement of scheduled energy for export of electricity issued by regional power committee (RPC) secretariat, as a part of regional energy account (REA) under clause (nnn) of sub-regulation (1) of regulation (2) of Central Electricity Regulatory Commission.

29. Further, the amendment to rule 89(2)(ba) of the CGST (Amendment) Rules, 2022 (July, 2022) clearly show that the number and date of the export invoices, details of energy exported, tariff per unit of export as per agreement, along with the copy of scheduled energy for exported electricity by Generation Plants, issued by the regional power committee secretariat, can be made the basis to show the number of units of electricity, trans mitted and supplied across the border. This amendment makes it clear that information relating to generation of electrical energy and its transmission across the border, can be obtained from regional power committee secre-

tariat or regional energy account under the regulations of Central Regulatory Committee.

30. The situation reminds of an age old maxim “lex non cogit ad impossi bilia”, meaning that the law does not compel a man to do things which he cannot possibly perform.

31. Dealing with the aspect of impossibility of compliance, in Wipro Limited v. Union of India [2013] 61 VST 194 (Delhi) ; [2013] 29 STR 545 (Delhi); MANU/DE/0414/2013, the High Court of Delhi, held as under (paras 13 and 17, pages 214, 215, 217 and 218 in 61 VST) :

> “9. We are of the view that there is a good deal of force in what the appellant says. Any condition imposed by the notification must be capable of being complied with. If it is impossible of compliance, then there is no purpose behind it. The appellant is in the business of ren- dering IT-enabled services such as technical support services, cus- tomer-care services, back-office services, etc., which are considered to be ‘business auxiliary services’ under the Finance Act, 1994 for the purpose of levy of service tax. The nature of the services is such that they are rendered on a continuous basis without any commencement or terminal points ; it is a seamless service. It involves attending to cross-border telephone calls relating to a variety of queries from exis- ting or prospective customers in respect of the products or services of multinational corporations. The appellant’s unit in Okhla is one of those places which are popularly known as ‘call centres’-business process outsourcing (BPO) centres. The wealth of skilled, english-speaking, computer-savvy youth in our country are a great source of manpower required by the multinational corporations for such ser- vices. The BPO centres become very active from evening because of the time-difference between India and the European and American continents. The mainstay of the call centres is a sophisticated com- puter system and a technically strong and sophisticated international telephone network. The service consists of providing information relating to the products and services of the MNCs, queries relating to maintenance and after-sales services, providing telephonic assistance in case of glitches during operating the consumer-products or while utilising the services and so on. For instance, the customer sitting in USA has a problem operating a washing machine sold to him by an American company. When he

calls the company, the local telephone number would be linked to the call centre number in India and it will actually be an employee of the Indian call centre who would answer the queries and assist the customer in USA get over the problem. Another example could be of a person in USA wanting to book an international air-ticket from an airline ; his queries over the phone will be answered by the employee of the Indian call centre, sitting in some place in India. The American manufacturer of the washing machine or the American airline company is the source of revenue for the Indian call centre or BPO centre.

13. All the lower authorities, including the Customs, Excise and Service Tax Appellate Tribunal, are unanimous in their view that the requirement, though one of procedure, is nevertheless inflexible as it is conceived with a view to preventing the evasion of service tax and dispensing with the same would deprive the service tax authorities from carrying out the necessary preventive and audit-checks. The cor- rectness of this view, as a broad proposition, need not be decided in this case. The question here is one of impossibility of compliance with the requirement. If, having regard to the nature of the business and its peculiar features-which are not in dispute-the description, value and the amount of service tax and cess payable on input-services actually required to be used in providing the taxable service to be exported are not determinable prior to the date of export but are determinable only after the export and if, further, such particulars are furnished to the service tax authorities within a reasonable time along with the necessary documentary evidence so that their accuracy and genuineness may be examined, and if those particulars are not found to be incorrect or false or unauthenticated or unsupported by documentary evidence, we do not really see how it can be said that the object and purpose of the requirement stand frustrated. In the present case, no irregularity or inaccuracy or falsity in the figures furnished by the appellant both on February 5, 2007 and in the rebate claims has been alleged. Moreover, it appears to us somewhat strange that none of the authorities below has demonstrated as to how the appellant could have complied with the requirement prior to the date of the export of the IT-enabled services."

32. In PVR Limited v. State of Telangana [2019] 9 TMI 641 ; MANU/TL/0306/2019, the High Court of Telangana, observed as under :

"11. Logically, the Film Development Corporation would not be in a position to issue such a certificate without knowing the number of prints of the movie that had been released. As already noted supra, a low budget feature film was one where the number of prints was less than 35. This fact could only be ascertained after release of the movie and not prior thereto. In effect, the condition was practically impos- sible to perform.

12. Significantly, the petitioner company asserted that it was alone being singled out for this discriminatory treatment and other similarly situated theatres were allowed to furnish the certificates from the Film Development Corporation later and not in advance. This assertion by the petitioner-company was not rebutted by the third respondent in her counter-affidavit. No explanation is forthcoming even now as to why the petitioner-company alone is being picked upon for violation of the condition of furnishing the certificates in advance. The third respondent also does not dispute, that the certificates were produced by the petitioner-company after release of the movies and there is no shortcoming or lacuna in this regard. If that is so, mere failure on the part of the petitioner-company to produce such certificates in advance, which it could not have done in any event, is not a ground to deny it the benefit of G. O. Ms. No. 604 dated April 22, 2008. The assessment orders, which proceeded only on the premise that such benefit could not be extended to the petitioner-company owing to belated production of the certificates, therefore cannot be countenanced."

33. In Commissioner of Customs v. Frontier Aban Drilling (India) Limited [2010] 254 ELT 63 (Mad) ; MANU/TN/0035/2010, the Madras High Court observed as under :

"4. We have carefully considered the arguments of the learned counsel for the appellant and perused the materials available on record as well as the orders of the lower authorities. No such condition has been imposed or stated to be imposed in the notification. It is the admitted case of the Department that the blow out preventer and its accessories were immersed in the deep water of the sea and became irretrievable. Hence, the importer cannot be directed to per- form the function, which is impossible of performance. It is a different matter if it is the case of the Department that the importer retrieved the sheared off part of the drill ship and diverted it for

some other purpose. On the contrary, it is the admitted case of the Department that the blow out preventer has been sheared off and immersed in the deep water of the sea, which is irretrievable. That was the reason given by the Tribunal for confirming the order of the Commissioner of Customs, who set aside the proposal of the Department to recover a sum of Rs. 5,75,84,140 and for imposition of penalty. We do not find any merit in this case so as to entertain the appeal in the above-stated facts and circumstances of the case."

34. Having to the above discussion and the judgments referred to above, we hold that the rule 89 of the CGST Rules, 2017 and the amendment made thereto cannot curtail the benefit of input-tax credit. The petitioner, in our view, was justified in not producing shipping bills to prove the quantity of energy units transmitted and that the reports of REA filed by the petitioner, could be made the basis to deal with the claim for refund of input-tax credit.

35. At this stage, Sri Suresh Kumar Routhu, learned senior standing counsel for CBIC submits that the amendment/notification issued by the Govern- ment of India on July 5, 2022 to rule 89(3) of the CGST (Amendment) Rules, 2022 cannot be made retrospective in operation, more so, when the notification in the Gazette postulates that it will come into effect from July 5, 2022.

36. On the other hand, the learned counsel for the petitioner submits that though the amended rule came into effect from July 5, 2022 but since this being a clarificatory and beneficial legislation, it has to be given retrospective effect.

37. The issue that props up now for adjudication at this stage is to whether amended rule 89(2) of the CGST Rules, 2022 is clarificatory or declaratory ?

38. Circular No. 175/07/2022-GST, dated July 6, 2022 issued by Ministry of Finance, Government of India, with regard to the manner of securing refund of unutilized ITC on account of export of electricity, is as under :

"Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of

unutilised input-tax credit (ITC) on account of export of electricity. It has been represented that though electricity is classified as 'goods' in GST, there is no requirement for filing of shipping bill/bill of export in respect of export of electricity. However, the extant provisions under rule 89 of the CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and a statement 3B has been inserted in form GST RFD-01 of the CGST Rules, 2017 vide Notification No. 14/2022-CT, dated July 5, 2022. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity."

The above circular clearly establishes that amendment to rule 89 of the CGST (Amendment) Rules, 2022 was carried out to cure the defect in rule 89 of the CGST Rules, 2017, because of the problem faced by power gen- erating units in filing refund claims of unutilised input-tax credit on export of electricity.

39. Further, a perusal of the amendment to rule 89(2) of the CGST Rules, would inter-alia show that the said rule came to be amended only to clarify the anomaly that was existing with regard to production of material evi- dencing export of a thing which is intangible in nature. This clarification came to be made since the situation namely transmission of energy could not have been visualized when rule 89(2) was incorporated in the statute book. Production of shipping bills will not prove or establish by any means the quantity of energy transmitted. Hence, by no stretch of imagination, the amendment can be said to be declaratory in nature, but it can only be a one, which would be curing the defect by issuing necessary clarification as to how transmission of electrical energy can be proved.

40. Hence, we are of the view that the rule 89 of the CGST (Amendment) Rules, 2022 is only clarificatory in nature.

41. When amendment/notification dated July 5, 2022 issued by Government of India is held to be curative or clarificatory in nature, the question now would be whether the said clarification is retrospective in nature ?

42. A proviso, which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omis- sion in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole. (R. B. Jodha Mai Kuthiala v. Commissioner of Income-tax, Pun- jab, Jammu and Kashmir and Himachal Pradesh [1971]82 ITR 570(SC)).

43. In Commissioner of Income-tax v. Alom Extrusions Ltd. [2009]319 ITR 306 (SC) ; [2010] 1 SCC 489, the Parliament has explicitly stated that the Finance Act, 2003, will operate with effect from April 1, 2004, but the mat- ter before the court involved the principle of construction with regard to the provisions of the Finance Act, 2003. Referring to judgment of Com- missioner of Income-tax v. J. H. Gotla [1985] 156 ITR 323 (SC), the hono- urable Supreme Court held that the Finance Act, 2003, to the extent indi- cated above, should be read as retrospective. In fact, in J. H. Gotla case [1985] 156 ITR 323 (SC), the honourable Supreme Court observed (pages 339 and 340 in 156 ITR) :

> ". . . we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result, i.e., a result not intended to be sub-served by the object of the legislation found in the manner indicated before, then if another con- struction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction.
>
> Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction."

44. The Constitutional Bench of the honourable Supreme Court in Com missioner of Income-tax v. Vatika Township P. Ltd. [2014] 367 ITR 466 (SC); [2015] 1 SCC 1 while deciding the question as to whether the inser- tion of proviso to section 113 by the Finance Act, 2002 is retrospective, dis- cussed the general principles concerning retrospectivity. The honourable Supreme Court observed as under (para 33, page 487 in 367 ITR) :

> "30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a

benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospec- tive. In Govt. of India v. Indian Tobacco Assn. [2005] 7 SCC 396 the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [2006] 6 SCC 289. It was held that where a law is enacted for the ben- efit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here."

45. It is well-settled law that no statute shall be construed to have a retros pective operation until its language is such that would require such con- clusion. The exception to this rule is enactments dealing with procedure. This court held that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to the proceedings pending at the time of enactment as also to the proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, the court held that there is an excep- tion to the rule also, where the right of suit is barred under the law of lim- itation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. T. Kaliamurthi v. Five Gori Thaikkal Wakf [2008] 9 SCC 306.

46. From the judgments referred to above, it is very clear that any benefit that gets accrued by way of legislation cannot be denied/curtailed, more so, when it is clarificatory in nature like the present one and as such it has to be made retrospective in operation.

47. The petitioner's contention on the retrospective operation is also sub stantiated by the Department action through the deficiency memo dated July 7, 2022 issued by the Assistant Commissioner, Nellore Division, for the refund claim filed for the period January, 2022 to March, 2022. The defi- ciency memo has advised the petitioner to resubmit the refund

application as prescribed vide CBIC Circular No. 175/07/2022-GST, dated July 6, 2022 along with all supporting documents. Copy of the refund claim in RFD-01 filed on June 23, 2022 along with deficiency memo dated July 7, 2022 is submitted before this Court along with a memo in USR No. 42132 of 2022, dated July 15, 2022.

48. From the above, it is clear that the Department has applied Notification No. 14/2022-Central Tax, dated July 5, 2022 even for the refund claim filed for the period prior to July 4, 2022 acknowledging the amendment as retrospective in operation.

49. Accordingly, these writ petitions are allowed and the orders under chal lenge are set aside and the W. P. Nos. 11194, 11206 and 11263 of 2021 are remanded back to the Additional Commissioner (GST Appeals) and the W. P. Nos. 11198, 17275, 28836 and 30292 of 2021 are remanded back to the Deputy Commissioner of Central Tax to deal with the claim of refund in terms of this common order. The petitioner shall file relevant reports evidencing transmission of electricity before appropriate authorities, if not already filed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

[Sheel Nagu and Dwarka Dhish Bansal, JJ]

Writ Petition No.26956 of 2022

BETWEEN:-

Concord Tieup Pvt. Ltd. A Company Incorporated Under the Companies Act 1956 through its Director Naval Agarwal S/o Naresh Chandra Agarwal Aged About 40 Years Occu. Business having Its Registered Office at near Bye Pass Satna Rewa Road Statna (M.P.)R/o Ward No. 1, Amoudha Kala Panna Road Opp. City Cars Satna (M.P.) ... Petitioner

AND

1. The State Of Madhya Pradesh Through Its Secretary Department Of State Tax Mantralaya Vallabh Bhawan, Bhopal (M.p.)
2. Joint Commissioner Audit Wing Commercial Tax Officer Ghantaghar Jabalpur (M. P.) ... Respondents

On the 25th of April, 2023

WHETHER DEPARTMENT CAN ISSUE THE SCN WITHOUT PROVIDING THE DATE, TIME AND PLACE FOR PERSONAL HEARING AND PASS AN ORDER ON THE BASIS OF SUCH NOTICE.

***Held** – NO – on the basis of Bharat Mineral Allied Chemicals vs. Com. Of Commercial Tax, an opportunity of being heard have to be granted by Revenue Department.*

Present for Petitioner : Shri Sanjay Mishra - Advocate)

Present for Respondent : Shri Darshan Soni – Government Advocate)

This petition coming on for admission this day, JUSTICE DWARKA DHISH BANSAL passed the following:

ORDER

By way of this writ petition under Article 226 of the Constitution of India, challenge has been made to the order dated 24.08.2022 (Annexure P/4) passed under section 74 of the MPSGST/CGST Act, 2017 and section 20 of IGST Act, 2017 by Deputy Commissioner, Audit Wing, Jabalpur upholding the tax, interest and penalty mentioned in the show cause notice dated 22.07.2022 (Annexure P/3).

2. Learned counsel for the petitioner submits that upon issuance of notice/intimation of tax ascertained as being payable under Section 74(5) of the M.P.G.S.T. Act (in short “the Act”), reply was submitted on 23.06.2022, thereafter show cause notice under Section 74 of the Act dated 22.07.2022 (Annexure P/3) was issued making mention about personal hearing to the effect that “you may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below”, but no date, time and venue for personal hearing was shown in the notice. He submits that as per Section 75(4) of the Act, before passing the impugned order, personal hearing was necessary, which is mentioned in the notice itself, as such in absence of personal hearing, the order dated 24.08.2022 (Annexure P/4) is not sustainable. In support of his submissions, he placed reliance on the co-ordinate Bench decision of Allahabad High Court in the case of Bharat Mint & Allied Chemicals Vs. Commissioner of Commercial Tax, 2022

(59) G.S.T.L. 394 (All.). The relevant paragraphs of which are quoted as under:-

"5. We have carefully considered the submissions of learned counsel for the parties.

Question

The two question involved in this writ petition are as under :-

(i) Whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act, 2017 ?

(ii) Whether under the facts and circumstances of the case the impugned adjudication order has been passed in breach of principle of natural justice and consequently it deserves to be quashed in exercise of powers conferred under Article 226 of the Constitution of India ?

6. We have perused the show cause notice dated 09.09.2021 in which it has been mentioned as under:

> "You may appear before the undersigned for personal hearing either in person or through representative for representing your case on the date, time and venue, if mentioned in the table below."

7. In the table below the aforementioned lines, date, time and venue of personal hearing has not been mentioned. Section 75(4) of the Act, 2017 provides that opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

8. Section 75(4) of the Act, 2017 reads as under:

> "An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

9. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal

hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person."

3. Learned counsel appearing for the respondents supports the impugned order and prays for dismissal of the writ petition, although has failed to justify the impugned order on the ground of non-affording of personal hearing to the petitioner. However, he submits that the petitioner has alternative remedy of appeal against the impugned order, therefore, no interference is warranted in the limited scope of Article 226 of the Constitution of India.

4. Heard learned counsel for the parties and perused the record.

5. The show cause notice dated 22.07.2022 (Annexure P/3) issued under Section 74 of the Act, itself shows that before passing final order dated 24.08.2022 (Annexure P/4), the intention of the respondents was to give personal hearing to the petitioner as required under the law, but in the table given below, captioned as "Details of personal hearing etc.", no Date, Time and Venue of personal hearing has been shown and in front of columns 3,4&5 of Date, Time and Venue, NA has been mentioned, which is sufficient to infer that no personal hearing was given to the petitioner before passing the impugned order dated 24.08.2022.

6. So far as argument raised by counsel for the respondents regarding availability of alternative remedy of appeal, is concerned, it is well settled that when due opportunity of hearing, as required under the law, has not been afforded and principle of natural justice has not been followed, then the question of availability of alternative remedy does not come in the way for exercising jurisdiction under Article 226 of the Constitution of India.

7. In view of the aforesaid and following the law laid down by the co-ordinate Bench of Allahabad High Court in the case of Bharat Mint & Allied Chemicals (supra), the impugned order is not sustainable and deserves to be and is hereby quashed and the matter is remitted back to the Deputy Commissioner, Audit Wing, Jabalpur for passing order afresh, after giving personal hearing to the petitioner as indicated above.

8. Resultantly, writ petition succeeds and is allowed. No order as to the costs.

9. Interim application(s), if any, shall stand disposed off.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 15684/2022

Consortium of Sudhir Power Projects Ltd. and Sudhir Gensets Ltd
... Petitioner

versus

Commissioner Of Delhi Goods And Services Tax ... Respondent

Date of Decision: 31st January, 2023

WHETHER A DEALER IS ENTITLED TO INTEREST ON REFUND FROM THE PERIOD OF 2 MONTH AFTER FILING OF RETURN UNDER DVAT ACT U/S 42?

Held: Yes

The said issue was considered by a coordinate bench of this Court in *IJM Corporation Berhad v. Commissioner of Trade and Taxes : 2017 SCC OnLine Del 11864*. This Court had held that in terms of Section 42 of the DVAT Act, interest would be payable if the refund is not paid within a period of two months of filing of the return.

This Court is also constrained to note that delays on the part of the respondent in processing the pending claims for refund result in unnecessary burden of interest on the ex-chequer not to mention, unnecessary imposition on judicial time. The Commissioner, Department of Trade and Taxes is directed to take expeditious steps to ensure that all pending refund claims are processed as expeditiously as possible.

Present for Petitioner	:	Mr. Rajesh Jain, Mr. Virag Tiwari and Mr. Ramashish, Advs.
Present for Petitioner	:	Mr. Satyakam, ASC with Ms. Pallavi Singh, Adv.; Mr. Amit Sharma, Legal Assistant DT&T; Mr. Akshay Allagh, Legal Assistant DT&T; and Mr. Ashok, AVATO, DT&T.

Vibhu Bakhru, J. (Oral)

1. The petitioner has filed the present petition, inter alia, praying for the direction to be issued to the respondent to refund an amount of

₹59,56,772/-, which the petitioner claims is due for the fourth quarter of the year 2013-14. The petitioner further claims that he is entitled to interest on the said amount which has been outstanding since several years.

2. The petitioner had filed a return claiming a refund of the Neutral Citation Number 2023/DHC/000844 sum of ₹59,59,499/- for the fourth quarter of the year 2013-14 on 09.05.2014. Thereafter, it filed a revised return on 15.01.2015 reducing its claim of refund to ₹59,56,772/-. The petitioner's return was not processed immediately.

3. However, on 19.10.2015, the concerned Value Added Tax Officer (VATO) issued a notice under Section 59(2) of the Delhi Value Added Tax Act, 2004 (DVAT Act).

4. Thereafter, default assessment was framed on 31.03.2018 and a demand for the fourth quarter of the year 2013-14 was framed raising a demand of ₹34,582/-. A notice was issued for the aforesaid amount.

5. The petitioner claims that the liability for the said amount was assessed on account of some difference in the output tax liability and the input tax credit.

6. The petitioner claims that it continued to pursue the concerned authority for seeking the refund, which according to the petitioner, was due within a period of two months from filing of the return / revised return.

7. The petitioner also contends that even if the additional liability of ₹34,582/- is accepted, the petitioner's claim for refund would at best be reduced by the aforesaid amount. And, there is no possible reason for the respondent to have withheld the said amount.

8. In the aforesaid context, the petitioner had filed the present petition.

9. The present petition was listed on 15.11.2022 and this Court had expressed a *prima facie* view that the petitioner would be entitled for a refund along with interest for at least previous three years.

10. There is no dispute that the petitioner was entitled to the refund of the excess tax paid. The respondent has since refunded the excess tax and also paid interest for the period of three years. In the circumstances the only question that falls for consideration of this Court is whether the petitioner is entitled to interest for the period prior to the said three years.

11. Concededly, the return filed by the assessee is required to be considered as an application for refund and the respondent is required to process the same.

12. The said issue was considered by a coordinate bench of this Court in *IJM Corporation Berhad v. Commissioner of Trade and Taxes : 2017 SCC OnLine Del 11864.* This Court had held that in terms of Section 42 of the DVAT Act, interest would be payable if the refund is not paid within a period of two months of filing of the return. Paragraph 16 and 17 of the said judgment are relevant and read as under:

> "16. Section 42 relates to interest and sub-section (1) thereof stipulates that an assessee who is entitled to refund shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the government from time to time computed on a daily basis. It fixes the time from which the interest is payable i.e. the date on which refund was due to be paid to the assessee; or the date when the overpaid amount was paid by that person, whichever was later. Interest is payable up to the date on which the refund is given. Subsection (1), therefore, fixes the starting point and the end point. With reference to the starting point, the date on which the refund was due to be paid to the assessee or the date when the overpaid amount was paid by the assessee, whichever is later is applicable. There is also stipulation in the first proviso with regard to adjustment, deduction etc. with which we are not concerned in the present case. The second proviso stipulates that if the amount of such refund is enhanced or reduced, as the case may be, the interest would be enhanced or reduced accordingly. Explanation to the sub-section (1) states that if the delay in grating the refund is attributable to the assessee, whether wholly or in part, the period of delay attributable to him shall be excluded from the period for which interest is payable.
>
> 17. When we harmoniously read Sections 38 and 42 of the Act, which relate to processing of claim for refund and payment of interest, it is crystal clear that the interest is to be paid from the date when the refund was due to be paid to the assessee or date when the overpaid amount was paid, whichever is later. The date when the refund was due would be with reference to the date mentioned in Section 38 i.e. clause (a) to sub-section (3). This would mean that interest would be payable after the period specified in clause

(a) to sub-section (3) to Section 38 of the Act i.e. the date on which the refund becomes payable. Two sections, namely, Sections 38(3) and 42(1) do not refer to the date of filing of return. This obviously as per the Act is not starting point for payment of interest."

13. Mr. Rajesh Jain, learned counsel appearing for the petitioner has also pointed out that in terms of the explanation to Section 42 of the DVAT Act, if the delay in granting refund is attributable to the assessee, whether wholly or in part, the said period would be excluded from the period for which interest is payable under Section 42 of the DVAT Act.

14. In the present case, there is no material on record to indicate that the petitioner was responsible for any part of the delay in processing the refund. There is no allegation to the aforesaid effect either.

15. Mr. Satyakam, learned counsel appearing for the respondent has submitted that there has been some delay on the part of the petitioner in approaching this Court by filing a writ petition and therefore, the period of delay ought to be excluded for the purpose of computing the period for which interest is payable to the petitioner. He referred to the decision of the Hon'ble Supreme Court in *Union of India v. Tarsem Singh : (2008) 8 SCC 648* and on the strength of the said decision, contended that the belated claim would be rejected on the ground of delay and latches or limitation where the remedy is sought by filing a writ petition.

16. We are unable to accept that the said decision is applicable in the given facts of this case. In that case the respondent (Tarsem Singh) was invalidated from the services of the Indian Army in the year 1983 and he had applied for disability pension in the year 1999. In that context, the court had held that consequential relief in service could in certain circumstances be limited to a period of three years. This decision has no application in the facts of this case.

17. On a closer examination of the facts of this case, we are unable to accept that the petitioner can be denied interest on the amount of refund which has been unjustifiably withheld, mainly for two reasons. First, that there is no dispute that the petitioner is entitled to the refund and his return was required to be considered as an application for the same. The petitioner was not required to approach or pursue the authorities for its claim for refund of excess tax. Second, that the delay in processing claims for refund is endemic to the DVAT authorities and if the same

is considered, the delay on the part of the petitioner approaching this court is not long.

18. The respondent filed an affidavit in compliance with the directions issued by this Court which indicates that the respondent department has collated the data from the year 2005 till date and 14,024 refund claims are pending in respect of 9,990 assesses as on 21.02.2023.

19. This Court is also conscious of the fact that any person would reflect before taking a legal recourse and would approach the courts only as a matter of last resort.

20. In the facts of the present case, the petitioner had received a notice under Section 59(2) on 19.10.2015 and in view of the same, was aware that some proceedings were pending before the DVAT authorities. The default assessment was framed on 31.03.2018. Obviously, the petitioner could not be expected to immediately approach this Court thereafter.

21. Further the period of two years till 28.02.2022 is required to be excluded while calculating any period of limitation pursuant to the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 In Re: Cognizance for Extension of Limitation.

22. Although the petitioner has not approached this Court immediately after the refund of tax became due, we are unable to accept that the same disentitles the petitioner from claiming what is rightfully due.

23. In the given circumstances, this Court directs the respondents to process the petitioner's claim for interest in accordance with law.

24. After some arguments, there is a consensus that the petitioner would be entitled to interest commencing from the period of two months after 15.01.2015 till the date of refund.

25. This Court is also constrained to note that delays on the part of the respondent in processing the pending claims for refund result in unnecessary burden of interest on the ex-chequer not to mention, unnecessary imposition on judicial time. The Commissioner, Department of Trade and Taxes is directed to take expeditious steps to ensure that all pending refund claims are processed as expeditiously as possible.

26. The petition is disposed of in the aforesaid terms.

In the High Court of Andhra Pradesh
[U. Durga Prasad Rao and V.Gopala Krishna Rao JJ]

WP 4663/2023

Sri Sai Balaji Associates .. Petitioner

Versus

The State of Andhra Pradesh ... Respondent

Date of Order : 07-03-2023

WHETHER BY NOTICE U/S 70(1) OF CGST ACT THIRD PARTY CAN BE DIRECTED TO STOP MAKING PAYMENT WHICH THE PARTY IS TO RECEIVE FROM THAT CUSTOMER?

Held: No.

Accordingly, this writ petition is allowed and the impugned portion of the notice issued under Section 70 (1) of GST Act i.e., "in view of the above explanation you are hereby requested stop all further payments from here onwards until clearance is given by the undersigned" is set aside and liberty is given to the 3rd respondent to proceed in accordance with law so far as the other part of the notice issued by him under section 70 (1) of GST Act is concerned. No costs.

Present for Petitioner : Mr. G V Shivaji

Present for Petitioner : Mr. GP for Commercial Tax

ORDER (per UDPR,J)

The challenge in this writ petition is to the notice under Section 70 (1) of GST Act, 2017 issued by the 3rd respondent to M/s. Sterlight technologies limited, Vishakapatnam who are the customers of the petitioner.

2. Heard learned counsel for petitioner Mr. G.V.Shivaji and learned Government Pleader for Commercial Taxes II.

3. The grievance of the petitioner as ventilated by learned counsel is that though the 3rd respondent in terms of Section 70 (1) of G.S.T Act, has power to summon any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in any inquiry in the same manner, however that power is not extended to

direct the summoning of a party to stop all further payments, which he ought to receive from the customers. Learned counsel would submit in notice such a direction is contained which is beyond the jurisdiction of the 3rd respondent. He would thus pray to allow the writ petition and delete the last paragraph in the impugned notice.

4. Learned Government Pleader while admitting that in a notice issued Under Section 70 (1) of GST Act, the concerned officer may not have power to issue a direction to stop payment by the summoning party to the assessee, would however argue, he has such power Under Section 83 of GST Act which deals with provisional attachment of any property or bank account of the assessee.

5. As can be seen, the impugned notice was issued under Section 70(1) of GST Act but not under Section 83 of GST Act. Section 70 (1) of GST act only says that the proper officer shall have the power to summon any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in the enquiry and nothing more. Therefore, it is obvious that under Section 70 (1) of GST Act the proper officer cannot exercise powers to direct the summoning party to stop payment to the assessee which is beyond the scope of 70 (1) of GST Act. Of course, under Section 83 of GST Act, if the Commissioner is of the opinion that for the purpose of protecting the government revenue, he may by order provisional attachment of any property including bank account belonging to the taxed person or any person specified in Sub Section 1 (A) of Section 122 in such manner as prescribed. The impugned notice was issued under Section 70 (1) of GST Act but not in exercise of powers conferred under Section 83 of GST Act. Thus at the outset, it is clear that the 3rd respondent has exceeded his power in directing M/s. Sterlight Technologies Limited to stop further payments to the petitioner herein. Therefore, such a direction is beyond the jurisdiction of the 3rd respondent. The same is liable to be set aside to that extent.

6. Accordingly, this writ petition is allowed and the impugned portion of the notice issued under Section 70 (1) of GST Act i.e., “in view of the above explanation you are hereby requested stop all further payments from here onwards until clearance is given by the undersigned” is set aside and liberty is given to the 3rd respondent to proceed in accordance with law so far as the other part of the notice issued by him under section 70 (1) of GST Act is concerned. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

IN THE HIGH COURT OF CALCUTTA

[T. S. Sivagnanam and Uday Kumar, CJ, J.]

J.L. Enterprises ... Appellant

Vs.

Assistant Commissioner, State Tax,
Ballygunge Charge & Ors. ... Respondent

Date of order: 16.06.2023

WHETHER BY AN ORDER U/S 83, CASH CREDIT A/C OF A SUPPLIER CAN BE PROVISIONALLY ATTACHED?

Held – NO.

Editors Note: Please also see judgment of M/s Merlin Facilities Pvt. Ltd., WPC No. 5931/2023 (Delhi High Court)

For the Appellants	:	Mr. Vinay Kr. Shraff Miss. Priya Sarah Paul Mr. R. Banerjee Mrs. S. Dey
Present for the State	:	Mr. A. Ray, Ld. G.P. Mr. T.M. Siddiqui

Order

1. We have elaborately heard the learned advocates appearing for the parties.

2. This intra-Court appeal is directed against the order dated 25.05.2023 passed in WPA 12132 of 2023. By the said order the writ petition was disposed of by relegating the appellant to resort to the remedy provided under Section 159(5) of Central Goods and Services Tax Rules 2017 (for short “the Rules”).

3. The petitioner was aggrieved by an order of provisional attachment of cash credit account maintained by the appellant with its banker. The legal question involved in the writ petition was whether an order of provisional attachment can be made to a cash credit account. In fact, the learned

Single Bench has noted all the decisions, which were cited by the learned advocate for the appellant and has held that the cash credit facility is not a debt and, therefore, it cannot be made attachable and that the writ Court is bound by the precedent. The operative portion of the order reads as follows:

> "It is submitted by the learned advocate for the petitioner referring to a decision of this Court in the case of Jugal Kishore Das Vs. Union of India reported in 2013 SCC Online Cal 19941 that the cash-credit limit is a facility provided by the bank to its customers to use and utilise the money and if such facility availed of, it would attract the interest to be charged for the same so utilised. It is further held that the cash-credit facility is not a debt to be attached by the respondent authority.
>
> Learned counsel appearing for the petitioner further refers to another decision of the Division Bench of Gujarat High Court reported in 2022 (64) GSTL 482 (Guj) wherein it is specifically held that the law is well-settled that a cash-credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act.
>
> Referring to a decision of the Hon'ble Supreme Court in Radha Krishan Industries Vs. State of Himachal Pradesh reported in 2021 (48) GSTL 113 (SC). It is submitted by the learned advocate for the petitioner that the order of provisional attachment before assessemnt order should be imposed in rarest of rare cases and sparingly.
>
> The Hon'ble Supreme Court quoted the observation of the Gujarat High Court in Valerius Industries Vs. Union of India reported in 2019 (30) GSTL 15 (Guj) as hereunder:
>
> "52. […]
>
> The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information … It is not any and every material, howsoever vague and indefinite or

distant, remote or far-fetching, which would warrant the formation of the belief.

(1) The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and farreaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons. (3)The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.

(4) The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

(5) The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(6) The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

(7) The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things:

(i) whether it is a revenue neutral situation.

(ii) the statement of “output liability or input credit”. Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not

be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment."

Thus, it is submitted by the learned advocate for the petitioner that cash-credit facility is not a debt and it is not provisionally attached under Section 83 of the CGST Act and rules made thereunder.

The learned advocate for the respondent, on the other hand submits that Section 83 of the Central Goods and Services Tax Act, 2017 gives power to the GST authority to provisionally attach the bank accounts to protect revenue in certain cases. cash-credit facility is also a bank account issued by the bank in favour of the petitioner wherefrom the petitioner is using credit facility for the purpose of his business. It is found from the record of the case that even the petitioner has been paying GST from the said cash-credit account.

Be that as it may, it is held by this Court that cash-credit facility is not a debt and therefore, it cannot be made attachable. This Court is bound by the above-stated precedent."

4. In the light of the above conclusion, it goes without saying that the Court has accepted the legal position which has been settled by various decisions which have been referred to in the impugned order. If such be the case, no useful purpose will be served by relegating the petitioner to avail the remedy under sub-Section 5 of Section 159 of the Rules. Therefore, we are of the view that the learned writ Court ought to have allowed the writ petition in its entirety instead of relegating the appellant to a remedy which is inapplicable to the cases where there is an order of provision attachment of a cash credit account.

5. In the light of the above, the appeal stands allowed and the order passed by the learned writ Court is set aside insofar as it directs the appellant to avail the remedy under Sub-Section 5 of Section 159 of the Rules and in other respect where the learned writ Court has rightly accepted the legal position stands confirmed.

6. In the light of the above conclusion the respondents are directed to lift the order of provisional attachment of the cash credit account within 10 days from receipt of the server copy of this order.

7. Needless to state that this order will not in any manner prejudice the rights of the department to initiate other proceedings in accordance with

law and this order pertains only to the provisional attachment of the cash credit account and not to the other bank accounts of the appellant.

8. In the result, the appeal stands allowed to the extent indicated hereinabove. Consequently, the connected application stands allowed.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
[G.R. Swaminathan, J]

W.P.(MD)Nos.2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021

and

W.M.P(MD)Nos.1791, 1781, 1784, 1805, 1807, 2160, 1814, 1816, 2076, 2078, 2080, 2092, 2093, 2094, 2096, 2098 & 2099 of 2021

W.P.(MD)No.2127 of 2021

D.Y. Beathel Enterprises,
Rep. by its Proprietor Y.Godwin Prasad,
11/1/21, Mancode, Vellachiparai,
Kanyakumari District - 629 121 ... Petitioner

Vs.

The State Tax Officer (Data Cell), (Investigation Wing)
Commercial Tax Buildings, Tirunelveli. ... Respondents

Prayer in W.P.(MD)No.2127 of 2021: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33AUMPG3862A1ZZ/2017-18, dated 29.10.2020 and to quash the same as illegal, arbitrary, wholly without jurisdiction and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording an opportunity of cross examination of the sellers to the petitioner by considering the replies dated 01.07.2020 and 21.09.2020 filed by the petitioner.

DATED: 24.02.2021

WHETHER INPUT TAX CREDIT CAN BE REJECTED WITHOUT EXAMINING THE FACTS OF THE SELLER AND ENTIRE TAX LIABILITY PUT ON THE PURCHASER.

Held – No.

Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.

In all writ petitions

For Petitioner : Mr.N.Sudalaimuthu for Mr.S.Karunakar

For Respondent : Mr. S.Dayalan, Government Advocate

Common Order

Heard, the learned counsel on either side.

2. The petitioners' herein are dealers, registered with Nagercoil Assessment Circle. Though the petitions are 17 in number, the issue raised in all these writ petitions is virtually one and the same.

3. The petitioners are traders in Raw Rubber Sheets. According to them, they had purchased goods from one Charles and his wife Shanthi.

4. The specific case of the petitioners is that a substantial portion of the sale consideration was paid only through banking channels. The payments made by the petitioners to the said Charles and his wife, included the tax component also. Charles and his wife are also said to be dealers registered with the very same assessment circle.

5. Based on the returns filed by the sellers, the petitioners herein availed input tax credit. Later, during inspection by the respondent herein, it came to light that Charles and his wife, did not pay any tax to the Government. That necessitated initiation of the impugned proceedings. There is no doubt that the respondent had issued shows cause notices to the petitioners herein. The petitioners submitted their replies specifically taking the stand that all the amounts payable by them had been paid to the said Charles and his wife Shanthi and that therefore, those two sellers will have to be necessarily confronted during enquiry. Unfortunately, without involving the said Charles and his wife Shanthi, the impugned orders came to be passed levying the entire liability on the petitioners herein. The said

orders are under challenge in these writ petitions.

6. The respondent has filed a detailed counter affidavit and contended that the impugned orders, do not warrant any interference.

7. The learned Government Advocate would point out that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners herein. The respondent cannot be faulted for having reversed whatever ITC that was already availed by the petitioners herein.

8. The learned counsel for the petitioners would draw my attention to the decision of the Madras High Court made in Sri Vinayaga Agencies Vs. The Assistant Commissioner, CT Vadapalani, reported in 2013 60 VST page 283. It was held therein that the authority does not have the jurisdiction to reverse the input tax credit already availed by the assesses on the ground that the selling dealer has not paid the tax. I am afraid that this proposition laid down in the context of the previous tax regime may not be straight-away applicable to the current tax regime.

9. At this stage, the learned counsel brought to my notice that the press release issued by the Central Board of GST council on 4.5.2018. In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on nonpayment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

10. On section 16(1) & (2) of Tamil Nadu Goods and Services Tax Act, 2017, also makes the position clear. It is extracted hereunder :

> 16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business

and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards

the value of supply of goods or services or both along with tax payable thereon."

11. It can be seen therefrom that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply.

12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

13. The learned counsel for the petitioners draws my attention to the order, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

14. That apart in the enquiry in question, the Charles and his Wife ought to have been examined. They should have been confronted. This is all the more necessary, because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

15. According to the respondent, there was no movement of the goods. Hence, examination of Charles and his wife has become all the more necessary and imperative. When the petitioners have insisted on this, I do not understand as to why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry. Thus, the impugned orders suffers from certain fundamental flaws. It has to be quashed for more reasons than one.

a) Non-examination of Charles in the enquiry

b) Non-initiation of recovery action against Charles in the first place

16. Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of

reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.

17. With these directions, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
[Avinash G. Gharote & Urmila Joshi-Phalke, JJ.]

Writ Petition No. 5645 Of 2022

M/s Guru Storage Batteries,
a partnership firm, through its partner,
Surjit Singh Sabarwal having office at Plot
No.122, Wanjara Layout, Pili Nadi,
Industrial Area, Nagpur – 440026
Email – surjitsabharwal@gmail.com ... Petitioner

Versus

1. The State of Maharashtra,
   Department of Goods and Services Tax,
   through Joint Commissioner State Tax,
   Nagpur Division, GST Bhavan, Civil Lines,
   Nagpur – 440001
2. The Deputy Commissioner of State Tax
   NAG BST-E-001, Nagpur having office at
   GST Bhavan, Civil Lines, Nagpur - 440001
3. State Tax Officer, Kamptee, District Nagpur ... Respondents

Dated : 13th September, 2023

WHETHER STATE TAX OFFICER CAN BLOCK THE ELECTRONIC CREDIT LEDGER UNDER RULE 86A OF CGST ACT?

HELD – NO.

Oral Judgment : (PC)

Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The petition questions the action on the part of the respondent No.3 in blocking the Electronic Credit Ledger of the petitioner. On 14/09/2022, after hearing the learned counsel for the petitioner, this Court had passed the following order.

"1. Heard learned counsel for the petitioner.

2. The contention is that blocking of the Electronic Credit Ledger (ECL) has been done by one Mr. Ujval Shrirampant Deshmukh,

State Tax Officer, Kamptee, as per the impugned communication at page No.16 of the petition and that it cannot be done by State Tax Officer being an Officer below the rank of Assistant Commissioner. He submits that under Rule 86A of the Central Goods and Services Tax Rules, 2017, such blocking can be done either by the Commissioner or any Officer authorised by the Commissioner, who is not below the rank of an Assistant Commissioner. He further submits that prerequisites before blocking order is passed, as highlighted in paragraph No.32 of the judgment of this Court in the case of Dee Vee Projects Ltd. Vs. Government of Maharashtra and ors. reported in 2022(2) Bom.C.R. 239 have also not been fulfilled in the present case, at least as seen from the impugned communication. He further submits that now, illegal notices of recovery are also being issued by the respondents.

3. The points raised by the learned counsel for the petitioner require consideration by this Court although, much of the law in relation to them has already been settled by this Court in the case of Dee Vee Projects Ltd. Vs. Government of Maharashtra and ors.(supra). Therefore, issue notice for final disposal at admission stage to the respondents, returnable after three weeks.

4. Learned Additional Government Pleader waives service of notice for respondent Nos.1 to 3.

5. Meanwhile, having considered the submissions made across the bar, we direct that there shall be stay to the effect and operation of the impugned communication until further orders. We further direct that the ECL be unblocked without any further delay."

3. It is not in dispute that the Electronic Credit Ledger has been blocked by respondent No.3. A perusal of Rule 86A of the Central Goods and Services Tax Rules, 2017, indicates that such a blocking can be done by the Commissioner or an officer authorized by him in this behalf, not below the rank of Assistant Commissioner. Admittedly, the respondent No.3 does not fall within that category and is an Officer of the rank below that of the Assistant Commissioner. Though the Notification dated 24/1/2020 has been relied upon to contend that the power has now been delegated by the Commissioner to the respondent No.3 (page 104), the same is under the State GST Act, whereas Rule 86-A of the aforesaid Act would contemplate a delegation by way of amendment to the Rule. The Notification dated 24/01/2020, would be of no assistance to the respondents. In that view of the matter the action on behalf of the respondent No.3 in blocking the

Electronic Credit Ledger of the petitioner cannot be sustained and the same is hereby quashed and set aside. The petition is allowed in the above terms. No costs.

Rule is made absolute in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru & Purushaindra Kumar Kaurav, JJ]

W.P.(C) 6739/2021

Deepak Khandelwal Proprietor
M/s Shri Shyam Metal ... Petitioner

versus

Commissioner of CGST, Delhi West & Anr. ... Respondents

Judgment delivered on: 17.08.2023

WHETHER THE PROPER OFFICER HAS THE POWER TO SEIZE THE CURRENCY AND OTHER VALUABLE ASSETS UNDER SECTION 67 OF THE ACT, EVEN THOUGH HE HAS NO REASON TO BELIEVE THAT THE SAME ARE LIABLE FOR CONFISCATION. THE CONTROVERSY, ESSENTIALLY, RELATES TO INTERPRETATION OF SECTION 67 OF THE ACT.

Held

Thus, even if, it is accepted, which we do not, that the proper officer could seize the currency and other valuable assets in exercise of powers under Sub-section (2) of Section 67 of the Act, the same were required to be returned by virtue of Sub-section (3) of Section 67 of the Act because the silver bars and currency have not been relied upon in the notice issued subsequently.

In view of the above, the petition is allowed. The respondents are directed to forthwith release the currency and other valuable assets seized from the petitioner during the search proceedings conducted on 28.01.2020. It is, however, clarified that the respondents are not precluded from instituting or continuing any other proceedings under the Act in accordance with law. Nothing stated in this order shall be construed as an expression of opinion on the petitioner's liability to pay any tax, penalty or interest under the Act.

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Jain, Mr. Virag Tiwari & Mr. Ramashish, Advs.

For the Respondents : Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advs.

JUDGMENT

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying that directions be issued to the respondents to unconditionally release the two silver bars (weighing 29.5 Kgs. and 14.5 Kgs. respectively); ₹7,00,000/- Indian currency; and, Mobile Phones, which were seized by the respondents from the residential premises of the petitioner. The petitioner also prays that the search of his residential premises and seizure effected, be declared illegal.

Factual Context

2. The petitioner carries on business of trading in non-ferrous metals, inter alia, in the name of his sole proprietorship concern, Shri Shyam Metal. He is registered under the Central Goods and Services Tax Act, 2017 (hereafter 'the Act') under the registration: GSTIN- 07AGCPK1126B2Z5.

3. On 28.01.2020, a search was conducted at the petitioner's residence, House No. 3-4, Pocket 6, Sector-24, Rohini, Delhi, under Sub-section (2) of Section 67 of the Act. During the aforementioned operations, certain items and currency were seized from the ground floor of the petitioner's residence. The relevant extract of the order of seizure (Form GST INS-02) listing out the goods and items seized by the respondent authorities, is reproduced hereinbelow:

"A) Details of goods seized:

Sr. No.	Description of Goods	Quantity/Units	Make/Mark or Model	Remark
01	Silver Bar	Silver Bar 29872 (29.5 kgs)	2017	
02	Silver Bar	Silver Bar 14948(14.5 kgs)	2018	

Sr. No.	Description of books/ documents/ Equipments things seized	Page No.
1.	Sale Bill Book	251-300
2.	Axis Bank Cheque Book 917020084690138	125593-125605
3.	PNB Cheque Book 0155002106140506	260829-260920
4.	PNB Cheque Book 0155002106140506	610455-610460
5.	PNB Cheque Book 0617000100149333	705753-705770
6.	PNB Cheque Book 0617000100292510	929211-929250
7.	PNB Cheque Book 6582002100002424	034980-034990
8.	Green Colour Saraswati Note Book	01-01(Written Page)
9.	Red Colour Redmi 6A Mobile	IMEI 1 No. : 869956041874739 IMEI 2 No. : 869956041874747
10.	Blue Colour Redmi 6A Mobile	IMEI 1 No. : 869956048349958 IMEI 2 No. : 869956048349966
11.	One Plus Brand Mobile	IMEI 1 No. : 99001345485110 IMEI 2 No. : 869430049682205
12.	IPhone 11 Pro	IMEI 1 No. : 353844103083170 IMEI 2 No. : 353844103043356
13.	CASH INDIAN Currency	7 Lakh (10*50*100+50*50*100+ 500*4*100+2000*1*100)
14.	Kachha Parchi	Yellow Packet
		M/s. Nitin Metal, M/s. Adi Shree, M/s. Shree Ganesh Trading Co.,"

4. Thereafter on 29.01.2020, the petitioner was arrested by the Central Tax Officers of GST Commissionerate, North Delhi, as it was alleged that he had committed offences, punishable under Clause (i) of Sub- section (1) of Section 132 of the Act. The petitioner was released on bail on 21.03.2020 by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

5. The Sales Tax Officer Class II/AVATO, Ward 30: Zone 1: Delhi (Delhi State GST Officer) issued a notice under Section 74 of the Act on 10.11.2020 proposing a demand of ₹24,20,900/- including penalty of a sum of ₹12,10,450/-. The petitioner responded to the said notice by his letter dated 16.11.2020. The petitioner contended that, no reliance was placed on any of the documents, Indian currency, or any other items which were seized on 28.01.2020, as detailed in the seizure report, in the said notice.

6. The petitioner, by letter dated 23.03.2021, requested the Additional Commissioner, Central Tax GST, West Delhi, to release the goods, documents and cash seized from his premise on 28.01.2020. The petitioner contended that even if the proviso to Subsection (7) of Section 67 of the Act was applicable, no notice was issued with respect to the seizure of goods, within a period of six months from the date of seizure. Therefore, the seized goods were liable to be restored.

7. The petitioner has filed the present petition under Article 226/227 of the Constitution of India, being aggrieved by the failure on the part of the respondents to release his goods even after lapse of one year from the date of the seizure.

Submissions

8. It is the petitioner's case that the proper officer does not have any powers under Section 67 of the Act to seize currency as the same is not 'goods' as defined under the Act. The petitioner contends that the proper officer has the power to seize the goods under Sub-section (2) of Section 67 of the Act only if he has reasons to believe that the same are liable for confiscation. The petitioner also claims that the goods seized are liable to be returned if no notice in respect of the said goods is served within a period of six months from the date of seizure of the said goods.

9. It is contended that since no notice under Sub-section (2) of Section 67 of the Act was issued in respect of the seized silver bars, which fall within the definition of goods, within the stipulated period of six months, the said goods are liable to be released.

10. Mr. Rajesh Jain, learned counsel appearing for the petitioner contended that the Sub-section (2) of Section 67 of the Act is pari materia Section 105 and Sub-sections (1), (2) and (3) of Section 110 of the Customs Act, 1962, and referred to the decision of the Supreme Court in *I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another: (1989) 3 SCC 202*. On the strength of the said decision, he contended that if a notice is not given within a period of six months from the date of seizure

of the goods and the said period is not extended within the said period of six months, the seized goods are liable to be returned.

11. He submitted that currency neither fell within the definition of the terms 'goods' nor could be considered as 'things'. He contended that the term 'things' was required to be construed by applying the doctrine of ejusdem generis, as taking colour from the preceding words, 'documents' and 'books'.

12. Mr. Harpreet Singh, learned counsel appearing for the Revenue countered the contentions advanced on behalf of the petitioner. He contended that silver bars and cash seized by the proper officer were not covered under the definition of 'goods' and therefore, there was no requirement for issuing any show cause notice for confiscation of the same. He submitted that the silver bars and cash were seized as 'things' and not as 'goods' that were liable for confiscation. He referred to the definition of the word 'goods' under the Act and contended that 'money' and 'securities' were excluded from the said definition. He contended that silver bars were 'securities' and were seized as such.

13. He countered the submission that the proper officer did not have any power to seize cash. He submitted that the proper officer had the power to seize 'things' under Sub-section (2) of Section 67 of the Act and the said term was required to be interpreted in an expansive manner. He referred to the decision of the Madhya Pradesh High Court in *Kanishka Matta v. Union of India & Ors.: 2020 SCCOnline MP 4564* decided on 26.08.2020 in support of his contention.

Reasons & Conclusion

14. The principal controversy to be addressed in the present petition is whether the proper officer has the power to seize the currency and other valuable assets under Section 67 of the Act, even though he has no reason to believe that the same are liable for confiscation. The controversy, essentially, relates to interpretation of Section 67 of the Act. The said section is set out below:

> "67. **Power of inspection, search and seizure.**— (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
>
> (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in

hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break

open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word —Magistrate, wherever it occurs, the word —Commissioner were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

15. In terms of Sub-section (1) of Section 67 of the Act, the proper officer, not below the rank of Joint Commissioner, is empowered to authorize any officer of the central tax to inspect any place of business of a taxable person or persons engaged in the business of transporting or storing of goods. However, such inspection can be authorized only if the proper officer has reasons to believe that the taxable person has (i) suppressed any transaction relating to supply of goods or services or both; or (ii) suppressed the stock of goods in hand; or (iii) has claimed input tax credit in excess of his entitlement; or (iv) has otherwise contravened any provision of the Act or the Rules made thereunder, to evade payment of tax. Such inspection can also be authorized if the proper officer believes that any person who is engaged in the business of transporting goods, or operating a warehouse or a godown or any other place, is keeping goods that have escaped payment of tax or has kept his accounts or goods in such a manner, which is likely to cause evasion of tax payable under the Act.

16. It is apparent from the above, the power of inspection under Sub-section (1) of Section 67 of the Act is conferred to unearth any evasion of tax or any attempt to evade tax. Sub-section (1) of Section 67 of the Act is not a provision for recovery of tax or for securing the same.

17. The power to seize goods is specified in Sub-section (2) of Section 67 of the Act. In terms of the said Sub-section, if the proper officer has reasons to believe that any goods, which are liable for confiscation, or any documents or books or things, which in his opinion will be useful or relevant for any proceedings under the Act, are secreted at any place;

he may either search and seize the said goods, documents or books or things, or authorize any officer of the Central Tax to do so.

18. It is clear from the plain language of Sub-section (2) of Section 67 of the Act that only those goods can be seized, which the proper officer has reasons to believe are liable for confiscation. Insofar as seizure of documents or books or things is concerned, the same is permissible provided the proper officer is of the opinion that the said documents or books or things shall be useful or relevant to any proceedings under the Act.

19. The first proviso to Sub-section (2) of Section 67 of the Act provides that if it is not practical to seize such goods – that is, goods that are liable for confiscation – the proper officer or any officer authorized by him may direct the owner or custodian of the goods, not to remove or part with the same.

20. The second proviso to Sub-section (2) of Section 67 of the Act clarifies that insofar as seized documents or books or things are concerned, the same shall be retained only so long as it is necessary for their examination and for any inquiry or proceedings under the Act. It is, thus, clear that seizure of documents or books or things are only for the purpose of examination or inquiry or any proceedings under the Act. And, the seized documents or books or things can be retained only so long as it is necessary for the said purpose – for their examination, any inquiry, or proceedings under the Act.

21. Sub-section (3) of Section 67 of the Act further requires that documents or books or things as referred to in Sub-section (2) of Section 67 of the Act or any other documents or books or things produced by the taxable person or any other person “which have not been relied upon” for the issue of notice under the Act or Rules made thereunder shall be returned to such person, within the period not exceeding thirty days from the issue of such notice.

22. In terms of Sub-section (6) of Section 67 of the Act, the goods seized under Sub-section (2) of Section 67 of the Act are required to be released on provisional basis upon execution of a bond and furnishing of a security, in such manner and of such quantum, as may be prescribed or on payment of applicable tax, interest and penalty payable as the case may be.

23. In terms of Sub-section (7) of Section 67 of the Act where goods are seized under Sub-Section (2) of Section 67 of the Act and no notice,

in respect thereof, is given within the period of six months of seizure of the goods, the goods are required to be returned to the person from whom the same were seized. This period of six months can be extended on sufficient cause being shown.

24. In terms of Sub-section (8) of Section 67 of the Act, the Government also has the power to specify goods, which are required to be disposed of by the proper officer, as soon as may be, after its seizure under Sub-section (2) of Section 67 of the Act. Such goods are required to be specified having regard to the perishable or hazardous nature of the goods, constraints of storage space, depreciation in the value of goods with the passage of time, or other relevant consideration.

25. In terms Sub-section (11) of Section 67 of the Act, the proper officer may seize accounts, registers or documents produced before him if he has reason to believe that any person has evaded or attempting to evade payment of tax. However, it is necessary for him to record the reasons in writing for seizure of the accounts, register or documents. However, such accounts, registers or documents can be retained only as long as it is necessary in connection with any proceedings under the Act or the rules made thereunder for prosecution.

26. The question whether the proper officer has any power to seize cash or other asset is required to be addressed bearing in mind the aforesaid scheme of Section 67 of the Act. 27. The expression 'goods' is defined in Sub-section (52) of Section 2 of the Act as under:

> "(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"

28. The expression 'goods' covers all movable property other than 'money' and 'securities'. The expression 'securities' as defined in Sub-section (101) of Section 2 of the Act has the same meaning as assigned to it in Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956.

29. Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 reads as under:

> "2(h) "securities" —include
>
> (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;"

30. It is at once clear from the above that silver bars being movable assets are not securities within the meaning of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. The contention that silver bars are 'securities', as advanced on behalf of the Revenue, is insubstantial. Although the definition of the term 'securities' is an inclusive definition, the same cannot be read in disregard of Subclauses (i) to (iii) of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 or the scope of that enactment. Plainly, as silver bars do not fall within the definition of 'securities' under Subsection (101) of Section 2 of the Act read with Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. Thus, silver bars are included in the term 'goods' as defined under Sub-section (52) of Section 2 of the Act.

31. Cash (Indian currency) is clearly excluded from the definition of the term 'goods' as the same falls squarely within the definition of the word 'money' as defined in Sub-section (75) of Section 2 of the Act

32. Having stated the above, we are of the view that it would not be apposite to construe the word 'things' under Sub-section (2) of Section 67 of the Act to be mutually exclusive to the term 'goods'. The term 'goods' as used in Sub-section (2) of Section 67, essentially, relates to goods, which are subject matter of supplies that are taxable under the Act. Admittedly, the goods that can be seized under Sub-section (2) of the Act are goods, which the proper officer believes are liable for confiscation. In this regard, it is relevant to refer to Section 130 of the Act, which provides for confiscation of goods and conveyances. Subsection (1) of Section 130 of the Act specifies the goods and conveyances that may be liable for confiscation under the said Act and is set out below:

"130. Confiscation of goods or conveyances and levy of penalty.—
(1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;

or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

33. A plain reading of Clauses (i) to (iv) of Sub-Section (1) of Section 130 of the Act indicates that the goods, which are supplied or received in contravention of the provisions of the Act with the intent to evade payment of tax; goods which are unaccounted for and chargeable to tax; supply of goods chargeable to tax, by a taxpayer, without applying for registration; and cases where the taxpayer contravenes any provision of the Act with the intent to evade payment of tax, are liable for confiscation.

34. The word 'goods' as defined under Sub-section (52) of Section 2 of the Act is in wide terms, but the said term as used in Section 67 of the Act, is qualified with the condition of being liable for confiscation. Thus, only those goods, which are subject matter of or are suspected to be subject matter of evasion of tax. During the course of search under Sub-section (2) of Section 67 of the Act, the officer conducting the search may find various types of movable assets. Illustratively, in an office premises, one may find furniture, computer, communication instruments, air conditioners

etc. Those assets although falling under the definition of 'goods' cannot be seized, if the proper officer has no reasons to believe that those goods are liable to be confiscated.

35. Sub-section (6) of Section 67 of the Act provides for provisional release of the goods so seized on payment of applicable tax, interest and penalty. This also indicates that the goods, which may be seized under Sub-section (2) of Section 67 are goods that are subject matter of evasion of tax or are supplies in respect of which the proper officer has reason to believe, taxes would not be paid.

36. Sub-section (7) of Section 67 of the Act mandates that the goods seized under Sub-Section (2) would be returned to the person from whose possession the goods were seized, if no notice in respect of those goods is issued within a period of six months. It is apparent that a notice in respect of such goods can be issued only where taxes, interest or penalty in respect of the said goods have not been paid or there are reasons to believe so.

37. If the goods are of the nature specified in Sub-section (8) of Section 67 of the Act, that is, are perishable or hazardous; or are depreciable with the passage of time; are subject to constraints of storage space and are so specified by the Government, the same may be disposed of, after their seizure.

38. The second category of items – that is, items other than goods, which the proper officer believes are liable for confiscation – which can be seized are 'documents or books or things'. Sub-section (2) of Section 67 of the Act makes it amply clear that such items – that is, documents or books or things – may be seized if the proper officer is of the opinion that it shall be useful or relevant to any proceedings under the Act. The words 'useful for or relevant to any proceedings under the Act' control the proper officer's power to seize such items.

39. Documents and books are also covered under the wide definition of 'goods' under Sub-section (52) of Section 2 of the Act but the same are not goods that are liable for confiscation. Seizure of such documents or books is not contemplated for the reason that they are subject matter of supplies in respect of which tax has been evaded; seizure of books and documents is contemplated only for the purpose that they may contain information, which may be useful or relevant for any proceeding under the Act. Hence, the purpose of providing for seizure of such items is to secure material information, which may be useful or relevant for the proceedings under the Act.

40. It is clear from the schematic reading of Section 67 as well as other provisions of the Act that the purpose of Section 67 of the Act is not recovery of tax; it is not a machinery provision for enforcing a liability. The purpose of Section 67 of the Act is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax. In respect of goods and supplies, which are subject matter of evasion, the proper officer has the power to seize the goods to ensure that taxes are paid. Once the department is secured in this regard – either by discharge of such liability or by such security or bond as the concerned authority deems fit – the goods are required to be released in terms of Sub-section (6) of Section 67 of the Act.

41. The second limb of Section 67(2) of the Act permits seizure of documents or books or things so as to aid in the proceedings that may be instituted under the Act. The documents or books or things cannot be confiscated and have to be returned. This is amply clear from the plain language of the second proviso to Sub-section (2) of Section 67 of the Act. In terms of the second proviso to Sub-section (2) of Section 67, the documents or books or things seized are required to be retained only for so long as it may be necessary *"for their examination and for any inquiry or proceedings under the Act"*. Once the said purpose is served, the books or documents or things seized under Subsection (2) cannot be restrained and are required to be released.

42. The second proviso, although couched as a proviso, is an integral part of Sub-section (2) of Section 67 of the Act. The same clearly reflects that the legislative intent of empowering seizure of documents or books or things is for enabling their use in aid of the proceedings under the Act. Thus, seizure of such documents or books or things is conditional upon the proper officer's opinion. That the same are "useful for or relevant to" such proceedings.

43. Sub-section (3) of Section 67 of the Act, consistent with the legislative intent of permitting seizure of books or documents or things, provides that if the documents or books or things seized under Sub-Section (2) are not relied upon for issue of a notice under the Act or Rules made thereunder, the same shall be returned within a period of thirty days. Although, there is no ambiguity in the language of Sub-section (2) of Section 67 of the Act that seizure of books or documents or things is permissible only if the same are considered useful for or relevant to the proceedings under the Act; Sub-section (3) of Section 67 makes it amply clear that the purpose of seizure of books or documents or things is only for the purpose of reliance in the proceedings under the Act. It, thus, posits that if the documents or

books or things are not relied upon in any notice that is issued, the same are liable to be returned.

44. It follows from the contextual interpretation of Sub-section (2) and Sub-section (3) of Section 67 that seizure of books or documents or things are only for the purpose of relying on such material in proceedings under the Act.

45. It is also relevant to refer to Sub-section (11) of Section 67 of the Act. The said Sub-section empowers the proper officer to seize, for reasons to be recorded in writing, the accounts, registers or documents, which are produced before him and to retain the same so long as it is necessary "in connection with any proceedings under this Act or the rules made thereunder for prosecution".

46. It is clear from the Scheme of Section 67 of the Act that the word 'things' is required to be read, ejusdem generis, with the preceding words 'documents' and 'books'. It is apparent that the legislative intent of using a wide term such as 'things' is to include all material that may be informative or contain information, which may be useful for or relevant to any proceedings under the Act. Although, documents and books are used to store information; they are not the only mode for storing information. There are several other devices that are used to store information or records such as pen-drives, personal computers, hard disks, mobiles, communication devices etc. The word 'things' would cover all such devices and material that may be useful or relevant for proceedings under the Act. The word 'things' must take colour from the preceding words, 'documents' and 'books'. It denotes items that contain information or records, which the proper officer has reason to believe is useful for or relevant to the proceedings under the Act. The context in which the word 'things' is used makes it amply clear that, notwithstanding, the wide definition of the term 'things', the same is required to be read ejusdem generis with the preceding words. It is apparent that the legislative intent in using a word of wide import is to include all possible articles that would provide relevant information, records, and material which may be useful for or relevant to proceedings under the Act.

47. We are unable to accept that the word 'things' must be read expansively to include any and every thing notwithstanding that the same may not yield and / or provide any material useful or relevant to any proceedings under the Act as contended on behalf of the Revenue. It is necessary to bear in mind that power of search and seizure is a drastic power; it is invasive of the rights of a taxpayer and his private space.

Conferring of unguided or unbridled power of this nature would fall foul of the constitutional guarantees. It necessarily follows that such power must be read as circumscribed by the guidelines that qualify the exercise of such power, and the intended purpose for which it has been granted. As stated above, it is contextually clear that exercise of such power is restricted only in cases where in the opinion of the proper officer, seizure is useful for or relevant to any proceedings under the Act. The second proviso of Sub-section (2) and Sub-section (3) of Section 67 of the Act makes it amply clear that the purpose of seizure is for the purpose of relying on the same in proceedings under the Act.

48. It is relevant to refer the decision of the Bombay High Court in Emperor v. Hasan Mama: AIR 1940 Bom 378. In the said case, the accused was convicted under Section 152 of the Bombay Municipal Boroughs Act, 1925. The allegation against the accused was that he had allowed the hand driven lorries containing fruits to remain on a public street at Ahmedabad for more than half an hour. Section 152 of the Bombay Municipal Boroughs Act, 1925 reads as under:

> "(1) Whoever in any area after it has become a municipal district, or borough
>
> (a) shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, or
>
> (b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise or any other thing, in any public place or street … shall be punished …"

49. The Division Bench of the Bombay High Court rejected the contention that the hand driven lorry containing fruits could be considered as 'thing' either under Clause (a) or Clause (b) of Subsection (1) of Section 152 of the Bombay Municipal Boroughs Act, 1925. It is held that the word 'thing' in both the clauses is required to be construed ejusdem generis. The hand driven lorry thus could not be considered as a stall or any projecting structure or a box, bale, package or merchandise. The Court further held as under:

> "The question is whether the hand-cart, which the accused had kept in the street, fell within the prohibition contained in s. 152, sub-s. (1), of the Bombay Municipal Boroughs Act. It was conceded in

> the lower Court that the case did not fall within sub-s. (1)(a) of that section. But Mr. G.N. Thakor, who seldom concedes anything, did not concede that proposition. He says that the act of the accused amounted to setting up a stall. No doubt you may have a stall on wheels, but I am clearly of opinion that introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within s. 152(1)(a). In my opinion that sub-section deals with making some form of addition or annexe, more or less permanent, to a building in the street. It is directed against the man who has a shop or house in the street, and who encroaches upon the street by making some sort of addition to his house or shop.
>
> I think the real question is whether the case can be brought within s. 152, sub-s. (1)(b). In my opinion the words "or any other thing" must be read ejusdem generis as the words "box, bale, package or merchandise". Those words seem to cover merchandise, and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. In my view a motor car or a motor lorry or a horse drawn or hand-propelled vehicle, though containing merchandise and left standing in a street, cannot be said to come within the section. The hand lorry of the accused clearly falls within the definition of vehicle contained in s. 3, sub-s. (21), of the Bombay Municipal Boroughs Act. The control of vehicles in streets is dealt with by the Bombay District Police Act. Whatever the powers of the police may be under that Act, I am of opinion that the learned Sessions Judge was right in the view he took that a vehicle does not fall within the mischief of s. 152."

50. The contextual interpretation of all Sub-sections of Section 67 of the Act clearly indicates that the same do not contemplate seizure of valuable assets, for securing the interest of Revenue.

51. In the case of *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.: (1987) 1 SCC 424*, the Supreme Court held as under:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known.

> With this knowledge, the statute must be read first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

52. In *Balram Kumawat v. Union of India & Ors.: AIR 2003 SC 3268*, the Supreme Court observed that:

> "20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole, statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature."

53. In the case of State of West Bengal v. Union of India: AIR 1963 SC 1241, the Supreme Court held as under:

> "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

54. Section 67 of the Act is not a machinery provision for recovery of tax; it is for ensuring compliance and to aid proceedings against evasion of tax. Section 79 of the Act provides for the machinery for recovery of tax. Section 83 of the Act provides for provisional attachment of any property belonging to a taxable person to safeguard the interests of the Revenue. Section 67 of the Act must be read schematically along with other provisions of the Act.

55. The Revenue has averred in its counter affidavit that cash and silver bars in question were seized because "the petitioner could not produce any lawful evidence of its purchase / possession and they appeared to be sale proceeds from the goodless / fake invoices being transacted by the

petitioner". The search and seizure operations under Section 67 of the Act are not for the purpose of seizing unaccounted income or assets or ensuring that the same are taxed. The said field is covered by the Income Tax Act, 1961. Thus, even if it is assumed that the petitioner could not produce any evidence of purchase of the silver bars or account for the cash found in his possession, the same were not liable to be seized under Sub-section (2) of Section 67 of the Act. The power of the proper officer to seize books or documents or things does not extend to seizing valuable assets for the reasons that they are unaccounted for or may be liable to confiscation under any other statute. Concededly, there is no material to indicate that the particular silver bars or cash were received by the petitioner in specie against any particular fake invoice.

56. There may be cases where the Revenue finds that a particular currency note or any particular asset has evidentiary value to establish the Revenue's case. Illustratively, a delinquent dealer supplies goods without invoices only on presentation of a currency note that bears a particular number. The presentation of the currency note is used as a means of authenticating the identity of the purchaser. The number of the particular currency note is recorded in diary maintained by the purchaser. The Revenue Officer ascertains this modus operandi of evasion of taxes. The currency note, corelated with the diary, would be relevant in establishing evasion of tax in respect of certain goods. Undoubtedly, in such cases, the currency note is material that yields information as to the modus adopted for evading tax; the proper officer may seize the currency note for its evidentiary value and relevance in establishing evasion of tax in proceedings under the Act. The same may be relied upon in the proceedings that may ensue. The particular currency note in such a case would yield certain information when read in conjunction with the diary. It is material to note that such currency note can be retained for so long as may be necessary for its "examination and for any enquiry or proceedings under the Act". Cash or other assets, which are not required in species in aid of any proceedings, but represent unaccounted wealth, cannot be seized under Section 67 of the Act. This Court had pointedly asked Mr. Harpreet Singh whether there was any material showing information that the currency or the silver bars that were seized could be traced in species to any transaction which the Revenue required to establish in any proceedings. However, the answer to the same was in the negative. It is, thus, clear that the silver bars and the cash were seized only on the ground that it was 'unaccounted wealth' and not as any material which was to be relied upon in any proceedings under the Act.

57. Mr. Harpreet Singh has placed reliance on the decision of the Madhya Pradesh High Court in Kanishka Matta v. Union of India & Ors. (supra). In that case, the Division Bench at Indore had rejected the

prayer for release of ₹66,43,130/- that were seized from the premises of the petitioner. The Court held that the word 'things' as appearing in Sub-section (2) of Section 67 of the Act is required to be given wide meaning as per Black's Law Dictionary. The Court also referred to Wharton's Law and had noted that the word 'thing' is defined to include 'money'. In addition, the Court had also referred to a decision of the Supreme Court referring to the Heydon's Rule, and concluded that money was included in the word 'things'. With much respect to the Hon'ble Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of Subsection (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584 in Heydon's case: 76 ER 637) requires a statute to be interpreted in the light of its purpose. The purpose of the Act is not to proceed against unaccounted wealth. The provision of Section 67 of the Act is also not to seize assets for recovering tax. Thus, applying the principle of purposive interpretation, the power under Section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for.

58. It is also material to note that the show cause notice dated 10.11.2020 does not refer to any documents or material relied upon by the Revenue for proposing any such demand. According to Mr. Harpreet Singh, the said notice is not relevant as it is issued by State Authorities. He states that Central Tax Authorities have not issued any notice.

59. The aforesaid contention is unpersuasive as the demand under the said notice issued under Section 74 of the Act includes a demand of ₹6,05,225/- on account of Central Goods and Service Tax.

60. In terms of Sub-section (3) of Section 67 of the Act, the documents, books and things seized under Sub-section (2) which have not been relied upon for issuance of a notice, under the Act or Rules made thereunder, are required to be returned to the person from whom the such items were seized within a period not exceeding thirty days from the issuance of notice.

61. The notice dated 10.11.2020 proposes to raise a demand for the month of April, 2019 (which is prior to the date of the search). Although, Mr. Singh contended that the said notice is not a notice issued by the Central Authorities but he does not dispute that the said notice does not

rely on any of the items seized during the search operations conducted on 28.01.2020. Moreover, in the counter affidavit, it is alleged that "the petitioner had filed ineligible / bogus GST Input Tax Credit on the strength of fake / goodless invoices issued by various bogus / non-existent firms". Thus, it follows that the demand of CGST/SGST raised in the notice dated 10.11.2020 issued under Section 74 of the Act would take into account the said allegation. The notice under Section 74 of the Act does not specify any particular reasons to show that "Input Tax Credit has been wrongly availed or utilized". In the circumstances, we are unable to accept that the notice dated 10.11.2020 is not the "notice" as referred to under Sub-section (3) of Section 67 of the Act.

62. Thus, even if, it is accepted, which we do not, that the proper officer could seize the currency and other valuable assets in exercise of powers under Sub-section (2) of Section 67 of the Act, the same were required to be returned by virtue of Sub-section (3) of Section 67 of the Act because the silver bars and currency have not been relied upon in the notice issued subsequently.

63. In view of the above, the petition is allowed. The respondents are directed to forthwith release the currency and other valuable assets seized from the petitioner during the search proceedings conducted on 28.01.2020. It is, however, clarified that the respondents are not precluded from instituting or continuing any other proceedings under the Act in accordance with law. Nothing stated in this order shall be construed as an expression of opinion on the petitioner's liability to pay any tax, penalty or interest under the Act.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru & Amit Mahajan, JJ]

W.P.(C) 11629/2023

Bansal International ... Petitioner

Versus

Commissioner Of Dgst And Anr. ... Respondents

Judgement delivered on: 21.11.2023

WHETHER THE PERIOD FOR WHICH THE INTEREST IS PAYABLE UNDER SECTION 56 OF THE DGST ACT – WHICH IS SIMILARLY WORDED AS SECTION 56 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (HEREAFTER 'THE CGST ACT')

– COMMENCES FROM THE DATE IMMEDIATELY AFTER EXPIRY OF SIXTY DAYS FROM THE RECEIPT OF AN APPLICATION FOR REFUND OR FROM A LATER DATE, IN CASE THE REFUND IS INITIALLY DENIED BUT SUBSEQUENTLY ALLOWED BY THE APPELLATE AUTHORITY, APPELLATE TRIBUNAL, OR A COURT?

Held

The applications for refund filed pursuant to orders passed by the Appellate Authority, do not invite any fresh adjudication. The said applications are merely to implement the orders already passed. Sensu stricto, such application is only for the purposes of convenience and to retrigger the processing of the refund claimed. It is obvious that the petitioner's claim for refund cannot be subjected to repeated rounds of adjudication by the Adjudicating Authority. Once an application for refund under Section 54(1) of the CGST Act has been filed, the same requires to be carried to its logical conclusion. If the said claim is denied by the Adjudicating Authority and the applicant prevails before the Appellate Authority, the order of the Appellate Authority is required to be implemented. However, in one sense, the subsequent application filed by a person pursuant to succeeding before the Appellate Authority, is solely for the purposes of giving a nudge to the process of disbursal of the refund claim and for the proper officer to determine and disburse the interest as payable.

The petition is, accordingly, allowed. The impugned order is set aside. The Adjudicating Authority is directed to process the petitioner's application for refund filed on 16.05.2023, in accordance with this decision.

Present for the Petitioner	:	Mr Rajesh Jain, Mr Virag Tiwari, Mr K.J. Bhat & Mr Ramashish, Advocates.
Present for the Respondents	:	Mr Rajeev Aggarwal and Mr Aadish Jain, Advocates for R-1.

JUDGMENT

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning an order dated 11.07.2023 (hereafter '**the impugned order**') passed by the Additional Commissioner, Department of Trade and Taxes (hereafter 'the Adjudicating Authority'), whereby the petitioner's claim for interest of ₹13,12,761/- calculated at the rate of 9% per annum, on the refund of GST already granted, was rejected. The Adjudicating Authority referred to Section 56 of the Delhi Goods and Services Tax Act, 2017 (hereafter ' DGST

Act') and had held that in terms of the proviso to Section 56 of the DGST Act, interest was payable only if the refund was not made within sixty days from the receipt of the application filed pursuant to the order passed by the Appellate Authority. Since in the present case, the refund was processed within the period of sixty days from the date of such application, no interest was payable under Section 56 of the DGST Act.

2. According to the petitioner, the Adjudicating Authority has misinterpreted the provisions of Section 56 of the DGST Act. The petitioner claims that he is entitled to interest for the period immediately after the expiry of sixty days from the date of the first application for a refund and not after sixty days from the application filed after succeeding in his claim for refund before the Appellate Authority.

3. In view of the above, the principal controversy to be addressed is whether the period for which the interest is payable under Section 56 of the DGST Act – which is similarly worded as Section 56 of the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act') – commences from the date immediately after expiry of sixty days from the receipt of an application for refund or from a later date, in case the refund is initially denied but subsequently allowed by the Appellate Authority, Appellate Tribunal, or a court.

4. Briefly stated, the context in which the aforesaid controversy arises is as under:

4.1. The petitioner (Arun Bansal) carries on business of export of goods in the name of its proprietorship concern, Bansal International. On 06.02.2020, the petitioner filed an application claiming a refund of Input Tax Credit (hereafter 'ITC') of ₹53,92,516/- (₹8,62,883/- Central GST, ₹8,62,883/- Delhi GST and ₹36,66,750/- Cess) in respect of goods exported without payment of tax in the month of November, 2019.

4.2. The petitioner's application for the refund was acknowledged on 30.07.2020 and on the same date, the concerned officer issued a Show Cause Notice (in form RFD-08) proposing to reject the petitioner's application for a refund on the ground that his claim was wrongful. Thereafter, the concerned officer passed an order dated 10.11.2020 sanctioning a refund of ₹1,08,293/- but rejecting the remaining refund claim of ₹52,84,223/- as not tenable under Section 62(2)(c) of the DGST Act.

4.3. The Adjudicating Authority found that there was no inward supply to M/s Suvidha Enterprises, which was the supplier from whom the petitioner claims to have received the supplies. This was on account of the non-

generation of E-way Bills. According to the petitioner, the finding that no supplies had been received by M/s Suvidha Enterprises was incorrect as one M/s U.K. Traders of West Bengal had supplied goods to M/s Suvidha Enterprises through Railways. The petitioner also contended that its claim could not be denied on account of any doubt as to the supplies received by M/s Suvidha Enterprises. The petitioner contended that since there was no dispute that it had paid taxes on input supplies received from its supplier (M/s Suvidha Enterprises), it was entitled for a refund of the same.

4.4. The petitioner filed an appeal before the Appellate Authority assailing the order dated 10.11.2020 to the extent that the petitioner's claim for refund was rejected.

4.5. The Appellate Authority found the appeal in favour of the petitioner. The petitioner's claim that one M/s U.K. Traders of Calcutta had supplied goods to M/s Suvidha Enterprises, Delhi through the Railways, was verified and confirmed by the Railways pursuant to a letter dated 09.09.2022, issued to the Chief Parcel Officer Northern Railways. The Appellate Authority also accepted the petitioner's contention that it was open for a taxpayer to discharge its tax obligations either in cash or through utilisation of ITC admissible in respect of such supplies. Accordingly, the Appellate Authority set aside the order dated 10.11.2020 passed by the Adjudicating Authority to the extent that it rejected the petitioner's claim for refund. The petitioner was directed to file an application for fresh refund and the Adjudicating Authority was directed to process the petitioner's application in accordance with the timeline as prescribed in the CGST/DGST Act and the Central Goods & Services Tax Rules, 2017 (hereafter 'the Rules'). The petitioner's claim for interest was denied.

4.6. On 23.11.2022, the petitioner once again filed an application (in RFD-01) for the refund of ₹52,84,223/- as well as the interest. Pursuant to the said application, the Adjudicating Authority passed an order dated 28.12.2022 sanctioning a refund of balance amount of ₹52,84,223/- . However, the Adjudicating Authority did not sanction any amount on account of interest on the said amount. Thus, the petitioner's claim for refund was allowed in entirety but interest on the said amount was denied.

4.7. The amount of ₹52,84,223/- was credited into the petitioner's account on 03.01.2023. The petitioner once again filed an application on 16.05.2023 claiming an interest of ₹13,12,761/- computed at the rate of 9% per annum on refund already granted (Central GST = ₹2,09,120/, Delhi GST = ₹2,09,120/- and Cess = ₹8,94,521/-). The said application was rejected by the impugned order.

5. The petitioner has filed the present petition, inter alia, assailing the impugned order dated 11.07.2023 as well as the order dated 28.12.2022. The petitioner also impugns orders allocating the jurisdiction to the Additional/Special Commissioner to act as an Appellate Authority. However, the petitioner had confined the present petition to the denial of its claim of interest on the refund pertaining to the tax period, November, 2019.

6. At the outset, it would be relevant to refer to Section 56 of the CGST Act (which is identically worded as Section 56 of the DGST Act). The said Section reads as under:

> "56. **Interest on delayed refunds.** — If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:
>
> Provided that where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.
>
> Explanation. —For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)."

7. In terms of Section 54(1) of the CGST Act, any person claiming refund of tax and any interest paid on such tax or any other amount paid by him can make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If his refund as ordered, is not paid within a period of sixty days from the date of the

application, the applicant is required to be paid interest not exceeding 6% per annum from the date immediately after the expiry of sixty days from the date of receipt of the said application.

8. Sub-section (4) of Section 54 of the CGST Act requires the said application for refund to be accompanied by such documentary evidence as may be prescribed to establish that a refund is due to the applicant and such documentary or other evidence to establish that the incidence of tax and interest claimed has not been passed on to any other person. Sub-section (1) and Sub-section (4) of Section 54 of the CGST Act are relevant and are set out below:

"54. Refund of tax.–

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed."

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(4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person."

9. Chapter X of the Rules contains provisions regarding refund. Rule 89 of the Rules stipulates that an application for refund would be made electronically in form GST RFD-01 through common portal either directly or through a facilitation centre notified by the Commissioner.

10. Sub-rule (2) of Rule 89 of the Rules prescribes the documents required to be filed to establish that a refund is due to the applicant. Sub-rule (2) of Rule 89 of the Rules is set out below:

"Rule 89. Application for refund of tax, interest, penalty, fees or any other amount.-

(1) xxx xxx xxx

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **FORM GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in subsection (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, other than electricity;

(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward

Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of **FORM GST RFD-01** issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Explanation. - For the purposes of this rule-

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer."

11. Sub-rule (3) of Rule 89 of the Rules provides that before making an application relating to refund of ITC, the applicant would debit the electronic credit ledger by an amount equal to the refund claimed. Sub-rule (4) of Rule 89 of the Rules relates to computation of the refund payable in case of zero-rated supplies, without payment of tax.

12. Rule 90 of the Rules stipulates that an acknowledgement of an application for refund would be issued in Form GST RFD-02 and the period of sixty days within which a proper officer is required to make an order in respect of the application, as prescribed under Section 54(7) of the CGST Act, would be reckoned from the date of issuance of the acknowledgment. Sub-rules (1), (2) and (3) of Rule 90 of the Rules are set out below:

"Rule 90. Acknowledgement. -

(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who

shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."

13. It is apparent from the scheme of the CGST Act that an order in respect of an application for refund is required to be made within a period of sixty days from the date of receipt of an application, complete in all respects.

14. The provisions of Section 56 of the CGST Act read with the provisions of Sections 54(7) and 54(8) of the CGST Act makes it amply clear that an applicant would be entitled to interest on the amount of refund due for the period commencing from the date immediately after the expiry of sixty days from the date when an application (complete in all respects) has been received and acknowledged by the proper officer.

15. The petitioner's entitlement for interest cannot be defeated merely because the proper officer passed an incorrect order, which is subsequently rectified in the appellate proceedings.

16. In terms of Section 107 of the CGST Act, any person aggrieved by any decision or an order passed by an Adjudicating Authority under the CGST Act, the SGST Act or the UT CGST Act may appeal to the Appellate Authority within a period of three months from the date of communication of the said order. It is well settled that the appellate proceedings are in continuation of the original proceedings. In terms of Sub-section (11) of

Section 107 of the CGST Act, the Appellate Authority is required to pass such orders as it thinks fit and proper confirming, modifying, annulling the decision or the order appealed against. It is also specifically provided that the Appellate Authority shall not refer the case back to the Adjudicating Authority that has passed the decision or the order. Similarly, Section 112 of the CGST Act entitles any person aggrieved by an order passed under Sections 107 or 108 of the CGST Act (by the Appellate Authority or the revisional authority) to appeal to the Appellate Tribunal. Section 117 of the CGST Act provides an appeal to a High Court against any order passed by the Appellate Tribunal if the case involves a substantial question of law.

17. It is relevant to note that the appellate proceedings are in continuation of the original proceedings[1] and an order passed by the Adjudicating Authority would stand merged with the order passed by the Appellate Authority or the Appellate Tribunal/High Court. Once a person has triggered the proceedings for claiming refund by filing an application under Section 54(1) of the CGST Act along with all relevant documents as specified under Section 54(4) of the CGST Act read with Rule 89(2) of the Rules, which are acknowledged in terms of Rule 90 of the Rules, and his claim is ordered but not paid within a period of sixty days, his entitlement to interest is crystalised. In case where the claim initially is denied by the Adjudicating Authority but subsequently ordered by the Appellate Authority, Appellate Tribunal or the court, the said orders are deemed to be the orders passed under Section 54(5) of the CGST Act. This is expressly stipulated in the Explanation to Section 56 of the CGST Act. It is obvious that the right to receive interest would arise only if the refund is ordered under Section 54 of the CGST Act. The period for which the interest is to be calculated would commence from the date immediately after the expiry of sixty days from the date of the refund application.

18. Mr Rajeev Aggarwal, learned counsel appearing for the Revenue had contended that the grant of interest was not a matter of equity and therefore, is required to be granted strictly in accordance with the statute. He submitted that Rule 89(2) of the Rules, inter alia, provides that the person seeking refund must file an application accompanied by an order passed by the proper officer, or the Appellate Authority or the Appellate Tribunal or the court resulting in such refund. He submitted that Clause (a) of Sub-rule (2) of Rule 89 of the Rules made it clear that a separate application was required to be filed in case the claim of refund was allowed by the Appellate Authority, Appellate Tribunal or the court as the case may

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1 ***State of Kerela v. K.M Charia Abdullah & Co****: AIR 1965 SC 1585;* ***Gojer Bros Pvt Ltd v Ratan Lal Singh****: (1974)* 2 SCC 453.

be. He submitted that proviso to Section 56 of the CGST Act read with Rule 89(2)(a) of the Rules makes it clear that the interest would run from the date immediately after expiry of sixty days from the date of an application filed pursuant to the order passed by the Appellate Authority, Appellate Tribunal or the court.

19. We are unable to accept the said contention. There is no cavil that the taxpayer's right to interest is circumscribed by the text of the statutory provisions. It is also not the petitioner's case that he is entitled to interest in equity and in disregard of the provisions of Section 56 of the CGST Act.

20. As stated at the outset, the controversy essentially relates to the interpretation of Section 56 of the CGST Act. A plain reading of the main provision of Section 56 of the CGST Act clearly indicates that an applicant would be entitled to interest from the date immediately after expiry of sixty days from the date of receipt of application under Sub-section (1) of Section 54 of the CGST Act. Thus, on a plain reading of Section 56 of the CGST Act, the petitioner's entitlement to interest was required to be reckoned from the date of receipt of the application under Section 54 of the CGST Act. This, obviously, refers to the first application for refund, which is required to be made within a period of two years from the 'relevant date' as defined under Explanation (2) of Section 54 of the CGST Act.

21. The assumption that any application for the refund filed pursuant to any orders passed by the Appellate Authority, Appellate Tribunal or the court is required to be considered as a fresh application under Section 54(1) of the CGST Act, is clearly unmerited. This is apparent when one considers that an application under Section 54(1) of the CGST Act is required to be made within a period of two years from the relevant date. The logical sequitur of the Revenue's contention is that the period spent by the taxpayer in pursuing its appellate remedies would also be disregarded for the purposes of calculating the period of two years within which an application is required to be made under Section 54(1) of the CGST Act. Resultantly, the taxpayer would be denied its claim for refund altogether in cases where the first application for refund was made within the stipulated period of two years from the relevant date (as defined under explanation to Section 54 of the CGST Act) but the proceedings before the appellate forum had carried on beyond the said period. This is, plainly, unacceptable, and therefore, the assumption that the application filed after the appellate orders is required to be treated as a fresh application is clearly flawed.

22. It is well settled that an interpretation of a statute that leads to an absurd result must be eschewed. A statute must be interpreted to further

its object. The object of providing a period of limitation is clearly to deny the remedies to a person who has not availed the same within the period as stipulated. The rationale is that matters must rest finally within a defined period of time. Thus, the applicant cannot be denied interest on account of the time involved in appellate fora.

23. It is also well settled that an interest is a measure to compensate a person for denial of funds. In ***Union of India Through Director of Income Tax v. M/s Tata Chemicals Ltd.***[2], the Supreme Court had observed as under:

> "38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course."

24. It is also well settled that where a statute specifies or regulates the payment of interest, it would be payable in terms of the statute. But where the statute is silent and the payment of interest is not proscribed, the court would award reasonable interest on equitable grounds[3].

25. The object of providing payment of interest after the expiry of sixty days from the date of the refund application is to ensure that a taxpayer is

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2 (2014) 6 SCC 335

3 ***Modi Industries Ltd., Modi Nagar & Ors. v. Commissioner of Income Tax, Delhi & Anr:*** *(1995) 6 SCC 396;* ***Godavari sugar Mills Ltd. v. State of Maharashtra & Ors.:****(2011) 2 SCC 439;* ***Union of India & Ors. v. Willowood Chemicals Pvt Ltd. & Anr.*** *(2022) 9 SCC 341*

adequately compensated for denial of the funds that were legitimately due to it after accounting for a reasonable period of sixty days for processing its claim. The right of a taxpayer to receive such compensation would be severally diluted if the reference to the date of receipt of application under Section 54(1) of the CGST Act, in Section 56 of the CGST Act is construed to mean the date of an application for refund filed subsequently – that is, after the first application for refund is rejected in whole or in part – pursuant to the orders passed by the appellate fora.

26. We are of the view that on a plain reading of the main provisions of Section 56 of the CGST Act, a taxpayer would be entitled to interest from the date immediately after the expiry of sixty days from the receipt of the first application under Section 54(1) of the CGST Act, which is accompanied by the documents as specified under Section 54(4) of the CGST Act read with Rule 89 of the Rules.

27. We are also unable to accept that the proviso to Section 56 of the CGST Act in any manner dilutes the right of a taxpayer to receive interest under the main provisions of Section 56 of the CGST Act. It is well settled that a provsio to a clause must be read in the context of the main clause and not as a separate or an independent clause. The main clause and the proviso must be read as a whole.

28. In *Dwarka Prasad v. Dwarka Das Saraf*[4]*, V. R. Krishna Iyer, J.* observed that:-

> "18. ….The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (Thompson v. Dibdin, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

4 (1976) 1 SCC 128

"The proper course is to apply the broad general Rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (Maxwell on Interpretation of Statutes, 10th Edn., p. 162)"

29. In Union of India & Ors. v. VKC Footsteps (India) (P) Ltd.[5], the Supreme Court had observed as under:-

"91. Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognised, while heeding to the text and context. Justice G.P. Singh, in his seminal text, Principles of Statutory Interpretation [Justice G.P. Singh, Principles of Statutory Interpretation, (14th Edn., Lexis Nexis, 2016) pp. 215-234.] formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:

"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by Lush, J. [Mullins v. Treasurer of the County of Surrey, (1880) LR 5 QBD 170] : (QBD p. 173) '… When one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso.' In the words of Lord Macmillan [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7]: (SCC OnLine PC) '… The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.' The proviso may, as Lord Macnaghten [Local Govt. Board v. South Stoneham Union, 1909 AC 57 (HL)] laid down, be 'a qualification of the preceding enactment which is expressed in terms too general to be quite accurate' (AC p. 62). The general rule has been stated by Hidayatullah, J. [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] , in the following words : (AIR p. 1600,

5 (2022) 2 SCC 603

para 9) '9. … As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.' And in the words of Kapur, J. [CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713] : (AIR p. 717, para 9) '9. … The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment.…'"

92.2. A proviso is construed in relation to the subject-matter of the statutory provision to which it is appended:

"The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words, normally a proviso does not travel beyond the provision to which it is a proviso. 'It is a cardinal rule of interpretation', observed Bhagwati, J. [Ram Narain Sons Ltd. v. CST, AIR 1955 SC 765, p. 769, para 10] , 'that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'" [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 221.]

92.4. An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:

"The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort is to be made to give some meaning to the proviso and to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution." [Id, p. 226.]

30. Thus, the proviso to Section 56 of the CGST Act must not be read as replacing the main clause or diluting its import; it merely addresses a situation which is covered by the main clause.

31. It is important to note that the rate of interest as specified in the main provision of Section 56 of the CGST Act and the proviso to Section 56 of the

CGST Act is materially different. Whereas, the main provision of Section 56 of the CGST Act provides for an interest at the rate not exceeding 6% per annum, the proviso to Section 56 of the CGST Act stipulates interest at the rate not exceeding 9% per annum.

32. The learned counsel also informed this Court that the interest at the rate of 6% per annum and 9% per annum has been notified for the purposes of Section 56 of the CGST Act and the proviso to the said section, respectively. Thus, there are two separate rates of interest specified under Section 56 of the CGST Act. The interest at the rate of 6% is payable for the period commencing from a date immediately after expiry of sixty days from the date of an application under Section 54(1) of the CGST Act, however, this rate is enhanced for the period covered under the proviso to Section 56 of the CGST Act. The proviso to Section 56 of the CGST Act expressly provides that an interest at the rate of 9% per annum would be payable from the date immediately after the expiry of sixty days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Adjudicating Authority, Appellate Tribunal or a court that has attained finality. This clearly indicates that if a person's claim for refund is a subject matter of further proceedings, which finally culminate in orders upholding the applicant's entitlement, and yet the payment is not made within a period of sixty days from an application filed pursuant to such orders, the person is required to be compensated at a higher rate of interest, of 9% per annum. This higher rate of interest would run from the date immediately after the expiry of sixty days of the filing of such an application – that is, the application filed pursuant to the orders of the appellate fora and not the first application.

