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.

Editors-in-Chief
RAJ K. BATRA
S.K. KHURANA

Index – Volume 56

2018

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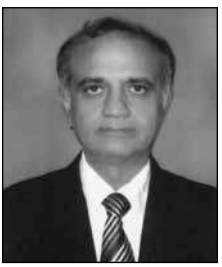

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FROM THE DESK OF EDITORS-IN-CHIEF

"Law is not static, it is dynamic and it is not dry subject"

– Altmas Kabir, Ex-CJI.

It has been the endeavor of Sales Tax Bar Association to keep the members of the Bar abreast of the latest developments in the field of Value Added Tax Laws and Goods and Services Tax Law. Publishing monthly Journal is one of the best modes of updating the members. It is a matter of great pride and pleasure that our Bar has completed 56 Years of publication of its journal, Delhi Sales Tax Cases.

Appointment of Editors-in-Chief is highly responsible and arduous job. A lot of pressure and responsibility was fastened on us to maintain regularity of publication and also to maintain its quality. However, We accepted this challenge believing that it will take us to the road of hard work, long hours and extreme devotion toward this task

This issue begins the final part of this year that will be published during our tenure with the fact in mind We would like to acknowledge the contributions of various members interested in the bar. As the last issue of 2018, this gives us an opportunity to thank all those authors of the Articles published during this year and to acknowledge generous help which both the authors and editors obtained from peer reviewers. The journal will continue to publish the quality judgments and other relevant material relating to GST and other allied laws in future as well.

The GST which was occupying our minds since long became a reality by virtue of 101st Constitutional Amendment Act, 2016 and was made Applicable with effect from 01-07-2017 with a moto of "one tax one nation". This concept of ONE TAX ONE NATION has taken its existence but with some hurdles of federalism which compelled the Central Government to keep Alcohol for human consumption and Petroleum products out of GST ambit, also having multiple rates of taxes with different limits of basic exemption, do not make it, "ONE NATION ONE TAX" slogan completely true."

By implementation of the GST Law new concepts have emerged due to which old concepts may be unlearned and new one learned. GST is an ad valorem tax, which means a tax, which is based on the value of supply. GST is a destination based tax as against the previous concept of origin based taxation. Concept of sale has changed into supply. The process and

procedures of the GST are computer based without which it is very difficult to proceed. There shall be involvement of minimal human intervention.

With the change in law, we also tried to update the journal, so as to cater the needs of the Bar and the Bench. We worked hard to keep you abreast with the latest law and the judgments, circulars, notifications and press notes etc., This will increase the page numbers of the journal in future, as the GST practice will be based on these notifications, circulars and other press releases of the department as it used to be in the Excise Act. Though the law on GST is in initial stage and it will take time to develop, with the advent of complicacies faced by the traders and dealers adjudication on the subject by the lower authorities and the Courts in particular will settle down it with the time to come. The initial glitches will also be removed either suo moto by the Government or with interference of the Courts. The next editorial Board shall report all the matters which shall come before the courts. We however, always welcomed the suggestions and criticism from our esteemed readers for further improvement of the journal.

We extend our gratitude towards Sh. H.C Bhatia, patron of our journal who has been source of our inspiration and we sought his guidance throughout the year we also thankful to P.K Bansal, S.N Garg, M.L Garg, S.K Bansal, Neetika Khanna, Sh. H.L Madan, Vasdev Lalwani, A.K Babbar, Ravi Chandok and Suresh Aggarwal who provided us a lot of orders and judgments' to publish in our journal

Wish you a Happy New Year, 2019 to you and your family. We convey our best wishes to new team for the year 2019

"Law is the command of the sovereign" AUSTIN

Editors-in-Chief
Raj K. Batra and S.K. Khurana

Co-Editor
Kumar Jee Bhat

FROM THE DESK OF PRESIDENT

Respected Seniors and Esteemed Colleagues

Greetings and Wishing you all a
Very Happy and Prosperous New Year.

The year 2018 has witnessed a lot of changes, especially in the GST arena. The GST being in its nascent stages has now started crawling like a small baby. However, keeping in view the number of changes by way of Notifications, Circulars, Orders, Advance Rulings, Case Laws etc. introduced in the GST regime, it has become imperative for the professionals to keep himself abreast of all the latest changes and developments.

We have made all our attempts to inform the members about these changes and have completed this volume i.e. Volume 56 of DSTC. All the parts were published on a monthly basis. The entire credit for doing this mammoth task goes to the Editorial Board and especially to Sh. S.K. Khurana, Sh. R.K. Batra and Sh K.J. Bhat, Sh. Gaurav Gupta and Other Member of Editorial Board. I am also thankful to the members who contributed their articles for the Journal.

I personally feel that time has come when the name of the Journal should be changed. 'Delhi Sales Tax" as well as 'Delhi VAT' were a state subjects and at that time it was important to publish judgments decided under the Delhi Sales Tax Act or Delhi VAT Act.

However with the implementation of GST, which is uniform all across the country and which is likely to stay for long, I personally feel that the name of the Journal should be replaced with a more suitable and apt name, keeping in view the changing times. However, I leave this to the wisdom of the 'August General House'. With this note, I thank each one of you from the core of my heart for your unstinted support during my tenure as President.

At the end, I wish and hope that the coming year 2019 will bring a lot of happiness and prosperity in everyone's life.

Regards,

Vineet Bhatia
President

Manish Khurana
Advocate
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Respected seniors,
Greetings to all.

After the Sales Tax Bar Association (Regd) started publishing their prestigious journal Delhi Sales Tax Cases, started 58 years ago as e-journal, I became interested to convert the previous volumes to e-journals.

I spoke to the Editorial Board of the journal and was given a go ahead to convert the previous hard bound printed journals as e-books. I am thankful to the Office Bearers of Sales Tax Bar Association (Regd.) for having confidence in me for the task.

I have been requested to explain the use of e-journals for the information of subscribers who may not be conversant with the use of e-journals.

When one is trying to find a judgement, article, notification from the respective index of the journal, the required item is to be clicked in the index and immediately required page opens. If a reader is trying to locate a judgement in General Index and from the index he selects a judgement to read, the reader is required to click the judgement in General Index and the said judgement opens.

At times without any particular judgement or specific article or notification or subject in mind, a reader just has a word or expression, a reader has to press "Ctrl + F" keys on the keyboard and wherever such word or expression appears in the volume, it starts appearing on the screen one by one.

I hope I have clarified the use of e-journal satisfactorily. If still any question or query remains, all the subscribers should feel free to contact the undersigned.

I once again express my sincere thanks to the Sales Tax Bar Association (Regd.) and Editorial Board of the DSTC and especially Sh. Raj K Batra, Advocate, Editor-in-Chief for having given me this opportunity to serve the profession.

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DELHI SALES TAX CASES

VOLUME 56

[2018]

LIST OF SUPREME COURT AND HIGH COURT JUDGMENTS

DELHI SALES TAX CASES

VOLUME 56

[2018]

LIST OF TRIBUNAL ORDERS

DELHI SALES TAX CASES

VOLUME 56

[2018]

LIST OF OBJECTION HEARING AUTHORITY

DELHI SALES TAX CASES

VOLUME 56

[2018]

LIST OF ADVANCE RULINGS

DELHI SALES TAX CASES

VOLUME 56

[2018]

ARTICLES

DELHI SALES TAX CASES

VOLUME 56

[2018]

INDEX OF CIRCULARS, NOTIFICATIONS & ORDERS

GENERAL INDEX

Advance Ruling

– NOTIFICATION No. 14/2015-CE AND 15/2015-CE DATED 01.03.2015 – EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS WERE ABOLISHED ON EXCISABLE GOODS w.e.f. 01.03.2015 – EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS WERE ALSO ABOLISHED ON TAXABLE SERVICES w.e.f. 01.06.2015 – PETITIONERS CLAIMED TO AVAIL BENEFIT OF THE UNUTILIZED AMOUNT OF EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS CREDIT FOR PAYMENT OF TAX ON EXCISABLE GOODS AND TAXABLE SERVICES – CREDIT OF EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS COULD BE ONLY ALLOWED AGAINST EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS AND COULD NOT BE CROSS-UTILISED AGAINST THE EXCISE DUTY OR SERVICE TAX – WRIT PETITION DISMISSED.

[Cellular Operators Association of India and Others J-111]

Credit Note

REJECTION OF CLAIM OF DECREASE IN OUTPUT TAX – CHANGE IN AGREED CONSIDERATION BY THE WAY OF ISSUANCE OF CREDIT NOTES – SELLER DID NOT ENSURE THAT THE PURCHASING DEALERS CARRIED OUT REVERSAL OF ITC – NO PLAUSIBLE EXPLANATION AND THERE WAS NO DOCUMENTARY EVIDENCE FILED TO SHOW THAT WHEN THERE WAS NO CHANGE IN QUALITY AND HOW THERE COULD BE CHANGED IN AGREED CONSIDERATION – ORDER OF VATO UPHELD.

TAXABILITY ON SUPPLYING MATERIAL FREE OF COST UNDER PROMOTIONAL SCHEME – ARGUED BEFORE TRIBUNAL THAT NONE OF THE INGREDIENT OF SALE EXISTED IN SUPPLY OF MATERIAL FREE OF COST – SUBMISSION OF APPELLANT WAS THAT HE HAS NOT AVAILED ANY INPUT TAX CREDIT ON THE GOODS GIVEN AS FREE GIFTS AS THESE WERE EITHER BROUGHT INTO THE STATE AGAINST 'C' FORMS OR BROUGHT AS STOCK TRANSFER AGAINST 'F' FORMS – SUBMISSION WAS RIGHTLY MADE WAS THAT EVEN IF HE WAS HELD GUILTY OF MIS-UTILIZATION OF THE GOODS PROCURED AGAINST 'C' FORMS, THE GOODS COULD NOT BE TAXED IN TERMS OF PROVISIONS OF THE CST ACT, BUT PENALTY COULD BE IMPOSED – MATTER REMANDED BACK TO VATO.

ADMISSION OF FORMS AT APPELLATE STAGE – 'C' FORMS & 'I' FORMS WITH CERTIFICATE OF GAZETTE NOTIFICATION REGARDING SEZ / EPZ SUBMITTED – APPELLANT WAS IN POSSESSION OF FORMS WHICH COULD BE ADMITTED – MATTER REMANDED BACK.

Disallowance of ITC

DISALLOWANCE OF INPUT TAX CREDIT U/S 9(2)(G) OF DELHI VALUE ADDED TAX ACT – MISMATCH OCCURRED IN ANNEXURE 2A WITH 2B – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OBJECTION PETITION PREFERRED AND PARTLY ALLOWED – BEFORE TRIBUNAL ARGUMENTS WERE MADE THAT AUTHORITIES BELOW RELIED UPON THE ANNEXURE 2B OF THE SELLING DEALER WITHOUT VERIFYING THE CONTENTS AND NO SUMMON TO SELLING DEALER WAS SENT.

IT WAS HELD THAT CONDITIONS OF SECTION 9(2)(g) WERE FULFILLED WHICH COULD ONLY BE FOUND AFTER EXAMINING THE RECORDS OF SELLING DEALER – NEITHER VATO NOR O.H.A. VERIFIED THE RECORDS OF SELLING DEALER – ORDERS SET ASIDE VATO TO REFRAME ASSESSMENT AFRESH AND TO VERIFY WHETHER SELLING DEALER HAD DEPOSITED OUTPUT TAX IN THE MATTER.

[M/s ITC Ltd J-174]

EVAPORATION LOSS IN HANDLING OF PETROL AND DIESEL DUE TO NATURAL PROCESS – REVENUE APPLIED RULE 7(3) OF DELHI VALUE ADDED TAX RULES, 2005 – ITC DISALLOWED ON VAPORATED QUANTITY – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OHA UPHELD THE ORDER OF VATO (AUDIT) – WHETHER CORRECT; HELD NO – LOSSES DUE TO EVAPORATION WERE NATURAL AND INEVITABLE BECAUSE IT WAS THE CHEMICAL QUALITY OF PETROL AND DIESEL THAT CERTAIN QUANTITY OF PETROL AND DIESEL WAS LOST DUE TO EVAPORATION WHILE LEFT IN OPEN – APPEAL ALLOWED AND DIRECTIONS ISSUED TO MAKE FRESH ASSESSMENT AND TO VERIFY WHETHER ITC, WHICH WAS CLAIMED ON LOSSES DUE TO EVAPORATION WERE REASONABLE AND AS PER NORMS SET BY OIL COMPANIES.

[Ruchika Service Station J-361]

Entries in Schedules

ENTRIES IN SCHEDULE – RAJASTHAN VALUE ADDED TAX ACT, 2003 – WHETHER SHOWER TO SHOWER, LISTERINE MOUTH WASH AND SAVLON ARE HAVING MEDICINAL QUALITIES AND ARE DRUGS OR MEDICINE TO BE COVERED UNDER ENTRY NO. 43 OF SCHEDULE IV OF RVAT ACT – PRODUCTS SHOWER TO SHOWER AND LISTERINE MOUTH WASH HELD AS COSMETICS AND PRODUCT SAVLON HAD MEDICINAL PROPERTIES AND IT WAS COVERED UNDER ENTRY NO. 43

OF SCHEDULE IV OF RVAT ACT – PENALTY IS NOT LEVIABLE ISSUE DEBATABLE.

[Johnson & Johnson Ltd. J-96]

NOTICE OF DEFAULT ASSESSMENT FOR TAX & INTEREST – "SKETCH PEN" WAS HELD TO BE UNCLASSIFIED GOODS AND NOT COVERED UNDER ENTRY 76 OF IIIRD SCHEDULE OF DVAT ACT, 2004 – WHETHER CORRECT. HELD; NO. REVENUE SIDE HAD NOT PRODUCED ANY EVIDENCE TO PROVE THAT SKETCH PEN WAS NOT A WRITING INSTRUMENT.

[Stic Pens Ltd. J-500]

E-way Bill

WRIT PETITION - IRREGULARITY IN FILLING E-WAY BILL- BONAFIDE MISTAKE-NO INTENTION TO EVADE TAX - DETENTION ORDER OF VEHICLE AND GOODS PASSED - TAX AND PENALTY ORDER PASSED - WHETHER JUSTIFIED HELD NO; PETITIONER WAS CARRIED ALL THE DOCUMENTS WITH GOODS NO REASONS WERE RECORDED NOR ANY DISCUSSION WAS MENTIONED IN THE IMPUNGED ORDER OF SEIZURE AND NOTICE OF PENALTY.

[VSL Alloys (India) Pvt. Ltd. J-218]

TECHNICAL ERROR – NO UPDATION MADE IN PART B OF E-WAY BILL – PROBLEM WAS NOT APPRISED BEFORE AUTHORITIES NOR GIVEN ANY WRITTEN GRIEVANCES.

THE DISTANCE WAS MORE THAN 1200-1300 Kms AND IT WAS MANDATORY TO FILL PART – B OF E-WAY BILL – COURT HELD THAT THE PENALTY WAS RIGHTLY IMPOSED.

[Gati Kintetsu Express Pvt. Ltd. J-322]

WRIT PETITION UNDER ARTICLE 226 – SECTION 129 OF THE CGST ACT, 2017 READ WITH RULE 138 OF THE CGST RULES, 2017 – DETENTION, SEIZURE AND RELEASE OF THE GOODS AND CONVEYANCES IN TRANSIT – SEIZURE ORDERS AND SHOW CAUSE NOTICES ISSUED FOR NON-ACCOMPANYING OF E-WAY BILL – NOTICES WERE CHALLENGED ON THE GROUND THAT THERE WAS NO REQUIREMENT OF ACCOMPANYING E-WAY BILL AS MECHANISM WAS NOT IN OPERATION BY CENTRAL GOVERNMENT – THERE COULD NOT BE A GROUND FOR SEIZURE OR IMPOSITION OF PENALTY AND VIOLATION OF ANY PROVISIONS OF

ACT OR RULES – CONCERNED AUTHORITY REFERRED TO GOVERNMENT'S NOTIFICATION DT 21.07.2017 AND COMMISSIONER'S CIRCULAR DT 09.08.2017, DESPITE OF THE FACT THAT FORMS WERE ALREADY CHANGED & DIFFERENT PROCEDURES WERE ALSO TAKEN PLACE UNDER RULE 138 VIDE NOTIFICATION DT 31.01.2018 W.E.F. 01.02.2018 WHICH WAS OPERATIVE DURING THE PERIOD OF TRANSACTIONS – LEGISLATIVE CHANGES WERE MADE IN SUCH A QUICK SUCCESSION THAT FIELD AUTHORITIES COULD NOT TRACK THEMSELVES WITH SUCH CHANGES – COMPLIANCE OF PROVISIONS WHICH STOOD ALREADY SUBSTITUTED BY NEW PROVISIONS AND EARLIER ONES HAD BECOME INEFFECTUAL – WHETHER THE INSISTENCE UPON PETITIONERS, AT THE TIME OF ISSUE OF SEIZURE MEMOS AND SHOW CAUSE NOTICES TO HAVE DOWNLOADED E-WAY-BILL 01 AND 02 AND ITS NON-COMPLIANCE BY REFERRING TO GOVERNMENT'S RELEVANT NOTIFICATION AND COMMISSIONER'S CIRCULARS AND ALSO RULE 138 AS SUBSTITUTED VIDE GOVERNMENT NOTIFICATION DT 20.09.2017 WAS CLEARLY INCORRECT AND UNLAWFUL – HELD, YES.