33. It is clear from a plain reading of Section 56 of the CGST Act that whereas the main provision of Section 56 of the CGST Act refers to the rate of interest applicable on the amount of refund due, which remains unpaid even after sixty days from the date of application for refund; the proviso provides for an increased rate of interest for the period that commences from the date immediately after the expiry of sixty days from the date of application which is filed pursuant to the claim for refund attaining finality in appellate proceedings. Section 56 of the CGST Act, thus, works as follows. The applicant claiming a refund is entitled to interest at the rate of 6% per annum from a date immediately after the expiry of sixty days from making an application under Section 54(1) of the CGST Act. However, if a person's claim is denied (or if granted is not accepted by the Revenue) and the order of the Adjudicating Authority is carried in appeal to the Appellate

Authority or to the Appellate Tribunal/High Court, which finally upholds the claim, the applicant may have to file a second application to secure the refund. If such application for refund filed by the person consequent to succeeding before the Appellate Authority, Appellate Tribunal or court, is not processed within a period of sixty days of filing the application, the applicant would be entitled to a higher rate of 9% per annum commencing from the date immediately after the expiry of sixty days of his application filed pursuant to the appellate orders. However, this does not mean that the rate of 6% per annum is not payable for the period commencing from the date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to the appellate orders. In another words, the proviso merely enhances the interest payable to a person for the period commencing from the date immediately after sixty days from the date of his application filed pursuant to its entitlement to refund claim attaining finality.

34. The applications for refund filed pursuant to orders passed by the Appellate Authority, do not invite any fresh adjudication. The said applications are merely to implement the orders already passed. Sensu stricto, such application is only for the purposes of convenience and to retrigger the processing of the refund claimed. It is obvious that the petitioner's claim for refund cannot be subjected to repeated rounds of adjudication by the Adjudicating Authority. Once an application for refund under Section 54(1) of the CGST Act has been filed, the same requires to be carried to its logical conclusion. If the said claim is denied by the Adjudicating Authority and the applicant prevails before the Appellate Authority, the order of the Appellate Authority is required to be implemented. However, in one sense, the subsequent application filed by a person pursuant to succeeding before the Appellate Authority, is solely for the purposes of giving a nudge to the process of disbursal of the refund claim and for the proper officer to determine and disburse the interest as payable.

35. In *SBI Cards & Payment Services Ltd. v. Union of India*[6], the Division Bench of Punjab and Haryana High Court had interpreted Section 56 of the CGST Act in a similar manner as is evident from the chart setting out the computation of interest, which was accepted by the Court. Paragraph 12 of the said decision, which sets out the computation of the interest payable to the petitioner in that case is set out below:

6 CWP-1851/2022 decided on 06.01.2023

"12. The Chart (Annexure P-3) indicating the delay in days is as follows:-

Sl. No.	Particulars	Amount in Rs.
1	Date of filing of refund application via Form GST RFD-01A (ARN No. AA060419007521I)	5-Apr-19
2	Amount of refund claimed	1,084,122,958
3	Interest rate u/S 54 proviso & Notification No. 13/2017 - Central Tax dated 28 June 2017	6%
4	60 days from filing of refund application	4-June-19
5	Date of filing of refund application via Form GST RFD -01A (ARN No.AA0610210489594) against High Court Order	28-Oct-21
6	60 days from filing of refund application against high court Order	27-Dec-21
7	Actual Date of Refund	4-Jan-22
8	Period of Interest upto 27 Dec 21	937
9	Interest amount up to 60 days of refund application against high court order	166,984,638
10	Interest rate u/S 56 proviso	9%
11	Additional Interest amount after 60 days of refund application against high court order	2,138,544
	Total Interest	1,69,123,181
	CGST 84,561,591	
	SGST 84,561,591"	

36. The petition is, accordingly, allowed. The impugned order is set aside. The Adjudicating Authority is directed to process the petitioner's application for refund filed on 16.05.2023, in accordance with this decision.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Yashwant Varma & Dharmesh Sharma, JJ]

W.P.(C) 5820/2022

ITD-ITD CEM JV ... Petitioner

Through : Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Sanjay Sharma and Mr. Ramashish, Advs.

versus

Commissioner of Delhi Goods And Services Tax ... Respondent

Through : Mr. Anuj Aggarwal, ASC, GNCTD along with Ms. Ayushi Bansal and Ms. Arshya Singh, Advs.

W.P.(C) 8352/2022 and CM APPL. 25160/2022 (Stay)

ITD-ITD CEM JV ... Petitioner

Through : Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Sanjay Sharma and Mr. Ramashish, Advs.

versus

Commissioner of Delhi Goods And Services Tax ... Respondent

Through : Mr. Anuj Aggarwal, ASC, GNCTD along with Ms. Ayushi Bansal and Ms. Arshya Singh, Advs.

Date of Order : 26.09.2023

The petitioner questions the jurisdiction of the OHA to commence hearing on those objections in light of the provisions contained in Section 74(9) of the DVAT Act and which embodies a legal fiction bidding us to hold that the objections submitted by an assessee would be deemed to have been allowed consequent to a failure of the OHA to dispose them of within a period of 15 days when computed as commencing from a written notice that may be submitted in terms of Section 74(8) of the DVAT Act.

The respondents have sought to adjust the amount of tax together with interest and penalty as was held to be due for FY 2010-2011 as well as a demand that stood raised for the first quarter of FY 2017-2018. The aforesaid adjustment is assailed with the petitioner contending that by the time the aforesaid adjustment came to be made, the OHA stood deprived of the jurisdiction to consider the objections in light of Section 74(9) of the Act. In the alternative and without prejudice to the above, it was submitted that even if it were to be assumed that the objections for FY 2010-2011were pending before the OHA, the provisions of Section 35(2) of the Act would apply and consequently, in the absence of an enforceable demand existing, no adjustment could have been made in light of Section 38(3)(a)(ii) of the Act.

Held

The objections tendered by the petitioner before the OHA remain pending on its board. The demand for the first quarter of FY 2017-2018 is clearly rendered unenforceable and could not have been adjusted against the refund as claimed by the petitioner for the first quarter of FY 2016-2017. This aspect is clearly covered by the decision in Flipkart.

We accordingly allow the instant writ petitions and quash the Hearing Notice dated 24 May 2022. The Refund Order of 29 April 2022 shall for reasons aforenoted stand set aside to the extent that it adjusts an amount of Rs. 13,60,14,547/-. The petitioner is held entitled to all consequential reliefs.

O R D E R

1. These two writ petitions were, with the consent of parties, heard together and are being disposed of in terms of the present common order. The principal question arises from W.P.(C) 8352 of 2022 with W.P.(C) 5820 of 2022 being limited to the framing of an appropriate direction commanding the respondents to refund the amounts claimed along with interest as per the return which was submitted by the petitioner for the first quarter of Financial Year[1] 2016-2017 under the relevant provisions of the Delhi Value Added Tax Act, 2004[2].

2. For the purposes of delineation of the issues which arise, we deem it apposite to reproduce the reliefs which are claimed in W.P.(C) 8352 of 2022 and which read as follows:-

> "a) quash and set aside the impugned hearing notice dated 24.5.2022 issued by the Spl. Commissioner-I for the same being non-est and without the authority of law;
>
> b) declare and hold that the deeming fiction as envisaged u/s 74(9) had come into play on the failure of the OHA to make the decision against the objections of 2010-11 within a period of 15 days form the service of notice in DVAT-41 on 4.5.2022;
>
> c) set aside the demand of tax and interest of Rs.8,80,89,920/- and penalty of Rs. 4,66,96,421/- as framed through DVAT-24 & DVAT-24A respectively on 29.3.2017; d) set aside the adjustment

1 FY

2 Act

of Rs.13,47,86,341/- made in the refund order issued in DVAT-22 on 29.4.2022 in consequence of coming into play of Sec 74(9);

e) held and declare the petitioner to be entitled to refund of Rs.13,47,86,341/- along with interest which has been adjusted while granting refund for the first quarter of 2016-17;"

3. As would be manifest from the aforesaid reliefs, the first challenge is laid to a Hearing Notice dated 24 May 2022 and which pertains to the objections which were filed by the petitioner before the Objection Hearing Authority[3] in respect of the Assessment Order dated 29 March 2017 framed for FY 2010-2011. Those objections are stated to have been filed on or about 29 May 2017. The petitioner questions the jurisdiction of the OHA to commence hearing on those objections in light of the provisions contained in Section 74(9) of the Act and which embodies a legal fiction bidding us to hold that the objections submitted by an assessee would be deemed to have been allowed consequent to a failure of the OHA to dispose them of within a period of 15 days when computed as commencing from a written notice that may be submitted in terms of Section 74(8) of the Act.

4. The petitioner additionally challenges the Refund Order dated 29 April 2022 and which has while disposing of the Refund Application dated 23 December 2017 made in connection with a return which was submitted for the first quarter of FY 2016-2017 adjusted an amount of Rs. 13,60,14,547/-. The details of that adjustment have been disclosed by the respondents themselves in their affidavit filed in W.P.(C) 5820 of 2022 and the tabular statement so set out in their affidavit is reproduced herein below:-

S. No.	Period	Tax + Interest	Penalty
1.	Annual 2010-11 Annexure R-3 (Colly)	Rs.8,80,89,920/-	Rs.4,66,96,421/-
2.	1st Quarter, 2017-18 Annexure R-4	Rs.12,28,206/-	NA
	Total	Rs.13,60,14,547/-	

5. As would be manifest from the aforesaid table, the respondents have sought to adjust the amount of tax together with interest and penalty as was held to be due for FY 2010-2011 as well as a demand that stood raised for the first quarter of FY 2017-2018. The aforesaid adjustment is assailed with the petitioner contending that by the time the aforesaid adjustment came to be made, the OHA stood deprived of the jurisdiction to consider the

3 OHA

objections in light of Section 74(9) of the Act. In the alternative and without prejudice to the above, it was submitted that even if it were to be assumed that the objections for FY 2010-2011were pending before the OHA, the provisions of Section 35(2) of the Act would apply and consequently, in the absence of an enforceable demand existing, no adjustment could have been made in light of Section 38(3)(a)(ii) of the Act.

6. We note that insofar as the first submission is concerned, the petitioner also seeks to draw sustenance from the judgment rendered by the Court in Combined Traders v. Commissioner of Trade and Taxes[4] and which had interpreted the statutory fiction as constructed in terms of Section 74(9) of the Act as well as the procedure liable to be followed in light of Section 74(8) of the Act.

7. For the purposes of answering the questions that stand posited, the following essential facts may be noticed. An Assessment Order for FY 2010-2011 came to be framed on 29 March 2017. The said assessment order created a total demand of Rs. 13,47,86,341/- which represented the assessed liability towards tax along with interest and penalty payable. The petitioner is stated to have filed objections before the OHA in respect of the said assessment order on 29 May 2017. Undisputedly, those objections had not been disposed of by the Commissioner at least till the issuance of the Hearing Notice dated 24 May 2022 which stands impugned in W.P.(C) 8352 of 2022. It becomes pertinent to note that while the said objections remained pending, the petitioner is stated to have served a notice bringing to the attention of the Commissioner that the objections dated 29 May 2017 had not been decided and thus seeking to place the said authority on notice of its obligation to decide and dispose of the same within a period of 15 days therefrom. The aforesaid notice is stated to have been deposited with the Central Resources Unit[5] of the respondents on 04 May 2022. The submission of that notice is fortified from a perusal of the endorsement which appears on that notice and finds reference at page 54 of the digital record of the Court. According to the petitioner, the period of 15 days must thus be computed from 04 May 2022 and since the notice of hearing came to be issued after the expiry of the said period, the objections dated 29 May 2017 would be deemed to have been duly accepted and the demand as raised in terms of the assessment order being effaced.

8. The respondents undisputedly appear to have adjusted the tax demand which stood created for FY 2010-2011 despite the aforesaid

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admitted position which emerges from the record. The second adjustment which has been made in the Refund Order of 29 April 2022 relates to a demand of tax which stood raised for the first quarter of FY 2017-2018 and emanates from an Assessment Order which was drawn on 01 September 2021. The respondents do not dispute the fact that the petitioner had assailed the said assessment by filing objections before the OHA on 01 October 2021. The fact that the said objections are pending before the OHA is neither denied nor questioned by the respondents in these proceedings.

9. The pendency of objections before the OHA and its resultant impact would have to be considered bearing in mind the provisions of Section 35(2) of the Act, which is extracted hereinbelow:-

> **—35 Collection of assessed tax and penalties**
>
> (2) Where a person has made an objection to an assessment or part of an assessment and has complied with the condition, if any, to entertain such objection in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of balance amount in dispute under that assessment until the objection is resolved by the Commissioner."

10. As is manifest from a reading of sub-section (2) of Section 35, till such time as objections are disposed of by the OHA, the tax liability in dispute cannot be enforced. The significance of the procedure as structured in terms of Section 35 of the Act was highlighted by this Court in its decision in *Flipkart India Private Limited v. Value Added Tax Officer, Ward 300 & Ors.*[6] and where the legal position was explained as under:-

> "41. The respondents also cannot possibly seek to justify the retention of the refund claim on account of the default assessment notices which were issued on 15 May 2014 and 07 June 2014. This since the petitioner had duly filed objections before the OHA and in terms of Section 35(2) of the DVAT Act, and the demand as raised in terms thereof could not have been enforced.
>
> 42. We note that Section 38(2) of the DVAT Act uses the expression "recovery of any other amount due under this Act". The Commissioner in terms of Section 38(2) is thus entitled to apply any amount found to have been paid by an assessee in excess of the amount due from him before making a refund only

6 2023 SCC OnLine Del 5201

if there exists an enforceable demand against that assessee. As is manifest on a conjoint reading of Section 35(2) and 38(2) of the DVAT Act, as long as objections remain pending with the OHA, any amount claimed by the respondents would clearly not answer the description of an amount due or payable as contemplated under Section 38(2). This is also evident from the exposition of the legal position in Bhupendra Auto International.

xxx xxx xxx

46. There thus existed no justification for the respondents adjusting the sum of Rs. 10,74,67,218/- on 03 December 2018. This since evidently the objections were yet to be disposed of by the OHA on that date. We thus find ourselves unable to sustain the stand as taken by the respondents and observe that they clearly acted in flagrant violation of the mandate of Section 38 of the DVAT Act. The writ petitioner is thus entitled to the grant of the writs as prayed for."

11. We, in *Flipkart* also had an occasion to construe the scope and ambit of Section 38(3) of the Act as also the meaning to be ascribed to the phrase —any other amount due" as appearing in sub-section (2) thereof. For the sake of clarity, we extract Section 38 hereunder:-

"38. Refunds

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in subsection (2) of this section shall be at the election of the dealer, either—

(a) refunded to the person,—

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under Section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under Section 59 of this Act, the amount shall be carried forward to the next tax period as a tax credit in that period.

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in Section 25 of this Act within forty-five days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within 15 days from the date the dealer furnishes the security to his satisfaction under subsection (5).

(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to—

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under Section 59; or (c) furnish returns under Section 26 and Section 27; or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956, shall be excluded.

(8) Notwithstanding anything contained in this section, where—

(a) a registered dealer has sold goods to an unregistered person; and

(b) the price charged for the goods includes an amount of tax payable under this Act;

(c) the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section; no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

(9) Where—

(a) a registered dealer has sold goods to another registered dealer; and

(b) the price charged for the goods expressly includes an amount of tax payable under this Act, the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.

(10) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

(11) Notwithstanding anything contained to the contrary in subsection (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act."

12. On due consideration of the import of the said provision, we had in Flipkart held that where a refund is claimed and stands embedded in the self-assessment form which is submitted, the respondents are liable to release the amount as claimed within two months from the date when the return is furnished in a situation where the assessee submits return on a quarterly basis. Undisputedly it is the provisions of Section 38(3)(a)(ii) of the Act which apply to the petitioner here.

13. We had also explained the ambit of Section 38(2) of the Act and held that an adjustment against a refund claim could only be made in

respect of a tax demand which is —due‖ and —enforceable‖. On a conjoint reading of the said provision along with Section 35(2) of the Act, we had ultimately come to conclude that till such time as objections are pending before the OHA, the tax demand cannot be said to have —crystalised‖ so as to be adjusted against the refund as claimed.

14. In the facts of the present case we find that not only have adjustments been made contrary to the mandate of Section 38 of the Act, the demand as raised for FY 2010-2011 and which has been adjusted against the refund as claimed is additionally liable to be set aside on grounds resting on the provisions contained in Section 74 of the Act.

15. Section 74 of the Act stands framed in the following terms:-

—74 Objections

(1) Any person who is dis-satisfied with –

(a) an assessment made under this Act (including an assessment under section 33 of this Act); or

(b) any other order or decision made under this Act; may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner;

PROVIDED that no objection may be made against a non-appealable order as defined in section 79 of this Act:

PROVIDED FURTHER that no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid failing which the objection shall be deemed to have not been filed:

PROVIDED ALSO that the Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained.

PROVIDED ALSO that only one objection may be made by the person against any assessment, decision or order.

PROVIDED ALSO that in the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended.

PROVIDED ALSO that no objection shall be made to the Commissioner against an order made under section 84 or section

85 of this Act if the Commissioner has not delegated his power under the said sections to other Value Added Tax authorities.

(2) A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or order, or undertake any other procedure under this Act, within six months after a request in writing was served by the person, may make an objection against such failure.

(3) An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.

(4) The objection shall be made –

(a) in the case of an objection made under sub-section (1) of this section, within two months of the date of service of the assessment, or order or decision, as the case may be,; or

(b) in the case of an objection made under sub-section (2) of this section, no sooner than six months and no later than eight months after the written request was served by the person:

PROVIDED that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

(5) The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any other document or information as may be relevant:

PROVIDED that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

(6) Where a person has requested a hearing under sub-section (5) of this section and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person.

(7) Within three months after the receipt of the objection, the Commissioner shall either –

(a) accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or

(b) refuse the objection or the remainder of the objection, as the case may be; and in either case, serve on the person objecting, a notice in writing of the decision and the reasons for it, including a statement of the evidence on which it is based:

PROVIDED that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

PROVIDED FURTHER that the person may, in writing, request the Commissioner to delay considering the objection for a period of up to three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

(8) Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within fifteen days.

(9) If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-section (8) of this section, then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.

(10) Where on the date of commencement of this Act a dispute under the Delhi Sales Tax Act, 1975 (43 of 1975) has been pending before a sales tax authority referred to in section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975), the dispute shall be disposed of within a period of [ten] years from the date of the commencement of this Act.

(11) Where the dispute referred to in sub-section (10) of this section has not been decided within the time required, the dispute shall be deemed to have been resolved in favour of the dealer."

16. In terms of sub-section (8) of Section 74, where objections have remained pending for a period of 5 months [the maximum time frame as

prescribed by Section 74(7)], the assessee may serve a written notice apprising the Commissioner of the aforesaid circumstance and calling upon him to render a decision within 15 days.

17. In terms of Section 74(9), if the Commissioner fails to dispose of the objections by the end of the period of 15 days after being placed on notice, the objections would be deemed to have been allowed. This position was lucidly explained by the Division Bench of the Court in Combined Traders in the following terms:-

> "22. Mr. Jain also placed reliance on the decision of this Court in CST v. Behl Construction (2009) 21 VST 261 (Del) in support of his plea that the fifteen day period in terms of Section 74(8) of the DVAT Act was the mandatory time limit and if an order was not passed within that period the objection would be deemed to have been accepted. Mr. Jain submitted that the time limit under Section 34(2) of the DVAT Act, which provides that the Commissioner may make an assessment of tax within one year after the date of the decision of the Appellate Tribunal or Court, would not apply in the instant case. In the Petitioner's case the re-assessment order was of 8th January, 2018 which had not been disturbed by this Court while remanding the matter to the OHA on 28th September, 2018. All that the OHA was required to do was to dispose of the objections under Section 74 of the Act. The order that had been set aside by this Court was the one dated 17th May, 2018 of the OHA passed under Section 74(7) of the Act.
>
> 23. In reply, Mr. Shadan Farasat, learned counsel for the Respondent, first submitted that after the order dated 17th May, 2018 had been passed by the OHA rejecting the earlier objections, the question of three months period again reviving in terms of Section 74(6) read with Section 74(8) did not arise. According to him, after the order dated 28th September, 2018 of this Court restoring the Petitioner's objections to the file of the OHA for a fresh disposal, there was no time limit as such for the OHA to dispose of the objections.
>
> 24. This Court is unable to agree with the above submissions of Mr. Farasat.
>
> xxx xxx xxx
>
> 28. Learned counsel for the Petitioner is right in his contention that this three-months period not having been adhered to, the procedure under Section 74(8) of the DVAT Act would kick in. The

Respondent has not controverted the assertion of the Petitioner that despite best efforts service of notice under DVAT-41 could not be effected in person on the OHA and was ultimately served on the Commissioner on 4th January 2019. Admittedly, the objections were not decided within fifteen days from that date.

29. Mr. Farasat next submitted that the Petitioner had not complied with Section 74(8) of the DVAT Act since the notice under DVAT-41 was not served _in person' on the OHA but on the Commissioner. He submitted that unless the conditions for applicability of Section 74(8) of the DVAT Act read with Rule 56 of the DVAT Rules are fulfilled, it cannot be invoked and in support thereof relied on the decision in Mancheri Puthusseri Ahmed v. Kuthiravattam Estate Receiver (1996) 6 SCC 185.

30. The above submission appears to overlook the fact that the Respondent has not controverted the statements made on oath by the Petitioner in the petition that despite best efforts to personally serve the DVAT 41 on the OHA he could not do so. It is seen from Annexure P-5 to the petition, that on the copy of the DVAT-41 Form served on the Commissioner by the Petitioner, there is an acknowledgement stamp with the diary no. E-820717 dated 4th January, 2019. The stamp is of the Central Resources Unit, DT& T.

31. Mr. Jain produced before this Court reply received by him from the Public Information Officer (PIO)/Assistant Commissioner in the DT&T, GNCTD dated 22nd February, 2017 in response to an application under the Right to Information Act where in response to the specific question: —What is the medium of personal service of documents in the CVAT's office generally? How they are received and who receives them?‖, the response received was:

> "Generally, an employee is deployed for receiving letter/ DAK to receive the same of personal service of documents in Commissioner (VAT) Office."

32. The above reply appears to be consistent with the general practice in Government offices where services of notice upon public officials are usually done at one desk where the offices are located. There is a clerk who usually receives all notices and gives an acknowledgement. The Court is therefore unable to accept the plea of Mr. Farasat that there was non-compliance with Section 74(8) of the DVAT Act read with Rule 56 of the DVAT Rules."

18. As would be evident from the aforesaid extracts of Combined Traders, the Court not only accepted the position which would directly flow from Section 74(9) of the Act, it also specifically dealt with the contention of the respondents who had urged that the submission of a notice under Section 74(8) of the Act in the CRU would not be compliant with the statutory requirements. Even this submission was negated.

19. The position which therefore emerges is that not only would the Hearing Notice of 24 May 2022 be rendered unsustainable in law, even the adjustments which have been made in the Refund Order of 29 April 2022 would be contrary to the provisions of the Act. We come to this conclusion since it is manifest that insofar as the demand for FY 2010-2011 is concerned, the objections would be deemed to have been accepted and granted by the Commissioner upon the expiry of 15 days when computed from 04 May 2022. The demand as created in terms of the assessment order as framed would thus clearly not survive. This clearly in light of the legal fiction which stands placed in that provision and as a consequence of which the Commissioner would stand denuded of the jurisdiction to adjudicate upon those objections once the statutory fiction comes into effect. Section 74(9) in that sense not only accords a closure but commands us to hold that the objections preferred by the assessee would be deemed to have been accepted.

20. Turning then to the adjustments which have been made with respect to the demand for the first quarter of FY 2017-2018, the respondents do not dispute that the objections tendered by the petitioner before the OHA remain pending on its board. The demand for the first quarter of FY 2017-2018 is clearly rendered unenforceable and could not have been adjusted against the refund as claimed by the petitioner for the first quarter of FY 2016-2017. This aspect is clearly covered by the decision in Flipkart.

21. We accordingly allow the instant writ petitions and quash the Hearing Notice dated 24 May 2022. The Refund Order of 29 April 2022 shall for reasons aforenoted stand set aside to the extent that it adjusts an amount of Rs. 13,60,14,547/-. The petitioner is held entitled to all consequential reliefs.

22. The respondents shall consequently compute the amounts which would become refundable to the petitioner in light of our observations appearing hereinabove and affect disbursement accordingly. The aforesaid refunds shall be disbursed along with interest in terms of Section 42 of the Act.

23. The writ petitions along with pending applications, if any, shall stand disposed of on the aforesaid terms.

OFFICE OF THE APPELLATE AUTHORITY (DELHI GST)/
ADDITIONAL COMMISSIONER
DEPARTMENT OF TRADE & TAXES
GOVT. OF N.C.T OF DELHI
ROOM NO. 801, VIII FLOOR, VYAPAR BHAWAN,
I.P. ESTATE, NEW DELHI-110002
(APL-04)

Ref. No. Dated: -

Name of the Appellant	:	M/s Sapry Marketing Pvt. Ltd.
Address	:	Basement, 1-65, Jalvihar Road, Lajpat Nagar-1, South Delhi, Delhi, 110024
GSTIN	:	07AAACS2100G1Z1
Ward No.	:	86
Representative of the objector	:	Sh. Sunil Minocha, STP

Date : 17.11.2023

WHETHER A REFUND APPLICATION CAN BE REJECTED BY PASSING AN ORDER IN GST-07 U/R 100 & 142 OF GST RULES BY ARBITRARILY INVOKING SECTION 73 OF THE SAID ACT IN BIZARRE AND UNLAWFUL MANNER?

HELD – No.

The provisions of the Act and Rules made thereunder provides for revision of returns in respect of details furnished in GSTR-3B and the time limit upto which such rectification can be done by the taxpayer. In this case the proper officer issued ASMT-10, before the taxpayer could revise the return.

I am of the considered view that the impugned summary order passed by proper officer appears to be not justifiable and not tenable in accordance with the provisions of the CGST / DGST Act and Rules made therein under the order is hereby set aside.

ORDER

1. This instant order shall dispose of an appeal in FORM GST APL -01 dated 27.11.2021 filed by M/s Sapry Marketing Pvt. Ltd. (GSTIN:07AAACS2100G1Z1) (hereinafter referred to as “Appellant”)

challenging the impugned order in DRC-07 vide ref. no. ZD070921004621R dated 06.09.2021 passed by the Proper Officer (Ward-86) whereby a demand of Rs. 16,20,184/- under the IGST Act, CGST Act and DGST Act respectively inclusive of tax and penalty was raised.

2. Being aggrieved the appellant filed the present appeal under Section 107 of the CGST/DGST Act and rules made therein on 27.11.2021 against the impugned GST DRC-07 dated 06.09.2021, whereby the Proper officer has raised the demand towards tax and penalty amounting to Rs. 16,20,184/-due to a mismatch of ITC amounting of Rs. 8,10,092/- as reported in GSTR3B and GSTR 2A for the Financial Year April 2020 to March 2021. Perusal of the appeal in Form GST APL-01 shows that the appellant has deposited 10% of the disputed amount of tax as per sub section (6) of section 107 of the DGST Act, 2017.

3. Brief facts of the case are that the ASMT-10 was issued to the Appellant on 06.08.2021 wherein it has been observed that "Whereas an investigation against your firm under the DGST Act, 2017 is being carried out, it has come to my notice that you have claimed excess ITC amounting to Rs. 8,10,092/-, which is the result of mismatch of GSTR 3B and GSTR 2A, and on which tax has not been paid for the financial year 2020-21." Accordingly, in view of such discrepancy, the Appellant was directed to furnish the reply within 15 days and also to appear for personal hearing on 20.08.2021. However, the Appellant has neither appeared for personal hearing nor filed any reply in response to the said ASMT-10 as a result of which DRC-07 has been issued to the Appellant on 06.09.2021 stating that "you have claimed excess ITC amounting to Rs. 8,10,092/-, which is the result of mismatch of GSTR 38 and GSTR 2A, and on which tax has not been paid for the financial year 2020-21" creating demand of Rs. 16, 20,184/- including tax and penalty. Another ASMT-10 was issued to the Appellant dated 09.12.2021 to which the reply in ASMT-11 was furnished by the Appellant vide dated 03.01.2022 stating that "In addition to our reply dt 06-09-2021 against ASMT-10 dt.06-08-2021, we had submitted letters manually twice on 29.11.2021, 06-12-2021 along with Appeal Ack dt.27.11.21 against DRC-07 Summary Order dt 06-09-2021. Besides, the bonafide mistake in claiming extra ITC in Jan,2021 on the basis of system generated GSTR 38 has been rectified in GSTR 3B for the month of September,20 and no additional benefits have been obtained. There is no mens rea either. Appeal hearing date has not yet been fixed by GST Appellate Authority. Hence, the coveted Refund in Qr-2.2019-20 be issued at the earliest with due interest as per GST law. All requisite documents are annexed for your perusal and prompt action. Refund timelines as prescribed under sec. 54 & Rule 91,92 be adhered to in letter and spirit, and bring an end to the avoidable deadlock."

4. During the course of the hearing, the AR of the Appellant, Sh. Sunil Minocha, STP, has appeared on various dates of hearing and after hearing him at length, the matter was kept for order accordingly.

5. Grounds of Appeal:-

a. That the proper officer has grossly erred by failing to serve upon the appellant not only the mandatory SCN, but also an intimation vide Part A of Form GST DRC-01A. Section 73 of the CGST Act, 2017, that has been invoked by the erring proper officer in the present case, talks about determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful mis-statement or suppression of facts. Show cause notice shall be issued at least 3 months before the due date of passing of adjudication orders i.e. 2 years and 9 months from due date of Annual Return.

b. Further, the Counsel argued that the first Opportunity of Zero penalty- The Officer will serve an intimation vide Part A of Form GST DRC 01A (which act is conspicuously absent in the present case under appeal), asking the person to remit the tax along with interest. Details about the tax demand will be stated briefly in Part A. This is a mandatory facility that must be allowed before SCN so that the taxpayer who turns down this opportunity also gives up the concession that goes along with this facility, the concession being that in cases covered by section 73, if tax demanded along with interest is paid before SCN then, penalty payable will be 'nil';

c. That the proper officer has grossly erred and has been totally oblivious to the prescribed rules contained under Rule 142 (1) and (1A) of CGST Rules, 2017 which are reproduced hereunder for better understanding and to get more clarity on the subject matter under consideration: (a) Sub-rule (1) says "The proper officer shall serve along with the (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in Form GST DRC-01, (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof a summary thereof electronically in Form GST DRC-02, specifying therein the details of the amount payable. In support of this contention, a landmark judgment delivered by Honorable Supreme Court of India in the case of "SWADESHI COTTON MILLS etc. etc., Vs Union of India

etc.etc." and reported in AIR 1981 SUPREME COURT 818 wherein Honorable SC has held that "Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth" Hearing at pre-decisional stage must be given--Rule of audi alteram partem not excluded;

d. The appellant emphatically challenges The Arbitrary and vociferously The Arbitrary Denial of ITC due to mismatch between GSTR-3B GSTR-3B and GSTR-2A by invoking section 16 (4) of the CGST Act, 2017 and resulting in creation of frivolous and imaginary demand of Tax of Rs. 8,10,092/- & Penalty of Rs. 8,10,092/- The entire demand emanating from an ex- party and unconstitutional Summary of impugned Order by the proper officer is contrary to the provisions of law, unlawful, unconstitutional and in gross violation of the principles of natural justice, even as the time limit prescribed under the Act had not elapsed. Therefore, in the light of above facts and the legal provisions, since the unwarranted additional demand of Rs. 16,20,184/- (Tax-Rs.810,092-& Penalty- Rs.8,10,092-) cannot stand the scrutiny of law, the same it is prayed, be annulled and quashed in toto in the interest of justice and in order to hold the tenets of the law of jurisprudence;

e. The proper officer continued to turn a blind eye to the submissions of the appellant and with a pr-determined biased mindset, framed an ex-party Summary of order. Further, as per Section 75(4) of the Central Goods and Service Tax Act, 2017, it is clearly held that "an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person", denoting that when the adjudication officer on completion of adjudication, decides to impose penalty or any penalty imposed against the assessee, naturally, an opportunity is to be given. In this case, no such opportunity was afforded to the hapless taxpayer for no rhyme and reason.

f. It was further submitted that the appellant had filed a Refund Application for the Tax period- July, 2019 - Sept, 2019 in Form GST RFD-01 on 06-08-2021 vide ARN: AA070821022269A for Rs. 6,19,953/- towards refund of ITC on Export of Goods & Services without payment of Tax, in accordance with the provisions

contained under sub-section (1) of Section 54 of CGST/SGST Act, 2017 read with Rules 89 & 90 of CGST/SGST Rules, 2017. Having scant respect of legal provisions and prescribed timelines under the GST law, the proper officer resorted to defy law with impunity, and instead of issuing Refund Order under sub-section (5) and (6) of the said Act within the timelines provided therein i.e. within the stipulated period of sixty days from the date of receipt of application complete in all respects, as enshrined under sub-section (7) of section 54 of the CGST Act, 2017, issued an ex-party Summary of order in Form GST DRC-07 under Rule 100 (1), (2) (3) & 142 (5) of CGST Rules, 2017 for FY 2020-21 by arbitrarily invoking Section 73 of the said Act and creating a Tax demand of Rs. 8,10,092/- and a penalty of Rs. 8,10,092/ in a bizarre and unlawful manner, which has been vociferously challenged tooth and nail through an appeal petition filed in GST APL-01;

g. That, the Principles of Natural Justice have been Denied to the hilt. Besides, in supportof this contention, strong reliance is placed upon the landmark judgments delivered by Honorable Delhi High Courtin the case of- (1) “KIRLOSKAR ELECTRIC CO.LTD. V. COMMISSIONER OF SALES TAX “duly reported in (1991) 83 STC 485 (DEL), wherein it has been held, that “The State is entitled to the tax which is legitimately due to it.” OPPORTUNITY AFFORDED OPPORTUNITY-MUST BE A ‘REASONABLE OPPORTUNITY (ii) (1993) 199 ITR 530 (SC):- C. B. GAUTAM VS UNION OF INDIA-HELD, “that to deny an opportunity of being heard to a person before creating a demand is against the principles of natural justice. This is one of the most important principles of natural justice. It is a ‘sine qua non’ of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void -ab-initio” “AIR 1978 SUPREME COURT OF INDIA 597-MA NEKA GANDHI vs. UNION OF INDIA.”

h. In the High Court of Judicature at Madras, a Judgment delivered on Dated 08-12-2021 in the case of: M/s AATHI HOTEL, by Commissioner (ST) (FAC), Mayiladuthurai, Nagapattinam District.. Respondent W.P.No.3474 of 2021. The honourable Court held that “The ratio in the above case is to be distinguished on facts as in the present case although credit was wrongly attempted to be transitioned, it was never utilized. Further before levying penalty or interest, a proper excise was required to be made by a proper officer under Section 74(10) after ascertaining whether the credit was wrongly availed and wrongly utilised. Though under Sections

73(1) and 74(1) of the Act, proceedings can be initiated for mere wrong availing of Input Tax Credit followed by imposition of interest penalty either under Section 73 or under Section 74 they stand attracted only where such credit was not only availed but also utilised for discharging the tax liability;

i. That the order passed by the Ld. Assistant Commissioner, ward-86, zone- 09 Delhi, is against the principal of natural justice as no opportunity of being heard has been given to the appellant;

j. That the passing of the order and raising the demand along with interest and penalty without investigation and reconciliation of the differences with facts and figures, is bad in facts and in law;

k. That it is prayed that the impugned summary of order of rejection of ITC of Rs. 8,10,092/-and imposition of penalty of Rs. 8,10,092/- be set-aside on the above mentioned grounds.

Submission of the DR and Proper Officer :-

6. Per contra, DR has submitted that the impugned order has been correctly passed considering the facts as well as legal provisions. Also, despite of affording opportunities of being heard, Appellant failed to respond to the notice in Form GST ASMT-10 well in time and the Appellant failed to put ASMT-11 dated 09.09.2021.

7. On the other hand, the Proper officer on report submitted that only difference reflecting on the portal in the Appellant's GSTR 3B and GSTR 2A is of Rs. 77,938/- and the Appellant firm had reversed the ITC in his GSTR 3B return in the month of Sept. 2021 amounting to Rs. 3,96,299.78/-
.

8. The AR of the Appellant has stated that the said mismatch of tax liability in GSTR-3B & GSTR-2A has arisen due to the bonafide mistake in claiming extra ITC in Jan, 2021 on the basis of system generated GSTR 3B has been rectified in GSTR 3B for the month of September, 20 and no additional benefits have been obtained. There is no mens rea either and no ineligible ITC amount has been claimed by the Appellant firm.

9. Further, the Appellant referred various Judgments passed by the various High Courts on the above-mentioned issue such as the "Hon'ble High Courthas taken a view in very similar circumstances as in the present case, in the case of Sun Dye Chem V. Assistant Commissioner (2021 (44) GSTL 358) reiterated in Pentacle Plant Machineries Pvt. Ltd. V. Office of the GST Council, New Delhi (2021 (52) GSTL 129) to the effect that those

petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assessee. The errors committed are clearly inadvertent and, the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fashion by the petitioner and connected assessees."

10. I have gone through the impugned order and the records available along with the submissions of the Appellant along with the said rulings thereof Perusal of the impugned order clearly reveals that the Appellant had reversed the ITC in his GSTR 3B return in the month of Sept 2021 amounting to Rs. 3,96,299.78/- It is also observed that the Appellant was not granted enough opportunities on the basis of which the demands towards tax and penalty amounting to Rs. 16,20,184/- have been confirmed on the Appellant vide the impugned DRC-07 dated 06.09.2021.

11. The Comments of the Proper Officer were also sought vide letter dated 12.06.2023 in which he has rebutted to the grounds raised by the Appellant in the instant Appeal by stating therein that the said difference was rectified by reversing the ITC in the month of Sept. 2021 itself.

12.Further, before deciding the claim of the Appellant on merits, it is imperative to examine the provisions of the DGST Act, 2017 and rules made there under which provides for the revision of returns in respect of details furnished in GSTR-3B and the time limit up to which such rectification may be done by a taxpayer. In this context, a proviso to sub-section (3) of Section 37 of the CGST/DGST Act clearly indicates that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under Section 39 for the month of September following the end of the financial year to which such details pertain or furnishing of the relevant annual return, whichever is earlier. In the present case, the Appellant ought to have revised the return till September 2021, but the taxpayer even before the revision of return, the Proper officer issued the ASMT-10. Further, since the appellant had correctly declared his GSTR-3B, and reversed the ITC well within time as per the provisions submitted the summary and reconciliation statement for the disputed period and referred the various Judgments passed by the Hon'bl High Court in support of his prayer. Thus, in view of the said provisions and observations thereof, the claim of the Appellant is maintainable and hence allowed.

13. I have gone through the entire records/documents placed on record and considered the facts and circumstances of the case as well as the relevant law position. After having perused the impugned summary

order and other documents, it appears that the proper officer issued the DRC-07 without the application of mind which is unsustainable. The Ld. Officer erred in following the procedure laid down under the DGST Act, 2017 and passed the summary of the order without analysing the taxpayer. The proper Officer instead of issuing the summary of the order should have examined the merits of the case. Thus, it appears that there are errors apparent on record and after perusal of the settled legal principles, in the interest of justice, the appeal is hereby allowed.

13. Upon a careful perusal of above deliberations and the facts of the case along with other available records and provisions thereof, I am of the considered view that the impugned summary order passed by the proper officer appears to be not justified and not tenable in accordance with the provisions of the CGST/DGST and rules made therein under. Accordingly, the appeal preferred by the Appellant is allowed and hence the impugned order dated 06.09.2021 is hereby set aside in aforesaid terms to the extent of tax, interest and penalty. This is in accordance with the prescribed procedure under the GST Act and Rules.

14. Ordered Accordingly.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
[T.S. Sivagnanam & Hiranmay Bhattacharyya, JJ]

MAT 1218 OF 2023 WITH I.A NO. CAN 1 OF 2023

Suncraft Energy Private Limited And Another ... Appellant

Versus

The Assistant Commissioner, State Tax,
Ballygunge Charge and Others ... For the State Respondent

RESERVED ON: 21.07.2023
DELIVERED ON:02.08.2023

WHETHER ITC CAN BE REVERSED ON THE BASIS OF DIFFERENCE IN GSTR-2A AND GSTR-3B ON THE GROUND THAT THE SUPPLYING DEALER HAS

NOT REMITTED THE TAX SO COLLECTED WITHOUT ISSUING NOTICE AND VERIFICATION OF FACTS REGARDING GENUINESS OF TRANSACTION AS WELL AS GENUINESS OF DEALER?

Held – NO.

It was held that the purchasing dealer's ITC cannot be denied by the department on the ground that the supplying dealer has not remitted the tax so collected unless there is an exceptional case like the supplier going missing or any situation wherein it becomes impossible for the department to collect tax from such a supplier. Until there is a remote chance of recovering the tax from the supplying dealer, the department shall not deny ITC to the purchasing dealer.

Appearance for the Appellant	:	Mr. Ankit Kanodia, Adv. Ms. Megha Agarwal, Adv. Mr. Jitesh Sah, Adv.
For the State Respondent	:	Mr. Anirban Ray, Ld. Govt. Pleader Md. T.M. Siddiqui, Learned A.G.P. Mr. S. Sanyal, Adv.

JUDGMENT
(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra Court appeal filed by the writ petitioner is directed against the order passed in WPA 12153 of 2023 dated 21.06.2023. The appellant had impugned the order passed by the Assistant Commissioner of State Tax, Ballygunge Charge, the Respondent No. 1 date 20.02.2023 by which the first respondent reversed the input tax credit availed by the appellant under the provisions of West Bengal Goods and Services Tax Act, 2017 (WBGST Act). The 4th respondent is a supplier of the appellant who provided supply of goods and services to the appellant who had made payment of tax to the fourth respondent at the time of effecting such purchase along with the value of supply of goods/ services. However, in some of the invoices of the said supplier was not reflected in the GSTR 2A of the appellant for the Financial Year 2017-18. The first respondent issued notices for recovery of the input tax credit availed by the appellant and the grievance of the appellant is that without conducting any enquiry on the supplier namely, the fourth respondent and without effecting any recovery from the fourth respondent, the first respondent was not justified in proceeding against the appellant. It is seen that a scrutiny of the return submitted by the appellant was made under Section 61 of the Act for the

Financial Year 2017-18 which was followed by a notice dated 03.08.2022 stating that certain discrepancies were noticed. The appellant had submitted their reply dated 24.08.2022. Thereafter the appellant was served with the show-cause notice dated 06.12.2022 proposing a demand as to the excess ITC claimed by the appellant for the Financial Year 2017-18 on the basis of the difference of the amount of ITC in Form GSTR-2A and Form GSTR-3B with respect to the purchase transaction made by the appellant with the fourth respondent. The appellant filed detailed replies on 06.01.2023 and 11.01.2023, denying the allegations made in the show-cause notice and among other things submitted that the appellant had made payment of tax to the fourth respondent arising from the transaction and thereafter availed ITC on the said purchase. The show-cause notice was adjudicated and by order dated 20.02.2023 a demand for payment of tax of Rs. 6,50,511/- along with applicable interest and penalty was confirmed under Section 73(10) of the Act. Challenging the said order, the appellant had filed the writ petition. The learned Single Bench by the impugned order disposed of the writ petition by directing the appellant to prefer a statutory appeal before the appellate authority after complying with the requisite formalities and the appellate authority was directed to dispose of the appeal without rejecting the same on the ground of limitation. Aggrieved by such order, the appellant has preferred the present appeal.

2. We have heard Mr. Ankit Kanodia assisted by Ms. Megha Agarwal and Mr. Jitesh Sah, learned Advocates for the appellant and Mr. T.M. Siddique, learned Government Counsel for the respondent.

3. For a dealer to be eligible to avail credit of any input tax, the conditions prescribed in Section 16 (2) of the Act have to be fulfilled. Sub-section (2) of Section 16 commences with a non-obstante clause stating that notwithstanding anything contained in Section 16 no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him unless-

(a) he is n possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both;

(c) subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply; and

(d) he has furnished the return under Section 39.

4. It is the case of the appellant that they have fulfilled all the conditions as stipulated under Sub-section (2) of Section 16 and they also paid the tax to the fourth respondent, the supplier and a valid tax invoice has been issued by the fourth respondent for installation and commission services and the appellant had made payment to the fourth respondent within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act, the first respondent erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid to the fourth respondent at the time of availing the goods/ services. In support of his contention, the learned Counsel for the appellant had placed reliance on the decision of the Hon'ble Supreme Court in *Union of India (UOI) Versus Bharti Airtel Ltd. And Ors.*[1]The learned Advocate for the appellant also placed reliance on the press release dated 18.10.2018 issued by the Central Board of Indirect Tax and Customs and also the press release dated 04.05.2018 to substantiate their argument that the ground on which the first respondent had passed the impugned order of recovery of tax is wholly unsustainable.

5. In the press release dated 18.10.2018 a clarification was issued stating that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act. Further, it has been clarified that the apprehension that ITC can be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due date for filing of the return in Form GSTR-3B for the month of September, 2018 is unfounded and the same exercise can be done thereafter also. In the press release dated 4th May, 2018, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

6. The effect and purport of Form GSTR-2A was explained by the Hon'ble Supreme Court in Bharti Airtel Ltd. It was held that Form GSTR-2A is only a facilitator for taking a confirm decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit

1 (2022) 4 SCC 328

return on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. In *Arise India Limited and Ors. Versus Commissioner of Trade and Taxes, Delhi and Ors*.[2], the challenge was to the constitutional validity of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (DVAT Act) as being violative of Article 14 of 19(g) of the Constitution of India. Section 9(2) of the DVAT Act sets out the conditions under which tax credit or ITC would not be allowed. Sub-clauses (a) to (f) specify certain kinds of purchase which would not be eligible for the claim of ITC. Clause (g) of the Section 9(2) of the DVAT Act states that to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period, would not be eligible for claim of ITC. The question that arose for consideration was as to whether for the default committed by the selling dealer can the purchasing dealer be made to bear the consequences of the denying the ITC and whether it is the violation of Article 14 of the Constitution. After taking note of the language used in Section 9(2)(g) of the DVAT Act where the expression "dealer or class of dealers" occurring in Section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transaction with validly registered selling dealer who have issued tax invoices in accordance with Section 15 of the said Act where there is no mismatch of transactions in Annexures 2A and 2B and unless the expression "dealer or class of dealers" in Section 9(2)(g) is read down in the said manner, the entire provision would have to be held to be violative of Article 14 of the Constitution. It was further held that the result of such reading down would be that the department is precluded from invoking Section 9(2)(g) of DVAT Act to deny the ITC to the purchasing dealer who had bona fide entered into a purchase transaction with the registered selling dealer who had issued a tax invoice reflecting the TIN number and in the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against a defaulting selling dealer to recover such tax and not denying the purchasing dealer the ITC. It was further held that where however, the department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the department can proceed under Section 40A of the DVAT Act. With the above conclusion, the default assessment orders of tax interest and penalty were set aside. The decision in Arise India Limited was challenged before the Hon'ble Supreme Court by the Government in Commissioner of Trade and Taxes, Delhi Versus Arise India Limited and the special leave petition was dismissed by judgment dated 10.01.2018, reported in MANU/

2 MANU/DE/3361/2017

SCOR/01183/2018. Though the above decision arose under the provisions of the Delhi Value Added Tax Act, the scheme of availment of Input Tax Credit continues to remain the same even under the GST regime though certain procedural modification and statutory forms have been made mandatory.

7. In the show cause notice dated 06.12.2022, the allegation was that the appellant had submitted that the fourth respondent has not shown the Bill in GSTR 1 and hence the appellant is not eligible to avail the credit of the input tax as per Section 16(2) of the WBGST Act, 2017 as the tax charged in respect of such supply has not been actually paid to the Government. The show cause notice does not allege that the appellant was not in possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the appellant has received the goods or services or both.

8. In the reply submitted by the appellant to the said show cause notice the appellant had clearly stated that they are in possession of the tax invoice, they had received the goods and services or both and the payment has been made to the supplier of the goods or services or both. The reason for denying the input tax credit is on the ground that the detail of the supplier is not reflecting in GSTR 1 of the supplier. The appellant had pointed out that they are in possession of a valid tax invoice and payment details to the supplier have been substantiated by producing the tax invoice and the bank statement. The appellant also referred to the press release dated 18.10.2018. What we find is that the first respondent has not conducted any enquiry on the fourth respondent supplier more particularly when clarification has been issued where furnishing of outward details in Form GSTR 1 by a corresponding supplier and the facility to view the same in Form GSTR 2A by the recipient is in the nature of tax payer facilitation and does not impact the ability of the tax payers to avail input tax credit on self-assessment basis in consonance with the provisions of Section 16 of the Act. Furthermore, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by seller. Further it is clarified that in case of default in payment of tax by the seller recovery shall be made from the seller however, reversal of credit from the buyer shall also be an option available with the revenue authorities to address the exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

9. The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they

have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable.

10. In the result, the appeal is allowed, the orders passed in the writ petition is set aside and the order dated 20.02.2023 passed by the first respondent namely the Assistant Commissioner, State Tax, Ballygaunge Charge, is set aside with a direction to the appropriate authorities to first proceed against the fourth respondent and only under exceptional circumstance as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC), then and then only proceedings can be initiated against the appellant. With the above observations and directions the appeal is allowed.

EDITOR'S NOTE: Against this order, the Department filed an SLP in the Supreme Court SLP(C) No. 27827-27828/2023 dt. 14.12.2023 which was dismissed.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
[B.V. Nagarathna & Ujjal Bhuyan, JJ]

Petition(s) for Special Leave to Appeal (C) No(s).27827-27828/2023(Arising out of impugned final judgment and order dated 02-08-2023 in MAT No. 1218/2023 02-08-2023 in CAN No.1/2023 passed by the High Court at Calcutta)

The Assistant Commissioner of State Tax,
Ballygunjge Charge & Ors. ... Petitioner(s)

Versus

Suncraft Energy Private Limited & Ors. ... Respondent(s)

(For admission and IA No.255567/2023-Condonation of delay in refiling/curing the defects)

Date : 14-12-2023 These petitions were called on for hearing today.

For Petitioner(s) : Mr. Maninder Acharya, Sr. Adv.
Ms. Madhumita Bhattacharjee, AOR
Ms. Urmila Kar Purkayastha, Adv.
Ms. Niharika Singh, Adv,
Mr. Akash Mohan Srivastav, Adv.
Ms. Srija Choudhury, Adv.

For Respondent(s) : Mr. Ankit Kanodia, Adv.
Mr. Ravi Bharuka, AOR
Ms. Megha Agarwal, Adv.

UPON hearing the counsel the Court made the following

ORDER

Delay condoned.

We have heard learned senior counsel appearing for the petitioners.

Having regard to the facts and circumstances of this case(s)and the extent of demand being on the lower side, we are notinclined to interfere in these matters in exercise of our powersunder Article 136 of the Constitution of India.

The Special Leave Petitions are dismissed, accordingly.Pending application(s), if any, shall stand disposed of

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU
[Sanjeev Kumar and Puneet Gupta, JJ]

WP(C) No.1071/2023

M/S Batra Brothers Pvt. Ltd. ... Petitioner(s)

Vs

Union Territory of Ladakh and another ... Respondent(s)

Date of 15.09.2023

WHETHER PAYMENT OF 25% OF THE PENALTY AMOUNT PAID BY THE APPELLANT THROUGH ELECTRONIC CASH LEDGER DOES NOT AMOUNT TO PAYMENT OF REQUIRED DEPOSIT FOR ENTERTAINMENT OF APPEAL AS PRE-DEPOSIT AS MANDATED U/S 107(6) PROVISO (1) OF CGST R/W SECTION 21 OF THE UTGST ACT.

Held

Since, the requisite amount is already deposited in the electronic cash ledger by the petitioner it would be appropriate and in the interest of justice to permit the respondents to take out and utilize the amount of pre-deposit in the manner, the pre-deposit is utilized. The petitioner, if required, shall facilitate the utilization of the aforesaid amount for the purposes of appropriating it towards the pre-deposit.

Present for Petitioner(s) : Mr. Subodh Singh Jamwal, Advocate with Mr. Ashish Nanda, Advocate.

Present for Respondent(s) : Mr. Vishal Sharma, DSGI

ORDER

01. The petitioner has called in question order No.SAA/UTL/2022-23/06 dated 01.12.2022 passed by the respondent No.2 in the appeal No.ARN AD380722000012S dated 30.07.2022 whereby the appeal filed by the petitioner has been dismissed for non-payment of 25% pre-deposit of the penalty as mandated under proviso (1) to sub-Section (6) of Section 107 of CGST Act 2017, read with Section 21 of the UTGST Act, 2017.

02. On being put on notice Mr. Vishal Sharma, learned DSGI appearing for the respondents has filed objections. The payment of 25% of the penalty amount by the appellant is not denied, however, it is submitted that the petitioner has deposited the amount in electronic cash ledger and, therefore, cannot be construed to be the payment of 25% pre-deposit as mandated by proviso (1) to sub-Section (6) of Section 107 of CGST Act, 2017, read with Section 21 of UTGST Act, 2017.

03. We have considered the rival contentions and are of the view that the objections taken by the respondent is technical in nature. The mandate of proviso (1) to sub-Section (6) of Section 107 of CGST Act, 2017 and Section 21 of UTGST Act, 2017 is clear and unequivocal and makes the appeal maintainable only if the person filing appeal makes a pre-deposit to the tune of Rs.25% of the penalty with the respondents. It is true that the petitioner herein has instead of depositing the said pre-deposit amount with the respondents has deposited the same in the electronic cash ledger.

04. From reading of Section 49(3) of CGST Act, 2017 it is evident that the amount available in the electronic cash ledger can be used by the petitioner for making any payment towards tax, interest, penalty, fees or

any other amount payable under the provisions of this Act or the rules made there-under in such manner and subject to such conditions and within such time as may be prescribed.

05. Since, the requisite amount is already deposited in the electronic cash ledger by the petitioner it would be appropriate and in the interest of justice to permit the respondents to take out and utilize the amount of pre-deposit in the manner, the pre-deposit is utilized. The petitioner, if required, shall facilitate the utilization of the aforesaid amount for the purposes of appropriating it towards the pre-deposit.

06. On doing so, the appeal shall be taken up for consideration on merits.

07. The petition is disposed of.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[Biren Vaishnav and Bhargav D. Karia]

R/Special Civil Application No. 5010 of 2021

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyof the judgment ?
4	Whether this case involves a substantial questionof law as to the interpretation of the Constitutionof India or any order made thereunder ?

Pee Gee Fabrics Private Limited ... Petitioners

Versus

Union Of India ... Respondents

Date : 15/09/2023

WHETHER A MANUFACTURING COMPANY LIABLE TO PAY TAX @ 5% ON THE SALE OF FABRICS, WHEREAS RAW MATERIALS USED FOR MANUFACTURING OF FABRICS I.E. YARN, COLOUR AND CHEMICALS, STORES AND CONSUMABLES, POWER AND FUEL ARE CHARGEABLE AT A HIGHER RATE RANGING FROM 12% TO 18% IS NOT ELIGIBLE TO REFUND OUT OF ITC DUE TO INVERTED DUTY STRUCTURE AS PER SECTION 54(3)(11) OF THIS GST ACT.

Held

The impugned order dated 12.09.2019 passed by respondent no.3 and confirmed by respondent no.2 vide order dated 29.09.2020 are hereby quashed and set aside. The respondent authorities are directed to sanction the refund of Rs. 8,06,852/- as per the refund application filed by the petitioners on 08.08.2019 within a period of six weeks from the date of receipt of a copy of this order along with applicable rate of interest in accordance with law.

Appearance:

Present for the Petitioner(s) No. 1,2 : Hiren J Trivedi (8808)

Present for the Respondent(s) No. 1 : Mr Harsheel D Shukla (6158)

Present for the Respondent(s) No. 3 : Mr Nikunt K Raval (5558)

NOTICE SERVED for the Respondent(s) No. 2

CAV JUDGMENT
(Per : Honourable Mr. Justice Bhargav D. Karia)

1. Heard learned advocate Mr. H.J. Trivedi for the petitioners, learned advocate Mr. Harsheel D. Shukla for respondent no.1 and learned advocate Mr. Nikunt Raval for respondent nos.2 and 3.

2. Learned advocate Mr. H.J. Trivedi has tendered a draft amendment. The same is allowed in terms of the draft. To be carried out forthwith.

3. By the draft amendment, learned advocate has sought to replace Annexure-G with order dated 12.09.2019 whereby the refund application of the petitioners is rejected.

4. Rule returnable forthwith. Learned advocate Mr. Harsheel D. Shukla waives service of notice of rule on behalf of respondent no.1 and learned advocate Mr. Nikunt Raval waives service of notice of rule on behalf of respondent nos.2 and 3.

5. By this petition under Article 226 of the Constitution of India, the petitioners have challenged order dated 29.09.2020 issued on 21.10.2020 passed by the Joint Commissioner, (Appeals), Ahmedabad confirming the order dated 12.09.2019 passed by the Deputy Commissioner, Central GST, rejecting the refund application dated 08.08.2019 filed by the petitioner no.1 in Form GST RFD-01A file bearing ARN No. AA240819017945S.

6. The petitioner no.1-Company is registered as manufacturing services in textile division under the Central Goods and Service Tax Act, 2017 (For short "the GST Act") having Registration No. 24AAACP8774BIZI. The petitioner Company is engaged in the business of textile manufacturing of fabrics i.e. from raw yarn and trading activity of fabrics.

7. The petitioner company is liable to pay GST at the rate of 5% on the sale of fabrics whereas raw materials used for manufacturing of fabrics i.e. yarn, colour and chemical, stores and consumable, Power and Fuel are chargeable at higher rate ranging from 12% to 28% under the GST Act.

8. Accordingly, the petitioner no.1 Company is eligible to avail refund of Input Tax Credit (hereinafter referred to as 'ITC') due to inverted duty tax structure as per section 54(3)(ii) of the GST Act.

9. As per the Government Notification No 5/2017, the petitioner company was not entitled to claim refund of unutilised Input Tax Credit on woven fabrics as well as knitted fabrics.

10. It is the case of the petitioners that restriction imposed by Notification No 5/2017 was removed by another Notification 20/2018 dated 26.07.2018. Accordingly, the petitioner company was eligible to claim refund of accumulated ITC under Inverted Refund Structure from August 2018 onwards with condition to comply with the Notification 20/2018 as well as clarification for calculating the lapse of credit as provided in Circular No.56/2018 dated 24.08.2018.

11. The petitioner company filed its return under the GST Act regularly for the Financial Year 2017-2018. The petitioner company came to know about claiming wrong credit on capital goods for the Financial Year 2017 as it had already claimed depreciation on the GST amount which was charged in the invoice while buying such capital goods. The petitioners therefore, were required to reverse the credit claimed on ITC of such capital goods. The bifurcation of such ITC which requires reversal is as under:

Particulars	IGST	CGST	SGST	Total	Remarks
Credit Reversed in August 18 GSTR-3B	9,94,811/-	8,689/-	8,689/-	10,12,189/-	As mentioned in 3B for August 2018
CAPEX Credit for the month of July 2017	9,37,930/-			9,37,930/-	The said credit was for imported looms which the petitioner no.1- company had opted to capitalise and accordingl y reversed in 3B for August 2018.

CAPEX Credit for the month of August 2017	56,880/-			56,880/-	The said credit was for Machine which for which the petitioner no.1-Company opted not to avail the credit
Credit for Service of Telephone bills for the month of August 2018		8,689/-	8,689/-	17,378/-	The petitioner no.1-Company had reversed the credit of Services (not goods) hence does not affect the refund amount as the petitioner no.1-Company have claimed refund for goods only
Total	9,94,810/-	8,689/-	8,689/-	10,12,188/-	

12. It is the case of the petitioners that as per the Rules 42 and 43 of the CGST Rules 2017, Form DRC-03 can be used for reversal of ITC. However, due to non-availability of DRC- 03 on GST Portal, the petitioner Company had reversed the ITC in Form GSTR-3B for the month of August 2018. The petitioner Company also claimed credit in respect of supplies of goods of Rs. 56,01,017/- under the inverted duty tax structure and Rs. 1,14,689/- pertaining to supplies of services, for which the petitioner Company was not entitled to credit under the inverted duty tax structure. The summary of ITC as per GSTR-3B for the month of August 2018 is as under:

Particulars	Amount
ITC available for the month of Aug 2018	57,68,728/-
Less: ITC reversed for FY 2017-18	10,12,188/-
Net ITC available	47,56,539/-
Less: Liability for the month of Aug 2018	(32,02,738/-)
Net ITC available for refund as per portal configuration	15,53,801/-

13. The petitioners have become eligible to claim refund of ITC from August 2018 as per the Notification No. 20/2018 and Circular No. 56/2018 as per the calculation to be made as prescribed under Rule 89 of the CGST Rules, 2017. The petitioner company therefore, was eligible for refund of Rs.22,78,798/- as under:

Sr. No.	Particulars	Amount
1	Turnover for inverted duty tax structure	60,700,548
2	Net ITC (Total ITC Less ITC availed on Input Services) Inverted duty tax structure	5,608,070 (However this figure has been auto captured as Rs.47,56,539/-)
3	Adjusted total turnover	64,061,743
4	Liability on Inverted tax duty tax structure	3,035,027

14. However, in view of reversal of the wrongly claimed credit on capital goods, the amount of the refund claimed by the petitioners was proportionately reduced by Rs. 8,06,852/- in view of the calculation made by the GST Portal.

15. Petitioner no.1 company therefore, by e- mail dated 14.06.2019 raised a query before the CBIC Mitra Helpdesk which was finally resolved by e-mail dated 19.06.2020 wherein the petitioner no.1 Company was asked to file the refund under “any other” category instead of “refund of unutilized ITC on account of accumulation due to inverted tax structure” in FORM GST RFD-01A. It was also informed to the petitioner company that second application for refund should relate to the same tax period in which such reversal has been made.

16. The petitioner company thereafter filed second refund application in FORM GST RFD-01A seeking refund on account of ITC accumulated due to Inverted Tax Structure and acknowledgment was generated on 21.06.2019. However due to the fact that the petitioner no.1 Company had reversed the credit on capital goods, which they had wrongly claimed earlier, the amount of refund got reduced in GSTR-3B and in FORM GST RFD-01A, as FORM GST RFD-01A is automated and captures figures directly from other Forms filed by the petitioners on GST portal. Accordingly, the petitioner Company was allowed to file refund amounting to Rs.14,71,946/-. Therefore, petitioner company relying on clarification provided by circular no. 94/2019 dated 28.03.2019 claimed the balance amount of refund of Rs. 8,06,852/-i.e. [Rs. 22,78,798/- (-) Rs. 14,71,946/-) under the head “any other Specify” and second refund application for the Month of August 2018 was filed on 08.08.2019.

17. The petitioner company received refund of Rs. 14,71,946/- as per the refund application filed on 21.06.2019 but however while processing refund application filed on 08.08.2019 under the head “ Any Other head (Please Specify)”, the respondent authority issued a show cause notice dated 03.09.2019 proposing to disallow the refund of Rs. 8,06,852/- the on following grounds:

> “(i) As per circular no. 94/13/2019-GST dated 28.03.2019, there is no provision that second refund application can be filled for the same particular month Le. August 2018 under which appellant filed refund claim under the category “Any Other Specify” in inverted rate of structure;
>
> (ii) For the refund application filled, calculation should be as per Rule 89(5):

(iii) The department has never asked to reverse the ITC on capital goods. The appellant had reversed the same on his own."

18. It is the case of the petitioner company that respondent no.3 Deputy Commissioner disregarded all the submissions made by the petitioner Company and rejected the refund application vide impugned order dated 12.09.2019 on the ground that it is impermissible under the law to split the refund claim for a particular month in two parts and further on the ground that refund of reversed ITC on capital goods cannot be claimed as refund.

19. Being aggrieved, the petitioners preferred an appeal before the Joint Commissioner (Appeals) under section 107 of the GST Act who by impugned order dated 29.09.2020 rejected the appeal. The petitioners therefore, being aggrieved by the impugned orders passed by respondent nos. 2 and 3 has preferred this petition.

20. Learned advocate Mr. Hiren J. Trivedi submitted that it is not in dispute that the petitioners are entitled to refund of ITC as per Notification No.20/2018 read with Circular No. 56/2018 under Rule 89 read with Rule 54(3)(ii) of the CGST Rules, 2017. It was submitted that the petitioners are entitled to get refund of ITC as per the inverted duty tax structure amounting to Rs.22,78,798/-. However same got proportionally reduced due to reversal of input tax credit on the capital goods which was wrongly claimed by the assessee for the year 2017-2018 in the month of August 2018. It was therefore, submitted that the respondent authorities could not have rejected the refund application filed by the petitioners on 08.08.2019 on the ground that refund could not have been claimed by filing second application under the head "Any other" category as per Circular No.94/2019 dated 28.03.2019. It was submitted that the findings given by respondent nos. 2 and 3 that reversal of the ITC of Capex Goods in Form GSTR-3B is binding on the petitioners and, therefore, the same cannot be claimed as refund, is contrary to the facts by misreading Circular No.94/2019 dated 28.03.2019 read with Notification No.20/2018 and Circular No. 56/2018.

21. On the other hand, learned advocates for the respondents submitted that the petitioners cannot file second refund application for the same month i.e. August, 2018 as the refund application filed by the petitioners on 21.06.2019 for Rs.14,71,946/- has already been sanctioned and refund is paid. It was submitted that the second refund application filed by the petitioners amounting to Rs.8,06,852/- dated 08.08.2019 for the month of August, 2018 in "any other" category was without any calculation and not as per Rule 89(5) of the CGST Rules, 2017 and therefore, the respondent authorities have rightly rejected the same.

22. It was submitted that the petitioner company had itself reversed ITC of capital goods in August 2018 amounting to Rs.10,12,189/- in GSTR-3B which was not reversed earlier and the same is binding upon the petitioner company and therefore, the refund for reversal of ITC on capital goods cannot now be claimed as refund again due to inverted duty tax structure as per section 54 of the GST Act.

23. Having heard learned advocates for the respective parties, the facts are not in dispute as narrated hereinabove. Notification No.5/2017 dated 28.06.2017 provided that no refund of unutilised tax credit shall be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods which included woven fabrics manufactured by the petitioner company. However, by Notification No.20/2018 dated 26.07.2018 it was provided that Notification No.5/2017 would not be applicable to the items stated therein as under:

> "In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance(Department of Revenue), No.5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.S.R.677(E), dated the 28th June, 2017, namely:-
>
> In the said notification, in the opening paragraph the following proviso shall be inserted, namely:-
>
> "Provided that,
>
> (i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below; and
>
> (ii) in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."

24. Circular No. 56/2018 dated 24.08.2018 clarified that Notification No.20/2018 would be effective from first day of August 2018 to keep the

accounting simple and refund of ITC for the month of July i.e. on purchases made on or before 31.07.2018 would lapse. Hence, as per the working of Rule 89(5) of the CGST Rules, 2017 the petitioners were entitled to refund of Rs.22,78,798/- as per Notification No.20/2018.

25. However, the petitioners also reversed ITC of Rs.10,12,188/- with regard to wrongly claimed credit on capital goods in the month of August, 2018 in Form GSTR-3B. Accordingly, the refund claim of the petitioners was automatically reduced by Rs. 8,06,852/-. Accordingly, the petitioners were allowed to file refund application for Rs.14,71,946/- by GST Portal on 21.06.2019.

26. The respondent authorities thereafter issued the clarification by Circular No.94/2019 dated 28.03.2019, relevant extract of the circular is as under:

Sr. No.	Issues	Clarification
1	Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No.20/2018- Central Tax (Rate) dated 26.07.2018 read with circular No.56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?	a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made. The application shall be accompanied by all statements, declarations, undertakings and other documents which statutorily are required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 3 of Circular No.59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper

		officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GSTRFD-06 and the payment advice in FORM GST RFD-05. c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".

27. Relying upon the clarification as per the aforesaid circular, the petitioners filed second refund application dated 08.08.2019 claiming refund of Rs. 8,06,852/- which could not be applied by the petitioners on account of reversal of the wrongly claimed credit on capital goods in the month of August, 2018.

28. The respondent authorities however, failed to consider that the petitioners were entitled to ITC as per inverted duty tax structure amounting to Rs.22,78,798/- as calculated under Rule 89 of the GST Rules. GST Portal did not allow the petitioners to submit the refund application for the said amount and restricted the same to Rs.14,71,946/ in view of reversal of the credit of Rs.10,12,188/- on account of wrongly claimed credit on capital goods.

29. The petitioners therefore, had no other option but to file second application for claiming balance amount of refund of Rs. 8,06,852/-. The respondent authorities have failed to consider that the petitioners have not filed second refund application for the same month but it has filed application for claiming the balance amount of refund which was not granted though the petitioners were eligible for the same. The petitioners had therefore, no other option but to file refund application in view of Circular No.94/2019 dated 28.03.2019 under the head "any other".

30. The reasons given by the respondent authorities that refund application filed is not as per the calculation made in Rule 89(5) of the CGST Rules is also not correct since as per the calculation made under Rule 89(5) which provides for maximum refund amount, the petitioners are

entitled to refund of Rs.22,78,798/- on the total turnover of inverted duty tax structure which is not in dispute and accordingly, the petitioners were entitled to refund of Rs. 8,06,852/- which the petitioners could not claim in view of the fact that GST Portal did not permit the petitioners to file refund application in view of the reversal of the wrongly claimed credit on capital goods.

31. The respondent authorities have therefore, adopted a pedantic approach by rejecting the refund application filed by the petitioners for balance amount of refund of Rs. 8,06,852/-.

32. It is also pertinent to note that the respondent authorities cannot dispute the claim of the petitioner's eligibility of refund of Rs.22,78,798/- for the month of August 2018 calculated as per Notification No.20/2018 read with Rule 89 of the CGST Rules, 2017. It is also not in dispute that the said claim of the petitioners was restricted to Rs.14,71,946/- by GST Portal in view of reversal of wrongly claimed credit of Rs.10,12,188/- on capital goods by the petitioner company. Therefore, respondent authorities ought to have taken into consideration that the petitioners were eligible for balance amount of refund of Rs. 8,06,852/- which could not have been denied on hyper-technical ground as stated in the impugned orders. Reasoning given by respondent no.3 for rejecting the legitimate claim of the petitioner company that reversal of ITC on capital goods in Form GSTR-3B amounting to Rs.10,12,189/- is binding on the petitioner company and therefore, the petitioner company is not eligible for claim of refund as per Circular No.94/2019 dated 28.03.2019 cannot be accepted. Circular No.94/2019 permited a one time measure for availing refund of ITC on account of inverted duty tax structure as per Notification No.20/2018 read with Circular No.56/2018 as the assessees were not able to claim refund of the accumulated ITC to the extent to which they were eligbile. Therefore, it was clarified by Circular No. 94/2019 that when the assessee was not eligible to claim the refund then ITC is required to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A for the same tax period in which said reversal has been made. The petitioners taking benefit of such circular preferred Second refund application dated 08.08.2019 for balance amount of ITC on account of accumulated inverted duty tax structure amounting to Rs. 8,06,852/-. Thus the respondent authorities have by adopting such a pedantic approach could not have rejected the legitimate claim of the petitioner company for balance amount of refund claim.

33. In view of the forgoing reasons, the petition succeeds and is accordingly allowed. The impugned order dated 12.09.2019 passed by respondent no.3 and confirmed by respondent no.2 vide order dated

29.09.2020 are hereby quashed and set aside. The respondent authorities are directed to sanction the refund of Rs. 8,06,852/- as per the refund application filed by the petitioners on 08.08.2019 within a period of six weeks from the date of receipt of a copy of this order along with applicable rate of interest in accordance with law.

34. Petition is accordingly disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

High Court of Judicature at Allahabad

[Hon'ble Ashwani Kumar Mishra and Syed Aftab Husain Rizvi, J.]

Neutral Citation No. - 2023:AHC:178819-DB
Case :- WRIT TAX No. - 1020 of 2023

Western Carrier India Ltd ... Petitioner

Versus

State Of U.P. And 4 Others ... Respondent

Order Date :- 15.9.2023

WHETHER THE DEPARTMENT IS BARRED FROM SEIZING A VEHICLE U/S 129 OF CGST ACT WHEN IT IS ACCOMPANIED BY DOCUMENTS LIKE INVOICES AND E-WAY BILL AS PER CIRCULAR ISSUED BY DEPARTMENT DATED 31.12.2018.

Held – YES

We are of the view that the department ought to have considered the petitioner's prayer for release of goods and vehicle upon compliance of the provisions contained U/s 129 (1) (a) of the Act. A direction accordingly is issued to the respondents to act in terms of the above circular and release the goods upon compliance of the condition stipulated U/s 129(1)(a). All other questions are left open to be examined in statutory appeal to be filed before the appropriate authority.

Counsel for Petitioner : Rahul Agarwal

Counsel for Respondent : C.S.C.,A.S.G.I.,Gopal Verma

ORDER

Heard learned counsel for the petitioner, learned Standing Counsel representing State and Sri Gopal Verma learned counsel appearing for respondent nos. 4 & 5.

The petitioner is aggrieved by an order dated 14.08.2023 contained in annexure no.10 to the writ petition whereby the liability has been fixed upon it to pay penalty in terms of Section 129 (1) b of the C.G.S.T. Act, 2017. Further prayer made in the writ is to command the respondents to release the goods and the vehicle seized by respondents by accepting penalty in terms of section 129 (1)(a) of the GST Act.

In addition to other arguments advanced, learned counsel for the petitioner places reliance upon a circular issued by the Board on 31.12.2018 which provides that if the invoice or any other specified document is accompanying the consignment of goods then either the consigner or the consignee should be deemed to be the owner of the goods. Relying upon such circular, it is urged on behalf of the petitioner's that the petitioner is a carrier and the goods transported by it was accompanied by E-Way bill and invoice etc. The submission is that the authorities in such circumstances have erred in imposing penalty upon the petitioner inasmuch as by virtue of the aforesaid circular the petitioner was liable to be treated as the owner of the goods and consequently the provision of section 129(1)(a) alone could have been invoked.

Learned State counsel submits that in respect of the demand of tax, the petitioner has the remedy of filing an appeal U/s 107 of the Act. So far as the prayer for release the goods and vehicle is concerned, learned State counsel does not dispute the petitioners assertion that the goods in transit were accompanied by requisite documents including E-Way bill and invoice etc. The applicability of the circular dated 31.12.2018 is otherwise not doubted.

The department itself has issued a circular dated 31.12.2018 containing clarification on various issues relating to the applicability of the provision, the department is expected to comply with it. The sixth issue is relevant in the circular for the present purposes and is extracted hereinafter.

Issues	Clarifications
Who will be considered as the 'owner of the goods' for the purposes of Section 129 (1) of the CGST Act?	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consigner or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such case, the proper officer should determine who should be declared as the owner of the goods.

In view of the fact that the department does not dispute the petitioner's assertion that the goods in transit were carrying necessary documents in the form of E-Way bill and invoice etc, we are of the view that the department ought to have considered the petitioner's prayer for release of goods and vehicle upon compliance of the provisions contained U/s 129 (1) (a) of the Act. A direction accordingly is issued to the respondents to act in terms of the above circular and release the goods upon compliance of the condition stipulated U/s 129(1)(a). All other questions are left open to be examined in statutory appeal to be filed before the appropriate authority.

Accordingly, the writ petition stands disposed of.

HIGH COURT FOR THE STATE OF TELANGANA

[P. Sam Koshy and & Laxmi Narayana Alishetty]

WRIT PETITION NO.23431 OF 2023

Between :

M/s. Kesoram Industries Ltd.,
Cement Division Unit, Basantnagar, Peddapalli,
Telangana State, Represented by Sri Vaishnu Sankar
Sankaramanchi, Manager, Legal Cement Division,
Kesoram Industries Ltd. … Petitioner

and

The Commissioner of Central Tax,
Medchal, GST Commissionerate,
Medchal, GST Bhavan, Redhills,
Lakdikapul, Hyderabad and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.09.2023

1. Whether Reporters of Local Newspapers : No
   may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes
   marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
   see the fair copy of the Judgment ?

20.09.2023

WHETHER GARNISHEE PROCEEDINGS CAN BE TAKEN U/S 79(1) OF CGST ACT WITHOUT ISSUING A NOTICE AS CONTEMPLATED UNDER THE ACT.

Held – NO

That the petitioner is entitled to prior notice before passing garnishee proceedings, which the respondent authorities have failed to follow and instead, the respondent authorities passed impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 contrary to section 73 (1) of CGST Act, 2017. Hence, impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 are bad in law and are accordingly, set-aside.

Counsel for the Petitioner	:	Sri Srinivas Chatruvedula
Counsel for the Respondents	:	Sri Dominic Fernandes, learned senior standing counsel for respondents 1 to 4.

Cases referred:

[2020(33) G.S.T.L.16(Jhar)]
2020(36) G.S.T.L.343(Jhar)]
W.A.Nos.2127 and 2151 of 2019
2019 (28) G.S.T.L3 (Kar.)
W.P.(C) 8317/2019 (Del.)
1996 (88) E.L.T.12 (SC)

ORDER
(per Hon'ble Sri Justice Laxmi Narayana Alishetty)

The present writ petition has been filed declaring the garnishee proceedings in Form GST-DRC-13, to the Manager, HDFC Bank Limited, in C.No. V/30/04/2019-Pdpl-MNCL, dated 25.07.2023 in DIN NO.20230756YP0800222A74, by which respondent No.2 directed to pay a sum of Rs.1,28,97,344/- and in Form GST-DRC-13 to the Manager, AXIS Bank, in C.No.V/30/04/ 2019-Pdpl-MNCL, dated 28.07.2023 in DIN No.2023756YP080062196C, by which respondent No.2 directed to pay a sum of Rs.1,28,97,344/-, as being arbitrary, illegal and violation of the fundamental rights of the petitioner.

2. The brief facts leading to filing of present writ petition are as under:

3. The petitioner is a Public Limited Company and is engaged in manufacture and supply of Cement under the brand name of Birla Shakti Cement. The petitioner was regular in payment of GST, however, owing to financial crisis, there was a delay in payment of GST. The Respondent No.3 issued letter dated 19.06.2023 to the petitioner demanding payment of interest of Rs.1,28,97,355/- on account of delayed payment of tax from

July, 2017 to January, 2023 along with calculation indicating month wise interest payable on delay in filing of GSTR 3B return. The petitioner was informed to reconcile the interest and pay the same within 07 days of receipt of letter to avoid recovery under section 79 of the CGST Act, 2017.

3. That due to financial crisis, there was a delay in payment of tax dues, however, the petitioner paid the dues along with interest @18% for the delayed period in accordance with section 50 of the GST Act basing on its own calculations. That in response to notice dated 19.06.2023 of the Department, the petitioner submitted letter dated 28.06.2023 seeking three months time for payment of interest in view of severe financial crisis which resulted in late payment of GST and finally requested the authorities not to take any coercive action.

4. In response to the said letter, the petitioner addressed a letter, dated 28.06.2023 informing responding that interest aggregating to Rs.13,07,942/- was paid and further stated that due to severe financial crisis, there was delay in payment of interest, however petitioner sought three months for payment of interest and further, requested to respondent No.3 not to take any coercive steps. The petitioner addressed another letter, dated 25.07.2023 to the respondent No.3 disputing the interest liability arrived at by the respondents and further requested the authority to demand interest from due date of filing of GSTR 3B Return till the date of deposit of GST to Electronic Cash Ledger till the issue is decided by Hon'ble High Court. However, without considering the letters dated 28.06.2023 and 25.07.2023 and without providing any opportunity respondent No.2 issued impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 under section 79(1) (C) of CGST Act, 2017 high handedly contrary to provisions of GST Act and principles of natural justice.

5. The petitioner received a letter dated 07.08.2023 from HDFC Bank Limited, on 10.08.2023 informing the petitioner about issuance of impugned garnishee proceedings, dated 25.07.2023 and in compliance of the bank placed the petitioner's account under "No Debit" status. Similarly, the petitioner received a call from Axis Bank on 10.08.2023 informing the petitioner about impugned garnishee proceedings, dated 28.07.2023 and that the petitioner petitioner's account has been placed under "No Debit" status.

6. Heard Sri Srinivas Chatruvedula, learned counsel for the petitioner and Sri Dominic Fernandes, learned senior Standing Counsel for the respondent Nos. 1 to 4.

7. Learned counsel for the petitioner submitted that the impugned garnishee proceedings were issued though the interest liability in question was disputed by the petitioner and further, the same was issued without issuing any notice to the petitioner under section 73 of the CGST Act, 2017 and without affording an opportunity of personal hearing to the petitioner. He further submitted that the impugned garnishee proceedings are bad in law and the same were issued without conducting requisite proceedings under section 73 of the CGST Act, 2017 and further, both the garnishee proceedings in Form DRC-13 were not issued to the petitioner.

8. He further submitted that the garnishee proceedings are against provisions of Section 79(1)(c) of CGST Act, 2017 read with Rule 145(1) of CGST Rules, 2017 and also Section 50(1) of the CGST Act, 2017. That no late fees is prescribed under section 47(2) of the CGST Act, 2017 and therefore, the garnishee proceedings for demand of Late Fees Under Section 47(2) of the CGST Act, 2017 is perverse, arbitrary, void abinitio and liable to be set-aside. He further submitted that Section 79 of the CGST Act,2017 pertains to Recovery of Tax and is applicable only in cases wherein, any amount is payable by an assessee to the Government under any of the provisions of this Act or the rules made there under and the same is not paid.

9. He further submitted that as per Rule 145 of CGST Rules, 2017, the proper officer may serve upon a person referred to in clause(c) of sub-section (1) of section 79, a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice. Therefore, for a demand to attain the status of money becoming due to the department for issuance of Form DRC-13, there has to invariably an order of the proper officer, issued under the provisions of Section 73 or 74 of the CGST Act, 2017, as the case may be, unless such liability in question is accepted by the assessee himself.

10. The respondent Authorities failed to appreciate that the provisions of Section 79 are not invokable in respect of demands which are in dispute and not subjected to the process of adjudication, as contemplated under Section 73 or 74 of the CGST Act, 2017, as the case may be. That, in the instant case, it is an undisputed fact that the petitioner, vide its letter dated 25.07.2023 had communicated to respondent No.3 that, they are seriously disputing the interest liability figure calculated by the respondents, for reasons explained in the said letter.

11. Therefore, it is prerequisite that any disputed liability, has to undergo the process contemplated by the provisions of Section 73 or 74 of

the CGST Act, 2017 as the case may be and cannot be enforced directly through Section 79(1)(c) of CGST Act, 2017 read with Rules, 2017.

12. It is relevant to reproduce Section 50 (1), 73(1), and 79(1)(c)(i) are as under:-

"Sec.50. Interest on delayed payment of tax:-

(1). Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government, on the recommendation of the Council.

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made there under.

Sec. 79. Recovery of tax"-

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made there under is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(a) & (b) xxxx

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on

account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;"

13. Learned counsel for the petitioner has relied upon following judgments:

i. Godavari Commodities Ltd. vs Union of India and Ors[1]
ii. Mahadeo Constructions Co vs Assistant Commissioner[2]
iii. Assistant Commissioner of CGST & Central Excise and Others vs Daejung Moparts Pvt. Ltd. and Ors[3]
iv. LC Infra Projects Pvt. Ltd. vs. The Union of India & Ors[4]
v. Vision Distribution Pvt. Ltd. v.Commissioner[5]
vi. Pratibha Processors v. Union of India[6]

14. He further submitted that in the absence of the rules that were required to be made under Section 50(2), the respondents cannot resort to any un prescribed method of calculation on their own, as the same will not have the sanction of law.

15. He further submitted that the portal maintained by GST Authorities does not permit and accept if lesser amount than that of demand amount is paid by the assessee. In the present case, the petitioner is already maintained an account with the GST Authority on their portal and the amounts had already paid through their credit ledger, however owing to particular design of the portal, it will not accept unless the entire demand amount is paid. Further, the interest was calculated from the due date of filing of GSTR 3B return till actual date of filing of GSTR 3B return and not the date of deposit of GST to Electronic Cash Ledger by the petitioner. That when the remittances of tax liability was made from the bank account of the company, the said amount would automatically get debited to the

1 [2020(33) G.S.T.L.16(Jhar)]
2 2020(36) G.S.T.L.343(Jhar)]
3 W.A.Nos.2127 and 2151 of 2019
4 2019 (28) G.S.T.L3 (Kar.)
5 W.P.(C) 8317/2019 (Del.)
6 1996 (88) E.L.T.12 (SC)

company's bank account and gets transferred to electronic cash ledger of the company maintained at common GST Portal.

16. He further submitted that Sections 49(2), 49(3), 49(4), Section 39(7), 2(117) indicates that the Act permits furnishing of return without payment of full tax as self assessed as per the said return, but, the return would be regarded as an invalid return. The said return would not be used for the purposes of matching of Input Tax Credit. Thus, although the law permits part payment of tax but no such facility has been made available on the common GST portal.

17. Learned counsel for the petitioner strenuously pointed out that garnishee notices were issued under Section 47(2) of GST Act in respect of late fee, which is impermissible under law.

18. Per contra, learned Standing Counsel for respondent Nos.1 to 4 submitted that petitioner's amounts are still lying in their account and were not transferred/credited to government. He further submitted that tax due amounts can be paid only through cash ledger and cannot be paid through credit ledger. Therefore, even if amounts are lying in the credit ledger account, the same does not amount to payment or transfer to the Department. Therefore, the contention of the petitioner that the amounts are lying with the Government is factually incorrect.

19. Learned Standing Counsel further submitted that the contention of the petitioner that the rules were not framed is factually incorrect, since rules were already framed from date of implementation of GST Act, 2017. He further submits that the petitioner paid the tax with delay, thereby invited interest for the delayed period which is 18% per annum. As per the records of respondent authorities, the petitioner was due a sum of Rs.1,28,97,355/- and despite notice, the petitioner failed to pay tax as well as interest on delayed payments. Therefore, the respondent Authorities are justified in issuing garnishee proceedings to the petitioner's bankers under Section 79 of the CGST Act, 2017.

20. Learned Standing Counsel for respondents had referred to section 39, 50, 75(12) and Rules 61(2), 88(B) to impress upon this Bench that the respondent Authorities have duly followed the procedure as provided under GST Act before issuing garnishee proceedings. Section 39, 50, 75 (12) and Rules 61(2), 88(B) of GST Act are reads reproduced for ready reference:

> **As per under Section 39 of the GST Act:** Every registered person shall for every calendar month or a part thereof, furnished, a return

electronically, inward supplies of goods or services or both, tax payable and tax paid on such other particulars, such form and manner and within such time as may prescribed.

As per under Section 50: Every person who is liable to pay tax in accordance with the provisions of GST Act or the Rules made there under, but fails to pay the tax or any part thereof to the Government within prescribed period shall be liable to pay interest on the said amount at such rate not exceeding 18%.

As per section 79 of GST Act : A proper Officer is empower to recover any amount payable by the person to the Government under any of the provisions of the GST Act.

As per Rule 61(2) of GST Act Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in Form GSTR-3B.

21. By referring to above provisions of GST Act, learned standing counsel strenuously contended that it is duty of every registered person under GST Act to pay the tax dues within prescribed time. In case of delay, the registered person is further liable to pay interest in accordance with section 50 of the GST Act.

22. The learned standing counsel submitted that the judgments cited and relied upon by the petitioner are not applicable to the present case and are distinguishable on facts.

23. He finally submitted that the petitioner failed to make out any case warranting interference by this Court and the respondent authorities have duly followed the procedure as provided under CGST Act, 2017 in issuing garnishee proceedings to the bankers of the petitioner and there is no illegality or arbitrariness in the action of the respondent authorities.

Consideration:

24. From the material and submissions made by learned counsel for the petitioner and standing counsel for respondent-department, it is clear that admittedly there is a delay on the part of petitioner in payment of GST dues. It is also not in dispute that, the petitioner paid the GST

dues belatedly, however along with interest as per it's own calculation. It is noteworthy to mention that the petitioner had addressed letter dated 28.06.2023 to the respondent authorities requesting three months time for payment of interest owing to financial crisis and acute shortage of working capital. The petitioner addressed another letter dated 25.07.2023 disputing the interest liability arrived at by the respondents and further requested the authority to demand interest from due date of filing of GSTR 3B Return till the date of deposit of GST to Electronic Cash Ledger till the issue is decided by Hon'ble High Court.

25. A perusal of Sections 73, 74 and 79 of CGST Act and Rules, 2017 indicate that before issuing garnishee proceedings under Section 79, the authorities shall issue notice to the assessee in terms of Section 73(1) and provide an opportunity to the assessee to submit his reply to the notice and only thereafter, the authorities shall proceed further by taking into consideration the reply / explanation provided by the assessee.

26. In the case of Mahadeo Constructions Co vs Assistant Commissioner2 , Hon'ble Jharkhand High Court held as under:-

> "……. If an assessee has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available to the proper officer would be to initiate proceedings under section 73 (1) of the CGST Act for recovery of the amount of "short paid" or "not paid" interest on the tax amount ……

27. In Assistant Commissioner of CGST & Central Excise and Others vs Daejung Moparts Pvt. Ltd. and Ors3 (supra), the Hon'ble Madras High Court quashed the garnishee proceedings under section 79 of the CGST Act, 2017 issued to the banker and held as under:-

> 29. A careful perusal of sub Sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid.

28. In the case of LC Infra Projects Pvt.Ltd. vs. The Union of India & Ors4, Hon'ble Karnataka High Court held as under:-

> "…….the issuance of Show Cause notice is sine qua non to proceed with the recovery of interest payable thereon under

> Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent - Authority without issuing Show Cause Notice, which is in breach of principles of natural justice……

29. In the case of Vision Distribution Pvt. Ltd. vs. Commissioner[7], Hon'ble Delhi High Court held that the taxpayer cannot be made to suffer for no fault of his own, on account of failure of the Government in devising smooth GST systems providing of debiting the Electronic Cash Ledger without filing of GSTR 3B Return.

30. Hon'ble Supreme Court in the case of Pratibha Processors v. Union of India[8] observed as under;-

> "In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known, they are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty-- which is penal in character."

31. In the present case, admittedly, the respondent authorities have not issued any notice in terms of Section 79(1) of CGST Act, 2017 to the assessee to submit his reply/explanation to the demand notice for delay payments. Instead, the respondent Authorities have straight away issued garnishee proceedings under Section 79 of CGST Act, 2017, by which the petitioner's bankers were directed to debit the alleged tax dues, which is referred to 73 of the CGST Act, 2017.

32. In considered opinion of this Bench, there is considerable amount of force in the contention of the petitioner that without providing an opportunity of clarifying / explaining, the respondents authorities have calculated that

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7 1996(88) E.L.T.12 (S.C)

8 1996(88) E.L.T.12 (S.C)

the petitioner is liable to pay a sum of Rs. 1,28,97,355/- on account of late filing of GSTR 3B Return for the period July, 2017 to January, 2023 and had issued the impugned garnishee notices under Section 47(2) of the CGST Act, 2017.

33. The respondent authorities are required to issue notice to the assessee seeking their response, clarifications for non-payment of tax, interest on late payment prior to passing garnishee proceedings under Section 79(1) of the CGST Act, 2017. Therefore, the action of respondent authorities in issuing the proceedings under section 73(1) of CGST Act, 2017 are in clear violation of principles of natural justice.

Conclusion:

34. In the above factual background and legal position, this Bench is of the considered opinion that petitioner is entitled to prior notice before passing garnishee proceedings, which the respondent authorities have failed to follow and instead, the respondent authorities passed impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 contrary to section 73 (1) of CGST Act, 2017. Hence, impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 are bad in law and are accordingly, set-aside.

35. The respondent authorities are at liberty to issue notice under Section 73(1) of CGST Act, 2017 to the petitioner as per law and afford an opportunity of hearing and thereafter, proceed further in accordance with law.

36. Accordingly, the present Writ Petition is allowed. No order as to costs.

37. Pending miscellaneous applications, if any, shall stand closed.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 16211/2023 & CM APPL. 65181/2023

Sanchit Jain ... Petitioner

versus

AVATO Ward -46 State Goods and
Services Tax & Anr. ... Respondents

Through : Mr. Rajeev Aggarwal A.S.C. along with
Mr. Prateek Bhadwar,
Ms. Shaguftha H. Badhwar and
Ms. Samridhi Vats, Advocates.

Date of oorder : 15.12.2023

WHETHER REGISTRATION CAN BE CANCELLED RETROSPECTIVELY IF SCN HAS BEEN ISSUED FROM A PARTICULAR DATE?

Held

NO.

The petitioner had confined his challenge to the cancellation of the petitioner's GST registration with retrospective effect. It is stated that the petitioner had no objection to his GST registration being cancelled but the same cannot be done with retrospective effect, as the same has a cascading effect on the petitioner's customers whom the supplies were made.

The impugned order to the extent that it directs cancellation of the petitioner's registration with retrospective effect, is set aside. The petitioner's GST registration shall stand cancelled from the date of the issuance of the Show Cause Notice.

O R D E R
15.12.2023

1. Issue notice.

2. Mr. Rajeev Aggarwal, learned Additional Standing Counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition, impugning an order dated 17.07.2023 (hereafter 'the impugned order'), cancelling the petitioner's GST registration with retrospective effect.

4. The impugned order was issued pursuant to a Show Cause Notice dated 06.06.2023, whereby the Proper Officer had proposed to cancel the petitioner's GST registration on the ground of failure to furnish the returns for a continuous period of six months.

5. The petitioner was called upon to furnish a reply to the said Show Cause Notice, within a period of 30 days from the date of service of notice.

He was also called to appear before the concerned Officer on 04.07.2023. Additionally, the petitioner's GST registration was suspended with effect from the date of the Show Cause Notice– 06.06.2023.

6. The impugned order indicates that the petitioner's GST registration was cancelled for the following reasons:

> "Rule 21A(2A)- comparison of returns furnished by registered person under section 39 as selected by PO while issuing REG-31"

7. The registration was cancelled with retrospective effect, from 03.07.2017.

8. The reasons stated in the impugned order are not intelligible.

9. We have asked Mr. Aggarwal, learned counsel, whether he could decipher the same. He too, is unable to explain the said reasons.

10. Further, the impugned order does not provide any reason for cancelling the petitioner's GST registration with retrospective effect.

11. As noted above, the only reasons stated in the Show Cause Notice for cancelling the petitioners GST registration was that he had not filed returns for a continuous period of six months.

12. Clearly, absent anything more, the said reason does not warrant cancelling GST registration even during the period when the petitioner had filed the returns.

13. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), a Proper Officer may cancel the GST registration from the said dated as he considers fit including from a retrospective date if the circumstances as set out in Section 29(2) are satisfied. However, the cancellation with retrospective effect cannot be arbitrary.

14. It is necessary that the same be informed by reason and not to the objective satisfaction of the Proper Officer.

15. In the present case, the impugned order does not set out any intelligible reason for cancelling the petitioner's GST registration, let alone doing so with retrospective effect.

16. Having stated above, it is also material to note that the learned counsel for the petitioner had confined his challenge to the cancellation of the petitioner's GST registration with retrospective effect. It is stated

that the petitioner had no objection to his GST registration being cancelled but the same cannot be done with retrospective effect, as the same has a cascading effect on the petitioner's customers whom the supplies were made.

17. In view of the above, the impugned order to the extent that it directs cancellation of the petitioner's registration with retrospective effect, is set aside.

18. The petitioner's GST registration shall stand cancelled from the date of the issuance of the Show Cause Notice, that is, with effect from 06.06.2023.

19. It is clarified that this would not preclude the respondents from initiating any other proceedings if it found that the petitioner had violated any of the statutory provisions.

20. The present petition is disposed of in the aforesaid terms. Pending application(s) also stands disposed of.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
[Pamidighantam Sri Narasimha and Aravind Kumar, JJ]

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 1887/2024

(Arising out of impugned final judgment and order dated 26-09-2023 in WP(C) No. 5820/2022 passed by the High Court Of Delhi At New Delhi)

Commissioner of Delhi Goods and Service Tax ... Petitioner(s)

Versus

ITD ITD CEM JV ... Respondent(S)

(IA No.14675/2024-CONDONATION OF DELAY IN FILING and IA No.14673/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date of Order : 09-02-2024

This petition was called on for hearing today.

WHETHER LIMITATION OF 15 DAYS WOULD START FROM THE NOTICE ISSUED U/S 74(8) PERSONALLY TO THE COMMISSIONER OR SUBMITTED AT THE COUNTER AUTHORISED TO RECEIVE THE SAME? IT WAS HELD THAT THE NOTICE REGARDING COMPLETION OF PROCEEDINGS WITHIN 15 DAYS WILL BEGIN FROM THE DATE OF THE NOTICE SUBMITTED AT THE DAK.

For Petitioner(s) : Mr. N Venkataraman, A.S.G.
Ms. Nisha Bagchi, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Ms. Saumya Tandon, Adv.
Mr. Prasenjeet Mohapatra, Adv.
Mr. Siddharth Sinha, Adv.

For Respondent(s) : Mr. Rajesh Jain, Adv., Mr. Virag Tiwari, Adv.
Mr. K.J. Bhat, Adv., Mr. Ramashish, Adv.
Ms. Tanya, Adv.
Mr. Avadh Bihari Kaushik, AOR

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Having heard Ms. Nisha Bagchi, learned senior counsel appearing for the petitioner, in the facts and circumstances of the case, we are not

inclined to interfere with the impugned judgment and order passed by the High Court.

Accordingly, the Special Leave Petition is dismissed. Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
COURT MASTER (NSH)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[Mohammed Shaffiq, J.]

W.P. (MD) NO. 22642 OF 2022
W.M.P. (MD) NOS.16803 and 16804 of 2022

M/s.Vadivel Pyrotech Private Limited ... Petitioner

Versus

Assistant Commissioner (ST) ... Respondent

Date of Order: 27.09.2022

WHETHER NOTICES ISSUED IN ASMT-10 AND DRC-01 ON DIFFERENT DISCREPANCIES CAN BE SAID TO BE VALID U/S 61 OF THE ACT OR WILL THE PROCEEDINGS BE VITIATED?

HELD – THE ENTIRE PROCEEDINGS WILL BE VITIATED AND HELD TO BE AGAINST PRINCIPLES OF NATURAL JUSTICE.

For Petitioner : Mr. N.Viswanathan

For Respondent : Mr. M. Prakash,
Additional Government Pleader

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records connected with order Ref.No:33AADCV5898H1ZV dated 09.05.2022 passed by the respondent herein and quash the same for having been passed in gross violation to the principles of natural justice besides being excessive and without the authority of law.

ORDER

This Writ Petition is filed challenging the impugned order in Ref. No:33AADCV5898H1ZV dated 09.05.2022 passed by the Respondent herein as having been made in gross violation of principles of natural justice

and the procedure provided/prescribed under the Tamil Nadu Goods and Service Tax Act, 2017.

2. The impugned order is apparently made pursuant to the Scrutiny of the GST returns filed by the petitioner under Section 61 of the Tamil Nadu Goods and Service Tax Act, 2017 (herein after referred to as TNGST Act) for the period 2018-2019 as would be evident from the Preamble to the Show Cause Notice in GST DRC-01 and the impugned Order in GST DRC-07, which reads as under:

> **"Summary of Show Cause Notice:**
>
> M/s. VADIVEL PYROTECHS PRIVATE LIMITED, Door No. 217/G, Setur Road Sivakasi, 626123 are dealing in Fireworks registered under the TNGST Act, 2017. This is to inform that during the scrutiny of the return under section 61 of Tamilnadu Goods and Service Tax Act, 2017 (hereinafter referred as TNGST Act, 2017) for the year 2018-2019, the following differences were noticed.
>
> **Summary of the Order:**
>
> M/s. VADIVEL PYROTECHS PRIVATE LIMITED, Door No. 217/G, Setur Road Sivakasi, 626123 are dealing in Fireworks registered under the TNGST Act, 2017. This is to inform that during the scrutiny of the return under section 61 of Tamilnadu Goods and Service Tax Act, 2017 (hereinafter referred as TNGST Act, 2017) for the year 2018-2019, the following differences were noticed."

3. Though a number of grounds have been raised challenging the impugned order, the learned counsel for the Petitioner would confine his challenge to the impugned proceedings on the ground that the same stands vitiated, inasmuch as rule 99 of the Tamil Nadu Goods Service Tax Rules, has not been complied with, which would prove fatal to the validity of the impugned order dated 9-5-2022.

4. The brief facts of the case are as follows:

(i) The petitioner is engaged in the business of manufacture and supply of pyrotechnic products (fireworks) and is registered under the TNGST Act. The petitioner had filed the GST returns under the TNGST Act periodically discharging appropriate taxes, while availing the Input Tax Credit in terms of section 16 of the TNGST Act. The Respondent had

undertaken Scrutiny of the GST returns in terms of section 61 of the TNGST Act and a notice in Form ASMT 10 dated 22-12-2021 was issued pointing out certain discrepancies between GSTR3B, GSTR 1 and GSTR 2A returns filed by the petitioner for the year 2018-19 calling upon the petitioner to pay taxes to the extent of Rs. 13,54,250/- along with interest. The petitioner in response paid the interest and furnished GST-DRC 03 dated 27-12-2021, while submitting his explanation in Form ASMT 11 on 18-1-2022 by furnishing the relevant details.

(ii) While so, after more than six months, the petitioner was enquired over telephone by the office of the Respondent as to whether the petitioner had paid taxes, interest and penalty demanded *vide* order dated 9-5-2022. It is stated that the petitioner was until then unaware of any proceedings other than the Scrutiny under section 61 of the Act resulting in the issuance of Form ASMT 10 dated 22-12-2021, which was responded to by the petitioner in Form ASMT 11 dated 18-1-2022. Thereafter, on enquiry with the office of the Respondent on 12-8-2022, the petitioner was informed that an order dated 9-5- 2022 was passed by the Respondent and a Summary of the Notice in GST DRC-01 and Order in GST DRC-07 had also been uploaded in the GST portal. On being so informed, the petitioner logged in to the GST portal and found that the Notice and Order had in fact been uploaded. Thereafter, the petitioner downloaded GST DRC-01 and GST DRC- 07.

(iii) On perusal of the downloaded summary of Show Cause Notice in GST DRC-01 and Order in GST DRC-07, the petitioner found that pursuant to alleged Scrutiny of the returns, six defects were noticed, *viz.*,

[1] Difference of turnover reported in the audited financial statement and in the GSTR 9 C involving tax amounting to Rs. 35,33,657/-;

[2] Availment of input tax credit of Rs. 4,22,08,872/-based on the invoices of their sister concerns without issue of e-way bills thereby assuming non-receipt of goods violating Sec. 16 of the TNGST Act, involving tax of Rs. 4,22,08,872/-;

[3] Difference of input tax credit between the input tax credit available as per GSTR2A and the input tax credit availed as GSTR3B involving credit amount of Rs. 13,54,250/-;

[4] Denial of ITC of Rs. 6,34,252/-(CGST of Rs. 3,17,126/- and SGST of Rs. 3,17,126/-) on the alleged 'Non accounting of purchases as per 2A Statement' for the reason that they have not availed IGST input tax credit of Rs. 5,25,260/-which was otherwise available to the petitioner as per GSTR-2A, on the value of Rs. 35,23,620/-;

[5] Availment of 'ineligible' 'Blocked Credit' Rs. 1,91,520/and

[6] Demand of Rs. 15,70,148/- under reverse charge presuming the value accounted as towards freight calculating the same @ 5% of the inward supplies received.

The aforesaid defects are different from the defects/discrepancy which were pointed out in the Form ASMT 10 issued on 22-12-2021. The petitioner submits that the entire proceedings has been made behind their back and they were completely unaware of either the summary of the Notice in GST DRC-01 or the Order in GST DRC-07 until being informed by the Respondent. It was submitted that the entire proceedings stands vitiated for violation of principles of natural justice inasmuch as neither the show cause notice nor the orders under GST DRC-07 passed under section 74 of the Act was served on the petitioner. In this regard, reliance was sought to be placed on the decision of this Court in W.P.No.27651 of 2021 to submit that it has been suggested by this Court that though section 169 prescribes different modes for service of orders, summons, notice etc., in view of the technical difficulties in implementing GST, unless the technical issues are resolved, a physical copy through registered post or speed post or courier with acknowledgement may be followed for service of orders, summons, notices etc. The relevant portion of the order reads as follows:

> "11. Though section 169 of the respective enactments allows the authorities to communicate any decision, order, summons, notice or other communication under this Act by any one of the methods specified, unless the proper conformation that notices and impugned orders which were uploaded in the web portal of the State Government in tngst.cid.tn.gov.in are auto populated, it cannot be said that there is a sufficient compliances of the aforesaid Section.
>
> 12. GST Act was implemented in the year 2017 with effect from 1-7-2017. The web portal maintained by GST has

faced problems on several occasions and steps were taken for correcting the technical glitches. Even as on date, there are problems arising out of intercommunication between the State GST and Central GST and the web portal which has to be resolved.

13. The respondents can therefore continue the service of notice through registered post or speed post or courier with acknowledgment to the petitioners at their last known place of business or residence and upload the same in the web portal. Till all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated section 169(1)(b) of the Act and through web portal.

14. Once all technical problems are resolved, the practice of sending physical copy through registered post or speed post or courier with acknowledgment may be dispensed with.

15. Considering the same, I am inclined to set aside the impugned assessment orders and remit the cases back to the respondents to pass speaking on merits and in accordance with law.

16. The petitioners are directed to file a reply to the respective Show Cause Notices which have been served on the learned counsel for the petitioners. The impugned orders which stand quashed by this order shall be treated as supplementary Show Cause Notices."

5. It is submitted by the learned counsel for the petitioner that the impugned proceedings is in gross violation of the procedure contemplated under Rule 99 of the Tamil Nadu Goods and Service Tax Rules, which prescribes the method and the manner for verification of the correctness of the returns and to correct any discrepancy that may be noticed or to initiate appropriate proceedings under section 65, 66, 67, 73 or 74 of the GST Act pursuant to a Scrutiny under section 61 of the Act. To appreciate the above contention, it may be relevant to extract section 61, 74 and rule 100(2) of the Tamil Nadu Goods and Service Tax Act and Rules which reads as under:

"Section 61. Scrutiny of returns: "(1) The proper officer may scrutinize the return and related particulars furnished by the

registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Section 74:

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.—

(1) Where it appears to the proper officer that any tax has not been paid short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement,

containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any willful misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub- section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for

furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11)Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax with in thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. - For the purposes of section 73 and this section,-
(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under 1[sections 122 and 125] are deemed to be concluded.

Explanation 2. - For the purposes of this Act, the expression "suppression" shall mean non- declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Rule 100(2):

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**."

On a cumulative reading of the above provisions and the corresponding Rules, the following position appears to emerge:

(a) The proper officer may scrutinize returns and related particulars and in case any discrepancies are noticed, the same shall be informed in ASMT 10 seeking explanation from the taxable person (As a matter of fact in the instant case ASMT 10 was issued on 22-12-2021 pointing out certain discrepancies).

(b) If the explanation offered by the petitioner in ASMT 11 is acceptable, no further action shall be taken (As a matter of fact ASMT 11 was submitted by the petitioner in response to the ASMT 10 dated 22-12-2021).

(c) In case the explanation is not satisfactory or no explanation is offered or the taxable person fails to take corrective measures in the return for the month in which the discrepancies were noticed and accepted, the proper officer may proceed to initiate appropriate action under section 65, 66, 67, 73 or 74 of the Act.

(d) Thereafter, the proper officer shall proceed to pass order in GST DRC-07 under section 73 and 74 after issuing GST DRC-01A in terms of rule 142 (1A) and GST DRC-01.

(e) It is thus clear that any proceeding in GST DRC-01A/1 culminating in an Order in GST DRC-07, if pursuant to Scrutiny under section 61 of the TNGST Act ought to be preceded by issuance of Form ASMT 10. In the present case, though ASMT 10 was issued on 22-12-2021 pointing out certain discrepancies, the GST DRC-01 dated 15-2-2022 and the impugned order in GST DRC-07 dated 9-5-2022 are made on the basis of issues that are completely different from what was set out in Form ASMT 10 dated 22-12-2021. As this Court is of the view that ASMT 10 is mandatory before proceeding to issue GST DRC-01, failure to issue the same in respect of the discrepancies forming the subject matter in GST DRC-01 dated 15- 2-2022 culminating in GST DRC-07 dated 9-5-2022 would vitiate the entire proceedings. It is trite law that when the Act prescribes the method and manner for performing an act, such act shall be performed in compliance with the said method and manner and no other manner.

6. To a pointed question as to whether Form ASMT 10 which ought to have been issued in respect of aspects forming the subject matter of the proceedings in GST DRC-01 culminating in GST DRC-07 in view of the fact that the proceedings are pursuant to scrutiny of

assessments, the learned Additional Government Pleader submitted that Form ASMT 10 was not issued other than the one issued on 22-12-2021, which does not cover the issues raised in the impugned proceeding. The learned Additional Government Pleader sought leave to issue notice in Form ASMT 10 in respect of the aspects forming the subject matter of the impugned proceedings and thereafter to assess in compliance with the procedure contemplated under the Act including section 61.

7. Recording the same, the impugned order dated 9-5-2022 is set aside and the matter is remitted back to the Assessing Officer for redoing the assessment. It is open to the Respondent to issue appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with law. The petitioner shall also co-operate in the proceedings.

8. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[Sonia Gokani (Designated) & Sandeep N. Bhatt, CJ.J.]

R/Special Civil Application No. 2288 of 2023

Devi Products ... Petitioner

versus

State of Gujarat ... Respondent

Date of Order: 15.02.2023

WHETHER A SHOW CAUSE NOTICE FOR CANCELLATION OF REGISTRATION, WITHOUT GIVING PROPER REASONS AS TO WHY IT IS BEING CANCELLED – CAN BE UPHELD IN LAW UNDER GST ACT?

HELD – NO.

Present for Petitioner(s) No. 1 : Mr Kuntal A Parikh (7757)

Present for Respondent(s) No. 2 : Ms Shrunjal Shah, Mr Utkarsh Sharma and Mr Kathiria, AGPS

ORDER

Ms. Sonia Gokani, (Designated) CJ.

1. By way of the present petition under Article 226 of the Constitution, the petitioner seeks to challenge the legality and validity of the order dated

24.03.2021 passed by the respondent No.2 whereby the registration certificate granted to the petitioner under the Central Goods and Service Tax Act, 2017 and Gujarat Goods and Services Tax, 2017 ("GST Acts" for short) has been cancelled with effect from 01.07.2017. It is averred that the same has been done in violation of principles of natural justice.

2. Petitioner has challenged the show cause notice dated 15.03.2021 issued under Rule 21 of the CGST Rules and GST Rules whereby respondent No.2 suspended the registration certificate with immediate effect from 15.03.2021 itself.

3. Petitioner is sole proprietor engaged in the business of trading of article brass and was registered with the Gujarat Value Added Tax under the Gujarat Value Added Tax, 2003 and Central Sales Tax Act, 1956. He got his registration with effect from 01.07.2017 by virtue of Section 139 of the GST Act and he has granted final certificate of registration under the very provision. According to petitioner, till June, 2020, he had filed his return of income under the GST Act, however, because of the prevalent circumstances he had no business subsequent to June, 2020, and therefore he was of bonafide belief that there was no requirement to file return under the GST ACT.

4. A show cause notice was issued on 15.03.2021 under Rule 22(1) of the GST Rules read with Section 29 of the GST Act whereby the petitioner was informed that his registration was liable to be cancelled because he had not filed the return for a continuous period of six months and he was called upon to file his reply to the notice. It is also the grievance of the petitioner that his registration has been suspended with immediate effect on 15.03.2021 itself under Rule 21A of the GST Rules and this had been done without recording any reasons. Thereafter, the registration of his was cancelled by respondent No.2 with effect from 01.07.2017 without recording any particulars or the reasons or the grounds for cancellation. This orders since was cryptic and there is no tax demand determined, he is before this Court.

5. It is his say that due to Covid-19 pandemic his business was badly affect and in fact, there had been no business post June, 2020 period. The financial hardship that he suffered from July, 2020 had led him to believe that there was no requirement for GST return to file. His registration has been cancelled with effect 01.07.2017 for not filing return after June, 2020. Therefore, he has approached this Court with the following prayers :

(a) That this Honorable Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the impugned order dated 24.03.2021 (Annexure - A)

cancelling the registration certificate of the Petitioner passed by the Respondent No. 2 as well as show cause notice dated 15.03.2021 (Annexure - B); and

(b) That this Honorable Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order directing the Respondents to forthwith restore the registration certificate (Annexure - C) of the Petitioner with effect from 01.07.2017; and

(c) Pending notice, admission and final disposal of this Petition, this Hon'ble Court by way of interim relief be pleased direct the respondent authorities to restore the registration of the Petitioner with effect from 01.07.2017; and

(d) Ex-parte ad-interim relief in term of Prayer 9(c) be granted; and

(e) For Costs; and

(f) That this Honorable Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case."

6. We have heard Mr.Kuntal Parikh, learned advocate appearing for the petitioner who has drawn our attention to the decision of this Court in case of **Aggarwal Dyeing and Printing Works vs. State of Gujarat and others** rendered in Special Civil Application No. 18860 of 2021 and allied matter. He has urged that his case is squarely covered by the decision of this Court. In the case of **Aggarwal Dyeing**, the writ applicant had approached the Court by urging that the show cause notice issued to him was cryptic and the order passed was also not in accordance with law. The appeal was preferred after delay of more than 2 years before the appellate authority in that case under Section 107 read with Rule 108 of the Rules. The case there was also that the turn over was nil and under the bonafide belief that no return was required to be tendered, the same was not submitted. In that group of matters, this Court had noticed that the notice impugned was devoid of any specific details and particulars. The order of cancellations also were more glaring. He therefore has urged that this would squarely cover the issue and hence, the order needs to be quashed along with the notice.

7. Ms.Shrunjal Shah, learned Assistant Government Pleader appearing on an advance copy argued fervently and Mr.Utkarsh Sharma, learned Assistant Government Pleader has also has drawn the attention of this

Court to the scheme of the Act which has brought into force on 01.07.2017 particularly the provision of Section 29 to urge this Court that the filing of return is must and Section 29 confers power on proper Officer to cancel the registration. It is also further argued before this Court that for period of six months, no return is filed, no further dilation in the notice is required. According to learned Assistant Government Pleader, the decision covers the issue of the cryptic notice and in the instant case such cancellation is on account of non-filing of return and that factor needs to be considered by the Court. It is not in dispute that this decision has not been challenged and in fact has been followed in various decisions delivered thereafter. In short, the attempt has been made to defend the action of the concerned officer since this was in relation to non-filing of the return for a period of six months.

8. Having heard both the sides at the stage of admission, we deem it appropriate to entertain this petition essentially following the decision in the case of **Aggarwal Dyeing**. The controversy there in the writ application was whether the show cause notice seeking cancellation of registration and the consequential order cancelling the registration under the GST Act was valid and sustainable in the eyes of law. The Court not only had examined the scheme of the Act but had also following various decisions of the Apex Court particularly on the necessity of giving reasons by a body or authority in support of the decision held that the absence of reasons renders an order indefensible and unsustainable particularly when it is subject to the appeal or revision. It also has amplified the decision of the **Krani Associates vs. Masood Ahmed** reported in **(2010) 9 SCC 496** where the Court has held that insistence on recording of reasons is meant to serve the vital principles of justice that justice must not only be done but it must also appear to be done as well. It would also operate as valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power. It also reassures that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. The reasons have virtually become indispensable component of a decision making process Observing the principles of natural justice vide judicial, quasi judicial or even the administrative bodies. They would also facilitate the process of judicial review by the superior Court. Therefore, it has been held that the assignment of the reason is imperative in nature and speaking order doctrine mandates assigning the reasons which is heart and sole of the decisions and that must be the result of independent re-appreciation of evidence adduced and documents produced in the case. Applying these principles, the Court held that the State and its officers ought to have at least incorporate the specific details of the contents of the show cause notice which any prudent person can respond to as otherwise

it would to fail to respond to such show cause notice which is bereft of details thereby making the mechanism of issuing show cause notice only a formality. Some of the findings and observations would be of profitable to reproduced at this stage :

> 12. At this stage it would be germane to refer to observations made by the Andhra Pradesh High Court in the case of MRF Mazdoor Sangh v. The Commissioner of Labour & Others, reported in 2014 (3) ALT 265, MANU/AP/1685/2013, wherein the matter of cancellation of registration of trade union, it was held that :
>
> "The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues."
>
> 12.1 We find that the aforesaid observation would squarely apply to the present facts of the case on hand. Thus, the sum and substance of various judgments on the principles of natural justice is to the effect that wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision.
>
> 13. It cannot be disputed that the writ applicant is liable to both civil and penal consequences pursuant to the impugned order of cancellation of certificate of registration. In all the writ applications we could note from the tabular details that the show cause notice though issued in the prescribed form does not elaborate the reasons and the one line reason mentioned is nothing but the reproduction of either of the reasons provide under rules regarding cancellation of registration. It appears from the materials on record that the respondent no. 2 issued a show-cause notice dated 18th September, 2018 in the Form GST REG-17, calling upon the writ-applicant to show-cause as to why the registration under the GST should not be cancelled. Such notice issued by the respondent no. 2 is under Rule 22(1) of the Central Goods and Services Tax Rules, 2017. The notice dated 18th September, 2018 referred to above reads as under :

"Form GST REG-17
[See Rule 22(1)]

Reference Number : ZA240918027128D Date : 18/09/2018

To Registration no. (GSTIN/Unique ID) :
24AEXPA3306
SANJEEV PREM AGGARWAL
SURVEY NO.230, OPP. MARIYA BANK, B/H RANIPUR VILLAGE,
NAROL, Ahmedabad, Gujarat 382405.

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons :

1. Any Tax payer other than composite taxpayer has not filed returns for a continuous period of six months. You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice. You are hereby directed to appear before the undersigned on 27/09/2018 at 12:42.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Place : Gujarat Signature valid digitally signed by
OS Goods and Service Tax Network

Date: 2018.09.18 13.00.44"

13.1 To say the least, the respondent authority i.e. the Assistant/Deputy Commissioner, State tax Officer ought to have atleast incorporated Specific details to the contents of the show cause. Any prudent person would fail to respond to such show cause notice bereft of details thereby making the mechanism of issuing show cause notice a mere formality and an eye wash.

14. We further notice that the respondent authority has failed to extend sufficient opportunity of hearing before passing impugned order, inspite of specific request for adjournment sought for. Even the impugned order is not only non speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Thus, on all counts the respondent authority has failed to adhered to the aforesaid legal position. We therefore, have no hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

15. We would be failing in our duty if we do not draw the attention of the Appellate Authority who has mechanically disposed off the appeals on the ground of delay. Apt would be to revisit the observations of the Supreme Court with regard to reasonable opportunity in the case of Union of India v. Jesus Sales Corporation, reported in 1996 (4)SCC 69, wherein it is observed that a practice has developed holding that even in the absence of a provision providing for an opportunity of hearing, such a provision is required to be read into the Rules governing the case, particularly, when an order being made is likely to have civil consequences. The Hon'ble Supreme Court has emphasize up on the appellate court to have the approach tilting in favour of providing fair and reasonable opportunity of hearing while dealing with condonation of delay application in filing appeal. The relevant observation made by the Hon'ble Supreme Court in the case of Jesus Sales Corporation (supra) in para 2, are as under :

"The Appellate authority may dispense with such deposit in its discretion. The proviso relating to the condonation for delay in filing the appeal is more or less on the pattern of section 5 of the Limitation Act. Some how, a practice has grown throughout the country that before rejecting the prayer for condonation of delay in filing the appeal or application, opportunities are given to the appellants or petitioners, as the case may be, to be heard on the question whether such delay be condoned. Opportunities to be heard are also the contesting respondents in such appeals. In different statutes given to where power has been vested in the Appellate authority to condone the delay in filing such appeals or applications, there are no specific provisions in those statutes saying that before such delays are condoned the appellants or the applicants shall be heard, but on basis of practice which has grown during the years the courts and quasijudicial authorities have been hearing the appellants and applicants before dismissing such appeals or applications as barred by limitations. It can be said that courts have read the requirements of hearing the appellants or the applicants before dismissing their appeals or applications filed beyond time on principle of natural justice, although the concerned statute does not prescribe such requirement specifically."

15.1 The Appellate authority ought to have appreciated that the writ applicants at relevant point of time i.e. in year 2017, applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the writ applicant. It was a transitional phase, whereby the old CST Act was repealed and the new regime of CGST/GGST has come into force. With the different forms and procedure envisaged there under, any layman is bound to take time to adhered to the norms. The Record reveals that subsequently the writ applicants have claim to have filed their returns and have even deposited all dues. We further notice that such exercise has been undertaken through the writ applicant's Tax Consultant who were professionally engaged to undertake such task. Unfortunately, information

of the returns for certain period not being uploaded, surfaced in the year 2019 and the cause explained suggest that circumstances were beyond the writ applicant's reach. In such peculiar circumstances, it was least expected of the Appellate authority to condone the delay for filing appeal, more so, with the Onset of Pandemic Covid-19, preventing further follow up action. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the writ applicant having made a fervent request for condonation of delay in filing appeal seeking revocation of cancellation of registration.

16. When we inquired with the learned AGP appearing for the respondents as to why such vague show cause notices and vague final orders, bereft of any material particulars therein are being passed, the reply on behalf of the respondents was quite baffling. The learned AGP submitted that on account of technical glitches in the portal, the department is finding it very difficult to upload the show cause notice as well as the final order of cancellation of registration containing all the necessary details and information therein. According to the learned AGP, it is in such circumstances that the show cause notices and impugned orders without any details are being forwarded to the dealers. This hardly can be a valid explanation for the purpose of issuing such vague show cause notices and vague final orders cancelling the registration.

17. We direct that till the technical glitches are not cured, the department will henceforth issue show cause notice in a physical form containing all the material particulars and information therein to enable the dealer to effectively respond to the same. Such show cause notice in physical form shall be dispatched to the dealer by the RPAD. In the same manner, the final order shall also be passed in physical form containing all necessary reasons and the same shall be forwarded/communicated to the dealer by way of RPAD. Any lapse in this regard, henceforth shall be viewed very strictly. We are saying so because this Court has been fedded up with unnecessary litigation in this regard.

18. Our final conclusion are as under:

18.1. Until the Department is able to develop and upload an appropriate software in the portal which would enable the Department to feed all the necessary information and material particulars in the show cause notice as well as in the final order of cancellation of registration that may be passed, the authority concerned shall issue an appropriate show cause notice containing all the necessary details and information in a physical form and forward the same to the dealer by RPAD. In the same manner, when it comes to passing the final order, the same shall also be passed in a physical form containing all the necessary information and particulars and shall be forwarded to the dealer by RPAD.

18.2. Over a period of time, we have noticed in many matters that the impugned order cancelling the registration of a dealer travels beyond the scope of the show cause notice. Many times, the dealer is taken by surprise when he gets to read in the order that the authority has relied upon some inspection report or spot visit report etc. If the authority wants to rely upon any particular piece of evidence then it owes a duty to first bring it to the notice of the dealer so that if the dealer has anything to say in that regard, he may do so. Even if the authority wants to rely on any documentary evidence, the dealer should be first put to the notice of such documentary evidence and only thereafter, it may be looked into.

18.3. The aforesaid may appear to be very trivial issues but, it assumes importance in reducing the unnecessary litigation. Our concern is that on account of procedural lapses, the High Court should not be flooded with writ applications. The procedural aspects should be looked into by the authority concerned very scrupulously and deligently. Why unnecessarily give any dealer a chance to make a complaint before this Court when it could have been easily avoided by the department."

9. In the instant case, what one finds is that it was a case of non-filing of return for six months. Assuming that requirement of filing of the return and the consequences for non-filing of return for six months is apparent in statutory provision, the very nature of notice has been held by this Court in the decision of Aggrawal Dyeing and Printing Works (supra) as cryptic and unsustainable under law.

10. Moreover, what is far more vital to be considered is the order which has been passed and that raises a serious concern of ours as the consequential order also is cryptic. While cancelling the registration, the authority concerned has not even determined the amount payable pursuant to such cancellation. It would be apt to reproduce the entire order of cancellation of registration :

"This has reference to your reply: dated 24/03/2021 in response to the notice to show cause dated 15/03/2021: Whereas no reply to notice to show cause has been submitted;

To

The effective date of cancellation of your registration is 01/07/2017 Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without

prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before 03/04/2021 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0	0	0	0

11. Assuming that the notice which merely speaks of "any tax payer other than composition tax payer has not filed returns for a continuous period of six months" would be comprehensible for the assessee to respond to the same as he was also given an opportunity to appear on 23-3-2021, this non-appearance on the part of the respondent when has resulted into cancellation of registration that too from the first date i.e. 1-7-2017 much prior to 2020 when he had defaulted in filing the returns, what is completely incomprehensible is that cancellation of registration without any determination of the amount which is to be paid by the petitioner which is hardly sustainable and such action can hardly be ratified in any manner.

12. We notice that this Court having noticed the repeated actions on the part of the officers of issuance of notice had also seriously frowned upon the non following of the decision. However, it has been brought to our notice that this is prior to delivery of the judgment in the month of February, 2022, therefore nothing further is to be stated as learned Assistant Government Pleader Mr.Kathiria had also drawn the attention of this Court of senior officers having taken note of the said decision and having circulated the same amongst them.

13. The writ application is allowed quashing the show cause notice and the consequential order cancelling registration with liberty to the respondent to issue fresh notice with particular reasons incorporating the details and a reasonable opportunity of hearing to writ applicant and to pass appropriate speaking order. The writ applicant is also permitted to respond to the same by filing an objection and reply with necessary documents.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru and Amit Mahajan, JJ.]

W.P.(C) NOS. 10407 & 10423 OF 2022

Balaji Exim ... Petitioner

Versus

Commissioner, CGST and Ors. ... Respondents

Date of Judgment : 10.03.2023

WHETHER ITC (REFUND) BE DENIED EVEN IF ALL DOCUMENTS FILED AND GOODS EXPORTED – ONLY ON THE GROUND THAT FAKE INVOICE WERE ISSUED?

HELD – NO

For the Petitioner	:	Abhas Mishra, Ms. Aakriti P. Mishra and Shyam Bhageria, Advs.
For the Respondent.	:	Aditya Singla, Sr. Standing Counsel, Ms.A. Sahitya Veena, Adv. for R-1 and R-2. Ms. Nidhi Banga, Sr. Panel Counsel and Nishant Kumar, Adv. for R-3.

JUDGMENT

Vibhu Bakhru, J.

1. The petitioner has filed the present petitions impugning the common Order-In-Appeal dated 31.03.2022 (Order-In-Appeal No.347-348/2021-22 – hereafter 'the impugned order'), whereby two separate appeals preferred by the petitioner against the Order-In-Original Nos. ZU0707210034420 dated 03.07.2021 and ZT0707210034442 dated 02.07.2021, respectively were dismissed.

2. Although the petitioner has a statutory right to appeal the impugned order, it is not possible for the petitioner to avail the said remedy as the Tribunal has not been constituted.

3. The petitioner had filed its refund application dated 11.09.2020 (in Form – GST-RFD – 01) seeking refund of the unutilized Input Tax Credit (hereafter 'ITC') amounting to ₹72,03,961/-, which comprised of Integrated Goods and Service Tax (hereafter 'IGST') amounting to ₹19,53,062/- and Cess of ₹52,50,899/-. The petitioner also filed another refund application dated 12.09.2020 (in Form GST-RFD – 01) claiming refund of ITC of ₹12,40,270/- comprising of IGST of ₹3,37,174/- and Cess amounting to

₹9,03,096/-. The refund sought was in respect of goods exported by the petitioner.

4. Respondent no.2 issued an acknowledgment (in Form GST-RFD-02) dated 27.09.2020, in respect of the petitioner's refund application for the amount of ₹12,40,270/-. In respect of the first application dated 11.09.2020, respondent no.2 issued a deficiency memo dated 21.09.2020, inter alia, stating that the supporting documents were not uploaded on the GST portal. Accordingly, the petitioner filed another application dated 23.09.2020 along with all documents in support of its refund application. The same was acknowledged by the respondent on 01.10.2020.

5. The petitioner's applications were not processed as the supplier from whom the petitioner had purchased the goods had allegedly received fake invoices from its suppliers.

6. A search was conducted by the officers of Central GST, Anti Evasion Branch, Delhi West Commissionerate in the premises of the petitioner on 21.10.2020. Thereafter, the petitioner (its proprietor) was summoned to the office of respondent no.1 on 23.10.2020 to tender certain documents.

7. Admittedly, the petitioner (proprietor) appeared before the Superintendent, Anti Evasion Branch on 23.10.2020 and furnished documents as sought for. Notwithstanding the same, the petitioner was issued another summons dated 28.12.2020 for furnishing the documents, which, according to the petitioner, had already been submitted.

8. The petitioner wrote several letters to respondent no.2 requesting for an early disposal of his refund applications. However, his requests were not acceded to.

9. In the meantime, the petitioner became aware of the allegations that its supplier, M/s Shruti Exports, had issued fake invoices and its ITC was blocked. The said supplier had moved the High Court of Calcutta by filing a writ petition seeking unblocking of its Electronic Credit Ledger (hereafter '**ECL**').

10. Show cause notice dated 04.06.2021 was issued by respondent no.2 to the petitioner proposing to reject the petitioner's refund applications. This show cause notice indicated that respondent no.2 had sought a report regarding legitimacy and genuineness of the export of goods from the Customs Station, Kolkata, which were purchased by the petitioner from M/s Shruti Exports (proprietor Sh. Vijander Kumar Goel). In response to the said query, respondent no.2 had received information that the said supplier – M/s Shruti Exports was being investigated by DGGI in connection with fake invoices allegedly issued by it. It was further alleged that M/s Shruti

Exports had availed CGST and SGST amounting to ₹1,35,21,489/- and Cess of ₹21,76,132/- on the strength of fake invoices issued by certain persons.

11. The petitioner responded to the said show cause notice on 12.06.2021. The petitioner was also afforded a personal hearing by respondent no.2 on 01.07.2021. During the course of the said proceedings, the petitioner also submitted additional documents in support of its refund claim.

12. The petitioner submitted that he was not concerned with any allegation against its supplier M/s Shruti Exports (proprietor Vijander Kumar Goel) as the purchases made by it were genuine and against genuine invoices. He also pointed out that in WPA No.4006/2020 captioned *Vijander Kumar Goel v. Assistant Commissioner, CGST Central Tax & Anr.,* the Calcutta High Court had passed an order directing unblocking of the ITC of the petitioner therein (Vijander Kumar Goel) and the same was subsequently unblocked.

13. Respondent no.2 rejected the refund applications by an order dated 02.07.2021, essentially, on the same grounds as stated in the show cause notice. Respondent no.2 reiterated that an investigation had been initiated against the supplier (M/s Shruti Exports) from where the petitioner had allegedly procured the goods. The said order indicated that respondent no.2 had received information that M/s Shruti Exports (GST No. 19AFRPG5814N1ZS) had issued the following two invoices to the petitioner in the month of August, 2020:

(i) Invoice No. SE/32/20.21 dated 29.08.2020; and

(ii) Invoice No. SE/33/20.21 dated 29.08.2020

14. Although it was confirmed that the said invoices were reflected on the 'AIO' System, the refund applications were rejected for the reason that *"it appeared that they are to be part of a supply chain involving fake Input Tax Credit".*

15. The petitioner appealed the said orders rejecting its refund applications, which was dismissed by the impugned order.

16. The Appellate Authority held that although the petitioner was in possession of the tax invoices, it could not be said that the petitioner had received the goods. Therefore, one of the conditions as stipulated in Section 16(2) of the Central Goods & Services Tax, 2017 – the taxpayer has received the goods or services or both – was not satisfied. The Appellate Authority concluded that the present case was one of *"goodless supply on the strength of fake invoices".*

17. It is clear from the above that the petitioner's refund applications were rejected on a mere apprehension that its supplier had issued fake invoices. There is no conclusive finding on the basis of any cogent material that the invoices issued by M/s Shruti Exports to the petitioner are fake invoices.

18. Admittedly, the invoices issued by M/s Shruti Exports are reflected in the AIO System and there is no dispute that M/s Shruti Exports had issued the said invoices. It is also clear that M/s Shruti Exports is a dealer registered with the Goods & Services Tax Department. There is no allegation that the invoices (which include IGST as well as Cess) were not paid by the petitioner. It is also important to note that there is no allegation that the goods in question were not exported overseas. Thus, the petitioner has established not only the fact that the goods have been exported but that it had paid for the same including the IGST and Cess.

19. The respondents filed a counter affidavit enclosing therewith a letter dated 16.04.2021 issued by the CGST Authorities, Kolkata in response to the request of respondent no.2 verifying the existence and genuineness of suppliers. The said letter indicates that M/s Shruti Exports was found to be an existing dealer and its sole proprietor was also a Director of M/s BVN Alloys Pvt. Ltd. Both the dealers were found existing at Room No.464, 4th Floor, 138 Biplabi Rashbehari Basu Road, Kolkata-700001. It was found that M/s Shruti Exports had availed of CGST and SGST totaling ₹1,35,21,489/- and Cess amounting to ₹21,76,132/- from the taxpayers against whom cases were booked for issuing fake invoices. The said letter set out a tabular statement mentioning the names of six dealers who had allegedly issued fake invoices to M/s Shruti Exports. It was pointed out by the learned counsel appearing for the petitioner that none of the said suppliers, except one, PSSM Commercial Pvt. Ltd., had made any supplies chargeable to Cess. He submitted that, thus, the only invoice in respect of which supplies received by M/s Shruti Exports, which could be assumed to be further supplied to the petitioner, was from PSSM Commercial Pvt. Ltd. However, CGST and SGST paid by PSSM Commercial Pvt. Ltd. was only ₹9,52,220/-.

20. It is also important to note that the supplies, as mentioned in the said letter, were for a period prior to August, 2020.

21. Mr. Singla, learned counsel appearing for the petitioner, handed over a copy of the show cause-cum-demand notice dated 30.11.2022 issued to M/s Shruti Exports and one, Sanjay Kumar Bhuwalka. However, the said show cause notice indicates that it relates to the period from July, 2017 to Financial Year 2019-20. Thus, it could not possibly cover the supplies made to the petitioner.

22. It is apparent that the petitioner's refund applications have been rejected merely because of suspicion without any cogent material. There is no dispute that goods have been exported; the invoices in respect of which the petitioner claims the ITC were raised by a registered dealer; and, there is no allegation that the petitioner has not paid the invoices, which include taxes. Thus, the applications for refund cannot be denied.

23. There is merit in the petitioner's contention that it is not required to examine the affairs of its supplying dealers. The allegations of any fake credit availed by M/s Shruti Exports cannot be a ground for rejecting the petitioner's refund applications unless it is established that the petitioner has not received the goods or paid for them. In the present case, there is little material to support any such allegations.

24. In *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi & Ors.: 2017 SCC OnLine Del 11286*, a Coordinate Bench of this Court had referred to various authorities and observed as under:

> "39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.
>
> 40.** ** **
>
> 41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9(2)(g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9(2)(g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer."

25. In view of the above, the petitioner would be entitled to the refund of the ITC on goods that have been exported by it. The present petitions are, accordingly, allowed and the respondents are directed to forthwith process the petitioner's applications for refund of the ITC including Cess.

26. It is clarified that in the event the respondents are able to find material to establish the allegations regarding non-supply of any goods by M/s Shruti Exports to the petitioner, it would be open for the respondents to initiate such action as may be warranted in accordance with law.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ.]

W.P.(C) 14719/2022

G. S. Industries ... Petitioner

Versus

Commissioner Central Goods and Services Tax Delhi West & Anr. & Ors. ... Respondents

Date of Order : 28.03.2023

WHETHER REFUND CAN BE WITHHELD ONLY ON THE GROUND THAT THE COMMISSIONER HAD DECIDED TO FILE AN APPEAL?

HELD – NO.

Present for Petitioner	:	Mr. Vineet Bhatia & Mr. Siddarth Malhotra, Advs.
Present for Respondent	:	Ms. Anushree Narain, Standing Counsel

ORDER

Vibhu Bakhru, J.

1. The petitioner has filed the present petition, inter-alia, praying that the directions be issued to the respondent to refund the tax amounting to ₹23,10,333/- claimed by the petitioner for the period September, 2017 to March, 2018. The petitioner also seeks directions that the respondent be directed to pay an amount of ₹14,46,417/- being the refund amount claimed for the period April, 2018 to March, 2019. Additionally, the petitioner also claims interest on the said amount of refund, which have been withheld by the respondent.

2. The petitioner carries on the business as G.S. Industries and is engaged in manufacturing Handpump parts falling under HSN 8413/9140, which is chargeable to Goods and Services Tax @ 5%.

3. The petitioner claims that it has accumulated Input Tax Credit on account of an inverted duty structure.

4. The petitioner filed an application on 04.07.2019 claiming refund of ₹23,10,333 accumulated Input Tax Credit for the period September 2017 to March, 2018. The petitioner filed another application on 09.07.2019 claiming an amount of ₹14,46,417/- as accumulated Input Tax Credit for the period April, 2018 to March, 2019. Thus, the petitioner claims an amount of ₹37,56,750/- as refund of accumulated tax.

5. The applications filed by the petitioner were acknowledged. However, thereafter two separate deficiency memos, both dated 29.11.2019, were issued. The respondent pointed out certain deficiencies and also sought certain clarifications with regard to the said applications. In addition, the respondent also called upon the petitioner to submit a Chartered Accountant's certificate confirming that the incidence of tax and interest was not passed on to any other person.

6. The petitioner responded to the said deficiency memos by a communication dated 27.01.2020. However, the respondent did not accept the petitioner's explanation and issued Show Cause Notices dated 23.11.2020 calling upon the petitioner to show cause why his applications for refund not be rejected for the following reasons:

> " 1. It has been observed that you are claiming that you are manufacturing India Mark 11 hand pump and their parts which fall under the 5% GST classification. Further, it has also been observed that the major part of the refund claim is of Brass Scrap (18%). You are requested to submit the complete details of the purchase and sale registers for the relevant period.
>
> 2. From various sources, it was also observed that the product which are claimed to be manufactured by you requires very little to no Brass. You are requested to provide the details of the stock register/item wise summary for verification of the refund claim.
>
> 3. You are also requested to submit the details of the registered place of business (both principal and additional) to this office as a PV was conducted by the AE branch on 16.09.2020 at the regd. Principal place of business under section 67(1) of the CGST Act 2017 and it was observed that some other firm is running since January 2019."

7. The petitioner responded to the said Show Cause Notices. Petitioner's explanation was not accepted and by a separate order dated 14.12.2020, the applications for refund were rejected.

8. The petitioner filed separate appeals impugning the orders-in-original dated 14.12.2020, which were disposed of by a common order dated 03.01.2022 (Order-in-appeal No.209-210/2021-2022). The Appellate Authority allowed the petitioner's appeal. It accepted that the petitioner was in existence at the material time, and the findings contrary to the same were erroneous. The Appellate Authority relied upon certain documents, including electricity bills, income tax returns etc. filed by the petitioner. The Appellate Authority also found that the Adjudicating Authority had not provided any basis for observing that the product manufactured by the petitioner required very less or no brass at all.

9. Since the petitioner succeeded in its appeal, the petitioner is entitled to the refund as claimed. However, notwithstanding the same, the refund has not been disbursed.

10. Ms. Narain, learned counsel appearing for the respondent, submits that the respondent has decided to challenge the Order-in-appeal dated 03.01.2022, and the Commissioner has passed an order dated 19.05.2022, setting out the grounds on which the appeal is required to be preferred against the Order-in-appeal.

11. The principal question that falls for consideration by this Court is whether the benefit of Order-in-appeal dated 03.01.2022 can be denied to the petitioner and the refund amount be withheld solely on the ground that the respondent has decided to file an appeal against the said order.

12. Concededly, the respondent has not filed any appeal against the order-in-appeal dated 03.01.2022, and there is no order of any Court or Tribunal staying the said order. Indisputably, the order-in-appeal dated 03.01.2022 cannot be ignored by the respondents solely because according to the revenue, the said order is erroneous and is required to be set aside.

13. Learned counsel for the parties also pointed out that the said issue is covered by the earlier decision of this Court in Mr. Brij Mohan Mangla Vs. Union of India & Ors.: W.P.(C) 14234/2022 dated 23.02.2023.

14. In view of the above, the present petition is allowed. The respondents are directed to forthwith process the petitioner's claim for refund including interest.

15. It is, however, clarified that this would not preclude the respondents from availing any remedy against the Order-in-appeal dated 03.01.2022 passed by the Appellate Authority. Further, in the event, the respondents

prevail in their challenge to order-in-appeal dated 03.01.2022, the respondents would also be entitled to take consequential action for recovery of any amount that has been disbursed, albeit in accordance with the law.

HIGH COURT OF JUDICATURE AT ALLAHABAD
[Rajesh Bindal and J.J. Munir, CJ. , J.]

Writ Tax No. 1580 of 2022

M/s Margo Brush India and others ... Petitioner

Versus

State of U.P. and another ... Respondents

Date of Order : 16.01.2023

WHETHER REFUND CAN BE WITHHELD ONLY ON THE GROUND THAT THE COMMISSIONER HAD DECIDED TO FILE AN APPEAL?

HELD – NO.

For the Petitioner	:	Aditya Pandey and Akhil Agnihotri, Advs.
Standing Counsel for the Respondent	:	Ankur Agarwal

ORDER

1. The order passed on GST MOV-06 dated September 29, 2022, vide which the goods in transit were seized by the authorities concerned, has been impugned in the present writ petition. Further show cause notice on GST MOV-07 and order passed thereon on GST MOV-09 dated October 7, 2022 are under challenge in the present petition.

2. Learned counsel for the petitioners submitted that the goods were accompanied by proper documents. The owners of the goods either are the consignors or the consignees. However, still without appreciating the contentions raised by the petitioners, vide impugned order, the driver of the vehicle was deemed to be the owner and penalty of ₹4,55,548/- has been levied in exercise of power under Section 129(1)(b) of U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').

3. The argument is that it is a case in which the goods in transit were accompanied by proper documents. When show cause notice was issued to the driver of the vehicle, the petitioners had filed their replies. In terms

of the provisions of Section 129(1)(a) of the Act, in case, the owner of the goods comes forward, the penalty is to be levied upon him. The penalty can be levied under section 129(1)(b) of the Act, only if the owner of the goods does not come forward. In the case in hand, vide impugned order the penalty has been levied under Section 129(1)(b) of the Act, which is not applicable. He has also referred to Circular dated December 31, 2018 issued by the Central Board of Indirect Taxes and Customs (hereinafter referred to as 'Board'), whereby a clarification has been issued as to who is to be treated as owner of the goods for the purpose of Section 129(1) of the Act. It provides that if the goods are accompanied with invoices then consignor should be deemed to be the owner. In the case in hand, the petitioner nos. 1 and 2 are the consignors, whereas petitioner nos. 3 to 5 are consignees, hence, in their presence and accepting the ownership of the goods, the impugned order should not have been passed under Section 129(1)(b) of the Act.

4. On the other hand, learned counsel for the respondents submitted that it is a case in which the goods were not matching with the invoices as certain goods were found either to be more or less than the quantity mentioned in the invoices. Hence, penalty has been appropriately levied on the petitioners.

5. After hearing learned counsel for the parties, in our opinion, the present writ petition deserves to be allowed and the order impugned dated October 7, 2022 deserves to be set aside for the reason that the consignors and consignees are present and accepting ownership of the seized goods. The consignors are registered dealers in the State of U.P.

6. In view of the aforesaid fact and also the clarification given by the Board vide its Circular dated 31, 2018, in our opinion, levy of penalty under Section 129(1)(b) of the Act was not called for and could not be justified as Section 129(1)(a) of the Act provides that where owner of the goods comes forward for payment of penalty, the amount has to be two hundred per cent of the tax payable, whereas, in the case in hand, the penalty has been levied to the tune of hundred per cent of the value of the goods.

7. For the reasons mentioned above, the impugned order dated October 7, 2022 passed by respondent no. 2 is set aside. The writ petition is allowed. The matter is remitted back to the competent authority for passing fresh order within a period of two weeks from the date of receipt of copy of the order.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
[Vipul M. Pancholi and Devan M. Desai, JJ.]

R/Special Civil Application No. 22339 of 2022

Shree Renuka Sugars Ltd. ... Petitioner

Versus

State of Gujarat ... Respondent

July 13, 2023

"WHETHER SUPPLEMENTARY APPLICATION FOR REFUND CAN BE REJECTED, FILED UNDER THE CLAIM OF ANY OTHER" CATEGORY WHEN SUBSTANTIALLY ALL THE CONDITIONS AS REQUIRED UNDER LAW, HAVE BEEN COMPLIED WITH CAN BE REJECTED.

HELD: NO

Present for the Petitioner : Amal Paresh Dave and Paresh M Dave

Present for the Respondent : Government Pleader

JUDGMENT

Vipul M. Pancholi, J.

Leave to amend the prayer clause by amending one of the numbers of the impugned order is allowed. Learned advocate for the petitioner to carry out the same forthwith.

1. By way of the present petition, which is filed under Article 226 of the Constitution of India, the petitioners have prayed for the following relief/s:

> "(A) That Your Lordships may be pleased to issue a Writ of Certiorari or any other appropriate writ, direction or order, quashing and setting aside the order Nos.ZD240822013296L and ZD240822001278N dated 26.08.2022, both dated 26th August, 2022 (Annexure-"J"), with all consequential reliefs and benefits to the Petitioner;
>
> (B) That Your Lordships may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction, directing the Respondent No.2 to consider, decide and sanction all the supplementary claims filed by the Petitioner as listed in Annexure-"F".

(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct Respondent No.2 to forthwith decide the Petitioner's supplementary refund claims on merits, on the terms and conditions that may be deemed fit by this Hon'ble Court.

(D) An ex-parte ad-interim relief in terms of Para 17(C) above may kindly be granted.

(E) Any other and further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."

2. Looking to the issue involved in the present petition, learned advocates appearing for the parties jointly requested that this petition be finally disposed of at admission stage. Hence, Rule. Learned AGP Ms. Shrunjal Shah waives service of notice of Rule qua respondents.

3. The brief facts leading to filing of the present petition are as under:

3.1. It is the case of the petitioner that petitioner No.1 is a company engaged in sugar industry. The petitioner is engaged in manufacturing, trading and supplying/selling sugar and allied products. The petitioner has been selling and supplying such goods within the country and also exporting substantial quantities of goods to foreign countries. It is stated that petitioner has been importing materials like raw sugar under Advance Authorization Scheme. Such imports are allowed to be made under exemption of integrated tax because import duties including integrated tax are exempt when such materials are imported under a valid Advance Authorization. The petitioner would process raw sugar in their refineries and refined sugar so produced is sold in the domestic market as well as exported to foreign countries. It is stated that the supplies made in the domestic market are always on payment of GST at appropriate rate, whereas the exports are made under Bond without payment of integrated tax on exported refined sugar.

3.2. It is stated that exports made by the petitioner are in the nature of zero-rated supplies as contemplated under Section 16 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act' for short). It is further stated that since such zero-rated supplies are made without payment of tax, ITC availed by the petitioner in respect of input supplies used in relation to making zero-rated supplies without tax remains unutilized and such unutilized ITC gets accumulated in the petitioner's credit ledger. It is also stated that by virtue of Section 54(3) of the Central Goods and Services Tax Act ('CGST Act' for short) and also Section 16(3) of the IGST Act, the petitioner is entitled to claim refund of such unutilized ITC. Further, under Rule 89(4) of the CGST Rules, the Central Government has provided for

a formula for calculating the amount of refund of unutilized ITC availed in respect of inputs and input services used in making zero-rated supplies of goods and the petitioner has been claiming refund of such unutilized ITC in accordance with this formula on regular basis.

3.3. It is further stated that petitioner has been claiming refund of the unutilized ITC of inputs and input services used in making zero-rated supply of goods on regular basis and such refund claims are sanctioned and paid by the respondent No.2 on regular basis.

3.4. The petitioner has further stated that the present case is for the petitioner's refund claims of unutilized ITC used in making zero-rated supply of goods during the period of 11 months in Financial Year 2020-2021 and 2021-2022. It is further stated that the petitioner has been legally entitled to refund of a sum aggregating to Rs.1,10,67,67,172/- for these 11 months, however, the petitioner erroneously lodged claims for a lower amount of Rs.1,00,47,38,439/- due to inadvertent arithmetical error of their employee and therefore the respondents have sanctioned and paid refund aggregating to Rs.1,00,47,38,439/-. It is further stated that when the petitioner realized the error and lodged supplementary refund claims for the left out amount of refund being Rs.10,20,28,733/-, the respondents have refused to sanction and pay such refund on a specious basis that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner. The petitioner has, therefore, filed the present petition.

4. Heard learned advocate Mr. Paresh M. Dave for the petitioner and learned AGP Ms. Shrunjal Shah for the respondents.

5. Learned advocate for the petitioner, at the outset, referred the provisions contained in Section 16 of the IGST Act and thereafter referred the provisions contained in Section 54 of the CGST Act. Thereafter, learned counsel has referred the provisions contained in Rule 89 of CGST Rules and also referred the document produced at page 48 of the compilation i.e. Form GST RFD – 01, i.e., the Application for Refund. At this stage, learned advocate has also referred the statement produced at page 57 of the compilation. Learned advocate Mr. Dave submitted that the total refund that the petitioner had been entitled to for these 11 months in respect of export of goods without payment of tax (accumulated ITC) in accordance with the formula of Rule 89(4) of the Rules is Rs.1,10,67,67,172/-, however, there was an error in showing the refund amount which resulted in total refund amount being shown as Rs.1,00,47,38,439/-, and therefore, a sum of Rs.10,20,28,733/- remained to be shown in the applications as refund amount. Learned advocate referred the statement produced at page 57 of the compilation in support of the said contention.

5.1. Learned advocate for the petitioner, therefore, submitted that the amount of refund claimed by the petitioner was lower than what was actually admissible to the petitioner because of accumulated ITC involving zero rated supplies. It is submitted that all the 11 refund applications have been sanctioned and paid by the respondent No.2 after verifying and scrutinizing the applications. Thus, the petitioner got refund claims aggregating to Rs.1,00,47,38,439/-.

5.2. Learned counsel further submits that when the petitioner realized the arithmetical error committed while submitting the applications for refund for particular months, the refund applications have been made within statutory period laid down under Section 54(1) of the CGST Act. However, while showing the category of refund application, the petitioner has shown “any other” as the category because refund applications for these 11 months had already been made under Clause 7(c) i.e. accumulated ITC category for export of goods without payment of tax and the same had been sanctioned and paid by CGST officers. It is clarified that these supplementary refund applications are only for correcting clerical and arithmetical error which crept in while making refund applications in past.

5.3. Learned advocate for the petitioner thereafter submitted that respondent No.2 issued two notices for rejecting the supplementary refund applications for July, 2020 and September, 2020 on the ground that “any other” category facilitated the tax payer to file a refund claim of a category other than listed in portal and the refund application made by the petitioner was not valid under “any other” category. It is submitted that petitioner filed reply on 10.08.2022 and explained the background in which the supplementary applications for refund had to be filed. The petitioners have also explained why “any other” category was mentioned in the refund application, and that the refund claim only of that amount which was left out while making the application with incorrect calculations. Two separate replies were also filed. At this stage, it is submitted that the respondent No.2 passed orders and uploaded the same on common portal on 26.08.2022 without giving opportunity of hearing to the petitioner.

5.4. Learned advocate referred the said orders and submitted that from the orders passed by the respondents, it is clear that the respondent has reproduced the notices but the submissions made by the petitioner in the replies are not referred at all in the said orders. It is submitted that there was no bar under the law for supplementary refund claim for the same period for differential amount.

5.5. Learned advocate Mr. Dave would further submit that in the CGST Act, a refund application has to be filed on the common portal and in the format prescribed by the Government. In such prescribed form of

application, the assessee is required to disclose grounds of refund claim with the category under which refund was claimed and the assessee is obliged to fill in such details against serial No.7 of the refund application. In the present case, the petitioner claimed refund of accumulated ITC in respect of export of goods without payment of tax, and therefore, such category was declared while lodging the refund application initially. The said refund application has been sanctioned and paid also by the respondent No.2. However, another application for remaining amount of refund or for supplementary claim for the same category of accumulated ITC is not possible to be uploaded on the common portal because another application for the same month under the same category of accumulated ITC for export of goods without payment of tax is not accepted on the common portal, and therefore, the petitioner had no option but to upload the supplementary application under "any other" category. It is also submitted that there is no bar or prohibition under the law as regards submission of a supplementary refund claim, if an assessee had committed an error of claiming refund of a reduced amount while making refund application on the common portal. Learned counsel, therefore, urged that this petition be allowed and appropriate directions be issued to the respondents by quashing and setting aside the order impugned in the present petition.

5.6. Learned counsel has placed reliance upon the following decisions/ orders in support of his submissions:

1. In **Bombardier Transporation India Pvt. Ltd. v. Directorate General of Foreign Trade**, reported in 2021 (377) ELT 489 (Guj.);
2. In **P.A.Footwear Pvt. Ltd. v. Director General of Foreign Trade, New Delhi, reported in 2020(372) ELT 660 (Mad.)**;
3. Order dated 11.02.2022 passed by this Court in Special Civil Application No.9151 of 2021 in the case of **M/s. Bodal Chemicals Ltd. v. Union of India;**
4. In **Vishnu Aroma Pouching Pvt. Ltd. v. Union of India**, reported in 2020(38) GSTL 289 (Guj.);
5. Order dated 21.07.2022 passed by this Court in Special Civil Application No.17424 of 2021 in the case of **M/s. Stitchwell Garments v. Union of India**.

6. On the other hand, learned AGP Ms. Shrunjal Shah has opposed this petition. Learned AGP has referred the averments made in the affidavit-in-reply filed on behalf of respondent No.2. It is submitted that the common portal calculates the refundable amount as per the formula and under Rule 89(4) of the CGST Rules. Learned AGP referred para 10 of the reply and

submitted that as per the refund application submitted by the petitioner for July, 2020, the maximum refund amount that could be claimed by the petitioner as per statement 3A of RFD-01 was Rs.5,57,57,863/- and the amount eligible for refund was Rs.2,91,60,705/-. It is submitted that the petitioner could claim a higher amount of refund up to a maximum of Rs.5,57,57,863/-. However, the petitioner only claimed Rs.2,91,60,705/- as refund by its own, and therefore, the petitioner is responsible for the less amount of refund claimed. Similarly, it is pointed out that for the month of September, 2020, the petitioner could claim an amount of Rs.15,85,34,281/-, however, the petitioner claimed only Rs.13,71,59,537/- for which the petitioner is responsible.

6.1. At this stage, it is further submitted that vide Circular dated 3rd October, 2019, the Government of India provided certain clarifications on the eligibility to file a refund application in form GST RFD-O1 for a period and category under which NIL Refund Application has already been filed. Learned AGP has referred Clause 3 of the said Circular and submitted that as per the said Clause no refund claims in Form GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period.

6.2. It is submitted that in the case of the petitioner, after claiming the ITC refund once for each of the specified period, the petitioner submitted supplementary refund application in “any other” category. It is submitted that for the said period, the petitioner had already claimed ITC refund and therefore the claim of the petitioner is rightly rejected by the respondent and thereby the respondent has not committed any error. Learned AGP, therefore, urged that this petition be dismissed.

6.3. Learned AGP has placed reliance upon the decision rendered by the Hon’ble Supreme Court in the case of **Union of India & Others v. VKC Footsteps India Private Ltd.,** reported in **(2022) 2 SCC 603**.

7. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it reveals that the petitioner is a company engaged in the business of manufacturing, trading and supplying/selling sugar and allied products. The petitioner has been selling and supplying such goods within the country and also exporting substantial quantities of goods to foreign countries. The petitioner states that the exports made by the petitioner are in the nature of zerorated supplies as contemplated under Section 16 of the IGST Act. The petitioner further states that since such zero-rated supplies are made without payment of tax, ITC availed by the petitioner in respect of input supplies used in relation to making zero-rated supplies without tax remains unutilized and

such unutilized ITC gets accumulated in the petitioner's credit ledger. It is also the case of the petitioner that by virtue of Section 54(3) of the CGST Act and also Section 16(3) of the IGST Act, the petitioner is entitled to claim refund of such unutilized ITC. Further, under Rule 89(4) of the CGST Rules, the Central Government has provided for a formula for calculating the amount of refund of unutilized ITC availed in respect of inputs and input services used in making zero-rated supplies of goods and the petitioner has been claiming refund of such unutilized ITC in accordance with this formula on regular basis.

8. The present is a case for the petitioner's refund claims of unutilized ITC used in making zerorated supply of goods during the period of 11 months in Financial Year 2020-2021 and 2021-2022. Learned advocate for the petitioner submitted that petitioner has been legally entitled to refund of a sum aggregating to Rs.1,10,67,67,172/- for these 11 months, however, the petitioner erroneously lodged claims for a lower amount of Rs.1,00,47,38,439/- due to inadvertent arithmetical error of the employee of the petitioner. It is submitted that the respondents have sanctioned and paid refund aggregating to Rs.1,00,47,38,439/-. It is the case of the petitioner that when the petitioners realized the error, they have lodged supplementary refund claims for the left out amount of refund being Rs.10,20,28,733/-, however, the respondents have refused to sanction and pay such refund on a ground that the category under which such supplementary claims were lodged was not applicable in the case of the petitioner.

9. At this stage, we would like to refer to the relevant provisions of law. Sub-Sections (3) and (14) of Section 54 of the CGST Act provides as under:

"54. Refund of tax.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies

of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

* * * * * *

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,--

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under subsection (3).

(2) "relevant date" means--

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,--

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of dispatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

6[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic

Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of--

(i) receipt of payment in convertible foreign exchange, 7[or in Indian rupees wherever permitted by the Reserve Bank of India] where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

8[(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax."

9.1. Section 16 of the IGST Act reads as under:

"16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:--

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking. in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub- section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999) for receipt of foreign exchange remittances, in such manner as may be prescribed.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.]

9.2. Now, we would like to refer to Sub-Rule (4) of Rule 89 of the CGST Rules, which reads as under:

"89: Application for Refund of Tax, Interest, Penalty, Fees or any Other Amount.

* * * * * *

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula,-

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similar placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub- rule (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub- rule (4A) or sub-rule (4B) or both, if any,during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed.»

10. Thus, from the aforesaid provisions, it is clear that the "refund amount" means the maximum refund that is admissible. In the present case, the respondents have not disputed that the maximum refund that is admissible is Rs.1,00,47,38,439 and not the amount of Rs.1,10,67,67,172/- . However, the stand of the respondent is that the petitioner is responsible for the error committed by the employee of the petitioner in claiming the refund of lower amount than the maximum admissible amount.

11. From the record, it appears that out of Rs.1,10,67,67,172/-, the respondent has already granted refund for an amount of Rs.1,00,47,38,439/- , and therefore, the dispute is with regard to refund of an amount of Rs.10,20,28,733/-. When the petitioner realized the arithmetical error committed while submitting the applications for refund for particular months, supplementary applications have been made for getting the refund of aforesaid amount of Rs.10,20,28,733/- within statutory period laid down under Section 54(1) of the CGST Act. It is the case of the petitioner that while showing the category of refund application, the petitioner has shown "any other" as the category because refund applications for these 11 months had already been made under Clause 7(c) i.e. accumulated ITC category for export of goods without payment of tax and the same had been sanctioned and paid by CGST officers. It is also relevant to note that as the petitioner already filed refund application under Clause 7(c) i.e. accumulated ITC category at first point of time, for the same month and same period, another/supplementary application for the refund of the differential amount of refund (not claimed by the petitioner on account of arithmetical error on the part of the petitioner) cannot be filed on the portal and therefore there was no option for the petitioner to submit the application under the category "any other". Thus, we are of the view that this is nothing but technical error and for such technical error, the claim of the petitioner cannot be rejected without examining the same by the respondent authority on its own merits and in accordance with law.

12. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of **VKC Foodsteps India Private**

Limited (supra), wherein the Hon'ble Supreme Court observed in para 88, 99 and 142 as under:

> "88. The jurisprudential basis furnishes a depiction of an ideal state of existence of GST legislation within the purview of a modern economy, as a destination-based tax. But there can be no gain saying the fact that fiscal legislation around the world, India being no exception, makes complex balances founded upon socio-economic complexities and diversities which permeate each society. The form which a GST legislation in a unitary State may take will vary considerably from its avatar in a nation such as India where a dual system of GST law operates within the context of a federal structure. The ideal of a GST framework which Article 279A(6) embodies has to be progressively realized. The doctrines which have been emphasized by Counsel during the course of the arguments furnish the underlying rationale for the enactment of the law but cannot furnish either a valid basis for judicial review of the legislation or make out a ground for invalidating a validly enacted law unless it infringes constitutional parameters. While adopting the constitutional framework of a GST regime, Parliament in the exercise of its constituent power has had to make and draw balances to accommodate the interests of the States. Taxes on alcohol for human consumption and stamp duties provide a significant part of the revenues of the States. Complex balances have had to be drawn so as to accommodate the concerns of the states before bringing them within the umbrella of GST. These aspects must be borne in mind while assessing the jurisprudential vision and the economic rationale for GST legislation. But abstract doctrine cannot be a ground for the Court to undertake the task of redrawing the text or context of a statutory provision. This is clearly an area of law where judicial interpretation cannot be ahead of policy making. Fiscal policy ought not be dictated through the judgments of the PART F High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more by, for instance, expanding the coverage of the legislation (to liquor, stamp duty and petroleum) or to bring in uniformity of rates. This would constitute an impermissible judicial encroachment on legislative power. Likewise, when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has provided. If the legislature has intended that the equivalence between goods and services should

be progressively realized and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy.

* * * * * *

99. We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' Counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We therefore, accept the submission which has been urged by Mr N Venkataraman, learned ASG.

142. The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr Natarjan and Mr Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assessees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same."

12.1.In the aforesaid decision, the Hon'ble Supreme Court has an occasion to deal with the issue where the High Court has expanded

the provision for refund beyond what the legislature has provided, and therefore, the aforesaid decision would not render any assistance to learned AGP in the facts of the present case.

13. Now, we would like to refer to the decisions relied on by the learned advocate appearing for the petitioner. In the case of **Bombardier Transportation India Pvt. Ltd. (supra)**, the Division Bench of this Court observed in para 23 and 25 as under:

> "23. The writapplicant submits that as per its understanding, the EDI system, which is an electronic system developed and managed by the respondent no.3 with an objective to digitalize transmission of shipping bills between Respondents, suffers from lacunae that it does not permit amendment, which is specifically permitted in terms of Section 149 of the Customs Act, 1961, to be carried electronically through EDI system. It is a settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system.
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> * * * * * *
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> 25. In view of the above, the present writapplication succeeds and is hereby allowed. The respondents nos.1 and 2 are directed to grant the benefits of the MEIS to the writapplicant within a period of four weeks from the date of the receipt of this order."

13.1. In the case of **M/s Bodal Chemicals Ltd. (supra)**, the Division Bench of this Court observed in para 9 and 11 as under:

> "9. We are of the view that the respondents cannot raise their hands in despair saying that it is not possible to correct or take care of the technical glitches. The writ applicant herein has been running from pillar to post requesting the respondents to provide a solution and take care of the technical error and glitch that occurred as regards furnishing the GSTR – 6 return for recording and distributing the ISD credit of Rs.20,52,989/-. As usual, there is no response at the end of the GSTN. The writ applicant is not allowed to distribute the ISD credit of Rs.20,52,989/- as the same has not been recorded, reported and declared in the GSTR – 6 return.
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> 11. For all the aforegoing reasons, this petition succeeds and is hereby allowed. The respondents are directed to allow the writ

applicant to furnish manually the GSTR – 6 return with details of the ISD credit of Rs.20,52,989/- and also permit distribution of such credit to the constituents of the writ applicant. Let this entire exercise be undertaken within a period of six weeks from the date of the receipt of writ of this order."

13.2.In the case of **M/s. Stitchwell Garments (supra)**, the Division Bench of this Court observed and held in para 5.2 to 5.4 and 6 as under:

"5.2 The entitlement of the petitioner for availment under export scheme is not in dispute. Entering a particular code to receive the benefit was only part of procedure. It could not overreach or obliterate the substantive right claimable by the petitioner once the petitioner was eligible under the scheme to get the benefit. The decisions relied on by the learned advocate for the petitioner lay down that technical glitch ought not to have been permitted to take toll of the petitioner's rights under the scheme to avail the benefits.

5.3 Supreme Court in Saiyad Mohammad Bakar El- Edroos (Dead) By Lrs. Vs. Abdulhabib Hasan Arab & Ors. [(1998) 4 SCC 343], held that procedure cannot operate to defeat the ends of justice, it must stand to the aid of justice,

"8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away be the procedural law what is given by the substantive law."

5.4 Even if the petitioner had entered wrong scheme code, it was only an irregularity and not illegality. In Solanki Parvatikumari Rameshbhai Vs. State of Gujarat being Special Civil Application No. 22981 of 2017, Single Judge of this Court explained the differentiation between illegality and irregularity,

"5.2 Law conceives a clear differentiation between illegality and irregularity. This nice distinction brings home the case of the petitioner. An illegality is something which amounts to substantial failure in compliance of requirement. It denotes such breach of rule or requirement which alters the position of a party in terms of his right or obligation. Illegality denotes a complete defect in the jurisdiction or proceedings. Illegality is properly predictable in its radical defects. It is a situation contrary to the principle of law. As against this, an irregularity

> as defined lexicographically, is want of adherence to some prescribed rule or mode of proceedings. It consist in omitting the rule something that is necessary for due and orderly conducting of a suit or doing it in an unreasonable time or improper manner. In Law Lexicon by R. Ramanatha Aiyar, 1997 Edition, irregularity is defined as "a neglect of order or method; not according to regulations; the doing of an act at an unreasonable time, or in an improper manner; the technical term for every defect in practical proceedings or the mode of conducting an action or defence, as distinguished from defects in pleading. Irregularity is failure to observe that particular course of proceedings which, conformable with the practice of the court, ought to have been observed".

> 6. In the aforesaid view, the petition deserves to be allowed. Resultantly, the decision of Respondent Director General of Foreign Trade reflected in email communication dated 10.06.2021 refusing to change the Scheme Code from 19 to 60 in EDI shipping bills is hereby set aside. Respondents no.1 and 2 herein are directed to accept the application of the petitioner for export benefits under the Scheme of Rebate of State and Central taxes and Levies (RoSCTL) in respect of 70 shipping bills referred to in order dated 04.01.2021, the Principal Commissioner of Customs, Customs House, Mundra. The acceptance of the petitioner's application may be by manual mode if the system does not permit the correction. The application of the petitioner for the above purpose shall be deemed to have been filed with Code 60."

14. Keeping in view the aforesaid decisions, it is settled law that the benefit which otherwise a person is entitled to once the substantive conditions are satisfied cannot be denied due to a technical error or lacunae in the electronic system. As discussed hereinabove, the petitioner has no option but to upload the supplementary application under "any other" category for the refund of the left out amount, which was due to an arithmetical error committed by the employee of the petitioner. We are of the view that the said claim of the petitioner for refund of the left out amount of Rs.10,20,28,733/- cannot be rejected outright merely on technicality and that too when the substantive conditions are satisfied without scrutiny by the respondent in accordance with law. Thus, the petition deserves to be allowed.

15. The petition is allowed. The impugned order Nos. ZD240822013296L and ZD240822013287K dated 26.08.2022 are hereby quashed and set aside. The respondents are directed to allow the petitioner to furnish

manually the refund applications for refund of the left out amount of Rs.10,20,28,733/-. However, it is open for the respondents authority to scrutiny the claim of the petitioner for refund of the aforesaid amount in accordance with law and to take appropriate decision on the applications which may be made by the petitioner. Let this exercise be undertaken by the respondents within a period of six weeks from the date of receipt of the applications from the petitioner. Rule is made absolute.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru and Amit Mahajan, JJ.]

W.P.(C) 9742/2023 & CM APPL. 37331/2023

Shivbhola Filaments (P.) Ltd. ... Petitioner

Versus

Assistant Commissioner CGST ... Respondent

Date of Order : 25.07.2023

WHETHER APPLICATION FOR REFUND CAN BE REJECTED SIMPLY ON THE GROUND OF ANY MISMATCH, WITHOUT ALLOWING THE APPLICANT TO RECONCILE THE STATEMENT OF REFUND AS QUANTIFIED EARLIER.

HELD: NO

For the Petitioner : Yuvraj Singh, Ms. Hemlata Rawat and Chetan Kumar Shukla, Advs.

For the Respondent. : Atul Tripathi and V.K. Attri, Advs.

ORDER

Vibhu Bakhru, J.

1. Issue notice.

2. The learned counsel for the respondents accepts notice.

3. The petitioner has filed the present petition, *inter alia*, impugning an Order-in-Appeal dated 18.11.2021 whereby, the appeals preferred by the petitioner (eight in number) against the eight separate orders, all dated 31.12.2020, passed by the Adjudicating Authority, were rejected.

4. The petitioner is engaged in the manufacturing of Polypropylene Yarn and Polypropylene narrow woven fabric, which is chargeable to Goods and Services Tax (GST) at the rate of 12% and 5% respectively.

5. The petitioner claims that raw materials used for manufacturing of the product (Granules, Master Batch, Spin Finish Oil) are chargeable to GST at the rate of 18%. The petitioner, thus, claims that due to the inverted tax structure, it is unable to avail the entire credit of input tax paid by it on inputs in discharge of its tax liability on output.

6. In the aforesaid circumstances, the petitioner had filed refund applications dated 23.10.2020 for various tax periods from August, 2018 to March, 2019. The petitioner received "Notice of Rejection of Application for Refund" dated 18.12.2020 (hereafter 'Show Cause Notice') in respect of each of its refund applications. The petitioner was also called upon to show cause as to why its refund applications should not be rejected.

7. The aforementioned notices indicated that the petitioner's applications for refund were proposed to be rejected for the reason that there was mismatch with the returns filed by the petitioner in form GSTR 2A. The petitioner responded to the said show cause notices and furnished a reconciliation statement for each tax period. However, the petitioner's applications (except for application relating to the tax period between August 2018 to September, 2018, which was rejected on the ground of limitation) were rejected for the same reason as stated in the show cause notices – mismatch with the returns filed by the petitioner).

8. Aggrieved by the said rejection orders dated 31.12.2020, the petitioner preferred appeals before the Appellate Authority under Section 107 of the Central Goods and Service Tax Act, 2017 (hereafter 'the CGST Act'). The said appeals have been rejected by a common Order-in-Appeal dated 18.11.2021, which is impugned in the present petition.

9. The petitioner challenges the impugned Order-in-Appeal dated 18.11.2021 essentially on two grounds. First, that the petitioner was not afforded an opportunity to be heard by the Adjudicating Authority and thus, the refund rejection orders were required to be set aside. Second that the petitioner had furnished the reconciliation statement scaling down its claims for refund, yet the same were rejected on the ground that there was a mismatch in the returns filed.

10. A plain reading of the impugned Order-in-Appeal dated 18.11.2021 indicates that the petitioner's applications for refund were rejected on the ground that the petitioner had changed the value of the inverted rated

supply of goods substantially. The relevant extract of the impugned Order in Appeal dated 18.11.2021 reads as under: -

> "5.8 From, the above, it can be seen that the appellant is changing the value of inverted rated supply of goods very frequently and drastically. I also noticed that in the reconciliation statement, the appellant has included the value of waste of HSN 55051090 attracting GST @ 18%, goods of HSN code 5402 of traded goods which do not fall under the category of inverted rated goods. Furthermore, the item of HSN 5402 which is inward supply of goods of the appellant found appearing in trading turnover as well as inverted turnover. Like-wise there was mis-match in the amount of tax payable on such inverted rated supply goods. I also noticed variation in amount of 'Total Adjusted Turnover' mentioned by the appellant at each stage of period. In appeal No.95/2021, the amount of Adjusted Total Turnover in Form GSTRFD- 01 has been shown as Rs.5,10,01,517/- as against Rs.3,12,40,839.32 in Reconciliation statement and Rs.6,92,25,015/- in GSTR-3B. Thus, I am of the considered view that the AA has correctly pointed out that there was mis-match in inverted rated supply of goods, Adjusted total turnover and the amount of tax payable on such inverted rated supplies."
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> 5.9 I also noticed that in SCNs it has been mentioned that some invoices included for the purpose of arriving at the amount of 'Net ITC' not found in GSTR-2A returns for the relevant period. In this regard, I want to refer Circular No.135/05/2020-GST dated 31.03.2020 wherein it has been clarified that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Hence, I am of the view that the refund of accumulated ITC shall not be available to the appellant of those invoices the details of which are not reflected in GSTR-2A of the applicant at the time of filing of refund. In view of the above discussions, mis-match in Net ITC, Inverted rated supply of goods and tax payable on such supplies and adjusted total turnover clearly established and the appellant failed to reconcile the mis-match documentary or otherwise."

11. It is apparent from the above that although the Appellate Authority had flagged issues on the basis of which certain amount of refund as claimed by the petitioner was required to be rejected, however, no exercise

was conducted to determine the extent of the refund claimed, which was untenable. The petitioner had submitted reconciliation statements, and had reduced its claims for refund substantially to restrict the same to the quantum of refund, that according to the petitioner, was due.

12. Plainly, it is not apposite for the concerned authorities to simply reject an application for refund on the ground of any mismatch without permitting the tax payer to reconcile the same and provide the necessary explanations.

13. In the present case, the petitioner was not heard by the Adjudicating Authority and no such exercise for determining the amount of refund admissible was undertaken.

14. In view of the above, we consider it apposite to set aside the impugned Order-in-Appeal dated 18.11.2021 as well as the orders dated 31.12.2020 passed by the Adjudicating Authority (annexed with the petition as Annexure P/4) and restore the petitioner's applications for refund before the Adjudicating Authority for determining the amount of refund payable to the petitioner after affording the petitioner an opportunity to be heard. The petitioner is also at liberty to file a written explanation along with a statement reconciling the quantum of refund claimed with the amounts as disclosed in the returns, within a period of two weeks from today. In the event, the petitioner files any such detailed explanation and reconciliation statements, the Adjudicating Authority shall consider the same and pass a speaking order.

15. The petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

IN HIGH COURT OF ANDHRA PRADESH

[U. Durga Prasad Rao and Venkata Jyothirmai Pratapa, JJ.]

Writ Petition Nos. 15481 of 2023

Arhaan Ferrous and Non-Ferrous Solutions (P.) Ltd. ... Petitioner

Versus

Deputy Assistant Commissioner-1(ST) ... Respondent

Date of Order : 03.08.2023

WHETHER GOODS CAN BE CONFISCATED UNDER RULE 138A BY REVENUE MERELY ON THE GROUND THAT THE PURCHASER HAD PURCHASED GOODS

FROM A VENDOR WHO WAS NOT HAVING ANY BUSINESS PREMISES AND WAS NOT AVAILABLE AT THE SAID ADDRESS, THOUGH HE WAS HAVING A VALID GST NUMBER AND PURCHASED THE GOODS FOR A VALUABLE CONSIDERATION AFTER VERIFYING HIS GST REGISTRATION FROM THE WEB PORTAL?

HELD: NO

For the Petitioner : V Siddharth Reddy

For the Respondent. : GP for Commercial Tax

ORDER

U. Durga Prasad Rao, J.

The 1st petitioner is the owner of the goods and 2nd petitioner is the owner of the vehicle in the above writ petitions and they seek writ of mandamus declaring the action of 1st respondent in detaining their goods and vehicles while in transit with valid invoices as illegal and consequently to set aside the Form GST MOV -01, dated 12-6-2023 and confiscation notices in Form GST MOV -10, dated 14-6-2023 proposing to confiscate the goods and vehicles and pass such other orders deemed fit.

2. Petitioners' case succinctly is thus:

(a) 1st petitioner who is common in the above batch of writ petitions is a trader in iron scrap under a valid registered GST No. 37AATCA9148B1ZD. He purchased the iron scrap from the 4th respondent under invoice, dated 12-6-2023 and in turn sold the same in favour of M/s Radha Smelters Private Limited, Sankarampet, Medak District, Telangana State under valid invoice number. The 1st petitioner engaged the vehicles of the 2nd petitioner for transporting goods from Vijayawada to Sankarampet and consignment was sent along with valid documents such as invoice, way bill, weighment slip etc., While goods were in transit the 1st respondent detained the vehicles along with the goods on 12-6-2023 on the alleged ground that the vendor of the 1st petitioner i.e., the 4th respondent has no place of business at Vijayawada and accordingly issued impugned proceedings in the name of 4th respondent by deliberately ignoring the documents produced by the drivers at the time of check.

(b) It is further case of the petitioners that the 4th respondent having sold the scrap has no interest and in case of default on his part,

the 1st respondent may initiate action against the 4th respondent. However, under the guise of initiating proceedings against the 4th respondent, the 1st respondent cannot put the petitioners in trouble as long as the transaction is covered by all relevant and applicable documents.

(c) It is further case of the petitioners that the 1st respondent did not follow the procedure contemplated under APGST/CGST Act, 2017 and in straight away issued proceedings proposing to confiscate the goods under transit without issuing notices in GST MOV-02, 03, 04, 05, 06 07, 08 or GST MOV -09 before issuing notice of confiscation in Form GST MOV -10. It is also contended that the documents served on the 2nd petitioner do not contain DIN Number. The 1st respondent has no right or jurisdiction to detain the goods and vehicle of the petitioners.

Hence, the writ petition.

3. The 1st respondent filed counter mainly contending thus:

(a) On 12-6-2023 the 1st respondent while conducting check of vehicles at Mahanadu Road, Auto Nagar, Vijayawada found the lorries of the petitioners transporting iron scrap covered by Bill and E-way Bill, which on verification revealed that 4th respondent was transporting iron scrap from Vijayawada destined to be delivered to M/s Radha Smelters Pvt Ltd., Sankarampet, Medak District, Telangana State. It is noticed that 4th respondent without having any place of business in Vijayawada dispatched goods therefrom. The consignment was not accompanied by the purchase voucher/ invoice and payment of consideration. Hence the proper officer recorded statement of the drivers in Form GST 01. The Joint Commissioner (ST), Kurnool was requested to verify the genesis of the goods and bonafides of the seller dealer. Basing on the report of the Joint Commissioner (ST) Ku;rnool the registering authority suspended the registration of 4th respondent on 13-6-2023. Since the goods are moved in violation of section 113 of APGST Act, notice of confiscation in Form GST MOV-10 was issued proposing to confiscate the goods and conveyance. Subsequently two reminders were issued to 4th respondent on 23-6-2023 and 3-7-2023. However, the seller remained silent. The transport is covered by bill and way bill issued by the 4th respondent and verification of the same shows that the 4th respondent sold iron scrap against bill and way bill without any purchase details. In the circumstances

the vehicle and goods were detained by following due process of law. Further, the Joint Commissioner (ST), Kurnool informed that the seller is a fake dealer who obtained registration by showing fictitious document and hence the same was suspended. The Assistant Commissioner (ST), Kurnool-I, inspected the business premises of the seller in Kurnool and recorded panchanama through mediators which shows that the seller is a non-existing entity. In such a scenario, it is questionable as to how the buyer has purchased the goods from a bogus and non-existing seller.

(b) It is contended that the tax invoice and e-Way bill were raised by the 4th respondent implying that he is the owner of the goods. The 1st petitioner failed to establish the ownership of goods under dispute but submitted a letter dated 26-6-2023 without signature claiming ownership of the goods. As the letter is without signature, the 1st respondent issued an endorsement dated 30-6-2023 to the address of the registered person which was returned with the endorsement as address is incomplete. This creates a doubt about the existence of the 1st petitioner also. Since the notices in this case were issued through the GST portal by generating reference number and date, DIN need not be generated for them.

(c) It is also contended that since the petitioners failed to establish the ownership of goods and genuineness of the purchases allegedly made from the non-existing dealer, it is not obligatory on the part of proper officer to issue notice to the petitioners. The writ petition is premature as the proceedings are pending and not attained finality. The respondent thus prayed to dismiss the writ petition.

4. The petitioners filed reply affidavit in W.P.No.15481/2023 and opposed the counter averments. It is contended that the suspension of registration of 4th respondent on 13-6-2023 pending enquiry relating to its genuineness, basing on the report of the Joint Commissioner (ST), Kurnool, is incorrect because the inspection of the premises of the 4th respondent according to Joint Commissioner's report was held only on 01-7-2023 and that being so, the suspension of registration cannot precede to 13-6-2023. It is further contended that at the time of interception of vehicle for check up, the 1st petitioner is the owner of the goods-cum-seller and M/s. Radha Smelters Private Limited is the buyer and the transaction is covered by valid invoice and waybill and those documents were accompanying the goods and therefore, if at all the 1st respondent suspected the genuineness of the documents, he ought to have initiated proceedings against the 1st petitioner. The 1st respondent

deliberately ignored the documents produced at the time of check which shows the source of goods and issued proceedings in the name of 4th respondent. As per section 129 of the CGST/APGST Act, 2017, action if any can be initiated against the person who is transporting goods in contravention of the provisions of the Act. In the instant case, the 1st petitioner is transporting goods with valid documents. Instead of issuing proceedings in the name of petitioner, the 1st respondent issued notices against 4th respondent who has no interest in the matter after selling the consignment for valuable consideration to the petitioner. Under law there is no requirement that the petitioner shall verify whether 4th respondent has any registered place of business at Vijayawada. Having verified the credentials of GST registration number of the 4th respondent on the Department web portal, the petitioner purchased the goods and paid the consideration through the bank transaction. However, the subsequent suspicion against the genuineness of a registration of 4th respondent entertained by the Department has no bearing with the transaction entered into by the petitioner with 4th respondent. It is further contended that in view of deletion of non-obstante clause in section 130 of the CGST Act, 2017, by virtue of the Finance Act, 2021, section 129 of the GST Act will have overriding effect on section 130 of the said Act and thereby, in respect of goods in transit, the procedure prescribed under section 129 of the CGST Act has to be followed. At any rate, since no notice was issued in the name of the petitioners, the confiscation proposals against 4th respondent cannot be made applicable against the petitioners.

5. Heard Sri V. Siddharth Reddy, learned counsel for petitioners, and learned Government Pleader for Commercial Taxes-1 representing the respondents. Both the learned counsel reiterated their pleadings in the respective arguments.

6. Severely fulminating the action of the 1st respondent in issuing notice dated 12-6-2023 in Form GST MOV-01 and notice dated 14-6-2023 in Form GST MOV-10 U/s 130 of CGST/APGST Act proposing to confiscate the goods and conveyance, learned counsel for petitioners would submit that the aforesaid notices were issued to 4th respondent on the main allegations, as if, the consignor i.e., the 4th respondent has no place of business at Vijayawada but making movement of goods i.e., MS Scrap without any details of purchase and further, his registration was suspended for obtaining the registration with fabricated documents. Learned counsel strenuously argued that in fact the 1st petitioner has purchased the subject goods from the 4th respondent and sold to M/s Radha Smelters Private Limited and transporting through conveyance of the 2nd petitioner and therefore as on the date of interception i.e.,

12-6-2023 the 1st petitioner was the owner of the goods but not the 4th respondent. Driver of the goods produced all relevant documents before the 1st respondent but he selectively perused only the invoice issued by the 4th respondent and came to conclusion as if the details of the Vendor of the 4th respondent and concerned bills were not produced and detained the vehicle. Learned counsel would lament that if the 1st respondent had any suspicion about the genuineness of the business of the 1st petitioner and his GST registration, he ought to have issued notice U/s 129 of CST/APGST Act and initiated proceedings. Without doing so he straight away issued notice of confiscation against the 4th respondent while detaining the goods pertaining to the 1st petitioner which is illegal and unjust. He further argued that without initiating proceedings U/s 129 against the petitioners, resorting to Section 130 of the Act against 4th respondent and on that ground proposing to confiscate the goods of the 1st petitioner is illegal. He placed reliance on the order dated 16-8-2022 in W.P.No.100849/2022 (T.Res) Rajeev Traders v. Union of India [2022] 142 taxmann.com 420 (Kar.)/2022 (66) G.S.T.L. 15 (Kar.)/[2023] 95 GST 313 (Kar.) passed by learned single Judge of the High Court of Karnataka, Dharwad Bench.

7. In oppugnation learned Government Pleader would argue, the vehicles were intercepted at Auto Nagar, Vijayawada on 12-6-2023 by the 1st respondent and having found they contained iron scrap, he enquired the drivers who produced the invoices dated 12-6-2023 which showed that the consignment was destined from Vijayawada to Sankarampet, Medak, Telangana. The invoices further showed that M/s K.S Enterprises, i.e., the 4th respondent is the owner of the consignment and the 1st petitioner is the buyer and the consignee is M./s Radha Smelters Pvt Ltd. Learned G.P would weightily point out that since the 4th respondent has no place of business at Vijayawada wherefrom the goods were sought to be transported and as the driver at that time could not show the bill of purchase, the mode of payment of purchase price by 1st petitioner to 4th respondent and mode of transportation from Kurnool to Vijayawada, the 1st respondent suspected the bonafides of 4th respondent and detained the vehicles and informed the Joint Commissioner (ST) Kurnool to examine bonafides of seller i.e., the 4th respondent. The enquiry revealed that the 4th respondent was not doing business in the given address at Kurnool and there was no such person. Therefore, the GST registration of the 4th respondent was suspended on 13-6-2023 pending further enquiry and notice of confiscation in Form GST MOV -10 was issued U/s 130 of CGST/APGST Act, 2017 to 4th respondent.