WHETHER THE SEIZURE ORDERS AND SHOW CAUSE NOTICES ALLEGING THAT GOODS WERE NOT ACCOMPANIED BY E-WAY BILL AT THE TIME OF INTERCEPTION WITHIN STATE OF U.P. OR INTERSTATE TRANSPORTATION WERE TO BE QUASHED – HELD, YES.

NEITHER IT CAN BE SAID THAT PETITIONERS HAVE DELIBERATELY COMMITTED ANY FAULT OR DISOBEYED LAW INTENTIONALLY OR FRAUDULENTLY, PARTICULARLY WHEN RESPONDENT-AUTHORITIES THEMSELVES WERE NOT VERY CLEAR ON THE RELEVANT PROVISIONS.

[Godrej & Boyce Manufacturing Co. Ltd. & Ors. J-380]

DETENTION OF THE GOODS – RULE 138 OF THE CGST RULES, 2017 – GOODS WERE DETAINED ON GROUND THAT IN E-WAY BILL DISTANCE BETWEEN KERALA AND DESTINATION AT UTTARAKHAND WAS SHOWN 280 KMS INSTEAD OF 2800 KMS – WHETHER ERROR IN E-WAY BILL WAS MINOR APART FROM BEING TYPOGRAPHICAL AND IT STOOD COVERED AND EXEMPTED UNDER CIRCULAR NO. 64/38/2018-GST, DATED 14-9-2018 – HELD; YES.

[Sabitha Riyaz J-533]

Extention of Time for Tran-1

EXTENSION OF TIME FOR COMPLETION OF PROCESS OF FILING TRAN-1 STUCK DUE TO IT RELATED GLITCHES- FACILITY PROVIDED TO THOSE

DEALERS WHO COULD NOT COMPLETE THE PROCESS OF TRAN-1 – NECESSARY PROOF REQUIRED OF THEIR INABILITY TO ACCESS THE PORTAL.

[Padmavati Enterprise J-215]

Imposition of Interest

IMPOSITION OF INTEREST – DEMAND CREATED ALTHOUGH HAVING EXCESS INPUT TAX CREDIT FOR WHICH REFUND WAS CLAIMED IN RETURN – WHETHER CORRECT HELD; NO – WHILE CREATING THE ADDITIONAL DEMAND VATO WAS REQUIRED TO ADJUST THE EXCESS INPUT TAX CREDIT AGAINST THE ADDITIONAL DEMAND CREATED. THE IMPOSITION OF INTEREST WAS CONTRARY TO THE PROVISIONS OF LAW AND HENCE UNSUSTAINABLE AND WAS ACCORDINGLY SET ASIDE.

[M/s Mahendra Industrial Corporation J-257]

Interest on Refund

INTEREST U/S 42 OF DVAT ACT, 2004 – COMPUTATION OF INTEREST – INTEREST ON REFUND WOULD NOT BE PAYABLE FROM THE DATE WHEN REFUND RETURN WAS FILED – INTEREST WOULD BEGIN IN TERMS OF SECTION 42(1)(a) AFTER A PERIOD OF ONE OR TWO MONTHS FROM FILING THE RETURN SPECIFIED IN CLAUSE (a) TO SUB SECTION 3 TO SECTION 38 OF THE ACT.

DATE WHEN TAX IS PAYABLE - DATE FROM WHICH INTEREST ON REFUND IS PAYABLE - NEED NOT COINCIDE - NET TAX STIPULATES LIABILITY TO PAY NET TAX OR REFUNDABLE SITUATION.

COMPUTATION OF INTEREST AFTER THE PERIOD OF ONE MONTH OR TWO MONTHS FROM THE DATE OF FILING REVISED RETURN OR FROM THE DATE OF ORIGINAL RETURN – COURT DID NOT GO INTO THE MULTIFARIOUS SITUATIONS WHICH MIGHT ARISE AFTER FILING THE REVISED RETURN – ISSUE LEFT OPEN TO BE DECIDED BY AUTHORITIES TO EXAMINE EACH AND EVERY CASE WITHIN A PERIOD OF FOUR MONTH.

[IJM Corporation Berhad & Ors. J-3]

INTEREST UNDER SECTION 42 OF DVAT ACT – WRIT PETITION FOR SEEKING DIRECTION OF REFUND – REFUND ORDER ISSUED WITHOUT INTEREST – DIRECTIONS ISSUED TO CREDIT INTEREST WITHIN A

PERIOD OF TWO WEEKS IF INTEREST NOT GIVEN THEN THERE SHALL BE COST OF RS.5,000/-.

[Rajdhani Furnitures And Interiors J-214]

(See also Review Petition J-483)

Inter-State Sale

INTER-STATE SALE - CLAIM OF CONCESSIONAL RATE OF TAX WAS DENIED AND TREATED AS LOCAL SALE – NO OPPORTUNITY WAS GIVEN TO PROVE INTER-STATE SALES – REVENUE DID NOT PRODUCE MATERIAL AGAINST THE APPELLANT – WHETHER CORRECT HELD; NO. VATO DIRECTED TO PROVIDE OPPORTUNITY TO APPELLANT TO PROVE INTER-STATE SALES AND REFRAME ASSESSMENT AFRESH WITH CLEAR FINDING ON SALES EITHER INTER-STATE OR INTRA-STATE.

[MR Gupta & Co. (P) Ltd. J-472]

Mismatch in Annexure 2A & 2B

(See also Disallowance of ITC J-174)

Mode of Payment

MODE OF PAYMENT UNDER GST – IGST WAS PAID THROUGH THE PORTAL – REVENUE INSISTED TO PAY CASH OR THROUGH DEMAND DRAFT AND REFUSED TO RELEASE GOODS – WHETHER JUSTIFIED HELD NO – THAT INSISTENCE APPEARED TO BE ARCHAIC AND OUT OF TUNE WITH THE VERY SPIRIT OF THE GST REGIME AND DIRECTION ISSUED TO RELEASE GOODS & VEHICLE.

[Pioneer Polyleathers Limited J-432]

Non-Speaking Order

NON-SPEAKING ORDER – NO DISCUSSION FOR GROUNDS OF APPEAL – TRIBUNAL IS LAST FACT FINDING AUTHORITY AND BIND TO PASS SPEAKING ORDER – ORDER SET ASIDE AND CASE REMANDED BACK.

[M/s. Nandhi Spinning Mills (P) Limited, J-253]

Offences & Prosecution

OFFENCES AND PROSECUTION UNDER GST ACT – ARREST AND DETENTION – APPLICATION FOR BAIL – FAKE TAX INVOICES CREATED

WITHOUT SUPPLY OF GOODS OR SERVICES TO FACILITATE IRREGULAR AVAILMENT AND UTILISATION OF FAKE INPUT TAX CREDIT.

"REASONABLE BELIEF" – DOES NOT REQUIRE AS MUCH EVIDENCE AS PRIMA FACIE CASE – INVESTIGATION REVEALED MORE THAN 40 SHELL COMPANIES WERE OPERATED BY ARRESTED PERSONS FOR ISSUED FAKE TAX INVOICES – EVEN AFTER LAPSE OF 60 DAYS FROM ARREST THE INVESTIGATION WAS GOING ON – OFFENCE COMPOUNDABLE – ACCUSED PERSONS TO BE ENLARGED ON BAIL ON FURNISHING OF BOND OF Rs. 50 LAKH EACH ON CONDITION TO DEPOSIT Rs. 39 CRORE TO THE EXCHEQUER AND DIRECTED TO APPEAR BEFORE INVESTIGATING AUTHORITY TILL FINAL INVESTIGATION.

[Sanjay Kumar Bhuwalka & Anr. J-436]

Penalty

NOTICE OF ASSESSMENT OF PENALTY U/S 86(14) OF DVAT ACT – FAILURE TO COMPLY WITH NOTICE U/S 59(2) – NOTICE NOT RECEIVED – NOTICE PASTED ON THE WEB PAGE ON THE APPELLANT AND SENT ON REGISTERED MOBILE NUMBER – REQUIRED DVAT-31 AS PER THE NOTICE WHICH ALREADY SUBMITTED – NO REVENUE LOSS TO THE DEPARTMENT – PENALTY REDUCED FROM Rs. 50,000/- TO RS. 10,000/-.

[Royal Trading Co. J-492]

NOTICE OF DEFAULT ASSESSMENT OF PENALTY U/S 33 OF DVAT ACT READ WITH SECTION 86(10) – OBJECTOR CLAIMED TAX FREE SALE IN THE RETURNS UNDER THE BONAFIDE BELIEF THAT THE FIRM WAS MAINLY EXECUTING AMC CONTRACT AND THE SAME WAS NOT TAXABLE – TDS DEDUCTED MORE THAN TAX LIABILITY – NO TAX DEFICIENCY – NO OPPORTUNITY WAS PROVIDED BEFORE IMPOSING PENALTY – PENALTY REDUCED FROM Rs. 14,97,459/- TO Rs. 10,000/-.

[Gupta Traders J-516]

NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST U/S 32 AND NOTICE OF ASSESSMENT OF PENALTY U/S 33 OF DVAT ACT, 2004 – TIN NUMBER AND BILL DATE OF SELLING DEALERS WERE INADVERTENTLY MENTIONED WRONGLY – MISMATCH IN ANNEXURE 2A WITH 2B OCCURRED – OBJECTION PETITIONS FILED SUBSEQUENTLY THE SAME WERE TRANSFERRED TO THE SPECIAL OBJECTION HEARING AUTHORITY WHO WAS A WARD OFFICER AND CARRIED OUT THE ASSESSMENT – VIOLATION OF CIRCULAR NUMBER 18/2014-15

Power of Inspection, Search and Seizure

Pre-Deposit

ADDITIONAL 10% OF THE DUTY AND PENALTY IN DISPUTE FOR SECOND APPEAL TO BE HEARD OVER AND ABOVE 7.5% PRE-DEPOSIT MADE FOR FILING OF FIRST APPEAL – WRIT PETITION CHALLENGING THE VALIDITY OF THE CIRCULAR – WHETHER CORRECT HELD; NO – CIRCULAR DT. 27TH APRIL, 2017 QUASHED WHICH WAS ISSUED BY TRIBUNAL AND ALSO CLARIFIED THAT ON FILING SECOND APPEAL BEFORE THE TRIBUNAL DEPOSIT OF 10% OF THE AMOUNT OF DUTY/ PENALTY AS CONFIRMED BY THE FIRST APPELLATE AUTHORITY INCLUSIVE OF 7.5% PRE-DEPOSIT MADE FOR THE FIRST APPEAL.

SECTION 35F OF THE CENTRAL EXCISE ACT ALSO APPLIES TO SERVICE TAX APPEALS AND PRE-DEPOSIT IS REQUIRED.

[M/s Santani Sales Organisation J-193]

(See also Refund J-466)

Refund

REFUND U/S 38(3) OF DVAT ACT – INPUT TAX CREDIT NOT VERIFIED – INPUT TAX CREDIT DISALLOWED U/S 9(2)(g) – DEFAULT ASSESSMENT ORDER FRAMED AND UNVERIFIED ITC ADJUSTED AGAINST THE REFUND.

NO MISMATCH IN ANNEXURE 2A & 2B – OBJECTION PETITION REJECTED – MATTER CARRIED BEFORE VAT TRIBUNAL – REVENUE DID NOT ESTABLISH THAT BOTH THE SELLING DEALER AND PURCHASING DEALER HAD ACTED IN COLLUSION – RATIO OF THE DECISION OF SWARAN DARSHAN IMPEX AND ON QUEST MERCHANDISING INDIA PVT. LTD. CASES APPLIED TO THE FACTS OF APPELLANT CASE – APPEAL ALLOWED – DIRECTION ISSUED TO PROCESS REFUND.

[M/s Bansal Plywood & Laminates J-152]

REFUND U/S 38(3) OF DVAT ACT – DEALER ENTITLED FOR REFUND WITHIN A PERIOD OF ONE MONTH FROM DATE OF FILING OF RETURN - DEFAULT ASSESSMENT ORDER FRAMED AND DEMAND CREATED AND ADJUSTED AGAINST THE REFUND.

OHA REMANDED THE MATTER BACK TO THE CONCERNED VATO DESPITE BEING CONVINCED THAT APPELLANT WAS ENTITLED FOR CLAIM OF REFUND AS WELL AS INTEREST THEREON – RATIO OF THE DECISION OF SWARAN DARSHAN IMPEX, PRIME PAPERS AND PACKERS, SHAILA ENTERPRISES AND NUCLEUS MARKETING AND COMMUNICATION CASES APPLIED TO THE FACTS OF APPELLANT

CASE – APPEAL ALLOWED – DIRECTION ISSUED TO PROCESS REFUND TOGETHER WITH INTEREST.

[M/s Zareen Traders J-183]

REFUND U/S 38 OF DVAT ACT – NO NOTICE SERVED WITHIN 60 DAYS FROM FILING THE RETURN – DEFAULT ASSESSMENT FRAMED WITHOUT SERVING OF NOTICE – REFUND DISALLOWED – OBJECTION PETITION WAS FILED AFTER RECEIVING CERTIFIED COPY OF ORDER – OHA REJECTED THE OBJECTION PETITION AS TIME BARRED – OHA CALCULATED 2 MONTH TIME FROM THE DATE OF PASSING THE ORDER – NO PROOF FOR SERVICE OF ORDER PLACED ON RECORD – WHETHER OHA WAS JUSTIFIED IN REJECTING THE OBJECTION PETITION. HELD NO – DIRECTION ISSUED TO VATO TO GRANT REFUND.

[M/s Karan Enterprises J-223]

REFUND- DEFAULT ASSESSMENT OF TAX & INTEREST U/S 32 OF DVAT ACT – INPUT TAX CREDIT DISALLOWED UNDER SECTION 9(2)(G) – NO MISMATCH IN ANNEXURE 2A & 2B SHOWN IN DEPARTMENT PORTAL – TAX INVOICE AND PROOF OF PAYMENT TO SELLING DEALER PRODUCED – VATO DID NOT PROVE ANY COLLUSION BETWEEN SELLING DEALER AND PURCHASING DEALER – OBJECTION ACCEPTED. ORDER SET ASIDE.

[Osian Electronics J-236]

REFUND OF PRE-DEPOSIT AMOUNT – OBJECTION HEARING AUTHORITY REMANDED THE CASE TO THE ASSESSING AUTHORITY – BUT NOT ORDERED FOR REFUND – WHETHER JUSTIFIED, HELD NO – MERE PENDING OF THE REMAND CASE DID NOT ENTITLE THE RESPONDENTS TO RETAIN THE AMOUNT DEPOSITED BY THE PETITIONER.

[H.A. Logistics (P) Ltd. J-466]

REFUND UNDER DVAT ACT – INADVERTENTLY REFUND WAS NOT CLAIMED BUT CARRIED FORWARD IN DVAT RETURN FOR THE TAX PERIOD OF MARCH, 2012 – PETITIONER DID NOT TAKE BENEFIT IN NEXT TAX PERIOD – REFUND WAS DENIED

WRIT PETITION FILED – COURT DIRECTED TO RESPONDENT TO PROCESS THE REFUND SUBJECT TO FILING DVAT-21 – RESPONDENT DID NOT PROCESS THE REFUND BUT STARTED ASSESSMENT PROCEEDINGS – PETITIONER TOOK STAND BEFORE ASSESSING AUTHORITY – MATTER HAD BECOME TIME BARRED – ASSESSING

AUTHORITY PASSED THE ORDER AND ADJUSTED THE DEMAND FROM 2009 TO SEPTEMBER 2011 WHICH ALREADY REMANDED BY O.H.A. AND ASSESSING AUTHORITY DID NOT PASS THE REMAND ORDER.

PETITIONER FILED ANOTHER WRIT CHALLENGING THE ORDER OF ASSESSING AUTHORITY FOR CREATING THE DEMAND – THE PETITIONER ARGUED BEFORE THE COURT THAT DEMAND FOR THE PREVIOUS YEARS WHICH O.H.A. REMANDED, A.O. DID NOT PASS ORDER WITHIN ONE YEAR AND CITED THE JUDGEMENT OF SHAILA ENTERPRISES – THE COURT HELD THAT SUBSEQUENT NOTICES CONCERNING THE PERIOD 2009 TO END MARCH 2011 WERE LEGALLY UNSUSTAINABLE. FURTHER HELD THAT DURING THE PENDENCY OF COURT ORDER VAT AUTHORITY FRAMED ASSESSMENT U/S 32 AND ISSUED PENALTY NOTICES FOR THE SUBSEQUENT PERIOD 2011-2012 WERE SUBJECT MATTER OF OBJECTION.

[Punj Llyod Ltd. J-523]

Rejection of Claim of "C" Forms

RULE 12(1) OF CENTRAL SALES TAX RULES, 1957 – COVERAGE OF TRANSACTIONS FOR TWO QUARTERS IN A SINGLE DECLARATION FORM – ISSUED NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST – TRANSACTION OF 2ND & 3RD QUARTER CLUBBED IN ONE FORM – ASSESSING AUTHORITY DENIED TO GRANT THE CONCESSIONAL RATE OF TAX – WHETHER CORRECT, HELD NO – NO DEFECT HAD BEEN POINTED OUT BY THE REVENUE AS REGARD TO GENUINENESS OF THE TRANSACTION. APPEAL ALLOWED.

[Sai Ram Enterprises J-496]

Release of Goods and Vehicle

SPECIAL LEAVE PETITION – NOTICE ISSUED – INTERIM RELIEF - DIRECTED THE DEPARTMENT OF GST TO RELEASE THE GOODS AND VEHICLE.

[Gati Kintetsu Express Pvt. Ltd. J-321]

INITIATION OF SEIZURE PROCEEDINGS U/S 129 OF CGST ACT, 2017 – INSPECTION OF GOODS IN MOVEMENT – COMPETENT AUTHORITY HAD SEIZED GOODS AND VEHICLE ON GROUND THAT TRUCK NUMBER WAS MENTIONED BEING U.P. 78 - DN 7983 INSTEAD OF U.P. - 78 - DN 7938 – WHETHER MISTAKE WAS DUE TO INADVERTENT OR HUMAN ERROR – HELD, YES – CLEAR CUT CASE OF HARASSMENT - VEHICLE NUMBER

WAS MENTIONED DIFFERENT, COMPETENT AUTHORITY WAS DIRECTED TO RELEASE GOODS AND VEHICLE ON FURNISHING INDEMNITY BOND TO THE EXTENT OF AMOUNT OF PENALTY DEMANDED.

[Rajavat Steels J-434]

Review Petition

REVIEW PETITION U/S 76(13) OF DVAT ACT, 2004 READ WITH RULE 24 OF DVAT (APPELLATE TRIBUNAL) REGULATION, 2005 – INTEREST U/S 42 OF DVAT ACT – DIRECTIONS HAD GIVEN TO GRANT REFUND IN ORIGINAL ORDER INADVERTENTLY MISSED OUT THE ISSUE OF INTEREST AND DID NOT DECIDE THE SAME – REVIEW PETITION ALLOWED DIRECTION GIVEN TO GRANT INTEREST ON THE REFUND.

[Persys Punj Llyod Joint Venture J-483]

Revise Return

PROVISION OF REVISE RETURN U/S 28 OF DVAT ACT, 2004 - INTERPRETATION OF TIME PERIOD FOR CORRECTION OF ERRORS IN REVISE RETURN AND PENALTY PROVISION U/S 86(9)(c) OF THE ACT – DETAILS FOR INWARD BRANCH TRANSFER AGAINST "F" FORMS NOT FILED CORRECTLY IN 2A ANNEXURE OF DVAT 16 – "F" FORMS COULD NOT BE DOWNLOADED – PERMISSION WAS SOUGHT TO FILE REVISE RETURN – PERMISSION WAS DENIED DUE TO TIME LIMIT PRESCRIBED IN SECTION 28 HAD LAPSED – WHETHER CORRECT. HELD NO.

RESPONDENTS DID NOT CONTEST THE GENUINENESS OF THE TRANSACTIONS – PETITIONER DISTINGUISHED THE INGRAM MICRO PVT. LTD. CASE – SECTION 86(9)(c) SUGGESTED IF SOME PARTICULARS NOT SHOWN IN THE RETURN THE TAX PAYER WAS LIABLE BY WAY OF PENALTY OF Rs. 200/- PER DAY FROM THE DATE OF FAILING DUE UNTIL THE FAILURE IS RECTIFIED – DIRECTIONS ISSUED TO ISSUE FORM AND LIBERTY WAS ALSO GIVEN TO RESPONDENT TO ASK TO FILE INDEMNITY BOND IF RESPONDENTS REQUIRED.

[E.I. Dupont India Private Limited J-347]

Search & Survey under DVAT Act

WRITS UNDER CONSTITUTION – SURVEY, SEARCH, SEIZURE AND INVESTIGATION UNDER SECTION 59 & 60 OF DVAT ACT, 2004 – SURVEY TEAM VISITED THE PREMISES WITHOUT HAVING DVAT 50 – VIOLATION OF SECTION 68(2) OF DELHI VALUE ADDED TAX ACT EMPOWERMENT

ORDER – CONFERRING UPON SPECIAL COMMISSIONER TO APPOINT OFFICER TO EXERCISE THE POWER UNDER CHAPTER X OF THE ACT – WITHOUT JURISDICTION AND VIOLATION OF RULE 65(1) OF DELHI VALUE ADDED TAX RULE, 2005, RECORDING OF REASONS ATTEMPTING TO EVADE TAXES – RECORDING OF THOSE REASONS WERE NOT ONLY REQUIRED IN TERMS OF SECTION 60(2) BUT IT HAS ALSO BEEN MADE NECESSARY IN TERMS OF SECTION 60(6) OF THE ACT – SEARCH AND SURVEY, SEIZURE AND INVESTIGATION WAS CARRIED BETWEEN 5 PM TO 3 AM – INSPECTIONS SHOULD HAVE COMMENCED AT A REASONABLE TIME ENSURING THAT THE INSPECTION WAS NOT TO BE CARRIED OUT AT MIDNIGHT AND BEYOND – WHETHER ENTIRE EXERCISE OF INVESTIGATION SEARCH, SEIZURE AND SURVEY CONDUCTED ON 27TH MAY TO 28TH MAY UNDER SECTION 59 & 60 OF THE ACT WAS ILLEGAL? HELD YES – COURT IMPOSED PENALTY IN THE FORM OF COSTS OF Rs. 50,000/- ON THE RESPONDENTS.

[Teleworld Mobiles Pvt. Ltd. J-15]

SEARCH AND SURVEY – SEIZED LOOSE PAPERS AND VARIATION IN CASH AND STOCK FOUND – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OBJECTION PETITION FILED AND WAS REJECTED – BEFORE TRIBUNAL IT WAS ARGUED THAT NO DIFFERENCE FOUND IN THE QUANTITY OF STOCK AT THE TIME OF VISIT OF ENFORCEMENT STAFF AND DIFFERENCE ARRIVED ON ACCOUNT OF VALUE TAKEN AND CALCULATED BY SURVEY TEAM. VALUE DECIDED OF STOCK WAS ON THE BASIS OF THE ORAL STATEMENT AND NOT ON THE BASIS OF ACTUAL VALUE – EXPLANATION OF EVERY SEIZED PAPER TENDERED – NEITHER VATO NOR OHA HAD TAKEN TROUBLE TO EXAMINE THE EXPLANATION – ADDITION IN SALES FOUND DEVOID OF REASON AND UNSUSTAINABLE – EXPLANATION OF SHORTAGE OF CASH WAS WITHOUT DOCUMENTARY EVIDENCE REGARDING ILLNESS HAD BEEN CORRECTLY REJECTED.

APPEAL PARTLY ALLOWED.

[M/s Foam Home J-164]

SURVEY & SEARCH UNDER DELHI VALUE ADDED TAX ACT, 2004 – UNACCOUNTED SLIPS RECOVERED AT THE TIME OF SURVEY – ON ASSESSMENT PROCEEDING BILLS WERE PRODUCED FOR UNACCOUNTED SLIPS – DEFAULT ASSESSMENT ORDER FRAMED AND AMOUNT OF UNACCOUNTED SLIP WERE TAXED AND PENALTY IMPOSED – OHA REJECTED THE OBJECTION – OBJECTION PETITION WAS REJECTED MERELY FOR THE REASON OF DIFFERENCE FOUND

IN THE NAME AND AMOUNT MENTIONED IN THE ESTIMATION SLIP MADE AT THE TIME OF BOOKING AND SALE INVOICE – ORDERS OF OHA WERE SET ASIDE – MATTER REMAND BACK TO VATO TO PASS FRESH ORDERS AFTER PROVIDING OPPORTUNITY OF HEARING TO THE APPELLANT.

[Seven Seas Hospitality Pvt. Ltd. J-456]

Service of Notice under DVAT Act

NOTICES, ADJUSTMENT ORDER AND NOTICES OF DEFAULT ASSESSMENT TO BE UPLOADED ON SYSTEM AS SOON AS ISSUED – NO ORDER SHEET MAINTAINED – WHETHER JUSTIFIED, HELD – NO. DIRECTIONS ISSUED TO COMMISSIONER OF TRADE & TAXES TO GIVE INSTRUCTIONS TO VATO AND AVATO THAT AS AND WHEN THEY SIGN ANY ORDER AND UPLOAD A DIGITALLY SIGNED COPY THEREOF ON SYSTEM. NOTING MUST BE MADE ON THE FILE.

[Swastik Polymers J-109]

Service of Notice under Income Tax Act

SERVICE OF NOTICE – RULE 127(2) OF INCOME TAX RULES, 1962 – ASSESSEE SHIFTED HER RESIDENCE – REASSESSMENT NOTICE SENT ON OLD ADDRESS – ASSESSEE UNAWARE OF THE SERVICES OF THE NOTICE SENT AT OLD AD-DRESS – LATEST ADDRESS WAS MENTIONED IN NEXT YEAR RETURNS – A.O. DID NOT CARE – EX-PARTE ASSESSMENT WAS FRAMED U/S 144 OF THE IT ACT – RULE 127(2) CLEARLY STATES FOR ADDRESSES TO WHICH A NOTICE OR SUMMON TO BE DELIVERED – WRIT PETITION ALLOWED – REASSESSMENT NOTICES & ORDER U/S 144/148 AND CONSEQUENTIAL ACTIONS SET ASIDE.

[Veena Devi Karnani J-447]

Special Leave Petition

SPECIAL LEAVE PETITION CHALLENGING THE ORDER PASSED BY HIGH COURT OF DELHI WHERE DELHI HIGH COURT HAD READ DOWN THE PROVISIONS OF SECTION 9(2)(g) OF DELHI VALUE ADDED TAX ACT – DISMISSED – LIBERTY WAS GRANTED TO REVENUE TO MOVE BEFORE HIGH COURT WHERE THE PUR-CHASE TRANSACTIONS WERE NOT BONAFIDE.

[Arise India Limited J-1]

SPECIAL LEAVE PETITION – RESPONDENT ARGUED THAT THE PETITION DESERVED TO BE DISPOSED OF IN THE SAME TERM AS SHAILA ENTERPRISES.

PETITIONER ARGUED BEFORE COURT THAT THERE WERE OTHER POINTS WHICH HAD NOT CONSIDERED BY THE HIGH COURT – THE PETITIONER WAS ASKED TO TAKE RECOURSE TO THE REMEDY OF REVIEW BEFORE HIGH COURT.

SPECIAL LEAVE PETITION DISMISSED.

[Punj Llyod Ltd. J-521]

(See also Trade Discount J-83)

(See also Release of Goods and Vehicle J-321)

Time Limit of prescribing Bank Guarantee

BANK GUARANTEE U/S 38(5) OF DVAT ACT TO PROCESS THE REFUND – ORDER ASKING TO FURNISH BANK GUARANTEE AFTER LONG EXPIRY OF MORE THAN 730 DAYS – NO OPPORTUNITY OF HEARING WAS GRANTED – VIOLATION OF PRINCIPLES OF NATIONAL JUSTICE – WHETHER JUSTIFIED – HELD NO – ASSESSING AUTHORITY OUGHT TO HAVE TAKEN INTO ACCOUNT THE 45 DAYS LIMITATION AS PRESCRIBED UNDER THE ACT – ORDER REQUIRING BANK GUARANTEE WAS NOT MAINTAINABLE.

[Sai Traders J-231]

Trade Discount

SPECIAL LEAVE PETITION – TRADE DISCOUNT – POST SALE DISCOUNT THROUGH ISSUANCE OF CREDIT NOTES – PERFORMANCE BASED DISCOUNT GIVEN WHICH WAS NOT RELATABLE WITH RELEVANT TAX INVOICES – DEFINITION OF TURNOVER U/S 2(34) OF KARNATKA VALUE ADDED TAX ACT READ WITH RULE 3(2)(c) OF KARNATAKA VALUE ADDED RULES – HELD: POST SALES DISCOUNT ADMISSIBLE AS A DEDUCTION FROM TAXABLE TURNOVER EVEN IF ORIGINAL TAX INVOICE PERTAINING TO GOODS DID NOT SHOW THE DISCOUNT.

WHETHER RECOGNIZING ONLY DISCOUNTS MENTIONED IN THE TAX INVOICE ELIGIBLE FOR DEDUCTION FROM TOTAL TURNOVER. HELD NO.

BURDEN FASTENED ON PETITIONER TO ESTABLISH FROM HIS ACCOUNTS THAT THE DISCOUNT RELATED SPECIFICALLY TO THE SALES WITH REFERENCE TO WHICH IT WAS ALLOWED.

[M/s Maya Appliances (P) Ltd J-83]

TRANS-1

WRIT OF MANDAMUS DIRECTING GST COUNCIL TO REOPEN GST PORTAL TO FILE TRANS 1 – PETITIONER ALLEGED SEVERAL EFFORTS WERE MADE FOR FILING THE APPLICATION – THE ELECTRONIC SYSTEM DID NOT RESPOND – COURT DIRECTED TO REOPEN THE PORTAL WITHIN TWO WEEKS – FAILING WHICH TO ENTERTAIN THE APPLICATION OF PETITIONER MANUALLY.

[M/s Continental India Private Limited And Another J-44]

Valuation of Taxable Service

CONSTRUCTION SERVICE U/S 65(105)(zzq) OF FINANCE ACT, 1994 – VALUATION OF TAXABLE SERVICE U/S 67 OF THE ACT – NOTIFICATION No. 15/2004-ST DATED 10.09.2004 AS AMENDED BY NOTIFICATION No. 4/2005-ST DATED 01.03.2005. RESPONDENT ASSESSEE DID NOT INCLUDE THE VALUE OF GOODS SUPPLIED FREE OF COST BY SERVICE RECIPIENT – REVENUE CONTENDED THAT BENEFIT OF NOTIFICATION COULD NOT BE GIVEN. FURTHER ARGUED THAT SINCE BUILDING CONSTRUCTION CONTRACT WAS A COMPOSITE CONTRACT OF PROVIDING SERVICE AS WELL AS SUPPLY OF GOODS FOR BIFURCATION OF COMPONENT OF GOODS & SERVICES INTO 67% : 33% : A READY FORMULA WAS PROVIDED.

WHETHER VALUE OF GOODS SUPPLIED OR PROVIDED FREE OF COST BY A SERVICE RECIPIENT IS TO BE INCLUDED IN COMPUTATION OF GROSS AMOUNT FOR VALUATION OF THE TAXABLE SERVICE U/S 67 OF THE ACT AND FOR AVAILING THE BENEFIT UNDER NOTIFICATION No. 15/2004-ST DATED 10.09.2004 AS AMENDED BY NOTIFICATION No. 4/2005-ST DATED 01.03.2005 – HELD: VALUE OF MATERIAL PROVIDED FREE OF COST BY SERVICE RECIPIENT NOT TO BE INCLUDED WHILE CALCULATING TAXABLE VALUE.

[M/s. Bhayana Builders (P) Ltd. Etc J-67]

Witholding of "C" Forms

WITH HOLDING OF ‘C’ FORMS – ENTRY 54 OF STATE LIST OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AS AMENDED BY THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016 –

DEFINITION OF GOODS UNDER CST ACT AFTER IMPLEMENTATION OF GST ACT W.E.F 01.07.2017 – SECTION 9 (2) OF CGST ACT – SECTION 174 OF HGST ACT, 2017 – SECTION 8 OF CST ACT READ WITH RULE 12 OF CST RULES.

THE PETITIONER PURCHASED NATURAL GAS AGAINST 'C' FORMS IN THE COURSE OF INTER-STATE TRADE FOR GENERATION OF ELECTRICITY – REVENUE REFUSED TO ISSUE FORMS AND STATED THAT THE PETITIONER WAS NOT ENTITLED TO MAKE INTER-STATE PURCHASE OF NATURAL GAS ON THE STRENGTH OF 'C' FORMS AFTER IMPLEMENTATION OF CGST ACT – WRIT PETITION FILED SEEKING DIRECTION FOR ISSUANCE OF FORMS.

IT WAS ARGUED BY PETITIONER THAT AFTER IMPLEMENTATION OF GST ACT FROM 01.07.2017, DEFINITION OF GOODS IN CST ACT WAS AMENDED AND COVERED ONLY SIX ITEMS INCLUDING NATURAL GAS – GOVERNMENT HAS NOT ISSUED NOTIFICATION UNDER CGST ACT OR HGST ACT TO COVER ITEMS LIKE PETROLEUM CRUDE, HIGH SPEED DIESEL, MOTOR SPIRIT, NATURAL GAS AND AVIATION TURBINE FUEL UNDER GST ACT – SECTION 174 OF HGST ACT, 2017 REPEALED THE HARYANA VALUE ADDED TAX, 2003, EXCEPT IN RESPECT OF GOODS INCLUDED IN THE ENTRY 54 WHICH INCLUDED NATURAL GAS ALSO.