8. Refuting the argument of the petitioners that no notice was issued and action was initiated against the petitioners but their stock and

vehicle were illegally detained by initiating proceedings against the 4th respondent, learned G.P would submit that since the origin of the goods as per the invoice is relatable to 4th respondent who happens to be a fictitious person, proceedings were initiated against him by issuing notices. The 4th respondent shall appear and prove the authenticity of his business. Be that as it may, since the 1st petitioner claims to be the purchaser from the 4th respondent, though proceedings were not separately launched against him, he owes a responsibility to establish the authenticity of the transaction between him and the 4th respondent by producing invoice and purchase bill issued by the 4th respondent and also the mode of payment of consideration to him and further, produce relevant document as to the place of purchase of the goods i.e., Kurnool or Vijayawada or some other place and mode of transportation to Vijayawada if delivery was obtained at some other place. Learned G.P would thus argue that the burden of proving the genuineness of the transaction between the 1st petitioner and the 4th respondent lay on the former. He would submit that the petitioners can attend the enquiry and establish their innocence by producing the relevant documents. Learned GP defended the action of the 1st respondent in straight away initiating proceedings U/s 130 of CGST/APGST Act on the submission that the very existence of 4th respondent and his obtaining GST registration were doubtful.

9. The point for consideration is:

(1) Whether 1st respondent is legally justified in detaining the goods and vehicles of petitioners without initiating any proceedings against them but only against the 4th respondent U/s 130 of CGST/APGST Act, 2017 ?

10. **POINT**: The authority of a proper officer to inspect the goods in movement can be traceable to Section 68 of CGST/APGST Act, 2017 which reads thus:

“68. Inspection of goods in movement:

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods."

11. Then, the details of documents required to be carried under sub-section (1) are narrated in rule 138A of CGST/APGST Rules, 2017, as per which the following documents and devices to be carried by a person in charge of a conveyance:

i. The invoice or bill of supply or delivery challan, as the case may be; and

ii. A copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Chief Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01

** ** **

12. Authorized by above provisions, in the instant case the proper officer/1st respondent intercepted the lorries at Auto Nagar, Vijayawada, on 12-6-2023 which were found carrying iron scrap covered by bill and e-way bills. They revealed that the consignor i.e., the 4th respondent without having place of business at Vijayawada, transporting the goods from Vijayawada to Sankarampet, Medak in Telangana State. According to 1st respondent, the enquiry conducted by Joint Commissioner (ST), Kurnool, revealed the 4th respondent was not doing business in the given address at Kurnool and there was no such person and therefore, his GST registration was suspended w.e.f. 13-6-2023 and enquiry was initiated against 4th respondent by issuing notice of confiscation in Form GST MOV-10 under section 130 of the CGST/APGST Act, 2017. The contention

of the Revenue is that since the existence and business activities of the 4th respondent are highly doubtful, confiscation proceedings U/s 130 of the CGST/APGST Act, 2017 can be launched directly against 4th respondent without reference to the petitioners and as the 1st petitioner claims to be the purchaser from 4th respondent, he has to establish that he is a bonafide purchaser from 4th respondent for valuable consideration by paying the due tax without knowing the credentials of 4th respondent by participating in the enquiry proceedings initiated against the 4th respondent.

Per contra, the contention of 1st petitioner is that he is the bonafide purchaser from 4th respondent for valuable consideration on verifying GST registration of the 4th respondent on the web portal and sold the goods to M/s. Radha Smelters Private Limited, Medak in Telangana and was transporting the goods from Vijayawada to the consignee through the conveyance of 2nd respondent backed by invoice and e-way bill etc. and in spite of producing the relevant records by the driver, the 1st respondent did not consider them and issued confiscation proceedings against 4th respondent, the original seller. Their prime contention is that since the interception was made while the goods were in transit, if at all any doubt is entertained against the bonafides of the petitioners, the 1st respondent shall issue notice u/s 129 of the CGST/APGST Act against the petitioners and proceed accordingly, but the Revenue cannot impose the proceedings initiated against 4th respondent on the petitioners.

13. In the light of the above respective contentions, the bone of contention in this case is whether the Revenue can confiscate the goods of the petitioners basing on the proceedings initiated against the 4th respondent.

14. In **Rajeev Traders' case (supra)** High Court of Karnataka, (Dharwad Bench) a learned single Judge has drawn the distinction between section 129 and 130 of CGST Act as follows:

> "103. It is to be stated that the power to detain under section 129 cannot be converted to a proceeding under section 130 of the Act since both these provisions operate independently of each other and in completely different contexts. The power to detain is only to stop the transit of the goods and thereby prevent its movement till the tax and penalty is paid. However, the power to confiscate is the process of divesting the owner of the goods of all title to the goods for a contravention of the provisions of the Act and Rules. The intent behind conferring power to detain the goods under section 129 is fundamentally to ensure that the applicable tax and penalty is recovered whereas the intent behind confiscation under Section

130 is to divest the owner of the goods itself and also impose liability of payment of the applicable tax and penalty."

15. In **Synergy Fertichem Pvt Ltd. v. State of Gujarat** 2020(33) G.S.T.L 513 (Guj.) = MANU/GJ/3200/2019/[2019] 112 taxmann.com 370 (Guj.) a division bench of Gujarath High Court also explained the distinction between section 129 and 130 CGST Act as follows:

"(i) Section 129 of the Act talks about detention, seizure and release of goods and conveyances in transit. On the other hand, section 130 talks about confiscation of goods or conveyance and levy of tax, penalty and fine thereof. Although, both the sections start with a non-obstante clause, yet, the harmonious reading of the two sections, keeping in mind the object and purpose behind the enactment thereof, would indicate that they are independent of each other. Section 130 of the Act, which provides for confiscation of the goods or conveyance is not, in any manner, dependent or subject to section 129 of the Act. Both the sections are mutually exclusive."

16. Thus as can be seen from the two provisions and their narration given in the above two decisions, it is clear that the proceedings for detention of goods can be initiated while the goods are in transit in contravention of provisions of the CGST/APGST Act. In the instant case also the 1st respondent has detained the goods of the 1st petitioner while they were in transit from Vijayawada to Sankarampet, Medak, Telangana State. That being the factual scenario, the question is whether 1st respondent can confiscate the goods of the 1st petitioner without initiating any proceedings against him u/s 129 but initiating proceedings u/s 130 of CGST/APGST Act against the 4th respondent on the ground of dubious credentials of the 4th respondent. In our considered view though the 1st respondent may initiate proceedings against the 4th respondent u/s 130 of the Act in view of his absence in the given address and not holding any business premises at Vijayawada, however, he cannot confiscate the goods of the 1st petitioner merely on the ground that the 1st petitioner happen to purchase goods from the 4th respondent. Even assuming that the petitioners, particularly the 1st petitioner partakes in the enquiry proceedings against the 4th respondent, his responsibility will be limited to the extent of establishing that he bonafidely purchased goods from the 4th respondent for valuable consideration by verifying the GST registration of the 4th respondent available on the official web portal and he was not aware of the credentials of the 4th respondent. Further, he has to establish the mode of payment of consideration and the mode of receiving of goods from the 4th respondent through authenticated documents. Except that he cannot be expected to

speak about the business activities of the 4th respondent and also whether he obtained GST registration by producing fake documents. In essence, the petitioners have to establish their own credentials but not the 4th respondent. In that view, the 1st respondent is not correct in roping the petitioners in the proceedings initiated against the 4th respondent without initiating independent proceedings u/s 129 of CGST/APGST Act against the petitioners. As the 1st petitioner claims to have purchased goods from the 4th respondent whose physical existence in the given address is highly doubtful as per the enquiry conducted by the Joint Commissioner (ST), Kurnool, the 1st petitioner as observed supra, owes a responsibility to prove the genuineness of the transactions between him and the 4th respondent. Therefore, the 1st respondent can initiate proceedings u/s 129 of CGST/APGST Act against the petitioners and conduct enquiry by giving opportunity to the petitioners to establish their case.

17. These writ petitions are accordingly disposed of giving liberty to the 1st respondent to initiate proceedings against the petitioners u/s 129 of CGST/APGST Act, 2017 within two weeks from the date of receipt of a copy of this order and conduct enquiry by giving an opportunity of hearing to the petitioners and pass appropriate orders in accordance with governing law and rules. In the meanwhile, the 1st respondent shall release the detained goods in favour of 1st petitioner on his deposit of 25% of their value and executing personal bond for the balance and he shall also release the vehicles in favour of the 2nd petitioner in the respective writ petitions on their executing personal security bonds for the value of the vehicles as determined by concerned Road Transport Authority. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ.]

W.P.(C) Nos. 14427 & 14461 of 2022 and 6014 of 2023

M/S Cube Highways and Transportation ... Petitioner
Assets Advisor Private Limited

Versus

Assistant Commissioner CGST Division & Ors. ... Respondents

Date of Judgment : 17.08.2023

WHETHER PETITIONER HAVING RENDERED ADVISORY SERVICES TO FOREIGN PARTIES FOR MAKING INVESTMENT IN INDIA AND INVESTMENTS HAVING BEEN

MADE, CAN LEAD TO THE CONCLUSION THAT THE SAID PETITIONER IS AN "INTERMEDIARY" HENCE CLAIM OF REFUND WAS NOT ALLOWED?

HELD: NO

For the Petitioner	:	Mr. Tarun Gulati, Sr. Adv. with Mr. Kishore Kunal, Mr. Parth, Mr. Shakaib Khan & Mr. Shubham Bajaj, Advs.
For the Respondents	:	Mr. R. Ramachandran, Sr. SC.

JUDGMENT

Vibhu Bakhru, J.

1. The petitioner has filed the present petitions impugning the orders passed by the Appellate Authority (respondent no.2) rejecting the appeals preferred by the petitioner against the orders passed by the Adjudicating Authority (respondent no.1).

2. The principal issue involved in these petitions are common. The controversy, essentially, relates to whether the services rendered by the petitioner to I Squared Asia Advisors Pte. Ltd., a company having its principal place of the business in Singapore (hereafter referred to as 'I Squared') in terms of the Amended Support Service Agreement dated 06.06.2015 (hereafter 'the Agreement') constitutes export of services. The petitioner claims that the services rendered by it are export of services because I Squared, the service recipient, is located overseas. However, the respondent authorities have held, on varying grounds, that services provided by the petitioner do not qualify as 'export of services' as the place of supply of services is in India.

Factual Context

3. The petitioner is a company incorporated under the Companies Act, 2013. It is engaged in the business of rendering investment advisory services related to the investment by non-resident group companies in the target companies in India, which are engaged in the transportation sector. The petitioner and I Squared belong to the same group of companies. The petitioner had entered into a Support Service Agreement on 30.05.2015 with I Squared. The scope of services to be provided under the said agreement were subsequently altered, therefore, the said agreement was

terminated and the parties (the petitioner and I Squared) entered into the Amended Support Service Agreement on 06.06.2015 (the Agreement). In terms of the Agreement, the petitioner agreed to provide Advisory Support Services as mentioned in the Agreement, the parties agreed that the petitioner would be remunerated at an arm's length price to be determined on cost-plus markup basis.

4. The services rendered by the petitioner were accepted as 'export of services' by the Revenue under the Finance Act, 1994 (Pre-GST Regime) and the Input Tax Credit (hereafter 'ITC') was refunded to the petitioner as claimed.

5. The petitioner filed its applications for refund of unutilized ITC for the financial years 2018-19 to 2020-21, which were rejected. The claims are subject matter of the present petitions.

Proceedings for the Financial Year 2018-19, subject matter of the W.P.(C) 14461/2022

6. The petitioner filed an application on 13.07.2020 seeking refund of unutilized ITC on export of services amounting to ₹26,52,799/- relating to the tax period April 2018 to March 2019 under Section 54 of the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act').

7. The Adjudicating Authority issued a show cause notice dated 18.07.2020 proposing to reject the petitioner's claim for refund for the following reasons:

"i. Place of provision appear to be in India;

ii. Refund claims in respect of remittances received on or before 13-7-2018 is time barred;

iii. difference in the value of supply as reflected in GSTR-1, GSTR-3B vis a vis RFD-01 and remittances received during 2018-19; and

iv. refund claimed in respect of capital goods and construction activities, repair and maintenance, rent-a-cab etc. not admissible under section 17(5) of the CGST Act."

8. The petitioner responded to the said show cause notice contesting the reasons for proposing rejection of its claim. Insofar as the place of supply of services is concerned, the petitioner responded as under :

> "In this respect, we would like to reiterate that the Company is engaged in the provision of Management Consultancy services in the nature of Investment Advisory and Marketing Survey and Advisory services to entities located outside India. The Company provides update on market information, market trends and businesses, legal and regulation information/environment in India to entities outside India. Its services inter-alia includes identifying potential opportunities for investments in India, analysing investment returns and related risks, preparing report etc. basis which the overseas entity make a decision whether to make a particular investment or not."

9. The petitioner claimed that although it had provided the services from its registered place of business in Delhi, the place of supply of services was required to be considered to be overseas by virtue of sub-section (2) of section 13 of the Integrated Goods and Services Tax Act, 2017 (hereafter '**the IGST Act**') as the location of the recipient of the service was overseas.

10. Insofar as the other grounds for proposing rejection of the petitioner's claim is concerned, the Adjudicating Authority was satisfied with the petitioner's response. The same are not subject matter of controversy in the present petitions. The petitioner's claim for refund was rejected by the Adjudicating Authority by an order dated 15-8-2020 on the sole ground that the place of supply of services was in India and therefore, the services rendered could not be considered as export of services. The relevant extract of the impugned order denying the said refund is set out below :

> "I find that the taxpayer fails to provide the documentary evidence as to what type of Investment Advisory/Market Survey and Advisory Services were provided to their foreign counterpart. The service recipient has made the expenditure at large volume but, on the basis of advisory provided by the taxpayer, where the service recipient has invested the amount for their trade promotion. Thus, it is nothing but the services provided by the taxpayer to the customers of service recipient and, thus, squarely covers under the ambit of "Intermediary services'. Therefore, the place of provision will be in taxable territory.
>
> Thus, I observe that the taxpayer is providing bundle of services of which primary and main element is business support services and the said supply of service fall under sub-section (3) to (13) of section 13 of the IGST Act. Hence, place of supply of such services will be within India in view of section 13(8) of the IGST

Act. My views are also supported with the order dated 26-7-2018 pronounced by the Maharashtra Authority of Advance Ruling in the case of Sabre Travel Network India Pvt. Ltd.

Hence, I find that (i) the supplier of service is located in India, (ii) the recipient of service is located outside India, (iii) the place of supply of service is within India, (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation I in section 8 of IGST Act. Hence, as per section 2(6) of the IGST Act, the supply of service will not be treated as "export of service"."

11. Aggrieved by the said order, the petitioner filed an appeal under section 107 of the CGST Act before the Appellate Authority which was rejected by an order dated 29-3-2022. The Appellate Authority noted the scope of services as specified under article 3 of the Agreement and observed that the petitioner was engaged in providing support services on behalf of I Squared regarding information of the Indian market for identifying potential opportunities/customers. The Appellate Authority held that the petitioner was engaged in rendering services for furtherance of the business for the foreign entity, which was investing in "large volume" through the petitioner. The Appellate Authority also observed that the petitioner was providing services to customers of the service recipient and held that the petitioner was an 'Intermediary' under sub-section (13) of section 2 of the IGST Act. Thus, the services rendered were considered to be 'Intermediary Services'. Paragraph 5.5 and paragraph 5.6 of the findings of the learned Appellate Authority are relevant and are set out below :

"5.5 I also observe from the agreement that the appellant, as an agent, identifies potential opportunities, provides analytical, operational support and market information in India for his principal's output. The appellant, in his submissions to the appeal document, stated that the services, being provided to the entities outside India, inter-alia includes **identifying potential opportunities for investments in India, analyzing investment returns and related risks, preparing report etc.**

5.6 Therefore, in view of the above, I find that the appellant is performing these activities in India in his liaison capacity and the person, acting in liaison capacity, has to act as go- between his

principal and his principal's customers which are opportunities for investments' in the instant case. Thus, these activities of the appellant are clearly in the nature of arranging or facilitating supply by the foreign entity in the taxable territory i.e. India and these activities are to be considered as intermediary services as defined in section 2(13) of IGST Act, 2017 as under :

"(13). 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.""

12. Aggrieved by the said order, the petitioner has filed the present petition [W.P.(C) 14461/2022].

Proceedings for the Financial Year 2019-20, subject matter of the W.P.(C) 14427/2022

13. The petitioner had filed an application dated 22-7-2021 seeking refund of ITC amounting to Rs. 60,64,843/- in respect of the financial year 2019-20 under section 54 of the CGST Act. The petitioner received a show cause notice dated 18-8-2021 proposing to reject the petitioner's claim for refund inter alia on the ground that the place of supply of services was in India. The Adjudicating Authority referred to the invoices raised by the petitioner that reflected the place of supply as Delhi and drew support from the same. In addition, the show cause notice also mentioned that on scrutiny of documents, it appeared that the petitioner was acting as an 'Intermediary' in terms of sub-section (13) of section 2 of the IGST Act.

14. The petitioner replied to the show cause notice on 2-9-2021 reiterating its stand as in the previous year.

15. The Adjudicating Authority rejected the petitioner's claim for refund by an order dated 21-9- 2021, *inter alia*, on the ground that the services rendered were covered in sub-section (3)(b) and sub-section (4) of section 13 of the IGST Act. According to the Adjudicating Authority, the place of supply of service was the location where services were actually performed as services supplied to an individual, which required physical presence of the recipient or a person acting on his behalf for supply of service in India. The Adjudicating Authority also reasoned that the petitioner was *"rendering services in relation to immovable property viz. roads, tolls, etc."*, which were covered by under sub-section (4) of section 13 of the IGST Act. In addition, the Adjudicating Authority also observed that the petitioner was rendering

services only to I Squared and was not providing services to any other company. It also observed that *"The service agreement has substantively every term and condition to make the taxpayer act as a facilitator of their services and products for their customers."* Accordingly, the Adjudicating Authority held that the petitioner was an 'Intermediary' and the place of supply of services provided by it were in India.

16. The petitioner appealed against the said decision. The Appellate Authority upheld the decision of the Adjudicating Authority and rejected the petitioner's appeal. The Adjudicating Authority also observed that Cube Highways Group of Companies was engaged in construction of highways, toll operations etc. in India. And the services provided by the petitioner were in relation to immovable property in India being the roads, tolls etc. The Appellate Authority further held that such activities required the physical presence of the recipient, and the recipient was represented by the petitioner. The Appellate Authority also held that in terms of sub-section (3)(b) and sub-section (4) of section 13 of the IGST Act, the place of supply of services by the petitioner were in India.

Proceedings for the Financial Year 2020-21, subject matter of the W.P.(C) 6014/2023

17. The petitioner filed an application dated 12-4-2022 seeking refund of ITC amounting to Rs. 36,70,056/- for financial year 2020-21 under section 54 of the CGST Act. A show cause notice dated 6-5-2022 was issued by the Adjudicating Authority, proposing to reject the petitioner's claim for refund inter alia on the ground that the place of supply of services was in India. The Adjudicating Authority stated that certain invoices on which ITC was claimed were not reflected in the returns filed in form GSTR-2A of the petitioner. In addition, the Adjudicating Authority also observed that the petitioner rendered services in relation to immovable property in India, therefore its activities were not covered under sub-section (6) of section 2 of the IGST Act. The petitioner responded to the show cause notice on 30-5-2022 and its response was the same as in previous years.

18. The petitioner's claim for refund was rejected by the Adjudicating Authority by an order dated 3-6-2022, inter alia, on the ground that the services rendered by the petitioner were covered under sub-section (3)(b) and sub-section (4) of section 13 of the IGST Act. According to the Adjudicating Authority, in case of services supplied to an individual, which require physical presence of the recipient or a person acting on his behalf for supply of service, the place of supply of service would be the location where services were actually performed. The Adjudicating Authority

observed that the petitioner was *"rendering services in relation to immovable property viz. roads, tolls, etc."*, which were covered under sub-section (4) of section 13 of the IGST Act. The Adjudicating Authority also reasoned that since the immovable property was situated in India, the services rendered in relation to those properties also required physical presence of the recipient. This was also corroborated by the invoices disclosing the place of services as 'New Delhi'. Accordingly, the Adjudicating Authority held that the place of services rendered by the petitioner were in India and did not qualify as export of services under sub- section (6) of section 2 of the IGST Act.

19. The petitioner filed an appeal before the Appellate Authority against the said order. By an order dated 24-2-2023, the Appellate Authority upheld the decision of the Adjudicating Authority. The Appellate Authority referred to clause 3 of the Agreement and observed as under :

> "6.2 From the above, I find that the appellant is engaged in providing marketing support services, regarding information of Indian market to identify potential opportunities in India, for and on behalf of I Squared Asia Advisors Pte. Ltd. As such, the appellant is engaged in rendering services which are for furtherance of business of the foreign entity as is evident from clause 3.7 of the agreement. As per para 3 read with clause 1.3 of the agreement, these services have been rendered by the appellant in the taxable territory i.e. India. I also find that the appellant is acting as a communication channel for I Squared Asia which is definitely with the prospective customers in India."

20. In addition, the Appellate Authority held that the petitioner was providing services on behalf of a foreign entity yet the place of supply of services was in the taxable territory, that is, India.

21. The Appellate Authority referred to the submissions filed by the petitioner and noted that the said services were in relation to construction, operation and maintenance of roads and tolls and concluded as under :

> "6.4 From the conjoint reading of the nature of services, as given in the service agreement, and the submissions made by the appellant, I find that the appellant has provided their services to M/s I Squared Asia Pte. Ltd. directly in relation to immovable property. M/s I. Squared Asia Pte. Ltd. has appointed the appellant to provide the services for better understanding and upkeep the construction and operation of roads and tolls in India. Therefore, the place of supply of these services is clearly to be decided by

invoking the provisions of section 13(4) of IGST Act, 2017 where the place of supply of these services shall be the place where the immovable property is located or intended to be located which is, in the appellant's case, in the taxable territory i.e. India. It is relevant to mention here that section 13(1) of the IGST Act, 2017 specifically states that the provisions of this section (i.e. section 13) shall apply **to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.** As such the appellant's submissions, that the place of supply of their services supplied to | Squared Asia cannot be determined under section 13(4) of IGST Act, hold no ground."

22. The Appellate Authority also found that the place of supply was in India in terms of section 13(3)(b) of the IGST Act. The Appellate Authority referred to the said provision and concluded as under :

"7.2 I find that the appellant has provided marketing support services in India specifically for and on behalf of M/s I Squared Asia Pte. Ltd. for furtherance of their business of M/s I Squared Asia Pte. Ltd. in India. I find that for a service for which the place of supply has to be interpreted under section 13(3)(b) of the IGST Act, 2017, it should first be supplied to an individual. I find that the term 'individual' has the meaning of the 'person' which is defined in section 2(84) of the CGST Act, 2017 and also includes a Hindu Undivided Family, a Company, a Firm, a Limited Liability Partnership, an Association of Persons or Body of Individuals, any Body Corporate incorporated by or under the laws of a country outside India, etc.

7.3 I find that the appellant has provided services to M/s I Squared Asia Pte. Ltd., Singapore by representing themselves physically or otherwise or by acting on behalf of M/s I Squared Asia Pte. Ltd. in India. Therefore, I find that the contentions of the appellant that the services are provided by way of reports/deliverables which are directly sent to I Squared Asia which do not require physical presence of any individual hold no ground as the term 'individual' has the same meaning as of 'the Company' or 'a Body Corporate incorporated under the laws of a country outside India. As such, I conclude that the provisions of section 13(3)(b) of the IGST Act, 2017 shall also apply in the appellant's case to determine the place of supply."

23. Thus, according to Appellate Authority, sub-section (3)(b) and sub-section (4) of section 13 of the IGST Act would be applicable to the

petitioner's case and the place of supply of services by the petitioner is in India.

Reasons & Conclusion

24. As is apparent from the above, the petitioner was denied refund of ITC on, essentially, three grounds. First, that the petitioner is an 'Intermediary' in respect of the services provided by it to I Squared, in terms of sub-section (13) of section 2 of the IGST Act; therefore, in terms of sub- section (8)(b) of section 13 of the IGST Act, the place of supply of service is in India, as the petitioner is located in India. Consequently, the services rendered by the petitioner did not qualify as export of services under sub-section (6) of section 2 of the IGST Act. Second, that the place of supply of services provided by the petitioner was in India by virtue of sub-section (3)(b) of section 13 of the IGST Act. And third, that the place of supply of services provided by the petitioner was in India by virtue of sub-section (4) of section 13 of the IGST Act.

25. The provisions of section 13 of the IGST Act, which provide for the place of supply of services, as are relevant to the present petitions, are set out below :

> "13. (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.
>
> (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:
>
> Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.
>
> (3) The place of supply of the following services shall be the location where the services are actually performed, namely :—
>
> * * * * * *
>
> (b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.
>
> * * * * * *

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

** ** **

(8) The place of supply of the following services shall be the location of the supplier of services, namely :--

** ** **

(b) intermediary services;"

26. Sub-section (6) of section 2 of the IGST Act, which defines the expression "export of services" is set out below :

"2. In this Act, unless the context otherwise requires, --

** ** **

(6) "export of services" means the supply of any service when, --

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"

27. Sub-section (13) of section 2 of the IGST Act defines the term "Intermediary" and is reproduced below for ready reference :

"2. In this Act, unless the context otherwise requires, --

* * * * * *

(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;"

28. The principal questions to be addressed are whether in the context of services rendered by the petitioner to I Squared under the Agreement, the petitioner is an 'Intermediary' and its services are covered under sub-section (8)(b) of section 13 and/or under sub-section (4) of section 13 and/or under sub-section (3)(b) of section 13 of the IGST Act.

29. In addition, it is also the petitioner's case that the orders passed by the Adjudicating Authority and the Appellate Authority have travelled beyond the show cause notices and therefore, are liable to be set aside.

30. Mr. Ramachandran, learned counsel for the respondents submitted that the petitioner and I Squared are group companies of I Squared Capital, which is a subsidiary of Abu Dhabi Investment Authority, International Finance Corporation and a consortium of Japanese investors. The said group has nineteen projects in India with a long-term concession to build toll highways on BOT (Build, Operate and Transfer) basis. The said concessions span over twenty to thirty years. He also submitted that the petitioner had agreed to supply services in India and it was not clear from the invoices as to the nature of services provided. He stated that the Adjudicating Authority was required to call for more information and documents to ascertain the true nature of services before arriving at any conclusion and therefore, the matters ought to be remanded back to the Adjudicating Authority to consider afresh. He stated that orders have been passed in other cases remanding the matters for re-adjudication in the light of the earlier decision rendered by this Court in *M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr.:2023:DHC:2116-DB. He also referred to such orders passed in Bharat Sanchar Nigam Ltd. v. Union of India & Ors.:2023:DHC:2482-DB and in M/s GAP International Sourcing (India) Pvt. Ltd. v. Additional Commissioner CGST Appeals-II & Ors.:W.P.(C) No.11399/2022* dated 01.05.2023.

31. Mr. Gulati, learned senior counsel appearing for the petitioner contested the aforesaid submissions. He contended that there was no dispute as to the nature of services rendered by the petitioner. He submitted

that petitioner had filed responses to the show cause notices setting out the nature of services and also provided a copy of the Agreement with I Squared in terms of which services were rendered. He pointed out that the Appellate Authority had also alluded to the nature of services in the impugned orders. Thus, there was no requirement for remanding the matters for re-adjudication as the controversy involved was squarely covered by the decisions of this Court in *M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr. (supra) and M/s Ohmi Industries Asia Pvt. Ltd. v. Assistant Commissioner, CGST:2023:DHC:2440-DB.*

32. Before proceeding further, it would be relevant to note that there is no real dispute that the services rendered by the petitioner are covered under the Agreement. It was contended on behalf of the Revenue that petitioner is a part of a group of companies, and some of those companies have projects in India; however, there is no material on record, which even remotely suggests that petitioner had rendered any services other than advisory services. The petitioner had claimed refund of accumulated ITC in respect of export of services to I Squared under the Agreement and there is no material indicating that those services were other than advisory services.

33. At this stage, it would be relevant to refer to Clauses 2 and 3 of the Agreement relating to appointment of service provider and the scope of services. The same are set out below:

"2. Appointment of Service Provider

I Squared Asia hereby engages Cube Highways India to render Advisory Support Services to I Squared Asia (collectively, the "Services") subject to the terms and conditions of this Agreement and scope of services as specified in section 3 of this Agreement.

The Parties agreed that Cube Highways India is and at all times shall be an independent service provider, contracting with I Squared Asia on principal-to-principal basis and is not intended to be an agent or partner of the I Squared Asia.

3. Scope of Services

Cube Highways India shall provide services to I Squared Asia related to transportation sector in India. The scope of services would be as follows :

3.1 Providing update on market information, market trends & business and legal regulations.

3.2 Providing assistance in identifying potential opportunities in India consistent with the parameters and guidance provided by I Squared Asia from time to time and under communication of the same to I Squared Asia.

3.3 Providing I Squared Asia with advices and suggestions with respect to the financial feasibility and viability of any proposed project.

3.4 Providing analytical support and support for completing due diligence.

3.5 Acting as a communication channel for I Squared Asia as may be requested by I Squared Asia on a time to time basis.

3.6 Providing management advisory, management consulting and operational support services.

3.7 Providing such other services in furtherance of the foregoing, as I Squared Asia may reasonably request.

The Parties agree and acknowledge that at all times during the Term of this Agreement, Cube Highways India staff shall remain employees of Cube Highways India, both legally and economically. The employees of Cube Highways India shall never be considered as employees of I Squared Asia.

As stated above in the scope of services, the role of Cube Highways India shall always remain that of service provider and I Squared Asia shall solely take its decisions. At its own discretion, I Squared Asia may communicate the same to Cube Highways India for further communication.

I Squared Asia shall have sole and exclusive right to either accept or reject any proposal or any request and Cube Highways India shall have no say in exercise of such decision.

Cube Highways India at no point in time can represent or reflect to anyone that it has the authority to negotiate and conclude any terms on behalf of I Squared Asia or its affiliates in this regard or that it can decide on acceptation/rejection of a project/contract on behalf of I Squared Asia or its affiliates"

34. It is apparent from Clause 2, stated hereinabove, that petitioner at all time was required to act as an independent service provider and

the Agreement with I Squared was on principal to principal basis. It was expressly specified in the said Clause that the petitioner is not intended to be an agent or partner of I Squared. Similarly, the last paragraph of Clause 3 of the Agreement clearly states that the petitioner could at "no point in time can represent or reflect to anyone that it has the authority to negotiate and conclude the terms on behalf of I Squared or its affiliates".

35. The first show cause notice – relating to Financial Year 2018-19 neither contained any allegation that the petitioner was an 'Intermediary' nor raised any question regarding the nature of services rendered by the petitioner. No doubt was raised that the services rendered by the petitioner were not those as claimed by the petitioner. However, the Adjudicating Authority had rejected the petitioner's claim for refund on the ground that it was rendering 'Intermediary Services'. The Adjudicating Authority had referred to Clause 3 of the Agreement and also noted the petitioner's submission that it was engaged in providing Management Consultancy Services in the nature of Investment Advisor, Market Survey and Advisory Services to entities located outside India. It was explained that the petitioner provides updates on market information, market trends and businesses, legal and regulatory information / environment in India.

36. The Adjudicating Authority concluded that the petitioner was rendering 'Intermediary Services'. It reasoned that *".....The service recipient has made the expenditure at large volume but, on the basis of advisory provided by the taxpayer, where the service recipient has invested the amount for their trade promotion. Thus, it is nothing but the services provided by the taxpayer to the customers of service recipient and, thus, squarely covers under the ambit of 'Intermediary services'……..".*

37. It is not easy to discern the import of the aforesaid reasoning of the Adjudicating Authority. However, it does appear that the Adjudicating Authority had proceeded on the basis that since the service recipient had invested amounts on the basis of advisory services rendered by the petitioner, the services provided by the petitioner were to customers of I Squared and therefore the petitioner was an 'Intermediary'. Plainly, the said reasoning is fundamentally flawed. Merely because I Squared may have, on the basis of advisory services given by the petitioner, made the investments in entities in India, cannot be construed to mean that the petitioner had rendered the advisory services as an 'Intermediary'.

38. As noted above, the Appellate Authority had accepted that the services provided by the petitioner included identifying potential opportunities for investments in India, analyzing investment returns and

related risks, preparing reports etc. However, the Adjudicating Authority concluded that the petitioner was *"…performing these activities in India in his liaison capacity and the person acting in liaison capacity, has to act as a go-between his principal and his principal's customers which are opportunities for investments' in the instant case".*

39. Concededly, the said view is unsustainable.

40. The petitioner is the service provider. It is rendering the advisory services directly to I Squared and is not acting as a facilitator for providing such services.

41. 'Intermediary' as defined under Sub-section (13) of Section 2 of the IGST Act is a person who facilitates supply of services – he does not supply services himself but merely arranges the same. The Central Board of Indirect Taxes and Customs had issued a Circular dated 20.09.2021 which clearly defines the scope of 'Intermediary Services'. The relevant extracts of the said Circular are set out below:

"2. Scope of Intermediary services

2.1 'Intermediary' has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under -

> 'Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."

2.2 The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Service Rules, 2012 issued vide Notification No. 28/2012-S.T., dated 20-06-2012 was as follows:

> "intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his own account."

3. Primary Requirements for Intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below :

3.1 Minimum of Three Parties.—By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services:

(1) Main supply, between the two principals, which can be a supply of services or securities:

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply. A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 **Intermediary service provider to have the character of an agent, broker or any other similar person:** The definition of "intermediary" itself provides that intermediary service providers-means a broker, an agent or any other person, by whatever name called… "This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

> 3.4 **Does not include a person who supplies such goods or services or both or securities on his own account:** The definition of intermediary services specifically mentions that intermediary "does not include a person who supplies such goods or services or both or securities on his own account". Use of word "such" in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of intermediary".

* * * * * *

42. It is, thus implicit in the concept of an 'Intermediary' that there are three parties, *namely*, the supplier of principal service; the recipient of the principal service and an intermediary facilitating or arranging the said supply. Where a party renders advisory or consultancy services on its own account and does not merely arrange it from another supplier or facilitate such supply, there are only two entities, *namely*, service provider and the service recipient. In such a case, rendering of consultancy services cannot be considered as 'Intermediary Services' or services as an 'Intermediary'.

43. It is also relevant to note that rule 2(f) of the Place of Provision of Services Rules, 2012 also defined 'Intermediary' in similar terms as sub-section (13) of section 2 of the IGST Act. The said sub-section is set out below :

> "(f) intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;"

44. Undisputedly, this question is also squarely covered by an earlier decisions of this Court in *M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr (supra)* and in *Ohmi Industries Asia Pvt. Ltd. v. Assistant Commissioner, CGST (supra)*.

45. It is also relevant to refer an Order-in-Original dated 26.07.2018 passed by the Adjudicating Authority (Order-in-Original No.15-17/MN-DIV/2018-19/R). In that case, the Adjudicating Authority had observed that the basic nature of services provided by the petitioner to I Squared

is “Management and Business Consultant Services”. The Adjudicating Authority had, thus, accepted that the input services as claimed by the petitioner such as business auxiliary services, consulting engineers, courier expenses, management consultant, online information and database access services etc. qualified as input services and the petitioner was, thus, entitled to refund of accumulated service tax in respect of those input services. The Adjudicating Authority had thus sanctioned refund of ₹17,75,393/- for tax period prior to July, 2017.

46. As noticed above, the definition of ‘Intermediary’ under Rule 2(f) of the Place of Provision of Service Rules, 2012 is similar to the definition of ‘Intermediary’ under Sub-section (13) of Section 2 of the IGST Act. It is not disputed that the services rendered by the petitioner were considered as export of services for the purpose of levy of service tax under the Finance Act, 1994. Concededly, the petitioner was not held to be an ‘Intermediary’ under Rule 2(f) of the Place of Provision of Services Rules, 2012, in respect of services rendered under the Agreement, prior to the rollout of GST with effect from 01.07.2017.

47. The petitioner’s claim for refund in respect of the next two financial years, that is, Financial Years 2019-20 and 2020-21 was rejected on two other additional grounds. The Adjudicating Authority held that the place of supply of services rendered by the petitioner was its location in terms of Sub-section (3)(b) and Sub-section (4) of Section 13 of the IGST Act.

48. The impugned order dated 21.09.2021 passed by the Adjudicating Authority rejecting the petitioner’s claim in respect of the Financial Year 2019-20 on the aforesaid grounds cannot be sustained as no such allegations are made in the show cause notice dated 18.08.2021 that preceded the said impugned order. In the said show cause notice, it was alleged that the petitioner was an ‘Intermediary’ but it was not alleged that the place of service was in India as it was covered under Sub-section (3)(b) or Sub-section (4) of Section 13 of the IGST Act. However, we also consider it apposite to examine whether the place of supply of services rendered by the petitioner is India by virtue of Sub-section (3)(b) and Sub-section (4) of Section 13 of the IGST Act.

49. The reasons recorded in the impugned order dated 21.09.2021 rejecting the petitioner’s claim for refund for the Financial Year 2019-20 are cryptic. The Adjudicating Authority had noted the scope of services as specified under Clause 3 of the Agreement. The order also indicates that the Adjudicating Authority had made further enquiries by visiting the website, www.cubehighways.com. The Adjudicating Authority observed

that the group of companies, which included the petitioner, was engaged in construction of highways, toll operations etc. in India and held that the petitioner renders services in relation to those projects in India. The Adjudicating Authority, thus, concluded that Sub-section (3)(b), Sub-section (4) and Sub-section (7)(b) of Section 13 of the IGST Act were attracted.

50. Sub-section (7)(b) of Section 13 of the IGST Act has no application whatsoever. Sub-section (7) of Section 13 of the IGST Act reads as under:

> "(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed."

51. Concededly, the petitioner has not rendered any services in more than one state or union territory as envisaged in Sub-section (7) of Section 13 of the IGST Act. Mr. Ramachandran has also made no attempt to support this conclusion.

52. Sub-section (3)(b) of Section 13 of the IGST Act is equally inapplicable. First of all, it relates to services which are supplied to an individual and which require physical presence of the recipient (or a person acting on his behalf) with the supplier of the services. There is no allegation that the petitioner has rendered any service to an individual. Plainly, the Adjudicating Authority has misunderstood the nature of services covered under Sub-section (3)(b) of Section 13 of the IGST Act. These are essentially in the nature of personal services which require the physical presence of the service recipient. A publication issued by the Central Board of Excise & Customs captioned "Taxation of Services: An Education Guide" explains the significance of the words 'physical presence of an individual', whether represented either as the service receiver or a person acting on behalf of the receiver, as under:

> "This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver (formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Illustration

A modeling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modeling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modeling agency. Hence, notwithstanding that the modeling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule."

53. We are, also, unable to accept that the services rendered by the petitioner can be covered under Sub-section (4) of Section 13 of the IGST Act. As is apparent from the plain language of Sub-section (4) of Section 13 of the IGST Act, the supply of services contemplated under the said Clause are those that are supplied directly in relation to an immovable property. Such services include services supplied by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite. It includes grant of rights to use immovable property, carrying out construction work and further include services as that of architects or interior decorators. In the present case, the petitioner is rendering advisory services to I Squared. The petitioner had repeatedly filed submissions before the concerned authorities (Adjudicating Authority as well as Appellate Authority) explaining that it is rendering "advisory services to overseas group companies with respect to investment avenues in transportation sector after performing its own analysis and due diligence". It had also explained that its overseas group company [I Squared] is not bound by its advices and takes its own decision at its discretion as expressly stated in the Agreement.

54. The petitioner had also provided invoices which indicated that it was charging "market services and advisory fee".

55. In view of the above, the orders impugned in the present petitions are liable to be set aside.

56. Mr. Ramachandran had filed written submissions, inter alia, praying that the matter be remanded for re-adjudication in the light of the decision in *M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr (supra)* by, *inter alia*, praying as under:

"In view of the foregoing facts and circumstances, it is respectfully prayed that this Hon'ble Court be pleased to remand the matter

for re-adjudication in the light of the decision of this Hon'ble Court in the case of *M/s Ernst & Young Ltd. v. Additional Commissioner, CGST Appeals-II, Delhi & Anr in W.P.(C) 8600/2022* by calling for additional documents / information if any, required."

57. However, we are unable to accept that the present petitions are required to be remanded to the Adjudicating Authority for consideration afresh. There is no material which would even remotely suggest that the services rendered by the petitioner are not as claimed, that is, advisory services relating to investments in India. As noticed above, the concerned authorities had also accepted the same as is apparent from some of the observations made in the impugned order. Neither the Adjudicating Authority nor the Appellate Authority had any material to doubt the petitioner's claim that it had rendered advisory services for making investments in India. We do not consider it apposite to remand the present petitions for fresh adjudication. The decisions in *Bharat Sanchar Nigam Ltd. v. Union of India & Ors. (supra)* and in M/s GAP International Sourcing (India) Pvt. Ltd. v. Additional Commissioner CGST Appeals-II & Ors. (supra) relied upon by the Revenue in support of the aforesaid prayer are inapplicable in the facts of the present case. In *Bharat Sanchar Nigam Ltd. v. Union of India & Ors. (supra)*, the petitioner's claim for refund was rejected on the ground of limitation and not on merits. Thus, it was essential that the Adjudicating Authority consider the merits of the claim in the first instance. In *M/s GAP International Sourcing (India) Pvt. Ltd. v. Additional Commissioner CGST Appeals-II & Ors. (supra)*, this Court had noted that there was a serious controversy as to the exact nature of the services rendered by the petitioner. Thus, it was apposite to remand the matter for re-adjudication.

58. In view of the above, the present petitions are allowed. The impugned orders are set aside. The Adjudicating Authority is directed to process the petitioner's claim for refund as expeditiously as possible and preferably with in a period of eight weeks from today.

IN THE HIGH COURT OF JHARKHAND AT RANCHI
[Aparesh Kumar Singh and Deepak Roshan, JJ.]

W.P (T) No. 1237 and 1244 of 2022

Vikash Kumar Singh ... Petitioner

Versus

Commissioner of State tax ... Respondents

Date of Order : 23.03.2023

WHETHER SUMMARY OF SHOW CAUSE NOTICE AND SUMMONING OF ORDER ISSUED UNDER SECTION 73 ISSUED IN NEGATION OF RULE OF NATURAL JUSTICE AND PROCEDURE PRESCRIBED U/S 73 WAS JUSTIFIED?

HELD – NO.

For the Petitioner : Deepak Kr. Sinha, Adv.

For the Respondent. : Deepak Kr. Dubey, A.C. to A.A.G.-II

ORDER

1. Both the writ petitions though relate to different petitioners, but common issues are involved. Therefore, they are being heard and decided by this common judgment.

2. In W.P (T) No. 1237/2022 relating to the tax period April 2018 to March 2019, petitioner has sought quashing of the show cause notice dated 07.10.2020 (Annexure 2) issued under section 73 of JGST Act, 2017 (herei nafter to be referred as the 'Act of 2017'). Petitioner has also laid challenge to the Summary of show cause notice of the same date issued in Form GST DRC 01 (Annexure 3). Petitioner has also challenged the Summary of the Order dated 12.12.2020 (Annexure 4) issued in Form GST DRC 07. All such notices and order have been issued by the Deputy Commissioner of State Tax, Jharkhand Goods and Service Tax, Godda (Respondent No. 2).

3. In W.P (T) No. 12 44 /2022 relating to the same tax period April 2018 to Mar ch 2019, petitioner has laid challenge to the show cause notice dated 2 0 1 0.2020 (Annexure 2) issued under section 73 of JGST Act, 2017. Petitioner has also sought quashing of the Summary of show cause notice of the same date issued in Form GST DRC 01 (Ann exure 3) as also Summary of the Order dated 14.12.2020 (Annexure 4) issued in Form GST DRC 7. All such notices have been issued by the Respondent No. 2.

4 . Petitioner in W.P (T) No. 123 7 /2022 is engaged in civil construction, etc. while pe titioner in W.P (T) No. 12 44 /2022 is the proprietor of M/s Maa Parwati Medical Stores and engaged in selling of medicine . Petitioners are duly registered under the provisions of JGST Act, 2017.

5 . Common ground taken in all these writ petition is that the show cause notices at Annexure 2 in the respective writ petitions is in teeth of the provisions of Section 73(1) the Act of 2017 and the judgment rendered by this Court in the case of *M/s NKAS SERVICES PRIVATE LIMITED Versus State of Jharkhand & others in W.P (T) No. 2659/2021 dated 09.02.2022.*

Summary of Show Cause Notice cannot be a substitute of a proper show cause notice as has been held by this Court in *M/s NKAS SERVICES PRIVATE LIMITED (Supra)*. The show cause notice does not strike out the relevant particulars and does not even enumerate the contravention which the petitioners have been called upon to reply. These proceedings were initiated allegedly on account of a mismatch in GSTR 3B and GSTR 2A for the period in question and that the petitioner s have taken undue ITC to which they were not entitled. Petitioners have also taken a plea that Summary of the Order contained in Form GST DRC 07 imposes 100% penalty which is impermissible under the provisions of Section 73(9) of the Act of 2017. 100% pen alty can only be levied in a proceeding under section 74 (9) of the Act of 2017. No adjudication order has been uploaded. It is further submitted that proceedings suffer from serious violation of principles of natural justices and the procedure prescribed in law. On the same plea three other writ petitions being W.P.(T) Nos.1239, 1261 and 1263 of 2022 have been allowed by this Court vide order dated 11 th July 2022. Therefore, the impugned show cause notices and the Summary of the Orders be quashed and the matters be remanded.

6 . In these writ petitions, counter affidavit has been filed by the Respondent State. Plea of alternative remedy of appeal under section 107 of the Act of 2017 has been taken. Otherwise, common flank in both these counter affidavi ts is that GSTN provides for standard format in which only notices can be issued upon the assesse. The Deputy Commissioner of State Tax, Godda Circle, Godda has therefore followed the procedure by mentioning the violations and charges on the petitioner i.e . difference between GSTR 3B and 2A. The show cause notices and Summary of the show cause notices in Form GST DRC 01 clearly mentions the charge i.e. difference between GSTR 3B and 2A. A plea has also been taken that entries in GSTR 2A, which are auto populated figure of inward supply for the taxpayer in the online GSTN portal, is dynamic in nature and changes upon filing of GSTR 1 by the suppliers / taxpayer. Thus, after filing of GSTR 1 by the suppliers, any changes made in the figures in GSTR 2 A by the taxpayers was never brought to the notice of the Department either during adjudication stage or until filing of these writ petitions. Therefore, because of late filing of GSTR 1 by the suppliers, interest under section 50 of the Act of 2017 are re quired to be levied to prevent loss of revenue to the State Exchequer.

It appears that there is no specific denial of the plea taken by the petitioners that no penalty of 100% of the tax dues can be levied in a proceeding under section 73(1) in terms of section 73(9) of the Act, 2017.

7 . Learned counsel for the State have however, submitted that in case impugned show cause notices and Summary of the Orders are quashed, liberty may be granted to the Revenue to initiate proceeding after proper service of show cause notice upon the petitioners. In view of Section 73 (10) of the JGST Act 2017, limitation for initiating fresh proceeding and passing orders would expire by 30 th December 2023

8 . We have considered the submissions of learned counsel f or the parties and taken note of the materials on record. We may straightaway point out that notices under section 73(1) of the Act of 2017 at Annexure 2 in the respective writ petitions are in the standard format and neither any particulars have been struck off, nor specific contravention have been indicated to enable the petitioners to furnish a proper reply to defend themselves. The show cause notices can therefore, be termed as vague. This Court has, in the case of *M/s NKAS SERVICES PRIVATE LIMITED (Supra)* categorically held that summary of show cause notice in Form GST DRC 01 cannot substitute the requirement of a proper show cause notice under section 73(1) of the Act of 2017. It seems that the authorities have, after issuance of show cause notices dat ed 07 1 0 .2020 and 2 0 1 0.2020 (Annexure 2 in the respective writ petitions) and Summary of show cause notices contained in GST DRC 01 (Annexure 3 in the respective writ petitions) of the same date, proceeded to issue Summary of the Order dated 12.12.2020 an d 14.12.2020 (Annexure 4 in the respective writ petitions). Respondents have also not brought on record any adjudication order. In this regard, the opinion of this Court rendered in the case of *M/s NKAS SERVICES PRIVATE LIMITED Versus State of Jharkhand and others* in W.P (T) 2659/2021 at paragraph 14 to 16 are profitably quoted hereunder:

> “14. We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner. As noted herein above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other

than the grounds specified in the notice as per section 75(7) of the JGST Act.

15. Learned counsel for the petitioner has relying upon the case of Bharti Airtel Ltd. (supra) and contended that the Apex Court has observed that the common portal of GSTN is only a facilitator. The format GST DRC-01 or 01A are prescribed format on the online portal to follow up the proceedings being undertaken against an assessee. They themselves cannot substitute the ingredient of a proper show cause notice. If the show cause notice does not specify a ground, the Revenue cannot be allowed to raise a fresh plea at the time of adjudication, as has been held by the Apex Court in a matter arising under Central Excise Act in the case of Shital International (supra) at para 19, extracted herein below:

> "19. As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee. (See Commr. of Customs v. Toyo Engg. India Ltd., CCE v. Ballarpur Industries Ltd. and CCE v. Champdany Industries Ltd.) Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show cause notice dated 22-6-2001 relating to Assessment Years 1988-1989 to 2000-2001. However, in the show-cause notice dated 12-12-2000, the process of electrifying polish finds a brief mention. Therefore, in the light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show- cause notice nor can it be allowed to take contradictory stands in relation to the same assessee."

In a notice under section 74 of the JGST Act, the necessary ingredients relating to fraud or willful misstatement of suppression of fact to evade tax have to be impleaded whereas in a notice under Section 73 of the same act the Revenue has to specifically allege the violations or contraventions, which has led to tax not being paid or short paid or erroneously refunded or Input Tax Credit wrongly availed or utilized. It is trite law that unless the foundation of a case is laid down in a show cause notice, the assessee would be precluded from defending the charges in a vague show cause notice. That would entail violation of principles

of natural justice. He can only do so, if he is told as to what the charges levelled against him are and the allegations on which such charges are based. Reliance is placed on the opinion of the Constitution Bench of the Apex Court in the case of Khem Chand v. Union of India [AIR 1958 SC 300], which has also been relied upon in the case of Oryx Fisheries P. Ltd. v. Union of India reported in (2010) 13 SCC 427 and profitably quoted in our decision rendered in the case of the same petitioner in W.P (T) No. 2444 of 2021.

16. We are thus of the considered view that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice. The challenge is entertainable in exercise of writ jurisdiction of this Court on the specified grounds as clearly held by the decision of the Apex Court in the case of Magadh Sugar & Energy Ltd. v.. State of Bihar & others reported in 2021 SCC Online SC 801, para 24 and 25. Accordingly, the impugned notice at annexure-1 and the summary of show cause notice at annexure-2 in Form GST DRC-01 is quashed. This Court, however is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of deciding the instant case. Since the Court has not gone into the merits of the challenge, respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks from today"

9. Levy of penalty of 100% of tax dues reflected in the Summary of the Order contained in Form GST DRC-07 vide Annexure-4 in the respective writ petitions are also in the teeth of the provisions of Section 73(9) of the Act of 2017, wherein while passing an adjudication order, the Proper Officer can levy penalty up to 10% of tax dues only. The above infirmity clearly shows non-application of mind on the part of the Deputy Commissioner, State Tax, Godda Circle, Godda. Proceedings also suffer from violation of principles of natural justice and the procedure prescribed under section 73 of the Act and are in teeth of the judgment rendered by this Court in the case *M/s Nkas Services Private Limited (supra)*.

10. Taking into account all these facts and circumstances and for the reasons recorded hereinabove, the impugned show-cause notices and Summary of the Show Cause Notices dated 7-10-2020 and 20-

10-2020 (Annexure-2 in the respective writ petitions) and Summary of Orders contained in Form GST DRC-07 dated 12-12-2020 and 14-12-2020 (Annexure-4 in the respective writ petitions) are quashed. However, Respondent No. 2-Deputy Commissioner of State Tax, Godda is at liberty to initiate fresh proceeding for the alleged contravention for the said tax period after issuance of proper show-cause notice in accordance with law. Writ petitions are allowed in the manner and to the extent indicated herein above.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 17171/2022

Santosh Kumar Gupta Prop. Mahan Polymers ... Petitioner

Versus

Commissioner, Delhi Goods and Services Tax Act & Ors. ... Respondents

Date of Judgment : 05.12.2023

WHETHER REVERSAL OF ITC THROUGH DRC-03 BY PETITIONER DURING THE LATE HOURS OF SEARCH BY THE DEPARTMENT CAN BE HELD TO BE AS VOLUNTARY PAYMENT MADE BY HIM?

HELD – NO

THE HON'BLE COURT DOES NOT FIND IT DIFFICULT TO ACCEPT THAT THE PETITIONER MAY HAVE FOUND THE CIRCUMSTANCES INTIMIDATING AND HAD, ACCORDINGLY, AGREED TO REVERSE THE ITC. WE ARE UNABLE TO ACCEPT THAT THE REVERSAL OF ITC WAS MADE VOLUNTARILY WITHOUT ANY SUGGESTION OR ENCOURAGEMENT BY THE OFFICERS.

IN THE CIRCUMSTANCES, THE HON'BLE COURT DIRECT THE RESPONDENTS TO REVERSE THE ITC AMOUNTING TO ₹22,14,226/- IN THE PETITIONER'S ECL.

For the Petitioner	:	Mr. A. K. Babbar & Mr. Surender Kumar, Advs.
For the Respondents	:	Mr. Rajeev Aggarwal, SC with Ms. Shilpa Singh, Adv.

JUDGMENT

Vibhu Bakhru, J

1. The petitioner has filed the present petition principally challenging the search / inspection conducted at his business premises situated at 3460/1, Jai Mata Market, Tri Nagar, Delhi- 110039 and Godown at E-285, Sector-4, Bawana, Delhi-110039 on 18.10.2022 under Section 67(1) of the Delhi Goods and Services Tax Act, 2017 (hereafter '**the DGST Act**'). The petitioner claims that during the course of the search/inspection, he was compelled to reverse the Input Tax Credit (hereafter '**ITC**') amounting to ₹22,14,226/- on account of inadmissible ITC and shortage of cash.

2. The petitioner claims that his statement was recorded at about 11:30 pm on 18.10.2022 and he was compelled to agree to reverse the ITC in respect of certain suppliers whose registration were stated to be cancelled. The petitioner claims that the petitioner's statement as well as the reversal of ITC, was done under duress and while the petitioner was effectively under the control and supervision of officers of the visiting team. The petitioner also claims that the petitioner was under the stress of interrogation as the inspection was continuing from 4:00 pm, earlier that day. The petitioner also claims that although the petitioner had filed FORM GST DRC-03, there was no acknowledgement of receipt by the Department by issuing FORM GST DRC-04.

3. The petitioner also claims that the inspection conducted on 18.10.2022 was illegal as the authorization for the same [(FORM GST INS-01 dated 18.10.2022)] was issued without mentioning any specific reason for the same.

4. The first and foremost question to be examined is whether the inspection conducted by the Delhi GST Authorities was illegal for want of proper authorization.

5. According to the petitioner, the inspection / search conducted on 18.10.2022 under Section 67 of the DGST Act was illegal as the authorization for conducting the search (in FORM GST INS-01) mentioned all the reasons as stated in Section 67(1)(a) of the DGST Act. The petitioner contends that the said authorization is issued mechanically and without application of mind.

6. Rule 139(1) of the Central Goods and Services Tax Rules, 2017 (hereafter 'the CGST Rules') expressly requires that the authorization for conducting a search be issued in FORM GST INS-01. The said form is set out below:

"FORM GST INS-1
AUTHORISATION FOR INSPECTION OR SEARCH
[See rule 139(1)]

To

……..

……..

(Name and Designation of officer)

Whereas information has been presented before me and I have reasons to believe that—

A. M/s._____

☐ has suppressed transactions relating to supply of goods and/or services
☐ has suppressed transactions relating to the stock of goods in hand,
☐ has claimed ITC in excess of his entitlement under the Act
☐ has claimed refund in excess of his entitlement under the Act
☐ has indulged in contravention of the provisions of this Act or rules made the

OR

B. M/s._____

☐ is engaged in the business of transporting goods that have escaped payment of tax
☐ is an owner or operator of a warehouse or a godown or a place where goods that have escaped payment of tax have been stored
☐ has kept accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

OR

C.

☐ goods liable to confiscation / documents relevant to the proceedings under the Act are secreted in the business/residential premises detailed herein below

<<Details of the Premises>>

Therefore,—

☐ in exercise of the powers conferred upon me under sub-section (1) of section 67 of the Act, I authorize and require you to inspect the premises belonging to the above mentioned person with such assistance as may be necessary for inspection of goods or documents and/or any other things relevant to the proceedings under the said Act and rules made thereunder.

OR

☐ in exercise of the powers conferred upon me under sub-section (2) of section 67 of the Act, I authorize and require you to search the above premises with such assistance as may be necessary, and if any goods or documents and/or other things relevant to the proceedings under the Act are found, to seize and produce the same forthwith before me for further action under the Act and rules made thereunder.

Any attempt on the part of the person to mislead, tamper with the evidence, refusal to answer the questions relevant to inspection / search operations, making of false statement or providing false evidence is punishable with imprisonment and /or fine under the Act read with section 179, 181, 191 and 418 of the Indian Penal Code.

Given under my hand & seal this …… day of …… (month) 20…. (year). Valid for …… day(s).

Seal
Place Signature, Name and designation of the issuing authority

Name, Designation & Signature of the Inspection Officer/s

(i)

(ii)"

7. In the present case, respondent no.3 had issued the authorization dated 18.10.2022 by selecting all reasons (except that the taxpayer had availed of a refund) as set out in Clause 'A' of the said form. The reasons, as stated, also exhaustively comprise of reasons for issuing such authorization as set out in Section 67(1)(a) of the DGST Act. Therefore, it does not appear that the authorization was issued without specifically noting the relevant reason for such search. However, it is averred by the respondents – and not seriously contested by the petitioner – that the reasons for conducting search / inspection on 18.10.2022 are recorded in the relevant files.

8. The authorization in FORM GST INS-01 does not require the concerned officer to give any reasons in detail. It merely requires that the reason for which the search / inspection is to be conducted under the statute, be mentioned. The detailed reasons are not required to be shared with the taxpayer prior to the search / inspection. However, the taxpayer is at liberty to apply for the same and absent any reason to deny the request, the same ought to be provided to the taxpayer.

9. It is contended on behalf of the respondents that the inspection / search was conducted on account of the petitioner having availed of the ITC from suppliers whose registrations were cancelled. It is also affirmed in the counter affidavit that during the course of the search, it was noticed that the petitioner had availed of ITC amounting to ₹2,39,40,871/- on account of purchases made from suppliers whose registrations were cancelled. In view of the above, we find no merit in the contention that the search conducted was illegal and was without any reasons to believe that the conditions under Section 67(1)(a) of the DGST Act were satisfied.

10. The second question to be examined is, whether the petitioner is entitled to the refund of ITC deposited during the course of the search conducted on 18.10.2022. According to the petitioner, he was compelled to deposit a sum of ₹22,14,226/- by reversing the ITC available in his Electronic Credit Ledger (hereafter '**the ECL**'). The petitioner also claims

that the statement to that effect as recorded on 18.10.2022, was also recorded under duress and coercion.

11. Mr. Rajiv Aggarwal, learned counsel appearing for the respondents countered the aforesaid submission on, essentially, two grounds. First, he submitted that the petitioner had not retracted the statement recorded on 18.10.2022, immediately after the search and therefore, he is precluded from disputing that he had voluntarily reversed the ITC amounting to ₹22,14,226/-. Mr. Aggarwal referred to the decision of the Coordinate Bench of this Court in *RCI Industries and Technologies Ltd. though its Director Rajiv Gupta v. Commissioner, DGST Delhi & Ors.: 2021 SCC OnLine Del 3450*.

12. Second, Mr. Aggarwal contended that on the date of the search, there was a balance of ₹84,19,466/- in the ECL of the petitioner. According to the respondents, the petitioner had availed of the inadmissible ITC to the extent of ₹2,39,40,871/-. Thus, if the petitioner was under any coercion, he would have been compelled to deposit the entire amount lying in his ECL.

13. It is relevant to refer to the statement of the petitioner recorded on 18.10.2022. The relevant extract which is relied upon by the respondent is set out below:

> "13. That the visiting team has informed that the following inward supply dealers have been cancelled suomoto from the date of registration: -
>
> 1. M/s. S. R. Enterprises, GSTN: 07AAFHS2748C1Z8 (1,67,310)
> 2. M/s N N Polymers, GSTN:07AMPS2298F1ZV (5,85,900/-)
> 3. M/s J P Polymers, GSTN:07ADGPJ9077M1ZW (4,64,130/-)
> 4. M/s Dream world global Asia, GSTN:07BEPPG0134K1ZJ (5,19,300/-)
> 5. M/s Kanav International Pvt. Ltd., GSTN:07AAFCK8521N1Z4 (3,94,785/-)
>
> In this regard, I agreed to reverse the ITC above mentioned firms as per DGST Act, 20 17, the question of payment of interest on ITC reversal does not arises as the firm always having ITC in Credit ledger to meet out any liability of tax."

14. It does appear from the above that the petitioner had agreed to reverse the ITC in respect of purchases from five firms aggregating

₹22,14,226/-. The petitioner now claims that the said statement was not voluntary and that he was compelled to reverse the ITC. It is not disputed that the said deposit was made at about 11:30 pm during the course of the search proceedings.

15. The petitioner filed the present writ petition on 23.11.2022, about a month after his statement was recorded, inter alia, seeking to retract the said statement. It is necessary to bear in mind that an opportunity to pay the tax prior to issuance of any notice under Sections 73 or 74 of the DGST Act is for the benefit of the taxpayer. Payment of tax along with interest, prior to issuance of notice, absolves the taxpayer of any liability to pay penalty or penalty in excess of 15% of the tax depending on whether Sections 73 or 74 of the DGST Act are applicable. The said tax is to be paid based on self-ascertainment basis. In the event that a taxpayer voluntary pays the tax and the applicable interest, no notice is required to be issued under Section 73(1) of the DGST Act. If it is found that the tax paid falls short of the tax payable, the proper officer is required to issue a notice for the shortfall under Section 73(7) of the DGST Act.

16. Sub-sections (5), (6) and (7) of Section 73 of the CGST Act are set out below:

> "73. Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.—
>
> xxx xxx xxx
>
> (5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
>
> (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the CGST Rules made thereunder.
>
> (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1)

in respect of such amount which falls short of the amount actually payable"

17. The scheme of Sub-sections (5), (6) and (7) of Section 74 of the DGST Act are also similar except that the taxpayer is also required to pay 15% of the tax as penalty.

18. If the tax is not paid on self-ascertainment basis, the assessee cannot be extended the benefit of Section 73(6) of the DGST Act or Section 74(6) of the DGST Act. In the present case, the petitioner has stoutly disputed that the reversal of ITC was voluntary. In cases where the payment made during search is not voluntary, the taxpayer is required to be refunded the said deposit while reserving the right of the GST authorities to proceed against the said taxpayer to the full extent in accordance with law.

19. It is also material to note that the respondents have not issued an acknowledgment in FORM GST DRC-04. Thus, the procedure under Rule 142 of Delhi Goods & Services Tax Rules, 2017 (hereafter '**the DGST Rules**') has not been followed. We find that the issue is covered by the decisions of this Court in *Vallabh Textiles v. Senior Intelligence Officer &Ors.: 2022 SCC OnLine Del 4508 and in Lovelesh Singhal v. Commissioner, Delhi Goods & Service Tax &Ors.: Neutral Citation No. 2023:DHC:8631-DB.*

20. We are also unable to agree that, the petitioner's case that he had deposited the tax involuntarily, is required to be rejected on the basis of the decision in *RCI Industries and Technologies though its Director Rajiv Gupta v. Commissioner, DGST & Anr. (supra)*. In that case, the Court had noted that the petitioner had "categorically admitted his tax liability and stated that he would deposit the admitted tax / penalty amounting to ₹17,34,314". In the present case, there is no admission on the part of the petitioner of his tax liability. It is clear that the petitioner was informed by the visiting team that registration of certain dealers from whom the petitioner had reportedly received supplies was cancelled. The petitioner's statement indicates that he had agreed to reverse the ITC in respect of those suppliers. There is no acknowledgment that the invoices covering supplies from those suppliers were fake and the petitioner had not paid the consideration and the applicable GST to the said suppliers. There is no adjudication of the question whether the taxpayer was required to reverse the ITC in respect of purchases made from dealers whose registration was cancelled after the receipt of supplies, albeit retrospectively.

21. Mr. Aggarwal further submitted that there was no requirement for adjudicating the liability as the petitioner had reversed the ITC. However, in *RCI Industries and Technologies Ltd. though its Director Rajiv Gupta*

v. Commissioner, DGST Delhi & Ors. (supra), this Court had not finally rejected the petitioner's claim that the statement was made under coercion as the Court had noted that the payment of tax would be adjudicated and that the correctness of the statement would be required to be established in the adjudication proceedings. In the present case, the tax deposited by the petitioner by reversal of ITC is not subject to any adjudication proceedings. As noted above, Mr. Aggarwal had contended that no adjudication in respect of the demand is necessary. This is also the Scheme of Sections 73(6) and 74(6) of the DGST Act. Thus, it is essential that the deposit made by an assessee on a self-ascertainment basis finally and conclusively concludes the issue regarding the tax liability to the said extent. As noted above, in the present case, the petitioner has stoutly disputed that the reversal of ITC was voluntary. Undisputedly, the same has been made while the petitioner's premises were being searched and he was being subjected to questioning / enquiries. We do not find it difficult to accept that the petitioner may have found the circumstances intimidating and had, accordingly, agreed to reverse the ITC. We are unable to accept that the reversal of ITC was made voluntarily without any suggestion or encouragement by the officers as contended by Mr. Aggarwal. But for the search continuing till late at night, there were no circumstances which would, in normal course, lead the petitioner to reverse the ITC late at night.

22. In the circumstances, we direct the respondents to reverse the ITC amounting to ₹22,14,226/- in the petitioner's ECL. We however clarify that this would not preclude the concerned authorities from safeguarding the interest of the Revenue including issuing order under Section 83 of the DGST Act or Rule 86A of the DGST Rules, if the requisite conditions are satisfied.

23. The petition is disposed of with the aforesaid terms.

IN THE HIGH COURT OF KERALA AT ERNAKULAM
[Dinesh Kumar Singh, J]

WP(C) NO. 41219 OF 2023

Chukkath Krishnan Praveen ... Petitioner/s:

Versus

State of Kerala and Ors. ... Respondent/s:

Date of Order : 08.12.2023

WHETHER AN ERROR COMMITTED IN SUBMITTING GSTR-3B, ON WHICH THE ASSESSMENT HAS BEEN COMPLETED CAN BE RECTIFIED BY FILING WRIT UNDER ARTICLE 226?

HELD – YES

THAT A DIRECTION TO RESPONDENT NO. 3 TO CONSIDER EXP-4 AND EXP-5 AS A RECTIFICATION APPLICATION AND PASS NECESSARY ORDERS IN ACCORDANCE WITH LAW.

Present for Petitioner	:	Lindons C.Davis, E.U.Dhanya, Rajith Davis, N.S.Shamila, Chinju P. Joyies, Advs.
Present for Respondent	:	Jasmne M.M. (Government Pleader)

This Writ Petition (Civil) having come up for admission on 08.12.2023, the Court on the same day delivered the Following:

J U D G M E N T

Heard Ms N S Shamila learned Counsel for the petitioner, and Ms Jasmin M M learned Government Pleader for the parties.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner, a registered dealer under the provisions of the KVAT Act and now under the provisions of the CGST/ SGST Act, for the following prayers:

> "i) To issue a Writ of mandamus or any other appropriate writ or order or direction directing respondents to permit the petitioner to rectify the mistake in Form GSTR-3B by accounting input tax credit as IGST instead of SGST and CGST credit.
>
> ii) To issue a Writ of mandamus or any other appropriate writ or order or direction directing the respondents to permit the petitioner to refund IGST Input tax credit and thereafter, adjust the same towards SGST and CGST liability;
>
> iii) To issue a Writ of mandamus or any other appropriate writ or order or direction directing the respondents to reconsider Exhibit.P3 or P6 by considering evidences produced by petitioner, especially in the fact that, IGST credit and liability towards CGST and SGST are same;

iv) To issue a Writ of certiorari or any other appropriate writ or order or direction quashing Exhibts.P3 and P6 as unjust and illegal;

v) And to pass such other appropriate orders or directions as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

vi) To dispense with the production of translation of vernacular documents"

3. After some arguments, the learned Counsel for the petitioner submits that the petitioner committed some errors in submitting the returns in GSTR-3B, on the basis of which the assessment order in Ext.P3 has been passed. The petitioner has made a representation on 21.10.2023 in Ext.P4 for rectifying the mistakes/error which resulted in passing the impugned assessment order. She further submits that a direction may be given to the 3rd respondent to treat the representation as a rectification application and necessary orders be passed.

4. Ms Jasmin M M, learned Government Pleader does not have much objection to the said prayer of the petitioner.

5. In view thereof, the present writ petition is disposed of with a direction to the 3rd respondent to consider Ext.P4 and Ext.P5 as a rectification application filed by the petitioner/assessee and pass necessary orders expeditiously in accordance with the law, after giving an opportunity of hearing to the petitioner. The order should be passed on Exts.P4 and P5, preferably within a period of two months.

Sd/-
DINESH KUMAR SINGH
JUDGE

APPENDIX OF WP(C) 41219/2023

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE FORM GST ASMT-10 DATED 30.07.2020 ISSUED BY THE 3RD RESPONDENT
Exhibit P2	A COPY OF THE FORM GST ASMT-11 DATED 13.11.2020 FILED BY THE PETITIONER
Exhibit P3	A COPY OF THE ORDER DATED 21.8.2023 OF THE 4TH RESPONDENT

Exhibit P4	A COPY OF THE REPRESENTATION DATED 21.10.2023 SUBMITTED BEFORE THE 2ND RESPONDENT
Exhibit P5	A COPY OF GOODS AND SERVICE TAX - TAX LIABILITIES AND ITC COMPARISON ALONG WITH DETAILS OF BILLS AS PER GSTR 2A
Exhibit P6	A TRUE COPY OF THE LETTER NO.A4/1814 DATED 15.11.2023 ISSUED BY THE 2ND RESPONDENT
Exhibit P7	A COPY OF THE JUDGMENT IN WRIT PETITION NO.2911 OF 2022 (T-RES) DATED 16.10.2022

IN THE HIGH COURT OF CALCUTTA AT CALCUTTA

[Krishna Rao, J.]

WPA 1009 of 2022

M/s. Gargo Traders ... Petitioner

Versus

The Jt. Commissioner,
Commercial Taxes (State Tax) & Ors. ... Respondent

Date of Order: 12.06.2023

WHETHER BENEFIT OF ITC CAN BE REFUSED ON THE ALLEGATION BY THE RESPONDENT THAT ON INQUIRY THEY CAME TO KNOW THAT THE SUPPLIER FROM WHOM THE PETITIONER CLAIMED TO HAVE PURCHASED THE GOODS IN QUESTION ARE ALL FAKE AND NON-EXISTING AND THE BANK ACCOUNTS OPENED BY THE SUPPLIER IS ON THE BASIS OF FAKE DOCUMENT AND THE CLAIM OF THE PETITIONER OF INPUT TAX CREDIT ARE NOT SUPPORTED BY ANY RELEVANT DOCUMENTS?

BASED ON THE JUDGMENT OF M/S LGW INDUSTRIES LTD. VS. UOI.

HELD – Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash. It is not the case of the respondents that there is a collusion between the petitioner and supplier with regard to the transaction. Based on the unreported judgment of M/S LGW Industries Ltd. Vs. UOI.

Present for Petitioner	:	Ms. Jagriti Mishra, Mr. Subham Gupta, Ms. Mrinmoyee Das & Mr. Reshab Kumar
Present for Respondent	:	Mr. Subir Kumar Saha, Ld. A.G.P Mr. Bikramaditya Ghosh

ORDER

Krishna Rao, J.

1. The petitioner has filed the present writ application challenging the order passed by Joint Commissioner, State Tax, West Bengal, Siliguri Circle dated 13th April, 2022 wherein the appeal preferred by the petitioner is rejected and the order passed by the Adjudicating Authority is withheld.

2. The petitioner being the registered taxable person (RTP) claimed credit of input tax against supply made from a supplier. As per the ledger account of the petitioner for the period from 01.04.2018 to 31.03.2019, the total purchase credit was Rs. 13,04,586/-. The petitioner has filed a tax invoice cum chalan reflecting a purchase of Rs. 11,31,513.00 from Global Bitumen. The debit note issued in the name of the transporter i.e. the International Transport Corporation for an amount of Rs. 1,73,073.00/-. The petitioner has made payment to Global Bitumen from the account of the petitioner through bank.

3 . The petitioner is aggrieved by the impugned order issued by the respondent authorities for not allowing the petitioner, who is the purchaser of goods in question and refusing to grant the benefit of Input Tax Credit (ITC) on purchase from supplier and also asking the petitioner to pay penalty and interest under the relevant provisions of GST Act.

4 . The case of the respondents that on inquiry, they came to know that the supplier from whom the petitioner claimed to have purchased the goods in question are all fake and non-existing and the bank accounts open by the supplier is on the basis of fake document and the claim of the petitioner of Input Tax Credit are not supported by any relevant document. It is the further case of the respondent that the petitioner has not verified the genuineness and identity of the supplier whether is a registered taxable person (RTP) before entering into any transaction with the supplier.

5 . It is the further case of the respondents that the registration of the supplier in question has already been cancelled with retrospective effect covering the transaction period of the petitioner.

6. The petitioner has filed supplementary affidavit by enclosing tax invoice cum challan dated 12th November, 2018, debit note dated 12th November, 2018, e-Way Bill dated 12th November, 2018, transportation bill dated 12th November, 2018 and statement of bank account of HDFC Bank of the petitioner showing the transaction made by the petitioner in favour of the supplier.

7. Learned Counsel for the petitioner relying upon the said documents and submits that the authorities have not considered the said documents and from the said documents, it is crystal clear that the petitioner has purchased the goods from the supplier and had transported the said goods and also transferred the amount through bank in the account of the supplier.

8 . Learned Counsel for the petitioner relied upon unreported judgment passed by the Principal Bench of this Court in WPA 23512 of 2019 (M/s.

LGW Industries Limited & Ors.-vs-Union of India & Ors.) dated 13th December, 2021 and the Judgment reported in MANU/DE/1509/2023 (Balaji Exim-vs-Commissioner, CGST & Ors.) and submitted that the allegation of fake credit availed by Global Bitumen cannot be a ground for rejecting the petitioner's refund application unless it is established that the petitioner has not received the goods or paid for them.

9 . Per contra, Learned Counsel for the respondents submits that the transaction relied by the petitioner with Global Bitumen is of November, 2018 but the authorities have cancelled the registration of the supplier of the petitioner with effect from 13.10.2018 and the said cancellation has been accepted by the supplier.

1 0 . Learned Counsel for the respondents submits that the judgments relied by the petitioner is distinguishable from the present case as in the present case, the cancellation of the supplier has been given retrospective effect and the supplier has accepted the same and thus the judgment relied by the petitioner is not applicable in the present case.

11. Considered the submissions made by the Counsels for the respective parties, perused the materials on record and the judgment relied by the petitioner.

12. The main contention of the petitioner that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction.

13. Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash.

14. It is not the case of the respondents that there is a collusion between the petitioner and supplier with regard to the transaction.

15. This Court finds that without proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering into the transactions in question.

16. The respondent authorities only taking into consideration of the cancellation of registration of the supplier with retrospective effect have

rejected the claim of the petitioner without considering the documents relied by the petitioner.

17. The unreported judgment passed in the case of M/s Law Industries Limited & Ors. (supra) is squarely applicable in the present case.

18. In view of the above, the impugned orders are set aside. The respondent no. 1 is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim.

19. The respondent no. 1 shall dispose of the claim of the petitioner by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

20. WPA No. 1009 of 2022 is thus disposed of. Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

IN THE HIGH COURT OF CALCUTTA AT CALCUTTA

[Md. Nizamuddin, J.]

WPA 23512 of 2019

M/s. LGW Industries Limited & Ors. ... Petitioner

Versus

UOI & Ors. ... Respondent

Date of Order: 13.12.2021

WHETHER ITC BENEFIT CAN BE DENIED BY THE PETITIONERS TO THE RESPONDENT DUE TO CANCELLATION OF REGISTRATION RETROSPECTIVELY IN CASE OF SUPPLIES IN QUESTION COVERING THE TRANSACTION PERIOD?

HELD – It is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.

Editor's Note : Please see also W.P. 1658/24, W.P. No. 1198 and 1199 of 2024 of Delhi Hight Court.

Present for Petitioner	:	Mr. Vinay Kumar Shraff, Mr. Himangshu Kumar Ray, Ms. Priya Sarah Paul
Present for Respondent	:	Mr. Jaydip Kar, sr. adv., Mr. Arijit Chakraborty, Mr. Debsoumya Basak, Mr. Pranit Bag, Mr. Nilotpal Chowdhury, Mr. Prabir Bera, Mr. Subhas Chandra Jana, Mr. V. Neogi, Mr. D. Saha

ORDER

In view of similarity in facts and questions of law involved in the writ petitions in item nos. 1, 4, 6 and 8 - WPA No.23512 of 2019, WPA No.6768 of 2020, WPA No.7285 of 2020 with CAN No.1 of 2020 and WPA No.8289 of 2021, these are heard together and disposed of by a common order.

The petitioners in those writ petitions are aggrieved by the impugned notices issued by the respondents concerned for not allowing the petitioners, who are the purchasers of the goods in question and refusing to grant the benefit of input tax credit (ITC) on purchase from the suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act.

Petitioners have also challenged the constitutional validity of section 16(2)(c) of the CGST/WBGST Act, which, according to me, does not require consideration in these cases, since it appears on perusal of relevant record that the refusal to grant benefit of input tax credit (ITC) to the petitioners are not on the grounds of non-deposit of tax in the Government account by the suppliers which have been collected from the petitioners, under Section 16 (2) (c) of the CGST/WBGST Act.

In these cases, it is the case of the respondents-GST authorities that on inquiry, they came to know that the suppliers from whom the petitioners/ buyers are claiming to have purchased the goods in question are all fake and nonexisting and the bank accounts opened by those suppliers are on the basis of fake documents and petitioners' claim of benefit of input tax credit are not supported by the relevant documents, and the case of the respondents is also that the petitioners have not verified the genuineness and identity of the aforesaid suppliers who are registered taxable persons (RTP) before entering into any transaction with those suppliers.

Further grounds of denying the input tax credit benefit to the petitioners by the respondents are that the registration of suppliers in question has already been cancelled with retrospective effect covering the transactions period in question.

The main contention of the petitioners in these writ petitions are that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contend that petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more so, when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction petitioners could not be faulted if they appeared to be fake later on. Petitioners further submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A which are matters of record.

Considering the facts as recorded subject to further verification it cannot be said that that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question.

The petitioners in support of their contention and proposition of law as discussed above rely on the following decisions:–

1) Commissioner of C. Ex. East Singhbhum v. Tata Motors Ltd. reported in 2013 (294) ELT 394 (Jhar).

2) R.S. Infra-Transmission Ltd. v. State of Rajasthan through its

Secretary, Ministry of Finance in Civil Writ Petition No.12445/2016 passed by the High Court of Rajasthan Bench at Jaipur.

3) Commissioner of Trade & Taxes, Delhi & 66 Ors. v. Arise India Limited & Ors. reported in TS-2 SC-2018-VAT.

4) On Quest Merchandising India Pvt. Ltd. v. Government on NCT of Delhi, reported in TS314-HC 2017 (Del)-VAT; 2018 (10) GSTL. 182 (Del);

5) M/s. Tarapore & Company, Jamshedspur v. The State of Jharkhand in W.P.(T) No. 773 of 2018 passed by Jharkhand High Court;

6) Gheru Lal Bal chand v. State of Haryana reported in (2011) 45 VST 195 (P&H);

7) D.Y. Beathel enterprises v. State Tax Officer (Data Cell) Tiruneveli reported in (2021) 127 Taxman. Com 80 (Madras);

8) Taparia Overseas (P) Ltd. v. Union of India reported in 2003 (161) E.L.T. 47 (Bom);

9) Prayagaj Dying & Printing Mills Pvt. Ltd. v. Union of India reported in 2013 (290) ELT 61 (Guj);

10) Star Plastic Industries v. Additional Commissioner of Sales Tax (Appeal) & Ors. reported 2021 SC OnLine Ori 1618; and

11) State of Maharashta v. Suresh Trading Company reported in (1998) 109 STC 439 (SC). The respondents have relied on the following decisions in support of their contention:–

    1) P. R. Mani Electronics v. Union of India reported in 2020 TIOL-1198 HC Mad GST;

    2) ALD Automotive Pvt. Ltd. v. The Commercial Tax Officer, reported in 2019 (13) SCC 225;

    3) Jayram & Co. v. Assistant Commissioner & Ors. reported in 2016 (15) SCC 125;

    4) Godrej & Boycentg & Co. Pvt. Ltd. v. GST reported in 1992 (3) SCC 624;

5) TVS Motors v. State of Tamil Nadu reported in 2019 (13) SCC 403;

6) Collector of Ex Commissioner v. Douba Cooperative Sugar Mills Ltd. reported in 1988 (37) ELT-478; and

7) D.Y. Bethal Enterprise v. The State Tax Officer (Data Cell) in W.P. (MD) No.2127 of 2021.

Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by remanding these cases to the respondents concerned to consider afresh the cases of the petitioners on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners want to rely in support of their claim of genuineness of the transactions in question and shall also consider as to whether payments on purchases in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

If it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.

These cases of the petitioners shall be disposed of by the respondents concerned in accordance with law and in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners and by dealing with the judgments petitioners want to rely at the time of hearing of the cases, within eight weeks from the date of communication of this order.

These Writ Petitions being WPA No.23512 of 2019, WPA No.6768 of 2020, WPA No.7285 of 2020 with CAN No.1 of 2020 and WPA No.8289 of 2021 are disposed of in the light of observation and directions as made above.

Further, let these Writ Petitions being WPA No. 10776 of 2021, WPA

No. 12964 of 2019, WPA No. 6771 of 2020 with CAN No. 1 of 2020 (Old CAN No. 5711 of 2020) and WPA No. 8195 of 2020 be listed for hearing two weeks after the Christmas Vacation.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Sanjeev Sachdeva & Ravinder Dudeja, J.J.]

WPC No. 3340 of 2024

Balaji Medical And Diagnostic Research Centre ... Petitioner

Versus

Union of India & Ors. ... Respondent

Date of Order: 05.03.2024

WHETHER ILLEGAL DEMANDS CAN BE RAISED IN ABSENCE OF REASONED AND SPEAKING ORDER AND AFTER NON-CONSIDERATION OF DETAILED REPLIES FILED?

HELD – NO

Present for Petitioner	:	Mr. Harsh Makhija, Advocate
Present for Respondent	:	Mr. Rajeev Aggarwal, ASC for R-1 and 4. Mr. Jitesh Vikram Srivastava, SPC and Mr. Prajesh Vikram Srivastava, Advocate. Mr. Aditya Singla, SSC for CBIC with Mr. Anand Pandey, Advocate.

ORDER

Sanjeev Sachdeva, J. (Oral)

1. Petitioner impugns order dated 27.12.2023, whereby the impugned Show Cause Notice dated 23.09.2023, proposing a demand against the petitioner has been disposed and a demand of Rs. 3,09,18,988.00 including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

2. Learned counsel for Petitioner submits that a detailed reply dated 23.10.2023 was filed to the Show Cause Notice, however, the impugned order dated 27.12.2023 does not take into consideration the reply submitted by the petitioner and is a cryptic order.

3. Perusal of the Show Cause Notice shows that the Department has given separate headings under declaration of output tax, excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax nonpayers. To the said Show Cause Notice, a detailed reply dated 23.10.2023 was furnished by the petitioner giving full disclosures under each of the heads.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "And whereas, in response to the DRC-01, the Taxpayer submitted his reply in Form DRC-06. The reply of the registered person as well as data available on GST Portal have been checked / examined and the submission of the Taxpayer was not found satisfactory." The Proper Officer has opined that the reply is unsatisfactory.

5. The observation in the impugned order dated 27.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply. Proper Officer had to at least consider the reply on merits and then form an opinion whether the reply was not satisfactory. He merely held that the reply is not satisfactory which *ex-facie* shows that Proper Officer has not applied his mind to the reply submitted by the petitioner.

6. Further, if the Proper Officer was of the view that reply was not satisfactory and further details were required, the same could have been specifically sought from the petitioner. However, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details.

7. In view of the above, the order cannot be sustained, and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 27.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

8. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner. Pursuant to the intimation being given, petitioner shall furnish the requisite explanation and documents. Thereafter, the Proper Officer shall re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75(3) of the Act.

9. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

10. The challenge to Notification No. 9 of 2023 with regard to the initial extension of time is left open.

11. Petition is disposed of in the above terms.

IN THE HIGH COURT OF MADHYA PRADES AT JABALPUR
[Sujoy Paul & Prakash Chandra Gupta, J.J.]

WPC No. 12323 of 2022

Daya Singh ... Petitioner

Versus

State of Madhya Pradesh ... Respondent

Date of Order: 10.08.2022

WHETHER PENALTY CAN BE IMPOSED ON A TRUCK DRIVER FOR HAVING HIS E-WAY BILL EXPIRED ON 19TH WHEN THE GOODS HAD REACHED THE DESTINATION BEFORE 12 O'CLOCK AND BUT FOR WEIGHMENT HAD TO MOVE FOR WEIGH BRIDGE AFTER 12 O'CLOCK AND WAS STOPPED AT 4.35 AM?

HELD – In the instant case, the delay of almost 4:30 hours before which E-way Bill stood expired appears to be bonafide and without establishing fraudulent intent and negligence on the part of petitioner, the impugned notice/order could not have been passed.

Resultantly, the penalty imposed by the order dated 25/05/2022 (Annexure P/11) is set aside. The amount of penalty already deposited by the petitioner be refunded back to him within 30 days failing which it will carry 6% interest till the time of actual payment.

The writ petition is allowed

Editor's Note : Please refer to W.P. (C) 8585/2022 also

Present for Petitioner : Mr. Abhishek Kumar Dhayani, Advocate

Present for Respondent : Mr. Darshan Soni, Govt. Advocate

ORDER

This petition filed under Article 226 of the Constitution of India takes exception to the notice dated 25.05.2022 (Annexure- P/10) and another order of same date (Annexure-P/11).

2. In short, the case of petitioner is that petitioner is a registered Government contractor and registered dealer holding Goods and Service Tax Identification No as 23BDRPS9015A1ZK.

3. The petitioner received a work order from Divisional Project Engineer of Public Works Department (PIU), Dindori for construction of additional laboratory and class room at Chandravijay College, Dindori. This work order dated 21.04.2022 is filed by petitioner as Annexure P/1.

4. The petitioner received quotation (Annexure-P/2) from Mittal Steels for supply of TMT bars. In turn, petitioner placed order to Mittal Steels, Raipur for supply of TMT bars.

5. Mittal Steels in furtherance of petitioner's order/demand raised commercial invoice on 17.05.2022 (Annexure-P/3) charging IGST @ 18% i.e. Rs. 3,41,011.37/-.

6. Mittal Steels being supplier of goods in compliance of Section 68 of the Central Goods and Services act R/W Rule 138-A generated an E-Way Bill for movement of goods from Raipur to Dindori on 17.05.2022 on 06:08 PM. The E-Way Bill No 8212 2755 0219 is filed as Annexure-P/4.

7. The vehicle which was carrying TMT bars on 18.05.2022 and was travelling from Raipur to Dindori suffered a problem and clutch-plates of vehicle got damaged. The proprietor of 'Maa Rewa Transport' sent a vehicle for servicing to 'Rama Moto Cooperation', Raipur on 18.05.2022. Copy of Customer Job Card is filed as Annexure-P/5.

8. On 19.05.2022, the vehicle bearing No. CG04MW3477 got repaired and tax invoice raised for changing parts is filed as Annexure-P/6. The vehicle after getting gate pass, started movement with related documents from Raipur to Dindori . The gate pass is also placed on record as Annexure-P/7.

9. It is averred in the petition that said vehicle reached Dindori on 19.5.2022 between 10.30 to 10.45 pm well within the time mentioned in the E-Way Bill. After reaching the destination, i.e. Dindori, the truck driver called the petitioner and informed that the truck has reached the destination. The petitioner told the truck driver to take the vehicle to Weigh Bridge. While the vehicle was moving towards Weigh Bridge, the Assistant Commissioner at 4.35 AM on 20.5.2022 stopped the vehicle and demanded the relevant documents. The truck driver produced all the relevant documents necessary for the purpose of transportation. The Assistant Commissioner was satisfied by all the documents produced by truck driver

except the Eway Bill. The Assistant Commissioner opined that E-way Bill got expired on 19.5.2022 at 12:00 AM. The repeated requests of truck driver and transporter to Assistant Commissioner that the goods reached Dindori before 12:00 AM and unintentional delay occurred thereafter went in vain. The Assistant Commissioner issued FORM GST MOV-02 stating that E-way Bill got expired. The vehicle was detained in the custody of the City Police Station, Dindori.

10. The petitioner submitted his written reply on 24.5.2022, (Annexure P/9) and requested that material detained be supplied to him which is necessary for construction of the class room and laboratory. The said written submission was not accepted and FORM GST MOV-06 was issued. The same was followed by GST FORM MOV- 07 specifying the penalty amount of Rs.6,82,030.00, (Annexure P/11).

11. Criticizing the impugned notice and order Shri Abhishek Dhyani, learned counsel for the petitioner urged that proceedings initiated under Section 29 of the GST Act were not justifiable. The respondents have not followed the principles of natural justice, which is part of statutory requirement of Section 126 of the said Act which clearly provides that no penalty should be imposed for 'minor breaches' or procedural requirements or omission etc. The petitioner was not found guilty of any fraudulent intent or gross negligence. Thus, imposition of penalty to the tune of Rs.6,82,030.00 was totally disproportionate and unwarranted.

12. The respondents have failed to see that there was no revenue loss. The intention of introducing E-Way Bill mechanism was to keep a check on the movement of goods without tax invoice or and to regulate tax evasion but penalty notice issued for expiry of E-Way Bill was unjustifiable and runs contrary to the scheme and object of said mechanism.

13. In support of his contention Shri Dhyani placed reliance on a judgment of Telangana High Court reported in (2021) 5 GSTJ Online 174 (TG) (Satyam Shivam Papers Pvt. Ltd. Vs. Asst. Commissioner, ST & Others). It is urged that in the aforesaid case, the High Court set aside FORM GST MOV-09 and action of levying tax and penalty on the petitioner because the department could not establish any evasion of tax by the petitioner. Mere lapsing of time mentioned in the E-Way Bill is not sufficient for invoking penalty clause. It is urged that this judgment of Telangana High Court was unsuccessfully challenged by the Revenue and in (2022) 7 GSTJ Online 16 (SC) (Assistant Commissioner (ST) & Others Vs. Satyam Shivam Papers Pvt. Ltd. & Another) the judgment got a stamp of approval from Apex Court.

14. Learned counsel for the petitioner then placed reliance on a judgment of Calcutta High Court in (2022) 7 GSTJ Online 78 (Cal) (Ashok Kumar Sureka Vs. Asst. Commissioner, State Tax, Durgapur Range) and urged that the facts of the present case have similarity, if compared with the facts involved in the case before Telangana High Court and Calcutta High Court.

15. The next contention of Shri Dhyani is based on a Circular No.64/38/2018-GST, dated 14.9.2018. On the strength of this circular, which was considered by the Division Bench of this court in (2021) 5 GSTJ Online 81 (MP) (Robbins Tunnelling & Trenchless Technology (India) Pvt. Ltd. Vs. State of Madhya Pradesh & Others) and it was held that imposition of penalty tax and penalty for clerical error is bad in law. The Division Bench judgment of this court was not interred with and Special Leave to Appeal (C) No.(S) 14196/2021 (The State of Madhya Pradesh & Ors. Vs. Robbins Tunnelling & Trenchless Technology (India) Pvt. Ltd.) was dismissed by the Supreme Court. Thus, the impugned notice and penalty order may be set aside. Since the petitioner has deposited the amount of penalty before the department in obedience of court's order dated 30.5.2022, the department be directed to refund the same.

16. Shri Darshan Soni, learned counsel for the Department/respondents supported the impugned notice/order. On a specific query from the Bench, Shri Soni, categorically admitted that singular flaw/deficiency found in the documents provided by the truck driver was that E-way Bill stood expired on 19/05/2022 and vehicle was intercepted almost 4-5 hours thereafter at 4.35 A.M. on 20/05/2022. No other discrepancy/deficiency was found in the documents produced by the truck driver.

17. Shri Darshan Soni, learned counsel for the respondents urged that the action taken by the Department is in consonance with the enabling provisions and no fault can be found in the impugned notice/order.

18. Learned counsel for the parties further apprised the Court that the Statutory Appellate Forum under the GST Act has not been constituted till date. Thus, the only remedy at present available to the petitioner is the remedy before this Court.