REVENUE ARGUED THAT INGREDIENTS OF SECTION 8 (1) OF CENTRAL SALES TAX ACT WOULD BE MET ONLY IF PETITIONER WAS LIABLE TO PAY SALES TAX UNDER HVAT ACT AND THAT REGISTRATION UNDER THE HGST ACT WAS NOT RELEVANT – FURTHER ARGUED THAT THE PETITIONER WAS NOT ENGAGED IN THE BUSINESS OF RE-SELLING OF NATURAL GAS AND PETITIONER WAS NOT LIABLE TO PAY ANY TAX ON ELECTRICITY UNDER HGST, AS RATE ON ELECTRICITY HAS BEEN FIXED AT 0% AND THEREFORE CEASED TO BE A REGISTERED DEALER U/S 7(2) OF CST ACT.

COURT HELD THAT THE PROVISION OF SECTION 8 OF CST ACT, RULE 12 OF CST RULES AND DECLARATION OF 'C' FORMS HAD NOT UNDERGONE ANY AMENDMENT AFTER IMPLEMENTATION OF GST ACT – THERE COULD NOT BE ANY OCCASION TO RESTRICT THE USES OF 'C' FORMS ONLY FOR THE PURPOSE OF RESALE – SECTION 7(2) DID NOT STIPULATE THAT ONLY A DEALER LIABLE TO PAY TAX UNDER THE SALES TAX LAW OF THE APPROPRIATE STATE IN RESPECT OF ANY PARTICULAR GOODS WAS ENTITLED TO APPLY FOR REGISTRATION – NOR DID SECTION 7(2) STIPULATE THAT AN APPLICATION FOR REGISTRATION COULD BE MADE OR 'C' FORM COULD BE ISSUED ONLY IN RESPECT OF THE SALE OF THE SAME GOODS PRESCRIBED IN THE COURSE OF AN INTER-STATE SALE – A DEALER LIABLE TO PAY TAX

UNDER THE SALES TAX LAW OF THE APPROPRIATE STATE IN RESPECT OF ANY GOODS WOULD BE COVERED BY SECTION 7(2) OF THE ACT – WRIT PETITION ALLOWED AND RESPONDENT WAS DIRECTED TO ISSUE 'C' FORMS.

[Carpo Power Limited J-131]

Works Contract

(See also Writ Petition J-93)

Writ Petition

WRIT PETITION SEEKING DIRECTION TO PASS ORDERS ON REPRESENTATION FILED BEFORE REVENUE RELATING TO THE ISSUE OF PAYMENT OF 12% GST IN ADDITION TO THE VALUE OF WORK DONE (i) FOR ALL WORKS CONTRACTS WHICH WERE EXECUTED PRIOR TO 01.07.2017 AND THE WORK IS UNDER PROGRESS, (ii) FOR THE TENDERS CALLED AND AGREEMENT EXECUTED AFTER 01.07.2017 WITHOUT ANY GST PROVISION IN THE ESTIMATE AND TENDER, (iii) THE LEVY OF 12% GST PROVISIONS TO BE INCLUDED IN ESTIMATES ITSELF FOR FURTHER TENDERS AND HAS TO BE PAID IN ADDITION TO THE VALUE OF WORK DONE FOR ALL WORKS CONTRACTS – DIRECTION ISSUED TO COMMISSIONER.

[Coimbatore Corporation Contractors J-93]

WRIT PETITION SEEKING DIRECTION FOR REIMBURSEMENT OF ADDITIONAL GST LIABILITY ON CIVIL CONTRACT AND WORKS ORDER ISSUED PRE GST PERIOD – NOTIFICATION DT 05.04.2018 ALSO NOT CONSIDERED – DIRECTIONS ISSUED TO CONSIDER THE APPLICATION FOR REIMBURSEMENT.

[Natthani Infrastructures J-255]

EXEMPTION NOTIFICATION NO. 25/2005 – CUSTOMS DT 1.03.2005 AS AMENDED BY NOTIFICATION NO. 133/2006 CUSTOMS DT 30.12.2006 – SERIAL NO. 26 OF THE EXEMPTION NOTIFICATION COVERING ELECTRICAL MACHINES WITH TRANSLATION OR DICTIONARY FUNCTIONS EXEMPT FROM BASIC CUSTOMS DUTY – AAR DEALT WITH AND INTERPRETED EXEMPTION GRANTED UNDER SERIAL NO. 26 WITH REFERENCE TO THE KINDLE E-READING DEVICES – REVENUE CONTENTION WAS REJECTED AS THE PRODUCT HAD NO PRIMARY FUNCTION TO TRANSLATE OR DICTIONARY FUNCTIONS.

WRIT PETITION FILED – REVENUE ARGUED THAT AAR DID NOT EXAMINE AND INTERPRET SERIAL NO. 26 OF THE EXEMPTION NOTIFICATION – PRINCIPLES OF INTERPRETATION TO EXEMPTION NOTIFICATION NOT DISCUSSED – RESPONDENT ASSESSEE ARGUED ON THE DIFFERENCE BETWEEN THE LANGUAGE AND THE USE OF THE WORD 'WITH' IN NOTIFICATION AT SERIAL NO. 26 AND TO OTHER ITEMS WHEREIN THE WORD 'FOR' AND NOT WITH HAD BEEN USED – WHETHER KINDLE E-READING DEVICES WOULD FALL WITHIN THE AMBIT OF ELECTRICAL MACHINES WITH TRANSLATION OR DICTIONARY FUNCTION WHICH WERE GRANTED AND ALLOWED EXEMPTION.

HELD: NO – THE WORDS 'WITH TRANSLATION OR DICTIONARY FUNCTIONS' HAD BEEN USED TO RESTRICT AND KEEP THE BENEFIT OF THE EXEMPTION NOTIFICATION WITHIN BOUNDS AND NOT EXPAND SCOPE OF EXEMPTION. THE PRODUCT WAS DEVELOPED AND DESIGNED TO FUNCTION AS AN E-BOOK READER AND WAS SOLD AND BOUGHT AS A E-BOOK READER AND NOT AS A TRANSLATOR OR AS A DICTIONARY. THE E-BOOK READER HAD AN IN-BUILT DICTIONARY FEATURE, WHICH WAS A SECONDARY OR ADDITIONAL FEATURE WOULD NOT MAKE IT AND QUALIFY THE E-READING MACHINE AS AN ELECTRICAL MACHINE WITH TRANSLATION OR DICTIONARY FUNCTION.

WRIT PETITION ALLOWED AND QUASHED – THE ORDER OF AAR. ALSO GRANTED PARTIAL RELIEF TO THE RESPONDENT BY HOLDING THAT PETITIONER WOULD NOT BE ENTITLED TO RECOVER BASIC CUSTOMS DUTY FOR THE PERIOD BETWEEN 15.05.2015 TILL 11.05.2017 i.e. THE DATE ON WHICH THE IMPUGNED ORDER WAS PASSED AND TILL THE PRESENT WRIT PETITION WAS FILED.

[Amazon Seller Services Pvt. Ltd J-328]

(See also E-way Bill J-218)

(See also E-way Bill J-380)

(See also Search & Survey under DVAT Act J-15)

(See also Service of Notice under Income Tax Act J-447)

(See also Refund J-523)

(See also TRANS-1 J-44)

(See also Cenvat Credit J-111)

[2018] 56 DSTC 1 – (Delhi)

IN THE SUPREME COURT OF INDIA
Record Of Proceedings
[Hon'ble Mr. Justice J. Chelameswar and Hon'ble Mr. Justice Sanjay Kishan Kaul]

Petition(s) for Special Leave to Appeal (C) No(s). 36750/2017

(Arising out of impugned final judgment and order dated 26-10-2017 in WPC No. 2106/2015 passed by the High Court Of Delhi At New Delhi)

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

Versus

Arise India Limited ... Respondent(s)
(For admission and I.R. and IA No.140887/2017-Exemption from filing C/C of the Impugned Judgment)

Date : 10-01-2018 This petition was called on for hearing today.

Date of Order: 10-01-2018

SPECIAL LEAVE PETITION CHALLENGING THE ORDER PASSED BY HIGH COURT OF DELHI WHERE DELHI HIGH COURT HAD READ DOWN THE PROVISIONS OF SECTION 9(2)(g) OF DELHI VALUE ADDED TAX ACT – DISMISSED – LIBERTY WAS GRANTED TO REVENUE TO MOVE BEFORE HIGH COURT WHERE THE PURCHASE TRANSACTIONS WERE NOT BONAFIDE.

Present for the Petitioner : Mr. A.N.S. Nadkarni, ASG
Mr. Sanjay Kr. Pathak, Adv.
Ms. Perna Kumari,Adv.
Mr. B. V. Balaram Das, AOR

Present for the Respondent(s) :

UPON hearing the counsel the Court made the following

ORDER

On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are some of the cases where the purchase transactions are not bonafide like the present case and those cases ought to have been remitted back to the competent authority.

Learned Additional solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.

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

[2018] 56 DSTC 3 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Justice Sanjiv Khanna And Justice Prathiba M. Singh]

W.P.(C) 3424/2017, W.P.(C) 4561/2017
W.P.(C) 5792/2017, W.P.(C) 6059/2017
W.P.(C) 6068/2017

IJM Corporation Berhad & Ors. ... Petitioner

Versus

Commissioner of Trade & Taxes ... Respondents

Date of Order: 02.11.2017

INTEREST U/S 42 OF DVAT ACT, 2004 – COMPUTATION OF INTEREST – INTEREST ON REFUND WOULD NOT BE PAYABLE FROM THE DATE WHEN REFUND RETURN WAS FILED – INTEREST WOULD BEGIN IN TERMS OF SECTION 42(1)(a) AFTER A PERIOD OF ONE OR TWO MONTHS FROM FILING THE RETURN SPECIFIED IN CLAUSE (a) TO SUB SECTION 3 TO SECTION 38 OF THE ACT.

DATE WHEN TAX IS PAYABLE - DATE FROM WHICH INTEREST ON REFUND IS PAYABLE - NEED NOT COINCIDE - NET TAX STIPULATES LIABILITY TO PAY NET TAX OR REFUNDABLE SITUATION

COMPUTATION OF INTEREST AFTER THE PERIOD OF ONE MONTH OR TWO MONTHS FROM THE DATE OF FILING REVISED RETURN OR FROM THE DATE OF ORIGINAL RETURN – COURT DID NOT GO INTO THE MULTIFARIOUS SITUATIONS WHICH MIGHT ARISE AFTER FILING THE REVISED RETURN – ISSUE LEFT OPEN TO BE DECIDED BY AUTHORITIES TO EXAMINE EACH AND EVERY CASE WITHIN A PERIOD OF FOUR MONTH.

Facts of the Case

IJM Corporation Berhad had filed its VAT Return under form DVAT 16 for the month of March, 2012 on 23rd April, 2012 claiming refund of Value Added Tax ("VAT"/Tax) of Rs.6,38,38,297/-. The petitioner claimed that interest was due and payable from the date of filing of the Return i.e. 23rd April, 2012 till 3rd October, 2016 when the refund of Rs.6,38,38,297/- was issued.

The case of the respondent was that the petitioner/IJM Corporation Berhad would be entitled to refund in terms of Section 42(1)(a) of the Act after a period of one or two months, as the case may be, from the date of filing of the Return and not from the date of filing of the return.

In other words, the issue raised and to be decided was whether interest under Section 42 read with other provisions of the Act, was due and payable to the petitioner/assessee in case of refund from the date of filing of the Return or after the period specified for processing of the refund/returns in terms of clause (a) to sub-Section (3) to Section 38 of the Act.

Held

Sections 38 and 42 of the Act, which related to the processing of claim for refund and payment of interest, it was crystal clear that the interest was 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 was 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 became payable. Two sections, namely, Sections 38(3) and 42(1) did not refer to the date of filing of return. This obviously as per the Act was not starting point for payment of interest.

Section 11 stipulated that an assessee would be liable to pay net tax, which was determined by the formula stipulated therein. Sub-section (2) stated that where the net tax of an assessee calculated under sub-section (1) was in the negative i.e. refund was payable, the dealer had adjusted the amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 and the assessee would be entitled to claim refund of any surplus amount. The Commissioner would deal with the refund claim in the manner prescribed in Sections 38 and 39 of the Act. There was no conflict between Section 11 and the interpretation given by the court on the date from which interest was payable with reference to Section 42 read with Section 38 of the Act. The Court would be referring to Section 39 of the Act subsequently. Section 11 was a computation formula, to calculate the tax payable or refundable. It empowered the assessee/ dealer to seek adjustment or refund, in case of a negative net tax.

It had been highlighted to the Court that there might be cases wherein the assessee himself preferred and filed a revised return. There could be a time gap between filing of the original return and the revised return. Questions might arise whether in such cases the assessee would be entitled to interest under Section 42(1) of Act from the date of filing of the original or from the date of filing revised return. This aspect, the Court would observe, would depend upon the factual matrix of each case. The Court need not go into the said aspect in detail in the present writ petitions as this was an aspect which the authorities under the Act would have to examine and deal on a case to case basis. Facts would matter and required elucidation and clarity. The cause or reason for filing of revised return, date of the revised return etc. might be relevant. The Court had already referred to the explanation to Section 42(1), which states that if the delay in granting the refund was attributable to the assessee, whether wholly or in part,

the period of delay attributable to him should be excluded from the period for which interest is payable. Reference to sub-section (2) to Section 38, could also be made. Revenue could well urge that filing of revised return amounts to filing of return for a new and fresh claim for refund and the earlier return for refund stands withdrawn. The assessee could well submit to the contrary.

In the present context, the Court would not like to go into the multifarious situations which might arise when an assessee filed the revised return. It would be more appropriate and proper for the authorities under the Act to examine each and every case wherein a revised return had been filed and thereafter, determine whether the assessee would be entitled to interest and, if so, from which date, on the findings. The Court left the question/ issue open.

With the consent of the counsel for the parties, it was directed that the authorities will examine the question of interest payable on refund and the date from which it was payable in accordance with the aforesaid dictum and principles. In case of revised return, facts would be examined first and then the issue of the date from which interest was payable would be decided. The said exercise would be completed by the authorities concerned within a period of four months from the date on which a copy of this order was received. The Court had fixed the aforesaid time period as the Court perceive and believe, it might take time for both the assessee and the authority to determine and decide in each and every case and the amount of interest payable on refund. The Court clarified that starting point or date from which interest commenced, had not been modified as the authorities had given four months time.

Present for Petitioners	:	Mr. Rajesh Jain, Mr. Virag Tiwari, Ms. Aastha Gandhi, Mr. V.K.Jain, Advocates
Present for Respondents	:	Mr. Satyakam, ASC for GNCTD with Ms. Trisha, LA, DTT, GNCTD and Mr. Gautam Narayan, ASC with Mr. R.A.Iyer, Advocate

ORDER

SANJIV KHANNA, J. (ORAL)

The short question raised in these writ petitions relates to the starting point for computation of interest payable on refunds under Section 42(1)(a) of the Delhi Value Added Tax, 2004 ('Act' for short).

2. With the consent of learned counsels for the parties, we have treated W.P.(C) 3424/2017 filed by IJM Corporation Berhad as the lead case. We also record that we are not dealing with the factual matrix and would be disposing of and deciding the question of law by interpreting the provisions relating to refund in the Act. Adjudicating Authorities would thereafter apply the ratio to the factual matrix and decide the issue i.e. the date from which interest is payable.

3. Initially learned counsel for respondent had raised a preliminary objection on the maintainability of the writ petition in view of the alternative remedy, which was contested by the learned counsel for the petitioner. The said contention, however, was later not pressed by the learned counsel for the respondent with the clarification that the respondent would be entitled to raise the said contention in another case, if required and necessary.

4. IJM Corporation Berhad had filed its VAT Return under form DVAT 16 for the month of March, 2012 on 23rd April, 2012 claiming refund of Value Added Tax ('VAT'/Tax) of Rs.6,38,38,297/-. The petitioner states and claims that interest is due and payable from the date of filing of the Return i.e. 23rd April, 2012 till 3rd October, 2016 when the refund of Rs.6,38,38,297/- was issued.

5. The case of the respondent authorities is that the petitioner/ IJM Corporation Berhad would be entitled to refund in terms of Section 42(1)(a) of the Act after a period of one or two months, as the case may be, from the date of filing of the Return and not from the date of filing of the return.

6. In other words, the issue raised and to be decided is whether interest under Section 42 read with other provisions of the Act, is due and payable to the petitioner/assessee in case of refund from the date of filing of the Return or after the period specified for processing of the refund/returns in terms of clause (a) to sub-Section (3) to Section 38 of the Act.

7. In order to appreciate the controversy and answer the contentions, we would like to reproduce Section 38 which relates to refunds and Section 42 of the Act which relates to interest payment. Section 38 of the Act reads:-

> **"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, 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 sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act."

Section 42 of the Act reads:-

"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."

8. Sub-Section (1) to Section 38 stipulates that the Commissioner shall refund the amount of tax, penalty, and interest, if any, paid in excess of the amount due from him. Sub-Section (2) empowers the Commissioner to first apply such excess or refund towards recovery of any other amount due under the Act or under the Central Sales Tax Act. Sub-Section (3) is subject to sub-Sections (4) and (5) of Section 38 and provides in clause (i) that the refund payable after adjustment, if any, under sub-Section (2) shall be paid within one month from the date on which the Return was furnished, if the tax period is one month. As per clause (ii) when the tax

period is quarterly, refund would be issued within two months after the date on which the Return is furnished or the claim for refund is made. We are not concerned in the present case with clause (b) to sub-Section (3) to Section 38 of the Act.

9. For clarity and understanding, we record that the expression 'tax period' has been defined in Section 2(zi) of the Act to mean the period prescribed under the Rules. Rule 26 of the Delhi Value Added Tax Rules, 2005 ('Rules' in short) prescribes the 'tax period' which in some cases, it is pointed out, could be one month and in other cases, the period prescribed is quarter of a year. Thus, clause (i) and (ii) of sub-section 3 to Section 38 of the Act, refer to and mandate refund within one month or two months when tax period is monthly or quarterly, as the case may be.

10. Sub-section (4) to Section 38 authorizes and empowers the Commissioner to issue notice to an assessee as per the provisions of Section 58 of the Act, advising him that audit, investigation or inquiry into his business affairs will be undertaken. In such an event, the amount is to be carried forward to the next tax period as a tax credit in that period. The Commissioner is also entitled to seek additional information under Section 59 of the Act. In the context of the present writ petitions, we have merely adverted to the provisions of sub-section (4) to Section 38, for in these cases, audit or investigations has not been invoked. Sub-section (4) may have its nuances and would have to be considered for interpretation in an appropriate case.

11. Sub-section (5) relates to the power of the Commissioner to demand security from an assessee as a condition for payment of refund within 15 days from the date return is furnished or claim for refund is made. Sub-section (6) states that the Commissioner would grant refund within 15 days from the date the dealer/assessee furnishes security to his satisfaction.

12. Sub-section (7) to Section 38 provide for exclusion of certain period prescribed under clause (a) to sub-section (3). These are:-

The time taken to furnish-

(i) Security under sub-section (5) to the satisfaction of the Commissioner.

(ii) The additional information sought under Section 59.

(iii) Returns under Sections 26 and 27.

(iv) Declaration or certificate forms as required under the Central Sale Tax Act, 1956.

Section 26 of the Act refers to periodical furnishing of returns by every registered dealer i.e. the assessee to the Commissioner for each tax period and by such dates as may be prescribed in the prescribed form and manner. Perhaps reference is made to Section 26 in sub-section (7) to Section 38 of the Act, for an assessee/dealer can claim refund vide Form DVAT-21 as prescribed by Rule 34 of the Rules. In clause (d) to sub-section (7) exclusion of time taken to furnish declaration or certificate forms as required under the Central Sale Tax Act, 1956 is prescribed with effect from 18th June, 2012. We are not referring to any other sub-section as reliance is not placed by any of the parties on the said sub-sections.

13. Counsel for the petitioner submits that sub-sections (4) and (5) have been considered and interpreted by a Division Bench of this Court in *Swaran Darshan Impex (P) Ltd. Vs. Commissioner, Value Added Tax and Anr.,* (2010) 31 VST 475 (Delhi). We need not refer to this decision, as the issue raised is these writ petitions, does not specifically relate to interpretation of the said sub-sections.

14. 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. Sub-section (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.

15. 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.

16. Counsel for the petitioner faced with the aforesaid position had referred to Section 11 (as it existed prior to amendment w.e.f. 12.9.2013) and sub-section (4) to Section 3 of the Act. For the sake of convenience, we would like to reproduce the two sections, which read as under:-

"11. Net tax

(1) The net tax payable by a dealer for a tax period shall be determined by the formula:

Net Tax = O – I – C where O = the amount of tax payable by the person at the rates stipulated in section 4 of this Act in respect of the taxable turnover arising in the tax period, adjusted to take into account any adjustments to the tax payable required by section 8 of this Act. I = the amount of the tax credit arising in the tax period to which the person is entitled under section 9 of this Act, adjusted to take into account any adjustments to the tax credit required by section 10 of this Act. C = the amount, if any, brought forward from the previous tax period under sub-section (2) of this section.

(2) Where the net tax of a dealer calculated under sub-section (1) of this section amounts to a negative value, the dealer shall –

(a) adjust the said amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 (74 of 1956), if any; and

(b) be entitled to claim a refund of any surplus amount and the Commissioner shall deal with the refund claim in the manner described in section 38 and section 39 of this Act.

Explanation: The dealer may elect to adjust the refund as a tax credit in the next tax period."

XXXXX

"3. Imposition of tax

(1)…

(4) The net tax of a dealer shall be paid within twenty one days of the conclusion of each calendar month.

Explanation.- The obligation to pay the tax arises by virtue of this provision and is not dependent on furnishing a return, nor on the issue of a notice of assessment to the dealer."

17. Section 11 stipulates that an assessee would be liable to pay net tax, which is determined by the formula stipulated therein. Sub-section (2) states that where the net tax of an assessee calculated under sub-section (1) is in the negative i.e. refund is payable, the dealer shall adjust the amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 and the assessee will be entitled to claim refund of any surplus amount. The Commissioner will deal with the refund claim in the manner prescribed in Sections 38 and 39 of the Act. There is no conflict between Section 11 and the interpretation given by us on the date from which interest is payable with reference to Section 42 read with Section 38 of the Act. We shall be referring to Section 39 of the Act subsequently. Section 11 is a computation formula, to calculate the tax payable or refundable. It empowers the assessee/dealer to seek adjustment or refund, in case of a negative net tax.

18. Sub-section (4) to Section 3 prescribes the time period within which the assessee/dealer has to make payment of net tax, which is 21 days from the end of the month. The explanation clarifies that this obligation to pay tax is not dependent on the assessee filing his return or issue of notice of assessment by the authorities. The said provision relates only to the date and obligation of the assessee/dealer to pay the tax. We do not understand in what manner the said sub-section would help and assist the contention of the petitioner that interest on refund would be payable from the date when refund return was filed, and not from the date specified in sub-section (3) to Section 38 read with Section 42 of the Act. The assessee would be liable to pay tax under sub-section (4) to Section 3 if net tax is payable. In case of refund, obviously the assessee is not liable to pay tax. Obligation of the assessee to pay tax and date when tax is payable, and the duty and date on which refund is payable by the Revenue need not coincide and could be different as per the statute.

19. The interpretation given by us gets affirmation from Section 39 of the Act, which relates to power to withhold refund in certain cases. Section 39 of the Act reads as under:-

"39 Power to withhold refund in certain cases:

(1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that

payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

(2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund."

Sub-section (1) gives power to the Commissioner, who may for reasons to be recorded in writing, either obtain security equal to the amount to be refunded or withhold the refund till such time the proceedings or audit has been concluded. The said power can be exercised as prescribed and stipulated in sub-section (1). Sub-section (2) states that where refund is withheld under sub-section (1), the person would be entitled to interest if as a result of the appeal or further proceedings or any other proceedings, he becomes entitled to the refund. In other words, under sub-section (2), interest would begin from the period specified in clause (a) to sub-section (3) to Section 38 of the Act, albeit the quantum of refund would depend upon the adjudication. To this extent on interpretation of sub-section (2) to Section 38, counsel for the parties are *ad idem*.

20. It has been highlighted to us that there may be cases wherein the assessee himself prefers and files a revised return. There could be a time gap between filing of the original return and the revised return. Questions may arise whether in such cases the assessee would be entitled to interest under Section 42(1) of Act from the date of filing of the original or from the date of filing revised return. This aspect, we would observe, would depend upon the factual matrix of each case. We need not go into the said aspect in detail in the present writ petitions as this is an aspect which the authorities under the Act would have to examine and deal on a case to case basis. Facts would matter and require elucidation and clarity. The cause or reason for filing of revised return, date of the revised return etc. maybe relevant. We have already referred to the explanation to Section 42(1), which states that if the delay in granting 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. Reference to sub-section (2) to Section 38, could also be made. Revenue could well urge that filing of revised return amounts to filing of return for

a new and fresh claim for refund and the earlier return for refund stands withdrawn. The assessee could well submit to the contrary.

21. In the present context, we would not like to go into the multifarious situations which may arise when an assessee files the revised return. It would be more appropriate and proper for the authorities under the Act to examine each and every case wherein a revised return has been filed and thereafter, determine whether the assessee would be entitled to interest and, if so, from which date, on the findings. We leave the question/issue open.

22. With the consent of the counsel for the parties, it is directed that the authorities will examine the question of interest payable on refund and the date from which it is payable in accordance with the aforesaid dictum and principles. In case of revised return, facts would be examined first and then the issue of the date from which interest is payable would be decided. The said exercise would be completed by the authorities concerned within a period of four months from the date on which a copy of this order is received. We have fixed the aforesaid time period as we perceive and believe, it may take time for both the assessee and the authority to determine and decide in each and every case and the amount of interest payable on refund. We would clarify that starting point or date from which interest commences, has not been modified as the authorities have given four months' time. 23. With the aforesaid observations and directions, the writ petitions are disposed of, without any order as to costs.

[2018] 56 DSTC 15 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Justice Sanjiv Khanna And Justice Prathiba M. Singh]

W.P.(C) 5583/2016

Teleworld Mobiles Pvt.Ltd. ... Petitioner

Versus

Commissioner of Trade & Taxes ... Respondents

Reserved on: 23rd November, 2017
Date of Decision: 8th January, 2018

WRITS UNDER CONSTITUTION – SURVEY, SEARCH, SEIZURE AND INVESTIGATION UNDER SECTION 59 & 60 OF DVAT ACT, 2004 – SURVEY TEAM VISITED THE PREMISES WITHOUT HAVING DVAT 50 – VIOLATION OF SECTION 68(2) OF DELHI VALUE ADDED

TAX ACT EMPOWERMENT ORDER – CONFERRING UPON SPECIAL COMMISSIONER TO APPOINT OFFICER TO EXERCISE THE POWER UNDER CHAPTER X OF THE ACT – WITHOUT JURISDICTION AND VIOLATION OF RULE 65(1) OF DELHI VALUE ADDED TAX RULE, 2005, RECORDING OF REASONS ATTEMPTING TO EVADE TAXES – RECORDING OF THOSE REASONS WERE NOT ONLY REQUIRED IN TERMS OF SECTION 60(2) BUT IT HAS ALSO BEEN MADE NECESSARY IN TERMS OF SECTION 60(6) OF THE ACT – SEARCH AND SURVEY, SEIZURE AND INVESTIGATION WAS CARRIED BETWEEN 5 PM TO 3 AM – INSPECTIONS SHOULD HAVE COMMENCED AT A REASONABLE TIME ENSURING THAT THE INSPECTION WAS NOT TO BE CARRIED OUT AT MID-NIGHT AND BEYOND – WHETHER ENTIRE EXERCISE OF INVESTIGATION SEARCH, SEIZURE AND SURVEY CONDUCTED ON 27TH MAY TO 28TH MAY UNDER SECTION 59 & 60 OF THE ACT WAS ILLEGAL? HELD YES – COURT IMPOSED PENALTY IN THE FORM OF COSTS OF RS. 50,000/-ON THE RESPONDENTS.

Facts

Teleworld Mobiles Pvt. Ltd. company incorporated under the Companies Act, 1956 and an assessee under the Delhi Value Added Tax Act, 2004 claimed that they were illegally subjected to operations under Sections 59 and 60 of the Act on 27th and 28th May, 2016 at their business premises. The petitioner filed the writ petition for the following reliefs:- WP(C) 5583/2016 Page 2 of 36 "(a) declare the order of empowerment dated 23.3.2016 issued by the Commissioner to the extent it conferred powers of appointment on Special Commissioner as illegal and without jurisdiction; (b) declare the entire exercise of investigation, search and seizure conducted on 27 and 28.5.2016 u/s 59 and 60 of the Act, as illegal; (c) direct the respondent to release and return the seized records, documents, bill books, ledgers, invoices, inventories etc., as neither any Panchnama was drawn nor any list of seized documents/records was prepared under acknowledgement of the petitioner; (d) issue a Writ of Mandamus or any other Writ, order or direction; (e) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Held

The empowerment order dated 23rd March, 2016, to the contrary did not state or put any restriction when an officer not below the rank of Special Commissioner granted authority and empowerment to the officer/persons so appointed. In these circumstances, court accepted the contention of the respondents that empowerment order dated 23rd March, 2016 would necessarily override the order dated 12th November, 2013 in respect of delegation of power under Chapter X of the Act. Of course, this did not mean that the Special Commissioner could appoint an officer contrary to Rule 48 and empower a person below the rank of Value Added Tax Officer

in case investigation was to be done under sub-sections (1) and (2) to Section 60 of the Act. As per the empowerment order dated 23rd March, 2016, the requirement that the power under Chapter X of the Act would be only exercised by the jurisdictional officer as specified in the order dated 12th November, 2013 would no longer be applicable. This was not the requirement stipulated and mentioned in the empowerment order dated 23rd March, 2016. The petitioner stated that Form DVAT 50 was never shown to the petitioner/dealer at the relevant time. This was a disputed question of fact and in view of the fact that the respondents had placed on record Form DVAT50, court would accept their version. It would be added that the respondents should ensure that when the said form was shown to the dealer at the time of the search or survey/investigation, signatures of the party ought to have been obtained to avoid such controversy. The next question, which arouse for consideration, was whether the exercise of power by the Special Commissioner in Form DVAT-50 dated 27th May, 2016 was in accordance with law. As recorded above, court accepted the contention of the respondents that in the present case only inspection of records, i.e. books of accounts, etc. and the goods was undertaken under Section 59 and sub-section (1) to Section 60 of the Act. As per the respondents, this was not a case in which search and seizure operations were undertaken under sub-section (2) to Section 60. Having held so, court would observe that certain lapses and failures on the part of authorities were apparent. These were listed as :- (i) Contrary to Rule 48, Form DVAT 50 had authorised officers below the rank of Value Added Tax Officer to undertake inspection under subsection (1) to Section 60. This was impermissible and contrary to Rule 48. (ii) Contrary to mandate of sub-section (1) to Section 59 and sub-section (1) to Section 60 of the Act, that inspection of the books of accounts, etc., goods kept in business premises would be undertaken at reasonable time, the inspection commenced at 1730 hours (5.30 P.M.) in the evening on 27th May, 2016 and had continued till 0330 hours (3.30 A.M.) on 28th May, 2016. (iii) The Special Commissioner was aware and conscious that the inspection under the two Sections would take time and, therefore, vide Form DVAT 50 had authorised inspection on 26 th and 27 th May, 2016. The authorities, therefore, would have commenced inspection at a reasonable time ensuring that the inspection was not to be carried out at mid-night and beyond. Surprisingly, the authorization dated 27th May, 2016, empowered inspection for a day earlier on 26th May, 2016. (iv) Respondents in the counter affidavit denied and refuted that any books, records, etc. were seized. CCTV footage/photographs revealed that books of accounts were seized and taken away from premises G-52, Aggarwal City Plaza, Mangalam Palace, Rohini, New Delhi-85 was accepted by the respondents in the subsequent affidavit of Mr. Ranjit Singh, Joint Commissioner (Enforcement-1 Branch) sworn on 2nd August, 2017, which

referred to Satya Prakash and Vijay Kumar as officers who had seized and taken away books of accounts. The seizure was without preparing panchnama and in the absence of any witnesses. This was impermissible and beyond the scope and power under Sections 59 and 60(1) of the Act. Moreover, the respondents changed their stand and stance once they were compelled to accept and admit that the books of accounts and records, including bill books, etc. were taken away from Rohini office. The respondents submitted that the books of accounts and records were removed and taken to the principal place of business to ensure compliance with Section 48 read with Rule 42 of the Rules. This, as per the petitioner, was an afterthought and was unacceptable and books of accounts and records were never returned. Without answering and determining the dispute/issue regarding return of books and papers, court would observe that even if there was violation of the aforesaid provision, the books of accounts, documents, etc. could not have been seized and taken away from the said shop. Moreover, correct factual position regarding removal of the books of accounts, etc. would have been accepted and stated in the counter affidavit and not concealed and accepted only after evidence to show the said removal was produced by the petitioner. It was obvious that a dealer would have to maintain bill books, etc. at every place of business. Counsel for the respondents have submitted that illegality of seizure or survey or investigation would not affect admissibility and relevancy of the evidence collected. The said evidence as per the respondent was admissible and decisions in R.M. Malkani versus State of Maharashtra, (1973) 1 SCC 471 and Pooran Mal versus Director of Inspection (Investigation), New Delhi and Others, (1974) 1 SCC 345 were relied upon. These decisions might partly support the case of the respondents, but court would not like to enter into the said controversy and issue as this would be a matter examined during the course of the assessment proceedings. In case incriminating evidence and material had been found and collected, it was open to the respondents to rely upon the same and the petitioner to contest in accordance with law. Court did not express and gave final affirmative binding finding. If the contention and the pleas of the petitioner were rejected, they could be burdened with tax, interest and penalty. However, there is no provision in the Act under which the authorities could be burdened with any penalty or costs for the wrongs committed by them in violation of the provisions of the Act. In these circumstances, having held that the respondents acted contrary to the provisions of the Act and the Rules, the opinion of the court was that they must be burdened with penalty in form of costs. This was necessary and required to ensure that such lapses would not happen in future and would not be repeated. Such conduct and misconduct could not be condoned and overlooked. Having considered the nature of lapses and

also ensure that such instances were not repeated, court inclined to impose penalty in form of costs of Rs.50,000/- on the respondents. Rs.25,000/- would be paid to the petitioner within a period of six weeks from the date a copy of this order was received by the respondents and the balance amount would be deposited with the Delhi State Legal Services Authority.