19. No other point is pressed by learned counsel for the parties.

20. We have heard learned counsel for the parties and perused the record.

21. In view of aforesaid stand of parties, it is clear that the E-way Bill of the petitioner was valid upto 19/05/2022 and truck was intercepted

on 20/05/2022 at Dindori at 4.35 A.M. The specific contention of learned counsel for the petitioner that there was no element of tax evasion, fraudulent intent and negligence on his part was not rebutted by learned counsel for the respondents. It is apt to reproduce the relevant para of judgment of Telangana High Court in (2021) 5 GSTJ Online 174 (TG) Satyam Shivam Papers Pvt. Ltd. vs. Asst. Commissioner, ST & others (W.P.No.9688 of 2020), which reads as under :-

> "42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the E-way Bill has expired is also nowhere explained in the counter-affidavit. In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the E-way Bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 6.1.2020. On account of non-extension of the validity of the E-way Bill by petitioner or the auto trolly driver, no presumption can be draw that there was an intention to evade tax."
>
> (Emphasis supplied)

22. The writ petition was allowed by the High Court and action of

levying of tax and penalty was set aside. The respondents were directed to refund the said amount with interest.

23. This judgment of Telangana High Court was put to test before the Apex Court and Apex Court in (2022) 7 GSTJ Online 16 (SC), Assistant Commissioner (ST) & others vs. Satyam Shivam Papers Pvt. Ltd. & Another, opined as under:-

> "8. Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the parat of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the

undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic."

(Emphasis supplied)

24. Similarly Calcutta High Court in (2022) 7 GSTJ Online 78 (Cal), Ashok Kumar Sureka vs. Asst. Commissioner, State Tax, Durgapur Range, opined as under :-

"2. In this writ petition, petitioner has challenged the impugned order of the appellate Commissioner dated March 18, 2021 confirming the original order dated September 11, 2019 passed by the adjudicating authority under Section 129 of the West Bengal Goods and Services Tax Act, 2017 for detention of the goods in question on the grounds that the E-way Bill relating to the consignment in question had expired one day before i.e. in the midnight of September 8, 2019, and that the goods was detained in the morning of September 9, 2019 on the grounds that the E-way Bill has expired which is even less than one day and extension could not be made and petitioner submits that delay of few hours even less than a day of expiry of the validity of the tenure of the E-way Bill was not deliberate and willful and was due to break down of the vehicle in question and there was no intention of any evasion of tax on the part of the petitioner.

3. The petitioner in support of his contention has relied on an unreported decision of the Supreme Court dated January 12, 2022 passed in Special Leave Appeal (C) No(s). 21132/2021 (Assistant Commissioner (ST) & Ors. v. Satyam Shivam Papers Pvt. Limited & Anr.).

4. Learned advocate appearing for the respondent could not make out a case against the petitioner that the aforesaid violation was willful and deliberate or with a specific material that the intention of the petitioner was for evading tax.

5. Considering the submission of the parties and the facts and circumstances of the case, this writ petition being WPA No.11085 of 2021 is disposed of by setting aside the impugned order of the appellate authority dated March 18, 2021 as well as the order of the adjudicating authority dated September 11, 2019 and as a consequence, the petitioner will be entitled to get the refund of the penalty and tax paid on protest subject to compliance of all legal formalities."

(Emphasis supplied)

25. We find substantial force in the arguments of learned counsel for the petitioner that present case has similarity with that of the above cases decided by Telangana and Calcutta High Court. The respondents could not establish that there exist any element of evasion of tax, fraudulent intent or negligence on the part of the petitioner. In this backdrop, the impugned notice/order could not have been passed.

26. The principles of natural justice were statutorily recognized and ingrained in Section 126(1)(3) of the Act. The Law Makers have taken care of doctrine of proportionality while bringing sub-section (1) of Section 126 in the Statute Book. The punishment should be commensurate to the breach is the legislative mandate as per subsection (1) of Section 126.

27. In the instant case, the delay of almost 4:30 hours before which E-way Bill stood expired appears to be bonafide and without establishing fraudulent intent and negligence on the part of petitioner, the impugned notice/order could not have been passed.

28. Resultantly, the penalty imposed by the order dated 25/05/2022 (Annexure P/11) is set aside. The amount of penalty already deposited by the petitioner be refunded back to him within 30 days failing which it will carry 6% interest till the time of actual payment.

29. The writ petition is allowed.

IN THE HIGH COURT OF MADRAS AT MADRAS
[Krishna Ramasamy, J.]

WPA 35453 of 2023

Jak Communications Private Limited ... Petitioner

Versus

The Deputy Commercial Tax Officer & Ors. ... Respondent

Date of Order: 19.12.2023

WHETHER AN ORDER CAN BE PASSED WITHOUT PROVIDING AN OPPORTUNITY OF BEING HEARD?

Held - NO

Present for Petitioner : Mr. M.V.Swaroop,
for Ms. Rukmani Venugopalan

Present for Respondent : Ms. E. Ranganayaki,
Additional Government Pleader,

ORDER

This writ petition has been filed challenging the impugned order dated 25.05.2023 passed by the 1st respondent.

2. Ms. E.Ranganayaki, learned Additional Government Pleader, takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that prior to the passing of the impugned order dated 25.05.2023, all the notices dated 24.12.2021, 24.03.2023 and 15.05.2023 were uploaded by the respondent in their web portal in the “View Additional Notices and Order” column and the same were not served physically to the petitioner, due to which, the petitioner was unaware of the said notice. Therefore, he would contend that the said impugned order was passed in the violation of principles of natural justice since prior to the passing of the impugned order, neither opportunity for filing the reply nor the opportunity of personal hearing was provided by the respondent to the petitioner.

4. In reply, the learned counsel for the respondent would submit that though the notice was uploaded by the respondent in the web portal, the petitioner had failed to appear before the respondent for personal hearing. However, she would fairly submit that if any order is passed by this Court, the same will be complied with by the respondent. 5. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

6. In the present case, it appears that the notices dated 24.12.2021, 24.03.2023 and 15.05.2023 and the assessment order dated 25.05.2023 have been uploaded in the web portal in the “View Additional Notices and Orders” column and the same were not at all physically served to the petitioner, due to which, the petitioner was unaware about the said notice. Hence, the reasons provided by the petitioner for being unaware of the notice, which was uploaded in the web portal, are appears to be genuine.

7. Further, this Court is of the view that no order can be passed without providing sufficient opportunities to the petitioner. However, in the present case, no reply was filed by the petitioner and no opportunity of personal

hearing was provided to the petitioner. Hence, the impugned order is liable to be set aside.

8. Accordingly, the impugned order dated 25.05.2023 is set aside. While setting aside the impugned order, this Court remits the matter back to the respondents. The petitioner is directed to file the reply to the show cause notice dated 24.03.2023 within a period of 21 days from the date of receipt of copy of this order. Thereafter, the respondent is directed to dispose of the matter after providing sufficient opportunities to the petitioner.

9. With the above directions, this writ petition is disposed of. No cost. Consequently, the connected miscellaneous petition is also closed.

IN THE SUPREME COURT OF INDIA
[Dinesh Maheswari & Hrishikesh Roy, J.J.]

SLP (C) No. 21132 of 2021

Assistant Commissioner (St) & Ors. ... Petitioner

Versus

M/s Satyam Shivam Papers Pvt. Limited & Anr. ... Respondent

Date of Order: 12.01.2022

SLP DISMISSED – AND UPHELD THE ORDER OF THE HIGH COURT AS WELL AS THE COSTS IMPOSED ON THE OFFICERS WHO LEVIED PENALTY –

HELD – Having said so; having found no question of law being involved; and having found this petition itself being rather mis- conceived, we are constrained to enhance the amount of costs imposed in this matter by the High Court.

Present for Petitioner : Mr. P. Venkat Reddy, Adv.
Mr. Prashant Tyagi, Adv.
Mr. P. Srinivas Reddy, Adv.
M/s. Venkat Palwai Law Associates, AOR

Present for Respondent :

ORDER

Having heard learned counsel for the petitioners and having perused the material placed on record, we find no reason to consider interference

in the well-considered and well-reasoned order dated 2nd June, 2021, as passed by the the High Court for the State of Telangana at Hyderabad in Writ Petition No. 9688 of 2020. Rather, we are clearly of the view that the error, if any, on the part of the High Court, had been of imposing only nominal costs of Rs. 10,000/- (Rupees Ten Thousand) on the respondent No. 2 of the writ petition, who is petitioner No.2 before us.

The consideration of the High court in the order impugned and the material placed on record leaves nothing to doubt that the attempted inference on the part of petitioner No.2, that the writ petitioner was evading tax because the e-way bill had expired a day earlier, had not only been baseless but even the intent behind the proceedings against the writ petitioner was also questionable, particularly when it was found that the goods in question, after being detained were, strangely, kept in the house of a relative of the petitioner No.2 for 16 days and not at any other designated place for their safe custody.

The High Court has, inter alia, found that:

> "41. ……It was the duty of 2nd respondent to consider the explanation offered by petitioner as to why the goods could not have been delivered during the validity of the e-way bill, and instead he is harping on the fact that the e-way bill is not extended even four(04) hours before the expiry or four(04) hours after the expiry, which is untenable.
>
> The 2nd respondent merely states in the counter affidavit that there is clear evasion of tax and so he did not consider the said explanations.
>
> This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India, because there is no denial by the 2nd respondent of the traffic blockage at Basher Bagh due to the anti CAA and NRC agitation on 4.01.2020 up to 8.30 pm preventing the movement of auto trolley for otherwise the goods would have been delivered on that day itself. He also does not dispute that 04.01.2020 was a Saturday, 05.01.2020 was a Sunday, and the next working day was only 06.01.2020."

The High Court has further found and, in our view, rightly so thus:

> "42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the e-way bill has expired, is also nowhere explained in the counter- affidavit.

> In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 06.01.2020. On account of non-extension of the validity of the e-way bill by petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax".

The High Court has also commented on blatant abuse of the power by the petitioner No.2 and has deprecated his conduct in the following words:

> "43. We are also unable to understand why the goods were kept for safe keeping at Marredpally, Secunderabad in the House of a relative of 2nd respondent for (16) days and not in any other place designated for such safe keeping by the State.
>
> 44. In our opinion, there has been a blatant abuse of power by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs.69,000/- by such conduct.
>
> 45. We deprecate the conduct of 2nd respondent in not even adverting to the response given by petitioner to the Form GST MOV-07 in Form GST MOV-09 and his deliberate intention to treat the validity of the expiry on the eway bill as amounting to evasion of tax without any evidence of such evasion of tax by the petitioner."

Having said so, the High Court has set aside the levy of tax and penalty of Rs. 69,000/- (Rupees Sixty-nine Thousand) while imposing costs of Rs. 10,000/- (Rupees Ten Thousand), payable by the petitioner No.2 to the writ petitioner within four weeks.

The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.

Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case,

as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

Having said so; having found no question of law being involved; and having found this petition itself being rather mis conceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today. This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.

Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.

This petition stands dismissed, subject to the requirements foregoing.

Compliance to be reported by the petitioners.

IN THE HIGH COURT OF ALLAHABAD AT ALLAHABAD
[Shekhar B. Saraf, J.]

Writ Tax No. 937 of 2022

M/s Roli Enterprises Petitioner

Versus

State of UP & 2 Ors. Respondents

Date of Order: 16.01.2024

WHETHER THE STATE WAS JUSTIFIED IN LEVYING PENALTY U/S 129(3) IN VIEW OF THE FACTS AND CIRCUMSTANCES OF THE CASE?

HELD – No.

Present for Petitioner : Mr. Subham Agrawal,

Present for Respondents : C.S.C.

ORDER

Hon'ble Shekhar B. Saraf,J.

Heard Mr. Shubham Agrawal, learned counsel for the petitioner and Sri Rishi Kumar, learned Additional Chief Standing Counsel for the State respondents.

This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by an order dated November 10, 2020 passed under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") levying penalty upon the petitioner and the subsequent appellate order dated January 10, 2022 dismissing the appeal filed by the petitioner.

Upon perusal of the record, it appears that the only controversy involved in the present petition is with regard to non filling up of Part 'B' of the e-Way Bill. The undisputed facts are that firstly the bilty in fact had the details of the truck that was carrying the goods; secondly, the goods were not in variance with the invoice; and thirdly, the Department has not been able to indicate any kind of intention of the petitioner to evade tax.

Mr. Shubham Agarwal, learned counsel for the petitioner has relied upon two judgments of this Court in **VSL Alloys (India) Pvt. Ltd v. State of**

U.P. and another reported in **2018 NTN [Vol.67]-1** and **M/s Citykart Retail Private Limited through Authorized Representative v. Commissioner Commercial Tax and Another** reported in **2023 U.P.T.C. [Vol.113]-173** to buttress his argument that non filling up of Part 'B' of the e-Way Bill by itself without any intention to evade tax cannot lead to imposition of penalty under Section 129(3) of the Act.

Sri Rishi Kumar, learned Additional Chief Standing Counsel has relied upon the order passed by the appellate authority to show that part 'B' of the e-Way Bill was not filled up.

One may look into the judgment passed in **M/s Citykart Retail Pvt. Ltd.'s case (supra)** and lay reliance on two paragraphs that are quoted below:

> "7. In view of the contentions of the parties and the material placed on record, it is clear that the only allegation levelled against the petitioner leading to seizure of the goods was that Part-B of the e-way bill was not filled up. There is no allegation that the goods being transported were being transported without payment of tax. The explanation offered by the petitioner for not filling the Part-B of e-way bill, is clearly supported by the Circulars issued by the Ministry of Finance wherein the problem arising in filling the part-B of e-way bill was noticed and advisories were issued.
>
> In the present case, prima-facie no intent to evade the duty can be ascertained, only on the allegation that Part-B of the e-way bill was not filled, more so, in view of the fact that the vehicle in which the goods were being transported on a Delhi number, the said issue being decided in the judgment dated 13.04.2018 in the case of VSL Alloys India Pvt. Ltd. (supra) covers the issue raised in the present case also, as such, for the reasoning recorded above, the impugned order dated 18.04.2018 and the appellate order dated 14.05.2019 are set aside."

In the present case, the facts are quite similar to one in **M/s Citykart Retail Pvt. Ltd.'s case (supra)** and I see no reason why this Court should take a different view of the matter, as the invoice itself contained the details of the truck and the error committed by the petitioner was of a technical nature only and without any intention to evade tax. Once this fact has been substantiated, there was no requirement to levy penalty under Section 129(3) of the Act.

In light of the above, the orders dated November 10, 2020 and January 10, 2022 are quashed and set aside. The petition is allowed. Consequential reliefs to follow. The respondents are directed to return the security to the petitioner within six weeks.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Rajiv Shakdher & Tara Vitasta Ganju, JJ.]

WPC No. 8585 of 2022

M/s Nirmal Kumar Mahaveer Kumar ... Petitioner

Versus

Commissioner of CGST & Anr. ... Respondents

Date of Order: 23.08.2022

WHETHER PENALTY U/S 129(3) CAN BE IMPOSED WHEN THE VEHICLE IS BROKEN-DOWN DURING THE JOURNEY?

HELD – NO

Present for Petitioner	:	Mr. Rahul Gupta & Mr. Rakesh Kumar, Adv.
Present for Respondents	:	Mr. Anurag Ojha, Mr. Gautam Narayan with Ms. Pragya Barsaiyan, Advs.

Physical Hearing/Hybrid Hearing (as per request)]

ORDER

Rajiv Shakdher, J. (Oral):

1. We have heard the learned counsel for the parties at some length.

2. This writ petition is directed against the order dated 31.12.2021 passed by respondent no.2/Office of Appellate Authority (Delhi GST).

3. Respondent no.2 *via* the impugned order dated 31.12.2021, has sustained the demand raised by respondent no.3/Assistant Commissioner,Ward-112, Special Zone, Delhi,towards tax and penalty.

4. The amount demanded towards tax is Rs.2,33,100/-.An equal amount has been also demanded towards penalty i.e., Rs.2,33,100/-.

4.1 Thus, as is obvious, penalty has been imposed on the petitioner, at the rate of 100%.

4.2 In this regard, the respondent no. 3 appears to have taken recourse to the provisions of Section 129(3) of the Central Goods and Services Tax Act, 2017 [in short "CGST Act"].

5. What has emerged from the record, is that the impugned demand was raised against the petitioner on account of the fact that the e-way bill generated had expired. In other words, when the goods were intercepted, the e-way bill was no longer valid.

6. The record also shows, that the subject goods were being transported from Guwahati to New Delhi.

7. The e-way bill was valid till 28.09.2020.

7.1 The subject goods were intercepted on 29.09.2020 at 3:40 AM, by which time the e-way bill had expired.

8. On record, we have two e-way bills. These are marked as Annexure P-1 and Annexure P-3, appended on pages 25 and 30 of the casefile respectively.

9. A comparison of the two e-way bills, even according to Mr Gautam Narayan, who appears for respondent nos.2 and 3, shows that the vehicles were changed.

9.1 The explanation given across the bar, was that since the earlier vehicle had broken down, another vehicle was requisitioned for transporting the goods.

10. It appears, that the petitioner did not ask for extension of time for completion of journey. Resultantly, when the vehicle was intercepted, it was found that the e-way bill generated had already expired.

11. It is on this account, that a showcause notice was issued to the petitioner on 30.09.2020 in a prescribed form i.e.,Form GST MOV-07.

11.1 This was issued as required under Section 129(3) of the CGST Act.

12. The reason given for issuance of the show-cause notice was "*goods not covered by valid documents*". The proposed tax and penalty were also indicated in the said show-cause notice.

12.1 However, in consonance with the principles of natural justice, the petitioner was accorded seven days to file a reply with respect to the proposed demand made towards tax and penalty, and to appear before the concerned officer for a hearing on 07.10.2020.

13. We are informed that the petitioner paid the amount demanded towards tax and penalty, as he was keen that the goods reached the designated destination at the earliest.

13.1 The demand was liquidated on the same date on which it was made i.e., 30.09.2020.

14. Consequentially, the petitioner did not avail of the opportunity to demonstrate, that the goods could not reach their destination before the expiry of the validity period of the e-way bill.

15. It is not in dispute, that against the subject goods, the tax stands paid, and that the impugned demand has been raised, as noticed above, only for the reason that at the time of interception, the e-way bill was not valid.

16. This is not a case where the petitioner intended to evade tax. However, the impugned demand seeks not only the payment of tax, but also penalty.

17. Given the aforesaid circumstances, we are of the view, that the petitioner needs to be given another chance to establish, as to why the subject goods did not reach their designated designation before the expiry of the e-way bill.

18. Accordingly, the impugned order dated 31.12.2021 passed by respondent no. 2 is set aside.

19. The matter is remanded to respondent no. 2, to take a fresh decision in the matter, after giving the petitioner due opportunity to produce relevant material/evidence to establish its case, that the delay in transporting the goods to their destination was on account of genuine reasons.

19.1 While carrying out this exercise, the concerned officer will also bear in mind, the provisions of section 126 of the CGST Act, which *inter alia* adverts to omission or mistake in documentation which is easily rectifiable.

20. Needless to add, respondent no. 2 will issue a notice, in writing, to the petitioner, indicating the date and time when he intends to hear the petitioner and/or his authorized representative, in support of his case.

21. The writ petition is disposed of in the aforesaid terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Sanjeev Sachdeva & Ravinder Dudeja, J.J.]

WPC No. 1199 of 2024

Himanshu Goyal Proprietor of M/s Raj and Co. ... Petitioner

Versus

Principal Commissioner State GST Delhi & Anr. ... Respondents

Date of Order: 27.02.2024

WHETHER GST REGISTRATION CAN BE CANCELLED WITH EFFECT FROM 08.06.2018 RETROSPECTIVE DATE FOR NON-FILING OF RETURNS?

HELD – NO

Present for Petitioner : Mr. Santanu Kanungo &
Mr. Himanshu Goel, Adv.

Present for Respondents : Mr. Rajeev Aggarwal, ASC

JUDGMENT

Sanjeev Sachdeva, J. (Oral)

1. Petitioner impugns order dated 12.10.2022, whereby, the GST Registration of the Petitioner has been cancelled with effect from 08.06.2018 i.e. retrospective date.

2. Petitioner was in the business of trading of household edible items and had obtained the GST Registration.

3. As per the petitioner, petitioner closed his business in June 2022. Subject Show Cause Notice dated 18.07.2022 was issued on the ground that the petitioner had not filed the returns. Petitioner was called upon to file a reply and appear for personal hearing on the appointed date and time.

4. Show Cause Notice shows that there was no date, time or venue mentioned where the petitioner had to appear pursuant to the Show Cause Notice. The Show Cause Notice does not even bear the name and designation of the Officer issuing the Show Cause Notice and merely bears the digital signature signed by D.S. Goods & Services Tax Network (4).

5. The impugned order cancelling the registration dated 12.10.2022 begins with a reference to a reply dated 27.07.2022 and then states that no reply to notice to show cause has been submitted and the effective date of cancellation is 08.06.2018. The notice thereafter records that the petitioner has to pay the amounts mentioned in the notice on or before 22.10.2022. However, the amounts mentioned are 0.0 i.e. Nil.

6. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

7. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in this regard is correct, it would follow that the proper officer is also required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

8. Further, Show Cause Notice dated 18.07.2022 and order dated 12.10.2022 does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, petitioner had no opportunity to even object to the retrospective cancellation of the registration.

9. Clearly, the impugned notice and impugned order are bereft of any detail and are thus not sustainable. However, in the instant case, the case of the petitioner is that petitioner has himself shut the business since June 2022 and is no longer interested in the restoration of the GST registration.

10. Both the petitioner as well as the respondent want cancellation of GST registration, however, for different reasons. Accordingly, the impugned order dated 12.10.2022 is modified to the effect that the cancellation of

registration shall be effective from 18.07.2022 i.e. the date of the Show Cause Notice on which date the registration was also suspended.

11. The petitioner shall however comply with the provisions of Section 29 of the Central Goods & Service Tax Act, 2017 and file all necessary details as mandated by the Act.

12. It is clarified that Respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law including retrospective cancellation.

13. Petition is disposed of.

IN THE HIGH COURT OF MADRAS AT MADRAS
[Krishnan Ramasamy, J.]

WP No. 33164 of 2023

Titan Company Ltd. ... Petitioner

Versus

The Jt. Commissioner of GST & Central Excise & Anr. ... Respondents

Date of Order: 18.12.2023

WHETHER BUNCHING OF SHOW CAUSE NOTICE IS PERMISSIBLE U/S 73 OF CGST ACT WHERE THE TIME LIMIT SPECIFIED U/S 73(10) HAS NOT BEEN EXTENDED?

HELD – NO.

In view of the aforesaid direction, the respondent is directed to defer all the proceedings, until the date of disposal of the representation of the petitioner to split up the show cause notices for each year separately.

Present for Petitioner	:	Mr. Mr.N.L.Rajah, Senior Counsel for Mr. Natesan Murali
Present for Respondents	:	Mr. M. Santhanaraman, Sr. Standing Counsel

ORDER

The petitioner has come up with the present Writ Petition seeking for issuance of a Writ of Mandamus directing the first respondent to consider and pass orders on the representation dated 25.10.2023 submitted by the petitioner before proceeding with the adjudication of show cause notice dated 28.09.2023.

2. Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of the petitioner would submit that the first and foremost grievance of the petitioner is that the respondent had issued bunching of show cause notices dated 28.09.2023 for five Assessment Years starting from 2017-18 to 2021-22. According to the learned Senior Counsel, in terms of Section 73 of CGST Act, 2017 [hereinafter referred to as the 'Act'], bunching of show cause notices is not permissible and it only provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or willful misstatement or suppression of facts.

3. Further, he would submit that sub-section 10 of Section 73 provides that an order determining the tax from a person should be passed within three years from the due date for furnishing of annual return for the financial year to which the tax due relates to and therefore, he would submit that determination of tax due under Section 73 is with reference to a financial year and the limitation date to complete the proceedings and issue an order is three years from the due date to file annual return for that particular financial year.

4. By referring to the aforesaid provision, learned Senior Counsel would further submit that though in the present case, the time limit specified under Section 73(10) of the Act has been extended from time to time, the respondent is still issuing show cause notices and in the event if they have not extended the said period, virtually the bunching of show cause notices issued on 28.09.2023 is barred by limitation for the Assessment Years 2017-18. He would further submit that if the respondents are allowed to issue bunching of show cause notices, it would set a bad precedent and in future, it would pave way for issuance of show cause notices even for the cases where limitation is not available.

5. Section 73(10) of the Act has categorically fixed the limitation for the purpose of making assessment under Section 73. What the respondents cannot do directly, they cannot do the same indirectly by issuing bunching of show cause notices to extend the period of limitation, is the further

submission of the learned Senior Counsel appearing on behalf of the petitioner.

6. Learned Senior Counsel would further submit that the GST council in its 49th Meeting held on 18.02.2023 had observed that it may not be desirable to extend the timelines in such a manner so that it may lead to bunching of last date of issuance of SCN/order made under Section 73 and 74 for a number of financial years and they have extended the limitation period specified under Section 73(10) separately for each financial year and accordingly, the time limit is extended as follows:

– For FY 2017-18, time limit under Section 73(10) is extended from the present 30th September 2023 to 31st December 2023.

– For FY 2018-19, time limit under Section 73(10) is extended from the present 31st December 2023 to 31st March 2024.

– For FY 2019-20, time limit under Section 73(10) is extended from the present 31st March 2024 to 30th June 2024.

7. To support his contention, learned Senior Counsel appearing on behalf of the petitioner relied on the decisions reported in ***AIR 1966 SC 1350, State of Jammu and Kashmir and Others v. Caltex (India) Ltd*** and (***2011) 39 VST 184, Kesar Enterprises Ltd., v. State of U.P and Others***.

8. Thus, by placing the above submission learned Senior Counsel would submit that the petitioner has made a representation to split the show cause notices and to adjudicate the same independently and the said representation is not disposed of till date and hence, the petitioner is constrained to approach this Court by filing the present Writ Petition.

9. On the other hand, learned Senior Standing Counsel appearing on behalf of the respondents would submit that there is no provision under Section 73 of the Act prohibiting the respondents from issuing bunching of show cause notices and in the absence of such provision, the petitioner cannot come before this Court and submit that the respondent is not empowered to issue bunching of show cause notices.

10. He would further submit that in the event if this Court is inclined to order splitting up of bunching of show cause notices issued by the respondent, in which case, for the Assessment Year 2017-18, the limitation is going to expire on 31st December 2023 and before that the respondent

has to finish the adjudication and pass orders. He would contend that since in the instant case, the petitioner was enjoying the stay of proceedings granted by this Court for a period of 26 days, the said period may be excluded for calculating the period of limitation.

11. Considered the submissions made by the learned Senior Counsel appearing on behalf of the petitioner and the learned Senior Standing Counsel appearing on behalf of the respondents and perused the materials placed before this Court.

12. The prayer in this Writ Petition is for issuance of Writ of Mandamus directing the first respondent to consider and pass orders on the representation dated 25.10.2023 submitted by the petitioner before proceeding with the adjudication of show cause notice dated 28.09.2023. It is the case of the petitioner that the respondent had issued bunching of show cause notices dated 28.09.2023 for five Assessment Years starting from 2017-18 to 2021-22.

13.The main contention of the petitioner was that bunching of show cause notices was not allowed in law and it is against the provisions of Section 73 of the Act. Section 73(10) of the Act specifically provides a time limit of three years from the due date for furnishing of annual return for the financial year to which the tax due relates to. In the present case, notice was issued under Section 73 of the Act for determination of the tax and therefore, the limitation period of three years as prescribed under Section 73(10) would be applicable. Therefore, the contention of the respondent that there is no time limit contemplated under Section 73 of the Act is not correct.

14. Further, by issuing bunching of show cause notices for five Assessment Years starting from 2017-18 to 2021-22, the respondents are trying to do certain things indirectly which they are not permitted to do directly and the same is not permissible in law. If the law states that a particular action has to be completed within a particular year, the same has to be carried out accordingly. The limitation period of three years would be separately applicable for every assessment year and it would vary from one assessment year to another. It is not that it would be carried over or that the limitation would be continuing in nature and the same can be clubbed. The limitation period of three years ends from the date of furnishing of the annual return for the particular financial year.

15. Therefore, issuing bunching of show cause notices is against the spirit of provisions of Section 73 of the Act and the Constitution Bench of

the Hon'ble Apex Court in the decision reported in ***AIR 1966 SC 1350,***

State of Jammu and Kashmir and Others v. Caltex (India) Ltd has held that where an assessment encompasses different assessment years, each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said law was laid down keeping in mind that each and every Assessment Year will have a separate period of limitation and the limitation will start independently and that is the reason why the Hon'ble Supreme Court has held that each assessment year could be easily split up and dissected and the items can be separated and taxed for different periods. The said principle would apply to the present case as well.

16. For all these reasons, I do not find force in the submission made by the learned Senior Standing Counsel appearing on behalf of the respondents. Therefore, I find fault in the process of issuing of bunching of show cause notices and the same is liable to be quashed. However, since the petitioner has made an representation before the authorities concerned for splitting up of the show cause notices and pass separate adjudication order, this Court is inclined to pass the following order:

(i) The first respondent is directed to dispose of the representation dated 25.10.2023 made by the petitioner, keeping in mind the above order passed by this Court.

(ii) As far as splitting up of the show cause notice pertaining to the Assessment Year 2017-18 is concerned, the period of stay granted by this Court viz., 26 days will be excluded and accordingly, the time period of passing the adjudication order pertaining to the Assessment Year 2017-18 is extended upto 26.01.2024, subject to the orders to be passed in the W.P.Nos.34065, 34073 and 34074 of 2023.

(iii) In view of the aforesaid direction, the respondent is directed to defer all the proceedings, until the date of disposal of the representation of the petitioner to split up the show cause notices for each year separately.

17. The Writ Petition is disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

[B.N. Sharma, Chairman, J.C. Chauhan, R. Bhagyadevi & Amand Shah, Members (T)]

Case No. 30/2019

Ms. Pallavi Gulati & Anr. ... Applicants

Versus

Puri Constructions Pvt. Ltd. ... Respondent

Date of Order: 19.12.2023

WHETHER THERE WAS A CASE OF NOT PASSING ON OF THE ITC AND WHETHER THE PROVISIONS OF SECTION 171 OF THE CGST ACT, 2017 ARE ATTRACTED IN THE PRESENT CASE?

Held – In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation is only up to 30.06.2018 any benefit of ITC which accrues subsequently shall also be passed on to the buyers by the Respondent. The Annexures submitted by the Respondent through his submissions dated 11.10.2018 and 05.11.2018 which comprise of the details of suo moto payments made by him through various modes are taken on record.

Present for Petitioners	:	Sh. Anwar Ali T.P., Addl. Commissioner
Present for Respondent	:	Sh. Rakesh Sodhi, Sh. Himanshu Juneja, Sh. Kishor Kunal, Sh. Achal Chawla & Ms. Ruchi

ORDER

1. The present Report dated 27.08.2018, has been received from the Applicant No. 2 i.e. the Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that vide his application dated 22.01.2018 (Annexure-1 of the Report) submitted to the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, the Applicant No. 1 had alleged profiteering by the Respondent while he had purchased Flat No. T4-2B in the Anand

Vilas Project, Sector-81, Faridabad, Haryana-121006 launched by the Respondent. Initially Sh. Dinesh Kumar Madan, H. No. 86/L, Ward No. 10, New Colony, Palwal, Haryana and Shri Ravi Kumar were jointly allotted this flat which was transferred to the Applicant No. 1, however, the Respondent had not allegedly passed on the benefit of Input Tax Credit (ITC) to the above Applicant although he had charged GST @ 12% w.e.f. 01.07.2017.

2. The DGAP has stated in his Report that the above Applicant had booked the flat on 09.05.2017 before the GST had come in to force and following demands had been raised on him by the Respondent as per the Table-'A' given below:-

Table-"A" (Amounts in Rs.)

Particulars	BSP	DEV	Service Tax & VAT	GST @12%	Total
Agreement Value (A)	72,75,000	8,73,000	4,39,410	–	85,87,410
Paid in Pre-GST era (B)	43,65,000	5,23,800	2,63,646	–	51,52,446
Balance to be paid Post GST (C)= (A)-(B)	29,10,000	3,49,200	1,75,773	–	34,34,973
Demanded by the Respondent (D)	29,10,000	3,49,200	–	3,91,104	36,50,304
Excess Demand by the Respondent (E)= (D)-(C)					2,15,331

3. The DGAP has also stated that the above Applicant had claimed that the Respondent had completed approximately 60% of the project work using inputs which were liable to higher GST @18% or 28% due to which additional ITC benefit had accrued to him. The Applicant No. 1 had also furnished an e-mail dated 28.08.2017 through which he had asked the Respondent why he was not being given the benefit of ITC when GST was being charged from him @12% and vide e-mail dated 28.08.2017, the Respondent had communicated that the benefit of ITC would be calculated at the time of the completion of the project and if due, would be proportionately passed on to the above Applicant. The Applicant No. 1 had also submitted the following documents along with his complaint:-

(a) Duly filled in Form APAF-1
(b) Payment Schedule pre-GST & post-GST
(c) Copy of Tax Invoice post-GST
(d) Copy of Demand Note pre-GST
(e) Statement of GST paid upto 02.01.2018

(f) Copy of receipts of payment

(g) ID proof (Aadhar Card)

(h) Copies of e-mails requesting for passing on the benefit of ITC

(1) Detailed work-sheet

4. The above complaint was considered by the Standing Committee on Anti-profiteering in its meeting held on 09.02.2018 and was forwarded to the DGAP on 28.02.2018 for investigation whether the benefit of ITC had been passed on by the Respondent to the above Applicant or not.

5. The DGAP had issued Notice under Rule 129 of the CGST Rules, 2017 on 14.03.2018 (Annexure-2 of the Report) asking the Respondent to intimate whether he admitted that the benefit of ITC had not been passed on to the above Applicant through commensurate reduction in the price of the flat and if so, to suo moto determine the quantum of such benefit and communicate the same with necessary evidence. An opportunity to inspect the non- confidential evidences/information submitted by the Applicant No. 1 was also afforded to the Respondent between 21.03.2018 and 23.03.2018 (Annexure-3 of the Report) which he had utilised on 23.03.2018.

6. The DGAP has further stated that the above Applicant vide e-mail dated 08.08.2018 (Annexure-4 of the Report) was given an opportunity to inspect the non-confidential evidences/replies submitted by the Respondent between 10.08.2018 to 14.08.2018 however, he through his letter dated 13.08.2018 had informed the DGAP that the matter had been discussed by him with the Respondent and after being fully satisfied with the clarification given by the Respondent he had no grievance left and therefore, his complaint should be treated to have been withdrawn. The DGAP has also submitted that the present investigation had been conducted from 01.07.2017 to 30.06.2018 and the period for completing the investigation was extended upto 27.08.2018 by this Authority, vide its order dated 15.05.2018, as per the provisions of Rule 129 (6) of the CGST Rules, 2017.

7. The DGAP has further submitted that the Respondent had filed replies to the Notice vide his letters dated 28.03.2018, 12.04.2018, 27.04.2018, 07.05.2018, 17.05.2018, 29.05.2018, 07.06.2018, 12.06.2018, 20.07.2018, 25.07.2018, 31.07.2018, 03.08.2018, 09.08.2018 and 13.08.2018. The contents of the replies given by the Respondent have been given in brief by the DGAP as under:-

I. That the Respondent had intimated his buyers that he intended to compute the benefit of additional ITC at the time of handing over

the possession so that correct amount of benefit could be passed on as it was not certain that the customers would take possession or leave the project or transfer the booking after availing benefit of additional ITC or they would pay the construction linked instalments on time or not.

II. That no additional benefit of ITC had accrued after coming in to force of the GST to the Respondent and the benefit of ITC on all the taxes charged from him before GST, was available to him as has been described as under:-

a) All the purchases of marble and steel etc. had been done from the suppliers based in Haryana by paying Value Added Tax (VAT), on which ITC was available under the Haryana VAT Act and no purchases had been made from outside the State.

b) In the service contracts in respect of design, architecture, horticulture work, cutting and testing and painting etc., the contractors were charging Service Tax on which CENVAT credit was available.

c) In one contract, the civil contractor had charged Service Tax and VAT (WCT) from the Respondent on which CENVAT Credit was available and the VAT (WCT) was eligible as deduction under the Haryana VAT Act.

III. That costs of various inputs had increased during the period of agreement for sale executed with the above Applicant, the details of which had been submitted by the Respondent with the reply. He had also claimed that there were several exempted services which formed part of the transaction and in a number of cases ITC had not been allowed and hence its figures were always dynamic.

IV. That the Respondent had requested that except the following documents all other information was to be treated as confidential in terms of Rule 130 of the CGST Rules, 2017:-

a) Buyers agreement (Annexure R-5 to the letter dated 12.06.2018)

b) Customer receipts and demands (Annexure R-5 to the letter dated 12.06.2018)

c) Cost Inflation Index (Annexure R-6 to the letter dated 12.06.2018)

d) Pre-GST and Post-GST tax chart (Annexure R-7 to the letter dated 12.06.2018).

V. That the above Applicant had informed the Respondent vide his letter dated 13.08.2018 that he was withdrawing his application and therefore, the investigation should be closed.

8. The DGAP has intimated that the Respondent had also submitted the following documents:-

(a) Copies of GSTR-1 returns for July, 2017 to June, 2018

(b) Copies of GSTR-3B returns for July, 2017 to June, 2018

(c) Copies of Tran-1 returns for transitional credit availed

(d) Copies of VAT & ST-3 returns for April, 2016 to June, 2017

(e) Copy of ST-2 (Certificate of Service Tax Registration)

(f) Copies of all demand letters and sale agreement/contract issued in the name of Applicant No 1

(g) Tax rates - pre-GST and post-GST

(h) Copy of Cost Audit report for the FY 2016-17

(i) Details of cost indices and cost escalation.

(j) Abridged Cost Statement along with pre-GST impact of input tax credit on cost.

(k) Copy of Electronic Credit Ledger for 01.07.2017 to 25.07.2018

(l) CENVAT/Input Tax Credit register for April, 2016 to June, 2018

(m) List of home buyers in the project “Anand Vilas”

9. The DGAP after investigation has stated that the main issues for determination was whether there were benefits of reduction in the rate of tax or additional ITC on the supply of construction service provided by the Respondent after coming in to force of the GST w.e.f. 01.07.2017 and whether the Respondent had passed on the above benefits to the recipients in terms of Section 171 of the CGST Act, 2017. The DGAP has also stated that the Respondent vide his letter dated 12.04.2018, had furnished copy of the agreement executed by him with the above Applicant for the purchase of one flat measuring 1940 square feet at the basic sale price of Rs. 3750 per square feet, copies of the demand letters and the payment schedule, the details of which were as under:-

Table-"B" (Amounts in Rs.)

S. No.	Payment Stages	Due Date	Basic %	BSP	DEV	Service Tax includ-ing SBC & KKC	VAT	CGST	SGST	Total
1	At the time of Booking	07.09.2016	10%	7,27.500	87,300	36,666	7,275	–	–	8,58,741
2	Booking+60	06.11.2016	10%	7,27.500	87,300	36.666	7,275	–	–	8,58,741
3	Booking +120	05.01.2017	10%	7,27.500	87,300	36.666	7,275	–	–	8,58,741
4	Booking +180	06.03.2017	10%	7,27.500	87,300	36.666	7,275	–	–	8,58,741
5	Booking +270	04.06.2017	10%	7,27.500	87,300	36.666	7,275	–	–	8,58,741
6	Booking +311	15.07.2017	10%	7,27.500	87,300	36.666	7,275	–	–	8,58,741
7	Booking +375	17.09.2017	10%	7,27.500	87,300	–	–	48,888	48,888	9,12,576
8	Booking +720	01.11.2017	10%	7,27.500	87,300	–	–	48,888	48,888	9,12,576
9	Booking +480	31.12.2017	10%	7,27.500	87,300	–	–	48,888	48,888	9,12,576
10	On App. of OC or within 18 Months of Booking (whichever is later)	Not due till date of application	5%	3,63,750	43,650			24.444	24,444	4,56.288
11	At the time of offer for possession									4,56,288
Total										88,02,750

10. The DGAP has also submitted that the claim of the Respondent that the exact amount of ITC would be finally determined and the benefit passed on to the buyers at the time of handing over possession might be correct but the profiteering, if any, had to be computed at a point of time in terms of Rule 129 (6) of the CGST Rules, 2017 and hence the amount of ITC available to the Respondent and the taxable amount realised by him from the above Applicant so far had to be taken into consideration for determining profiteering. The DGAP has further submitted that the contention of the Respondent that a customer might cancel or transfer the booking before taking possession after availing the benefit of additional ITC was valid, however, in such cases the benefit already availed by such a customer would be taken into account while determining the price to be paid by the prospective customer. Therefore, the above contention of the Respondent had no bearing on his legal liability of passing on the benefit of ITC to the Applicant No. 1, the DGAP has stated.

11. The DGAP has also intimated that another claim made by the Respondent was that the above Applicant had withdrawn his complaint and hence, the investigation should be closed, however, he has submitted that although the proceedings must flow from an application but there was no legal provision under which it could be withdrawn. He has further

intimated that as per the provisions of Rule 129 of the CGST Rules, 2017, he was legally bound to complete the investigation in case of any reference having been received from the Standing Committee on Anti-profiteering and hence withdrawal of an application could legally not be a valid reason for closing the investigation.

12. The DGAP has found that before coming in to force of the GST w.e.f. 01.07.2017, the Respondent was entitled to avail CENVAT credit of Service Tax paid on input services, credit of VAT paid on purchases of the inputs and credit of VAT (WCT) charged by the civil contractor on sub-contracts but the CENVAT credit of Excise Duty paid on inputs was not available. He has further found that post-GST, the Respondent had become entitled to avail ITC on GST paid on inputs and input services including on the sub-contracts. He has also averred that from the information supplied by the Respondent which had been further verified from the invoices issued during the pre-GST period (April, 2016 to June, 2017) and the post-GST period (July, 2017 to June, 2018), the details of the ITC availed by the Respondent and his taxable turnover were as per the Table-C given below:-

Table-"C" (Amounts in Rs.)

S . No.	Particulars	April, 2016 arc, to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to June, 2018	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	167,90,834	39,87,427	207,78,261	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	21,27,046	8,23,223	29,50,269	-	-	
3	Input Tax Credit of VAT(WCT) paid to Sub Contractors (C)	107,38,476	26,43,641	133,82,117	-		-
4	Total CENVAT/Input Tax Credit Available (D)=(A+B+C)	296,56,356	74,54,291	371,10,647	-	-	-
	Input Tax Credit of GST						
5	Availed (E)		-	-	532,51,994	84,12,610	616,64,604
6	Total Taxable Turnover (F)	4243,39.766	1127.06,432	5370,46,198	3843,52,825	657,71,797	4501,24,622
7	**Ratio of CENVAT/ Input Tax Credit Pre-GST [(G)=(D)/(F)] and Ratio of Input Tax Credit Post-GST [(G)=(E)/(F)]**			**6.91%**			**13.70%**

13. On the basis of the above Table the DGAP has argued that it was evident that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period was 6.91% and during the post-GST period it was 13.70% and therefore, it was clear that post-GST, the Respondent had benefited from additional ITC to the extent of 6.79% (13.70%-6.91%) of the total turnover. He has further argued that

the issue of profiteering had been examined by comparing the applicable tax and the ITC available for the pre-GST period when Service Tax @4.5% and VAT@1% was payable (total tax rate of 5.50%) with the post-GST period when the prevalent GST rate was 12% (GST @18% alongwith 1/3d abatement on value) on construction service imposed vide Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. He has also computed the comparative figures of ITC availed/available during the pre-GST period and the post-GST period as per the Table-'D' given below:-

Table-"D" (Amounts in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April, 2016 to June,2017	July, 2017 to June, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Total input tax credit availed (Rs.)	C	371,10,647	616,64,604
4	Taxable turnover (Rs.)	D	5370,46,198	4501,24,622
5	Ratio of input tax credit to taxable turnover (%)	E=C/D	6.91 %	13.70%
6	Increase in tax rate post-GST (%)	F= GST Rate less pre-GST Tax rate	-	6.50%
7	Increase in input tax credit availed post-GST (%)	G	-	6.79%
8	Analysis of Increase in input tax credit:			
9	Basic Price Pre-GST (per square feet) (Rs.)	H		3,750.00
10	Service Tax @4.5% (Rs.)	1= H*4.5%		168.75
11	VAT @ 1% (Rs.)	J=H*1°/0		37.50
12	Total per square feet price pre-GST (Rs.)	K=H+I+J		3,956.25
13	Recalibrated Basic Price after considering additional input tax credit of 6.79% in GST (Rs.)	L= H*(100-G)/100		3,495.38
14	GST 012% on recalibrated Basic Price (Rs.)	M= L*12%		419.45
15	Commensurate price post-GST (Rs.)	**N= L+M**		3,914.82

14. The DGAP has also contended that the additional ITC of 6.79% of the taxable turnover, should result in commensurate reduction of cum-tax price from Rs. 3,956.25 per square feet to Rs. 3,914.82 per square feet. He has further contended that as per the provisions of Section 171 of the CGST Act, 2017, the benefit of the additional ITC which had accrued to the Respondent, was required to be passed on to the flat buyers. He has also claimed that the Respondent had not objected to passing on of the benefit of ITC at the time of giving possession of the flat, however, the fact was that the benefit had not been passed on till now. The DGAP has pleaded that the payments received from the above Applicant did not state that the benefit available to the Respondent had been passed on to the Applicant, which showed that the Respondent had retained the benefit which had

accrued to him on account of GST. The DGAP has also alleged that by not reducing the basic price by 6.79% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre-GST basic price, the Respondent had violated the provisions of Section 171 of the of the CGST Act, 2017.

15. The DGAP has also stated that on the basis of the CENVAT/ITC available pre and post-GST and the details of the amount collected by the Respondent from his purchasers during the period from 01.07.2017 to 30.06.2018, the amount of benefit of ITC not passed on by the Respondent or the profiteered amount came to Rs. 3,42,31,077/- which included 12% GST on the basic profiteered amount of Rs. 3,05,63,462/-. He has also supplied the details of all the buyers who had purchased flats from the Respondent along with their unit numbers vide Annexure-22 attached with the Report. The DGAP has further stated that the above amount was inclusive of Rs. 1,65,975/- (including 12% GST over the basic amount of Rs. 1,48,192/-) which the Respondent had profiteered from the Applicant No. 1. He has also intimated that the construction service was supplied in the State of Haryana only.

16. The DGAP has also stated that the benefit of additional ITC (6.79%) was more than the increase in the rate of tax (6.5%) which showed that net benefit of ITC had accrued to the Respondent and the same was required to be passed on to the above Applicant and therefore, the provision of Section 171 of the CGST Act, 2017 had been violated by the Respondent as the additional benefit of ITC @6.79% of the basic price received by the Respondent from the above Applicant during the period from 01.07.2017 to 30.06.2018, had not been passed on to him and the Respondent had collected an additional amount of Rs.1,65,975/- from the Applicant No. 1 which included both the profiteered amount @6.79% of the taxable amount and the GST on the said profiteered amount @12%. The DGAP has further stated that the Respondent had also realized an additional amount of Rs. 3,40,65,102/- including profiteered amount @6.79% of the taxable amount and GST on the profiteered amount @12% from the other home buyers who were not applicants in the present investigation. He has also intimated that all such buyers were identifiable as per the documents received form the Respondent in which their names and addresses along with unit nos. allotted to them had been mentioned.

17. The above Report was considered by the Authority in its meeting held on 28.08.2018 and it was decided that the Applicants and the Respondent be asked to appear before the Authority on 13.09.2018. Since, the Respondent had asked for adjournment of the hearing scheduled on

13.09.2018, it was decided to grant next hearing on 28.09.2018. During the course of the hearing the Applicant No. 1 did not appear, the DGAP was represented by Sh. Anwar Ali T. P., Additional Commissioner and the Respondent was represented by Sh. Rakesh Sodhi, Sh. Himanshu Juneja, Sh. Kishor Kunal, Sh. Achal Chawla and Ms. Ruchi Jha.

18. The Respondent vide his reply dated 11.09.2018 has submitted that the Applicant No. 1 had withdrawn the complaint which alleged that the Respondent had not passed on the benefit of ITC to him which showed that he was satisfied with the explanation given by the Respondent on the issue of not passing on the benefit of ITC.

19. The Respondent has also submitted that the computation of the benefit/ loss could not be done before completion of the project and he had never denied to pass on the benefit to the buyers as was evident from the correspondence made by him with them. He has further submitted that vide his email dated 28-Jul-2017 he had intimated the above Applicant that the benefit accruing to him, if any, would be calculated at the time of completion of the project and the same would be passed on to him. He has also claimed that the DGAP had also not disputed his this contention as had been mentioned in para 13 of the report. The Respondent has reiterated that the profiteering needed to be computed on the overall project and the benefit would be passed on to the buyers on the completion of the project and calculation of the same before completion would not give true account of the actual benefit/ loss accruing to the Respondent.

20. The Respondent has also pleaded that as per entry 5 (b) of 'Schedule II' of the CGST Act, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly was deemed to be supply of service liable to GST, however, the said entry specifically excluded the cases where the entire consideration had been received after issuance of completion certificate or after its first occupation. He has further pleaded that 'Schedule III' of the CGST Act listed the activities or transactions which should be treated neither as a supply of goods nor a supply of services which covered, sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building and accordingly, in case the building/ flat was sold post completion, it would be considered neither supply of goods nor supply of services. He has also contended that as per section 17 (2) of the CGST Act in case the goods or services or both were used by the registered person partly for effecting taxable supplies and partly for effecting exempt supplies the amount of credit shall be restricted to so much of the input tax as was attributable to the taxable supplies. He has further contended that

the value of the exempt supply included sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building and therefore, the sale of building post completion was considered as exempt supply wherein the Respondent would be required to reverse the ITC. He has also stated that the Respondent was constructing flats under the project 'Anand Vilas', the total saleable area of which was 11,54,550 square feet, out of which he had been able to sell only 6,67,065 square feet which accounted for only 58% of the total saleable area. The Respondent has also mentioned that the above project was started in the year 2013 and was likely to be completed by March 2019 and during the last 4 years he had sold only 58% of the total saleable area and no flat had been sold since July 18 and hence at this point of time he was not in a position to determine how many flats would be sold before completion. He has further mentioned that in case if the flats were not sold before the completion, it would amount to sale of the building as per Schedule III of the GST law which would result in reversal of the ITC. The Respondent has also contended that the ITC which had been taken in to account for computation of the profiteered amount was based on all the credit availed by him till the time, assuming that he would be able to sell all the flats before completion, however, in case no sale could be made before completion, he would be required to reverse the proportionate credit to the extent of 42% of the area which was still unsold. He has also argued that due to the reversal of ITC which might happen later on, it would be incorrect to infer that the entire ITC was the benefit accruing to the Respondent. The Respondent has further argued that he was required to follow the guidelines issued by the Real Estate Regulatory Authority (RERA) Haryana according to which he could not increase the price of the flats and if the benefit computed by the DGAP was passed on to the buyers without taking in to account the reversals on the unsold flats, he would not be able to recover the amount from the buyers due to the Real Estate (Regulation and Development) Act, 2016 and therefore, the profit/ loss should be calculated on the completion of the project. He has also claimed that he was yet to receive the balance instalments from the buyers and if any benefit would accrue due to additional ITC it would be passed on and adjusted in the last instalment.

21. The respondent has also submitted that the Real Estate Sector had unique complexities due to long turnaround time unlike manufacture of goods and construction of a building was a long drawn process. He has further submitted that the manufacturing of goods took short time and hence computing of the benefit per unit was easy due to availability of exact quantities and prices of the inputs used per unit and the time taken for manufacturing but it took substantial period of time to construct a building. He has also claimed that the input output ratio varied considerably

since the start of the project till its completion due to various factors which included change in the tax rate and change in the prices of the inputs as construction period extended from 4-5 years and therefore, it was difficult to compute the benefit/ loss merely for the impugned period.

22. The Respondent has further claimed that the rate of GST had been changed on various goods/ services during the last one year of its implementation and the Government had reduced rates on over 200 products on 15th Nov 2017 and about 50 products on 27th Jul 2017 and therefore, in case there was any reduction in the tax rate in future, ITC would also be reduced and hence accurate computation of the benefit would be possible only when the project was completed.

23. The Respondent has also submitted that he was not in agreement with the computation of the profiteered amount of Rs. 3,42.31,077/- calculated by the DGAP as it included the GST of Rs. 36,67,615/- in the above amount which he had already paid to the Government and hence it should be excluded for the purpose of computation of the benefit. The Respondent has further submitted that a mere difference in the ITC availed in the pre and the post GST era could not be said to be the profit which had accrued to the Respondent and there were a number of factors which were required to be taken in to account for calculating the benefit. The Respondent has also claimed that he was eligible to take ITC in the pre GST regime as well however, the rate of tax on services had increased from 15% to 18% post GST and the rate of tax on goods had also increased from 5.25% VAT to 18%/12%/ 28% post GST. He has also furnished the comparison of tax rates under the erstwhile and post GST regime as under:-

Sr. No.	Description of goods/services	Tax rate under erstwhile regime	Post GST tax rate
1.	Architect	15%	18%
2.	Brokerage	15%	18%
3	Steel	5.25%	18%

He has further claimed that he would be paying tax at the rate of 18%/28% on the inputs instead of 5.25%/13.125%, due to which ITC would increase but it could not be considered as additional benefit which had arisen to the Respondent.

24. The Respondent has also contended that he had made purchases during the pre-GST period and hence the benefit of CENVAT credit of Excise Duty paid on the inputs was not available for providing the construction

services under the erstwhile regime, however the same was available in the GST regime on the basis of which the DGAP had computed the benefit which had accrued to him. The Respondent has further contended that the DGAP had not taken in to account the fact that he was engaged in procurement of goods from traders and he was not aware whether the trader was purchasing such goods from a trader or manufacturer and therefore, the benefit of Excise Duty, if any, had accrued to the vendor of the Respondent and not to him which had not been passed on to him. The Respondent has also highlighted that the prices of the goods procured by him had not reduced post GST. He has also claimed that as per the provisions of Section 171 of the CGST Act, any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit had to be passed on to the recipients by way of commensurate reduction in prices and it was the duty of the supplier to do so and the law did not require the recipient to pass on the benefit and hence the Respondent would be in a position to pass on the benefit only if the same had accrued to him, however, there was no benefit of Excise Duty to the Respondent as he was purchasing goods from the traders and therefore, the benefit which had not accrued to him could not be passed on by him.

25. The Respondent has also pleaded that he was a bonafide and law abiding dealer who was filing his Statutory Returns and he had not violated any provisions of the law and had never denied to pass on the benefit, however the accurate computation of the same was required as he would not be able to recover the wrongly passed on benefit and therefore, he had been requesting to allow him to pass it on on the completion of the project. He has further pleaded that in view of his submissions the Imposition of penalty was not warranted. The Respondent also prayed that he was in the process of computing the actual benefit/loss which had accrued to him with the reasonable assumption for the unsold area which required reversal of ITC and would submit the same to the Authority and requested for grant of 15 days time for quantifying the benefit and submit the same. The Respondent further prayed that personal hearing be granted to him before any decision was taken in this matter with liberty to produce relevant evidence.

26. The Respondent vide his submissions dated 28.09.2018 reiterated the submissions which were made by him on 11.09.2018 and additionally submitted that the DGAP had mentioned in his Report that the Respondent had not denied his liability to transfer the benefit. However, the same could not be computed before completion of the project, as accurate computation of the same was required as it would not be posssible to recover it if it was passed on wrongly. He has also prayed that he should be allowed to

pass on the benefit after the completion of the project and therefore, the imposition of penalty was not warranted. He has also argued that it was well settled that imposition of penalty was a quasi-criminal adjudication and hence, the mens rea or malafide intent ought to be necessarily present, which was absent in the present case. He has also cited the cases of Hindustan Steel Limited v. State of Orissa (1970) 25 STC 211 (SC) and CST v. Sanjiv Fabrics 2010-TIOL-71-SC-CST wherein it has been held that mens rea was an essential ingredient for imposition of penalty. He has also quoted the case of Bharjatiya Steel Industries v. Commissioner Sales Tax, U.P. 2008 (11) SCC 617 in which it was held that:-

> "An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary Section 78 (5) of the Act of 1994 unless there is mens rea on the part of the trader. Apart from this, mens rea is an essential ingredient for imposing penalty. The word "mens rea" does not bear a literal meaning (i.e. "bad mind" or quilty mind) because one who breaks the law even with the best of motives still commits a crime The language is no longer meant to convey the idea of general malevolence characteristic of early common law usage. The true translation is criminal intention or recklessness. Words typically imposing a mens rea requirement include wilfully, maliciously, fraudulently recklessly, negligently, corruptly, feloniously and wantomly
>
> The fundamental principle pertaining to mens rea is based on the maxim actus non facit reum nisi mens sit rea. (the intent and act must both concur to constitute the crime). Meaning thereby an act does not make a man guilty without guilty intention to do the guilty act which is made penal by the statute or common law..."

Based on the above judgements the Respondent has argued that the penalty proposed to be imposed by the impugned notice under Section 29 and 122-127 of the CGST Act read with Rule 133 of CGST Rules, was not justifiable and hence it might not be imposed.

27. The Respondent has also requested to take into account the amount of reversal of ITC due to unsold flats and allow him to pass on the benefit at the time of completion of the project so that correct amount of benefit could be passed on and no penalty should be imposed on him on this account. He has further requested that since the beneficiaries/ buyers were identifiable it would not be difficult to pass on the benefit with the last instalment.

28. Further, hearing in the case was held on 11.10.2018 during which the Respondent has submitted the following details:-

- Purchase summary for 'Anand Vilas' project-Annexure-2
- Summary of payment details and pending dues-Annexure-3
- Payment Schedule-Annexure-4
- Detail of buyers with pending instalments-Annexure-5
- Project details-Annexure-6
- Details of taxes collected from buyers till date-Annexure-7
- Undertaking to pass-on the benefit on completion of the project-Annexue-8

29. The Respondent has also stated that the benefit of ITC accruing to the Respondent was not certain due to variation in the project cost and the GST rates which was evident from the uneven purchase pattern of the Respondent given in Annexure-2. He has further stated that the ITC of the Respondent was varying due to the changes in the rates of GST on the inputs and hence it was difficult to ascertain the costs and pass on the benefit before closure of the project. He has also claimed that 42% of the total saleable area had not been sold as on 30.06.2018 as was evident from Annexure-3 and since the ITC was required to be reversed on the unsold area the accurate computation of the benefit could not be made at this stage. He has further claimed that after completion of the project no GST could be charged and the ITC has to be reversed however, the DGAP had calculated the benefit on the assumption that the whole area would be sold therefore, the calculation of the benefit made by the DGAP was incorrect. He has also contended that as per the RERA guidelines he could not increase the prices of the flats and in case the benefit was passed on at this stage the wrongly passed benefit could not be recovered. He has further contended that he vide the payment schedule (Annexure-4) had stated that "all other additional charges and taxes as applicable, in terms of application form, shall be payable along with last instalment" therefore, bona-fide intention of the Respondent to pass- on the benefit was clear. The Respondent has also submitted that the reversal of the ITC should be taken in to account while computing the benefit to be passed on and accordingly, he had computed the benefit on the basis of the area sold i.e. 58% of the total saleable area vide Annexure-5. He has also mentioned that the benefit accruing to him was due to the ITC which pertained to all the buyers as the construction was being undertaken in respect of all the units and the inputs were also being used for all of them whether the instalment was due/paid by the buyer post introduction of GST or not. He has further mentioned that the benefit computed by the DGAP was based on the instalments received which was accruing only to the buyers who had paid

instalment(s) post introduction of GST however, he had also computed the benefit to be passed on the basis of the instalment(s) received. He has also claimed that the amount of benefit was Rs. 11,97,77,709/- as per Annexure-5, after considering reversals on account of the unsold flats. He has further claimed that each buyer should be entitled to benefit, however, had he computed the same on the basis of the instalment(s) received, no benefit would be passed on to those buyers who had not purchased flats post GST. Therefore, he has submitted that the benefit should be given on the basis of the area sold which would be more correct and rational mechanism for passing on the benefit. The Respondent has also prayed to consider the amount of reversal of credit due to unsold flats and requested to allow him to pass on the benefit at the time of completion of the project and also not to impose penalty.

30. Further, hearing in the case was held on 28.10.2018 wherein the Respondent has submitted the following details:-

- Annexure-2: Project status of all other projects
- Annexure-3: Certified copies of Occupancy Certificates (OCs)
- Annexure-4: Details of projects whose OCs have been obtained post GST
- Annexure-5: Letter sent to customers intimating that benefit has been passed on in respect of all on going projects
- Annexure-6: Press statements
- Annexure-6: Case law

31. The Respondent has also stated that no penalty should be imposed on him as he had passed on the benfit which had accrued to him to his customers subject to the modification at the time of completion of the project. He has further stated that no malafide intention had been established on the part of the Respondent not to pass on the benefit to his customers and in fact, he had discharged his obligation as per the provisions of Section 171 of the CGST Act and hence penalty was not attracted in his case.

32. The Respondent has also submitted that in accordance with the anti- profiteering clause he had passed on the benefit in respect of the Anand Vilas project not only to the Applicant No. 1 but to all the buyers who had purchased flats. He has also contended that without prejudice to the disagreement on the methodology of computation of the benefit, he had passed on the benefit on account of ITC subject to modification and

credited the same to all the buyers and intimation had also been given to them as per Annexure-5. He has further submitted that he had also passed on the benefit accuring to the customers of his other projects also in respect of which OCs had been applied post GST on a non-prejudice basis. He has also pleaded that there was no mens rea or malafide intent in the instant case and imposition of penalty was not sustainable. He has further pleaded that he had never refused to pass on the benefit which was evident from the correspondence made between him and his customers, however it was his contention that the benefit could be passed only at the time of completion of the project as accurate computation of the benefit was required to be done.

33. The Respondent has also argued that the anti-profiteering clause had been recently introduced in the law and in the absence of any mechanism/ timeline, the Authority ought to act leniently in respect of imposition of penalty. He has also claimed that the Government and the GST Council through this clause wanted to ensure that the rate rationalization benefit was passed on to the society at large in the shape of reduced prices. He has also quoted the then Finance Secretary to the Government of India stating that this Authority would investigate only those cases which had mass impact and not small cases and threfore, he has pleaded that no penalty should be imposed on him. He has also contended that the Government of India was laying great stress on the ease of doing business and was promoting business activities for employment generation and hence, the imposition of penalty in the absence of mens rea or wrong doing, would be detrimental to the business. He has further contended that the CGST Act did not provide for imposition of penalty in the cases of profiteering as it was not covered under Section 122-127 of the CGST Act read with Rule 133 of the CGST Rules. It was also submitted that none of the said provisions of the CGST Act contemplated levy of penalty in the cases where the Respondent had been benefited due to introduction of GST and the benefit had not been passed on to the recipients by commensurate reduction in the prices which were still prone to modification at the time of completion. He has further submitted that the real estate industry being dynamic and governed by the contractual obligations of the parties through the Buyer's Agreements and the sale considerations, it was advised and it was understanding of the Respondent to pass on the benefit of ITC only on closure of the obligations of the parties. He has also argued that under Rule 133 of the CGST Rules penalty could be imposed as was specified under the CGST Act and since there was no corresponding provision in the Act to impose penalty for contravention of Section 171 no penalty could be imposed as it was well settled that the penalty had to be prescribed in the main statute/ Act itself. He has further argued that the Rules could not prescribe penalty

by travelling beyond the provisions of the Statute/Act and such exercise of power amounted to “excessive delegation”. He has also pleaded that in a similar situation of Sikkim State Lottery Rule imposing a fee of Rs. 2,000/- per lottery draw on the distributor was struck down by the Hon’ble Sikkim High Court in the case of Shubh Enterprises v. Union of India; W. P. (C) No. 41 OF 2013 decided on 14.10.2015 which was later on affirmed by the Hon’ble Supreme Court on the grounds of excessive delegation since the parent statute i.e. the Lottery Regulation Act, 1998 did not envisage such a fee. Similarly, the Hon’ble Madras High Court had struck down Rule 3 (ee) of the Gold Control Rules, 1969 since it did not contain any guidelines for the licensing authorities to determine “too low a turnover holding that the Rule would work differently for different individuals depending upon the particular officer, as per the law settled in the case of B. Narasimhalu Chettiar v. Government of submitted that the real estate industry being dynamic and governed by the contractual obligations of the parties through the Buyer’s Agreements and the sale considerations, it was advised and it was understanding of the Respondent to pass on the benefit of ITC only on closure of the obligations of the parties. He has also argued that under Rule 133 of the CGST Rules penalty could be imposed as was specified under the CGST Act and since there was no corresponding provision in the Act to impose penalty for contravention of Section 171 no penalty could be imposed as it was well settled that the penalty had to be prescribed in the main statute/Act itself. He has further argued that the Rules could not prescribe penalty by travelling beyond the provisions of the Statute/ Act and such exercise of power amounted to “excessive delegation”. He has also pleaded that in a similar situation of Sikkim State Lottery Rule imposing a fee of Rs. 2,000/- per lottery draw on the distributor was struck down by the Hon’ble Sikkim High Court in the case of Shubh Enterprises v. Union of India; W. P. (C) No. 41 OF 2013 decided on 14.10.2015 which was later on affirmed by the Hon’ble Supreme Court on the grounds of excessive delegation since the parent statute i.e. the Lottery Regulation Act, 1998 did not envisage such a fee. Similarly, the Hon’ble Madras High Court had struck down Rule 3 (ee) of the Gold Control Rules, 1969 since it did not contain any guidelines for the licensing authorities to determine “too low a turnover holding that the Rule would work differently for different individuals depending upon the particular officer, as per the law settled in the case of B. Narasimhalu Chettiar v. Government of Tamil Nadu 89 LW 55. He has also contended that in his case even if the profiteering was established maximum penalty of Rs. 25000/- under Section 125 of the CGST/SGST Act could be imposed.

34. The Respondent has also submitted that the Show Cause Notice issued to him had merely mentioned the provisions of Section 122-127

of the CGST Act and Rule 133 of the CGST Rules, without specifying the exact allegations against him and the above Sections were not attracted in his case except for Section 125 which was general in nature. It was further submitted that it was obligatory to point out the allegation specifically in order to enable the Respondent to make appropriate submissions in his defence and since the notice was general it was bad in law for being vague and arbitrary and the penalty proceedings were required to be dropped. He has also cited the judgement recorded by the Hon'ble Apex Court in the case of Kaur & Singh v. CCE, New Delhi, 1997 (94) ELT 289 (SC), wherein the Hon'ble Court has held as under:-

> "2. The assessee was issued a notice dated 10th December, 1981, to show cause why a penalty should not be imposed upon it under Rule 9 (2) of the Central Excise Rules, 1944, and why Central Excise duty should not be collected from it on goods cleared without payment of the same during the year 1980-81. The notice, it is common ground, was issued after the expiration of the period of six months. It could, therefore, have been issued only upon the basis that the assessee was guilty of fraud or of collusion or of wilful mis-statement or suppression of facts or of contravention of the provisions of the Act or the Rules with intent to evade payment of Excise duty; this because, by the time the show cause notice was issued, Rule 9(2) had been amended to incorporate therein the period specified in Section 11A of the Act. The show cause notice does not set out any particulars in respect of fraud or collusion or wilful mis-statement or suppression of facts or contravention with intention to evade the payment of Excise duty. Not only does it not give any such particulars, it does not even make a bare allegation.
>
> 4. This Court has held that the party to whom a show cause notice of this kind is issued must be made aware of the allegation against it. This is a requirement of natural justice. Unless the assessee is put to such notice, he has no opportunity to meet the case against him. This is all the more so when a larger period of limitation can be invoked on a variety of grounds. Which ground is alleged against the assessee must be made known to him, and there is no scope for assuming that the ground is implicit in the issuance of the show cause notice. [See Collector of Central Excise v. H.M.M. Limited, 1995 (76) E.L.T. 497 and Raj Bahadur Narayan Singh Sugar Mills Limited v. Union of India, 1996 (88) E.L.T. 24]."

35. The Respondent has also cited the judgment passed by the Hon'ble Supreme Court in the case of **CCE v. HMM Ltd., 1995 (76) ELT 497 (SC)**,

wherein the Hon'ble Court has ruled as under:-

> 2. There is considerable force in this contention. If the Department proposes to invoke the proviso to Section 11A(1), the show cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the excise department places reliance on the proviso it must be specifically stated in the show cause notice which is the allegation against the assessee falling within the four corners of the said proviso. In the instant case that having not been specifically stated the Additional Collector was not justified in inferring (merely because the assessee had failed to make a declaration in regard to waste or by-product) an intention to evade the payment of duty. The Additional Collector did not specifically deal with this contention of the assessee but merely drew the inference that since the classification list did not make any mention in regard to this waste product it could be inferred that the assessee had apparently tried to evade the payment of excise duty."

The Respondent has therefore, argued that in the absence of invocation of specific provision with respect to imposition of penalty, the entire notice regarding levy of penalty deserved to be dropped.

36. The Respondent has also submitted that the methodology of computation of profiteered amount applied by the DGAP was arbitrary as there was no acceptable methodology to demonstrate the absence of 'profiteering' as neither the CGST Act nor the CGST Rules provided the guidelines/methodology for ascertaining the quantum of 'profiteering' by the supplier and the same methodology could not be applied in all the cases due to different business models, tax structure and production cycle etc. The Respondent has further submitted that the DGAP had assessed the profiteered amount by merely computing the difference in the ratio of ITC to the taxable turnover under the pre-GST and the post-GST era however, it had not been taken in to account that the rates of tax under both the regimes on the outward supplies made by the Respondent had also varied which had not been considered by the DGAP in his report. In this regard, the Respondent has quoted the findings given by this Authority in the case of Kumar Gandharv v. KRBL Limited 2018-VIL-02-NAA, Case No. 3/2018 decided on 04.05.2018 as under:-

> "6. We have carefully heard the Respondent and also perused the material placed on the record and it is revealed that the "India Gate Basmati Rice" sold by the Respondent was not liable for tax before the implementation of the GST and after coming into force of the CGST Act, 2017 it was levied GST @ 5% w.e.f. 22.09.2017. The Respondent was also made eligible to avail ITC w.e.f. the above date. However, the ITC claimed by the Respondent was not sufficient to meet his output tax liability and he had to pay the balance amount of tax in cash as is evident from the perusal of the table prepared by the DGSG. It is also apparent from the returns filed by the respondent for the months of September, 2017, October, 2017 and November, 2017 that the ITC available to him as a percentage of the total value of taxable supplies was between 2.69% to 3% whereas the GST on the outward supply of his product was 5% which was not sufficient to discharge his tax liability. Moreover in this case the rate of tax has been increased from 0% to 5% instead of reduction in the same. Therefore, there appears to be no reason for treating the price fixed by the Respondent as violation of the provisions of the Anti-Profiteering clause."

37. The Respondent has also claimed that there was no nexus between the instalments received and the ITC as the ITC was dependent on the goods and services purchased by the Respondent and the taxable turnover was based on the instalments received from the buyers. He has further claimed that the Respondent might not have received any instalment from the buyers during a specific period however, the construction would have continued and therefore, ITC would be available. He has also contended that in case instalments were due from lesser number of buyers, it would always increase the ratio of ITC to the taxable turnover and vice-versa. He has further contended that in this case also no instalment was due from 01-07-2017 to 30-06- 2018 from the buyers of 130 flats however, it could not be stated that the inputs and the input services had not been obtained for the flats purchased by these buyers. Therefore, he has claimed that the computation made by the DGAP had not considered the various factors which would have impacted the profiteered amount.

38. The Respondent has also argued that this Authority had travelled beyond its power by increasing the scope of investigation. He has further argued that in the present case the DGAP had started investigation in respect of a single unit of Anand Vilas Project launched by the Respondent however, the complaint was withdrawn by the Applicant No. 1 and the report submitted by DGAP also pertained to the above project and the proceedings before the Authority were initially restricted to the scope of

the above however, during the course of the proceedings, the Authority had asked the Respondent about his other projects also. He has further argued that as per Rule 133 (4) if the Authority was of the view that further investigation was required in the matter after the DGAP's investigation, it could for reasons to be recorded in writing, refer the matter to the DGAP to cause further investigation or inquiry. Therefore, he has contended that in view of the above provision it was incumbent upon the Authority to seek report from the DGAP before proceeding to pass any order with respect to other projects of the Respondent and the power of investigation could not be taken over by the Authority in the absence of any such prescription under the CGST Act / Rules. The Respondent has also stated that without prejudice to the above, as a provisional measure he had also passed on the benefit which had accrued to the buyers of the other projects also in respect of which OCs had been obtained post GST. He has also attached copies of the letters sent to the buyers intimating that the benefit had been passed on in respect of the on- going projects i.e. the Emerald Bay and the Aman Vilas. The Respondent finally prayed that the present proceedings may be dropped and penalty may not be imposed.

39. In continuation of the earlier submissions, the Respondent has filed additional submissions dated 05.11.2018 in which he has furnished status of all the projects along with the details of the benefit passed vide Annexure-1, details of compliances in respect of the projects vide Annexures-2A, 2B & 2C, sample letter of intimation to buyers vide Annexure-3 and reasons for difference between the area sold of the projects in his submissions dated 11.10.2018 vide Annexure-4. He has also stated that out of the total 11 projects OCs had been received in respect of 8 projects and the buyers had occupied them after registration of the conveyance deeds. He has further stated that sale of land as per Schedule III of the CGST Act and clause 5 (b) of Schedule II was not to be treated as supply of goods or services therefore, ITC would not be available on the sale of the flats of 6 projects after receipt of OCs and hence, the provisions of Section 171 of the CGST Act should not be applicable on these projects. He has also claimed that the difference in the area sold in annexures furnished through his letter dated 11-Oct-2018 was due to inadvertent error while stated that without prejudice to the above, as a provisional measure he had also passed on the benefit which had accrued to the buyers of the other projects also in respect of which OCs had been obtained post GST. He has also attached copies of the letters sent to the buyers intimating that the benefit had been passed on in respect of the on- going projects i.e. the Emerald Bay and the Aman Vilas. The Respondent finally prayed that the present proceedings may be dropped and penalty may not be imposed.

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40. The submissions dated 26.11.2018 and 05.11.2018 filed by the Respondent were forwarded to the DGAP for his counter replies and he vide his Reports dated 16.11.2018 and 12.11.2018 respectively has stated that all the issues raised by the Respondent pertained to the Authority and hence, no Report was being filed. The DGAP was again asked to file a comprehensive reply on 20.11.2018 on the issues raised by the Respondent. The DGAP has accordingly submitted revised investigation Report dated 28.12.2018, the brief facts of which are as follows:-

a. On the issue of details of all the projects and the benefit passed on in respect of all the on-going projects by the Respondent: The DGAP has stated that as per the provisions of Rule 129 (1) of the CGST Rules, 2017, if the Standing Committee on Anti-profiteering was of the view that there was prima facie evidence to come to the conclusion that a supplier had not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of ITC to his recipients by way of commensurate reduction in the prices, it should forward the case to the DGAP for a detailed investigation and hence he could investigate the complaint only when the above Committee had referred the matter to him. He has also stated that accordingly, he had confined the scope of investigation to only that project on the basis of the RERA registration in respect of which the anti-profiteering application had been received and for which direction to investigate had been given by the Standing Committee. He has further stated that the investigation had covered all other recipients in that project, in addition to the Applicant No. 1. He has also contended that due to

shortage of staff and other infrastructure he was not in a position to investigate all the projects of a supplier against which allegation of profiteering had been made.

b. On the Issue of the modalities and mechanism of Anti- profiteering: The DGAP has submitted that the Respondent had mentioned that there were no guidelines/methodology for computing the quantum of "profiteering by the supplier. In this regard, it has been contended by the DGAP that as per Rule 126 of the CGST Rules, 2017, the Authority had been empowered to determine the methodology and procedure for determination as to whether the reduction in the rate of tax or the benefit of ITC had been passed on by a registered person to the recipients by way of commensurate reduction in prices or not. He has also submitted that this Rule did not stipulate that the Authority should prescribe the methodology and procedure to quantify the amount of profiteering and hence the quantum of profiteering had to be computed on a case to case basis analysis by devising appropriate method as per the nature and facts of each case and no uniform methodology could be prescribed for determination of the quantum of benefit to be passed on. He has further stated that in Rule 126, the word used was 'determine' and not 'prescribe'.

c. On the issue of the CGST Act, 2017 that it does not contemplate levy of penalties: The DGAP has submitted that this issue pertained to the proposal of the Authority to impose penalty on the Respondent which was the exclusive domain of the Authority and he being the investigative arm could not file any Report on the same.

d. On the issue that the NAA had travelled beyond its scope of investigation: The DGAP has claimed that this issue did not pertain to him hence, no Report was being filed.

41. The DGAP after examination of the documents submitted by the Respondent during the hearing held on 05.11.2018, has stated that a notice was issued to the Respondent on 04.12.2018 asking him to furnish details of the home buyers along with the area sold and in response, the Respondent had submitted further documents on 11.12.2018 & 18.12.2018. The DGAP has also stated that in view of the various submissions made by the Respondent before the Authority and him he had re-examined the Report dated 27.08.2018 filed by him and after taking in to account the revised details of the area sold by the Respondent as per the home-

buyer's list, the ITC availed and the Respondent's taxable turnover during the period from April, 2016 to June, 2017 (i.e. pre-GST) and during the period from July, 2017 to June, 2018 (i.e. post-GST), the ratio of CENVAT/ Input Tax Credit and the taxable turnover, pre-GST & post-GST, was as per the details furnished in Table-E below:-

Table-"E" (Amounts in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July 2017 to June, 2018 (Post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	1,67,90,834	39,87,427	2,07,78,261	–
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	21,27,046	8,23,223	29,50,269	–
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,89,17,880	48,10,650	2,37,28,530	–
4	Input Tax Credit of GST Availed (D)	–	–	–	6,16,64,604
5	Total Taxable Turnover (E)	42,43,39,766	11,27,06,432	53,70,46,198	50,10,60,283
6	Total Saleable Area (in Sq ft.) as per Submission dated 28.09.2018 to NAA (F)			11,54,550	11,54,550
7	Sold Area (in Sq. ft.) relevant to above turnover as per Home Buyers List (G)			5,78,095	3,75,400
8	Relevant Proportionate input tax credit [(H)= (C*G)/(F)] or [(H)= (D*G)/(F)]			1,18,81,118	2,00,50,143
9	**Ratio of CENVAT/Input Tax Credit Pre-GST & Post-GST [(I)= (H)/(E)]**			**2.21%**	**4.00%**

42. The DGAP has also claimed that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 2.21% and during the post-GST period (July, 2017 to June, 2018), was 4.00% which showed that post-GST, the Respondent had benefited from the additional ITC to the tune of 1.79% [4.00% (-) 2.21%] of the taxable turnover. He has further claimed that as per the revised details given in the Table-E above, the comparative figures of ITC availed/available during the pre-GST period and the post-GST period, were computed in the Table-'F' as under:-

Table-"F" (Amounts in Rs.)

S. No.	Particulars		Pre-GST	Post-GST
1	Period	A	April, 2016 to June, 2017	July, 2017 to June, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Ratio of CENVAT/Input Tax Credit to Taxable Turnover as per Table - A above (%)	C	2.21%	4.00%
4	Increase in tax rate post-GST (%)	D= 12% less 5.50%	–	6.50%
5	Increase in input tax credit availed post-GST (%)	E= 4.00% less2.21%	–	1.79%
6	**Analysis of Increase in input tax credit:**			
7	Base Price raised during July, 2017 to June, 2018 (Other Than Cancelled Units)	F		44,37,82,127
8	Other than Base Price raised during July, 2017 to June 2018	G		5,72,78,156
9	Total Taxable Value raised during July, 2017 to June, 2018	H=F+G		50,10,60,283
10	GST Collected @ 12% over Basic Price	I= F*12%		5,32,53,855
11	GST Collected @ 18% over other than Basic Price	J = G*18%		1,03,10,068
12	Total GST Collected	K = I+J		6,35,63,923
13	Total Demand collected	L=H+K		56,46,24,206
14	Recalibrated Basic Price	M=F*(1-E) or 98.21% of F		43,58,38,427
15	GST @12%	N = M*12%		5,23,00,611
16	Recalibrated other than Basic Price	O = G*(1-E) or 98.21% of G		5,62,52,877
17	GST @18%	P = O*18%		1,01,25,518
18	Commensurate demand price	Q=M+N+O+P		55,45,17,433
19	Excess Collection of Demand or Profiteering Amount	R=L-Q		1,01,06,773

43. The DGAP has also argued that the additional ITC of 1.79% of the taxable turnover should result in commensurate reduction in the base prices of the flats and hence as per the provisions of Section 171 of the CGST Act, 2017, the benefit of the additional ITC which had become available to the Respondent, was required to be passed on to the flat buyers. He has also re-computed the profiteered amount after taking in to account the CENVAT/ITC availability pre and post-GST and the details of the instalments received by the Respondent from the Applicant No. 1 and the other home buyers during the period from 01.07.2017 to 30.06.2018 and stated that the amount of benefit of ITC which had not been passed on by the Respondent to his customers or the profiteered amount came to Rs. 1,01,06,773/-which included GST (@12% or 18%) on the base profiteered amount of Rs. 89,68,979/- and which also included an amount of Rs. 49,169/- (including GST on the base amount of Rs. 43,655/-) which was profiteered by the Respondent from the above Applicant. The details of the home buyers and the unit no. wise break up of the amount of Rs. 89,68,979/- has been furnished by the DGAP vide Annexure-22 (revised).

44. The DGAP has also mentioned that the above computation of the profiteered amount was in respect of the 155 flat buyers whereas, the Respondent had booked 303 flats till 30.06.2018, out of which 148 buyers had booked them in the pre-GST period and also paid the booking amount in this period but they had not paid any consideration during the period between 01.07.2017 to 30.06.2018 post-GST, the period for which the investigation was being carried out. He has further mentioned that if the ITC in respect of these 148 units was calculated with reference to the 155 units where payments had been received after GST had come in to force, the ITC as a percentage of taxable turnover would be distorted and it would be erroneous and hence, the the benefit of ITC in respect of these 148 units should be calculated when the consideration had been received post-GST by taking into account the proportionate taxable turnover in respect of these 148 Units. He has also intimated that in view of the details of outward supplies of the construction service furnished by the Respondent, it was found that the service was supplied in the State of Haryana only. The DGAP has further mentioned that the Respondent vide Annexure- 2A attached to his submissions dated 05.11.2018 had submitted before the Authority that he had passed on the benefit of Rs. 1,97,77,419/- to the 303 flat buyers including the units under cancellation and accordingly, a summary of the category wise profiteering & the benefit passed on has been furnished by him in the Table-'G' given below:-

Table-"G" (Amounts in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sqf)	Amount Received Post GST	Profiteering Amt. as per Annex-22	Benefit claimed to have been Passed on by Respondent	Difference	Remark
A	B	C	D	E	F	G	H	I
1	Applicant	1	1,940	24,38,844	49,169	53,994	(4,825)	Excess Benefit passed on.
2	Other Than Applicant	92	2,25,420	38,99,63,392	78,64,128	62,73,889	15,90,239	Further Benefit to be passed on as per Annex-24
3	Other Than Applicant	62	1,48.040	10,86,58,047	21,93,476	41,20,249	(19,26,774)	Excess Benefit passed on. List Attached as Annex-25
4	Other Than Applicant	127	2,85,845	–	–	79,55,638	(79,55,638)	No Consideration Paid Post-GST, However, Respondent passed on benefit. List Attached as Annex-26
5	Other Than Applicant	3	5,820	–	–	–	–	No Consideration Paid Post-GST & No benefit passed. List Attached as Annex-26
6	Other Than Applicant	3	8,120	86,78,966		2,25,996	(2,25,996)	Cancelled Units. List Attached as Annex-26
7	Other Than Applicant	18	41,235	–	–	11,47,653	(11,47,653)	Cancelled Units. List Attached as Annex-26
8	Other Than Applicant	206	4,38,130	–	–	–	–	Unsold Units
	Total	**512**	**11,54,550**	**50,97,39,249**	**1,01,06,773**	**1,97,77,419**	**(96,70,646**	

45. The DGAP has also contended that the benefit claimed to have been passed on by the Respondent was less than what he should have passed on in respect of 92 cases (Sr. 2 of the above table) amounting to Rs. 15,90,239/- and the benefit claimed to have been passed on by the Respondent was higher compared to what he should passed on in respect of the 63 recipients of the flats including the Applicant No. 1 (Sr. 1 & 3 of above table) amounting to Rs. 19,31,599/-. He has further contended that the Respondent has also stated to have passed on the benefit amounting to Rs. 93,29,286/- in respect of 148 buyers of the flats who had not paid any consideration post GST. The DGAP has found that the additional ITC benefit of 1.79% of the taxable turnover which had accrued to the Respondent was required to be passed on to the Applicant No. 1 and the other recipients and therefore, the provisions of Section 171 of the CGST Act, 2017 had been violated by the Respondent as the additional benefit of ITC @1.79% of the base price received by the Respondent during the period from 01.07.2017 to 30.06.2018 had not been passed on to the

Applicant No. 1 and the other buyers and the Respondent had realized an additional amount of Rs. 49,169/- from the Applicant No. 1 which included both the profiteered amount @1.79% of the taxable amount (base price) and the GST on the said profiteered amount, however, the Respondent has claimed to have passed on Rs. 53,994/- during the hearings therefore, the Respondent has passed on excess amount of Rs. 4,825/- (53,994/-(-) 49,169/-) which might be adjusted against the future demands from the above Applicant. He has also claimed that the investigation had revealed that the Respondent had realized an additional amount of Rs. 15,90,239/- which included both the profiteered amount @1.79% of the taxable amount (base price) and the GST on the said profiteered amount from 92 other recipients who were not Applicants in the present proceedings and since they were Identifiable as per the documents furnished by him therefore, this additional amount of Rs. 15,90,239/- was required to be returned to such eligible buyers.

46. The revised Report filed by the DGAP was considered by the Authority and it was decided that the Applicants and the Respondent be asked to appear before the Authority on 15.01.2019. Since, the Respondent had asked for adjournment of the hearing scheduled on 15.01.2019, the Authority decided to accord next hearing opportunity on 21.01.2019. During the hearing, the Respondent has filed reply dated 19.01.2019 on the DGAP's revised Investigation Report as follows:-

i. The Respondent has submitted that the benefit of ITC pertained to all the buyers on account of the area sold to each of them and on the basis of his understanding of the proceedings before this Authority and the previous report of the DGAP, he had already passed on the benefit of ITC to all the buyers although he had not received consideration from all of them post GST. He has also submitted that the benefit if any, had accrued to him due to ITC which pertained to all the buyers as the construction was under progress in respect of all the units and the inputs were also being used for all of them irrespective of the fact whether the instalment was due/paid by the buyer post introduction of GST or not. He has also attached details of the benefit passed as per Annexure-A.

ii. The Respondent has also claimed that vide 'Table B' of the reply of the DGAP the GST realised from the buyers had been considered as the profiteered amount, which was not correct as it had been paid to the Government. The Respondent has further claimed that the GST amount of Rs. 11,37,794/- collected on the increased sale consideration had been deposited with the Government even if it

was collected in excess and the same should not be included in the profiteered amount and therefore, the revised profiteered amount should be taken as Rs. 89,68,938/- (79,43,655+10,25,279). He has also contended that the additional benefit to be passed on to the buyers would be Rs. 7,53,217/- and not Rs. 15,90,239/- as had been calculated vide Annexure-B and the excess benefit passed on to the buyers would be Rs. 22,22,072/- as per the revised calculation shown in Annexure-C.

iii. The Respondent has further contended that the DGAP has claimed in his Report that after taking in to account the profiteered amount of Rs. 15,90,239/- which was payable to the flat buyers the Respondent had paid an amount of Rs. 96,70,646/- in excess to them and hence the total extra benefit was Rs. 1,12,56,061/- (96,70,646 +15,90,239). He has also stated that the DGAP had suggested to adjust this amount against the future instalments however, it would not be possible to do so and hence he should be allowed to adjust the same against the amount which was payable by the Respondent.

47. The Authority, during the hearing held on 21.01.2019, had directed the Respondent to submit the details of the instalments received by him from the buyers from 01.07.2018 to 31.12.2018 and the ITC benefit passed on by him to them on these instalments. He was also asked to submit compliance of Section 171 of the CGST Act, 2017 in case of his other on going projects and Occupation/Completion Certificates in case of the completed projects as he had himself admitted during the course of the hearings that he was executing other projects also and had taken suo moto initiative to pass on the benefit of additional ITC which he had received on these projects. The Respondent, vide his submissions dated 04.02.2019 has submitted the following points and documents:-

a. Detail of instalments received post GST till 31st Dec 2019 as per Annexure-A

b. OCs of the completed projects as per Annexure-B

c. The Respondent has further submitted that he had not sold any unit under the Project Anand Vilas after 30th June, 2018.

48. The submissions of the Respondent were forwarded to the DGAP on 06.02.2019 and the DGAP vide his Report dated 12.02.2019 has stated that:-

a. As the OC for the project had already been applied and was expected to be received shortly, it would not be correct to re-quantify the profiteered amount by extending the period of investigation till 31.12.2018 as it would amount to re-investigation of the case, leading to complete reworking of the availability of ITC, area sold, taxable turnover and the profiteered amount. He has also stated that the exact quantum of benefit of ITC to be passed on could be ascertained only after the project was completed when there would be no further accrual of ITC to the Respondent. Therefore, he has suggested that the present proceedings based on his Report dated 27.08.2018 and subsequent Report dated 21.12.2018 should be finalised and the Respondent should be asked to pass on the balance benefit to the flat buyers after completion of the project, based on the area sold after 30.06.2018, consideration received after 30.06.2018 and the ITC availed after 30.06.2018.

b. The DGAP has also submitted that no Report was being filed on the details of the OCs issued in respect of other completed projects which were not part of the present investigation.

49. The Respondent vide his submissions dated 11.02.2019 has also stated that he had already submitted the details of the instalments received post GST till 31.12.2018 and also the status and the OCs of the completed projects. He has further stated that the DGAP by comparative analysis of the period from April 2016 till June 2017 and July 2017 till June 2018 had filed his Report on 27.8.2018, wherein the profiteered amount had been calculated and he had already passed on the benefit of ITC to all the buyers as per the above Report. He has further submitted that the DGAP had submitted a revised Report on 28.12.2018 in which the methodology adopted was different from the earlier Report and the profiteered amount had been reduced however, he had already passed on the ITC benefit to all the buyers which was higher than what had been computed in the revised Report dated 28.12.2018.

50. The Respondent vide his submissions dated 06.03.2019 has stated that he had already supplied the required information and explanation regarding the pre-GST and the post-GST data/figures to the DGAP who had also filed his detailed investigation Report on 27th August, 2018 which included the unsold area and the Revised Report on 28th Dec., 2018 which excluded the unsold area and he had already passed on the ITC benefit to all the buyers on the basis of the area sold while the DGAP, vide his revised Report dated 28th Dec., 2018, had adopted different methodology and computed amount of profiteering by excluding the unsold area as

compared to the original Report dated 27th August, 2018. He has further submitted that in view of this matter may be concluded.

51. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent and the other material placed on record and find that the Applicant No. 1 had booked Flat No. T4-2B on 09.05.2017 with the Respondent in his Anand Vilas Project located in Sector 81, Faridabad, Haryana for total consideration of Rs. 85,87,410/- as per the details furnished by the DGAP in Table A of his Report. It is also revealed from the record that the above Applicant vide his complaint dated 22.01.2018 had alleged that the Respondent was not passing on the benefit of ITC to him inspite of his request made through email dated 28.08.2017 although he had completed 60% of the work and was availing ITC on the purchase of the inputs at higher rates of GST which had resulted in bebefit of additional ITC to him and was also charging GST from him @12%. The above complaint was examined by the Standing Committee in its meeting held on 09.02.2018 and was forwarded to the DGAP for investigation who vide his Report dated 27.08.2018 had found that the ITC as a percentage of the total turnover which was available to the Respondent during the pre-GST period was 6.91% and during the post-GST period this ratio was 13.70% as per the Table C mentioned above and therefore, the Respondent had benefited from the additional ITC to the tune of 6.79% (13.70%-6.91%) of the total turnover which he was required to pass on to the flat buyers of this project. He has also stated that the additional ITC of 6.79% of the taxable turnover, should result in commensurate reduction of cum-tax price from Rs. 3,956.25 per square feet to Rs. 3,914.82 per square feet as per Table D of his Report however, the Respondent had not reduced the basic prices of his flats by 6.79% due to additional benefit of ITC and by charging GST at the increased rate of 12% on the pre- GST basic price, he had contravened the provisions of Section 171 of the of the CGST Act, 2017. The DGAP has further submitted that the amount of benefit of ITC which had not been passed on by the Respondent or the profiteered amount came to Rs. 3,42,31,077/- which included 12% GST on the basic profiteered amount of Rs. 3.05.63,462/-. The DGAP has also intimated that the above amount was inclusive of Rs. 1,65,975/- (including 12% GST over the basic amount of Rs. 1,48,192/-) which the Respondent had profiteered from the Applicant No. 1. He has also supplied the details of all the buyers who had purchased flats from the Respondent along with their unit numbers vide Annexure-22 attached with the Report.

52. The Respondent was issued notice dated 29.08.2018 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be

fixed along with imposition of penalty as per Section 122-127 of the above Act read with Rule 133 of the CGST Rules, 2017 and his registration under the Act should also not be cancelled. The Respondent in his submissions has repeatedly stated that the Applicant No. 1 had withdrawn the complaint in which it was alleged that the Respondent had not passed on the benefit of ITC to him, on being satisfied with the clarification given by him on the issue of benefit of additional ITC and hence the investigation conducted against him should have been dropped. However, this contention of the Respondent is not acceptable as there is no provision in the above Act or the Rules framed under it to withdraw the complaint once it has been made by following the prescribed procedure and despite withdrawal the offence of profiteering remains and therefore, the DGAP has rightly persued the investigation. Moreover, once violation of the provisions of Section 171 (1) of the above Act had come to the notice of the DGAP he was legally bound to ascertain the truth of the allegation after conducting detailed investigation as per the provisions of Rule 129 (1) of the CGST Rules, 2017 as it not only adversely affects the interests of the common buyers but also amounts to wrongful appropration of the concession which has been granted by the Central as well as the State Government by sacrificing their own revenue and hence no illegality has been committed by him by launching the present investigation against the Respondent.

53. The Respondent has also stressed that the computation of the benefit/ loss could not be done before completion of the project. It is apparent from the record that the above project was launched by the Respondent in the year 2013 and was likely to be completed by March, 2019 after a lapse of a period of about 6 years whereas he had been regularly availing the benefit of additional ITC w.e.f. 01.07.2017 to pay his output tax liability by appropriating the benefit of ITC which he was required to pay to the flat buyers. The Respondent can not be allowed to enrich himself at the cost of of the buyers and keep them waiting till the project was completed and hence he is legally bound to pass on the benefit periodically to them by computing the same on the basis of the ITC availed as well the instalments paid by them. Any reversal of ITC due to unsold flats could have been factored by him during the course of calculation of the benefit and had any of the buyers surrendered his allotment after availing the benefit of ITC the same could also have been taken in to consideration while selling the flat to the subsequent buyer. The contention of the Respondent that he had not got any benefit of additional ITC after coming in to force of the GST w.e.f. 01.07.2017 as he was already availing this benefit during the pre GST regime is also not borne out from the record as he has got benefit of 1.79% of additional ITC after coming in to force of the GST as is apprent from the perusal of Table E mentioned above. The Respondent has also

claimed that he had no malafide intention of not paying the benefit of ITC to the flat buyers is also not borne out from the record as he had not taken any effective steps to release the benefit till the present proceedings were launched. All the claims made by the Respondent in this regard are not correct and hence they are not tenable.

54. It would be pertinent to mention here that the Respondent through his submissions dated 11.09.2018 had sought time of 15 days to compute the benefit of ITC which he was required to pass on as per the provisions of Section 171 of the CGST Act, 2017 to the above Applicant as well as rest of the house buyers which was granted to him. Accordingly, he has himself computed and passed on the benefit of Rs. 53,994/- to the above Applicant and Rs. 1,97,23,425/- to rest of the flat buyers the details of which have also been furnished by him through his subsequent submissions.

55. The Respondent has also pleaded that as per entry 5 (b) of 'Schedule II' and 'Schedule III' of the CGST Act, 2017 where a building/ flat is sold after issuance of the OC the ITC availed on it was required to be reversed and since he had sold only 58% of the total saleable area he would have to reverse ITC in respect of the balance 42% area and he also could not increase the prices of the flats as per the RERA guidelines and hence the exact benefit of ITC could not be determined at this stage. However, the above argument of the Respondent is not correct as the benefit was required to passed on only to those buyers who had paid the instalments after coming into force of the GST and on the sold area only as the unsold area was not to be taken into consideration while computing the benefit.

56. The Respondent has also claimed that the Real Estate Sector had long gestation period and the rates of tax were being changed frequently due to which the benefit of ITC could not be calculated periodically. However, the claim of the Respondent can not be accepted as the buyers can not be compelled to wait till the completion of the project when the Respondent is utilising the additional ITC every month to discharge his output tax liability, the benefit of which he is legally bound to pass on to the flat buyers. Moreover, any change in the rates of tax is duly reflected in the quantum of ITC available to the Respondent and in case there is additional benefit of ITC only then the same is required to be passed. It is apparent from the data supplied by the Respondent that he had got additional benefit of 1.79% ITC which was required to be passed on by him to the flat buyers and hence the argument advanced by the Respondent in this behalf is without any merit.

57. The Respondent has also contended that he was not in agreement with the computation of the profiteered amount by the DGAP as it included

the GST which had been deposited by him in the Govt. account. The plea taken by the Respondent on this ground is fallacious as by forcing the flat buyers to pay more price by not releasing the benefit of additional ITC and by collecting tax @12% on this additional realisation he has denied the benefit of additional ITC to them by not reducing the prices of the flats commensurately. Had he not collected additional GST the buyers would have paid less price and by doing so he has denied them the benefit of additional ITC which amounts to violation of Section 171 of the above Act. Both the Central as well as the State Government had no intention of collecting the additional GST as they had forfeited their revenue in favour of the flat buyers to provide them accommodation at affordable prices and by compelling the buyers to pay the same the Respondent has not only defeated the intention of the above Goverments but has also acted against the interests of the house buyers hence the contention of the Respondent is not justifiable and therefore, the GST collected by him on the additional realisation has rightly been included in the profiteered amount by the DGAP.

58. The Respondent has also contended that he had made purchases from the traders who had not passed on the benefit of ITC to him and hence he could not further pass on the same to the house buyers. This pleading of the Respondent goes completely against the provisions of Section 171 (1) of the above Act as every registered person is required to pass on the benefit of additional ITC on every supply by commensurate reduction in the prices. Since the Respondent is a person duly registered under the above Act he is legally liable to pass on the benefit and he cannot deny the same on the ground that he had not received the benefit from his suppliers. The Respondent can always claim the benefit from his suppliers if he thinks that it is due to him by following the legal options but he cannot contend that he would not pass on the benefit to his recipients on this ground and hence his claim is ultra vires of the above Section.

59. The Respondent has also stated that no penalty should be imposed on him as he had voluntarily passed on the benefit which had accrued to him to his customers subject to the modification/recalculation at the time of completion of the project. He has further stated that no malafide intention had been established on compelling the buyers to pay the same the Respondent has not only defeated the intention of the above Goverments but has also acted against the interests of the house buyers hence the contention of the Respondent is not justifiable and therefore, the GST collected by him on the additional realisation has rightly been included in the profiteered amount by the DGAP.

58. The Respondent has also contended that he had made purchases from the traders who had not passed on the benefit of ITC to him and hence he could not further pass on the same to the house buyers. This pleading of the Respondent goes completely against the provisions of Section 171 (1) of the above Act as every registered person is required to pass on the benefit of additional ITC on every supply by commensurate reduction in the prices. Since the Respondent is a person duly registered under the above Act he is legally liable to pass on the benefit and he cannot deny the same on the ground that he had not received the benefit from his suppliers. The Respondent can always claim the benefit from his suppliers if he thinks that it is due to him by following the legal options but he cannot contend that he would not pass on the benefit to his recipients on this ground and hence his claim is ultra vires of the above Section.

59. The Respondent has also stated that no penalty should be imposed on him as he had voluntarily passed on the benefit which had accrued to him to his customers subject to the modification/recalculation at the time of completion of the project. He has further stated that no malafide intention had been established on execution of the project, the area sold and the tumover realised. The Respondent has himself admitted that the same methodology could not be applied in each case and hence he should have no objection on the methodology which had been adopted in his case based on the ITC availed, area sold and the instalments received after 01.07.2017. Further the Authority under Rule 126 of the CGST Rules, 2017 has already notified the 'Procedure & Methodology' for determination of the profiteered amount vide its Notification dated 28.03.2018 however, as has been stated above the same has to be applied on case to case basis. It would also be appropriate to mention here that this Authority has power to 'determine' the methodology and not to 'prescribe' it as per the provisions of the above Rule and therefore, no set prescription can be laid while computing profiteering. Hence the objection raised by the Respondent on this ground is frivolous and without legal force.

61. The Respondent has also argued that the anti-profiteering Section has been introduced to ensure that the rate rationalization benefit was passed on to the society and only cases of mass impact were to be investigated. He has further contended that the CGST Act, 2017 did not provide for imposition of penalty under Section 122-127 read with Rule 133 of the CGST Rules. He has further pleaded that since there was no corresponding provision in the Act to impose penalty for contravention of Section 171, no penalty could be imposed as it was well settled that a penalty has to be prescribed in the main statute/Act itself and therefore, imposition of penalty would amount to excessive delegation. The

Respondent has also submitted that the Show Cause Notice issued to him on 29.08.2018 has merely mentioned the provisions of Section 122-127 of the CGST Act and Rule 133 of the CGST Rules, without specifying the exact allegations against him and the above Sections were not attracted in his case except for Section 125 which was general in nature. Perusal of the notice dated 29.08.2018 issued to the Respondent shows that he has been intimated that it was proposed to impose penalty under Section 122- 127 of the CGST Act, 2017 read with Rule 133 of the CGST Rules, 2017 and also to cancel his registration if the allegation of profiteering was proved against him, however, no specific instances of violation of the above Sections have been mentioned in the above Notice. Therefore, the proposed imposition of penalty under the above Sections and cancellation of his registration is not sustainable unless specific allegations how he had violated the provisions of the above Sections are levelled against him. Therefore, the above notice is ordered to be withdrawn to the extent that it proposes to impose penalty on him as per the provisions of the above Sections and the Rule. However, rest of the contents of the above show cause notice will continue to operate.

62. The Respondent has also cited the following cases in his support on the issue of imposition of penalty which are being relied upon and the show cause notice issued for imposition of penalty is being ordered to be withdrawn. However, the rest of the cases cited by the Respondent are not relevant to the facts of the present case at this stage and hence they are not being followed:-

1. Shubh Enterprises v. Union of India; W. P. (C) NO. 41 of 2013 decided on 14.10.2015.

2. B. Narasimhalu Chettiar and others v. Government of Tamil Nadu 89 LW 55.

3. Kaur & Singh v. Collector of Central Excise, New Delhi, 1997 (94) ELT 289 (SC).

4. Collector of Central Excise v. HMM Ltd., 1995 (76) ELT 497 (SC).

63. The Respondent has also argued that this Authority had travelled beyond its jurisdiction by increasing the scope of investigation by including the projects which were not investigated by the DGAP. However, perusal of the record shows that the Respondent had himself come forward and furnished details of his other projects and claimed that he had passed on the benefit of ITC in respect of his other projects also. He has voluntarily

submitted full details of the flat buyers, the area sold, the amount of instalments received and the benefit of ITC which was to be passed on to them. He has also furnished copies of the letters and the credit notes through which the benefit has been released in favour of the buyers. The above action of the Respondent appears to have been taken to avoid the consequences of Section 171 of the above Act when he had realised that he was legally bound to pass on the benefit of additional ITC availed by him to the flat buyers. Therefore, the allegation made by the Respondent in this regard is false and cannot be accepted.

64. It is also apparent from the record that the DGAP has submitted revised investigation Report dated 28.12.2018, in which he has stated that after taking in to account the revised details of the area sold by the Respondent, the ITC availed and the Respondent's taxable turnover during the period from April, 2016 to June, 2017 (i.e. pre-GST) and during the period from July, 2017 to June, 2018 (i.e. post-GST), the ratio of CENVAT/ ITC to the taxable turnover, pre-GST was 2.21% and during the post-GST period, it was 4.00% which shows that post-GST, the Respondent has benefited from the additional ITC to the tune of 1.79% [4.00% (-) 2.21%] of the taxable turnover which was required to be passed on to the buyers by the Respondent. It would be appropriate to mention here that vide his Report dated 27.08.2018 the pre-GST ratio had been computed as 6.19% and the post-GST ratio had been shown as 13.70% as per Table C mentioned above and the Respondent was held to have availed additional ITC to the tune of 6.79%. The revised ratio calculated by the DGAP has not been challenged by the Respondent, moreover the same is based on the information supplied by the Respondent and therefore, the same is being treated to be correct.

65. The DGAP has also re-computed the profiteered amount after taking in to account the CENVAT/ITC availability pre and post-GST and the details of the instalments received by the Respondent from the Applicant No. 1 and the other home buyers during the period from 01.07.2017 to 30.06.2018 and stated that the amount of benefit of ITC which has not been passed on by the Respondent to his customers or the profiteered amount came to Rs. 1,01,06,773/- which included GST (@12% or 18%) on the base profiteered amount of Rs. 89,68,979/- and which also included an amount of Rs. 49,169/- (including GST on the base amount of Rs. 43,655/-) which was profiteered by the Respondent from the above Applicant. The details of the home buyers and the unit no. wise breakup of the amount of Rs. 89,68,979/- has been furnished by the DGAP vide Annexure-22 (revised) against which no objection has been raised by the Respondent and hence the same can be relied upon. On the basis of the aforesaid

facts the amount of benefit of ITC which has not been passed on by the Respondent to the recipients or in other words, the profiteered amount as per the provisions of Rule 133 (1) of the CGST Rules, 2017 is determined as Rs. 1,01,06,773/- which includes GST (@ 12% or 18%) on the base profiteered amount of Rs. 89,68,979/-. This amount is also inclusive of Rs. 49,169/- (including GST on the base amount of Rs. 43,655/-) which is the profiteered amount in respect of the Applicant No. 1.

66. The DGAP has also mentioned that the above computation of the profiteered amount was in respect of the 155 flat buyers whereas, the Respondent had booked 303 flats till 30.06.2018, out of which 148 buyers had booked them in the pre-GST period and also paid the booking amount in this period but they had not paid any consideration during the period between 01.07.2017 to 30.06.2018 post-GST. He has further mentioned that if the ITC in respect of these 148 units was calculated with reference to the 155 units where payments had been received after GST had come in to force, the ITC as a percentage of taxable turnover would be distorted and erroneous and hence, the benefit of ITC in respect of these 148 units should be calculated when the consideration had been received post-GST by taking into account the proportionate taxable turnover in respect of these 148 Units. It is observed from the documents placed on record as well as the above submissions of the DGAP that there are total 512 flats out of which 209 flats have remained unsold and 303 flats have been sold by the Respondent. Out of the above 303 flat buyers the Respondent has received consideration post GST, only from 155 flat buyers. Therefore the ITC benefit is required to be passed on to the 155 buyers only at this stage and benefit should be passed on to the other buyers at a later stage when demands would be raised against them and payments received.

67. The DGAP has further mentioned that the Respondent vide Annexure- 2A attached to his submissions dated 05.11.2018 had submitted before the Authority that he had passed on the benefit of Rs. 1,97,77,419/- to the 303 flat buyers including the units under cancellation. The DGAP has also stated that the benefit claimed to have been passed on by the Respondent was less than what he should have passed on in respect of 92 cases (Sr. 2 of the Table G mentioned in para supra) amounting to Rs. 15,90,239/- (Annexure-24 of the Report) and the benefit claimed to have been passed on by the Respondent was higher (Annexure-25 of the Report) compared to what he should have passed on in respect of the 63 recipients of the flats including the Applicant No. 1 (Sr. 1 & 3 of Table G mentioned above) amounting to Rs. 19,31,599/-. He has further contended that the Respondent has also stated to have passed on the benefit amounting to Rs. 93,29,286/- in respect of 148 buyers of the flats

who had not paid any consideration post GST. The above claims made by the DGAP appear to be based on the analysis of the data supplied by the Respondent and after careful perusal of Table G mentioned above appear to be accurate.

68. The DGAP has also found that the additional ITC benefit of 1.79% of the taxable turnover which had accrued to the Respondent was required to be passed on to the Applicant No. 1 and the other recipients and therefore, the provisions of Section 171 of the CGST Act, 2017 had been violated by the Respondent as the additional benefit of ITC @1.79% of the base price received by the Respondent during the period from 01.07.2017 to 30.06.2018 had not been passed on to the Applicant No. 1 and the other buyers and the Respondent had realized an additional amount of Rs. 49,169/- from the Applicant No. 1 which included both the profiteered amount @1.79% of the taxable amount (base price) and the GST on the said profiteered amount. He has also claimed that the investigation had revealed that the Respondent had realized an additional amount of Rs. 15,90,239/- which included both the profiteered amount @1.79% of the taxable amount (base price) and the GST on the said profiteered amount from 92 other recipients who were not Applicants in the present proceedings and since they were identifiable as per the documents furnished by him therefore, this additional amount of Rs. 15,90,239/- was required to be returned to such eligible buyers. Since the above claims made by the DGAP are based on the information supplied by the Respondent and have also not been objected to by him they are treated to be correct.

69. The issue that needs to be dwelled upon is as to whether there was a case of not passing on of the benefit of ITC and whether the provisions of Section 171 of CGST Act, 2017 are attracted in the present case. Perusal of Section 171 (1) of the CGST Act, 2017 shows that it provides as under:-

> "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

70. It is established from the perusal of the above facts of the case that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent as he has profiteered an amount of Rs. 1,01,06,773/- inclusive of GST @ 12% or 18% on the base profiteered amount of Rs. 89,68,979/-, The Respondent has also realized an additional amount to the tune of Rs. 49,169/- from the Applicant No. 1 which includes both the profiteered amount @1.79% of the taxable amount (base price) and GST on the said profiteered amount. The Respondent has also realized an

additional amount of Rs. 15,90,239/- which includes both the profiteered amount @1.79% of the taxable amount (base price) and GST on the said profiteered amount from 92 other flat buyers who were not Applicants in the present proceedings as per Annexure-24 of the Report. These buyers are identifiable as per the documents placed on record and therefore, the Respondent is directed to pass on this amount of Rs. 15,90,239/- along with interest @18% per annum to these 92 flat buyers from the dates from which the above amount was collected by him from the buyers till the payment is made.

71. In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation is only up to 30.06.2018 any benefit of ITC which accrues subsequently shall also be passed on to the buyers by the Respondent. The Annexures submitted by the Respondent through his submissions dated 11.10.2018 and 05.11.2018 which comprise of the details of suo moto payments made by him through various modes are taken on record.

72. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his Anand Vilas Project in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus realized more price from them than what he was entitled to collect and has also compelled them to pay more GST on the additional realisation than what they were required to pay by issuing incorrect tax invoices and hence he has committed an offence under section 122 (1) (i) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 122 of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him. The above act of the Respondent appears to be deliberate, contumacious and conscious violation of the provisions of the CGST Act, 2017. Since a specific allegation of issuing incorrect invoices has been levelled against the Respondent he would have sufficient opportunity to state his defence on the above charge. He can also raise his other objections which have been mentioned above during the course of the hearing on the issue of imposition of penalty.

73. The Respondent has himself admitted that he has passed on the additional ITC benefit of Rs. 1,99,42,985/- in respect to the project “Emerald Bay” and Rs. 53,19,592/- in respect to the project “Aman Vilas being

executed by him. Since the above claim of the Respondent is required to be verified the DGAP is directed to investigate the issue of passing on the benefit of additional ITC in respect of the above two projects and submit his Report within a period of 3 months from the receipt of this order in terms of Rule 133 (4) of the CGST Rules, 2017.

74. The Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Haryana to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is passed on to all the eligible buyers. A report in compliance of this order shall be submitted to this Authority by the Commissioners CGST /SGST within a period of 4 months from the date of receipt of this order.

75. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioners CGST/SGST as well as the Principal Secretary (Town & Planning), Government of Haryana for necessary action. File be consigned after completion.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Sanjeev Sachdeva, J.]

WPC No. 15845 of 2023

M/s. Mahavir Singh ... Petitioner

Versus

Assistant Commissioner,
Anti-Evasion Cell - I & Ors. ... Respondents

Date of Order: 26.02.2024

SEEKS REFUND OF RS. 35,00,000/- RECOVERED DURING SEARCH PROCEEDINGS BY COERCION FOR REVERSING THE ITC THROUGH FORM DRC-03.

WHETHER THE DEPOSIT OF AMOUNT MADE BEFORE THE CONCLUSION OF SEARCH WAS VOLUNTARY OR WAS DEPOSITED UNDER COERCION AND CONTRARY TO THE CBIC INSTRUCTION NO. 01/2022 DATED 25.05.2022?

HELD – Therefore, the amounts that were deposited on behalf of petitioner lacked voluntariness. Accordingly, the said amount is liable to be returned with interest. In view of the above, Respondents are directed to, within four weeks, refund the amount of Rs.35,00,000/- to the Petitioner alongwith statutory interest @ 6% p.a. from date of deposit till repayment.

Present for Petitioner : Mr. Preetam Singh, Advocate

Present for Respondent : Mr. Rajeev Aggarwal, ASC

ORDER

Sanjeev Sachdeva, J. (Oral)

1. Petitioner seeks refund of an amount of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) which was recovered from the Petitioner sans authority of law during the search proceedings carried out on 07.01.2023, by coercing him to reverse the Input Tax Credit done on 07.01.2023 through FORM GST DRC-03.

2. Petitioner was engaged in business of trading of health supplements.

3. On 06.01.2023, Petitioner was subjected to search based on GST INS-01 issued by the Respondents. The reasons mentioned in the form INS-01 are as under:

"i has suppressed transaction relating to supply of goods and/or services

ii has suppressed transaction relating to stock of goods in hand

iii has claimed input tax credit in excess of his entitlement under the Act

iv has indulged in contravention of the provisions of this act or rules made thereunder to evade tax under this Act"

4. The search operation commenced on dated 07.01.2023 at 03:15 PM and after some initial inspection, a notice under Rule 56(18) of the Delhi GST Rules, 2017 had been issued by the Respondents directing Petitioner to produce the records for the period of 2017-2018 on the same day i.e. 07.01.2023 by 5:00 PM itself.

5. As per the Petitioner, pre-typed statement were printed by the officers of the Respondents from the Petitioner's computer and Petitioner was coerced to sign the same. Thereafter Petitioner was made to deposit an amount of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) by way of reversal of Input Tax Credit before the search team left the premises of the Petitioner. The said amount was paid vide FORM GST DRC-03.

6. Learned counsel for the petitioner relies upon the decision dated 20.12.2022 in W.P.(C) 9834/2022 titled 'M/s Vallabh Textiles vs. Senior Intelligence Officer' wherein it was held that if the petitioner is coerced to make a deposit in an involuntary manner then the Petitioner is entitled to refund the said amount along with interest.

7. Learned counsel for petitioner submits that the deposit being made during course of search in the presence of the official, could not be termed a voluntarily deposit. He further submits that the petitioner was not given an opportunity to explain about the transactions and the stock position in question.

8. Per contra learned counsel for respondents submits that there was no coercion, and the amount was voluntarily deposited by the petitioner. He further submits that recovery proceedings under Section 73 of the Central Goods and Services Tax Act 2017 have been initiated by issuance of a Show Cause Notice and proceedings are underway.

9. It would be apposite herein to quote the decision in the case of Vallabh Textiles vs. Senior Intelligence Officer (supra). A Co-ordinate bench of this court held as under:

"51. The 2017 Act and the 2017 Rules made therein, do make provisions for enabling a person chargeable with tax to pay tax, along with interest, before being served with a notice for payment of tax, which either has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason.

52. Thus, if the person chargeable with tax takes recourse to such a route, the proper officer is restrained from serving any notice qua tax or penalty under the provisions of the 2017 Act or the 2017 Rules framed thereunder, unless the amount which is self-ascertained by the person chargeable with tax falls short of the amount payable as per law.

53. This leeway is also available, where the person chargeable with tax is served with a show cause notice and pays the tax, along with interest, under Section 50 of the 2017 Act within thirty [30] days of the issue of the show-cause notice. In such eventuality, a penalty is not leviable, and all proceedings in respect of such notice are deemed to be concluded.

54. This regime is set out in Section 73 of the 2017 Act.

55. Broadly, this regime also applies, where a notice has been issued under sub-section (1) of Section 73, and the proper officer serves a statement containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1) of Section 73.

56. The important aspect to be kept in mind, is that the regime given in Section 73 of the Act operates in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax.

57. In cases which involve one or more of the aforementioned ingredients i.e., fraud, wilful misstatement or suppression of facts to evade tax, parimateria provisions are contained in Section 74 of the 2017 Act, with small variations.

58. In these cases as well, latitude has been given to the person chargeable with tax, to pay monies towards tax, along with interest, based on self-ascertainment, before issuance of notice under subsection (1) of Section 74 of the 2017 Act, with a caveat that

fifteen per cent of such self-ascertained tax is required to be paid by way of penalty.

59. The penalty amount increases if amounts towards tax and interest are paid by the person chargeable with tax within thirty [30] days of the notice being issued by the proper officer under sub-section (1) of Section 74 of the 2017 Act. The person concerned is required to pay a penalty at the rate of twenty-five per cent within the aforesaid timeframe i.e., 30 days, upon which all proceedings in respect of such notice are deemed to be concluded.

60. These provisions have to be read alongside Rule 142, found in Chapter XVIII of the 2017 CGST Rules.

61. The said chapter bears the heading “Demands and Recovery”.

62. Sub-rule (1) of Rule 142 of the 2017 Rules makes a provision for service of notice for raising a demand for recovery of tax; a provision which we are not concerned with in this matter, as it is not the case of the official respondents/revenue that a notice was served.

63. Besides this, the two sub-rules which are, perhaps, relevant are sub-rule (1A) and (2) of Rule 142, as they relate to the steps required to be taken before service of notice on the person chargeable with tax, interest and penalty under sub-section (1) of Section 73, or under subsection (1) of Section 74 of the 2017 Act.

64. Under sub-rule (1A) of Rule 142 of the 2017 Rules, where a proper officer, before service of notice under Section 73(1) or Section 74(1) of the 2017 Rules seeks to communicate details of tax, interest or penalty, he is required to do so in the prescribed form i.e., via Part A of Form GST DRC-01A.

65. Where, however, before service of notice or statement, the person chargeable with tax, based on self-ascertainment, seeks to make payment of tax and interest, in consonance with the leeway given under sub-section (5) of Section 73 [which relates to cases not involving fraud, wilful misstatement or suppression of facts to evade tax] or as the case may be, the payment of tax, interest and penalty under sub-section (5) of Section 74 [which relates to cases involving fraud, wilful misstatement or suppression of facts to evade tax], he is required to inform the proper officer of such payment made in the prescribed form i.e., GST DRC-03.

66. The proper officer thereafter, is required to issue an acknowledgement, accepting the payment made by the person, also in the prescribed form i.e., GST DRC-04.

67. This is also required to be done [i.e., the acknowledgement of acceptance of payment] where tax, interest and penalty are ascertained by the proper officer, under Rule 142(1A).

***** ***** *****

76. The malaise of officials seeking to recover tax dues (in contrast to voluntary payments being made by assesses towards tax dues) during search, inspection or investigation was sought to be addressed by the GST-Investigation, CBIC via Instruction No. 01/2022-2023 dated 25.05.2022. For the sake of convenience, the said instruction is extracted hereafter:

> "Date : 25 May, 2022
>
> Instruction No. 01/2022-2023 [GST - Investigation]
>
> Subject : Deposit of tax during the course of search, inspection or investigation-reg.
>
> 1. During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.
>
> 2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the

taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73 (5) and Section 74(5) of the CGST Act, 2017. This helps he taxpayers in discharging their admitted liability, self ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on nonpayment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

5. Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting

> the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.
>
> (Vijay Mohan Jain)
> Commissioner (GST-Inv.), CBIC"

77. It appears that this Instruction was issued by the GST Investigation Wing, CBIC, in the backdrop of an order dated 16.02.2021, passed by the Gujarat High Court in the matter of Bhumi Associate v. Union of India, SCA No. 3196 of 2021, order dated 16-2- 2021 (Guj), whereby the following wholesome directions were issued-

> "The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:
>
> (1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.
>
> (2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.
>
> (3) Facility of filing [a] complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.
>
> (4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."

***** ***** *****

80. Clearly, the aforementioned direction, issued by the Gujarat High Court as far back as on 16.02.2021, is binding on the official respondents/revenue, which was not followed in the instant case.

81. The violation of the safeguards put in place by the Act, Rules and by the Court, to ensure that unnecessary harassment is not caused to the assessee, required adherence by the official respondents/revenue, as otherwise, the collection of such amounts towards tax, interest and penalty would give it a colour of coercion, which is not backed by the authority of law.

***** ***** *****

83. Failure to follow the prescribed procedure will, as in this case, have us conclude that the deposit of tax, interest and penalty was not voluntary."

10. In in the instant case, the deposit made by the Petitioner before the search ended and the officers left, shows that the deposit was not voluntary and contrary to the CBIC Instruction No. 01/2022-2023 dated 25.05.2022.

11. We are unable to the accept the contention of learned counsel for the respondent that the deposit was voluntary for the reason that there is no material placed on record by respondent to show as to why petitioner would voluntarily deposit the said amount when there was no claim made against the petitioner as on the date of deposit.

12. Therefore, the amounts that were deposited on behalf of petitioner lacked voluntariness. Accordingly, said amount are liable to be returned with interest.

13. In view of the above, Respondents are directed to, within four weeks, refund the amount of Rs.35,00,000/- to the Petitioner alongwith statutory interest @ 6% p.a. from date of deposit till repayment.

14. It is clarified that the refund would be without prejudice to the proceedings initiated by the respondents under Section 73 of the Act and the defense of the petitioner thereto.

15. Petition is disposed of in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Sanjeev Sachdeva & Ravinder Dudeja, JJ.]

WPC No. 2752 of 2024

M/s White Mountain Trading Pvt. Ltd. ... Petitioner

Versus

Additional Commissioner, CGST Appeals-II, Delhi ... Respondent

Date of Order: 23.02.2024

WHETHER LIMITATION OF FILING AN APPEAL FILED U/S 107(1) OF THE CGST ACT BEING 3 MONTHS WAS ACTUALLY FILED AFTER A DELAY OF MORE THAN A MONTH COULD BE CONDONED U/S 107(4) OF THE ACT IF SUFFICIENT CAUSE IS SHOWN?

HELD – Since in the present case the appeal was filed on 02.09.2023, we hold that the appeal was filed with a delay not exceeding one month and as such the Commissioner Appeals was empowered to consider the application seeking condonation of delay.

Present for Petitioner : Mr. Srijan Sinha and Mr. Naveen Soni, Advs.

Present for Respondent : Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Jatin Kumar Gaur, Advocates

ORDER

Sanjeev Sachdeva, J. (Oral)

1. Petitioner impugns order dated 15.01.2024 passed by the Commissioner of Central Tax Appeals-II whereby the appeal filed by the petitioner impugning the order in original dated 04.05.2023 was dismissed holding that the same is barred by limitation.

2. Issue notice. Notice accepted by learned counsel for respondent. With the consent of parties, the petition is taken up for hearing today.

3. As per the impugned order, the order in original is dated 04.05.2023 and the last date for filing the appeal in terms of Section 107 (1) of the Central Goods and Service Tax Act 2017 (hereinafter referred to as the Act) being 3 months, was 03.08.2023. The impugned order records that the appeal was actually filed on 25.09.2023 after a delay of more than one month. As per the Commissioner Appeals only a delay upto one month,

in filing an appeal, could be condoned under Section 107 (4) of the Act if sufficient cause in shown.

4. Commissioner Appeals held that since the appeal was filed with a delay of more than one month, Commissioner Appeals was not vested with the power to Condon the delay.

5. It is pointed out that the petitioner had filed the appeal through an online process on 02.09.2023. The date noticed in the impugned order, i.e. 25.09.2023 is the date when the petitioner physically filed the appeal after the filing done on 02.09.2023 through the online process.

6. It is not in dispute that the appeal is to be filed through an online process and thereafter the physical copy is to be supplied to the department.

7. The date of filing is always taken as the date of initial filing through the online mode if other steps as required in the law are also taken by the appellant.

8. Since in the present case the appeal was filed on 02.09.2023, we hold that the appeal was filed with a delay not exceeding one month and as such the Commissioner Appeals was empowered to consider the application seeking condonation of delay.

9. As the Commissioner Appeals has erroneously not considered the application seeking condonation of delay solely on the ground that appeal same was beyond the period prescribed under Section 107 (4) of the Act and thus beyond the powers vested in the Commissioner Appeals, we set aside the said order and remit the matter to the Commissioner Appeals to consider the application seeking condonation of delay in accordance with law.

10. The petition is accordingly disposed of with the aforesaid directions.

11. The Commissioner Appeals shall expeditiously dispose of the proceedings.

12. It is clarified that this Court has neither considered nor commented on the merits or the contention of either party or the merits of the application seeking condonation of delay.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Sanjeev Sachdeva & Ravinder Dudeja, J.J.]

WPC No. 2796 of 2024

Sandeep Jain Proprietor of
M/S Nandi Polychem ... Petitioner

Versus

Union of India Revenue Secretary
Ministry of Finance & Ors. ... Respondents

Date of Order: 05.03.2024

WHETHER A DEMAND OF RS. 10,03,08,628/- PASSED U/S 73 OF THE CGST ACT AFTER A SHOW CAUSE NOTICE DATED 23.09.2023 REPLIED IN DETAIL VIDE REPLIES DATED 23.10.2023 AND DRC-06 DATED 11.12.2023 WAS JUSTIFIED?

HELD – In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 30.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

Present for Petitioner	:	Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. V.K. Jain, Mr. Ramashish and Ms. Tanya Saraswat, Advocates
Present for Respondent	:	Ms. Vinish Phoghat, Standing Counsel for UOI/R-1 Mr. Rajeev Aggarwal, ASC for R-3.

ORDER

1. Petitioner impugns order dated 30.12.2023, whereby the show cause notice dated 23.09.2023, proposing a demand against the petitioner has been confirmed and a demand of Rs. 10,03,08,628.00/- including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017.

2. Learned counsel for the petitioner submits that a detailed reply dated 20.10.2023 to the show cause notice was filed on 23.10.2023. He further submitted that subsequent to the said reply Petitioner filed a DRC-06 on 11.12.2023, whereby the petitioner had given party-wise details and return filing status. Further, on 21.12.2023 petitioner filed another reply reiterating

the submissions made by him on 23.10.2023 and 11.12.2023. However, the impugned order dated 29.12.2023 does not take into consideration the replies submitted by the petitioner and is a cryptic order which merely records that reply was found not satisfactory and devoid of merits.

3. A perusal of the show cause notice shows that the Department has given specific details of alleged under declaration of output tax, excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said show cause notice, detailed replies dated 23.10.2023, 11.12.2023 and 21.12.2023 were furnished by the petitioner giving full disclosures under each of the heads.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "However, during the personal hearing, the taxpayer reiterated the contents of the reply filed in form DRC-06. On scrutiny of the same, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. Since, the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed, with the direction to deposit the amount mentioned in DRC-07 within one month from the date of receipt of this demand notice, failing which recovery proceedings w/s 79 of CGST Act will be initiated and the actions as per law will be initiated without further reference." The Proper Officer has opined that the reply is unsatisfactory.

5. The observation in the impugned order dated 30.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply.

6. Proper officer had to at least consider the reply on merits and then form an opinion whether the explanation was sufficient or not. He merely held that no proper reply/explanation has been received which ex-facie shows that proper officer has not even looked at the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details.

8. In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly,

the impugned order dated 30.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

9. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner within a period of one week from today. On such intimation being given, petitioner shall furnish the requisite explanation and documents within one week thereof. Thereafter, the Proper Officer shall re-adjudicate the show cause notice within a period of two weeks after giving an opportunity of personal hearing.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties, are reserved.

11. The challenge to Notification No.9 of 2023 is left open.

12. Petition is disposed of in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru & Amit Mahajan, J.J.]

WPC No. 15685 of 2022

Ramky Infrastructure Limited ... Petitioner

Versus

Commissioner of Trade & Taxes ... Respondent

Date of Order: 20.07.2023

WHETHER LIMITATION OF SECTION 38 OF DVAT ACT OF TWO MONTHS FOR ISSUE OF REFUND IS SACROSANCT?

HELD – Yes.

Affirmed by Hon'ble Supreme Court of India vide order dated 20.10.2023 in Special Leave to Appeal (C) No(s). 22814/2023.

Present for Petitioner : Mr. Rajesh Jain & Mr. Virag Tiwari, Advs.

Present for Respondent : Mr. Satyakam, ASC

ORDER

Vibhu Bakhru, J

Introduction

1. The petitioner has filed the present writ petition, inter alia, praying that the respondent be directed to refund the amount of ₹54,58,897/- , along with interest with effect from 01.06.2015. The said sum of ₹54,58,897/- as claimed by the petitioner, relates to the fourth quarter of the Financial Year 2013-14 and was included in the petitioner's claim for refund of ₹2,64,77,458/-, in its revised return of Value Added Tax for the fourth quarter of the Financial Year 2013-14, furnished on 31.03.2015. The petitioner claims that in terms of Section 42 of the Delhi Value added Tax Act, 2004 (hereafter 'the DVAT Act'), it is entitled to interest on the said amount of ₹54,58,897/- with effect from 01.06.2015, that is, two months after filing the revised return.

Factual Context

2. The petitioner is a limited company engaged in the business of development of the infrastructural sector and was awarded civil construction works for various projects in Delhi, namely, Mangolpuri DMSW Project, Narela Power Project, DSIIDC Residential Flats Project, Bawana Power Projects, and Najafgarh Drain Project, to name a few.

3. For the purposes of complying with his obligations under the DVAT Act as well as the Central Sales Tax Act, 1956 (hereafter 'the CST Act'), the petitioner applied for and was registered with the Department of Trade and Taxes, Delhi (hereafter 'the Department') on 05.03.2007. The petitioner was assigned TIN 07510324123.

4. On 27.05.2014, the petitioner filed its return under the requisite form (Form DVAT 56) for the fourth quarter of the Financial Year 2013-14 claiming a refund of ₹2,59,88,302/-. Thereafter, the petitioner filed a revised return in Form DVAT 56 on 31.03.2015, enhancing its claim of refund to ₹2,64,77,458/-. The petitioner claims that on the date of filing of its return, there were no amounts due for any period either under the DVAT Act or the CST Act.

5. On 07.06.2014, and 15.05.2014 notices (in all twenty-four in number) for default assessments of tax and interest were issued under Sections 32 and 33 of the DVAT Act, for various tax periods falling during the Financial

Year 2012-13. On 15.06.2015, notices for default assessments were framed for tax periods falling within the Financial Year 2013-14 by the Department. These default assessments were made alleging mismatch in the Input Tax Credit (ITC), due to mismatch between purchases made by the petitioner and sales shown by the registered selling dealer. The Department raised a demand of additional tax amounting to ₹54,58,897/- on account of the aforesaid count. In addition, the Department also imposed a penalty of ₹32,600/- on the petitioner.

6. The petitioner claims that on 10.10.2015, the petitioner filed its objections in respect of the default assessments for the tax periods falling within the Financial Years 2012-2013 and 2013-2014, under Section 74 of the DVAT Act before the Objection Hearing Authority (hereafter 'the OHA'). The petitioner claims that it simultaneously also pursued the Department for release of the refund as claimed by it in its revised return in, respect of the fourth quarter of the Financial Year 2013-14. There is a controversy as to whether the petitioner had filed the objections, on 10.10.2015 as claimed, or later. Although, it is contended on behalf of the Revenue that the objections were filed later;

it is conceded that there is no material to substantiate the said contention. Mr Satyakam, learned counsel who appeared for the Revenue, states that the relevant records are not traceable and it is not possible to ascertain the date on which the objections were filed. He also clarified that the date of filing of the objections (30.09.2019) as reflected in the tabular statement set out in paragraph no. 5 of the Revenues application (CM No. 7916/2023) is not the date of filing of the objections but the date of communications issued. We therefore, accept that the Petitioner had filed objections under Section 74 before the OHA on 10.10.2015, as claimed.

7. Since the petitioner's claim for refund was not processed, the petitioner filed a writ petition before this Court (being *W.P.(C) No. 7324/2017 captioned Ramky Infrastructure Limited v. Commissioner of Trade and Taxes*). The said petition was taken up for hearing on 08.09.2017. On the said date, the statement was made on behalf of the respondent that the petitioner's refund would be processed and the refund order would be issued within a period of four weeks from the said date. The said statement was noted and this Court, by an order dated 08.09.2017, directed that the refund along with interest be paid directly to the account of the petitioner within two weeks, thereafter.

8. The petitioner's claim was not processed within the period as stipulated in the aforementioned order dated 08.09.2017. Resultantly,

the petitioner was constrained to file a Contempt Case (being Cont. Cas. 736/2017) under Section 11 read with Section 2(b) of Contempt of Courts Act, 1971. In the aforementioned contempt petition filed on 28.10.2017, the petitioner, inter alia, prayed that directions be issued for the refund of ₹2,64,77,458/- along with interest. While the said proceedings were pending, on 30.10.2017, the petitioner's claim for refund was partly processed and the Department granted a refund of ₹2,40,32,088/-, which included interest amounting to ₹30,46,127/-. The refund amount was computed after adjusting an amount of ₹54,91,497/- (₹54,58,897/- on account of additional tax under the default assessment notices and ₹32,600/- on account of penalty). The contempt petition was, thereafter, dismissed by this Court by an order dated 16.07.2018.

9. The petitioner prevailed in its objections before the OHA impugning the additional demands raised pursuant to the default assessment of tax and interest for the various periods falling within the Financial Years 2012-13 and 2013-14. By orders dated 12.07.2022, the OHA set aside the said demands. Copies of the orders dated 12.07.2022 placed on record also indicate that the OHA had reviewed the earlier assessments under Section 74B(5) of the DVAT Act.

10. Thereafter, the petitioner issued a letter dated 12.09.2022 claiming release of the amount of ₹54,58,897/- along with interest that had been withheld on account of the assessments under Sections 32 and 33 of the DVAT Act, as noted above.

11. The petitioner's claim for refund was not processed. Aggrieved by the same, the petitioner has preferred the present writ petition.

12. It is relevant to note that in the meantime, the additional demands aggregating to ₹10,43,918/- have been raised relating to the Financial Year 2013-14 (demand of ₹6,50,434/- on account of tax and interest; and ₹3,93,484/- on account of penalty). These demands were reflected as raised on 04.09.2018. The petitioner claims that on 02.11.2018, it filed objections against the said demands and that the said objections are pending consideration.

13. This petition was listed before this Court on 15.11.2022. This Court had briefly noted the petitioner's grievances and issued notice. Mr Satyakam, learned counsel had appeared on behalf of the Department on advance notice and had accepted the notice. He had sought time to take instructions and also contended that in terms of Rule 57 read with Rule 34 of the Delhi Value Added Tax Rules, 2005 (hereafter 'the DVAT Rules'),

the petitioner was required to apply for the refund in Form DVAT 21. This was contested by the learned counsel for the petitioner. However, without considering the rival contentions, this Court granted liberty to the petitioner to file Form DVAT 21, claiming refund without prejudice to its rights and contentions.

14. In terms of the liberty granted by this Court, the petitioner made an application in Form DVAT 21 seeking refund of the amount of ₹54,58,897/- along with interest, for the fourth quarter of the Financial Year 2013-14.

15. The petitioner's claim for refund was considered and the Joint Commissioner of the Department of Trade and Taxes, passed an order on 01.02.2023 in Form DVAT 22 granting a refund of the amount of ₹44,14,979/- after adjustment of an amount of 10,43,918/-. The petitioner's claim for interest was partly allowed to the extent of ₹7,983/- being the interest on the amount of ₹44,14,979/- computed from 15.01.2023 (that is, two months from the date of filing of Form DVAT 21), till the date of the order.

16. Whilst the petitioner claims that it is entitled to an interest on the refund of tax with effect from 01.06.2015, that is, on expiry of two months from the date of filing of the revised return; the respondent claims that the petitioner is entitled to an interest only with effect from two months, after filing an application for the refund in Form DVAT 21. According to the respondent, no interests were payable on the amounts as adjusted, on account of the outstanding demands, notwithstanding that the same were set aside subsequently.

17. The only controversy, that is, required to be addressed by this Court is whether the petitioner's claim for interest on the refund is required to be reckoned with reference to the date of filing its revised return.

Submissions

18. Mr Rajesh Jain, learned counsel appearing for the petitioner referred to the decision of the Co-ordinate Bench of this Court in *ITD-ITD Ltd CEM JV v. Commissioner of Trade and Taxes: 2019 SCC Online Del 9568* and on the strength of the said decision submitted that the demands raised subsequent to the claim for refund cannot adversely affect the petitioner's claim for refund. He also relied on the decision in the case of *IJM Corporation Berhad & Ors. v. Commissioner of Trade and Taxes: (2017) SCC Online Del 11864*. He further submitted that the controversy involved in the present case was covered by the decision of the Co-ordinate Bench

of this Court in *Corsan Corviam Construction S.A-Sadbhav Engineering Ltd. JV v. Commissioner of Trade and Taxes: 2021 SCC OnLine Del 3788*.

19. Mr Satyakam, learned counsel appearing for the respondent countered the aforesaid submissions. He submitted that the claim for the refund could be processed only once the petitioner had made an application in Form DVAT 21. He submitted that the default assessment orders would supersede the petitioner's returns and the same could no longer be considered as assessments for the purposes of processing the refund or the interest, thereon. He submitted that the petitioner's claim for the refund would arise pursuant to the orders setting aside the said default assessments and therefore, in terms of Rule 34(4) of the DVAT Rules, the petitioner would require to claim the refund in Form DVAT 21 along with a certified copy of a judgment of a Court or an order setting aside the default assessments. He also referred to the decision in the case of *IJM Corporation Berhad & Ors. v. Commissioner of Trade and Taxes (supra)*. He submitted that setting aside of the default assessments pursuant to the orders passed by the OHA under Section 74 of the DVAT Act does not revive the returns. He contended that in such cases, the petitioner's claim for refund would arise directly as a result of the orders passed by the OHA under Section 74 of the DVAT Act and not on account of the return furnished by the assessee. He also submitted that similarly, if the petitioner became entitled to the refund on prevailing in the appeals either before the Appellate Tribunal under Section 76 of the DVAT Act or before this Court under Section 81 of the DVAT Act; the petitioner's entitlement to the refund would get instituted pursuant to the said orders. In terms of Rule 57 of the DVAT Rules, the refund so payable, is required to be processed in accordance with Rule 34 of the DVAT Rules.

Reasoning And Conclusion

20. At the outset, it would be relevant to refer to Section 38 of the DVAT Act, which contains provisions regarding refunds. The relevant extract of the said Section is set out below:

> **"38 Refunds**
>
> (1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.
>
> (2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

(a) refunded to the person, –

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act, the amount shall be carried forward to the next tax period as a tax credit in that period

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act, within fifteen days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).

(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to –

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under section 59; or

(c) furnish returns under section 26 and section 27; or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956, shall be excluded.

xxx xxx xxx”

21. In terms of Sub-section (1) of Section 38 of the DVAT Act, the Commissioner is obliged to refund the amount of tax, penalty or interest if paid by a person in excess of the amount due from him. In terms of Sub-section (2) of Section 38 of the DVAT Act, the Commissioner is required to apply the excess amount due to be refunded towards the recovery of any other amount due under the DVAT Act or the CST Act. Sub-section (3) of Section 38 of the DVAT Act requires that the amount remaining after adjustments under Sub-section (2) of Section 38 of the DVAT Act be either refunded to the person in terms of Clause (a) of Sub-section (3) or, at the option of the taxpayer, be carried forward as tax credit, to the next tax period in terms of Clause (b) of Sub-section (3) of Section 38 of the DVAT Act.

22. It is also relevant to refer to Rule 34 of the DVAT Rules, which provides for refund of excess payment. Rule 34 of the DVAT Rules is set out below:

"34. Refund of excess payment

(1) A claim for refund of tax, penalty or interest paid in excess of the amount due under the Act (except claimed in the return) shall be made in Form DVAT-21, stating fully and in detail the grounds upon which the claim is being made.

(2) Only such claim shall be made in Form DVAT-21 that has not already been claimed in any previous return. A claim for refund made in Form DVAT-21 shall not be again included in the return for any tax period.

(3) The Commissioner may, for reasons to be recorded in writing, issue notice to any person claiming refund to furnish security under sub-section (5) of section 38, in Form DVAT -21A, of an amount not exceeding the amount of refund claimed, specifying therein the reasons for prescribing the security.

(4) Where the refund is arising out of a judgment of a Court or an order of an authority under the Act, the person claiming the refund shall attach with Form DVAT-21 a certified copy of such judgment or order.

(5) When the Commissioner is satisfied that a refund is admissible, he shall determine the amount of the refund due and record an order in Form DVAT-22 sanctioning the refund and recording the

calculation used in determining the amount of refund ordered (including adjustment of any other amount due as provided in sub-section (2) of section 38).

(5A) The order for withholding of refund/furnishing security under section 39 shall be issued in Form DVAT-22A.

(6) Where a refund order is issued under sub-rule (5), the Commissioner shall, simultaneously, record and include in the order any amount of interest payable under sub-section (1) of section 42 for any period for which interest is payable.

(7) The Commissioner shall forthwith serve on the person in the manner prescribed in rule 62, a cheque for the amount of tax, interest, penalty or other amount to be refunded along with the refund order in Form DVAT-22:

PROVIDED that the Commissioner may transfer the amount of refund through Electronic Clearance System (ECS) in the bank account of the dealer.

(8) No refund shall be allowed to a person who has not filed return and has not paid any amount due under the Act or an order under section 39 is passed withholding the said refund."

23. In terms of Rule 34(1) of the DVAT Rules, a claim for refund of tax, penalty or interest paid in excess of the amount due under the DVAT Act is required to be made in Form DVAT 21 setting out the grounds for claiming such a refund. Sub-rule (2) of Rule 34 of the DVAT Rules, expressly provides that a claim in Form DVAT 21 is required to be made only if it is not made in a previous return. Thus, once a person has furnished a return claiming a refund, he is not required to file a fresh Form 21, for making any fresh claim.

24. Rule 34(2) of the DVAT Rules must be read in conjunction with Section 38(3)(a) of the DVAT Act. It is clear from the plain language of Section 38(3)(a) of the DVAT Act that the refund claimed by a person in respect of any tax period is required to be processed within a period of one month or two months as the case may be, from the date of furnishing the return or making the claim of the return. In the event the taxpayer furnishes a return reflecting a refund of tax paid, for any period, he is not required to make further claim for such refund by filing Form DVAT 21. This is clear from the plain language of Rule 34(2) of the DVAT Rules.

25. There are two facets to the controversy in this case. The first relates to the requirement of adjusting the pending dues from the amount of refund due to a tax payer. The question being, whether in cases of such an adjustment, a tax payer is required to make a fresh claim notwithstanding, that he had furnished a return claiming such a refund. The second relates to the date when the amount of refund is payable for the purposes of Section 42 of the DVAT Act.

26. The language of Section 38(2) of the DVAT Act indicates the scheme of application of an amount refundable to a person towards the outstanding dues. It requires the Commissioner to apply the excess amount due to a taxpayer towards recovery of any other amount due under the DVAT Act or under the CST Act. Clearly, if there is a crystalized demand, which is due and payable by any taxpayer, the Commissioner is required to first apply the amount refundable for satisfaction of that liability. If any amount remains after the discharge of such dues, the same is required to be refunded within the stipulated period. In other words, the refund would be made only to the extent of the amount that remains payable after discharge of any other amount due from the taxpayer.

27. It is apparent that the use of the words "*any other amount due*" in Section 38(2) of the DVAT Act refers to the amount due and outstanding at the material time, which is other than that covered under the assessment or quantification resulting in the claim for the refund either made separately or as reflected in the return furnished by the taxpayer.

28. As noted above, if the taxpayer does not elect to carry forward the refund to the next period in terms of Clause (b) of Section 38(3) of the DVAT Act; the refund is required to be processed within the period as specified under Clause (a) of Section 38(3) of the DVAT Act. The application of the amount of refund payable towards any other amount due is clearly of such outstanding amounts that satisfies the two conditions. First, that the amount is due and payable when the refund is required to be processed, that is, within the period of one month or two months, as specified under Section 38(3)(a) of the DVAT Act. And second, that the dues are other than that covered under the quantification, determination or assessment resulting in the claim of the refund.

29. The other cases where the refund is not required to be disbursed is where the Commissioner has issued a notice under Section 58 of the DVAT Act or has sought additional information under Section 59 of the DVAT Act. In such cases, the refund is required to be carried forward to the next period as tax credit, in terms of Sub-Section (4) of Section 38 of the

DVAT Act. In terms of Section 38(5) of the DVAT Act, the Commissioner may demand security from a person pursuant to the powers conferred under Section 25 of the DVAT Act, within the period of fifteen days from the date on which the return was furnished or a claim for refund is made. In terms of Sub-Section (6) of Section 38 of the DVAT Act, the Commissioner is required to grant the refund within 15 days from the date the dealer furnishes such security to the satisfaction.

30. It is clear from the above that the scheme of Section 38 of the DVAT Act requires adherence to strict timelines.

31. By virtue of Section 37 of the DVAT Act if the amount of refund payable or part thereof, is applied for the payment of any other amount due under the DVAT Act, the liability in respect of the said due would stand discharged to the extent that the amount refundable has been so applied. The word 'apply' as used in Section 38(2) of the DVAT Act denotes the payment and discharge of the said liability to the extent that the amount refundable, or part thereof, is so applied. Application of the amount refundable against any other amounts due is in the nature of recovery of the said amount and in a manner of speaking, amounts to set off of the amount due payable to a person against a crystalized debt, recoverable from him.

32. If the taxpayer is aggrieved by the determination or assessment of the amount recoverable from him, it is open for him to avail such remedies as available to call into question such assessment or quantification. But he cannot resist recovery of the amount that is due and payable by him by adjustment, in terms of Section 38(2) of the DVAT Act, from the amounts refundable to him. This is, obviously, subject to the Commissioner making such recovery strictly in compliance with the provisions of Section 38(2) of the DVAT Act.

33. Processing of the refund in terms of Sections 38(2) and 38(3)(a) of the DVAT Act, will exhaust and discharge the taxpayer's claim for the refund in full, which is either made by furnishing a return or otherwise.

34. As stated earlier, if the assessee seeks to dispute the liability against which the amount refundable has been applied; he may avail of such remedies as available but the same shall obviously be on the footing that the amount of liability, to the extent of the amount of refund applied, has been discharged by payment. The taxpayer's claim for consequential refund of the amount recovered in terms of Section 38(2) of the DVAT Act, would necessarily be a separate claim and cannot be considered as

subsumed in the earlier claim for the refund by the taxpayer, either by furnishing a return or otherwise. As stated earlier, that claim for the refund (under a return furnished by the taxpayer or made separately by filing Form DVAT 21) will stand discharged and satisfied on being processed in terms of Sections 38(2) and 38(3)(a) of the DVAT Act.

35. Having stated the above, it is also necessary to state that if the application of the amount refundable or any part thereof, is not towards an amount that was outstanding and payable at the material time but towards a demand, which is suspended in terms of Section 35(2) of the DVAT Act, or is, otherwise not recoverable under the machinery provisions for recovery of tax; the taxpayer's claim for the refund would remain unsatisfied. It would be erroneous to assume that the taxpayer's remedy would be to re-apply for the refund after successfully challenging such an appropriation.

36. In terms of the aforesaid scheme, a claim for refund made by furnishing a return (which is self assessment under Section of 31 of the DVAT Act) would stand satisfied and exhausted only if the same is processed strictly in accordance with Section 38 of the DVAT Act. If the refund is not processed within the stipulated time or if the amount refundable is sought to be appropriated against other amounts that were not due and payable at the material time, the taxpayer would be within its right to pursue its claim for refund, either before the Commissioner or by escalating its grievance to the Appellate Authorities and the Courts.

37. The Revenue's contention that in such cases, the taxpayer's claim for the refund arises out of the appellate orders and therefore does not relate back to the date when it was made, either under a return or otherwise, is erroneous, and we reject the same.

38. The taxpayer's remedies and claim in respect of any amount correctly applied in terms of Section 38(2) of the DVAT Act – that is against other amounts due outside the rubric of the return furnished or its claim for the refund – would follow a different trajectory. As stated above, in such cases the taxpayer's remedies would proceed on the basis that the amounts due and payable have been paid by the taxpayer. If the taxpayer succeeds in his remedies in setting aside the liability (either partly or in whole) against which the amounts refundable (or part thereof) have been correctly applied in terms of Section 38(2) of the DVAT Act; he would be entitled to the consequential relief of a refund in respect of that amount due, to the extent that the same was satisfied by appropriating an amount refundable to him. In such cases, it follows that the taxpayer's refund would arise from such orders setting aside the cause for the outstanding demand

and not from the return furnished by him, which was correctly processed in terms of Section 38 of the DVAT Act. In such cases the assessee would have to apply for a refund in Form DVAT 21. The same would not be covered under the return furnished for the claim made, which was correctly processed under Section 38 of the DVAT Act.

39. The petitioner's remedy against the amounts withheld or appropriated towards dues that arise from the same subject as the petitioner's claim for a refund would follow a different course. The same would, essentially, be in the nature of the Commissioner's decision to decline the payment of the refund on account of a subsequent assessment, and not an appropriation towards "other amount due" as contemplated under Section 38(2) of the DVAT Act. If the petitioner prevails in his remedies against such a decision of the Commissioner to decline the payment of the refund on the basis of his assessment, or to not process the same, the petitioner's entitlement to the refund would obviously relate back to the period as specified under Section 38(3) of the DVAT Act. This has been explained by the Co-ordinate Bench of this Court in *Corsan Corviam Construction SA-Sadbhav Engineering Ltd. JV v. Commissioner of Trade and Taxes (supra)* as in a manner of speaking, removing the cause that had eclipsed the taxpayer's claim for refund. In such cases, there is no requirement for a taxpayer to make a separate claim for refund by filing Form DVAT 21. The refund claim as reflected in the return would require to be discharged notwithstanding, that the taxpayer has not filed Form DVAT 21.

40. Mr Satyakam's contended that once an assessment has been framed by the concerned authorities under Sections 32 and 33 of the DVAT Act, the return filed by the taxpayer stands superseded. He contends that, if the taxpayer succeeds in challenging the assessment so framed and prevails in establishing that he is entitled to the refund as claimed in the return, the refund would be payable two months from the date of filing the claim for refund in Form DVAT 21, along with the copies of the order passed by the Appellate Authority. According to him such refund is payable pursuant to the order setting aside or modifying the assessments under Section 32 or Section 33 of the DVAT Act, and not pursuant to the return filed.

41. We are unable to accept the aforesaid contention. The same runs contrary to the scheme of the DVAT Act. If the refund claimed by the taxpayer in his return is not paid on account of the assessment and re-assessment framed under Sections 32 or 33 of the DVAT Act for the same tax period and the petitioner is successful in upsetting the same either pursuant to the objections filed under Section 74 of the DVAT Act, or in an

appeal filed before the Appellate Authority under Section 76 of the DVAT Act, the self-assessment (return furnished) would stand confirmed and the assessee's claim would be required to be processed. This is so because, if the petitioner prevails in its objections under Section 74 of the DVAT Act, or appeals under Section 76 of the DVAT Act, that would amount to vindicating its stand that the assessments framed are erroneous and the refund claimed under the return should have rightly been paid within the time as stipulated under Section 38(3)(a) of the DVAT Act. Even in cases where the assessments are reviewed under Section 74B of the DVAT Act and as a consequence, the refund as reflected in the return is required to be made, the refund would be traceable to the return furnished by the taxpayer.

42. There is merit in Mr Satyakam's contention that if a refund arises out of a judgment of a Court or an order of an authority under the DVAT Act, the person claiming the refund is required to attach a certified copy of such a judgment or an order along with Form DVAT 21 in terms of Rule 34(4) of the DVAT Rules. However, Rule 34(4) of the DVAT Rules is applicable in respect of refund claims that arise out of orders passed by the authorities or a judgment passed by a Court do not arise from the return furnished, by a taxpayer. Such cases also include those cases, where a part or whole of the refund claimed in a return filed by the taxpayer has been correctly appropriated towards an existing liability in terms of Section 38(2) of the DVAT Act and the taxpayer succeeds in its challenge relating to the said liability. In addition, the reference to orders of an authority and a judgment or a Court under Rule 34(4) would also include cases, where the amount of tax, penalty and interest are refundable to the taxpayers, but not in terms of the return furnished by the taxpayer. The doctrine of Harmonious Construction requires that provisions of a statute not be read in isolation but in conformity with the scheme of the statute so as to avoid any conflict with the other provisions. This interpretation of Sub-rule (2) and Sub-rule (4) of Rule 34 of the DVAT Rules is consistent with the said doctrine.

43. The second aspect relates to the date from which interest is required to be computed.

44. Section 42 of the DVAT Act contains provisions regarding the payment of interest. The said Section is set out below:

"42. Interest

(1) A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual

rate notified by the Government from time to time, computed on a daily basis from the later of –

(a) the date that the refund was due to be paid to the person; or

(b) the date that the overpaid amount was paid by the person, until the date on which the refund is given.

PROVIDED that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):

PROVIDED FURTHER that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

Explanation: If the delay in granting the refund is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

(2) When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.

(3) Where the amount of tax including any penalty due is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.

(4) Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.

(5) The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen.”

45. In terms of Section 42(1) of the DVAT Act, a person is entitled to interest from the date that the refund was due to be paid or the date when the amount was over paid by the person, whichever is later. In the present case, undisputedly, the date on which the refund was due was later. According to the Revenue, the return furnished by a taxpayer, would stand superseded by the subsequent assessments under Sections 32 or 33 of the DVAT Act and, if no refund is due in terms of such assessments, the refund would be payable only after the taxpayer has succeeded in its challenge for setting aside or modifying the assessments framed under Sections 32 and 33 of the DVAT Act. It is contended that if the taxpayer secures the orders for setting aside or modifying the said assessments, the refund would be payable as a consequence of such orders. Thus, in such cases, the taxpayer would have to once again make a claim by filing Form DVAT 21 and the refund would be payable, thereafter. According to the Revenue, interest would be required to be calculated from two months after filing of Form DVAT 21.

46. This aforesaid contention is unmerited. Once the taxpayer has succeeded in upsetting the assessments framed under Sections 32 or 33 of the DVAT Act, which results in vindicating its claim for refund either in part or as a whole, as claimed by furnishing a return, interest under Section 42(1)(a) of the DVAT Act would be payable from such date as the refund was due to be paid to the taxpayer. The expression, "*the date that refund was due to be paid*" must be construed as the date when such a refund ought to have been paid to the taxpayer. If the taxpayer succeeds in vindicating its stand that its claim for the refund was correct and that the subsequent assessments framed by the concerned authorities for the same tax period were erroneous or unjustified; it would follow that the taxpayer should have been refunded the amount claimed and that interest would be payable from the said date. In cases where the taxpayer partially succeeds and its claim for refund has been upheld, not to the extent of the entire amount but part thereof, the taxpayer would be entitled to interest only for the part of the said amount, which has been sustained, pursuant to the subsequent proceedings. However, it would be erroneous to proceed on the basis that the amount of refund, which has been sustained by the authorities or the Court in the subsequent proceedings, was not payable at the material time when the taxpayer had made a claim.

47. The Revenue's interpretation of Section 42(1)(a) of the DVAT Act would clearly lead to arbitrary and unjustified results. The taxpayer whose return is erroneously rejected and an unjustified assessment has been made, which is subsequently set aside would be placed in a disadvantageous position viz-a viz the taxpayer, whose return is correctly

processed. It would accord premium to unjustified action of the concerned authorities in framing erroneous assessments and a corresponding penalty on the taxpayer. Clearly, this is not the legislative intent of Section 42(1) of the DVAT Act. It is also relevant to refer to the second proviso to Section 42(1) of the DVAT Act, which also clarifies that if the amount of refund is enhanced or reduced as the case may be, the interest shall be enhanced or reduced accordingly. The second proviso makes it amply clear that an assessee is entitled to interest from the date when the amount ought to have been paid to him. If the amount of refund is reduced or denied and the taxpayer succeeds in the subsequent proceedings either in part or whole; in terms of the second proviso, the interest is required to be varied accordingly.

48. In the present case, the petitioner had filed its revised return for the fourth quarter of the Financial Year 2013-14 on 31.03.2015. However, prior to that (on 15.05.2014 and 07.06.2014) default assessments under Section 32 and 33 of the DVAT Act were framed for various tax periods falling within the Financial Year 2012-13. The said default assessments were framed on 15.05.2014 and 07.06.2014. The petitioner had not filed any objections to the said assessments at the material time. In terms of Section 35 of the DVAT Act, the demands that were assessed in respect of the tax periods in the Financial Year 2012-13 were payable and outstanding. However, the refund due to the petitioner was not applied towards the dues pertaining to the amounts due against demands raised in respect of the tax periods in the Financial Year 2012-13, at the material time. Thus, the same were required to be disbursed. Insofar as the demands for assessments for the Financial Year 2013-14 are concerned, the assessments under Sections 32 and 33 of the DVAT Act were framed subsequent to the last date of processing the petitioner's claim for refund and the refund could not have been withheld at the material time.

49. The petitioner had objected to the said assessments framed under Sections 32 and 33 of the DVAT Act by filing objections under Section 74 of the DVAT Act, on 10.10.2015. In terms of Section 35(2) of the DVAT Act the recovery of the said demands, thereafter, were required to be suspended. The petitioner had prevailed in its objections in respect of the said demands and the same were, subsequently, reviewed and set aside by an order dated 12.07.2022.

50. As stated above, there is no dispute that the petitioner's refund was required to be paid within a period of two months from the date of filing the revised return. The respondent had clearly failed to act in accordance with Section 38 of the DVAT Act as it had not processed the petitioner's claim within the stipulated period of two months.

51. The withholding of the amount due to the petitioner was in breach of Section 38 of the DVAT Act. Thus, interest would be payable to the petitioner on the said amount from 01.06.2015, as claimed.

52. Whilst the Department has processed the petitioner's claim for the refund of ₹44,14,979/-. The Department has withheld a sum of ₹10,43,918/- [₹6,50,434/- as tax and interest and ₹3,93,484/- on account of penalty] for the tax period covered under the Financial Year 2013-14. The demand for the same was raised on 04.09.2018. However, the said amount is not recoverable as the petitioner had filed its objections against the said demands on 02.11.2018. As stated above, it is impermissible to withhold refund towards demands which are not recoverable.

53. In view of the above, we consider it apposite to direct the concerned authority to refund the remaining withheld amount of amount ₹10,43,918/- along with interest with effect from 01.06.2015 and recompute the interest for the amount of ₹44,14,979/- as refunded in terms of the order dated 01.02.2023 and refund the interest due after adjusting the amount of ₹7,983/- already disbursed.

54. The petition is allowed in the aforesaid terms.

IN THE HIGH COURT OF RAJASTHAN AT JODHPUR

[Vijay Bishnoi & Praveer Bhatnagar, JJ.]

D.B. Civil Writ Petition No. 4236 of 2023

M/s. R.K. Jewelers
Through Sole Prop. Ramesh Kumar Soni ... Petitioner

Versus

UOI & Ors. ... Respondents

Date of Order: 26.04.2023

WHETHER REGISTRATION CERTIFICATE CAN BE CANCELLED FOR NON-FILING OF RETURNS?

THE IMPUGNED OFFENDING WORDS, "OR THE VALUE WHICH IS 1.5 TIMES THE VALUE OF LIKE GOODS DOMESTICALLY SUPPLIED BY THE SAME OR, SIMILARLY PLACED SUPPLIER" APPEARING IN RULE 89(4C) OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 AS AMENDED VIDE PARA 8 OF THE NOTIFICATION NO.16/2020-CENTRAL TAX(F.NO.CBEC- 20/06/04/2020-GST) DATED 23.03.2020 IS DECLARED ULTRA VIRES THE PROVISIONS OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND THE INTEGRATED GOODS AND SERVICES TAX

ACT, 2017 AS ALSO VIOLATIVE OF ARTICLES 14 AND 19 OF THE CONSTITUTION OF INDIA AND RESULTANTLY, THE SAME ARE HEREBY QUASHED;

THE IMPUGNED ORDER AT ANNEXURE-C DATED 30.6.2020 PASSED BY THE 3RD RESPONDENT IS HEREBY QUASHED;

HELD – The Court is of the opinion that the Petitioner is at liberty to file an application for restoration of registration in view of the Circular dated 31.03.2023 and also lodge its claim for availment of Input Tax Credit.

Present for Petitioner : Mr. Prahlad Singh

Present for Respondent : Mr. Hemant Dutt & Mr. Kuldeep Vaishnav

ORDER

This writ petition has been filed by the petitioner-firm challenging the order dated 02.02.2022 passed by the respondent No.4, whereby the GST registration of the petitioner-firm has been cancelled on the ground of non-filing of GST return by it. The appeal filed by the petitioner-firm against the said order has also been rejected by the Appellate Authority.

During the pendency of this writ petition, the competent authority under the Goods and Services Tax Act, 2017 had issued a notification dated 31.03.2023 and as per the said notification, on the conditions being fulfilled, the cancellation of registration effected on the ground of non-filing of GST return, could be revoked.

This Court is of the opinion that the case of the petitioner firm covers with the notification dated 31.03.2023 and the petitioner firm can move an application before the competent authority with a prayer for restoration of its GST registration subject to fulfillment of the conditions mentioned in the said notification.

In such circumstances, this writ petition is disposed of with liberty to the petitioner-firm to file application for restoration of its GST registration before the competent authority, which shall consider and decide the application filed by the petitioner-firm in the light of the notification dated 31.03.2023 issued by the competent authority under the Goods and Services Tax Act, 2017 expeditiously.

It is made clear that when the competent authority considers the issue of revocation of cancellation of petitioner firm GST registration under the notification dated 31.03.2023, the petitioner-firm, shall be entitled to lodge

its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
[S. R. Krishna Kumar, J.]

WP No. 13185 of 2020 (T-Res)

M/s Tonbo Imaging India Pvt. Ltd. ... Petitioner

Versus

UOI & Ors. ... Respondents

Date of Order: 16.02.2023

WHETHER RULE 89(4)(C) OF THE CGST RULES CAN BE DECLARED ULTRA VIRES AS AMENDED VIDE PARA 8 OF THE NOTIFICATION NO. 16/20202-CT DATED 23.03.2020?

THE WRIT PETITION IS HEREBY ALLOWED;

THE IMPUGNED OFFENDING WORDS, "OR THE VALUE WHICH IS 1.5 TIMES THE VALUE OF LIKE GOODS DOMESTICALLY SUPPLIED BY THE SAME OR, SIMILARLY PLACED SUPPLIER" APPEARING IN RULE 89(4C) OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 AS AMENDED VIDE PARA 8 OF THE NOTIFICATION NO.16/2020-CENTRAL TAX(F.NO.CBEC- 20/06/04/2020-GST) DATED 23.03.2020 IS DECLARED ULTRA VIRES THE PROVISIONS OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 AS ALSO VIOLATIVE OF ARTICLES 14 AND 19 OF THE CONSTITUTION OF INDIA AND RESULTANTLY, THE SAME ARE HEREBY QUASHED;

HELD – Page 2 Para Order (a) and (b) type here.

Present for Petitioner : Mr. Sri. V. Raghuraman, Sr. Counsel for Sri. C.R. Raghavendra, Advocate

Present for Respondents : Smt. Vanitha. K.R. Advocate

ORDER

In this petition, petitioner has sought for the following reliefs:-

a. Issue a writ of declaration or any other appropriate writ or direction declaring the provision of Rule 89(4) (C) of the CGST Rules, as amended vide Para 8 of Notification 16/2020-CT dated 23.03.2020, enclosed a **Annexure A** as unconstitutional for the reasons stated in the grounds;

b. Issue a writ of declaration or any other appropriate writ or direction declaring the provisions of Explanation to Rule 93 of the CGST Rule, enclosed as **Annexure B** as unconstitutional for the reasons stated in the grounds;

c. Issue a writ of certiorari or any other appropriate writ to quash impugned order passed by Respondent No. 3 in Form GST-RFD-06 dated 30.06.2020, enclosed as **Annexure C** for the reasons stated in the grounds;

d. Issue a writ of mandamus or any other appropriate writ directing the Respondent No. 3 to accept the six refund applications in Form GST-RFD-01 on 25.05.2020, 27.05.2020 and on 28.05.2020 for the tax periods May 2018, July 2018, August 2018, November 2018, December 2018 and March 2019 (enclosed in **Annexures D1, D2, D3, D4, D5 and D6**) and grant refund of taxes in accordance with law along with interest;

And

e. Grant such other consequential relief a this Hon'ble High Court may think fit including refund of amounts paid, if any and the cost of this writ petition.

2. Apart from other issues, the validity of Rule 89(4C) of the Central Goods and Services Tax Rules, 2017 (for short 'the CGST Rules') as amended vide Para 8 of the Notification No.16/2020-CT dated 23.03.2020 is the subject matter of the present petition. Prior to the aforesaid amendment, Rule 89(4C) of the CGST Rules, read as under:-

> "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both".

After amendment w.e.f 23.03.2020, Rule 89(4C) reads as under:-

> "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both"

Factual Matrix of the case:

3. The petitioner - M/s Tonbo Imaging India Pvt Ltd, is engaged in designing, developing, building and deploying various types of advanced imaging and sensor systems to sense, understand and control complex environments. The petitioner is engaged in developing innovative designs in micro-optics, lower power electronics and real-time vision processing to design imaging systems for real world applications in fields of military applications, critical infrastructures for modern day battlefields, unmanned reconnaissance, transport vehicles driving in the dark etc., wherein the customized products provide effective visualization in different and challenging environments.

3.1 The petitioner exported various aforementioned customized / unique products during the period from May 2018 to March 2019. Since exports made by the petitioner are "zero rated" under Section 16 of the Integrated Goods and Services Act, 2017 (for short, 'the IGST Act'), the petitioner filed refund applications with the respondents on 25.05.2020, 27.05.2020 and 28.05.2020 and claimed refund of unutilized input tax credit under Section 54(3)(i) of the Central Goods and Services Act, 2017 (for short 'the CGST Act') read with Rule 89 of the CGST Rules.

3.2 Meanwhile, Rule 89(4)(C) of the CGST Rules having been amended w.e.f 23.03.2020, Show Cause Notices dated 27.05.2020, 03.06.2020 and 04.06.2020 were issued by the respondents on the ground that the petitioner had not given proof, which was required to be given in terms of the amended Rule 89(4)(C) of the CGST Rules and that therefore, the refund claims could not be considered.

3.3 The petitioner submitted replies dated 04.06.2020, 08.06.2020 and 09.06.2020 to the show cause notices inter-alia stating that the amended Rule 89(4)(C) of the CGST Rules would not be applicable in the instant case, as the period for which refund was being claimed (i.e., May 2018 to March 2019) was much prior to the amendment of Rule 89(4)(C) (i.e., on 23.03.2020) and that therefore, the petitioner would be governed by the old/un-amended Rule 89(4)(C) and not the amended Rule 89(4)(C).

3.4 In pursuance of the same, the respondents proceeded to pass the impugned order dated 30.06.2020 rejecting the refund claim of the petitioner, who is before this Court by way of the present petition not only assailing the impugned order but also the validity of Rule 89(4)(C) of the CGST Rules as well as the Explanation to Rule 93 of the CGST Rules.

4. Heard Sri.V.Raghuraman, learned Senior Counsel along with Sri.J.S.Bhanumurthy for the petitioner and Smt.K.R.Vanitha, learned counsel for the respondents-revenue and perused the material on record.

Petitioner's Contentions:

5. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submitted that at the outset, the challenge in the present petition to the validity of the explanation to Rule 93 of the CGST Rules(Relief 'B') was not being pressed into service by the petitioner, who would be restricting its claim to the remaining reliefs sought for in the petition.

5.1 It was submitted that Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 is *ultra vires* and invalid and deserves to be declared unconstitutional and struck down. It was further submitted that the impugned order is illegal, arbitrary and without jurisdiction or authority of law and deserves to be quashed and the respondents be directed to accept/allow the subject refund claims of the petitioner and grant refund of taxes along with interest in favour of the petitioner. Learned Senior counsel elaborated his submissions as under:-

5.2 Rule 89(4)(C) of the CGST Rules is ultra vires Section 54 of the CGST Act read with Section 16 of the IGST Act; the very intention of the zero-rating it to make entire supply chain of "exports" tax free, i.e., to fully 'zero-rate' the exports by exempting them from both input tax and output tax; accordingly, Section 16(3) of the IGST Act allows refund of input taxes paid in the course of making a zero-rated supply, i.e., supplies which covers exports as well as supplies to SEZs. The rule in whittling down such refund is *ultra vires* in view of the well settled principle of law that Rules cannot over-ride the parent legislation.

5.3 Rule 89(4)(C) of the CGST Rules is ultra vires Article 269A read with Article 246A of the Constitution of India as the Parliament has no legislative competence to levy GST on export of goods; neither in Article 246A nor in Article 269A is there a reference to treatment of export of goods or services, while in Article 269A reference is made to import of goods or services or both, particularly when reference to export of goods or services in Article 286 is only for the purpose of placing restrictions on the powers of the State Legislature.

5.4 Rule 89(4)(C) of the CGST Rules is violative of Article 14 and 19(1)(g) of the Constitution of India; it was submitted that the quantum of refund of unutilized input tax credit is restricted only in cases falling under Section 16(3)(a) of the IGST Act, i.e., in cases where export of goods is made without payment of duty under a Bond/Letter of Undertaking(LUT);

however, no such restriction is imposed on cases falling under Section 16(3)(b) of the IGST Act, i.e., in cases where export of goods is made after payment of duty; by virtue of the above, there is a hostile discrimination between two class of persons, viz.,

(i) the class of exporters, who opt to obtain refund of unutilized input tax credit where export of goods are made without payment of duty under a bond/LUT in terms of Section 16(3)(a) of the IGST Act read with Rule 89(4) of the CGST Rules and,

(ii) the class of exporters who opt to obtain refund of tax after payment of duty in terms of Section 16(3)(b) of the IGST Act read with Rule 96A of the rules; the guarantee of equal protection of the laws must extend even to taxing statutes; if person or property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property; if the same class of property or persons similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property or persons.

5.5 It was submitted that Article 14 of the Constitution forbids class legislation; however, Article 14 does not prohibit reasonable classification for the purpose of legislation provided it passes two tests, viz., that the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the group; and that the differentia must have a rational relation with the object sought to be achieved by the statute; it was submitted that the impugned Rule 89(4)(C) of the CGST Rules is arbitrary and unreasonable, in as much as it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act, in that while Section 16 of the IGST Act seeks to make exports tax-free by "zero-rating" them, the impugned Rule 89(4)(C) of the CGST Rules aims to do just exactly the opposite by restricting the quantum of refund of tax available to the expended in making such exports; it was therefore submitted that including domestic turnover in the definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable.

5.6 Insofar as violation of Article 19(1)(g) of the Constitution of India is concerned, it was submitted that in exports, availability of the rotation of funds is essential for the business to thrive; the entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated,

in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies; the incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters who are earning valuable foreign exchange for the country; it was therefore submitted that exporters would have factored in such incentives in the pricing mechanism when they quote and consequently, the restriction of the same by the impugned amended Rule 89(4)(C) would be highly unreasonable.

5.7 Rule 89(4)(C) of the CGST Rules also suffers from the vice of vagueness for the reason that the words "like goods" and "similarly placed supplier" in the impugned Rule 89(4)(C) are completely open-ended and are not defined anywhere in the CGST Act/Rules or the IGST Act/Rules; in this context, it was submitted that considering the business of the petitioner, it is not possible to have any "like goods" and "same or similar placed supplier" for the unique and customized products being manufactured by the petitioner and the preciseness of definitions as found in the customs legislation is missing herein.

5.8 In this context, it was submitted that the impugned Rule fails to clarify, as to what would be the consequence if there are no goods supplied in the domestic market and value of like goods provided by other suppliers is not available or as to what would be the consequences in respect of a supplier who may have different pricing policy for different local customers nor what would be the consequences in respect of a supplier who would be pricing the local goods differently in different states for the same products being exported. It was therefore submitted that when it is impossible for any exporter to show proof of value of "like goods" domestically supplied by the "same or, similarly placed, supplier", the refund itself cannot be denied to such exporter and consequently, Rule 89(4)(C) of the CGST Rules merely being a machinery provision cannot impose a rigorous condition to take away right to obtain refund, which the petitioner is otherwise entitled to in terms of Section 54 of CGST Act read with Section 16 of the IGST Act.

5.9 The impugned Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 is arbitrary and unreasonable, in as much as the possibility of taking undue benefit by inflating the value of the zero-rated supply of goods, cannot be a ground to amend the Rule, which deserves to be declared invalid on this ground also.

5.10 The impugned refund rejection order has been mechanically passed without any application of mind also violative of principles of natural justice; further, the refund claims of the petitioner pertain to periods prior

to 23.03.2020, when Rule 89(4)(C) of the CGST Rules came into force and since the same cannot be given retrospective or retroactive effect, the impugned order deserves to be quashed.

In support of his contentions, learned Senior counsel placed reliance upon the following judgments:-

(i) CIT vs. Taj Mahal Hotel – (1971) 3 SCC 550;

(ii) Bimal Chandra Banerjee vs. State of Madhya Pradesh – 1970) 2 SCC 467;

(iii) Sangram Singh vs. Election Tribunal – AIR 1955 SC 425;

(iv) All India Federation of Tax Practioners vs. Union of India – 2007) 7 SCC 527;

(v) Shayarabano vs. Union of India – (2017) 9 SCC 1;

(vi) Pitambra Books Pvt. Ltd., vs. Union of India (34) – GSTL 196 (DEL);

(vii) Shreya Singal vs. Union of India – (2015) 5 SCC 1;

(viii) Universal Drinks Pvt. Ltd., vs. Union of India – 1984 (18) ELT 207(BOM);

(ix) Deepak Vegetable Oil Industries vs. Union of India – 1991(52) ELT 222 (GUJ);

(x) Hajee K Assiannar vs. CIT – (1971) 81 ITR 423 (KER);

(xi) CIT vs. Vatika Township Pvt. Ltd., - (2014) 367 ITR 466 (SC);

(xii) Verghese vs. DCIT – (1994) 210 ITR 511 (KAR);

(xiii) ACCT vs. Shukla & Brothers – 2010 (254) ELT 6 (SC);

(xiv) Moopil Nair vs. State of Kerala – AIR 1961 SC 552;

(xv) Deputy Commissioner of Income Tax vs. Pepsi Foods Ltd., - (2021) 7 SCC 413;

(xvi) Reckitt Benckiser vs. Union of India – 2011 (269) ELT 194 (J & K);

(xvii) U.P. Power Corporation vs. Sant Steels & Alloys Pvt. Ltd., - (2008) 2 SCC 777;

Respondents' Contentions:

6. Per contra, learned counsel for the respondents-revenue, in addition to reiterating the various contentions urged in the statement of objections submitted that the petition was not maintainable and was liable to be dismissed. It was submitted that the petitioner has not submitted the proof that the export turnover mentioned in the instant claim is 1.5 times the value of like goods domestically supplied by the same or similarly placed supplier and hence, zero-rated turnover declared by the petitioner cannot be accepted for the purpose of calculation of eligible refund amount. Thus repudiating the various contentions of the petitioner, it was submitted that there was no merit in the petition and the same was liable to be dismissed.

Analysis and Findings:

7. Before adverting to the rival contentions and the relevant statutory provisions, a brief overview of the GST scheme is required; in this context, it is relevant to state that the entire scheme of indirect taxes in India has undergone transformation upon introduction of GST with effect from 01.07.2017. This tax is being levied with concurrent jurisdiction of the Centre and the States on the supply of goods or services. For this purpose, the Constitution of India has been amended vide Constitution (101st Amendment) Act, 2016 with effect from 16th September 2016. The Constitutional Amendment Bill specifically mentions that the objective of introducing GST is to avoid cascading effect of taxes.

8. Central Government enacted the CGST Act to provide for levy and collection of tax on supply of goods or service or both where the supply is intra-state supply; so also, the CGST Rules were also framed including the impugned Rule 89(4)(C);

9. Central Government enacted the IGST Act for the purpose of levy and collection of GST on the supply of goods or services or both where the supply is inter-state supply;

10. The State of Karnataka enacted the KGST Act to levy and collect tax on intra-state supply of goods or services or both within the state of Karnataka.

11. GST is a multi-stage tax, as each point in a supply chain is taxed (unless specifically exempted by law) till the goods and services reach the final consumer. This can be demonstrated by the following:

- A manufacturer procures "input goods" and "input services" to manufacturer his goods and would make "outward supply"

to a wholesale supplier. Here, the levy of GST would be on the manufacturer/seller. However, the incidence of GST would be on the wholesale supplier.

- For the wholesale supplier, the goods procured from the manufacturer/seller becomes "input goods". The wholesale supplier would make value additions thereon and make an "outward supply" of the same to the retailer. In doing so, GST is levied on the wholesale supplier, but the incidence of GST, which was earlier on the wholesale supplier, is further passed on to the retailer.
- The goods procured from the wholesale supplier becomes "input goods" for the retail seller. The retail seller would make value additions thereon and make an "outward supply" of the same to the final consumer. In doing the same, GST is levied on the retail seller, but the incidence of GST, which was earlier on the retail seller, is further passed on to the final consumer.
- The supply chain having been terminated, the final consumer will not be able to pass the incidence of tax any further and thus bears the final burden of tax.
- GST is therefore a destination-based tax on consumption of goods and services. It is levied at all stages right from manufacture up to final consumption with 'credit' of taxes paid at previous stages of supply chain available as setoff. In a nutshell, only value addition will be taxed, and burden of tax is to be borne by the final consumer.

12. In the case of *All India Federation of Tax Practitioners Vs Union of India - (2007) 7 SCC 527*, the Apex Court held as under:

> "6. At this stage, we may refer to the concept of "Value Added Tax" (VAT), which is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.
>
> 7. In the light of what is stated above, it is clear that service tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax."

13. In the case of *Union of India v. VKC Footsteps (India) (P) Ltd., - (2022) 2 SCC 603*, the Apex Court held as under:-

"44. The idea which permeates GST legislation globally is to impose a multi-stage tax under which each point in a supply chain is potentially taxed. Suppliers are entitled to avail credit of tax paid at an anterior stage. As a result, GST fulfils the description of a tax which is based on value addition. Value addition is intended to achieve fiscal neutrality and to obviate a cascading effect of taxation which traditional tax regimes were liable to perpetuate. In a sense therefore, the purpose of a tax on value addition is not dependent on the distribution or manufacturing model. The tax which is paid at an anterior stage of the supply chain is adjusted. The fundamental object is to achieve both neutrality and equivalence by the grant of seamless credit of the duties paid at an anterior stage of the supply chain."

Section 16 of the IGST Act, 2017 reads as under:

Zero rated supply.

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the

provisions of section 54 of the Central Goods and Services Tax Act or the rules made there under.

Section 54(3) of the CGST Act, 2017 reads as under:

Refund of tax.

54. (1) Any person claiming refund of any tax……

(2)xxxxxxxxxxxxxxxxxxxxxxx

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty: Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxx

Rule 89(4) of the CGST Rules, 2017 reads as under:

"89. Application for refund of tax, interest, penalty, fees or any other amount.-(1)xxxxxxxxxxxxxxxx

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of subsection

(3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods
+ Turnover of zero-rated supply of services) x Net ITC
÷ Adjusted Total Turnover Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both"

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zerorated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zerorated supply of services for which the supply of services has not been completed during the relevant period;"

14. There is no gainsaying the fact that one of the fundamental principles to make exports competitive in the international market is that taxes are not added to the cost of exports. This intention cannot be carried out by merely exempting the output goods or services for the following reasons:-

- The inputs and input services which go into the making of the output goods or services would have already suffered tax and only the final output product would be exempted.

- When the output is exempted, tax laws do not allow availment/ utilization of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense, the entire supply is not zero-rated.

- To overcome the above anomalies, export of goods and services to destinations outside India have been "zero-rated" in the GST regime. The effect of "zero-rating" is that the entire supply chain of a particular zero-rated supply (i.e., export) is tax free i.e., there is no burden of tax either on the input side or output side.

- The detailed write-up on 'zero rating of supplies' issued by the Director General of Taxpayer Services, CBIC(Annexure- K to the writ petition) clarifies the position as under:

What is the need for Zero Rating?

As per section 2(47) of the CGST Act, 2017, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted buy a notification or kept out of the purview of tax (i.e. a non-GST) supply). But if a good or service is exempted from payment of tax, it cannot be said that it is a zero rated. The reason is not har5d to find. The inputs and input services which go into the making of the good or provision of service has already suffered tax and only the final product is exempted. Moreover, when the output is exempted, tax laws do not allow availment /utilisation of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax on input side is not permitted, that becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly.

– What is Zero Rating?

– By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Such an approach would in true sense make the goods or services zero rated.

– All supplies need not be zero-rated. As per the GST Law exports are meant to be zero rated the zero rating principle is

applied in letter and spirit or exports and supplies to SEZ. The relevant provisions are contained in Section 16(1) of the IGST Act, 2017, which states that “zero rated supply” means any of the following supplies of goods or services or both, namely:--

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

– As already seen, the concept of zero rating of supplies requires the supplies as well as the inputs or input services used in supplying the supplies to be free of GST. This is done by employing the following means:

a) The taxes paid on the supplies which are zero rated are refunded;

b) The credit of inputs/input services is allowed;

c) Wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded.

– The provisions for the refund of unutilised input credit are contained in the explanation to section 54 of the CGST Act, 2017, which defines refund as below:

– “refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

– Thus, even if a supply is exempted, the credit of input tax may be availed for making zero-rated supplies. A registered person making zero rated supply can claim refund under either of the following options, namely:--

a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedures as may be prescribed, without

payment of integrated tax and claim refund or unutilised input tax credit; or

b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the CGST Act, 2017 or the rules made there under.

– As per Section 54(3) of the CGST Act, 2017, any unutilised input tax credit in zero rated supplies can be refunded, wherever such supplies are made by using the option of Bo0nd/LUT. The difference between zero rated supplies and exempted supplies is tabulated as below:

Exempted supplies	Zero rated supplies
"exempt supply" means supply of any goods or services or both which attracts nil rate of tax which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of the IGST Act, and includes not-taxable supply	"zero rated supply" shall have the meaning assigned to it in section 16
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free
Credit of input tax needs to be reversed, it taken; no ITC on the exempted supplies	Credit of input tax may be availed for making zerorated supplies, even if such supply is an exempt supply IIC allowed on zero-rated supplies
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration	A person exclusively6 making zero rated supplies may have to register as refunds of unutilised ITC or integrated tax paid shall have to be claimed
A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply	Normal tax invoice shall be issued

– Provisional refund:

– As per section 54(6) of the CGST Act, 2017, ninety percent of the total amount of refund claimed, on account of zerorated supply of goods or services or both made by registered persons, may be sanctioned on a provisional basis. The remaining ten percent can be refunded later after due verification of document furnished by the applicant.

– Non-applicability of Principle of Unjust Enrichment:

– The principle of unjust enrichment shall not be applicable in case of refund of taxes paid wherever such refund is on accounts of zero rated supplies. As per section 54(8) of the CGST Act, 2017, the refundable amount, if such amount is relatable to refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, shall instead of being credited to the Fund, be paid to the applicant.

15. The detailed write-up on 'refund of integrated tax paid on account of zero rated supplies' issued by the Director General of Taxpayer Services, CBIC, (Annexure-L to the writ petition) clarifies the position as under:-

Under GST, Exports and supplies to SEZ are zero rated as per section 16 of the IGST Act, 2017. By zero rating it is meant that the entire supply chain of a particular zero rated supply is tax free i.e. there is no burden of tax either on the input side or output side. This is in contrast with exempted supplies, where only output is exempted from tax but tax is suffered on the input side. The essence of zero rating is to make Indian goods and services competitive in the international market by ensuring that taxes do not get added to the cost of exports.

The objective of zero rating of exports and supplies to SEZ is sought to be achieved through the provision contained in Section 16(3) of the IGST Act, 2017, which mandates that a registered person making a zero rated supply is eligible to claim refund in accordance with the provisions of Section 54 of the CGST Act, 2017, under either of the following options, namely:--

• He may supply goods or service or both under bond or Letter of Undertaking, subject to such conditions, safeguards and

procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit of CGST, SGST/UTGST and IGST; or

- He may be supply good or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

The second category pertain to refund of integrated tax paid for the zero-rated supplies made by suppliers who opt for the route of export on payment of integrated tax and claim refund of such tax paid. There can be two sub-categories of such suppliers namely:

1. Exporter of goods

2. Service of exporters and persons making supplies to SEZ.

Export of Goods

The normal refund application in GST RFD-01 is not applicable in this case. There is no need for filing a separate refund claim as the shipping bill filed by the exporter is itself treated as a refund claim. As per rule 96 of the CGST Rules, 2017 the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:- (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bill or bills of export; and (b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR3B, as the case may be.

Thus, once the shipping bill and export general manifest (EGM) is filed and a valid return is filed, the application for refund shall be considered to have been filed and refund shall be processed by the department.

Service Exporters and Persons making supplies to SEZ

Under this category also, the supplier may choose to first pay IGST and then claim refund of the IGST so paid. In these cases, the suppliers will have to file refund claim in FORM GST RFD-01

on the common portal, a per Rule 89 of the CGST Rules, 2017. Service Exporter need to file a statement containing the number and date of invoices and the relevant Bank Realisation Certificate, a the case may be, along with the refund claim.