Present for Petitioner	:	Mr. Rajesh Jain, K.J. Bhat and Astha Gandhi, Advocates.
Present for Respondent	:	Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate and Mr. Dinesh Gondyan, AC, Mr. Santosh Kr. Gupta, AVATO and Mr. Satya Prakash Dabas, AVATO.

Sanjiv Khanna, J.

Teleworld Mobiles Pvt. Ltd., a company incorporated under the Companies Act, 1956 and an assessee under the Delhi Value Added Tax Act, 2004 (Act, for short), claims that they were illegally subjected to operations under Sections 59 and 60 of the Act on 27th and 28th May, 2016 at their business premises.

2. The petitioner has filed the writ petition for the following reliefs:-

"(a) declare the order of empowerment dated 23.3.2016 issued by the Commissioner to the extent it confers powers of appointment on Special Commissioner as illegal and without jurisdiction;

(b) declare the entire exercise of investigation, search and seizure conducted on 27 and 28.5.2016 u/s 59 and 60 of the Act, as illegal;

(c) direct the respondent to release and return the seized records, documents, bill books, ledgers, invoices, inventories etc., as neither any Panchnama was drawn nor any list of seized documents/records was prepared under acknowledgement of the petitioner;

(d) issue a Writ of Mandamus or any other Writ, order or direction;

(e) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The grounds on which the aforesaid action is challenged in the present writ petition for the sake of convenience are reproduced below:-

"A. Because the exercise of investigation and enforcement covered u/s 59 and 60 of the Act fall under Chapter X of the Act. For any officer to exercise the power in any of these two Sections, was statutorily required to carry an authority in form DVAT 50. This is the mandate of Section 68(2) read with Rule 65 of the Delhi Value Added Tax Rules, 2005 (in short 'the Rules'). The officers who visited the premises on 27.5.2016 did not carry any DVAT 50 with them. They were repeatedly asked to produce the DVAT 50 issued in their name, but they did not show any such authority issued by the Commissioner. Therefore, in the absence of any authority given by the Commissioner, the operation was illegal at the nascent stage itself. Even when the request was made through a letter dated 31.5.2016 to give copy of DVAT 50, petitioner's request did not meet any response from the Deptt.

B. Because the order of empowerment dated 23.3.2016 issued by the Commissioner is not in accordance with the provisions of Section 68(2) read with Rule 65(1) of the Rules. Section 68 (2) reads as under:-

> "Where the Commissioner delegates his powers under Chapter X, the delegate shall carry and produce on demand evidence in the prescribed form of the delegation of these powers when exercising the powers."

In terms of Section 68(1) read with sub-section (2), the Commissioner has issued an order of delegation vide No.F.6(7)/DVATIL&J/2013-14/748 dated 12.11.2013. As per the said order, powers u/s 59(1), (2), (3), (4) and Section 60(1) of the Act, could be exercised by all the officers within their respective jurisdiction not below the rank of Asstt. Value Added Tax Officer, whereas powers u/s 60(2) could not be exercised by the jurisdictional officers below the rank of Asstt. Commissioner, VAT. Through this order of delegation, the Commissioner has appointed the jurisdictional officers of the above stated ranks to exercise and discharge the functions provided under the above provisions of the Act. Nowhere from the reading of Section 68, it comes out that the Commissioner can delegate his power of appointment unto another VAT authority. This is also specifically stated in Rule 65(1) of the Rules, which reads as under:-

> "Where the Commissioner wishes to appoint an officer or other person to exercise any of the powers in Chapter X of the Act, the grant of authority to exercise the powers shall be in form DVAT 50 and shall be issued by the person empowered by the Commissioner in this regard."

As per the petitioner's understanding, the power of appointment of an officer to exercise authority under Chapter X vests with the Commissioner only. That authority is to be given in form DVAT 50. From the later part of sub-rule (1), it is the empowered officer or authority who has to issue the DVAT 50 in favour of the person who stands appointed by the Commissioner himself. Thus, it is only the authorities who have been delegated powers through order dated 12.11.2013, which has not been modified till date, with respect to the powers available u/s 59 and 60 of the Act, the empowered authority could have issued DVAT 50 in their name only. The Commissioner by issuing this order of empowerment on 23.3.2016 has conferred upon the Special Commissioner two powers i.e. to appoint an officer or person to exercise the powers under Chapter X, and (b) to grant authority to the officer/person so appointed in form DVAT 50. That way, through the order of empowerment, the Commissioner has exceeded his jurisdiction which is not vested in him. Thus, any exercise of investigation and enforcement carried out by persons who have been appointed by the Special Commissioner and been issued DVAT 50 is without the authority of law.

C. Because the officers who visited the premises to carry out the proceedings were not even jurisdictional officers. The Commissioner, in terms of Section 68 of the Act, had delegated his authority unto various VAT authorities for the various provisions of the Act. Such VAT authorities could only be the jurisdictional officer and none else, when read in terms of the order dated 12.11.2013 issued by the Commissioner. Petitioner has been registered with the Deptt. since 1996 at the address of PD-29/A, Pitampura, Delhi 110034. The said address falls within the jurisdiction of Ward 64 with which all statutory compliances and obligations, as are mandated upon the petitioner under the Act, are being complied with. This includes filing of returns, statements, assessments etc. The officers who visited the premises were not the jurisdictional officers. It is true that as per Rule 65(1), the Commissioner can delegate his authority to issue DVAT 50 upon any VAT authority, but he is only to issue the authority for the appointment of officers who have been chosen for

that work by the Commissioner. When the Commissioner himself through order dated 12.11.2013, had chosen the jurisdictional VATOs/Asstt. Commissioners to carry out the work u/s 59 and 60 of the Act, then there lies no power or authority with other VAT authorities in issuing DVAT 50 in somebody else's name, ignoring the order dated 12.11.2013 issued by the Commissioner.

D. Because the entire exercise of survey, search and seizure was carried out between 5.30 pm of 27.5.2016 till 3.30 am on 28.5.2016. How this exercise is to be done, law has been laid down by this Hon'ble Court in its judgment of Larsen &Toubro and that of Capri Bathaid Pvt. Ltd. The officers were required to record reasons as to why the search and seizure operation is to be carried out. As per sub-section (2) of Section 60, seizure of any record could have been carried out if the Commissioner has the information in his possession or has reasonable grounds to believe that any person or dealer is attempting to avoid or evade taxes or is concealing his tax liability. Recording of those reasons was not only required in terms of Section 60(2) but it has also been made necessary in terms of Section 60(6) through which the provisions of CrPC relating to search and seizure apply mutatis mutandis. No such recording has been done nor the petitioner has been confronted with any such reason.

E. When the books of accounts, records, Balance Sheets, bill books etc. were seized, then it was incumbent upon the officers to have summoned at least two witnesses to vouch for those proceedings. When the entire exercise went on for about 10 hours, it is surprising to see that no witnesses were summoned, which was necessary in terms of Section 100(4) of CrPC which applies to such proceedings under the VAT Act.

F. Because seizure of records when made either u/s 60(2)(c), then as per Section 62(1) of the Act, the Commissioner is under an obligation to give a dealer or the person present on his behalf, as the case may be, receipt for the same and obtain acknowledgement of the receipt so given to him. To the shock of the petitioner, neither any Panchnama was drawn nor any list of seized documents was prepared. Where Section 62(1) calls upon the Commissioner to obtain an acknowledgement of the documents seized from the dealer's premises, the question of such acknowledgement does not arise when no list of documents had ever been prepared. This is not only suggested u/s 62(1) but is also well laid down u/s 100(5) of the CrPC which reads as under:-

"The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witness; but no person witnessing a search under this Section shall be required to attend the court as a witness of the search, unless specially summoned by it."

The casual manner in which this entire exercise has been done despite the law laid down by this Hon'ble Court in the above said judgments, speaks volumes about the callous approach of the Deptt. in following the law in its letter and spirit."

4. A reading of the said grounds would indicate that the challenge is predicated on the following:-

(i) Violation of Section 68(2) read with Rule 65 of the Delhi Value Added Tax Rules, 2005 (Rules, for short) as the officers, who had conducted the search did not carry and show Form DVAT-50 in spite of repeated requests.

(ii) Violation of the order of the Commissioner F.6(7)/DVAT/L&J/2013-14/748 dated 12th November, 2013 for the following reasons:-

(a) The operations under Section 60 and Rule 65(1) were undertaken by the non-jurisdictional Assistant Value Added Tax Officer.

(b) Non-jurisdictional officers below the rank of Assistant Commissioner were also part of the team, which had carried on operations under Section 59 and sub-sections (1) and (2) of Section 60.

(iii) Order of empowerment dated 23rd March, 2016 issued by the Commissioner is invalid as the Commissioner cannot delegate the said power to the Special Commissioner, and hence the entire operation was unauthorised and contrary to law.

(iv) Search and seizure operations under Section 60(2) of the Act were without complying with Section 100(4) and (5) of the Code of Criminal Procedure, 1973 (Code, for short) as no Panchnama was prepared and no independent witnesses were joined.

(v) The officers had taken away with them various records, balance sheets, bill books, ledger, etc. for different years without giving

any receipt or preparing a panchnama. Reliance is placed upon statement of Manpreet Singh, Director of the petitioner company recorded on 27th May, 2016.

(vi) The survey and seizure operations were carried out between 5.30 P.M. on 27th May, 2016 till 3.30 A.M. on 28th May, 2013. The survey and seizure operations were contrary to law as they were not conducted within reasonable hours.

5. The respondents in their counter affidavit deny that search and seizure operations under sub-section (2) to Section 60 of the Act were undertaken. Thus, Section 100 of the Code was not attracted and summoning of independent witness was not required. It is asserted that only "Investigation" in terms of power conferred under Sections 59 and 60 (1) of the Act was undertaken on the basis of authorization under DVAT-50 dated 27th May, 2016 issued by the Special Commissioner. Reliance is placed upon annexures R-2 and R-3 to the counter affidavit. It was denied that any records, books of accounts, register, other documents and goods were seized. Thus, no *panchnama* was drawn.

6. The respondents submit that Commissioner vide order dated 23rd March, 2016, in exercise of power under Section 68 of the Act read with Rules 48 and 65, has empowered all officers, not below the rank of Special Commissioner, to appoint an officer or person to exercise power under Chapter-X to grant authority in Form DVAT-50. Special Commissioner (Endorsement -I) vide order dated 27th May, 2016 after recording that he had information in his possession and had reasonable grounds to believe that the petitioner was attempting to avoid or evade tax or concealing his liability, had given authorization to conduct operations under Section 60(1) at the premises of the petitioner at (i) PD-29A, Pitam Pura, Delhi-100 034, (ii) 67 Harsh Vihar, Pitampura, and (iii) G-52, Aggarwal City Plaza, Manglam Place, Sector-3, Rohini, Delhi-85, to Mr. Dinesh Gondyan, Assistant Commissioner, Mr. Arvind Kumar, Assistant Commissioner, Mr.Satya Prakash, AVATO, Mr.Vijay Kumar, AVATO, W-71, Mr.Abhishek Kumar, AVATO and Mr. Ramesh Kumar, VATI. On the same day itself, while granting authority in the Form DVAT-50, Special Commissioner recorded that the authority would be valid from 26th May, 2016 till 27th May, 2016.

7. The note of the Assistant Commissioner dated 23rd May, 2016, enclosed as Annexure R-1, is elaborate and records reasons such as failure to file return for the fourth quarter of 2015-2016, accumulation of stock during last three years which showed purchases more than the sales and the miniscule amount of tax paid. The said note prepared by Assistant Commissioner was approved by the higher officers, including

the Commissioner, before authorization under DVAT-50 was issued on 27th May, 2016. It is also stated that the Form DVAT-50 was shown to the dealer/petitioner at the time of the operation.

8. The petitioner in the rejoinder affidavit has stated that Form DVAT-50 was never shown to the petitioner/dealer at the relevant time. Authorization was invalid and illegal, being in favour of non-jurisdictional Value Added Tax Officers and in favour of several non jurisdictional low ranked officers like Assistant Value Added Tax Officer and Inspector. The Commissioner had not issued authorization or authority in Form No. DVAT-50 and had only endorsed the file notings of the Assistant Commissioner. The petitioner have relied upon CCTV footage as well as the photographs in support of their contention that records including sale bills, purchase vouchers, ledger and other documents were seized and taken away by the officers. Some photographs in support have been enclosed as Annexure P-9 to the rejoinder affidavit.

9. In view of the version and the assertions made by the petitioner in the rejoinder affidavit with reference to the CCTV footage, a Division Bench of this Court vide order dated 26th May, 2017, had directed:-

"1. Mr. Gautam Narayan informs the court that pursuant to the order dated 3rd July, 2016, no coercieve steps have been taken against the Petitioner and further that no such coercieve steps shall be taken till the next date of hearing.

2. The main prayer in the present petition is for declaring the order of empowerment dated 23rd March, 2016 issued by the Commissioner (VAT) to the extent it confers powers of appointment on Special Commissioner, as illegal and without jurisdiction. It also seeks a declaration that the entire exercise of investigation 'search and seizure' conducted on 27th and 28th May, 2016 in the business premises of the Petitioner under Sections 59 and 60 of the Delhi Value Added Tax Act, 2004 (DVAT Act) as illegal.

3. There is a specific prayer 'c' which reads as under:- (c) direct the respndenet to release and return the seized records, documents, bill books ledgers, invoices, inventories etc., as neiether any Panchnama was drawn nor any list of seized documents/records was prepared under acknowledgement of the petitioner. 4. In the writ petition there is a specific avermement at para No.11 which reads as under:

11. When petitioner continuously pusued its refunds, then, instead of granting the same, it was visited by a team of Enforcement

Officers on 27.5.2016 without carrying any DVAT 50 in their favour. On demand, no such authority was shown during the period of ten hours i.e. between 5.30 pm on 27.5.2016 to 3.30 am on 28.5.2016. The said survey caused u/s 59 and 60 of the Act was wholly without the authority of law. While conducting this operation, provisions of Section 60(2) and (6) of the Act were flouted in as much as neither any reasons were recorded nor any Panchnama was drawn nor any witnesses were summoned. The whole exercise went on from 5.30 pm on 27.5.2016 and continued till 3.30 am of 28.5.2016. Two statements of Shri Manpreet Singh Sethi, Director, of the petitioner were recorded (Annexure P-6 Colly), one of which is on a preprinted proforma. None of these two statements bear the signatures of any of the visiting officers. Various records like Balance Sheets, Bill Books, Ledgers etc. for various years were seized. Where Section 62(1) mandates upon the Commissioner to give a receipt to the dealer or the person from whom records, books of accounts and other documents were seized, no such receipt was prepared, what to speak of taking any acknowledgement from the petitioner. This was also contrary to para 9 of the guidelines dated 29.4.2016 issued by the Joint Commissioner (Enforcement-I).

5. A reply was filed by the Respondent/the DVAT deparment supported by an affidavit of Mr. Ranjeet Singh, the Joint Commissioner, Enforecement -I branch specifically adverting to the visit by the Officers of the DVAT Department to the business premises of the Petitioner. It is stated in Paras 5.10 to 5.12 as under:

5.10. The records, books of accounts, registers, other documents as well as the goods of the Petitioner at the said premises were inspected by the said officers. An inventory of thirty two pages was prepared, recording the particulars as well as unique IMEI number of each of the phone found at the premise, This inventory was duly countersigned by the Director of the Petitioner herein. A true copy of the inventory dated 21 7 th / 28th May, 2016 is annexed herewith and marked as Annexure R4.

5.11. The statements at Annexure P-6 (Golly) to the Petition were written by the said Director of the Petitioner in his own hand and duly signed by the said Director. A true copy of the Statements written and signed by the Director of the Petitioner in his own hand is annexed herewith and marked as Annexure R-5.

5.12. No records, books of accounts, registers, other documents or goods were seized from the business premises of the Petitioner."