In so far as refund is on account of supplies made to SEZ, the DTA supplier will have to file the refund claim in such cases. The second proviso to Rule 89 stipulates that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the-

(a) Supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) Supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

Thus, proof of receipt of goods or service as evidenced by the specified officer of the zone is a pre-requisite for filing of refund claim by the DTA supplier.

The claim for refund when made for supplies made to SEZ unit/ Developer has to be filed along with the following documents:

1. A statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

2. A statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule(1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations a defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

3. A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input

tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund I on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer.

Grant of Provisional Refund

The above category of persons making zero rated supplies will be entitled to provisional refund of 90% of the claim in terms of Section 54(6) of CGST Act, 2017.

Rule 91 of CGST Rules, 2017 provide that the provisional refund is to be granted within 7 day from the date of acknowledgement of the refund claim. An order for provisional refund is to be issued in Form GST RFD 04 along with payment advice in the name of the claimant in Form GT RFD 05. The amount will be electronically credited to the claimant's bank account. Rule 91 also prescribe that the provisional refund will not be granted if the person claiming refund has, during any period of five year immediately preceding the tax period to which the claim for refund relate, been prosecuted for any offence under the Act or under an earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

16. The principles emerging from the aforesaid discussion can be summarized as under:-

- The entire supply chain in an export transaction would be tax free and exempt from GST, i.e., GST would be exempt both at input stage as well as output stage.

- There is no bar on availing/utilizing credit of input taxes paid for making/providing the output supply in an export transaction.

- It is seen that the above intention is effectuated vide Section 16 of the IGST Act. Section 16(1)(a) of the IGST Act says that "zero-rated supply" means export of goods and services. Further, Section 16(2) of the IGST Act says that "credit of input tax" may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

- Since GST would have been suffered at the input stage, either by actual payment thereof or through utilization of credit of input tax, Section 16(3) of the IGST Act says that a registered person making

zero rated supply shall be eligible to claim refund such taxes paid in accordance with Section 54 of the CGST Act by exercising either of the following options, but subject to such conditions, safeguards and procedure as may be prescribed.

- He may supply goods or services or both under bond or LUT without payment of IGST and claim refund of unutilized input tax credit; or

- He may supply goods or services or both on payment of IGST and claim refund of such tax paid on goods or services or both so supplied.

- Section 54 of the CGST Act deals with refund of tax; Section 54(3) provides that a registered person may claim refund of any unutilized input tax credit at the end of any tax period. Corresponding to Section 16(3) of the IGST Act (supra), Clause (i) of first Proviso to Section 54(3) provides that refund of the said unutilized input tax credit would be available on making zero-rated supplies.

- Section 16 of the IGST Act contemplates that exports are “zero rated” (in other words, exports are tax free) and that therefore, refund can be claimed of input tax credit lying unutilized on account of such zero-rated supplies (i.e., exports) as also on the output tax.

- Section 54 of the CGST Act provides for refund of GST; Section 54(3) provides that a registered person may claim refund of any unutilized input tax credit at the end of any tax period.

- Rule 89 of the CGST Rules contains the machinery provisions to operationalize Section 54 of the CGST Act where exports are done without payment of output tax under bond or LUT.

- The method of calculation of refund under Rule 89 of the CGST Rules prior to its amendment dated 23.03.2020 provided that the refund of unutilized input tax credit is computed by identifying the proportionate input tax credit utilized for export of goods to total supplies, viz., refund value = (turnover of zero-rated supply of goods and/or services ÷ adjusted total turnover) X Net input tax credit for the period; in other words, refund will be in proportion of export turnover to the total turnover during the relevant period.

- By the impugned amendment to Rule 89(4)(C), the phrase “turnover of zero-rated supply of goods” came to be defined; accordingly, refund will be the lesser of: (a) value of zerorated supply of goods;

or (b) value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier.

- In effect, refund of unutilized input tax credit on account of making zero rated supply of goods would now be restricted to a maximum of 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier.

- The effect of the impugned amendment to Rule 89(4)(C) is demonstrated by the petitioner vide the Illustration in the table at Annexure-N as under:-

Sl. No.	Export / Domestic	No.of goods	Value per Goods	Turnover	Turnover of zero-rated supply of goods as per Rule 89(4): Before amendment	Turnover of zero-rated supply of goods as per Rule 89(4): After amendment
1.	**Export goods**	10	100	1000	1000	450 Like goods domestically sold 10 30 300 i.e., 1.5*30*10 = 450 or 1000 whichever is less. Refund is 450 and balance 550 is lost:
	Like goods domestically sold	10	30	300		
2.	**Export goods**	10	100	1000	1000	0 i.e., 1.5*0*10 = 0 or 1000 whichever is less.
	Like goods domestically sold	0	0	0	0	

17. In my considered opinion, the impugned amendment to Rule 89(4)(C) of the CGST Rules is illegal, arbitrary, unreasonable, irrational, unfair, unjust and ultra vires Section 16 of the IGST Act and Section 54 of the CGST Act for the following reasons:-

(a) Rule 89(4)(C) of the CGST Rules is ultra vires Section 54 of the CGST Act read with Section 16 of the IGST Act; the very intention of the zero-rating it to make entire supply chain of “exports” tax

free, i.e., to fully 'zero-rate' the exports by exempting them from both input tax and output tax; accordingly, Section 16(3) of the IGST Act allows refund of input taxes paid in the course of making a zero-rated supply, i.e., supplies which covers exports as well as supplies to SEZs. The rule in whittling down such refund is ultra vires in view of the well settled principle of law that Rules cannot override the parent legislation.

(b) Rule 89(4)(C) of the CGST Rules is violative of Article 14 and 19(1)(g) of the Constitution of India; the quantum of refund of unutilized input tax credit is restricted only in cases falling under Section 16(3)(a) of the IGST Act, i.e., in cases where export of goods is made without payment of duty under a Bond/Letter of Undertaking(LUT); however, no such restriction is imposed on cases falling under Section 16(3)(b) of the IGST Act, i.e., in cases where export of goods is made after payment of duty; by virtue of the above, there is a hostile discrimination between two class of persons, viz., (i) the class of exporters who opt to obtain refund of unutilized input tax credit where export of goods are made without payment of duty under a bond/LUT in terms of Section 16(3)(a) of the IGST Act read with Rule 89(4) of the CGST Rules and (ii) the class of exporters who opt to obtain refund of tax after payment of duty in terms of Section 16(3)(b) of the IGST Act read with Rule 96A of the rules; the guarantee of equal protection of the laws must extend even to taxing statutes; if person or property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property; if the same class of property or persons similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property or persons.

(c) It is trite law that Article 14 of the Constitution forbids class legislation; however, Article 14 does not prohibit reasonable classification for the purpose of legislation provided it passes two tests, viz., that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and that the differentia must have a rational relation with the object sought to be achieved by the statute; the impugned Rule 89(4)(C) of the CGST Rules is arbitrary and unreasonable in as much as it bears no rational nexus with the objective sought to be achieved by Section 16 of

the IGST Act in that while Section 16 of the IGST Act seeks to make exports tax-free by "zero-rating" them, the impugned Rule 89(4)(C) of the CGST Rules aims to do just exactly the opposite by restricting the quantum of refund of tax available to the expended in making such exports; consequently, including domestic turnover in the definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable.

(d) It is significant to note that in exports, availability of the rotation of funds is essential for the business to thrive; the entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies; the incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters who are earning valuable foreign exchange for the country; it follows there from that exporters would have factored in such incentives in the pricing mechanism when they quote and consequently, the restriction of the same by the impugned amended Rule 89(4)(C) would be highly unreasonable.

(e) Rule 89(4)(C) of the CGST Rules also suffers from the vice of vagueness for the reason that the words "like goods" and "similarly placed supplier" in the impugned Rule 89(4)(C) are completely open-ended and are not defined anywhere in the CGST Act/Rules or the IGST Act/Rules; in this context, it is relevant to state that considering the business of the petitioner, it is not possible to have any "like goods" and "same or similar placed supplier" for the unique and customized products being manufactured by the petitioner and the preciseness of definitions as found in the customs legislation is missing herein.

(f) The impugned Rule also fails to clarify, as to what would be the consequence if there are no goods supplied in the domestic market and value of like goods provided by other suppliers is not available or as to what would be the consequences in respect of a supplier who may have different pricing policy for different local customers nor what would be the consequences in respect of a supplier who would be pricing the local goods differently in different states for the same products being exported; when it is impossible for any exporter to show proof of value of "like goods" domestically supplied by the "same or, similarly placed, supplier", the refund itself cannot

be denied to such exporter and consequently, Rule 89(4)(C) of the CGST Rules merely being a machinery provision cannot impose a rigorous condition to take away right to obtain refund which the petitioner is otherwise entitled to in terms of Section 54 of CGST Act read with Section 16 of the IGST Act.

(g) The amendment to the said rule does have the effect of restricting refunds in actuality as shown in the table at Annexure-N without any adequate defining reason for so doing; in a case where the domestic turnover is nil for the particular period or very less, the quantum of refund becomes nil or negligible thereby clearly whittling down the principle of zero rating as is specified in Section 16 of the IGST Act, 2017 which would mean that the taxes on exports do not get refunded adequately; these aspects are contained in the clarifications issued by the respondents at Annexure K and L referred to supra.

(h) The object of zero rating would be lost if exports are made to suffer GST as the exporter would either pass it on to the foreign supplier or would absorb it himself; firstly it would mean that taxes are exported which is against the policy of zero rating supra and secondly, it would make exports uncompetitive being against the stated policy of the Government. The amending words therefore, do not sub serve the objectives set out in Section 16 of the IGST Act, 2017 nor Section 54 of the CGST Act, 2017 and are contrary to the clarifications given above.

(i) The impugned amendment is also unreasonable and arbitrary as adequate reasoning is not present; this would make such amendment unreasonable for the reason that it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act (supra). While Section 16 of the IGST Act seeks to make exports tax-free by “zero-rating” them, the impugned Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 aims to do just the opposite by restricting the quantum of refund of tax available in making such exports. Further, what is seen is that including domestic turnover in definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable as that would defeat the provisions of law to grant refund on zero rated goods.

18. Therefore, I am also of the view that terminology used in the impugned Rule viz., ‘like goods and same or similarly placed supplier’

does not have any precise meaning in the said Rules and no guideline is present in that respect.

19. In Shayara Bano's case (supra), the Apex Court held as under:

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

20. In *Shreya Singhal's case* (supra), the Apex Court held as under:-

"68. Similarly, in Kartar Singh v. State of Punjab, (1994) 3 SCC 569 at para 130-131, it was held:

'130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.'

> 69. Judged by the standards laid down in the aforesaid judgments, it is quite clear that the expressions used in 66A are completely open-ended and undefined.
>
> 76. Quite apart from this, as has been pointed out above, every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another. What may cause annoyance or inconvenience to one may not cause annoyance or inconvenience to another. Even the expression "persistently" is completely imprecise - suppose a message is sent thrice, can it be said that it was sent "persistently"? Does a message have to be sent (say) at least eight times, before it can be said that such message is "persistently" sent? There is no demarcating line conveyed by any of these expressions - and that is what renders the Section unconstitutionally vague."

21. As rightly contended by the petitioner, in exports, availability of the rotation of funds is essential for the business to thrive. The entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies. The incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters, who are earning valuable foreign exchange for the country. It should be noted that exporters would have factored in such incentives in the pricing mechanism when they quote and therefore, the restriction of the same would be highly unreasonable, given the objective of the Government that exports should be zero rated and taxes should not be exported.

22. The respondents-revenue contend that the impugned amendment was based on the minutes of the GST Council's 39th meeting held on 14.03.2020, which discloses that the above the only ground for amendment seems to be a possible misuse without any factual data supporting the same; the reasons for such amendments based on possible misuse without adequate defining data cannot be countenanced as having a reasonable basis in law. Issue of misuse cannot be generalized. Every such misuse is required to be ascertained and verified before asserting that there has been misuse. It is also well settled that if the government perceives that there could be a possibility of abuse of a provision, it should adopt measures to keep a check on the same; however, the law cannot be amended on the premise of distrust.

23. In *Reckitt Benckiser's case* supra, the High Court of Jammu and Kashmir held as under:-

"29. The issue of misuse cannot be generalized. It has to be case specific covering an individual or group of individuals. Every such misuse is required to be ascertained and verified before asserting that there has been misuse of exemption. By a general survey conducted, it cannot be said that exemption benefit is being misused by the present petitioners. Taking recourse to the fact that exemption granted is being misused without identifying the individual cases would be an exercise which can be termed to have been made by the respondents only to deny the exemption granted to petitioners by way of original notification in pursuance to which they have altered their position. This action on the part of respondents can be termed to be arbitrary in nature."

24. In Sant Steel's case (supra), the Apex Court held as under:-

"30. It is highly against the public morality that the incumbent who have felt persuaded on account of the representation made by the State Government that they will be given certain benefits and they acted on that representation, it does not behove on the part of the appellant Corporation to withdraw the said benefit before expiry of the stipulated period by issuing the notification revoking the same which the respondents were legitimately entitled to avail. We fail to understand why the appellant Corporation which made a representation and allowed the other party to act upon such representation could resile and leave the citizens in a lurch. In such a situation, the principle of promissory estoppel which has been evolved by the courts which is based on public morality cannot permit the State to act in such an arbitrary fashion.

31. Other grounds for the purpose of public interest which have been pleaded, namely, that there are two methods of tariff provided by the amendment and the actual consumption has (energy consumption charges have) been reduced based on the calculation of energy charges per KV from 308 paise to 100 paise and there was large scale theft or that units were closing down and there was no mala fide intention in the matter of revocation of the notification and the cost of production of power has gone up to Rs. 2.50 per unit, are considerations which hardly involve any public interest. They were more of a nature of losses which have been suffered by the Corporation and these methods were evolved to reduce and to

make good the losses. Restructuring benefit to 17% of Tariff 4(A) (demand charges) are the factors which are aimed to make the losses good for the Corporation. This is not case in which serious public repercussion was involved. These are not the factors which put together can constitute a public interest. Theft of the energy if it was proved by cogent data that as a result of giving this benefit to the entrepreneurs in the hill areas, they were misusing it or there was theft of the energy at a large scale by these persons to whom the concession had been given then of course such factors, if all the datas were brought on record of course could have persuaded the Court to take a different view of the matter. But simply because there was theft of energy the State cannot persuade us to hold that the revocation of such concession can be said to be in public interest. Since the benefit was given to these units in the hill areas, there should have been overwhelming evidence to show some mala fide on the part of these consumers which have persuaded the Corporation to revoke it. If there was no misuse of the energy by these units in the hill areas to whom the concession had been granted then in that case it cannot be taken that there was really public interest involved which persuaded the Corporation to revoke the same.

58. In the present case, the plea of respondents that some unscrupulous manufacturers were involved in bogus production for the purpose of claiming maximum exemption from the payment of excise duty, cannot be generalized but has to be case specific. The same, therefore, cannot be treated to be in the public interest as projected by the respondents. This is because there has been no individual identification of such bogus manufacturers and the action of respondents vide impugned notifications would prejudice the rights of those genuine manufacturers who on the promise of the State, have altered their position and are involved in fair industrial activities. In view of the above discussion, I am of the opinion that there is no supervening public interest in withdrawing the exemption by way of impugned notifications."

25. It is also relevant to note that in the aforesaid GST Council Meeting, it was stated that the FOB value of exports will not be changed, which would mean that there is no doubt about the valuation of the goods; therefore, if there is no doubt about the value of the goods, the artificial restriction of refunds by taking the value of domestic supplies seems irrational. Further, the policy of the Government itself will have to satisfy the test of rationality

and must be free from arbitrariness and discrimination. In *Pepsi Foods (case) supra*, the Apex Court held as under:-

> "27. We have already seen how unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India. Also, the expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down, as has been found in para 20 above."

26. As rightly contended by the learned Senior counsel for the petitioner, the impugned Rule 89(4)(C) is arbitrary and unreasonable, in as much as the possibility of taking undue benefit by inflating the value of the zero-rated supply of goods, cannot be a ground to amend the Rule, which deserves to be declared invalid on this ground also.

27. Insofar as the other contentions urged by the respondents – revenue in their statement of objections and before this Court, the same are neither relevant nor germane for adjudication of this petition and consequently, the same have not been referred to in detail in this order.

28. For the foregoing reasons, I am of the considered opinion that the impugned Rule 89(4)(C) of the CGST Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-Central Tax dated 23.03.2020 deserves to be declared ultra vires and invalid and consequently deserves to be quashed. So also, the impugned order dated 30.06.2020 which is based on the impugned amended Rule also deserves to be quashed and consequently, respondents are to be directed to accept the refund applications of the petitioner and grant refund in favour of the petitioner together with applicable interest within a stipulated time frame.

29. The issue regarding validity of the Explanation to Rule 93 of the CGST Rules is however kept open to be dealt with in an appropriate case.

30. In the result, I pass the following:-

ORDER

(i) The writ petition is hereby allowed;

(ii) The impugned offending words, "or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier" appearing in Rule 89(4C) of the Central Goods

and Services Tax Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-Central Tax(F.No.CBEC- 20/06/04/2020-GST) dated 23.03.2020 is declared ultra vires the provisions of the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 as also violative of Articles 14 and 19 of the Constitution of India and resultantly, the same are hereby quashed;

(iii) The impugned order at Annexure-C dated 30.6.2020 passed by the 3rd respondent is hereby quashed;

(iv) The respondents-revenue are directed to accept the refund claims/applications of the petitioner at Annexures D-1 to D-6 and grant refund together with applicable interest in favour of the petitioner within a period of three (3) months from the date of receipt of a copy of this order.

IN THE HIGH COURT OF MADRAS AT MADURAI

[B. Pugalendhi, J.]

WP (MD) No. 6580 of 2024

Jones Diraviam ... Petitioner

Versus

The Deputy Commissioner (GST Appeal) & Ors. ... Respondents

Date of Order: 27.03.2024

WHETHER CANCELLATION OF GST REGISTRATION FOR NON-FILING OF RETURNS IS JUSTIFIED AND WHETHER APPEAL FILED LATE U/S 107 SHOULD BE DISMISSED?

HELD – No - In similar circumstances, this Court, in Suguna Cutpiece Vs. Appellate Deputy Commissioner (ST) (GST) and others reported in 2022(2) TMI 933, allowed the writ petitions by holding that no useful purpose would be served by keeping the petitioner out of the Goods and Service Tax regime.

Present for Petitioner : Mr. M. Iniyavan

Present for Respondent : Mr. A. Baskaran, Addl. Govt. Pleader.

Editor's Note: Please see judgments of Allyssum Infra R/Spl. Civil Appl. No. 23556 / 2022 and R.K. Jewelers D.B. Civil Writ Petition No. 4236 of 2023 on the same point

ORDER

The petitioner is a supply contractor and he has GST registration. The petitioner has failed to submit his returns and therefore, his GST registration was cancelled by the 2nd respondent. The petitioner has also filed an appeal before the 1st respondent, however, with a delay of 260 days.

2. According to the petitioner he was unaware of the notice issued for non-filing of the returns and further due to his inadvertent oversight he failed to submit his reply. However, the respondents have passed an order cancelling his GST registration. In view of the cancellation of registration, he is not in a position to do his business and his livelihood is affected.

3. The learned Additional Government Pleader submits that the petitioner has been issued with notice and however he has not filed any reply and he has also not filed the appeal in time.

4. This Court considered the rival submissions and perused the materials placed on record.

5. A similar issue has been dealt with by a Hon'ble Division Bench of Bombay High Court in WP.No.11833 of 2022, wherein it has been held as follows:

> "8. We have considered the submissions advanced by both the sides. It appears that the petitioner was earning his livelihood through his fabrication business and requires registration under GST Act to run the business. The entire world suffered during the pandemic. The small scale industrialists and service providers like petitioner lost their business for more than two years. The financial losses suffered during this time cannot be ignored particularly when it comes to small scale businesses and service providers. To add apathy to this situation, the petitioner suffered medical emergency. He was required to undergo medical treatment for heart disease and the procedure like angioplasty. The stringent provisions of GST Act took its own course. The petitioner suffered cancellation of registration. Even he lost his appellate remedy because of lapse of limitation. The petitioner has been practically left remediless. He seeks to invoke jurisdiction of this Court under Art. 226 of the Constitution of India.
>
> 9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce

to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1) (g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.

10. There is one more aspect as far as the issue regarding limitation in filing the appeal under Section 107 of MGST Act is concerned. Indeed the Deputy Commissiosner of State Tax has no power to condone the delay beyond 30 days. But then one cannot overlook the aspect of provisions stipulating limitations. The objective is to terminate the lis and not to divest a person of the right vested in him by efflux of time.

11. Since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.

12. In this regard, a reference can be made to the judgment of the Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536. The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies. True that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

13. Applying the aforesaid gidelines to the facts of the present case, we find that the petitioner, who is sufferer of unique circumstances resulting from pandemic and his health barriers, would be put to great hardship for want of GST registration. The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood

would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India.

14 Even looking to the object of the provisions under GST Act, it is not in the interest of the government to curtail the right of the entrepreneur like petitioner. The petitioner must be allowed to continue business and to contribute to the state's revenue. The learned advocate for the petitioner has submitted before us that the petitioner is ready and willing to pay all the dues along with penalty and interest as applicable. In the light of the above submission, we are inclined to allow the writ petition as under :-

(i) The writ petition is allowed.

(ii) The order dated 28-02-2022 suspending the GST registration, the order dated 14-03-2022 cancelling GST registration of the petitioner passed by the State Tax Officer and the order dated 21-10-2022 passed by the Dy. Commissioner of Tax, Aurangabad (Appeal) No.DC/APP/E-001/ABAD/GST/323/2022-2023 are quashed and set aside.

(iii) We hold and declare that the registration No. 27AHQPD2485F1Z7 in the name of the petitioner is valid, from 28-02-2022 onwards subject to the condition that the petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MAST Rules, 2017. (iv) The Rule is made absolute in above terms."

6. The High Court of Uttarakhand in Special Appeal No.123 of 2022, dated 20.06.2022 in a similar situation has observed as follows:

"8) Viewing from another angle, it is apparent that the law made by the Parliament as well as the Legislature with regard to the appeals is very strict, insofar as, that it does not provide an unlimited jurisdiction on the First Appellate Authority to extend the limitation beyond one month after the expiry of the prescribed limitation. In such case, the petitioner/appellant is put to hardship and is left without remedy. In such cases, the party concerned may face starvation because of denial of livelihood for want of GST

Registration. In this case, the petitioner/appellant is a semi-skilled labourer working as a painter doing painting on doors, windows of the houses. Now-a-days bills for any work executed for a private player or, even for the Government agency, are drawn on-line. In most cases, the payments are made direct to the bank on 6 production of the bill with the GST registration number.

In the absence of GST registration number, a professional cannot raise a bill. So, if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works. Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because of the fact that his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood springs from the right to life as enshrined in Article 21 of the Constitution of India. In this case, if we allow the situation so prevailing to continue, then it will amount to violation of Article 21 of the Constitution, and right to life of a citizen of this country."

7. This Court in ***Suguna Cutpiece Vs Appellate Deputy Commissioner (ST)(GST)*** and others reported in 2022 (2) TMI 933 wherein it was held that no useful purpose would be served keeping the petitioners out of the Goods and Service Tax regime as such the assessee would still continue to his businesses and supply goods and services.

8. The petitioner is a contract supplier. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc... are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. The object of any Government is to promote the trade and not to curtail the same. The cancellation of registration certainly amounts to a capital punishment to the traders, like the petitioner.

9. In similar circumstances, this Court, in *Suguna Cutpiece Vs. Appellate Deputy Commissioner (ST) (GST)* and others reported in 2022(2) TMI 933, allowed the writ petitions by holding that no useful purpose would be served by keeping the petitioner out of the Goods and Service Tax regime. By applying the above ratio, this writ petition is allowed and the impugned order is set aside. The matter is remitted back to the respondents for fresh consideration. No costs.

IN THE HIGH COURT OF ORISSA AT CUTTACK

[B.R. Sarangi & G. Satapthy, J.J.]

WP(C) No. 289 of 2015

M/s Hindustan Tyre House ... Petitioner

Versus

Dy. Commissioner of Sales Tax, Sambalpur ... Respondent

Date of Order: 02.05.2024

WHETHER AN ASSESSMENT / REASSESSMENT CAN BE FRAMED ON THE BASIS OF A TAX EVASION REPORT OR AN AUDIT REPORT, WITHOUT FRAMING HIS OWN OPINION?

HELD – No.

Present for Petitioner : Mr. R.P. Kar, Sr. Adv. alongwith Mr. B.P. Mohanty, Adv.

Present for Respondent : Mr. S. Das, ASC

ORDER

This matter is taken up by hybrid mode.

2. Heard Mr. R.P. Kar, learned Senior Counsel along with Mr. B.P. Mohanty, learned counsel appearing for the petitioner and Mr. S. Das, learned Additional Standing Counsel appearing for the opposite party.

3. The petitioner has filed this writ petition seeking to quash the order of assessment/reassessment dated 29.09.2014 passed by the opposite party in Form VAT 312 under Annexure-3 as well as the notice of demand in Form VAT 313 under Annexure-4 and the notice issued by the opposite party in Form 307 under Annexure-1, and further to issue direction restraining the opposite party from collecting the tax and penalty as involved in the order of assessment along with the demand notice under Annexure-3 & 4 respectively.

4. Mr. R.P. Kar, learned Senior Counsel along with Mr. B.P. Mohanty, learned counsel appearing for the petitioner brings to the notice of this Court the docket note of Annexure-2, the order sheet maintained by the opposite party, which states that “A fraud case report has been received from DCST, Vigilance, Sambalpur in respect of the above dealer and period, which suggests sale suppression. If approved notice in VAT- 307

will be issued to dealer. Put up for order". It is further contended that on the basis of fraud case, if the authority proposed to take steps and issue notice, he should have formed opinion as required under Section 43 of the OVAT Act. Without forming opinion, issuance of demand notice to the petitioner under Annexure-4 and the order of assessment/reassessment dated 29.09.2014 under Annexure-3 cannot be sustained in the eye of law.

5. Mr. S. Das, learned Additional Standing Counsel appearing for the opposite party contended that in view of provisions contained in Section 98(1) of the OVAT Act, the order of assessment/reassessment dated 29.09.2014 passed by the opposite party is well justified, which does not warrant interference of this Court.

6. This Court considered the contentions raised by learned counsel for the parties and went through the records. Section 98 (1) of the OVAT Act reads as follows:

> "98. **Assessment proceedings, etc. not to be invalid on certain grounds.-**
>
> (1) No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken , or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act."

As it appears, the docket note clearly mentions that when a fraud case report has been received from DCST, Vigilance, Sambalpur in respect of the petitioner-dealer and the period in question and follow up action, i.e., assessment/reassessment has been made, in that case Section 43 of the OVAT Act is required to be complied with, which speaks that opinion has to be formed by the Assessing Authority before passing the order and, as such, no opinion has been formed by the Assessing Authority while dealing with the fraud case, as stated in the docket note. Learned Senior Counsel appearing for the petitioner has placed reliance on Indure Ltd. v. Commissioner of Sales Tax, (2006) 148 STC 61 (Ori), wherein this Court has held that it is not enough if the Assessing Officer refers to the tax evasion report or an audit report, but has to independently apply his mind

and record his satisfaction that there has been an escapement of tax. That is the mandatory minimum requirement of Section 43 of the OVAT Act.

7. In view of the above principle of law laid down by this Court, since the Assessing Authority has not formed opinion, as required under Section 43 of the OVAT Act, the order of assessment/reassessment dated 29.09.2014 passed by the opposite party in Form VAT 312 under Annexure-3 and the demand notice in Form VAT 313 under Annexure-4 cannot be sustained in the eye of law. Thereby, the same are liable to be quashed and are hereby quashed. Accordingly, this Court remits the matter to the Assessing Authority for making fresh adjudication and passing appropriate order in accordance with law after giving opportunity of hearing to the petitioner.

8. With the above observation and direction, the writ petition stands disposed of.

IN THE SUPREME COURT OF INDIA

[C.T. Ravikumar & M.R. Shah, J.J.]

Civil Appeal No. 230 of 2023

The State of Karnataka ... Petitioner

Versus

M/s Ecom Grill Coffee Trading Pvt. Ltd. ... Respondent

Date of Judgment: 13.03.2023

WHETHER ITC CAN BE REJECTED ON THE GROUND THAT THE REGISTRATION OF SELLING DEALERS IS EITHER CANCELLED OR NIL RETURNS HAVE BEEN FILED?

HELD – In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed

by the High Court and the second Appellate Authority allowing the ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the Assessing Officer denying the ITC to the concerned purchasing dealers, confirmed by the first Appellate Authority are hereby restored.

Present for Petitioner : Mr. SHUBHRANSHU PADHI.

Present for Respondent : Mr. PAI AMIT[R-1]

ORDER

M.R. SHAH, J.

1. As common question of law and facts arise in this group of appeals and the issue is with respect to interpretation of Section 70 of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the 'KVAT Act, 2003'), all these appeals are decided and disposed of together, by this common judgment and order.

2. For the sake of convenience, Civil Appeal No. 231 of 2023 arising from the impugned judgment and order dated 26.02.2021 passed by the High Court of Karnataka at Bengaluru in S.T.R.P. No. 82 of 2018 is treated as the lead matter, as in some matters, the said decision has been relied upon.

3. By the impugned judgment(s) and order(s) passed by the High Court, the High Court has dismissed the revision applications preferred by the revenue – State of Karnataka and as such has allowed the Input Tax Credit (hereinafter referred to as the 'ITC') claimed by the respective purchasing dealers. The impugned judgment(s) and order(s) passed by the High Court are the subject matter of present appeals. Civil Appeal No. 231/2023 (The State of Karnataka v. M/s Tallam Apparels)

4. The facts leading to the present appeal in nutshell are as under:

That the respondent herein – M/s Tallam Apparels (hereinafter referred to as the 'purchasing dealer') purchased readymade garments from other dealers for the purposes of further sale. The purchasing dealer claimed the ITC on such sale to the extent of Rs. 4,18,818/-. Vide order dated 26.12.2014, the Assessing Officer disallowed the ITC claim for the Assessment Year 2012-2013 on the ground that the dealers from whom M/s Tallam Apparels have purchased the readymade garments have either got their registration cancelled or have filed 'NIL' returns. Thus,

the Assessing Officer doubted the sale and the payment of tax on such sale of which the ITC was claimed. An Appeal was filed by the purchasing dealer. The Appellate Authority dismissed the same by holding that the burden under section 70 of the KVAT Act, 2003 has not been discharged. However, the Karnataka Appellate Tribunal reversed the orders passed by the Assessing Officer as well as the first Appellate Authority on the ground that the purchasing dealer should not suffer due to default of seller. The revision application before the High Court has been dismissed by the impugned judgment and order.

4.1. In other cases, the Tribunal as well as the High Court have allowed the ITC in favour of the purchasing dealers solely/mainly on the ground that the sale price was paid to the seller by an account payee cheque and that copies of invoices were produced.

4.2 Insofar as the case of M/s Ecom Gill Coffee Trading Private Limited being Civil Appeal No. 230 of 2023 is concerned, M/s Ecom – purchasing dealer purchased green coffee bean from other dealers for the purposes of further sale in exports and in domestic market. Upon finding some irregularities in Input Tax Rebate claimed by the purchasing dealer for Assessment Year 2010-2011, the Assessing Officer issued notice under section 39 of the KVAT Act, 2003 seeking furnishing of accounts, books, tax invoices etc. Re-assessment order came to be passed. It was found that the purchasing dealer had claimed ITC from mainly 27 sellers and out of aforesaid 27 sellers , six were found to be de-registered; three had effected sales to the respondent but did not file taxes and six have outrightly denied turnover nor paid taxes.

Therefore, ITC came to be disallowed to the extent of Rs. 10.52 lacs. The first Appellate Authority confirmed the findings of the Assessing Officer. However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee from the registered dealer under genuine tax invoices and consequently allowed the ITC claimed. The revision application before the High Court has been dismissed, relying upon its earlier decision in the case of M/s Tallam Apparels (supra).

5. Shri Nikhil Goel, learned AAG has appeared on behalf of the State of Karnataka and the respective learned counsel have appeared on behalf of the respective purchasing dealers.

6. Shri Nikhil Goel, learned AAG appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in dismissing the revision applications and

confirming the respective orders passed by the Appellate Authorities in allowing the Input Tax Credit in favour of the respective purchasing dealers.

6.1 It is vehemently submitted that the High Court has not properly appreciated that when the Assessing Officer doubted the genuineness of the transactions/sales and when it was found that the sale transactions were only paper transactions and even in some of the cases, the registration of the sellers were cancelled and nothing was on record that any tax was paid by the seller, the purchasing dealers shall not be entitled to the Input Tax Credit.

6.2 It is vehemently submitted by Shri Nikhil Goel, learned AAG appearing on behalf of the State that the High Court ought to have appreciated that as such a duty is cast upon the purchasing dealers to prove the transactions/financial transfers, which in the present case, the purchasing dealers failed to discharge. It is submitted that for the purposes of Section 70 of the KVAT Act, 2003, the burden required to be discharged is slightly higher than showing financial transfers and should show actual movement of goods. It is submitted that mere production of invoices or even payment to the seller by cheque cannot be said to be sufficient and may not be said to discharging the burden to claim Input Tax Credit, to be discharged under Section 70 of the KVAT Act, 2003. It is submitted that actual movement of goods is required to be established and proved, over and above the invoices, payment by cheques and actual payment and even the demand of tax by the seller.

6.3 Shri Goel, learned AAG has heavily relied upon the decision of the Karnataka High Court in the case of M/s. Bhagadia Brothers Vs. Additional Commissioner of Commercial Taxes, STA No. 4 of 2018 dated 29.01.2020, against which the special leave petition has been dismissed as well as the decision of the Gujarat High Court in the case of Madhav Steel Corporation Vs. State of Gujarat, Tax Appeal No. 742 of 2013 and other allied tax appeals against which also the special leave petition has been dismissed, however, keeping the question of law open and has also relied upon another decision of the Gujarat High Court in the case of Shreeji Impex Vs. State of Gujarat, Tax Appeal No. 330 of 2014, 2014 SCC OnLine Guj 8074, in support of his above submissions.

6.4 It is further submitted by Shri Nikhil Goel, learned AAG appearing on behalf of the State that the High Court has failed to appreciate that the revenue cannot recover from the seller who is not registered or who has filed 'NIL' returns, thereby denying sale. It is further submitted that the High Court has materially erred in observing and holding that once the purchases are

made by the purchasing dealer by account payee cheque, the purchasing dealer is deemed to have discharged his burden. It is submitted that the High Court has also materially erred in observing that if the seller of the goods from whom the dealer has purchased does not deposit such tax, the dealer (purchasing dealer) cannot be held liable for that. It is submitted that as such the purchasing dealer is entitled to the Input Tax Credit on the tax paid by the seller and/or on the tax paid. It is submitted that therefore, for the purposes of Input Tax Credit, the purchasing dealer has to prove the actual payment of tax and actual transfer of goods and mere paper transaction is not sufficient.

6.5 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

7. While opposing the present appeals, learned counsel appearing on behalf of the respective assessees/dealers, who claimed the Input Tax Credit have vehemently submitted that in the present case, as such, the purchasing dealers have discharged the burden of proof cast under Section 70 of the KVAT Act, 2003 and proved the genuineness of the transactions by producing the genuine invoices and even the payment made through cheques. It is submitted that therefore once the dealer has discharged the burden cast under Section 70 of the KVAT Act,2003, the purchasing dealer is entitled to the Input Tax Credit and if at all it is found that a tax is not paid by the seller, the same can be recovered from the seller. However, so far as the purchasing dealer is concerned, they are entitled to the ITC, once having discharged the burden under Section 70 of the KVAT Act, 2003.

7.1 It is further submitted by learned counsel appearing on behalf of the respective dealers that in fact they have discharged the burden of proof cast under Section 70 of the KVAT Act, 2003 by producing the valid invoices and making the payment online to the supplier. It is submitted that registration of the dealer and online payments were never disputed. It is further submitted that apart from Section 70 of the KVAT Act, 2003, the Karnataka Value Added Tax Rules, 2005, namely Rules 27 and 29 provide for the details and obligations upon the dealer to issue the tax invoice and also the particulars of the tax invoices. It is submitted that neither the KVAT Act nor the Rules provide for any other document or any other obligation, which are statutorily required for the purposes of establishing the claim for seeking refund towards Input Tax Credit.

7.2 It is submitted that therefore the decision of the adjudicating authority was beyond the Act and Rules. It is further submitted by the learned counsel appearing on behalf of the respective assessees / dealers that the

only requirement of law, as far as the purchasing dealers wanting to avail the benefit of Input Tax Credit is concerned, is that he has to make sure that the selling dealer is a registered dealer and has issued the tax invoice in compliance with the requirement of the KVAT Act and the Rules made thereunder. It is submitted that once the purchasing dealer demonstrates that he has complied with such requirement, he cannot be denied the ITC only because the selling dealer fails to discharge his obligation under the KVAT Act. 7.3 It is submitted that in the present case, the respondents are purchasing dealers, who have complied with the requirement of KVAT Act and have ensured that the purchases made by them are in compliance with the requirements of the KVAT Act and Rules for claiming ITC. Reliance is placed on the decision of this Court in the case of Corporation Bank Vs. Saraswati Abharansala, (2009) 19 VST 84 (SC). It is further submitted that the ITC could be denied where the purchasing dealer has acted without due diligence, i.e., by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration. It is submitted that denial of ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bonafide. It is submitted that in the case of The Additional Commissioner of commercial Taxes Zone – II and Ors. Vs. M/s. Transworld Star Manjushree, Civil Appeal Nos. 216-217 of 2023 @ SLP (Civil) No. 6337-6338 of 2022, both the seller and dealer were registered.

7.4 Making above submissions, it is prayed to dismiss the present appeals.

8. We have heard learned counsel for the respective parties at length.

We have gone through the orders passed by the Assessing Officer and the first Appellate Authority as well as the orders passed by the second Appellate Authority/Tribunal and also the impugned judgment(s) and order(s) passed by the High Court dismissing the revision applications. The respondents herein – all purchasing dealers claimed the Input Tax Credit on the alleged purchases made from the respective dealers. The Assessing Officer, on appreciation of evidence and considering the other material on record, doubted the genuineness of the transactions and the purchases made from the respective dealers and denied the ITC. The findings of fact recorded by the Assessing Officer came to be confirmed by the first Appellate Authority. However, the second Appellate Authority and the High Court have allowed the ITC, by observing that as the purchasing dealers produced the invoices issued by the respective dealers and that in some of the cases they also made the payment through cheques, the

Assessing Officer was not justified in denying the ITC. Against the grant of ITC, the State is before this Court.

8.1 Therefore, the short question which is posed for the consideration of this Court is, "whether, in the facts and circumstances of the case, the second Appellate Authority as well as the High Court were justified in allowing the Input Tax Credit?"

9. While considering the aforesaid issue/question, Section 70 of the Karnataka Value Added Tax Act, 2003 is required to be referred to, which reads as under:

> "70. Burden of proof.- (1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.
>
> (2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:
>
> (a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and
>
> (b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.
>
> (3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty." 9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The

burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.

10. Even considering the intent of section 70 of the Act, 2003, it can be seen that the ITC can be claimed only on the genuine transactions of the sale and purchase and even as per section 70(2) if a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to take at a lower rate, or that a deduction of input tax is available, such a dealer is liable to pay the penalty. Therefore, as observed hereinabove, for claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer/s fails/fail to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them from the concerned

dealers and on which the ITC have been claimed, the Assessing Officer is absolutely justified in rejecting such ITC claim.

11. In the present case, the respective purchasing dealer/s has/ have produced either the invoices or payment by cheques to claim ITC. The Assessing Officer has doubted the genuineness of the transactions by giving cogent reasons on the basis of the evidence and material on record. In some of the cases, the registration of the selling dealers have been cancelled or even the sale by the concerned dealers has been disputed and/or denied by the concerned dealer. In none of the cases, the concerned purchasing dealers have produced any further supporting material, such as, furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and therefore it can be said that the concerned purchasing dealers failed to discharge the burden cast upon them under Section 70 of the KVAT Act, 2003. At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/ purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to Input Tax Credit.

12. Despite the findings of fact recorded by the Assessing Officer on the genuineness of the transactions, while refusing to allow the ITC, which came to be confirmed by the first Appellate Authority, the second Appellate Authority as well as the High Court have upset the concurrent findings given by the Assessing Officer as well as the first Appellate Authority, on irrelevant considerations that producing invoices or payments through cheques are sufficient to claim ITC which, as observed hereinabove, is erroneous. As observed hereinabove, over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers.

13. Now so far as the reliance placed upon Rules 27 and 29 of the Karnataka Value Added Tax Rules, 2005 and the submission

on behalf of the purchasing dealers that under the provisions of the Rules 2005, more particularly under Rules 27 & 29, the only requirement is to issue the tax invoice and to produce the same and there is no other requirement is concerned, the aforesaid has no substance. Rule 27 cast an obligation on the dealers to issue tax invoice and the particulars of the tax invoice are provided under Rule 29. Merely because the tax invoice as per Rule 27 and Rule 29 might have been produced, that by itself cannot be said to be proving the actual physical movement of the goods, which is required to be proved, as observed hereinabove.

Producing the invoices as per Rules 27 and 29 of the Rules 2005 can be said to be proving one of the documents, but not all the documents to discharge the burden to prove the genuineness of the transactions as per section 70 of the KVAT Act, 2003.

14. Now so far as the reliance upon the decision of the Delhi High Court in the case of On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi (Writ Petition (Civil) No. 6093/2017, decided on 26.10.2017), relying upon by the learned counsel appearing on behalf of the purchasing dealers is concerned, at the outset, it is required to be noted that before the Delhi High Court, Section 9(2)(g) of the Delhi Value Added Tax Act was under consideration, which reads as under:

"9(2)(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period." The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC.

15. In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and

address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed by the High Court and the second Appellate Authority allowing the ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the Assessing Officer denying the ITC to the concerned purchasing dealers, confirmed by the first Appellate Authority are hereby restored.

16. The instant appeals are accordingly allowed. However, there shall be no order as to costs.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[N.V. Anjaria & Devan M. Desai, JJ.]

R/Special Civil Appl. No. 23556 of 2022

Allysuum Infra ... Petitioner

Versus

UOI ... Respondents

Date of Order: 17.04.2023

WHETHER REGISTRATION CERTIFICATE CAN BE CANCELLED FOR NON-FILING OF RETURNS?

HELD – The Court is of the opinion that the Petitioner is at liberty to file an application for restoration of registration in view of the Notification dated 31.03.2023 and also lodge its claim for availment of Input Tax Credit.

Present for Petitioner : Mr. Abhay Y Desai

Present for Respondent : Mr. Ms Hetvi H Sancheti & Govt. Pleader

ORDER

Honourable Mr. Justice N.V. Anjaria

Heard learned advocate Mr. Abhay Desai for the petitioners and learned advocate Ms. Hetvi Sancheti for the respondents-department.

2. The petitioner, which is a partnership firm engaged in the business of real estate projects, has challenged in this petition order of cancellation of its Goods and Services Tax Registration. The Goods and Services Tax registration of petitioner came to be cancelled on the ground that the petitioner did not file Goods and Service Tax returns.

2.1 While the order was passed on 11.1.2022, the effect thereof was given from 10.09.2021.

3. When the petition came up for consideration, it was pointed out by learned advocates that the competent authority under the Goods and Services Tax Act, 2017 have issued notification No. 3/2023 dated 31.3.2023. It is contemplated in the said notification that on conditions being fulfilled, the cancellation of registration effected on the ground of non-filling of the GST returns, could be revoked.

4. The said notification stands to the benefit of the petitioners. It was submitted on behalf of the petitioners that the petitioners' case fall within the compass of the said notification.

5. In the aforesaid view, the petitioner is permitted to make application to the competent authority seeking the benefit of the aforesaid resolution dated 31.3.2023 bearing No. 3/2003. As and when such an application is made, the competent authority shall deal with the same and give the benefit of this notification to the petitioner.

5.1 It is made clear that this court has not expressed any opinion on the merits of the case of the either side.

6. It was submitted at this stage by learned advocate for the petitioners that retrospective cancellation of the GST registration of the petitioners may come in its way for claiming Input Tax Credit for the period from the date of cancellation till the date of restoration of the registration.

6.1 In this regard it is observed that when the competent authority considers the issue of revocation of cancellation of petitioners' GST

registration under the aforesaid notification, the petitioners shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.

7. The petition stands disposed of in the above terms and with the observations as above.

Direct service is permitted.

Registration Under Goods And Services Act, 2017

By Sh. Kumar Jee Bhat, Advocate

Registration under the Goods and Services Tax Act,2017 is provided under sections 22-30 read with Rules 8-26 of GST Rules, 2017. Different types of registrations have been provided for different set of people i.e., dealer's compulsory registration, casual dealer, Non-resident dealers, Suo moto registration, E-Commerce Operators and so on. The application for registration is to be filed within 30 days from the date on which person becomes liable to registration, where it is mandatory and 5 days prior to commencement of business for a casual dealer and like that other limitations have been provided in the Act and Rules.

Every supplier is liable to get himself registered under the Goods and Services Act, who is making a taxable supply of goods or services or both if his aggregate turnover is more than 20/40 lakhs and 10 lakhs in special category States. There is a general exemption from obtaining registration by any person, who is exclusively engaged in supply of goods and who's aggregate turnover in a financial year does not exceed 40 lakhs. Section 23 of CGST Act has specified the circumstances when a person is exempt from obtaining registration under the Act.

Notwithstanding anything contained in section 22(1) some categories of persons are mandatorily required to be registered even if their turnover is within exemption limits. Registration is PAN based. Hence, every person who supplies goods or services from different States has to get himself registered in each State, where from supply is made within 30 days from the date he becomes liable to be registered in every State/union Territory.

Process of registration takes place as per Rule 8(4A). There is no fees payable for filing of application for registration. Approval for grant of Certificate & Registration shall be under Rule 9 where it is found correct within 7 days from the date of filing/submitting of application and registration shall be granted within 30 days after the physical verification of the premises conducted in the manner prescribed under Rule 25.

There is a set procedure of law, from the filing of application to the grant of registration under the Act and Rules whether Central, State or Union Territory. The expression "procedure established by law" means procedure laid down by statute or procedure prescribed by the law of the State. Accordingly, first, there must be a law justifying interference with the

person's life or personal liberty, and secondly, the law should be a valid law, and thirdly, the procedure laid down by the law should be strictly followed.

In our legal system, Acts of Parliament and the Ordinances and other laws made by the President and Governors in so far as they are authorized to do so under the Constitution are supreme legislation. Thus, a power is granted to the Proper Officer under the statute to exercise them for the proper use of the suppliers. This Rule is a statutory Rule. Since the dawn of GST Act, this power of grant of registration has either been misinterpreted or misutilised by the Officers of the Department.

Necessity to do the Act in the Manner Prescribed and No Other

The method and modality of grant of Registration is clearly delineated by the Legislature. It is well known principle of law that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in Nazir Ahmad vs. King Emperor , a Bench of three Judges of this Court made following observations in State of Uttar Pradesh vs. Singhara Singh and others.

> "7. In Nazir Ahmed case, 63 Ind App 372; (AIR 1936 PC 253 (2)) the Judicial Committee observed that the principle applied in Taylor v. Taylor [(1875) 1 Ch D 426, 431] to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves".
>
> 8. The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been

enacted. AIR 1936 Privy Council 253.

In J.N. Ganatra vs. Morvi Municipality, exercise of power of dismissal having not been done in conformity of the Act, the same was set aside.

It was stated:-

"4. We have heard the learned counsel for the parties. We are of the view that the High Court fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of Rule 35 of the Rules, was an "act done in pursuance or execution or intended execution of this Act ...". It is no doubt correct that General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by Rule 35 of the Rules. Admittedly the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. In view of the categorical finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules. It cannot be treated to have been passed under the Act."

In Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala, a Constitution Bench of Court stated the normal rule of construction in such cases as under: -

It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

In Babu Verghese & Ors vs Bar Council of Kerala & Ors (1999) AIR 1281 SC, Para 31, 32, it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act

must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs. Taylor (1875) 1 Ch. D 426 which was followed by Lord Roche in Nazir Ahmad vs. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under :

> "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This rule has since been approved by this Court in Rao Shiv Bahadur Singh & Anr. vs. State of Vindhya Pradesh 1954 SCR 1098 = AIR 1954 SC 322 and again in Deep Chand vs. State of Rajasthan 1962(1) SCR 662 = AIR 1961 SC 1527. These cases were considered by a Three-Judge Bench of this Court in State of Uttar Pradesh vs. Singhara Singh & Ors. AIR 1964 SC 358 = (1964) 1 SCWR 57 and the rule laid down in Nazir Ahmad's case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

(See also Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd., AIR 2007 SC 2458)

Dharvi Sugar & Chemicals Ltd vs Union of India (2019) 5 DCC 480, Dipak Babaria & Ors vs State of Gujrat, 2014,

Necessity to Pass Speaking Order

It was held by Supreme Court in Siemens Eng & Mfg Co vs Union of India, AIR 1976 SC 1785, that If an Authority in the exercise of quasi judicial function, makes an order, it must record reasons before initiation of any action. Non-Speaking orders for Cancellation of Registration have been quashed by various High Courts of the country.

Keeping in view the above said fundamental principles of law the courts decided various cases which arose after the implementation of the Goods and Services Tax Act, 2017. In most of the cases either registration was not granted on frivolous grounds or registration was cancelled without providing any opportunity to put forward his case. Controversies started over various issues raised by the Proper Officer during approval and final permission of grant of registration. Questions regarding authenticity of business premises, on filing of electricity bill of business premises, Aadhar, space and other issues were raised and people aggrieved took various forums and High Courts to challenge such orders. Some of the judgments pronounced have been highlighted in this article for the benefit of the readers.

There can be multiple issues/reasons for rejection of registration, for cancellation / suspension of Registration and Revocation of cancellation of Registration.

1. Non-Filing Of Electricity Bill

In RANJANA SINGH VS COMMISSIONER (Allahabad High Court) Writ Tax No. 1084 of 2021, it was held;

Although the required documents as specified in the Act were submitted but, Rule 8 requires the submission of electricity bill or house tax receipt which were not submitted and therefore order of non-compliance was passed Judgment:

The validation of the orders passed stands rejected. Respondents are at liberty to charge the cost from erring officer.

Important Points given by the Hon'ble Judges:

1) Authorities rejected the application without specifying the reasons for rejection;

2) after giving a choice in the SCN they cannot insist for submission of electricity bill without stating any defect in the submitted house tax receipt;

3) once petitioner has satisfied the requirements of law it cannot be insisted to submit electricity bill;

4) in the absence of any shortcoming or defect in the reply submitted the petitioner has every right to carry on the business lawfully.

2. Non-Filing of No Objection Certificate for the Business Premises

PARVEZ AHMAD BABA VS UNION TERRITORY OF JK AND OTHERS, **(J & K High Court) LPA No. 197/2022.**

On cancellation of registration and on application for revocation of the registration the High Court of Jammu, Kashmir and Ladhakh held as under;

The application pending before the Deputy Commissioner (Appeals) Sales Tax Department, Kashmir Division, Srinagar, shall also be considered and decided after affording an opportunity of hearing to the respondent no. 5 also. Till the time the license is granted in favour of the rightful party by the competent authority, the Samci Restaurant shall not be operated/ run by any of the party.

3. Show Cause Notice Issued But Without Waiting For The Reply, Registration Cancelled.

A. ASHWANI AGGARWAL VS UNION OF INDIA, (Allahabad High Court), Writ Tax No. 451 of 2020 AND

B. MAHADEV TRADING CO VS UNION OF INDIA, (Gujarat High Court at Ahmedabad), R/Special Civil Application No. 11262/2020

(A) After hearing counsels for the parties and perusing the record, it is apparent that while giving the reason for cancellation of the registration, it is mentioned that no reply has been received from the petitioner whereas in the same order in the very beginning there is a specific reference in the said order that has taken into the reference the reply dated 25.02.2020 of the petitioner which is in response to the notice to show cause dated 14.02.2020, which is contrary in itself.

In view of the same, the order dated 14.04.2020 passed by the Superintendent, Kanpur Sector 12, Central Goods and Services Tax (Annexure 5 to the writ petition), is set aside with liberty to respondent no. 2 to pass a fresh order in accordance with law.

The writ petition is accordingly allowed. No order as to costs.

(B) It was held by the court as under;

Show Cause Notice for Cancellation of Registration read, whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Mr. Dave, without fixing a date for hearing and without waiting for any reply to be filed by the petitioner, the cancellation order was passed on 30.07.2020 whereby registration of the petitioners with GST department was cancelled. Although the cancellation order refers to a reply submitted by the petitioner and also about personal hearing, but according to Mr.

Dave neither he had submitted any reply nor afforded any opportunity of hearing. This fact is not disputed by Mr. Bhatt.

Mr. Bhatt, learned counsel for the respondent No.2 has sought to explain that some discrepancy occurred on account of some technical glitch in the system (on-line portal). The reply filed by the respondent is on record.

We are not entering into the merits of the impugned order as we are convinced that the show cause notice itself cannot be sustained for the reasons already recorded above. Therefore, the cancellation of registration resulting from the said show-cause notice also cannot be sustained.

In S M CIVIL LABOUR CONTRACTOR VS THE ASSTT. COMMISSIONER, (Madras High Court), W.P. No. 17610 of 2021.

Notice was issued for public holiday and registration was cancelled for not attending the proceedings.

The order was set aside.

DEVENDER PRASAD VS ASSTT COMMISSIONER, STATE GST, DEHRADUN, (Uttarakhand High Court), Writ Petition No. 3263 of 2022.

It was held as under;

4. Since, the petitioner failed to furnish returns for a continuous period of six months and show cause notice has been sent to him, it is directed that the petitioner shall file an application for revocation under Section 30 of the CGST Act in terms of Rule 23 of the CGST Rules. Though it is time barred, we are inclined to wave the limitation and direct the petitioner to file an application for reviving of G.S.T. registration before the Revenue within a period of 21 days. He shall also comply with other provisions of Section 30 of the U.K. GST Act, that is submission of returns for the defaulted six months and any further completed months after the revocation. In such case, if dues are found to be due from the petitioner and he pays the same, then his case shall be considered liberally by the revenue and shall be disposed of within a period of 30 days.

Accordingly, the writ petition is disposed of.

4. No Reason given in the Show Cause Notice still Registration Cancelled.

Cancellation should not be on flimsy grounds and sufficient opportunity should be given to the applicants to explain the issues raised.

In **SHAKTI SHIVA MAGNATS PVT LTD**, **(W.P.(C) NO. 1559 / 2022)** the Delhi High Court, held that there was no reason given in the show cause notice for cancellation of registration, the order was quashed and ordered for restoration of registration certificate.

Raj Kishore Engg. Construction Pvt. Ltd vs Joint Commissioner Appeals-II, **W.P. No. 32740 of 2022**, Madras High Court held that without Cancellation of registration without any explanation and only reason that the returns were filed late is not sustainable.

Pitchiah Venkateshprumal vs Superintendent of CGST, **WP No. 19848 dt.14-11-2022**.

5. Registration at Co-Working Space.

SPACELANCE OFFICE SALUTIONS PVT LTD

If the landlord permits sub-leasing as per the agreement, separate registration may be allowed to multiple companies to function in a 'co-working' space.

ASIA (CHENAI) ENGINEERING VS ASSTT.COMMESSIONER STATE TAX, **(W.P. (MD) Nos. 13851 of 2022),** the Madras High Court held that filing of reply to the Show Cause Notice in form GST DRC-06 is not mandatory under section 73(9),74(9) and 76(3) of the CGST2017, and the reply so filed through post to be treated as valid.

6. No Notice Served Prior to Inspection of the Premises

MICRO FOCUS SOFTWARE SOLUTION INDIA PVT LTD VS UNION OF INDIA, **(W.P.C. No. 8451 of 2021),** it was held by the Delhi High Court that when no notice is served for inspection of the premises as provided under Rule 25, the order of cancellation of registration on the ground of non functioning is not justified.

CURIL TRADEX PVT LTD VS UNION OF INDIA, W.P.C. NO. 10408 / 2022, Delhi High Court.

This aspect of the matter, that is, an inspection was carried out on 05.07.2021 was not put to the petitioner-consortium, when SCN dated 08.07.2021 was issued. Although the petitioner-consortium claims, that it had submitted a reply dated 23.11.2021; evidently, the same was not uploaded on the designated portal. It is Mr. Jain's contention though, that the reply was uploaded on the website of the respondent/revenue. That in the appeal preferred by the petitioner, information was submitted, which alluded to the fact that PIL had relocated itself. In the impugned order

dated 22.02.2022 passed by the Joint Commissioner, CGST-I, Delhi there was no discussion with regard to assertions made in that behalf by the petitioner-consortium. Given these facts, Court was of the view, that the impugned order cannot be sustained.

In sum, the entire proceedings, right up to the stage of passing of the order-in-appeal was legally flawed. Accordingly, the impugned order is set aside. Liberty is, however, given to the respondent/revenue, to issue a fresh SCN, if deemed necessary, with regard to the registration certificate, issued under the Act. However, in the meanwhile, the registration of the petitioner shall be restored.

Aditya Narayan Ojha (Amit Associates) Vs Principal Commissioner, CGST, Delhi North & Anr., **W.P.C. No. 8508/2022,** dated August 2, 2022, the Hon'ble Delhi High Court has directed the Department to restore GST registration of the assessee within one week upon filing of pending returns along tax and other dues. Held that, notice is needed to be served to the assessee under Rule 25 of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") before physical inspection is carried out.

Drs Wood Products Lucknow Thru. ... vs State of U.P. Thru. Prin. Secy. Tax, Writ C No. 21692 of 2021 (Allahabad High Court) on 5 August, 2022, the court held as under;

21. I have no hesitation in recording that the said authorities while passing the order impugned have miserably failed to act in the light of the spirit of the GST Act. The stand of the Central Government before this Court is equally not appreciable as on the one hand, they are alleging that excess goods were found for which the petitioner is liable to pay duty and on the other hand there is justification to the order passed and impugned in the present petition.

22. Finding the orders contrary to the mandate of Section 29 and 30 of the Act as well as the principles of adjudication by the quasi-judicial authorities, the orders impugned dated 18.01.2021 (Annexure - 19) and 15.07.2020 (Annexure - 16) cannot be sustained and are set aside.

23. The registration of the petitioner shall be renewed forthwith.

24. In the present case, the arbitrary exercise of power cancelling the registration in the manner in which it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in

consonance with the ease of doing business, which is being promoted at all levels. For the manner in which the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs.50,000/- to the petitioner. The said cost of Rs.50,000/- shall be paid to the petitioner within a period of two months, failing which the petitioner shall be entitled to file a contempt petition.

25. The writ petition is allowed in above terms.

7. Cancellation for Non-Filing of Returns

DEVENDER PRASAD VS ASSTT COMMISSIONER, STATE GST, DEHRADUN, (Uttarakhand High Court), Writ Petition No. 3263 of 2022.

It was held by the Uttaranchal High Court as under:

Since, the petitioner failed to furnish returns for a continuous period of six months and show cause notice has been sent to him, it is directed that the petitioner shall file an application for revocation under Section 30 of the CGST Act in terms of Rule 23 of the CGST Rules. Though it is time barred, we are inclined to wave the limitation and direct the petitioner to file an application for reviving of G.S.T. registration before the Revenue within a period of 21 days, hence. He shall also comply the other provisions of Section 30 of the U.K. GST Act that is submission of returns for the defaulted six months and any further completed months after the revocation. In such case, if dues are found to be due from the petitioner and he pays the same, then his case shall be considered liberally by the revenue and shall be disposed of within a period of 30 days. Accordingly, the writ petition is disposed of.

After going through all these judgments, I suggest that the readers should also read judgment of Madras High Court in **SUGNA CUTPIECE CENTRE**, **2022-TOIL-261-MAD-GST**.

Some basic / fundamental principles

1. A thing must be done only in the manner prescribed.

2. Necessity to pass speaking order

Mandatory Provisions v. Directory Provisions.

Compiled by: Kumar Jee Bhat, Advocate

Substantive And Procedural Law

Substantive law is the statutory of written law that governs rights and obligations of those who are subject to it. Substantive law defines the legal relationship of people with other people or between them and the state. Substantive law stands in contrast to procedural law, which comprises the rules by which a court hears and determines what, happens

In civil or criminal proceedings, procedural law deals with the method and means by which substantive law is made and administered. The time allowed for one party to sue another and the rules of law governing the process of the lawsuit is examples of procedural laws. Substantive law defines crimes and punishments (in criminal law) as well as civil rights and responsibilities in civil law .it is codified in legislated statues or can be enacted through the initiative process.

Another way of summarizing the difference between substantive and procedural is as follows:

> substantive rules of law define rights and duties, while procedural rules of law provide the machinery for enforcing those rights and duties. However, the way to this clear differentiation between substantive law and, serving the substantive law, procedural law has been long, since in the roman civil procedure the action included both substantive and procedural elements.

When is a statutory procedural requirement ‘mandatory’? There has been much debate as to whether in any given instance a requirement is ‘mandatory’ or ‘directory’, and the debate continues! In Wade & Forsyth Administrative Law (8th edn, 2000) p 228 the authors state: -

> “… the same condition may be both mandatory and directory: mandatory as to substantial compliance, but directory as to precise compliance …”

Procedural law prescribes the means of enforcing rights or providing redress of wrongs and comprises rules about jurisdiction, pleading and practice, evidence, appeal, execution of judgments, representation of counsel, costs, and other matters. Procedural law is commonly contrasted

with substantive law, which constitutes the great body of law and defines and regulates legal rights and duties. Thus, whereas substantive law would describe how two people might enter into a contract, procedural law would explain how someone alleging a breach of contract might seek the courts' help in enforcing the agreement.

To be effective, law must go beyond the determination of the rights and obligations of individuals and collective bodies to say how these rights and obligations can be enforced. Moreover, it must do this in a systematic and formal way, because the failure to do so would render the legal system inefficient, unfair, and biased and, as a result, possibly upset the social peace. Embodying this systematization and formalization, procedural law constitutes the sum total of legal rules designed to ensure the enforcement of rights by means of the courts.

Because procedural law is a means for enforcing substantive rules, there are different kinds of procedural law, corresponding to the various kinds of substantive law. criminal law is the branch of substantive law dealing with punishment for offenses against the public and has as its corollary criminal procedure, which indicates how the sanctions of criminal law must be applied. Substantive private law, which deals with the relations between private (i.e., nongovernmental) persons, whether individuals or corporate bodies, has as its corollary the rules of civil procedure. Because the object of judicial proceedings is to arrive at the truth by using the best available evidence, there must be procedural laws of evidence to govern the presentation of witnesses, documentation, and physical proof.

In deciding whether a provision is mandatory or directory the court must examine its purpose and its relationship with the scheme, subject matter and objective of the statute in which it appears. The court must also attempt to assess the importance attached to the provision by Parliament.

The word 'shall' is prima facie mandatory, but may often be construed as merely directory depending on the context in which it appears. If the effect of adopting a mandatory construction would be substantial public inconvenience, public policy requires that it should not be adopted.

Lord Hailsham of St Marylebone, Lord Chancellor, In London and Clydesdale Estates Ltd v. Aberdeen District Council [1980] 1 WLR 182 said at p. 189:

> "When Parliament lays down a statutory requirement for the exercise of a legal authority it expects its authority to be obeyed down to the minutest detail."

However, there is the well-known older line of authority which is evidenced by the dictum of Lord Penzance in Howard v. Boddington (1877) 2PD 203 at p. 211:

> "You must look at the subject matter, consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory."

Provision in the legislation for a consequence which is to follow on failure to perform the act prescribed is an indication that the provision is mandatory. Mr Larkin QC for the appellant cited the old American cases of Shaw v Randall (1860) 15 Cal 384 and Perine v Forbrush (1893) 97 Cal 305 in support of this proposition, but its logical force is such that it hardly needs authority.

There is American authority that as a general proposition constitutional provisions are given mandatory effect: Sutherland, Statutory Construction, 3rd ed, vol, para 57:13. On the other hand, it has been held by the Privy Council that such provisions may require more flexible interpretation to cater for changing circumstances: Attorney General for Ontario v Attorney General for Canada [1947] AC 127 at 154. In that case the Judicial Committee paid considerable regard to the spirit of the Statute of Westminster that Dominion legislatures should have "the widest amplitude of power". This approach is an application of the well-established principle that in construing legislation the court should pay regard to its policy and objects.

In some cases the consequences of adopting a mandatory construction would cause such public inconvenience that public policy requires that it should not be adopted: see such cases as R v Mayor of Rochester (1857) 7 E & B 910 and the striking example of Simpson v Attorney General [1955] NZLR 271.

In Jeyeanthan, R (on the application of) v Secretary of State for the Home Department respondent [1999] EWCA Civ 3010 (21 May 1999) Lord Woolf said:

> "……I suggest that the right approach is to regard the question of whether a requirement is directory or mandatory as only at most a first step. In the majority of cases there are other questions which have to be asked which are more likely to be of greater assistance

than the application of the mandatory/directory test: The questions which are likely to arise are as follows:

(a) Is the statutory requirement fulfilled if there has been substantial compliance with the requirement and, if so, has there been substantial compliance in the case in issue even though there has not been strict compliance? (The substantial compliance questions.)

(b) Is the non-compliance capable of being waived, and if so, has it, or can it and should it be waived in this particular case? (The discretionary question.) I treat the grant of an extension of time for compliance as a waiver.

(c) If it is not capable of being waived or is not waived then what is the consequence of the non-compliance? (The consequences question.)

He went on to say:

"Which questions arise will depend upon the facts of the case and the nature of the particular requirement. The advantage of focusing on these questions is that they should avoid the unjust and unintended consequences which can flow from an approach solely dependent on dividing requirements into mandatory ones, which oust jurisdiction, or directory, which do not. If the result of non-compliance goes to jurisdiction it will be said jurisdiction cannot be conferred where it does not otherwise exist by consent or waiver."

Under the taxation law a literal interpretation of the provisions should be made. A reference is made to the provisions of DVAT Act,2004 Section 9. On a plain reading of section 9(1) it does not say about the time period for claiming the tax credit on the purchases occurring during the tax period unlike in section 9(9) which stipulates the time period for claiming the tax credit in respect of capital goods. The tax credit under section 9(1) is in respect of purchases which arises in the course of his activities as a dealer and the goods are to be used directly or indirectly for the purpose of making sales which are liable to tax under section 3 or the sales which are not liable to tax under section 7 of the DVAT Act. The legislative intent behind introducing VAT is to avoid cascading effect and denial of tax credit is contrary to the provisions of VAT. It is necessary to mention here when full tax credit is not utilized in the tax period, the same can either be refunded or adjusted/carry forward to next tax period, how the claim of

tax credit can be denied if taken in the subsequent month. The law does not envisage such intent. The tax credit comes first on the purchases and utilization comes thereafter.

The rule of law is that what cannot be done directly cannot be done indirectly also. The Hon'ble Delhi High Court in the case of Northern Motor Company vs. Commissioner, Value Added Tax 25 VST 466(Del) has held that a pragmatic interpretation of the principals of the provision of the Act had to be made. The word used "shall" be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer being procedural in nature and since no tax deficiency found by the VA the penalty cannot be imposed. More so, under section 86 no penalty is leviable if the dealer fails to take tax credit in respect of the turnover of the purchases. The Hon'ble Supreme Court in various judgments gave fine distinction for determining a provision as mandatory or directory. In addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. **A Constitution Bench in the case of Commissioner of Central Excise, New Delhi vs. M/S Hari Chand Shri Gopal & Others etc. Civil Appeal Nos.1878-1880 of 2004 order dated 18.11.2010** has observed and held that "The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness" , the acceptance or otherwise of a plea of "substantial compliance", depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defense cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should be determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly

with regulatory requirements that are important, especially when a party seeks the benefit of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantial complied with notwithstanding the non-compliance of the directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statue, albeit procedurally faulty. The test for determining the applicability of substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the statute, if so, strict adherence to those requirement is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the “essence” of the thing to be done but are given with a view to the orderly conduct of business they may be fulfilled by substantial, if not strict compliance.

In Dattatraya Mores war Vs. The State of Bombay & Ors., AIR 1952 SC 181, this Court observed that law which creates public duties 8 is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:-

It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provision of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done.

A Constitution Bench of Supreme Court in State of U.P. & Ors. Vs. Babu Ram Upadhya AIR 1961 SC 751, decided the issue observing: -

For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not

visited by some penalty, the serious or trivial consequences that flow there from, and, above all, whether the object of the legislation will be defeated or furthered.

In **Sharif-Ud-Din Vs. Abdul Gani Lone AIR 1980 SC 303**, this Court held that the difference between a mandatory and directory rule is that the former requires strict observance while in the case of latter, substantial compliance of the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific consequence, the provision has to be construed as mandatory.

In **M/s. Rubber House Vs. M/s. Excellsior Needle Industries Pvt. Ltd. AIR 1989 SC 1160**, this Court considered the provisions of the Haryana (Control of Rent & Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application and held the 10 provision to be directory though the word shall has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.

The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as what would be the consequence which would flow from construing it in one way or the other and as to whether the Statute provides for a contingency of the non-compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow there from and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.

The apex court in the case of Sambhaji and Others vs. Gangabai and Others (2008) 17 SCC 117 has held that “No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of the Parliament the mode of procedure is altered, he has no other right than to proceed to the altered mode..... . a procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any

interpretation which eludes or frustrates the recipient of justice is not to be followed..... Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words 'shall not be later than ninety days' but the consequences flowing from non- extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire contacts in which the provision came to be enacted, hold the same to be directory though worded in a negative form." The court also held that the consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

A **Constitution bench in the case of Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur AIR 1965 SC 895** held that "the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to the persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken in to account in arriving at the conclusion whether a particular provision is mandatory or directory."

The Constitution Bench decision in the case of Bhikraj Jaipuria v. Union of India [1962] 2 SCR 880, the Supreme Court observed that where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the Legislature as disclosed by the object, purpose and scope of the statute.

In the present case substantial compliance have been made by the appellant as required under section 9(2) and section 9(7) of DVAT Act, 2004. In fact, section 9(2) and section 9(7) is rider. The appellant made

purchases from the registered dealers & is in possession of tax invoices, goods which were purchased are used directly or indirectly for the purpose of export outside India. The selling dealers were not under composition scheme and the goods purchased are creditable goods. More so, no penal consequences arise if the tax credit not taken in the same period or no loss to the revenue if taken in subsequent tax period rather revenue is benefited.

Hence in view of the judgments of the apex court and interpreted by their Lordships, the notice of assessment of penalty be quashed. Reference can made to other judgments also;

***B.S. Khurana & Ors. Vs. Municipal Corporation of Delhi & Ors. (2000) 7 SCC 679; State of Haryana & Anr. Vs. Raghubir Dayal (1995) 1 SCC 133*; *Gullipilli Sowria Raj Vs. Bandaru Pavani @ Gullipili Pavani (2009) 1 SCC 714*,**

The various courts have held that substantial benefits cannot be disallowed or rejected relying on technicalities and the authorities should act in a manner consistent with the broader concept of justice.

The Hon'ble Supreme Court in the case of Manglore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner 1991 (55) ELT 437(SC) while drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute has held "Exemption – technicalities cannot be equated with substantive conditions in an exemption notification. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations or policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve……. **A distinction between the provisions of statute which are of substantive in character and were built- in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished.**"

The Apex court laying down the test for giving the distinction between '*mandatory provisions'* and '*directory provisions*', in a recent decision in

May George Vs. Special Tahsildar & Ors. on 25 May, 2010, CIVIL APPEAL NO. 2255 OF 2006, has stated that where the provisions are mandatory, their non-compliance vitiates the entire proceedings and set to naught the action taken thereon. The Court was dealing with the requirement on the part of the Land Acquisition Officer to give notice under Section 9(3) of the Land Acquisition Act and the question raised thereon as to whether such requirement was a mandatory precondition. In this scenario, the Supreme Court brought forth the distinction between mandatory and directory provisions in the following terms;

The only question remains for our consideration is as to whether the provisions of Section 9(3) are mandatory in nature and non-compliance thereof, would vitiate the Award and subsequent proceedings under the Act. Section 4 Notification manifests the tentative opinion of the Authority to acquire the land. However, Section 6 Declaration is a conclusive proof thereof. The Land Acquisition Collector acts as Representative of the State, while holding proceedings under the Act, he conducts the proceedings on behalf of the State. Therefore, he determines the pre-existing right which is recognised by the Collector and guided by the findings arrived in determining the objections etc. and he quantifies the amount of compensation to be placed as an offer on behalf of the appropriate government to the person interested. It is for the tenure holder/person interested to accept it or not. In case, it is not acceptable to him, person interested has a right to ask the Collector to make a reference to the Tribunal.

Section 9(3) of the Act reads as under: -

> "The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate"

Section 9 of the Act provides for an opportunity to the "person interested" to file a claim petition with documentary evidence for determining the market value of the land and in case a person does not file a claim under Section 9 even after receiving the notice, he still has a right to make an application for making a reference under Section 18 of the Act. Therefore, scheme of the Act is such that it does not cause any prejudicial consequence in case the notice under Section 9(3) is not served upon the person interested.

Conclusion

The controversy can be resolved and summarized by the judgment in Robinson v Secretary of State for Northern Ireland & Ors [2002] UKHL 32 (25 July 2002) Lord Slynn of Hadley in Wang v Commissioner of Inland Revenue [1994] 1 WLR 1286 at 1296 said:

> **"**. . . their Lordships consider that when a question like the present one arises - an alleged failure to comply with a time provision - it is simpler and better to avoid these two words 'mandatory' and 'directory' and to ask two questions. The first is whether the legislature intended the person making the determination to comply with the time provision, whether a fixed time or a reasonable time. Secondly, if so, did the legislature intend that a failure to comply with such a time provision would deprive the decision maker of jurisdiction and render any decision which he purported to make null and void?"

Allahabad High Court in State of U.P. vs Triloki Nath Pandey (H.C.C.P. ... on 2 December, 2004

Acquiescence, being the principle of equity, must be made applicable in a case where the order has been passed and complied with without raising any objection.

A Constitution Bench of the Hon'ble Supreme Court, in Pannalal Binjraj and Ors. v. Union of India and Ors., AIR 1957 SC 397, had explained the scope of estoppel observing that once an order is passed against a person and without raising any objection he submits to the jurisdiction or complies with such order, he cannot be permitted to challenge the said order merely because he could not succeed there, for the reason that such conduct of that person would disentitle him for any relief before the Court.

A similar view has been reiterated by the **Hon'ble Supreme Court in Manak Lal v. Dr. Prem Chand Singhvi and Ors., AIR 1957 SC 425; Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and Ors., AIR 1969 SC 329.**

State Bank Of Patiala & Ors vs S.K. Sharma; 1996 AIR 1669, 1996 SCC (3) 364

It is not brought to our notice that the State Bank of Patiala (Officers') Service Regulation contains provision corresponding to Section 99 C.P.C.

or Section 465 Cr.P.C. Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 C.P.C. and Section 465 Cr.P.C. is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the authority competent to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable For examples take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/ material in support evidence of the other side. If no such opportunity is given at all inspite of a request therefor, It will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions it would be possible to apply the theory of substantial compliance or the test of prejudices as the case may be. The position can be stated in the following words: Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (s) In respect of procedural provisions other than of a fundamental nature the theory of substantial compliance would be available. In complain objection on this score have to be judged on the touch-stone of prejudices as explained later in this judgment. In other words, the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to he decided in each case having regard to the nature and character of the relevant provision.

> “Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be waived. But a mandatory provision can obviously be waived. But a mandatory provision can only be waived if it is not conceived in the public interests, but in the interests of the party that waives it. In the present case the executing court had inherent jurisdiction to sell the property. We have assumed that s.35 of the Act is a mandatory provision. If so, the question is whether the said provision

> is conceived in the interests of the public or in the interests of the person affected by the non- observance of the provision. It is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of s.35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situations may be visualized when the judgment-debtor does not seek to take advantage of the benefit conferred on him under s.35 of the Act."

The principle of the above decision was applied by this Court in Krishan Lal State of Jammu & Kashmir [1994 (4) S.C.C.422) in the case of an express statutory provision governing a disciplinary enquiry. It was a case where the employee was dismissed without supplying him a copy of the enquiry officer's report as required by Section 17(5) of the Jammu and Kashmir (Government Servants) Prevention of Corruption Act, 1962. This was treated as mandatory. The question was how should the said complaint be dealt with.

In Krishan Lal v. State of J & K (1994 (4) SCC 422), this Court while considering the requirement of furnishing copy of inquiry proceedings under Section 17(5) of the J & K (Government Servants) Prevention of Corruption Act, 1962 held following the judgment in V. Chettiar's case (supra) and D.N. Gorai (supra) that though the requirement mentioned in Section 17(5) of the Act was mandatory, the same can be waived because the requirement of giving a copy of the proceedings of the inquiry mandated by Section 17(5) of the Act is one which is for the benefit of the individual concerned.

HWR Wade's name is well known in the world **of** administrative law. He has dealt with this aspect at page 267 **of** the sixth edition **of** his treatise wherein he has quoted what Lord Denning, MR said in Wells v. Minister **of** Housing-and Local Government, 1967 (1) WLR 1000, which is as below: -

> "I take the law to be that a defect in procedure can be cured, and irregularity can be waived, even by a public authority, so as to render valid that which would otherwise be invalid."

We may end this journey into the field **of** law by referring to the meaning **of** the words "irregularity" as given at page 469 **of** Volume 22A **of** "Words and Phrases" (Permanent Edition) and **of** 'nullity' at pages 772 and 773 **of** Volume 28A **of** the aforesaid book. As to "irregularity" it has been stated that it is "want **of** adherence to some prescribed rule or mode **of** proceeding"; whereas "nullity" is "a void act or an act having no legal force

or validity" as stated at page 772. At page 773 it has been mentioned that the safest rule **of** distinction between an "irregularity" and a "nullity" is to see whether "a party can waive the objection: if he can waive, it amounts to irregularity and if he cannot, it is a nullity.

Commissioner Of Customs, Mumbai vs M/S. Virgo Steels, Bombay & Anr on 4 April, 2002 (2002) 4SCC 316

The next question for our consideration is: can a mandatory requirement of a statute be waived by the party concerned ? In answering this question, we are aided by a catena of judgments of this Court as well as of the Privy Council. We will first refer to the judgment of the Privy Council which has been consistently followed by the Supreme Court in a number of subsequent cases involving similar points. In Vellayan Chettiar v. Government of Province of Madras (AIR 1947 PC 197), the Privy Council held that even though Section 80 C.P.C. is mandatory, still non-issuance of such notice would not render the suit bad in the eye of law because such non-issuance of notice can be waived by the party concerned. In the said judgment, the Privy Council held that the protection provided under Section 80 is a protection given to the person concerned and if in a particular case that person does not require the protection he can lawfully waive his right.

From the ratio laid down by the Privy Council and followed by this Court in the above-cited judgments, it is clear that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.

Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that that requirement is provided by the Statute solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, this right of notice being personal to the person concerned, the same can be waived by that person.

Scope of Rectification Under CGST Act – Section 161

Sushil K Verma, Advocate

On the request of large number of professionals – Advocates and CAs – who have been calling me to pen down a note on the above issue – for all my esteemed bros a legal note on section 161. An alternative could be developed to section 107 provided we are able to appreciate the law on this subject and rectification order is also appealable. Let's expolore the law further and together.

Section 161 of GST Act 2017 deals with the provisions of 'Rectification of errors apparent on the face of record'. It states that the prescribed Authority can rectify the errors (and not mistakes as we usually read such provisions in other laws) in order or decision or notice or certificate or any other document on its own motion or when brought to its notice by any officer appointed under this act or by the affected person within a period of Three months from the date it is passed / issued. No such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document.

Taxable person can move the application within three months (and not ninety days) from the date when decision or order etc was issued and the proper officer shall have to complete the process, this way or that way, within a maximum period of 6 months (and not 180 days as normally people understand this)

This section has been very widely worded and including within its scope all decisions, notices, certificates and other documents issued and all these can be subject to rectification *suo moto* by the officer or based on directions or based on application by the affected party.

Rectification under section 161 can be done by proper officet suo moto or upon notice or application by the taxable person or affected person or upon notices of GST officials, both central and state. In other words, a proper officer of a State can request for rectification or a central officer is also authorised to request the state officer to rectify the order or decision or notice. This is a huge power given to revenue by the legislature.

This provision provides an alternative remedy, without pre-deposit of 10 percent, where the taxable person can file the application for rectification instead of going in appeal under section 107 which mandates a minimum

10 percent deposit of the disputed tax amount – it is possible provided the application is covered by section 161 i.e. There are errors apparent on the face of the order, notice or decision or certificate etc. No doubt it requires detailed appreciation of scope of such applications and especially the meaning of the phrase “errors apparent on the face of the record. And the appeal against rectification order, if the taxable person is not satisfied is not barred under section 121 of the CGST Act and hence another move can be availed and appeal can also be filed.

It is settled legal position that errors of law and errors of facts both can be rectified. Generally, there are three types of errors such as errors of law, errors of facts and clerical, arithmetical errors. Errors which are patent, obvious, visible and evident from the face of record can be said as errors apparent on the face of record and could be covered under section 161 of the Act. Errors which involved debatable, arguable points, involving interpretation, long and elaborate arguments and required additional evidences cannot be covered under the scope of apparent errors. Failure to consider documents submitted by person while passing order or decision is error of fact and apparent on the face of record. Similarly, failure to consider provision of law is error of law and amount to error apparent on the face of record.

M/s Deva Metal powder vs Commissioner of Trade Tax UP of 2007 is a very good Supreme Court Judgment to appreciate the scope of rectification and you must read.

Section 161 specifically prescribes that if any rectification affects any person adversely, principles of natural justice must be followed i.e., in general parlance an inference can be drawn that no adverse order in lieu of rectification must be passed without giving the affected party a chance to be heard and present their case against the given facts and circumstances of that rectification. In all applications under this section please mention that PERSONAL HEARING IS REQUIRED.

Always keep in mind while availing this remedy that the power vested by the said Section is neither a power of review nor is akin to the power of revision but is only a power to rectify a mistake apparent on the face of the record. Rectification implies the correction of an error or a removal of defects or imperfections. It implies an error, mistake or defect which after rectification is made right.

The limited scope of section 161 is that order of rectification can be passed in certain contingencies as spelt out in the provision quoted

hereinabove. It does not confer on any officer a power of review.- whether Suo moto or on the application of a taxable person. If an order of assessment is rectified by the Assessing Officer in terms of Section 161 of the Act, the same itself may be a subject matter of a proceeding for Suo moto revision by the higher authorities to whom such power may have been delegated under the Act.

It is a settled principle of law that if an order of rectification is passed by the Assessing Authority, the rectified order shall be given effect to.

Hon'ble Supreme Court of India in Assistant Commissioner of Income Tax vs. Saurashtra Kutch Stock Exchange Limited (2008) 219 CTR (SC) 90 settled long ago that non-consideration of the decision of the jurisdictional high court/Supreme Court constitutes mistake apparent from the face of record and is rectifiable- this judgment though under income tax act (section 254(2), but in my view squarely applicable to section 161 as well. Hence, whenever you think Delhi High Court judgment on the given issue or that of the Supreme Court has not been followed by the proper officer, you could avail this remedy instead of pushing your client to appeal process.

Hon'ble Supreme Court of India in Commissioner of Income Tax vs. Reliance Telecom Limited, Civil Appeal No.7110 of 2021 dated 03rd December, 2021 reported as (2021) 323 CTR (SC) 873 went a step ahead to curtail and prune the powers conferred upon the tribunal to rectify its mistake apparent from record itself. This judgment gives guidelines under which application for rectification can be made and you must go through this judgment.

To conclude legal aspects of section 161 the following judgment defines the phrase Error Apparent on the face of the Record

In Meera Bhanja v. Nirmala Kumari Choudhury (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the fact of the record and observed: (though judgment was dealing with Review – but the phrase has been aptly defined that is in section 161)

> "9. ....it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa

Tirumale AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

17. ....An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ".

Errors apparent on the face of the "RECORD"

The Act does not define the word RECORD which is so crucial for the purpose of this section. The Hon'ble Bombay High Court in the case of Maharashtra State, Bombay Vs Motwane Pvt Ltd reported in [1992] 84 STC 377W held that, "the word 'record' cannot be construed as meaning not only the assessment record but also the books of accounts, various registers maintained and the sale invoices which the assessee might have brought to the Sales Tax Officer at the time of assessment.

The power of rectification in the order is confined only to mistakes apparent on the face of record. The application for rectification can be made if the mistake is ex facie and it is not capable of further arguments. If the issues in order is involving legal interpretation, then it cannot be rectified under section 161.It is held by Hon'ble Supreme Court in Master construction Co (P) Limited Vs State of Orissa and Another 1966 AIR 1047. In simple terms, a decision on the debatable point of law or undisputed questions of fact is not a mistake apparent from the record.

Under the GST law the time limit for notifying the error by the assessee to the Authority is three months and the Authority can pass the rectification order within six months within specified date. Suppose a Central Officer requests for rectification after six months from the date of issue – order cannot be rectified under this provision as it would become time barred.

Whether time spent in pursuing rectification application can be exclluded for calculationg limitation period of 3 months under section 107?

What happens to the limitation period if someone in good faith files a case in a court that is unable to entertain it because of a defect of

jurisdiction? How will limitation be counted when the case is ultimately filed in the court of competent jurisdiction? Section 14 of the Limitation Act, 1963 ("LA") gives the answer. Under this provision, the court can exclude from limitation "the time during which the plaintiff has been prosecuting with due diligence another civil proceeding.

Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and

(5) Both the proceedings are in a court

Section 14(2) of the Limitation Act excludes the time for which the applicant has been prosecuting, with due diligence, another civil proceeding, whether in the court of first instance or of appeal or revision. The conditions precedent for exclusion under this section are: (a) the earlier proceedings were against the same party; (b) the earlier proceedings were for the same relief; (c) they were prosecuted with diligence and good faith; and (d) the proceedings were prosecuted in a forum which could not entertain it for want of jurisdiction, or any other defect of like nature.

The SC has spelt out, in Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department, the conditions stated above for the application of Section 14, including the requirement that 'both the proceedings are in a court', which creates room for controversy. It brings to the fore the issue whether the provisions of Section 14 of the Limitation Act would be applicable to 'quasi-judicial forums' as against 'courts.' This issue came up for consideration in the case of MP Steel Corporation v. Commissioner of Central Excise, wherein the SC held that "the word 'court' in section 14 takes its colour from proceeding terms 'civil proceedings'. It

was held that the section would not be applied to appeals before a quasi-judicial Tribunal".

However, the court further observed that this finding does not conclude the issue and held that even when Section 14 may not apply, the principles on which Section 14 is based shall apply by virtue of them being the principles advancing the cause of justice. This application of principles of Section 14 can be seen in the case of J. Kumardasan Nair vs. Iric Sohan. Further, in the case of Consolidated Engineering Enterprises, it was observed that in considering the provisions of Section 14, proper approach must be adopted in interpreting the provisions in a way that such interpretation advances the cause of justice rather than aborting proceedings. The SC recently, in Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, endorsed the above decisions.

It must be noted that the exclusion of time under Section 14 is mandatory, given its pre-requisites are met. The purpose of Section 14 is to grant relief to a party who has bona fide committed some mistake.

***In MP Steel Corporation* v*. Commissioner of Central Excis*e, (2015) 7 SCC 58 "the principles guiding the application of Section 14 OF LimitationAct, have been succinctly set down by the Supreme Court**

Thus if you received the order on 1.1.2024 the time for filing appeal is three months from 1.1.24. Suppose you file rectification application under Section 161 on 10.1.24, then you have consumed 10 days of the first month and you still have 2 months plus days of the first month. Let us image it takes six months for the proper officer to decide the rectification application – then in my view you still have 2 months and say 20 days left of the first month to file the appeal. Hence, it is worth taking this recourse if you meet the parameters of rectification law as spelt out hereinabove. As an alternative to appeal process this route can be very successful, more so, when SC says provisions of section 14 shall be applicable to quasi tribunals as well even though they are not courts in strict sense – law in section 14 being in advancement of justice to the citizens.

Rule 142(7) – Consequence of Rectified Order

In cases, where rectification of the directive has been issued under Section 161 or in cases, where an order uploaded on the portal has been taken back, then the proper officer must upload the abstract of the rectification order or the withdrawal order electronically in Form GST DRC-08.

As per the regulations, the Proper Officer must upload an abstract of the rectification order issued under Section 161 electronically in Form GST DRC-08. This same form can also be utilized for the withdrawal of the directive. This form includes information on the original order and rectification order and a summary of the original claim and demand post-rectification. As a summary of the rectification order, it is required to issue Form GST DRC-08 under Section 142(7). This form was a replacement via the GST Notification No. 16/2019-CT on 29.03.2019, which was in effect from 01.04.2019.

EDITORS NOTE

Delhi High Court in The Indian Institute of Planning vs The Commissioner of Service Tax, 2020 has held as under:

We note that the scope of the rectification of the mistakes application is very limited. Only mistakes which are apparent on the face of the record and which do not require long drawn process of arguments by both sides, may be rectified. It is well settled law that applicant cannot seek review of the order in the guise of rectification of mistakes. This view finds support in the decision of Hon'ble Supreme Court in case of Commissioner of Central Excise Kolkata vs. ASCU Ltd. reported in [2003(151) ELT (481) (SC)]. Further, such views are to be found in the decision of the Apex Court in case of Commissioner of Central Excise, vs RDC Concrete: India Pvt. Ltd. reported in [20 11(270) ELT 625(SC)], as also in case of Honda Power Products vs. Commissioner of Income Tax, Delhi [2008(221)ELT(11) (SC)]."

To Assign Powers of Superintendent of Central Tax to Additional Assistant Directors in DGGI, DGGST and DG Audit

Notification
No 01/2023-Central Tax

New Delhi, dated the 4th January, 2023

G.S.R (E).– In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017(13 of 2017), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, dated the 1st July, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 1st July, 2017, namely: -

In the said notification, in the Table, after Sl. No. 8 and the entries relating thereto, the following Sl. No. and entries shall be inserted namely:-

Sl. No.	Officers	Officers whose powers are to be exercised
(1)	(2)	(3)
"8A.	Additional Assistant Director, Goods and Services Tax Intelligence or Additional Assistant Director, Goods and Services Tax or Additional Assistant Director, Audit	Superintendent"

[F. No.CBIC-20006/17/2022-GST]
(Raghvendra Pal Singh)
Director

Note: The principal notification No. 14/2017- Central Tax, dated the 1st July, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 818(E), dated the 1st July, 2017.

Amnesty to GSTR-4 Non-filers

Notification
No. 02/2023 – Central Tax

New Delhi, the 31st March, 2023

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017)

(hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 73/2017– Central Tax, dated the 29th December, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1600(E), dated the 29th December, 2017, namely: —

In the said notification, after the sixth proviso, the following proviso shall be inserted, namely: —

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived where the total amount of central tax payable in the said return is nil, for the registered persons who fail to furnish the return in FORM GSTR-4 for the quarters from July, 2017 to March 2019 or for the Financial years from 2019-20 to 2021-22 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.".

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 73/2017– Central Tax, dated the 29th December, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended, vide notification number 12/2022 – Central Tax, dated the 5th July, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 515(E), dated the 5th July, 2022.

Extension of Time Limit for Application for Revocation of Cancellation of Registration

Notification
No. 03/2023 – Central Tax

New Delhi, dated the 31st March, 2023

G.S.R.....(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered person, whose registration has been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:–

(a) the registered person may apply for revocation of cancellation of such registration upto the 30th day of June, 2023;

(b) the application for revocation shall be filed only after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of the such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases.

Explanation: For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Amendment in CGST Rules

Notification
No. 04/2023 – Central Tax

New Delhi, dated the 31st March, 2023

G.S.R... (E). –In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the

following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement.— (1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2023.

(2) They shall be deemed to have come into force from the 26th day of December, 2022.

2. In the Central Goods and Services Tax Rules, 2017 in rule 8,-

(i) for sub-rule (4A), the following sub-rule shall be substituted, namely:-

"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.";

(ii) in sub-rule (4B), for and words, "provisions of", the words "proviso to", shall be substituted.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated

the 19th June, 2017, published, vide number G.S.R. 610(E), dated the 19thJune, 2017 and were last amended, vide notification No. 26/2022 -Central Tax, dated the 26th December 2022, vide number G.S.R. 902 (E), dated the 26th December 2022.

Seeks to Amend Notification No. 27/2022 dated 26.12.2022

Notification
No. 05/2023- Central Tax

New Delhi, dated the 31st March, 2023

G.S.R.…(E).— In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022, namely:-

In the said notification, for the words, “provisions of”, the words “proviso to” shall be substituted.

2. They shall be deemed to have come into force from the 26th day of December, 2022.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Note: - The principal Notification No. 27/2022- Central Tax, dated the 26th December, 2022, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022.

Amnesty Scheme for Deemed Withdrawal of Assessment Orders Issued under Section 62

Notification
No. 06/2023 – Central Tax

New Delhi, the 31st March, 2023

S.O.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,-

(i) the registered persons shall furnish the said return on or before the 30th day of June 2023;

(ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act,

irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Rationalisation of Late Fee for GSTR-9 and Amnesty to GSTR-9 Non-filers

Notification
No. 07/2023 – Central Tax

New Delhi, dated the 31st March, 2023

S.O.....(E).– In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:—

Table

S. No.	Class of registered persons	Amount
(1)	(2)	(3)
1.	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.
2.	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Amnesty to GSTR-10 Non-filers

Notification
No. 08/2023 – Central Tax

New Delhi, dated the 31st March, 2023

S.O.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the Act, which is in excess of five hundred rupees for the registered persons who fail to furnish the final return in FORM GSTR-10 by the due date but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Extension of Limitation under Section 168A of CGST Act

Notification
No. 09/2023- Central Tax

New Delhi, dated the 31st March, 2023

S.O.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to the period as specified below, namely:–

(i) for the financial year 2017-18, up to the 31st day of December, 2023;

(ii) for the financial year 2018-19, up to the 31st day of March, 2024;

(iii) for the financial year 2019-20, up to the 30th day of June, 2024.

[F. No. CBIC-20013/1/2023-GST]
(Alok Kumar)
Director

Seeks to Implement E-invoicing for the Taxpayers having Aggregate Turnover Exceeding Rs. 5 Cr from 1st August 2023

Notification
No. 10/2023 – Central Tax

New Delhi, the 10th May, 2023

G.S.R.....(E).- In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government,

on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of August, 2023, for the words "ten crore rupees", the words "five crore rupees" shall be substituted.

[F. No. CBIC- 20021/1/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated the 21st March, 2020 and was last amended vide notification No. 17/2022-Central Tax, dated the 1st August, 2022, published vide number G.S.R. 612(E), dated the 1st August, 2022.

Seeks to Extend the Due Date for Furnishing FORM GSTR-1 for April, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur.

Notification
No. 11/2023- Central Tax

New Delhi, the 24th May, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, after the third proviso, the following proviso shall be inserted, namely:-

"Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the tax period April, 2023, for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act whose principal place of business is in the State of Manipur, shall be extended till the thirty-first day of May, 2023.".

2. This notification shall be deemed to have come into force with effect from the 11th day of May, 2023.

[F. No. CBIC- 20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 25/2022 –Central Tax, dated the 13th December, 2022, published in the Gazette of India, Extraordinary vide number G.S.R. 877(E), dated the 13th December, 2022.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for April, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 12/2023 – Central Tax

New Delhi, the 24th May, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of April, 2023 till the thirty-first day of May, 2023, for the registered persons whose principal place of business is in the State of Manipur and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Seeks to extend the due date for furnishing FORM GSTR-7 for April, 2023 for registered persons whose principal place of business is in the State of Manipur

Notification
No. 13/2023–Central Tax

New Delhi, the 24th May, 2023

G.S.R.....(E).– In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, after the fourth proviso, the following proviso shall be inserted, namely: –

"Provided also that the return by a registered person, required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 under sub-section (3) of section 39 of the said Act read with rule 66 of the Central Goods and Services Tax Rules, 2017, for the month of April, 2023, whose principal place of business is in the State of Manipur, shall be furnished electronically through the common portal, on or before the thirty-first day of May, 2023.".

2. This notification shall be deemed to have come into force with effect from the 10th day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28th June, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 20/2020 –Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary vide number G.S.R. 203(E), dated the 23rd March, 2020.

Seeks to Extend the Due Date for furnishing FORM GSTR-1 for April and May, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 14/2023- Central Tax

New Delhi, the 19th June, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, in the fourth proviso:-

(i) for the words, letter and figure — tax period April, 2023‖ the words, letter and figure — tax periods April 2023 and May 2023‖ shall be substituted;

(ii) for the words, letters and figure —thirty-first day of May, 2023‖, the words, letter and figure —thirtieth day of June, 2023‖ shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 11/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 384(E), dated the 24th May, 2023.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for April and May, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 15/2023 – Central Tax

New Delhi, the 19th June, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2023 – Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 385(E), dated the 24th May, 2023, namely: — (i) for the words, letter and figure — month of April, 2023‖ the words, letter and figure — months of April, 2023 and May, 2023‖ shall be substituted; (ii) for the words, letters and figure —thirty-first day of May, 2023‖, the words, letter and figure — thirtieth day of June, 2023‖ shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 12/2023 –Central Tax, dated the 24th May, 2023 was published in the Gazette of India, Extraordinary vide number G.S.R. 385(E), dated the 24th May, 2023.

Seeks to Extend the Due Date for furnishing FORM GSTR-7 for April and May, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur.

Notification
No. 16/2023–Central Tax

New Delhi, the 19th June, 2023

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax

Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, in the fifth proviso:- (i) for the words, letter and figure " month of April, 2023" the words, letter and figure " months of April 2023 and May 2023" shall be substituted; (ii) for the words, letters and figure "thirty-first day of May, 2023", the words, letter and figure "thirtieth day of June, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 31st day of May, 2023.

[F.No.CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28thJune, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 13/2023 –Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 386(E), dated the 24th May, 2023.

Extension of Due Date for Filing of Return in FORM GSTR-3B for the Month of May 2023 for the Persons Registered in the Districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the State of Gujarat upto 30th June 2023.

Notification
No. 17/2023 – Central Tax

New Delhi, the 27th June, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of May, 2023 till the thirtieth day of June, 2023, for the registered persons whose principal place of business is in the the districts of Kutch,

Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat and are required to furnish return under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall be deemed to have come into force with effect from the 20th day of June, 2023.

[F. No. CBIC-20006/16/2023-GST]
(Alok Kumar)
Director

Seeks to Extend the Due Date for furnishing FORM GSTR-1 for April, May and June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 18/2023- Central Tax

New Delhi, the 17th July, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely: —

In the said notification, in the fourth proviso:-

(i) for the words, letter and figure “tax periods April 2023 and May 2023”, the words, letter and figure “tax periods April 2023, May 2023 and June 2023” shall be substituted;

(ii) for the words, letters and figure “thirtieth day of June, 2023”, the words, letter and figure “thirty-first day of July, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 14/2023 –Central Tax, dated the 19th June, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 448(E), dated the 19th June, 2023.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for April, May and June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 19/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2023 – Central Tax, dated the 24th May, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 385(E), dated the 24th May, 2023, namely: — (i) for the words, letter and figure "months of April, 2023 and May, 2023" the words, letter and figure "months of April, 2023, May, 2023 and June, 2023" shall be substituted; (ii) for the words, letters and figure "thirtieth day of June, 2023", the words, letter and figure "thirty-first day of July, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 12/2023 –Central Tax, dated the 24th May, 2023 was published in the Gazette of India, Extraordinary vide number G.S.R. 385(E), dated the 24th May, 2023 and was last amended by notification No. 15/2023 –Central Tax, dated the 19th June, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 449(E), dated the 19th June, 2023.

Seeks to Extend the Due Date for Furnishing FORM GSTR-3B for Quarter ending June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 20/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the quarter ending June, 2023 till the thirty-first day of July, 2023, for the registered persons whose principal place of business is in the State of Manipur and are required to furnish return under proviso to sub-section (1) of section 39 read with clause (ii) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Seeks to Extend the Due Date for Furnishing FORM GSTR-7 for April, May and June, 2023 for Registered Persons whose Principal Place of Business is in the State of Manipur

Notification
No. 21/2023–Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).–In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 26/2019 –Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.452(E), dated the 28th June, 2019, namely:–

In the said notification, in the first paragraph, in the fifth proviso:-

(i) for the words, letter and figure “months of April 2023 and May 2023” the words, letter and figure “months of April 2023, May 2023 and June 2023” shall be substituted;

(ii) for the words, letters and figure “thirtieth day of June, 2023”, the words, letter and figure “thirty-first day of July, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F.No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 26/2019 –Central Tax, dated the 28thJune, 2019 was published in the Gazette of India, Extraordinary vide number G.S.R. 452(E), dated the 28th June, 2019 and was last amended by notification No. 16/2023 –Central Tax, dated the 19th June, 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 450(E), dated the 19th June, 2023.

Seeks to Extend Amnesty for GSTR-4 Non-filers

Notification
No. 22/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29th December, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1600(E), dated the 29th December, 2017, namely: — In the said notification, in the seventh proviso, for the words, letter and figure “30th day of June, 2023” the words, letter and figure “31st day of August, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 73/2017– Central Tax, dated the 29th December, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1600(E), dated the 29th December, 2017 and was last amended vide notification number 02/2023 – Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 245(E), dated the 31st March, 2023.

Seeks to Extend Time Limit for Application for Revocation of Cancellation of Registration

Notification
No. 23/2023 – Central Tax

New Delhi, dated the 17th July, 2023

G.S.R.....(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 03/2023–Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 246(E), dated the 31st March, 2023, namely: — In the said notification, for the words, letter and figure “30th day of June, 2023” the words, letter and figure “31st day of August, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 03/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 246(E), dated the 31st March, 2023.

Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62

Notification
No. 24/2023 – Central Tax

New Delhi, the 17th July, 2023

G.S.R.....(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes

the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 06/2023– Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 249(E), dated the 31st March, 2023, namely: — In the said notification, for the words, letter and figure "30th day of June, 2023" the words, letter and figure "31st day of August, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 06/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 249(E), dated the 31st March, 2023.

Seeks to Extend amnesty for GSTR-9 Non-filers

Notification
No. 25/2023 – Central Tax

New Delhi, dated the 17th July, 2023

G.S.R.....(E).– In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 07/2023– Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 250(E), dated the 31st March, 2023, namely: — In the said notification, in the proviso, for the words, letter and figure "30th day of June, 2023" the words, letter and figure "31st day of August, 2023" shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 07/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 250(E), dated the 31st March, 2023.

Seeks to Extend Amnesty for GSTR-10 Non-filers

Notification
No. 26/2023 – Central Tax

New Delhi, dated the 17th July, 2023

S.O.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue), No. 08/2023–Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1563(E), dated the 31st March, 2023, namely: —

In the said notification, for the words, letter and figure “30th day of June, 2023” the words, letter and figure “31st day of August, 2023” shall be substituted.

2. This notification shall be deemed to have come into force with effect from the 30th day of June, 2023.

[F. No. CBIC-20006/10/2023-GST]
(Alok Kumar)
Director

Note: The principal notification No. 08/2023– Central Tax, dated the 31st March, 2023 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1563(E), dated the 31st March, 2023.

Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021)

Notification
No. 27/2023–Central Tax

New Delhi, dated the 31st July, 2023

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021), the Central

Government hereby appoints the 1st day of October, 2023, as the date on which the provisions of section 123 of the said Act shall come into force.

[F.No.CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify the Provisions of Sections 137 to 162 of the Finance Act, 2023 (8 of 2023).

Notification
No. 28/2023–Central Tax

New Delhi, dated the 31st July, 2023

S.O. …..(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2023 (8 of 2023), the Central Government hereby appoints, —

(a) the 1st day of October, 2023, as the date on which the provisions of sections 137 to 162 (except sections 149 to 154) of the said Act shall come into force;

(b) the 1st day of August, 2023, as the date on which the provisions of sections 149 to 154 of the said Act shall come into force.

[F.No.CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify Special Procedure to be followed by a Registered Person pursuant to the Directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018

Notification
No. 29/2023 – Central Tax

New Delhi, dated the 31st July, 2023

S.O.(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person or an officer referred to in sub-section (2) of Section 107 of the said Act who intends to file an appeal against the order passed by the proper officer under section 73 or 74 of the said Act in accordance with Circular No. 182/14/2022-GST, dated 10th of November, 2022 pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.

2. An appeal against the order shall be made in duplicate in the Form appended to this notification at ANNEXURE-1 and shall be presented manually before the Appellate Authority within the time specified in sub-section (1) of section 107 or sub-section (2) of section 107 of the said Act, as the case may be, and such time shall be computed from the date of issuance of this notification or the date of the said order, whichever is later:

Provided that any appeal against the order filed in accordance with the provisions of section 107 of the said Act with the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification.

3. The appellant shall not be required to deposit any amount as referred to in sub-section (6) of section 107 of the said Act as a pre-condition for filing an appeal against the said order.

4. An appeal filed under this notification shall be accompanied by relevant documents including a self-certified copy of the order and such appeal and relevant documents shall be signed by the person specified in sub-rule (2) of rule 26 of Central Goods and Services Tax Rules, 2017.

5. Upon receipt of the appeal which fulfills all the requirements as provided in this notification, an acknowledgement, indicating the appeal number, shall be issued manually in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the appeal shall be treated as filed only when the aforesaid acknowledgement is issued.

6. The Appellate Authority shall, along with its order, issue a summary of the order in the Form appended to this notification as ANNEXURE-2.

F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify Special Procedure to be followed by a Registered Person Engaged in Manufacturing of Certain Goods

Notification
No. 30/2023–Central Tax

New Delhi, dated the 31st July,2023

S.O.(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act,2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification, and falling under the tariff item, sub- heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, namely: —

1. Details of Packing Machines

(1) All the existing registered persons engaged in manufacturing of the goods mentioned in Schedule to this notification shall furnish the details of packing machines being used for filling and packing of pouches or containers in FORM SRM-I, within 30 days of issuance of this notification, electronically on the common portal,—

S. No.	Make and Model No. of the Machine (including the name of manufacturer)	Date of Purchase of the Machine	Address of place of business where installed	No. of Tracks	Packing Capacity of each track	Total packing capacity of machine	Electricity consumption by the machine per hour	Supporting Documents	Unique ID of the machine (to be auto populated)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
								<<Capacity certificate from Chartered Engineer>>	

(2) Any person intending to manufacture goods as mentioned in Schedule to this notification, and who has been granted registration after the issuance of this notification, shall furnish the details of packing machines being used for filling and packing of pouches or containers in

FORM SRM-I on the common portal, within fifteen days of grant of such registration.

(3) The details of any additional filling and packing machine being installed in the registered place of business shall be furnished, electronically on the common portal, by the said registered person within 24 hours of such installation in FORM SRM-IIA.

(4) Upon furnishing of such details in FORM SRM-I or FORM SRM-IIA, a unique ID shall be generated for each machine, whose details have been furnished by the registered person, on the common portal.

(5) In case, the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organization, the same shall be furnished by the said registered person in FORM SRM-IA on the common portal, within fifteen days of filing said declaration or submission:

Provided that where the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organization, before the issuance of this notification, the same shall be furnished by the said registered person in FORM SRM-IA on the common portal, within thirty days of issuance of this notification.

Serial No.	Name of Govt. Department/ any other agency or organization	Type of Declaration/ Submission	Details of Declaration/ Submission
(1)	(2)	(3)	(4)
		<<copy of declaration to be uploaded on the portal>>	

S. No.	Make and Model No. of the Machine (including the name of manufacturer)	Date of Purchase of the Machine	Date of installation of the Machine	Address of place of business where installed	No. of Tracks	Packing Capacity of each track	Total packing capacity of machine	Electricity consumption by the machine per hour	Supporting Documents	Unique ID of the machine (to be auto populated)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
									<<Capacity certificate from Chartered Engineer>>	

(6) The details of any existing filling and packing machine removed from the registered place of business shall be furnished, electronically on the common portal, by the said registered person within 24 hours of such removal in FORM SRM-IIB.

S. No.	Unique ID of the machine	Make and Model No. of the Machine <<auto-populated>>	Date of Purchase of the Machine <<auto-populated>>	Address of place of business from where the machine is removed. <<auto-populated>>	No. of Tracks <<auto-populated>>	Packing Capacity of each track <<auto-populated>>	Total packing capacity of machine <<auto-populated>>	Date of Removal	Reasons for removal/ disposal of the machine.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
									<<Sold to third party>> <<Scrap>>

2. Additional records to be maintained by the registered persons manufacturing the goods mentioned in the Schedule

(1) Every registered person engaged in manufacturing of goods mentioned in Schedule shall keep a daily record of inputs being procured and utilized in quantity and value terms along with the details of waste generated as well as the daily record of reading of electricity meters and generator set meters in a format as specified in FORM SRM-IIIA in each place of business.

(2) Further, the said registered person shall also keep a daily shift-wise record of machine-wise production, product-wise and brand-wise details of clearance in quantity and value terms in a format as specified in FORM SRM-IIIB in each place of business.

FORM SRM-IIIA
Inputs Register

Day 1	HSN of the Input	Description of the Input	Unit quantity	Opening Balance (in units)	Quantity procured (in units)	Quantity procured (value in Rs)	Qty Consumed (in units)	Closing Balance (in units)	Waste generated in respect of the said input (qty) (in units)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	HSN1								
	HSN2								
	HSN3								

	. . . . .								
Day 2	Electricity Reading								
Day 3									
.....									
Last Day of Month									

FORM SRM-IIIB
Production Register

	Electricity meter reading			Electricity meter reading		
Day 1	**Initial Meter Reading**	**Final Meter Reading**	**Consumption (kwH)**	**Initial Meter Reading**	**Final Meter Reading**	**Consumption (kwH)**
	(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
Day 2						
.....						
Last Day of Month						

Day 1		Brand B1											Brand B2	Brand Bn
		Machine M1(Mention Unique ID of the machine)								**M2**	**Mn**	**Total of all machines**		
		Total no. of Pouch P1 packed	Unit Value Of Pouch P1	Total Value Of Pouches P1 Packed (V1) (in Rs)	Total no. of Pouch …Pn packed	Value Of Pouch … Pn	Total Value Of Pouches Pn Packed (Vn) (in Rs)	Total No. of pouches Packed by Machine M1 (P1 + P2 + .. Pn)	Total value of Pouches packed By machine M1 (in Rs) (V1 + V2 + .. Vn)	…	…	Total Production value of Brand B1 by all machines (Rs)	.....	.....
	Shift 1 00:00 to 00.00 hrs													
	Shift 2 00:00 to 00.00 hrs													
	Shift 3 00:00 to 00.00 hrs													
	Total for Day 1													

Day 1														
.... Dayn of the month														
	Total for the Month													

3. Special Monthly Statement

(1) The said registered person shall submit a special statement for each month in FORM SRM-IV on the common portal, on or before the tenth day of the month succeeding such month.

FORM SRM-IV

Monthly Statement of Inputs used and the final goods produced by the manufacturer of goods specified in Schedule

PART-A

	HSN of the Input	Description of the Input	Unit quantity	Opening Balance (in units)	Quantity procured (in units)	Quantity procured (value in Rs)	Qty Consumed (in units)	Closing Balance (in units)	Waste generated qty (in units)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Total for Month	*HSN1*								
	HSN2								
	HSN3								
	...								
	HSNn								

	Electricity Reading					
	Electricity Reading			DG set meter reading		
Total for the Month	Initial Meter Reading on Day 1 of the month	Final Meter Reading on last day of the month	Consumption (kwH)	Initial Meter Reading on Day 1 of the month	Final Meter Reading on last day of the month	Consumption (kwH)
	(1)	(2)	(3)	(4)	(5)	(6)

	Brand B1											Brand B2	Brand Bn
	Machine M1								**M2**	**Mn**	**Total of all machines**		
	Total no. of Pouch P1 packed	MRP Value Of Pouch P1	Total Value Of Pouches P1 Packed (V1) (in Rs)	Total no. of Pouch Pn packed	Value Of Pouch Pn	Total Value Of Pouches Pn Packed (Vn) (in Rs)	Total No. of pouches Packed by Machine M1 (P1 + P2 + .. Pn)	Total value of Pouches packed By machine M1 (in Rs) (V1 + V2 + .. Vn)	…	– – –	Total Production value of Brand B1 by all machines (Rs)	⋮	⋮
Total for the Month													

Schedule

S. No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	**(2)**	**(3)**
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) – bearing abrand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	‘Hookah’ or ‘gudaku’ tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking ‘hookah’ or ‘chilam’ commonly known as ‘hookah’ tobacco or ‘gudaku’ not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	“Homogenised” or “reconstituted” tobacco, bearing a brand name
12	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff

19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name

Explanation.–

(1) In this Schedule, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(3) For the purposes of this notification, the phrase "brand name" means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

[F.No.CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Amend Notification No. 27/2022 dated 26.12.2022

Notification
No. 31/2023- Central Tax

New Delhi, dated the 31st July, 2023

G.S.R.….(E).—In pursuance of the powers conferred by sub-rule (4B) of rule 8 of the Central Goods and Services Tax Rules, 2017, the Central

Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, the Ministry of Finance (Department of Revenue) No. 27/2022-Central Tax, dated the 26th December, 2022 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R. 903(E), dated the 26th December, 2022, namely:-

In the said notification, after the words, “State of Gujarat”, the words “and the State of Puducherry” shall be inserted.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Note: - The principal Notification No. 27/2022- Central Tax, dated the 26th December, 2022, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 903(E), dated the 26th December, 2022 and was last amended, vide notification number 05/2023 – Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 248(E), dated the 31st March, 2023.

Seeks to Exempt the Registered Person whose Aggregate Turnover in the Financial Year 2022-23 is up to Two Crore Rupees, from Filing Annual Return for the said Financial Year

Notification
No. 32/2023 – Central Tax

New Delhi, dated the 31st July, 2023

G.S.R. .....(E).— In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Notify "Account Aggregator" as the Systems with which Information may be Shared by the Common Portal under section 158A of the CGST Act, 201

Notification
No. 33/2023 – Central Tax

New Delhi, dated the 31st July, 2023

G.S.R....(E),— In exercise of the powers conferred by section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies "Account Aggregator" as the systems with which information may be shared by the common portal based on consent under Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

2. This notification shall come into force with effect from the 1st day of October, 2023.

Explanation: For the purpose of this notification, "Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Waive the Requirement of Mandatory Registration under section 24(ix) of CGST Act for Person Supplying Goods through ECOs, Subject to Certain Conditions

Notification
No. 34/2023- Central Tax

New Delhi, dated the 31st July, 2023

G.S.R. .....(E).— In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons

making supplies of goods through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of sub-section (1) of section 22 of the said Act, as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions, namely: —

(i) such persons shall not make any inter-State supply of goods;

(ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory;

(iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);

(iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961), address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);

(vi) such persons shall not be granted more than one enrolment number in a State or Union territory;

(vii) no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

2. This notification shall come into force with effect from the 1st day of October, 2023.

[F. No. CBIC-20006/20/2023-GST]
(Alok Kumar)
Director

Seeks to Appoint Common Adjudicating Authority in respect of Show Cause Notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.

Notification
No. 35 /2023-Central Tax

New Delhi, dated the 31st July, 2023

S.O.—..In exercise of the powers conferred by section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Board, hereby appoint officers mentioned in column (5) of the Table below to act as the Authority to exercise the powers and discharge the duties conferred or imposed on officers mentioned in column (4) of the said Table in respect of noticees mentioned in column (2) of the said Table for the purpose of adjudication of notices mentioned in column (3) of the said Table, namely:-

Table

S. No.	Name of Noticees and Address	Notice Number and Date	Name of Adjudicating Authorities	Name of the Authority
(1)	(2)	(3)	(4)	(5)
1	BSH Household Appliances Manufacturing Pvt. Ltd, Situated 2nd Floor, Arena House, Plot No. – 103, Road No. -12, MIDC, Andheri (East), Mumbai-400093	03/CGST/ME/ Div-X/Supdt/ BSH/2022-23 dated 16.03.2023 issued vide F.No. CGST-A2/ MUM/G-29/BSH/ 5693/5335/2021/9893 to 9896 Dt. 16.03.2023	Superintendent, Division-X, CGST and Central Excise Mumbai East Commissionerate	Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate
2.	BSH Household Appliances Manufacturing Pvt. Ltd, 4th Floor, South Tower KRM Plaza No. 2, Harrington Road, Chetpet, Chennai-600031	02/2023-GST CH.N (ADC) dated 27.03.2023 issued vide C.NoGEXCOM/ADJN/ GST/ADC/684/2022 Dt. 27.03.2023	Additional Commissioner, CGST and Central Excise Chennai North Commissionerate	
3.	BSH Household Appliances Manufacturing Pvt. Ltd,No-8, GF & FF, 15th Cross, JP Nagar, 6th Phase, Bengaluru Urban, Karnataka-560078	58/2022-23 dated 03.03.2023 issued vide C.No.GEXCOM/ADJN/ GST/ADC/721/2022-ADJN Dt. 03.03.2023	Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate	

[F.No.CBIC-20016/16/2023-GST]
(Alok Kumar)
Director

Clarification Regarding GST Rates and Classification of Certain Goods

Circular No. 189/01/2023-GST

North Block, New Delhi
Date: 13th January, 2023

To,

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of
Central Excise & Central Tax

Madam/ Sir,

Subject: Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022 –reg.

Based on the recommendations of the GST Council in its 48th meeting held on 17th December, 2022, clarifications, with reference to GST levy, related to the following are being issued through this circular:

2. Rab -classifiable under Tariff heading 1702:

2.1 Representation has been received seeking clarification regarding the classification of "Rab". It has been stated that under the U.P. Rab (Movement Control Order), 1967, "Rab" means 'massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but does not include khandsari molasses or lauta gur.' Although, a product of sugarcane, Rab exists in semi-solid/liquid form, and is thus not covered under heading 1701. The Hon'ble Supreme Court in its order in Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others [1993 SCR (1)1037] has distinguished Rab from Molasses. Thus, Rab being distinguishable from molasses is not classifiable under heading 1703.

2.2 Accordingly, it is hereby clarified that Rab is appropriately classifiable under heading 1702 attracting GST rate of 18% (S. No. 11 in Schedule III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017).

3. Applicability of GST on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni:

3.1 Representations have been received seeking clarification regarding the applicable GST rate on by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi/Chuni.

3.2 The GST council in its 48th meeting has recommended to fully exempt the supply of subject goods, irrespective of its end use. Hence, with effect from the 1st January, 2023, the said goods shall be exempt under GST vide S. No. 102C of schedule of notification No. 2/2017- Central Tax (Rate), dated 28.06.2017.

3.3 Further, as per recommendation of the GST Council, in view of genuine doubts regarding the applicability of GST on subject goods, matters that arose during the intervening period are hereby regularized on "as is" basis from the date of issuance of Circular No. 179/11/2022-GST, dated the 3rd August, 2022, till the date of coming into force of the above-said S. No. 102C and the entries relating thereto. This is in addition to the matter regularized on as is basis vide para 8.6 of the said Circular.

4. Clarification regarding 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice':

4.1 Representations have been received seeking clarification regarding the applicable six-digit HS code for 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

4.2 On the basis of the recommendation of the GST council in its 45th meeting, a specific entry has been created in notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and notification No. 1/2017- Compensation Cess (Rate), dated the 28th June, 2017, vide S. No. 12B in Schedule IV and S. No. 4B in Schedule respectively, with effect from the 1st October, 2021, for goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'.

4.3 It is hereby clarified that the applicable six-digit HS code for the aforesaid goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice' is HS 2202 99. The said goods attract GST at the rate of 28% and Compensation Cess at the rate of 12%. The S. Nos. 12B and 4B mentioned in Para 4.2 cover all such carbonated beverages that contain carbon

dioxide, irrespective of whether the carbon dioxide is added as a preservative, additive, etc.

4.4 In order to bring absolute clarity, an exclusion for the above-said goods has been provided in the entry at S. No. 48 of Schedule-II of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017, vide notification No. 12/2022-Central Tax (Rate), dated the 30th December, 2022.

5. Applicability of GST on Snack pellets manufactured through extrusion process (such as 'fryums'):

5.1 Representations have been received seeking clarification regarding classification and applicable GST rate on snack pellets manufactured through the process of extrusion (such as 'fryums').

5.2 It is hereby clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

6. Applicability of Compensation cess on Sports Utility Vehicles (SUVs):

6.1 Representations have been received seeking clarification about the specifications of motor vehicles, which attract compensation cess at the rate of 22% vide entry at S. No. 52B of notification No. 01/2017 Compensation Cess (Rate), dated 28th June, 2017.

6.2 In this regard, it is clarified that Compensation Cess at the rate of 22% is applicable on Motor vehicles, falling under heading 8703, which satisfy all four specifications, namely: -these are popularly known as SUVs; the engine capacity exceeds 1,500 cc; the length exceeds 4,000 mm; and the ground clearance is 170 mm and above.

6.3 This clarification is confined to and is applicable only to Sports Utility Vehicles (SUVs).

7. Applicability of IGST rate on goods specified under notification No. 3/2017-Integrated Tax (Rate):

7.1 Representations have been received expressing doubts regarding the applicable IGST rate on goods specified in the list annexed

to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017.

7.2 On the basis of the recommendation of the GST Council in its 47th Meeting, held in June 2022, the IGST rate has been increased from 5% to 12% on goods, falling under any Chapter, specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, when imported for the specified purpose (like Petroleum operations/Coal bed methane operations) and subject to the relevant conditions prescribed in the said notification. However, some goods specified in the list annexed to notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, are also eligible for a lower schedule rate of 5% by virtue of their entry in Schedule I of notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017.

7.3 Accordingly, it is hereby clarified that on goods specified in the list annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the 28th June, 2017, which are eligible for IGST rate of 12% under the said notification and are also eligible for the benefit of lower rate under Schedule I of the notification No. 1/2017-Integrated Tax (Rate), dated the 28th June, 2017 or any other IGST rate notification, the importer can claim the benefit of the lower rate.

8. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Dibyalok)
Technical Officer, TRU-I

Clarification Regarding GST Rates and Classification of Certain Services

Circular No. 190/02/2023- GST

North Block, New Delhi
Dated the –13th January, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /The Principal Director Generals/ Director Generals (All)

Subject: Clarifications regarding applicability of GST on certain services – reg.

Madam/Sir,

Representations have been received seeking clarifications on the following issues:

1. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel;

2. Applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

The above issues have been examined by GST Council in the 48th meeting held on 17th December, 2022. The issue -wise clarifications are given below:

2. Applicability of GST on accommodation services supplied by Air Force Mess to its personnel:

2.1 Reference has been received requesting for clarification on whether GST is payable on accommodation services supplied by Air Force Mess to its personnel.

2.2 All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

3. Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:

3.1 Representations have been received requesting for clarification on whether GST is applicable on the incentive paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions.

3.2 Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

3.3 The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

3.4 The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive. However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

3.5 As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

4. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Anna Sosa Thomas)
Technical Officer, TRU II

Clarification regarding GST Rate and Classification of 'Rab' based on the Recommendation of the GST Council in its 49th meeting held on 18th February 2023 –reg

Circular No. 191/03/2023-GST

North Block, New Delhi
Date: 27th March, 2023

To,

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of Central Excise & Central Tax

Madam/ Sir,

Subject: Clarification regarding GST rate and classification of 'Rab' based on the recommendation of the GST Council in its 49th meeting held on 18th February, 2023 –reg.

Based on the recommendation of the GST council in its 49th meeting, held on 18th February, 2023, with effect from the 1st March, 2023, 5% GST rate has been notified on Rab, when sold in pre- packaged and labelled, and Nil GST, when sold in other than pre- packaged and labelled.

2. Further, as per the recommendation of the GST Council in the above-said meeting, in view of the prevailing divergent interpretations and genuine doubts regarding the applicability of GST rate on Rab, the issue for past period is hereby regularized on "as is" basis.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Amreeta Titus)
Deputy Secretary, TRU-I

Clarification on Charging of Interest under section 50(3) of the CGST Act, 2017, in Cases of wrong availment of IGST Credit and Reversal thereof.

Circular No. 192/04/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.

References have been received from trade requesting for clarification regarding charging of interest under sub-section (3) of section 50 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest under sub-section (3) of section 50 of CGST Act, read with rule 88B of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"), in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.

2. Issue has been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

S. No.	Issue	Clarification
1.	In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.	Since the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit. Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules.

2.	Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.	As per proviso to section 11 of Goods and Services Tax (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under subrule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the

Board. Hindi version would follow.
(Sanjay Mangal)
Principal Commissioner (GST)

Clarification to Deal with Difference in Input Tax Credit (ITC) Availed in FORM GSTR-3B as Compared to that Detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

Circular No. 193/05/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

Attention is invited to Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** for FY 2017-18 and 2018-19, subject to certain terms and conditions.

2. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per **FORM GSTR- 2A** were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in **FORM GSTR-1** or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in **FORM GSTR-2B**.

3.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their **FORM GSTR-1** or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A**. It may, however, be noted that such availment of input tax credit was

subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

3.2. Though the matter of dealing with difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A** during the period from 01.04.2019 to 31.12.2021.

4. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, in toto, for the period from **01.04.2019 to 08.10.2019.**

(ii) In respect of period from **09.10.2019 to 31.12.2019**, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices

or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using IFF. This is clarified through an illustration below:

Illustration:

Consider a case where the total amount of ITC available as per **FORM GSTR-2A** of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in **FORM GSTR 3B** by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs 3,00,000*1.2 = Rs.3,60,000.

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to production of the requisite certificates as per

(iii) Similarly, for the period from 01.01.2020 to 31.12.2020, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliers in their **FORM GSTR-1** or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

(iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1

or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of subsection (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

5. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

6. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No. 27/2021-CT dated 01.06.2021 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

7. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

8. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

9. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification on TCS Liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction

Circular No. 194/06/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

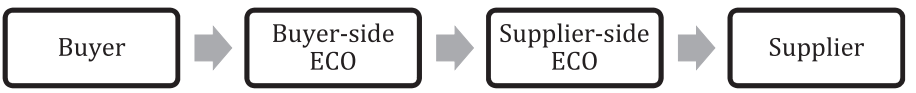
Reference has been received seeking clarification regarding TCS liability under section 52 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), in case of multiple E-commerce Operators (ECOs) in one transaction, in the context of Open Network for Digital Commerce (ONDC).

2.1 In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS under Sec 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.

2.2 In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?



Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on Availability of ITC in Respect of Warranty Replacement of Parts and Repair Services during Warranty Period 09/17/19

Circular No. 195/07/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of

charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies as follows:

S. No.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
2.	Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or

		repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3.	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4.	In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?	(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same. (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the

		customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty. (c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
5.	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. (b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)

Clarification on Taxability of Share Capital held in Subsidiary Company by the Parent Company

Circular No. 196/08/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on taxability of shares held in a subsidiary company by the holding company.

Representations have been received from the trade and field formations seeking clarification on certain issues whether the holding of shares in a subsidiary company by the holding company will be treated as 'supply of service' under GST and will be taxed accordingly or whether such transaction is not a supply.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
Taxability of share capital held in subsidiary company by the parent company		
1.	Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of	Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST

	service or not and whether the same will attract GST or not.	Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on Refund-Related Issues

Circular No. 197/09/2023- GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on refund related issues.

References have been received from the field formations seeking clarification on various issues relating to GST refunds. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

1. Refund of accumulated input tax credit under Section 54(3) on the basis of that available as per FORM GSTR 2B: -

1.1 In terms of Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, refund of accumulated input tax credit (ITC) is restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Para 5 of the said circular is reproduced below:

> "5. Guidelines for refunds of Input Tax Credit under Section 54(3):
>
> 5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references

have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent."

1.2 However, in view of the insertion of clause (aa) in sub-section (2) of section 16 of the CGST Act, 2017 w.e.f. 1st January, 2022 vide Notification No. 39/2021-Central Tax dated 21.12.2021, and the amendment in Rule 36(4) of the Central Goods and Services Tax Rules, 1997 (hereinafter referred to as "CGST Rules") w.e.f. 1st January, 2022 vide Notification No. 40/2021- Central Tax dated 29.12.2021, doubts are being raised as to whether the refund of the accumulated input tax credit under section 54(3) of CGST Act shall be admissible on the basis of the input tax credit as reflected in **FORM GSTR-2A** or on the basis of that available as per **FORM GSTR-2B** of the applicant.

1.3 The matter has been examined and it has been decided that since availment of input tax credit has been linked with FORM GSTR-2B w.e.f. 01.01.2022, availability of refund of the accumulated input tax credit under section 54(3) of CGST Act for a tax period shall be restricted to input tax credit as per those invoices, the details of which are reflected in **FORM GSTR-2B** of the applicant for the said tax period or for any of the previous tax periods and on which the input tax credit is available to the applicant. Accordingly, para 36 of Circular No. 125/44/2019-GST dated 18.11.2019, which was earlier modified vide Para 5 of Circular No. 135/05/2020-GST dated 31.03.2020, stands modified to this extent. Consequently, Circular No. 139/09/2020-GST dated 10.06.2020, which provides for restriction on refund of accumulated input tax credit on those invoices, the details of which are uploaded by the supplier in **FORM GSTR-1** and are reflected in the **FORM GSTR-2A** of the applicant, also stands modified accordingly.

1.4 It is further clarified that as the said amendments in section 16(2)(aa) of CGST Act and Rule 36(4) of CGST Rules have been

brought into effect from 01.01.2022, therefore, the said restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per **FORM GSTR-2B** for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards. However, in cases where refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular, in accordance with the extant guidelines in force, the same shall not be reopened because of the clarification being issued by this circular.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dated 18.11.2019.

2.1 Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in FORM RFD-01 in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 is reproduced below:

> "7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with subsection (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

2.2 In accordance with the same, the following undertaking was inserted in **FORM GST RFD-01:**

> "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 read with sub-section (2) of section 42 of the CGST/SGST Act have not been complied with in respect of the amount refunded."

2.3 However, Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide Notification No. 18/2022-CT dated 28.09.2022. Further, an amendment has also been made in Section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, **FORM GSTR-2** and FORM GSTR-3 have also been omitted from CGST Rules. In view of this, reference to section 42, **FORM GSTR-2** and FORM GSTR-3 is being deleted from the said para in the Circular as well as from the said undertaking. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 & the undertaking in **FORM GST RFD-01** may, therefore, be read as follows:

> Para 7: "The applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."
>
> Undertaking in FORM GST RFD 01:- "I hereby undertake to pay back to the Government the amount of refund sanctioned along with interest in case it is found subsequently that the requirements of clause (c) of subsection (2) of section 16 of the CGST/ SGST Act have not been complied with in respect of the amount refunded."

2.4. Consequentially, Annexure-A to the Circular No. 125/44/2019-GST dated 18.11.2019 also stands amended to the following extent:

i. "Undertaking in relation to sections 16(2)(c) and section 42(2)" wherever mentioned in the column "Declaration/ Statement/Undertaking/Certificates to be filled online" may be read as "Undertaking in relation to sections 16(2)(c)".

ii. "Copy of GSTR-2A of the relevant period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

iii. "Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant

period" wherever required as supporting documents to be additionally uploaded stands removed/deleted.

3. Manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

3.1 Doubts have been raised as regarding calculation of "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, in view of insertion of Explanation in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022-Central Tax dated 05.07.0222. Clarification is being sought as to whether value of goods exported out of India has to be considered as per Explanation under sub-rule (4) of rule 89 of CGST Rules for the purpose of calculation of "adjusted total turnover" in the formula under the said sub-rule.

3.2 In this regard, it is mentioned that consequent to amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, Circular 147/03/2021-GST dated 12.03.2021 was issued which inter alia clarified that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89.

3.3 On similar lines, it is clarified that consequent to Explanation having been inserted in sub-rule (4) of rule 89 of CGST Rules vide Notification No. 14/2022- CT dated 05.07.2022, the value of goods exported out of India to be included while calculating "adjusted total turnover" will be same as being determined as per the Explanation inserted in the said sub-rule.

4. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

4.1 References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received

within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A.of CGST Rules.

4.2 It is mentioned that in terms of sub-rule (1) of rule 96A of the CGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of -

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India

4.3 In this context, it has been clarified inter alia in para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019 that:

> "…….exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services"

4.4 Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not

be denied where it has been established that exports in terms of the relevant provisions have been made.

4.5 The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.

4.6 It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

4.7 It may further be noted that the refund application in the said scenario may be made under the category “Excess payment of tax”. However, till the time the refund application cannot be filed under the category “Excess payment of tax” due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as ”Excess payment of tax”, the applicant may file the refund application under the category “Any Other” on the portal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification on Issue Pertaining to E-invoice

Circular No. 198/10/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on issue pertaining to e-invoice.

Representations have been received seeking clarification with respect to applicability of e-invoice under rule 48(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") w.r.t supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act").

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issue as under:

S. No.	Issue	Clarification
1.	Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of einvoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?	Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act. Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons

		under the GST law as per provisions of clause (94) of section 2 of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification Regarding Taxability of Services provided by an Office of an Organisation in one State to the Office of that Organisation in another State, both being Distinct Persons

Circular No. 199/11/2023-GST

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board,

in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -

S. No.	Issue	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to

		the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.
2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs **when full input tax credit is available to the concerned BOs.**	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28 of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, **if the recipient BO is eligible for full input tax credit.** Accordingly, in cases **where full input tax credit is available to a BO**, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases **where full input tax credit is available to the recipient**, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3.	In respect of internally generated services provided by the HO to BOs, in cases where **full input tax credit is not available to the concerned BO**s, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where **full input tax credit is not available to the concerned BO**.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Clarification Regarding GST Rates and Classification of Certain Goods based on the Recommendations of the GST Council in its 50th Meeting held on 11th July, 2023

Circular No. 200/12/2023-GST

North Block, New Delhi
Dated the 1st August, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/ Sir,

Subject: Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023–reg.

Based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023, clarifications with reference to GST levy related to the following items are being issued through this circular:

i. Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion;
ii. Fish Soluble Paste;
iii. Desiccated coconut;
iv. Biomass briquettes;
v. Imitation zari thread or yarn known by any name in trade parlance;
vi. Supply of raw cotton by agriculturist to cooperatives;
vii. Plates, cups made from areca leaves
viii. Goods falling under HSN heading 9021

2. Applicability of GST on un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion:

2.1 In the 48th meeting of the GST Council, it was clarified that the snack pellets (such as 'fryums'), which are manufactured through the process of extrusion, are appropriately classifiable under tariff item 1905 90 30, which covers goods with description 'Extruded or expanded products, savoury or salted', and thereby attract GST at the rate of 18% vide S. No. 16 of Schedule-III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

2.2 In view of the recommendation of the GST Council in the 50th meeting, supply of uncooked/ un-fried extruded snack pellets, by whatever name called, falling under CTH 1905 will attract GST rate of 5% vide S. No. 99B of Schedule I of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017 with effect from 27th July,2023. Extruded snack pellets in ready- to-eat form will continue to attract 18% GST under S. No. 16 of Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017.

2.2 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on the un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis.

3. Applicability of GST on Fish Soluble Paste:

3.1 Fish soluble paste attracted 18% under the residual entry S No. 453 of Schedule III of notification no. 1/2017-Central Tax (Rate), dated the 28th June, 2017. As per recommendation of the GST Council, GST on fish soluble paste, falling under CTH 2309, has been reduced to 5%. Accordingly, the rate has been notified vide S. No. 108A with effect from 27th July,2023.

3.2 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on fish soluble paste, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis.

4. Desiccated coconut- Regularisation of the issue for past period from 01.07.2017 upto and inclusive of 27.07.2017:

As per recommendation of the GST Council, in view of the prevailing genuine interpretational issues regarding the applicability of GST rate on

the desiccated coconut, falling under CTH 0801, the issue for past period from 01.07.2017 up to and inclusive of 27.07.2017 is hereby regularized on "as is" basis.

5. Biomass briquettes- Regularisation of the issue for past period from 01.07.2017 up to and inclusive of 12.10.2017: As per recommendation of the GST Council, in view of the prevailing genuine interpretational issues regarding the applicability of GST rate on the Biomass briquettes, falling under any chapter, the issue for past period from 01.07.2017 up to and inclusive of 12.10.2017 is hereby regularized on "as is" basis.

6. Supply of raw cotton by agriculturist to cooperatives:

6.1 As per recommendation of the GST Council, it is hereby clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST on reverse charge basis under notification no. 43/2017-Central Tax (Rate) dated 14th November, 2017.

6.2 In view of prevailing genuine doubts, the issue for the past periods prior to issue of this clarification is hereby regularized on "as is basis".

7. GST rate on Imitation Zari thread or yarn known by any name in trade parlance:

7.1 In the 15th Council meeting, the Council agreed to tax embroidery or zari articles i.e., imi, zari, kasab, saima, dabka, chumki, gota, sitara, naqsi, kora, glass beads, badla, gizai at the rate of 5%. Based on the recommendation of the 28th GST Council, it was clarified that imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance, would attract a uniform GST rate of 12% under tariff heading 5605.

7.2 As per the recommendation of the GST Council in its 50th meeting, GST on imitation zari thread or yarn known by any name in trade parlance has been reduced from 12% to 5%. Accordingly, the rate has been notified vide S. No. 218AA with effect from 27th July,2023.

7.2 In view of the confusion in the trade regarding the applicability of GST rate on these products, the issue for past period upto 27.7.2023 is hereby regularized on "as is" basis.

8. Plates, cups made from areca leaves

As per the recommendation of the GST Council, issues relating to GST on plates and cups made from areca leaves are hereby regularized on "as is basis" for the period prior to 01.10.2019.

9. GST rate on goods falling under HSN 9021

9.1 Representations have been received seeking clarification regarding the GST rates applicable on trauma, spine and arthroplasty implants falling under HSN heading 9021 for the period before 18.07.2022 stating that there are interpretational issues due to the duality of rates on similar items leading to ambiguity. The issue has arisen as prior to 18.07.2022 there existed two rates on the goods falling under HSN heading 9021 as per S. No. 257 of schedule I and S. No. 221 of schedule II of notification no. 01/2017-CT (Rate) dated 28.06.2017.

9.2 The issue was examined by GST Council in its 47th meeting and as per its recommendations, a single uniform rate of 5% was prescribed for such goods (except hearing aid, which continued to attract Nil under S.N. 142 of 02/2017-CT(Rate)) falling under HSN heading 9021 with effect from 18.07.2022.

9.3 As per recommendations of the GST council in its 50th Meeting, it is hereby clarified that the GST rate on all such goods falling under heading 9021 would attract a GST rate of 5% and in view of prevailing genuine doubts, the issue for the past periods is hereby regularized on "as is basis". However, it is clarified that no refunds will be granted in cases where GST has already been paid at higher rate of 12%.

10. It is further clarified that no refunds will be granted where GST has already been paid in any of the above cases.

11. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Nitin Gupta)
Technical Officer, TRU-I

Clarifications Regarding Applicability of GST on Certain Services

Circular No. 201/13/2023-GST

North Block, New Delhi,
Dated the 1st August, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Representations have been received seeking clarifications on the following issues

1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism;

2. Whether supply of food or beverages in cinema hall is taxable as restaurant service.

The above issues have been examined by GST Council in the 50th meeting held on 11th July, 2023. The issue -wise clarifications as recommended by the Council are given below:

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism (RCM) or not.

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or

a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Whether supply of food or beverages in cinema hall is taxable as restaurant service:

3. References have been received requesting for clarification whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

3.1 As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, "Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."

3.2 Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

3.3 The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

3.4 It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

a) the food or beverages are supplied by way of or as part of a service, and

b) supplied independent of the cinema exhibition service.

3.5 It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

4. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,
(Rajeev Ranjan)
Under Secretary, TRU

Summary of all GST Notifications – 2023

Notification No.	Date	Subject	Description
01/2023	04/01/2023	To assign powers of Superintendent of central tax to Additional Assistant Directors in DGGI, DGGST and DG Audit	This notification amends notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, assigning powers of Superintendent of central tax to the Additional Assistant Directors in DGGI, DGGST and DG Audit.
02/2023	31/03/2023	Amnesty to GSTR-4 non-filers	Relief has been given to many taxpayers who did not file GSTR-4 yet but will file between 1st April 2023 to 30th June 2023 for periods July 2017-March 2019 or FY 2019-20 to 2021-22. The late fee over Rs.500 per return (Rs.250 each under CGST and SGST) is waived (no late fee if the return is nil).
03/2023	31/03/2023	Extension of time to apply for revocation of cancellation of GST registration	If GST registration is cancelled on or before 31st December 2022 under clauses (b)/(c) of Section 29(2) of the CGST Act and missed filing revocation by the due date under the law, they can file application for revocation by 30th June 2023.
04/2023	31/03/2023	Amendment in CGST Rules	CGST Rule 8(4A) is revised to segregate cases of just Aadhaar authentication and cases of biometric-based authentication. The time limit to undergo Aadhaar authentication for GST registration is the date of such authentication or 15 days from the date of application in part B of REG-01, whichever is earlier. People identified based on data analysis and risk parameters must undergo biometric-based Aadhaar authentication with photographs with submission of documents either on the GST portal or at facilitation centres.

05/2023	31/03/2023	Seeks to amend Notification No. 27/2022 dated 26th December 2022	The proviso to CGST Rule 8(4A) will apply to only GST registration applicants in Gujarat. The proviso states that people identified based on data analysis and risk parameters must undergo biometric-based Aadhaar authentication with photographs with submission of documents.
06/2023	31/03/202	Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62	Best judgement assessment shall be withdrawn where if the non-filer of returns has submitted returns on or before 30th June 2023 with applicable interest and late fee irrespective of appeal against the assessment order issued on or before 28th February 2023.
07/2023	31/03/2023	Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers	(1) GST amnesty scheme for GSTR-9 delayed filing- The authority has waived off late fee in excess of Rs.20,000 (Rs.10,000 each under CGST and SGST) for delayed filing of GSTR-9 for years 2017-18 up to 2021-22 if filed between 1st April 2023 to 30th June 2023. (2) Rationalisation of late fee for delaying the filing of GSTR-9 FY 2022-23 onwards - Registered persons with Turnover up to Rs.5 crore is fixed at Rs. 50 per day (Rs.25 each under CGST and SGST) subject to max cap 0.04% of turnover in state/UT (0.02% each under CGST and SGST). Registered persons with turnover more than Rs.5 crore to 20 crore is fixed at Rs 100 per day (Rs.50 each under CGST and SGST) subject to max cap 0.04% of turnover in state/UT (0.02% each under CGST and SGST)

08/2023	31/03/2023	Amnesty to GSTR-10 non-filers	Relief has been given to many taxpayers who did not file GSTR-10 yet but will file between 1st April 2023 to 30th June 2023. The late fee over Rs.1,000 per return (Rs.500 each under CGST and SGST) is waived.
09/2023	31/03/2023	Extension of limitation under Section 168A of CGST Act	The extension of limitation period to issue orders under Section 79 is as follows- For FY 2017-18 - up to 31st December 2023 For FY 2018-19 - up to 31st March 2024 For FY 2019-20 - up to 30th June 2024
10/2023	10/05/2023	Seeks to implement e-invoicing for more taxpayers	The e-Invoicing system will get extended to those annual aggregate turnover ranging from Rs.5 crore up to Rs.10 crore starting from 1st August 2023.
11/2023	24/05/2023	Seeks to extend the due date for filing GSTR-1 for April 2023	The due date to file GSTR-1 for GST filers from Manipur is extended up to 31st May 2023, effective from 11th May.
12/2023	24/05/2023	Seeks to extend the due date for filing GSTR-3B for April 2023	The due date to file GSTR-3B for GST filers from Manipur is extended up to 31st May 2023, effective from 20th May.
13/2023	24/05/2023	Seeks to extend the due date for filing GSTR-7 for April 2023	The due date to file GSTR-7 for GST filers from Manipur is extended up to 31st May 2023, effective from 10th May.
14/2023	19/06/2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 30.06.2023 instead of 31.05.2023.

15/2023	19/06/2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.	Date is extended to 30.06.2023 instead of 31.05.2023.
16/2023	19/06/2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.	Date is extended to 30.06.2023 instead of 31.05.2023.
17/2023	27/06/2023	Extension of due date for filing of return in FORM GSTR-3B for the month of May 2023 for the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat	Date is extended upto 30th June 2023.
18/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.
19/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.
20/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.
21/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.

22/2023	17/07/2023	Seeks to extend amnesty for GSTR-4 non-filers	Date is extended to 31.08.2023 instead of 30.06.2023.
23/2023	17/07/2023	Seeks to extend time limit for application for revocation of cancellation of registration	Date is extended to 31.08.2023 instead of 30.06.2023.
24/2023	17/07/2023	Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62	Date is extended to 31.08.2023 instead of 30.06.2023.
25/2023	17/07/2023	Seeks to extend amnesty for GSTR-9 non-filers	Date is extended to 31.08.2023 instead of 30.06.2023.
26/2023	17/07/2023	Seeks to extend amnesty for GSTR-10 non-filers	Date is extended to 31.08.2023 instead of 31.07.2023.
27/2023	31/07/2023	Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021).	Failure to file information Return by various agencies of Govt etc, Rs 100 will be levied as penalty will be applicable from 01.10.2023.
28/2023	31/07/2023	Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023).	Sec 149 to 154 will be applicable from 01.08.2023. Sec 137 to 148 & 155 to 162 will be applicable from 01.10.2023.
29/2023	31/07/2023	Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.	Special procedure to file an appeal against the order of Sec 73 or 74 with no pre-deposit condition to file appeal under Sec 107(6).
30/2023	31/07/2023	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.	Following details to be provided by a manufacturer of certain goods :- 1. Detail of packing machine 2. Detail of removal of existing machines 3. Electricity Consumption 4. Production Register

31/2023	31/07/2023	Seeks to amend Notification No. 27/2022 dated 26.12.2022.	Biometric-based Aadhaar authentication for granting GST registrations, starting with a pilot run in the state of Gujarat will now be started in State of Puducherry also.
32/2023	31/07/2023	Seeks to exempt the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.	Form GSTR-9 is to be filed for FY 2022-23 if the aggregate Turnover exceeds 2 crores in FY 2022-23.
33/2023	31/07/2023	Seeks to notify "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.	Account aggregator means a NBFC which undertakes the business of account aggregator & require to share the information will be effective from 01.10.2023
34/2023	31/07/2023	Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions.	Conditions – 1. Shall not make any inter state supply, 2. Shall not make supply of through ECO in more than one state, 3. Such person shall have PAN 4. Such person is granted enrolment number from common portal.
35/2023	31/07/2023	Seeks to appoint common adjudicating authority in respect of show cause notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.	Appointment of officer - Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate
36/2023	04/08/2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.	Form GSTR-8 will be applicable on ecommerce operator with effect from 01.10.2023.

37/2023	04/08/2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.	The electronic commerce operator shall furnish the details of supplies of goods made through unregistered dealers in the statement in FORM GSTR-8 electronically on the common portal
38/2023	04/08/2023	Seeks to make amendments (Second Amendment , 2023) to the CGST Rules, 2017.	1. Physical verification of business premises in certain cases 2. Insertion of Rule 88D – Difference between ITC in 3B & 2B

Summary of all GST Circulars – 2023

Circular Number	Date	Subject	Description
189/2023	13/01/2023	Clarification regarding GST rates and classification of certain goods.	This Circular clarifies the GST rates and classification of certain goods based on the recommendations of the 48th GST Council meeting, such as rab, chilka, churi, carbonated beverages, etc.
190/2023	13/01/2023	Clarification regarding GST rates and classification of certain services	This circular clarifies the applicability of GST on accommodation services supplied by an Air Force Mess to its personnel and on incentives paid by the Ministry of Electronics and Information Technology to acquiring banks under an incentive scheme for the promotion of RuPay debit cards and low-value BHIM-UPI transactions.
191/2023	27/03/2023	Clarification regarding GST rate and classification of 'R&D' based on the recommendation of the GST Council in its 49th meeting held on 18th February 2023 —reg	Rate of GST on Rab is 5% when sold under pre-package or labelled other wise the rate of GST on Rab is NIL.
192/2023	17/07/2023	Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.	where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.

193/2023	17/07/2023	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021	This circular further clarifies the earlier circular issued bearing No. 183/2022 for availment of ITC in excess of prescribed limit of 20%,10% & 5% as the case may be
194/2023	17/07/2023	Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction	Where multiple ECO's are involved in a single transaction, buyer side ECO will neither be required to collect TCS u/s 52.
195/2023	17/07/2023	Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period	Almost all the issues on warranty/ replacement of parts and repair services were clarified.
196/2023	17/07/2023	Clarification on taxability of share capital held in subsidiary company by the parent company	Activity of holding / purchase/ Sale of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.
197/2023	17/07/2023	Clarification on refund-related issues	Clarification on — 1. Manner of calculating Adjusted Turnover, 2. Undertaking to be issued with RFD-01 3. refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular shall not be reopened
198/2023	17/07/2023	Clarification on issue pertaining to e-invoice	Govt Departments registered solely for TDS on GST are liable for compulsory registration are required to issue e-invoices after threshold limit.

199/2023	17/07/2023	Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons	Taxability Of Services Provided By An Office Of An Organisation In One State To The Office Of That Organisation In Another State, Both Being Distinct Persons.
200/2023	01/08/2023	Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023	GST levy related to the following items are being issued through this circular: i. Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion; ii. Fish Soluble Paste; iii. Desiccated coconut; !v. Biomass briquettes; iv. Imitation zari thread or yarn known by any name in trade parlance; v. Supply of raw cotton by agriculturist to cooperatives; vi. Plates, cups made from areca leaves viii. Goods falling under HSN heading 9021
201/2023	01/08/2023	Clarifications regarding applicability of GST on certain services	1. Supply Of Food Or Beverages In A Cinema Hall Is Taxable As 'Restaurant Service' 2. Services Supplied By A Director Of A Company In His Personal Capacity will not attract RCM.

Extension of due date for filing of return in FORM GSTR-3B for the month of November, 2023 for the persons registered in certain districts of Tamil Nadu.

Notification No. 01/2024 – Central Tax

New Delhi, the 5th January, 2024

G.S.R…(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of November, 2023 till the tenth day of January, 2024, for the registered persons whose principal place of business is in the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu and are required to furnish return under sub- section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall come into force with effect from 20th day of December, 2023.

[F. No. CBIC-20006/1/2024-GST]
(Raghavendra Pal Singh)
Director

Extension of due date for filing FORM GSTR-9 and FORM GSTR-9C for the Financial Year 2022-23 for the persons registered in certain districts of Tamil Nadu.

Notification No. 02/2024 – Central Tax

New Delhi, the 5th January, 2024

G.S.R…(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act,2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. -(1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2024.

(2) They shall come into force on the 31st day of December, 2023.

2. In the Central Goods and Services Tax Rules, 2017, in rule 80,–

(a) after sub-rule (1A), the following sub-rule shall be inserted, namely:-

"(1B) Notwithstanding anything contained in sub-rule (1), for the financial year 2022-2023, the said annual return shall be furnished on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.";

(b) after sub-rule (3A), the following sub-rule shall be inserted, namely:-

"(3B) Notwithstanding anything contained in sub-rule (3), for the financial year 2022-2023, the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.";

[F. No. CBIC-20006/1/2024-GST]
(Raghavendra Pal Singh)
Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and were last amended vide notification No. 52/2023 - Central Tax, dated the 26th October, 2023 vide number G.S.R. 798(E), dated the 26th October, 2023.

Seeks to rescind Notification No. 30/2023-CT
dated 31 st July, 2023

Notification No. 03/2024- Central Tax

New Delhi, dated the 5th January, 2024

S.O.....(E).– In exercise of the powers conferred bysection148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as thesaid Act),the Central Government, on the recommendations of the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 30/2023-CT, dated the 31st July, 2023 published vide number S.O. 3424(E), dated the 31st July, 2023, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force from 1st day of January, 2024.

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.

Notification No. 04/2024–Central Tax

New Delhi, the 5th January,2024

S.O…(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification, and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, namely:—

1. Details of Packing Machines.– (1) All the registered persons engaged in manufacturing of the goods mentioned in Schedule to this notification shall furnish the details of packing machines being used for filling and packing of packages in **FORM GST SRM-I**, electronically on the common portal,within thirty days of coming into effect of this notification.

(2) Any person intending to manufacture goods as mentioned in the Schedule to this notification, and who has been granted registration after the issuance of this notification, shall furnish the details of packing machines being used for filling and packing of packages in **FORM GST SRM-I** on the common portal, within fifteen days of grant of such registration.

(3) The details of any additional filling and packing machine being installed at the registered place of business shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such installation in PART (B) of Table 6 of **FORM GST SRM-I**.

(4) If any change is to be made in the declared capacity of the machines, the same shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such change in Table 6A of **FORM GST SRM-I**.

(5) Upon furnishing of such details in **FORM GST SRM-I**, a unique registration number shall be generated for each machine, the details of which have been furnished by the registered person, on the common portal.

(6) In case, the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organisation, the same shall be furnished by the said registered person in Table 7 of **FORM GST SRM-I** on the common portal, within fifteen days of filing such declaration or submission:

Provided that where the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organisation, before the issuance of this notification, the latest such certificate in respect of the manufacturing unit or the machines, as the case may be, shall be furnished by the said registered person in Table 7 of **FORM GST SRM-I** on the common portal, within thirty days of issuance of this notification.

(7) The details of any existing filling and packing machine disposed of from the registered place of business shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such disposal in Table 8 of **FORM GST SRM-I**.

2. **Special Monthly Statement.**– The registered person shall submit a special statement for each month in **FORM GST SRM-II**, electronically on the common portal, on or before the tenth day of the month succeeding such month.

3. **Certificate of Chartered Engineer.**– (1) The taxpayer shall upload a certificate of Chartered Engineer **FORM GST SRM-III** in respect of machines declared by him, as per para 1 of this notification, in Table 6 of **FORM GST SRM-I**.

(2) If details of any machine are amended subsequently, then fresh certificate in respect of such machine shall be uploaded.

4. This notification shall come into effect from 1st day of April, 2024.

Schedule

S. No.	Chapter /Heading /Sub-heading /Tariff item.	Description of Goods.
(1)	(2)	(3)
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube)– bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube)–bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	tobacco used for smoking 'hookah' or known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
12.	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name

Explanation.– (1) In this Schedule, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively, a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act,1975, including the section and chapter notes and the General Explanatory notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(3) For the purposes of this notification, the phrase "brand name" means brand name ortrade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

FORM GST SRM-I
Registration and disposal of packing machines of pan masala and tobacco products

1. GSTIN	
2. Legal name	
3. Trade name, if any	
4. ARN	
5. Date of filing	

6. Details of the machines

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (8x10)	(12)	(13)	(14)
Part (A) Existing													
Part (B) Newly Added													

6A. Amendment to the details of machines.

Sr. no.	Registration no.of the machine.	Make.	Model no.	Name of manufacturer.	Machine no.	Date of purchase.	Address of place of instalation.	No. of tracks.	Weight of package-s which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package).	Total packing capacity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Working status (Y/N).	Date of change in any parameter listed.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12) (9x11)	(13)	(14)	(15)

7. Details of the intimation of the machines furnished to other departments.

Sr. no.	Date of intimation.	Name of Govt. department / any other agency or organisation.	Details of declaration (to be uploaded as pdf).
(1)	(2)	(3)	(4)

8. Disposal of the packing machines.

Sr. no.	Registration no. of the machine.	Make.	Model no.	Name of manufacturer.	Machine no.	Date of purchase.	Address of place of installation.	No. of tracks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package)	Total packing capacity of the machine for a specific weight of package to be packed.	Date of disposal.	Reason of disposal (Supplied/ Condemned).
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

9. Product details.

Sr. no.	Brand name.	Packing type.	Quantity in grams in each package.	HSN.	Description of the product.
(1)	(2)	(3)	(4)	(5)	(6)

10. Details of the Documents uploaded.

1. Certificate of chartered engineer.
2. Information given to other departments
3. Any other document to be mentioned by taxpayer.

11. Verification

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place
Signatory
Date

Signature of Authorised
Name

Designation / Status

Instructions to Form GST SRM-1

1. **Terms used:**

(i) GSTIN: Goods and Services Tax Identification Number
(ii) HSN: Harmonized System of Nomenclature
(iii) MRP: Maximum Retail Price
(iv) KWH: Kilo Watt Hour
(v) Packing type: Pouch, Zipper etc.

2. **Table 6:** Details of existing machines should be provided in Part-A and details of new machines added thereafter have to be provided in Part-B. Column wise details of the information to be provided is given in the table below:

Column no.	Description
(2).	Make of the machine, if available should be provided as to whether it is semi-automatic or automatic .
(3).	Mention model number of the machine, if available.
(4).	Name of the manufacturer of the machine to be provided.
(5).	Machine number to be provided.
(6).	Date of purchase as mentioned on the invoice or any other document in lieu thereof, issued by supplier, have to be provided.
(7).	Address of the place where machine has been installed has to be selected from the drop down provided for the same based on the details of places of business provided by the manufacturer in FORM GST REG-01.

(8).	Number of tracks associated with the machine to be provided.
(9).	Weight of package which can be packed by the machine (in grams) is to be declared here. The registered person can enter multiple entries of the same for each machine.
(10).	Packing capacity of each track has to be provided in terms of number of packages which can be packed by the machine on the said track per hour for the particular weight of package declared in column 9.
(11).	Total packing capacity of the machine for a specific weight of package which can be packed would be computed by System based on information provided in column 8,9 &10.
(12).	Electricity consumption capacity of the machine to be provided in KWH.
(13).	Unique registration no. of the machine would be generated by System after filing the form. Structure of the unique no. will be GSTIN followed by three digits.
(14).	Whether the machine is working or is at standby. Accordingly, Y or N to be selected from the drop down menu.

3. **Table 6A:** Amendment to the details of the machine already provided in Table 6 or amended thereafter to be provided. After entering registration number of the machine assigned by the System in column 12 of Table 6 , other details of the machine would be auto-populated. The same can be edited wherever required. Certificate of chartered engineer shall also be uploaded for the machines whose details have been amended if the particulars given in the certificate uploaded earlier undergoes any change and the details of the documents uploaded should be given in Table 10. Any such change in any of the details of the machine including its working status which needs to be amended, has to be communicated within twenty four hours of the said change carried out by the registered person.

4. **Table 7:** Details of the intimation of the machines furnished to other department have to be provided. Documents should be uploaded in pdf format after making entries and the details of the documents uploaded should be given in Table 10.

5. **Table 8:** Details of the machines disposed of (supplied /condemned) shall be provided. After entering registration number assigned to the machine by the System, other details would be auto-populated. Date of disposal and reason for the same to be provided.

6. **Table 9**: Details of the brands, packing type, HSN and description of the products manufactured to be provided in this table. If there is any change in the information already furnished in this table, the details need to be amended accordingly.

7. **Table 10**: List of Documents uploaded:

- Single Certificate of chartered engineer to be uploaded in pdf format for all machines in the format as per FORM GST SRM-III after entering the particulars of the machines.
- Certificate of chartered engineer, in the format as per FORM GST SRM-III, shall also be uploaded for the machines whose details have been amended if the particulars given in the certificate uploaded earlier undergoes any change.
- Document in pdf format providing details of the intimation of the machines furnished to other department have to be uploaded.

FORM GST SRM-II

Monthly Statement of inputs used and the final goods produced by the manufacturer of goods specified in the Schedule

1. GSTIN	
2. Legal name	
3. Trade name, if any	
4. Financial year	
5. Tax period	
6. ARN	
7. Date of filing	

8. Details of inputs

Serial number.	HSN.	Description.	Unit. (UQC)	Opening balance.	Quantity procured.	Value of the quantity procured (Rs.).	Quantity consumed.	Closing balance.	Waste generated.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

9. Details of production

Brand name.	Machine registration number.	Packing type.	Quantity in grams in each package.	HSN.	Description of the product.	Number of packages packed.	MRP per package packed. (Rs.)	Total value (in MRP)of the packages packed by machine. (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9) (7x8)
Total								

10. **Power consumption**

Sr. No.	Meter / DG set no.	Initial meter reading on first day of the month.	Final meter reading on the last day of the month.	Consumption (KWH).
(1)	(2)	(3)	(4)	(5)
(A) Electricity meter reading				
(B) DG set meter reading				
(C) Solar power having battery				
(D) Others				

11. **Details of grid integrated solar power**

Sr. No.	Initial meter reading on first day of the month.	Final meter reading on the last day of the month.	Generation/ Export / Import / Consumption (KWH).
(1)	(2)	(3)	(4)
(A) Solar meter reading (Generation)			
(B) Power meter reading (Import of electricity)			
(C) Power meter reading (Export of electricity)			
(D) Net consumption [A+B-C]			

12. **Verification**

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place
Signatory
Date

Signature of Authorised
Name

Designation / Status

Instructions to Form GST SRM-II

1. **Terms used:**

(i) GSTIN: Goods and Services Tax Identification Number

(ii) HSN: Harmonized System of Nomenclature

(iii) MRP: Maximum Retail Price

(iv) KWH: Kilo Watt Hour

(v) DG set: Diesel Generator set used for power generation

(vi) Packing type: Pouch, Zipper etc.

2. **Table 8:** Details of inputs used for manufacturing the goods specified in Schedule appended with the notification, have to be provided. Column wise details of the information to be provided are given in the table below:

Column no.	Description
(1).	
(2).	HSN at minimum 4 digit level of the inputs used for manufacturing to be reported.
(3).	Description of the goods as per HSN to be provided.
(4).	Unit of measurement of the goods to be selected from the drop down.
(5).	Quantity available in the beginning of the month to be reported for the first time. From next month onwards, the information will be auto-populated from the closing balance of the previous month.
(6).	Quantity procured during the month have to be reported.
(7).	Value of the quantity procured have to be provided.
(8).	Quantity consumed have to be reported.
(9).	Closing balance should be the sum of quantity reported in col. 5 & 6 reduced by quantity reported in col. 8 (5+6-8)
(10).	Waste generated, if any to be reported.

3. **Table 9:** Details of the products manufactured to be reported brand wise, machine wise and package wise. Column wise details of the information to be provided is given in the table below:

Column no.	Description
1.	Brand reported in table 9 of Form GST SRM-I to be selected from drop down for reporting production during the tax period.
2.	Registration number of the machine assigned by System to be reported.
3.	Packing type viz. pouch, zipper etc. manufactured during the tax period to be reported.
4.	Description of the packing (Quantity in grams in each pack) to be reported.
5.	HSN, at 8 digit level, of the goods manufactured during the tax period to be reported.
6.	Description of the product manufactured during the tax period to be reported.
7.	Number of packages packed during the tax period to be reported.
8.	Maximum Retail Price (MRP) in Rs. per package packed to be reported.
9.	Total value in MRP of the packages packed during the tax period will be computed by System based on the information provided in col. 6&7.

4. **Table 10**: Power consumption during the month to be reported. Initial reading of the electricity meter in the beginning of the month to be reported for the first month. From the next month onwards, the final reading reported at the end of previous month will become initial reading of the month. Reading of DG set used, if any should also be reported separately. For reporting the reading of more than one electricity meter or DG set, separate rows to be used. Also, electricity meter reading is to be given of the main meter of the manufacturing unit in case separate meter for machines is not available. Solar power mentioned at PART C pertains to only that generated through batteries not integrated with the grid.

5. **Table 11**. Here, details of the power consumed from solar power integrated with the grid is to be reported.

FORM GST SRM-III
Certificate of Chartered Engineer

1. GSTIN -

2. Details of the machines for which certificate has been issued -

Sr. no.	Make, if avail-able.	Mod el no., if avai-lable	Name of manufact -urer.	Mac-hine no.	Registration no. assigned by System (in cases where the amendment in specification of the machines in Table 6A to be done).	Date of purc-hase, if avail -able.	No. of trac -ks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages packed for a particular weight of package).	Total packing capacity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Re-marks if any.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (8x10)	(12)	(13)

This is to certify that I have examined --- (no.) machines and the above details are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature
Name –
Registration number –
Address –
Mobile no. –

Date:
Place:

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Amendment in Notification No. 02/2017-CT dated 19th June, 2017.

Notification No. 05/2024 – Central Tax

New Delhi, dated the 30th January, 2024

G.S.R...(E).— In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 02/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the 19th June, 2017, namely:–

In the said notification, in Table II, in serial number 83, in column (3), in clause (ii), after the figure and letter "411060,", the figure and letter "411069," shall be inserted.

[F. No. CBIC-20016/18/2023-GST]
(Raghavendra Pal Singh)
Director

Note:-The principal notification No. 02/2017-Central Tax, dated the 19th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended by notification No. 39/2023-Central Tax, dated the 17thAugust, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 612(E), dated the 17th August, 2023.

Seeks to amend Notification No 01/2017- Central Tax (Rate) dated 28.06.2017.

Notification No. 01/2024-Central Tax (Rate)

New Delhi, the 3rd January, 2024

G.S.R. .....(E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, Ministry of

Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28thJune, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28thJune, 2017, namely:-

In the said notification, in Schedule I – 2.5%, -

(i) against S. No. 165, in column (2), for the entry, the entry "2711 12 00, 2711 13 00, 2711 19 10" shall be substituted;

(ii) against S. No. 165A, in column (2), for the entry, the entry "2711 12 00, 2711 13 00, 2711 19 10" shall be substituted;

2. This notification shall come into force with effect from the 4th day of January, 2024.

[F. No. 190354/223/2023-TRU]
(Nitish Karnatak)
Under Secretary

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017 and was last amended by notification No. 17/2023 – Central Tax (Rate), dated the 19th October, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 774(E), dated the 19th October, 2023.

Extension of due date for filing of return in FORM GSTR-3B for the month of November, 2023 for the persons registered in certain districts of Tamil Nadu

NOTIFICATION
No. 01/2024 – CENTRAL TAX

New Delhi, the 5th January, 2024

G.S.R…(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of November, 2023 till the tenth day of January, 2024, for the registered persons whose principal place of business is in the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu and are required to furnish return under sub- section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall come into force with effect from 20th day of December, 2023.

[F. No. CBIC-20006/1/2024-GST]
(Raghavendra Pal Singh)
Director

Extension of due date for filing FORM GSTR-9 and FORM GSTR-9C for the Financial Year 2022-23 for the persons registered in certain districts of Tamil Nadu.

NOTIFICATION
NO. 02/2024 – CENTRAL TAX

New Delhi, the 5th January, 2024

G.S.R…(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement.** -(1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2024.

(2) They shall come into force on the 31st day of December, 2023.

2. In the Central Goods and Services Tax Rules, 2017, in rule 80,–

(a) after sub-rule (1A), the following sub-rule shall be inserted, namely:-

"(1B) Notwithstanding anything contained in sub-rule (1), for the financial year 2022-2023, the said annual return shall be furnished on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.";

(b) after sub-rule (3A), the following sub-rule shall be inserted, namely:-

"(3B) Notwithstanding anything contained in sub-rule (3), for the financial year 2022-2023, the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.";

[F. No. CBIC-20006/1/2024-GST]
(Raghavendra Pal Singh)
Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and were last amended vide notification No. 52/2023 - Central Tax, dated the 26th October, 2023 vide number G.S.R. 798(E), dated the 26th October, 2023.

Seeks to rescind Notification No. 30/2023-CT dated 31 st July, 2023

NOTIFICATION
No. 03/2024- Central Tax

New Delhi, dated the 5th January, 2024

S.O.....(E).– In exercise of the powers conferred bysection148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as thesaid Act),the Central Government, on the recommendations of the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 30/2023-CT, dated the 31st July, 2023 published vide number S.O. 3424(E), dated the 31st July, 2023, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force from 1st day of January, 2024.

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.

NOTIFICATION
NO. 04/2024–CENTRAL TAX

New Delhi, the 5th January,2024

S.O…(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification, and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, namely:—

1. **Details of Packing Machines.**– (1) All the registered persons engaged in manufacturing of the goods mentioned in Schedule to this notification shall furnish the details of packing machines being used for filling and packing of packages in **FORM GST SRM-I**, electronically on the common portal,within thirty days of coming into effect of this notification.

(2) Any person intending to manufacture goods as mentioned in the Schedule to this notification, and who has been granted registration after the issuance of this notification, shall furnish the details of packing machines being used for filling and packing of packages in **FORM GST SRM-I** on the common portal, within fifteen days of grant of such registration.

(3) The details of any additional filling and packing machine being installed at the registered place of business shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such installation in PART (B) of Table 6 of **FORM GST SRM-I**.

(4) If any change is to be made in the declared capacity of the machines, the same shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such change in Table 6A of **FORM GST SRM-I**.

(5) Upon furnishing of such details in **FORM GST SRM-I**, a unique registration number shall be generated for each machine, the details of which have been furnished by the registered person, on the common portal.

(6) In case, the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organisation, the same shall be furnished by the said registered person in Table 7 of **FORM GST SRM-I** on the common portal, within fifteen days of filing such declaration or submission: Provided that where the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organisation, before the issuance of this notification, the latest such certificate in respect of the manufacturing unit or the machines, as the case may be, shall be furnished by the said registered person in Table 7 of **FORM GST SRM-I** on the common portal, within thirty days of issuance of this notification.

(7) The details of any existing filling and packing machine disposed of from the registered place of business shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such disposal in Table 8 of **FORM GST SRM-I**.

2. **Special Monthly Statement.**– The registered person shall submit a special statement for each month in **FORM GST SRM-II**, electronically on the common portal, on or before the tenth day of the month succeeding such month.

3. **Certificate of Chartered Engineer.**– (1) The taxpayer shall upload a certificate of Chartered Engineer **FORM GST SRM-III** in respect of machines declared by him, as per para 1 of this notification, in Table 6 of **FORM GST SRM-I**.

(2) If details of any machine are amended subsequently, then fresh certificate in respect of such machine shall be uploaded.

4. This notification shall come into effect from 1st day of April, 2024.

Schedule

S. No.	Chapter/ Heading / Sub-heading / Tariff item.	Description of Goods.
(1)	(2)	(3)
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube)– bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube)–bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	tobacco used for smoking 'hookah' or known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
12.	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name

Explanation.– (1) In this Schedule, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively, a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act,1975, including the section and chapter notes and the General Explanatory notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(3) For the purposes of this notification, the phrase "brand name" means brand name ortrade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

FORM GST SRM-I

Registration and disposal of packing machines of pan masala and tobacco products

1. GSTIN	
2. Legal name	
3. Trade name, if any	
4. ARN	
5. Date of filing	

6. Details of the machines

Sr. no.	Make, if avail-able	Mod el no., if avail able.	Name of manufa -cturer.	Ma-chine no.	Date of pur-chase	Ad-dress of the place of instal-lati -on.	No. of tracks .	Weight of package -s which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of pack-age).	Total packing capacity of the ma-chine for a specific weight of package to be packed.	Elec-tricity con-sumpti -on capac-ity of the ma-chine per hour (KWH).	Regis-tration no. of the ma-chine (to be auto-gen-erate -d by the sys-tem).	Work -ing status (Y/N)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (8×10)	(12)	(13)	(14)

Part (A) Existing														
Part (B) Newly Added														

6A. Amendment to the details of machines.

Sr. no.	Registration no. of the machine.	Make	Model no.	Name of manufacturer	Mac-hine no.	Date of purch-ase	Address of place of installation.	No. of trac-ks.	Weight of package-s which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package).	Total packing capacity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Working status (Y/N).	Date of change in any parameter listed.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (9×11)	(12)	(13)	(14)	(15)

7. Details of the intimation of the machines furnished to other departments.

Sr. no.	Date of intimation	Name of Govt. department / any other agency or organisation.	Details of declaration (to be uploaded as pdf)
(1)	(2)	(3)	(4)

8. Disposal of the packing machines.

Sr. no.	Registration no. of the machine.	Make	Model no.	Name of manufacturer	Machine no.	Date of purch-ase.	Address of place of installation.	No. of tracks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package)	Total packing capacity of the machine for a specific weight of package to be packed.	Date of disposal.	Reason of disposal (Supplied/ Condemned)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

9. Product details.

Sr. no.	Brand name	Packing type	Quantity in grams in each package	HSN	Description of the product
(1)	(2)	(3)	(4)	(5)	(6)

10. Details of the Documents uploaded.

1. Certificate of chartered engineer.
2. Information given to other departments
3. Any other document to be mentioned by taxpayer.

11. Verification

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name

Designation / Status

Place

Date

Instructions to Form GST SRM-1

1. Terms used:

(i) GSTIN: Goods and Services Tax Identification Number
(ii) HSN: Harmonized System of Nomenclature
(iii) MRP: Maximum Retail Price
(iv) KWH: Kilo Watt Hour
(v) Packing type: Pouch, Zipper etc.

2. Table 6: Details of existing machines should be provided in Part-A and details of new machines added thereafter have to be provided in Part-B. Column wise details of the information to be provided is given in the table below:

Column no.	Description
(2)	Make of the machine, if available should be provided as to whether it is semi-automatic orautomatic .
(3)	Mention model number of the machine, if available.
(4)	Name of the manufacturer of the machine to be provided.
(5)	Machine number to be provided.
(6)	Date of purchase as mentioned on the invoice or any other document in lieu thereof, issued bysupplier, have to be provided.
(7)	Address of the place where machine has been installed has to be selected from the drop down provided for the same based on the details of places of business provided by the manufacturer in FORM GST REG-01.
(8)	Number of tracks associated with the machine to be provided.
(9)	Weight of package which can be packed by the machine (in grams) is to be declared here. Theregistered person can enter multiple entries of the same for each machine.
(10)	Packing capacity of each track has to be provided in terms of number of packages which can be packed by the machine on the said track per hour for the particular weight of package declared in column 9.
(11)	Total packing capacity of the machine for a specific weight of package which can be packed would be computed by System based on information provided in column 8,9 &10.
(12)	Electricity consumption capacity of the machine to be provided in KWH.
(13)	Unique registration no. of the machine would be generated by System after filing the form. Structure of the unique no. will be GSTIN followed by three digits.
(14).	Whether the machine is working or is at standby. Accordingly, Y or N to be selected from thedrop down menu.

3. Table 6A: Amendment to the details of the machine already provided in Table 6 or amended thereafter to be provided. After entering registration number of the machine assigned by the System in column 12 of Table 6 , other details of the machine would be auto-populated. The same can be edited wherever required. Certificate of chartered engineer shall also be uploaded for the machines whose details have been amended if the particulars given in the certificate uploaded earlier undergoes any change and the details of the documents uploaded should be given in Table 10. Any such change in any of the details of the machine including its working status which needs to be amended, has to be communicated within twenty four hours of the said change carried out by the registered person.

4. Table 7: Details of the intimation of the machines furnished to other department have to be provided. Documents should be uploaded in pdf format after making entries and the details of the documents uploaded should be given in Table 10.

5. Table 8: Details of the machines disposed of (supplied /condemned) shall be provided. After entering registration number assigned to the machine by the System, other details would be auto-populated. Date of disposal and reason for the same to be provided.

6. Table 9: Details of the brands, packing type, HSN and description of the products manufactured to be provided in this table. If there is any change in the information already furnished in this table, the details need to be amended accordingly.

7. Table 10: List of Documents uploaded:

- Single Certificate of chartered engineer to be uploaded in pdf format for all machines in the format as per **FORM GST SRM-III** after entering the particulars of the machines.

- Certificate of chartered engineer, in the format as per FORM GST SRM-III, shall also be uploaded for the machines whose details have been amended if the particulars given in the certificate uploaded earlier undergoes any change.

- Document in pdf format providing details of the intimation of the machines furnished to other department have to be uploaded.

FORM GST SRM-II

Monthly Statement of inputs used and the final goods produced by the manufacturer of goods specified in the Schedule

1. GSTIN	
2. Legal name	
3. Trade name, if any	
4. Financial year	
5. Tax period	
6. ARN	
7. Date of filing	

8. Details of inputs

Sr. No.	HSN	Description	Unit (UQC)	Opening balance	Quantity procured	Value of the quantity procured (Rs.).	Quantity consumed	Closing balance	Waste generated
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

9. Details of production

Brand name	Machine registration number	Packing type	Quantity in grams in each package	HSN	Description of the product	Number of packages packed	MRP per package packed. (Rs.)	Total value (in MRP)of the packages packed by machine. (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9) (7x8)
Total								

10. Power consumption

Sr. No.	Meter / DG set no.	Initial meter reading on first day of the month.	Final meter reading on the last day of the month.	Consumption (KWH)
(1)	(2)	(3)	(4)	(5)
(A) Electricity meter reading				
(B) DG set meter reading				
(C) Solar power having battery				
(D) Others				

11. Details of grid integrated solar power

Sr. No.	Initial meter reading on first day of the month	Final meter reading on the last day of the month	Generation/Export / Import /Consumption (KWH)
(1)	(2)	(3)	(4)
(A) Solar meter reading (Generation)			
(B) Power meter reading (Import of electricity)			
(C) Power meter reading (Export of electricity)			
(D) Net consumption [A+B-C]			

12. Verification

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name

Designation / Status

Place

Date

Instruction to Form GST SRM-II

1. Terms used:

(i) GSTIN: Goods and Services Tax Identification Number
(ii) HSN: Harmonized System of Nomenclature
(iii) MRP: Maximum Retail Price
(iv) KWH: Kilo Watt Hour
(v) DG set: Diesel Generator set used for power generation
(vi) Packing type: Pouch, Zipper etc.

2. Table 8: Details of inputs used for manufacturing the goods specified in Schedule appended with the notification, have to be provided. Column wise details of the information to be provided are given in the table below:

Column no.	Description
(1)	
(2)	HSN at minimum 4 digit level of the inputs used for manufacturing to be reported.
(3)	Description of the goods as per HSN to be provided.
(4)	Unit of measurement of the goods to be selected from the drop down.
(5)	Quantity available in the beginning of the month to be reported for the first time. From next month onwards, the information will be auto-populated from the closing balance of the previous month.
(6)	Quantity procured during the month have to be reported.
(7)	Value of the quantity procured have to be provided.
(8)	Quantity consumed have to be reported.
(9)	Closing balance should be the sum of quantity reported in col. 5 & 6 reduced by quantity reported in col. 8 (5+6-8)
(10)	Waste generated, if any to be reported.

3. Table 9: Details of the products manufactured to be reported brand wise, machine wise and package wise. Column wise details of the information to be provided is given in the table below:

Column no.	Description
1.	Brand reported in table 9 of Form GST SRM-I to be selected from drop down for reporting production during the tax period.
2.	Registration number of the machine assigned by System to be reported.
3.	Packing type viz. pouch, zipper etc. manufactured during the tax period to be reported.

4.	Description of the packing (Quantity in grams in each pack) to be reported.
5.	HSN, at 8 digit level, of the goods manufactured during the tax period to be reported.
6.	Description of the product manufactured during the tax period to be reported.
7.	Number of packages packed during the tax period to be reported.
8.	Maximum Retail Price (MRP) in Rs. per package packed to be reported.
9.	Total value in MRP of the packages packed during the tax period will be computed by System based on the information provided in col. 6&7.

4. Table 10: Power consumption during the month to be reported. Initial reading of the electricity meter in the beginning of the month to be reported for the first month. From the next month onwards, the final reading reported at the end of previous month will become initial reading of the month. Reading of DG set used, if any should also be reported separately. For reporting the reading of more than one electricity meter or DG set, separate rows to be used. Also, electricity meter reading is to be given of the main meter of the manufacturing unit in case separate meter for machines is not available. Solar power mentioned at PART C pertains to only that generated through batteries not integrated with the grid.

5. Table 11. Here, details of the power consumed from solar power integrated with the grid is to be reported.

FORM GST SRM-III

Certificate of Chartered Engineer

1. GSTIN -

2. Details of the machines for which certificate has been issued -

Sr. no.	Make, if available	Model no., if available	Name of manufacturer.	Machine no.	Registration no. assigned by System (in cases where the amendment in specification of the machines in Table 6A to be done).	Date of purchase, if available.	No. of tracks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages packed for a particular weight of package).	Total packing capacity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Remarks if any.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (8x10)	(12)	(13)

This is to certify that I have examined --- (no.) machines and the above details are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature

Name –

Registration number –

Address –

Mobile no. –

Date:

Place:

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Amendment in Notification No. 02/2017-CT dated 19th June, 2017.

NOTIFICATION
No. 05/2024 – CENTRAL TAX

New Delhi, dated the 30th January, 2024

G.S.R…(E).— In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 02/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the 19th June, 2017, namely:–

In the said notification, in Table II, in serial number 83, in column (3), in clause (ii), after the figure and letter "411060,", the figure and letter "411069," shall be inserted.

[F. No. CBIC-20016/18/2023-GST]
(Raghavendra Pal Singh)
Director

Note:-The principal notification No. 02/2017-Central Tax, dated the 19th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended by notification No. 39/2023-Central Tax, dated the 17th August, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 612(E), dated the 17th August, 2023.

Seeks to notify "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the Central Goods and Services Tax Act, 2017

NOTIFICATION
No. 06/2024 – Central Tax

New Delhi, dated the 22nd February, 2024

S.O…(E)— In exercise of the powers conferred by section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under subsection (2) of Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

Explanation.— For the purpose of this notification, "Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

[F. No. CBIC-20001/1/2024-GST]
(Raghavendra Pal Singh)
Director

Seeks to provide waiver of interest for specified registered persons for specified tax periods

Notification
No 07/2024 – Central Tax

New Delhi, the 08th April, 2024.

S.O….(E).— In exercise of the powers conferred by sub-section (1) of section 50 read with section 148 of the Central Goods and Services Tax

Act, 2017 (12 of 2017) (herein after referred to as the Act), the Government, on the recommendations of the Council, hereby notifies the rate of interest per annum to be 'Nil', for the class of registered persons mentioned in column (1) of the Table given below, who were required to furnish the return in FORM GSTR-3B, but failed to furnish the said return for the months mentioned against the corresponding entry in column (2) of the said Table by the due date, for the period mentioned against the corresponding entry in column (3) of the said Table, namely:–

TABLE

Class of registered persons	Months	Period for which interest is to be 'Nil'
(1)	(2)	(3)
Registered person having the following Goods and Services Tax Identification Numbers who are liable to furnish the return as specified under sub-section (1) of section 39 of the Act but could not file the return for the month as mentioned in the corresponding column (2), by the due date, because of technical glitch on the portal but had sufficient balance in their electronic cash ledger or electronic credit ledger, or had deposited the required amount through challan, namely: -		From the due date of filling return in Form GSTR 3B to the actual date of furnishing such return.
1.19AAACI1681G1ZM	June, 2018	
2.19AAACW2192G1Z8	October 2018	
3.19AABCD7720L1ZF	July 2017 and August 2017	
4. 19AAECS6573R1ZC	July 2017 to February 2018	

[F.No.CBIC-20013/7/2021-GST]
(Raghavendra Pal Singh)
Director

Seeks to extend the timeline for implementation of Notification No. 04/2024-CT dated 05.01.2024 from 1st April, 2024 to 15th May, 2024

NOTIFICATION
No. 08/2024- Central Tax

New Delhi, dated the 10th April, 2024

S.O.…(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 04/2024-Central Tax, dated the 5th January, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 85(E), dated the 5th January, 2024, namely:-

In the said notification, in para 4, for the words and letters "1st day of April, 2024", the words and letters "15th day of May, 2024" shall be substituted.

2. This notification shall come into force from 1st day of April, 2024.

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Note: - The principal Notification No. 04/2024- Central Tax, dated the 5th January, 2024, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 85(E), dated the 5th January, 2024.

Seeks to extend the due date for filing of FORM GSTR-1, for the month of March 2024

NOTIFICATION
No. 09/2024 – CENTRAL TAX

New Delhi, the 12th April, 2024

G.S.R.....(E).-In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 –Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:–

In the said notification, after the fourth proviso, the following proviso shall be inserted, namely:-

"Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act, other than the registered persons who are required to furnish return under proviso of the said sub-section, for the tax period March, 2024, shall be extended till the twelfth day of April, 2024."

2. This notification shall be deemed to have come into force with effect from the 11th day of April, 2024.

[F. No. CBIC-20021/1/2024-GST]
(R. Ananth)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 41/2023 –Central Tax, dated the 25th August 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 624(E), dated the 25th August 2023.

Seeks to amend the Notification no. 02/2017-CT dated 19.06.2017 with effect from 5th August, 2023

NOTIFICATION
No. 10/2024-Central Tax

New Delhi, the 29th May, 2024

G.S.R.....(E).– In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 02/2017-Central Tax, dated the 19th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification, in Table II, with effect from the 5th August, 2023,–

(i) for serial number 7 and the entries relating thereto, the following

serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

"7	Alwar	Districts of Alwar, Khairthal- Tijara, Bharatpur, Deeg, Dholpur, Dausa, Karauli, Sawaimadhopur, Gangapur City, Sikar, Neem Ka Thana and Jhunjhunu and Behror, Bansur, Neemrana, Mandan and Narayanpur tehsils of district Kotputli-Behror in the State of Rajasthan.";

(ii) for serial number 49 and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

"49	Jaipur	Districts of Jaipur, Jaipur (Rural), Dudu, Ajmer, Beawar, Tonk and Kekri and Kotputli, Viratnagar and Shahpura tehsils of district Kotputli- Behror in the State of Rajasthan.";

(iii) for serial number 53 and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

"53	Jodhpur	Districts of Jodhpur, Jodhpur (Rural), Phalodi, Nagaur, Didwana- Kuchaman, Pali, Sirohi, Jalore, Sanchore, Barmer, Balotra, Jaisalmer, Bikaner, Churu, Ganganagar, Hanumangarh and Anupgarh in the state of Rajasthan.";

(iv) for serial number 102 and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

"102	Udaipur	Districts of Udaipur, Salumbar, Rajsamand, Bhilwara, Shahpura, Chittorgarh, Pratapgarh, Dungarpur, Banswara, Bundi, Baran, Kota and Jhalawar in the state of Rajasthan.".

[F. No. CBIC-20016/18/2023-GST]
(Raghavendra Pal Singh)
Director

Note:– The principal notification No. 02/2017- Central Tax, dated the 19th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended vide Notification No. 05/2024-Central Tax, dated the 30th January, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 77(E), dated the 30th January, 2024.