6. In other words there is a categoric assertion by the DVAT Department that no record, registeres, goods or documents were seized from the business premises of the Petitioner.

7. A rejoinder has been filed to the said counter affidavit by the Petitioner supported by the affidavit of Mr. Manpreet Singh Sethi, the Director of the petitioner company. Para 7 (a) and 7 (b) of the rejoinder affidavit assert as under:-

(a) no two independent witnesses were summoned to vouch the proceedings. This was essentially required in terms of Section 100 (4) of CrPC when the exercise went on for about 10 hours and stretched to early morning of 28.5.2016.

(b) no panchnama was prepared of the seized records when in fact during this entire exercise, sale bills, purchase vouchers, ledger and other documents were seized from the premises for which the petitioner has CCTV footage as well as photographs in its possession. Copies of some photographs which establish that records were seized and taken away by the members of the team are enclosed as Annexure P9 Colly. Petitioner has recording of CCTV of the enforcement proceedings which can also be produced for the perusal of this Hon'ble Court. That way, the submissions made by the Respondent that they have not seized and taken away the records that too on an Affidavit are false and attracts proceedings for perjury.

8. Mr. Rajesh Jain, learned counsel for the Petitioner, has produced before the court a CD and photographs dated 28th May, 2016 being the photographs taken from the CCTV footage available in the CCTV installed in the business premises of the petitioner at G-52, Manghlam Place, Rohini, New Delhi-1100085.

9. Mr. Rajesh Jain played the said CCTV footage in this court on a laptop brought by the Director of the Petitioner which is approximately 8 minutes. CCTV footage bearing the date stamp '5/27/2016' beginning at '17:07:54 and ending on 17:24:02'.

10. He submitted that this is not the entire CCTV footage and stated that he would have the footage of the earlier portion and the later

portion. He seeks permission to place on record the CCTV footage of the search to the extent available in the hard-disc of the CCTV installed in the abovesaid premises which will be encrypted with a hash value. One copy of the hard disc be filed in the court in a sealed cover and another copy of the same be supplied to the counsel for the respondent. Counsel for the Petitioner will tender the CCTV footage along with an affidavit under Section 65 B of Indian Evidence Act. This be done not later than two weeks from today. It is understood that the original hard disc be preserved containing the original CCTV footage in case, it is required for verification by the Respondent.

11. After seeing the CCTV footage Mr. Ranjeet Singh, the Joint Commissioner, Enforcement -I branch, will inform the Court by the next date peferably on affidvait the names and designations of the officials of the DVAT Department who figure in the CCTV footage.

12. Mr. Jain will also file the photographs in chronological sequence in a sealed covers. A copy of the same be furnished to the counel for the Respondent in advance."

10. In response to the directions given in the said order, the petitioner has filed photographs in chronological sequence in a sealed cover and a copy was furnished to the respondents.

11. Ranjeet Singh, Joint Commissioner, Enforcement-I Branch has filed his affidavit sworn on 2nd August, 2017 stating that in the CCTV footage only two officers, namely, Satya Prakash, AVATO (Branch-I) and Vijay Kumar, AVATO (Ward-71) could be seen.

A. Statutory Provisions

12. In order to decide the present controversy, we would have to first make reference to Sections 59, 60 and 68 of the Act and Rule 65 and Form DVAT-50, which are as under:-

"59. Inspection of records

(1) All records, books of accounts, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at all reasonable times, be open to inspection by the Commissioner.

(2) The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require –

a) any dealer; or

(b) any other person, including a banking company, post office, a person who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, who maintains or has in his possession any books of accounts, registers or documents relating to the business of a dealer, and, in the case of a person which is an organisation, any officer thereof; to –

(i) produce before him such records, books of account, registers and other documents;

(ii) answer such questions; and

(iii) prepare and furnish such additional information, relating to his activities or to the activities of any other person as the Commissioner may deem necessary.

(3) The Commissioner may require a person referred to in sub-section (2) above, to –

(a) prepare and provide any documents; and

(b) verify the answer to any question; in the manner specified by him.

(4) The Commissioner may retain, remove, take copies or extracts, or cause copies or extracts to be made of the said records, books of account, registers and documents without fee by the person in whose custody the records, books of account, registers and documents are held.

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60. Power to enter premises and seize records and goods (Rule 22(2) & 48)

(1) All goods kept at any business premises by a dealer, transporter or operator of a warehouse shall at all reasonable times be open to inspection by the Commissioner.

(2) Where the Commissioner, upon information in his possession or otherwise has reasonable grounds to believe that any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner and for the purposes of administration of this Act, it is necessary so to do, the Commissioner may-

(a) enter and search any business premises or any other place or building;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not readily available;

(c) seize and remove any records, books of account, registers, other documents or goods;

(d) place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;

(e) make a note or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods; and

(f) seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle.

(3) Where it is not feasible to remove any records, books of account, registers, other documents or goods, the Commissioner may serve on the owner and any person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with them except with the previous permission of the Commissioner.

(4) Where any premises have been sealed under clause (f) of sub-section (2), of this section or an order made under sub-section (3) of this section, the Commissioner may, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or other receptacle, permit the de-sealing or release thereof, as the case may be, on such terms and conditions including furnishing of security for such sum in such form and manners as may be directed.

(5) The Commissioner may requisition the services of any police officer or any public servant, or of both, to assist him for all or any of the purposes specified in subsection (2) of this section.

(6) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried

out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

Explanation: The powers under this section may also be exercised in respect of a dealer or a third party for the purposes of undertaking an audit or to assist in recovery.

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68. Delegation of Commissioner's powers (Rule 48) (1)

Subject to such restrictions and conditions as may be prescribed, the Commissioner may delegate any of his powers under this Act to any Value Added Tax authorities. (2) Where the Commissioner delegates his powers under Chapter X, the delegate shall carry and produce on demand evidence in the prescribed form of the delegation of these powers when exercising the powers. (3) Where the Commissioner has delegated a power to a Value Added Tax Authority, the Commissioner may supervise, review and rectify any decision made or action taken by that Authority.

Explanation. The exercise of this power of supervision, review or rectification will not lead to the issue of an assessment or re-assessment after the expiry of the time referred to in section 34 of this Act.

(4) Notwithstanding any law or doctrine to the contrary, the power delegated by the Commissioner to a person to determine an objection under section 74 of this Act may be exercised by that person, even though the person determining the objection is equal in rank to the person whose decision is under objection.

XXXXX

Rule 65. Officers to carry and produce authorisations

(1) Where the Commissioner wishes to appoint an officer or other person to exercise any of the powers in Chapter X of the Act, the grant of authority to exercise the powers shall be in Form DVAT-50 and shall be issued by the person empowered by the commissioner in this regard.

(2) The grant of authority shall –

(a) be limited to a period not exceeding three years;

(b) be to a specific person; and

(c) expire on the retirement, resignation or transfer of the person; PROVIDED that an authority granted may be renewed.

(3) Every officer or other person authorised by the Commissioner under sub-rule (1) shall –

(a) carry the authorization in Form DVAT-50, with him when purporting to exercise any of the powers conferred under Chapter X of the Act; and

(b) produce the authorization in Form DVAT-50, if requested by the owner or occupier of any premises where he proposes to exercise these powers.

FORM DVAT 50

[*Refer rule 65*]

GRANT OF AUTHORITY BY THE COMMISSIONER

The Commissioner of Value Added Tax, Delhi do hereby appoint the following officials holding the designation, mentioned against their name for carrying out audit, investigation and enforcement functions under Delhi Value Added Tax Act and Rules:

S. No.	Name	Designation

This authority would be valid for the period from _____ to _____ (not exceeding three years).

Seal of authority

Signature Name Date Designation"

B. Interpretation of statutory provisions

13. Section 59 of the Act relates to inspection of records, which means all records, books of accounts, registers, other documents etc. maintained by a dealer, transporter or operator of warehouse at all reasonable times, and states that the said records will open to inspection by the Commissioner. Sub-section (2) stipulates that the Commissioner may for

proper administration, subject to the conditions prescribed, require the dealer etc. to produce before him records, books of accounts, registers and other documents. and answer such questions and prepare and furnish additional information relating to his activities or activities of other persons. The Commissioner under sub-section (3) is empowered to require a person referred to be sub-section (2) to prepare and provide documents and verify answer given to any question in the manner specified by him. Sub-section (4) empowers the Commissioner to take away copies of extracts or cause copies or extracts to be made of the records, books of account, registers etc. without fee by the person in whose custody the records, books of account, registers and documents are held. A reading of Section 59 would indicate that it relates specifically to inspection of records specified therein. The records would mean books of accounts, registers etc. maintained by the dealer etc. The inspection exercise has to be undertaken at reasonable times.

14. Section 60 as per the heading relates to the power to enter premises and seize records and goods and also carry out search and seizures. Sub-section (1) relates to power to inspect the goods kept at any business premises of the dealer, transporter etc. at all reasonable times. The said power is somewhat akin to and expands the scope of the power given for inspection of books etc. under Section 59. The power under sub-section (2) is, however, far greater and wider, for it stipulates that where the Commissioner upon information or otherwise has reasonable grounds to believe that any person or dealer is attempting to avoid or evade payment of tax or concealing his tax liability, he may enter and search any business premises or building. The Commissioner also has power to break open the lock of any door, box, locker, safe etc., seize and remove the records, books of accounts, registers etc., place marks for identification on any records, make a note or inventory of money or goods found and seal the premises including the office, shop, godown etc. Under sub-section (3) it is stipulated that where it is not possible to remove the records or goods, the Commissioner may serve on the owner or the person who is in immediate possession and control thereof, an order not to remove or part with or otherwise deal with them without prior permission.

15. We need not refer to sub-sections (4) and (5) in the context of the present case. However, reference is required to be made to sub-section (6), which stipulates that every search and seizure made under this Section shall be as far as possible in terms of the provision relating to search and seizure under the Code i.e. Code of Criminal Procedure.

16. Section 68 of the Act deals with the power of the Commissioner to delegate any of his powers under the Act to any Value Added Tax

Authorities. Sub-section (2) is relevant, for it relates to delegation of power under Chapter-X, and states that the delegate shall carry and produce on demand evidence in the prescribed proforma while exercising the power. Sub-section (3) states that where the Commissioner has delegated power to a Value Added Tax authority, he may supervise, review and rectify any decision made or action taken by that authority. Object and purpose behind this provision has been elucidated and explained below.

17. Rule 65 is a specific provision relating to the power of delegation given to the Commissioner for exercise of different powers under Chapter-X. It stipulates that where the Commissioner wishes to appoint an officer or person to exercise powers under Chapter-X of the Act including grant of authority to exercise the powers, the same shall be in the Form DVAT-50 and shall be issued by the person empowered by the Commissioner in this regard. Sub-rule (2) stipulates that grant of authority would for a period not exceeding three years; shall be to a specified person and expire on retirement, resignation or transfer of the person.

18. Section 66 of the DVAT Act reads as under:-

"66. Value Added Tax Authorities

(1) For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.

(2) To assist the Commissioner in the administration of this Act –

(a) the Government may appoint as many 1[Special] Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary; and

(b) the Commissioner may, with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties; in this Act referred to as "Value Added Tax Authorities".

(3) The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(4) The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of

penalties, the computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions."

Section 66 states that the Government shall appoint a person, i.e., a Commissioner of Value Added Tax, and to assist him in the administration, the Government may appoint Special Commissioners, Value Added Tax Officers and others with designations as the Government thinks necessary. The Commissioner, with the sanction of the Government, can also procure engagement of others. All of them, i.e., the Commissioner and others are designated and referred to as Value Added Tax authorities.

19. The power of delegation given under Section 68 is of importance, for the enactment i.e. the Act invariably uses the expression "the Commissioner" and does not define and prescribe functions and powers inter-se the Value Added Tax authorities. This is left to the Commissioner, who in exercise of power under Section 68 can delegate and prescribe functions, powers and jurisdiction to the Value Added Tax authorities. This power is exercised by means of notification(s) issued by the Commissioner. This authority of delegation of power and functions is vested with the Commissioner subject to restrictions and conditions as may be prescribed. These restrictions and conditions can be prescribed by Rules. Chapter-X, as noted above, deals with audit, investigation and enforcement and the chapter conferring powers requires that the delegate shall carry and produce on demand evidence in the prescribed form while exercising powers delegated to him by the Commissioner.

20. At this stage we would refer to Rule 48, which reads as under:-

"48. Conditions upon delegation of powers by the Commissioner

Without prejudice to the provisions of section 68, the Commissioner may delegate any of his powers to any person not below the rank of an Assistant Value Added Tax Officer, but he may delegate his powers-

(a) under sub-sections (1) and (2) of section 60, to a person not below the rank of a Value Added Tax Officer;

(b) under section 61, to a person not below the rank of a Value Added Tax Inspector; and

(c) under section 84, to a person not below the rank of Special Commissioner."

Rule 48 restricts power of the Commissioner and states that without prejudice to the provisions of Section 68, the Commissioner would not delegate any of his power to an officer not below the rank of Assistant Value Added Tax Officer. Clauses (a), (b) and (c) state that delegation of power under Sub-Sections 1 and 2 to Section 60 would be to a person not below the rank of Value Added Tax Officer; under Section 61 would be to a person not below the rank of Value Added Tax Inspector; and under Section 84 would be to a person not below the rank of Special Commissioner, respectively. Rule 48, therefore, supports the view that the Commissioner is entitle to delegate his power under sub-Sections 1 and 2 of Section 60 of the Act to an officer not below the rank of Value Added Tax Officer, in case of Section 61 not below the rank of Value Added Tax Inspector and in case of Section 84 not below the rank of Special Commissioner.

21. The Commissioner has issued notification dated 23rd March, 2016, which reads as under:-

"Sub: Empowerment by Commissioner, VAT, under Rule 65 of the DVAT Rules, 2005.

In exercise of powers available under Rule 65 of the DVAT Rules, 2005 read with Section 68 of the DVAT Act, 2004 (Delhi Act 3 of 2005) and Rule 48 of the DVAT Rules, 2005, I, S.S. Yadav, Commissioner, Value Added Tax, Government of NCT of Delhi, do hereby empower all officers appointed under sub-section (2) of Section 66 of the DVAT Act, 2004, not below the rank of Special Commissioner to appoint an officer or a person to exercise any of the powers in Chapter X of the Delhi Value Added Tax (DVAT) Act, 2004 (Delhi Act 3 of 2005) and to grant authority to the officers/ persons so appointed, in Form DVAT 50 for exercise of the powers by them under the aforesaid Chapter of the Act.

The order shall come into force with immediate effect."

This notification states that the officer not below the rank of Special Commissioner can appoint officer or person to exercise powers under Chapter X of the Act. It also empowers an officer not below the rank of the Special Commissioner to grant authority to such officer/persons so appointed in Form DVAT 50 for exercise of powers by them. The Rules, as elucidated, nowhere stipulate and postulate that the Commissioner cannot

delegate his power for issue of authorization under Chapter X. On the other hand Rule 65 and Form DVAT-50 state to the contrary.

22. One of the primary contentions raised by the petitioner, that the Commissioner alone has the power to issue Form DVAT-50 under Section 68 of the Act, albeit this power cannot be delegated, falters and fails. The Commissioner has delegated the said power to Special Commissioner, who in turn authorizes specific officers to undertake investigation, search etc. This, it is submitted, violates the principles of sub-delegation. Maxim of delegatus non potest delegare is invoked to assert that delegation to Special Commissioner to issue DVAT 50 is ultra vires under Sections 68 read with 66 and 67 of the Act. Reliance is placed under *Sahni Silk Mills Pvt. Ltd & Anr. Vs. ESIC* 1994 (5) SCC 346. We are not impressed with the said argument, which in the context of the present Statute has to be rejected. Decision in *Sahni Silk Mills (Supra)* observed that the Courts are rigorous in requiring the power to be exercised by the persons or the bodies authorized by the statutes. It is essential that the delegated power should be exercised by the authority on whom it is conferred and no one else. Yet, given the administrative set up extreme judicial aversion to delegation is unacceptable, for in many statutes delegation is authorized expressly or by necessary implication. Thus, the maxim quoted above is not applied universally. Reference was made to *Barium Chemicals Ltd. Vs. Company Law Board AIR* 1967 SC 295 and other decisions wherein it had been observed that delegation mechanism is merely a rule of construction and sub delegation may be permissible and can be sustained if permitted by express provision or necessary implication. Reference in support was made to *Halsbury's Laws of England* Vol.1 (4th Edn.), and *Harishankar Bagla & Anr. Vs. State of M.P.* (1955) 1 SCR 380, where power to sub-delegate was upheld because the statute itself had enumerated classes of persons to whom the power could be delegated or was sub-delegated by the Central Government.

23. When we turn to the enactment in question, as noticed above, enactment itself refers to the Commissioner and its powers, and that there is a provision dealing with and specifying power, function and jurisdiction of the VAT authorities. The Commissioner has been given authority to delegate powers to subordinate authorities. Thus there is an express and clear provision of delegation. The statute in fact mandates delegation. It is in exercise of these powers that the notification / circular dated 23rd March, 2016 was issued by the Commissioner to confer powers to issue authorization on the Special Commissioner. We do not think said power can be held to be contrary to the prescribed statutory provision. The conduct of search or survey/investigation operation requires issue of authorization. The Commissioner has, by notification / order of empowerment dated

23rd March, 2016, conferred the said power upon Special Commissioner. Thus the Special Commissioners are authorized to issue an authorization in DVAT -50. The authorization in Form DVAT-50 would authorize the person named with their rank to conduct survey/investigation or search. Authorized officers should not be below the rank of Value Added Tax Officer for operations under Section 60(1) and (2) of the Act. There is a difference between issue of authorization and officers who are authorized to conduct survey/ investigation or search. The contention of the petitioner, if accepted, would warrant accepting the position that the Special Commissioner must himself undertake the search and seizure. The power to authorize survey/ investigation or search is different and distinct from the power exercised by the officers so authorized and who actually undertake the search and survey. The argument of the petitioner does not take notice of the aforesaid position and is therefore fallacious and wrong.

24. We would concede that there is ambiguity and difficulty in Rule 65 of the Act but the same has to be interpreted in a pragmatic and in a practical manner. It stipulates that where the Commissioner wishes to delegate his power for grant of authority to exercise power, the delegate will issue the authority letter in Form DVAT-50. The authority will be given to a person empowered by the Commissioner in this regard. Sub – Rule 2 stipulates that grant of authority will be to a specific person and limited to a period not exceeding three years and would expire earlier on retiring, resignation or transfer. Authority in terms of time can, however, be extended. This is also clear from Sub-Rule 3 which stipulates that the person, who is authorized to undertake search and survey shall carry with him authorization Form DVAT-50 while exercising any of the power contained under Chapter X and shall produce such authorization in Form DVAT -50 at the request of the owner / occupier. This also becomes clear when we look at Form DVAT -50. The said form is not required to be filled by the Commissioner when he delegates his power to issue authorization to Special Commissioner. The Form has to be filled up when power is conferred and authorization is given to a particular officer by name for carrying out audit /enforcement function under Chapter X.

25. In terms of the discussion above, we would, therefore, reject the contention of the petitioner challenging the vires of empowerment order dated 23rd March, 2016 on the ground that it exceeds the power of delegation granted to the Commissioner under the Act and the Rules. The order is upheld.

26. Our attention was drawn to *Capri Bathaid Pvt. Ltd v. Commissioner of Trade and Taxes,* W.P.(C) 8913/2014 wherein after referring to the Act and Rules the following principles were elucidated:-

"24. The combined reading of Sections 60, 66 and 68 of the DVAT Act read with Rule 65 of the DVAT Rules reveals the following position:

(i) The CVAT may delegate any of his powers to any VAT Authority

(ii) Where the CVAT delegates his powers under Chapter X of DVAT Act (which deals with audit, investigation and enforcement), the delegate shall carry and produce on demand, evidence in the prescribed form, of the delegation of these powers when exercising the powers.

(iii) Where the CVAT has delegated his power to a VAT Authority, he may supervise, review and rectify any decision made or action taken by such VAT Authority.

(iv) Where the CVAT wishes to appoint an officer to exercise any of the powers of audit, investigation and enforcement, he shall issue the grant of authority for the exercise of such powers notified in Form DVAT-50. The authority shall be issued by the person empowered by the CVAT in that regard. The grant of authority in terms of Rule 65 (2) is to be for a period not exceeding three years. The grant of authority shall be to a specific person and expire on the retirement, resignation or transfer of the person.

(v) Rule 65 (3) mandates that every officer or other person authorized by the CVAT under Rule 65 (1) shall carry the authorization in Form DVAT-50 with him when purporting to exercise any of the powers conferred under Chapter X of DVAT Act.

(vi) Such officer is required in terms of Rule 65 (3) (b) of the DVAT Rules to produce the authorisation in Form DVAT -50, if requested by the owner or occupier of any premises where he proposes to exercise these powers."

27. We do not perceive and believe that there is any conflict between the aforesaid principles and what has been held above and the ratio in Capri Bathaid Pvt. Ltd (Supra). In fact our findings concur and resonate the aforesaid principles. In Capri Bathaid Pvt. Ltd (Supra) delegation and empowerment of Special Commissioner to issue authorization in Form No. DVAT-50 was accepted and judgment proceeds on validity of the delegation of authority. The point of distinction between Capri Bathaid Pvt. Ltd (Supra)

and the present case is that in the former case notification / order of delegation dated 12th November, 2013 and order dated 15th October, 2014 were under examination. By the latter order the Special Commissioner was empowered to authorize jurisdictional officers stipulated in the notification dated 12th November, 2013 to carry out audit and enforcement function under Chapter X of the Act. The delegation order dated 12th November, 2013 in different columns had specified the jurisdictional officer authorized to exercise power under Sub-sections 1 and 4 of Section 59 and Sub-sections 1 and 3 of Section 60. This was because of the wording of the notification dated 12th November, 2013, paragraph 1 of which reads:-

> "In supersession of all previous orders on the subject, I, Prashant Goyal, Commissioner of Value Added Tax, Department of Trade & Taxes, Government of NCT of Delhi, in exercise of the powers conferred by section 68 of the Delhi Value Added Tax (DVAT) Act, 2004 (Delhi Act 3 of 2005) read with rule 48 of the Delhi Value Added Tax Rules, 2005 do hereby delegate my powers specified in column Nos. 3 under Section mentioned in column no. 2 to the Officers specified in column 4 of the table appended below and direct that these officers shall exercise the powers and perform the duties concomitant with such powers, within their respective jurisdictions. The order shall come into force with immediate effect."

28. Our attention was drawn to another decision of Division Bench of this Court in Writ Petition (C) No. 1820/2013, *Larsen and Tubro Limited and Another versus Government of NCT of Delhi and Others* and other connected matters wherein impact and affect of the decision in *Capri Bathaid Private Limited* (supra) was considered. Paragraph 7 of this decision refers to decision in *Capri Bathaid Pvt. Ltd* (Supra) which with reference to delegation order dated 15th March, 2013 had empowered officers under Section 60(2) of the Act of the rank of VATO and above to exercise powers "within their respective jurisdiction". Similarly, in paragraph 8 in *Larsen and Toubro Ltd.* (Supra), the Division Bench specifically made reference to decision in *Capri Bathaid Pvt. Ltd (Supra)* and delegation notification dated 15th October, 2014. On this basis the respondents had relied upon the authority issued by the Special Commissioner on 25th September, 2014, a date prior. This contention was not accepted. The Court also rejected the contention that the Commissioner had duly approved and granted authority in view of the file notings on 25th September, 2014. Reference is also made to another order of delegation passed by the Commissioner dated 28th August, 2015 with retrospective effect from 1st April, 2015. The validation action with retrospective effect, it was observed, had no authority

of law. The Division Bench was also critical of the manner in which powers under Chapter X had been exercised in the said case.

29. The empowerment order dated 23rd March, 2016, to the contrary does not state or put any restriction when an officer not below the rank of Special Commissioner grants authority and empowerment to the officer/ persons so appointed. In these circumstances, we accept the contention of the respondents that empowerment order dated 23rd March, 2016 would necessarily override the order dated 12th November, 2013 in respect of delegation of power under Chapter X of the Act. Of course, this does not mean that the Special Commissioner can appoint an officer contrary to Rule 48 and empower a person below the rank of Value Added Tax Officer in case investigation is to be done under sub-sections (1) and (2) to Section 60 of the Act. As per the empowerment order dated 23rd March, 2016, the requirement that the power under Chapter X of the Act would be only exercised by the jurisdictional officer as specified in the order dated 12th November, 2013 would no longer be applicable. This is not the requirement stipulated and mentioned in the empowerment order dated 23rd March, 2016.

30. The petitioner has stated that Form DVAT 50 was never shown to the petitioner/dealer at the relevant time. This is a disputed question of fact and in view of the fact that the respondents had placed on record Form DVAT-50, we would accept their version. We would add that the respondents should ensure that when the said form is shown to the dealer at the time of the search or survey/investigation, signatures of the party ought to have been obtained to avoid such controversy.

31. The next question, which arises for consideration, is whether the exercise of power by the Special Commissioner in Form DVAT-50 dated 27th May, 2016 is in accordance with law. As recorded above, we have accepted the contention of the respondents that in the present case only inspection of records, i.e. books of accounts, etc. and the goods was undertaken under Section 59 and sub-section (1) to Section 60 of the Act. As per the respondents, this is not a case in which search and seizure operations were undertaken under sub-section (2) to Section 60. Having held so, we would observe that certain lapses and failures on the part of authorities are apparent. These are listed below:-

(i) Contrary to Rule 48, Form DVAT 50 had authorised officers below the rank of Value Added Tax Officer to undertake inspection under sub-section (1) to Section 60. This is impermissible and contrary to Rule 48.

(ii) Contrary to mandate of sub-section (1) to Section 59 and sub-section (1) to Section 60 of the Act, that inspection of the books of accounts, etc., goods kept in business premises would be undertaken at reasonable time, the inspection commenced at 1730 hours (5.30 P.M.) in the evening on 27th May, 2016 and had continued till 0330 hours (3.30 A.M.) on 28th May, 2016.

(iii) The Special Commissioner was aware and conscious that the inspection under the two Sections would take time and, therefore, vide Form DVAT 50 had authorised inspection on 26th and 27th May, 2016. The authorities, therefore, should have commenced inspection at a reasonable time ensuring that the inspection is not to be carried out at mid-night and beyond. Surprisingly, the authorization dated 27th May, 2016, empowers inspection for a day earlier on 26th May, 2016.

(iv) Respondents in the counter affidavit have denied and refuted that any books, records, etc. were seized. CCTV footage/ photographs that books of accounts were seized and taken away from premises G-52, Aggarwal City Plaza, Mangalam Palace, Rohini, New Delhi-85 was accepted by the respondents in the subsequent affidavit of Mr. Ranjit Singh, Joint Commissioner (Enforcement-1 Branch) sworn on 2nd August, 2017, which refers to Satya Prakash and Vijay Kumar as officers who had seized and taken away books of accounts. The seizure was without preparing pachnama and in the absence of any witnesses. This was impermissible and beyond the scope and power under Sections 59 and 60(1) of the Act. Moreover, the respondents changed their stand and stance once they were compelled to accept and admit that the books of accounts and records, including bill books, etc. were taken away from Rohini office. The respondents submit that the books of accounts and records were removed and taken to the principal place of business to ensure compliance with Section 48 read with Rule 42 of the Rules. This, as per the petitioner, is an afterthought and is unacceptable and books of accounts and records were never returned. Without answering and determining the dispute/ issue regarding return of books and papers, we would observe that even if there was violation of the aforesaid provision, the books of accounts, documents, etc. could not have been seized and taken away from the said shop. Moreover, correct factual position regarding removal of the books of accounts, etc. should

have been accepted and stated in the counter affidavit and not concealed and accepted only after evidence to show the said removal was produced by the petitioner. It is obvious that a dealer would have to maintain bill books, etc. at every place of business.

32. Counsel for the respondents have submitted that illegality of seizure or survey or investigation would not affect admissibility and relevancy of the evidence collected. The said evidence as per the respondent is admissible and decisions in *R.M. Malkani versus State of Maharashtra,* (1973) 1 SCC 471 and *Pooran Mal versus Director of Inspection (Investigation), New Delhi and Others,* (1974) 1 SCC 345 are relied upon. These decisions may partly support the case of the respondents, but we would not like to enter into the said controversy and issue as this would be a matter examined during the course of the assessment proceedings. In case incriminating evidence and material has been found and collected, it is open to the respondents to rely upon the same and the petitioner to contest in accordance with law. We do not express and give final affirmative binding finding.

33. If the contention and the pleas of the petitioner are rejected, they can be burdened with tax, interest and penalty. However, there is no provision in the Act under which the authorities can be burdened with any penalty or costs for the wrongs committed by them in violation of the provisions of the Act. In these circumstances, having held that the respondents have acted contrary to the provisions of the Act and the Rules, we are of the opinion that they must be burdened with penalty in form of costs. This is necessary and required to ensure that such lapses do not happen in future and are not repeated. Such conduct and misconduct cannot be condoned and overlooked. Having considered the nature of lapses and also ensure that such instances are not repeated, we are inclined to impose penalty in form of costs of Rs.50,000/- on the respondents. Rs.25,000/- would be paid to the petitioner within a period of six weeks from the date a copy of this order is received by the respondents and the balance amount would be deposited with the Delhi State Legal Services Authority. The writ petition is accordingly disposed of. We would clarify that imposition of costs would not in any manner affect the adjudication proceedings and would not be treated as expressing any opinion on the issues and questions, which may arise during the course of assessment. This is a separate aspect on which we do not make any comment.

[2018] 56 DSTC 44 – (Delhi)

IN THE HIGH COURT OF ALLAHABAD

[Hon'ble Bharati Sapru,J. and Hon'ble Neeraj Tiwari,J.]

WRIT TAX No. - 67 of 2018

M/s Continental India Private Limited And Another ... Petitioner

Versus

Union Of India Thru Secy. And 3 Others ... Respondent

Date of Order January 24, 2018

WRIT OF MANDAMUS DIRECTING GST COUNCIL TO RE-OPEN GST PORTAL TO FILE TRANS 1 – PETITIONER ALLEGED SEVERAL EFFORTS WERE MADE FOR FILING THE APPLICATION – THE ELECTRONIC SYSTEM DID NOT RESPOND - COURT DIRECTED TO REOPEN THE PORTAL WITHIN TWO WEEKS – FAILING WHICH TO ENTERTAIN THE APPLICATION OF PETITIONER MANUALLY.

Counsel for Petitioner : Mr. Tarun Gulati & Mr Rohan Gupta

Counsel for Respondent : S.S.C.,A.S.G.I.

Order

Heard Sri Tarun Gulati learned counsel assisted by Sri Rohan Gupta learned counsel for the petitioner and Sri Apoorva Hajela learned counsel assisted by Sri Ashok Singh learned counsel for the respondents.

The petitioner seeks a writ of mandamus directing the GST council respondent no.2 to make recommendations to the State Government to extend the time period for filing of GST Tran-1 in the case of the petitioner because his application was not entertained on the last date i.e. 27.12.2017 and he has filed his complete application for the necessary transactional credit.

The petitioner has alleged in the petition that despite making several efforts on the last date for filing of the application, the electronic system of the respondent no.2 did not respond, as a result of which the petitioner is likely to suffer loss of the credit that it is entitled to by passage of time.

It is the petitioner's case that he has also submitted his application for transitional credit manually on 10.1.2018. The respondents were served with a notice on 19.1.2018 with a copy of the petition and they have also

obtained instructions today. They say that portal is likely to be opened but is unable to say that when the portal is likely to be opened.

In view of the above, the respondents are directed to reopen the portal within two weeks from today. In the event they do not do so, they will entertain the application of the petitioner manually and pass orders on it after due verification of the credits as claimed by the petitioner. They will also ensure that the petitioner is allowed to pay its taxes on the regular electronic system also which is being maintained for use of the credit likely to be considered for the petitioner.

With the aforesaid directions, the the writ petition shall stand disposed of finally.

[2018] 56 DSTC 46 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI

[DIWAN CHAND: MEMBER (A) AND M. S. WADHWA: MEMBER (J)]

APPEAL NOS.1290-1293/ATVAT/12-13
ASSESSMENT YEAR: 2008-09
(DEFAULT ASSESSMENT OF TAX, INTEREST & PENALTY)
(CST & DVAT)

M/s Valvoline Cummins Ltd.,
50/8, Tolstoy Lane, Janpath, New Delhi ... APPELLANT

Versus

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

Date: June, 2017

REJECTION OF CLAIM OF DECREASE IN OUTPUT TAX – CHANGE IN AGREED CONSIDERATION BY THE WAY OF ISSUANCE OF CREDIT NOTES – SELLER DID NOT ENSURE THAT THE PURCHASING DEALERS CARRIED OUT REVERSAL OF ITC – NO PLAUSIBLE EXPLANATION AND THERE WAS NO DOCUMENTARY EVIDENCE FILED TO SHOW THAT WHEN THERE WAS NO CHANGE IN QUALITY AND HOW THERE COULD BE CHANGED IN AGREED CONSIDERATION – ORDER OF VATO UPHELD

TAXABILITY ON SUPPLYING MATERIAL FREE OF COST UNDER PROMOTIONAL SCHEME–ARGUED BEFORE TRIBUNAL THAT NONE OF THE INGREDIENTS OF SALE EXISTED IN SUPPLY OF MATERIAL FREE OF COST – SUBMISSION OF APPELLANT WAS THAT HE HAS NOT AVAILED ANY INPUT TAX CREDIT ON THE GOODS GIVEN AS FREE GIFTS AS THESE WERE EITHER BROUGHT INTO THE STATE AGAINST 'C' FORMS OR BROUGHT AS STOCK TRANSFER AGAINST 'F' FORMS – SUBMISSION WAS RIGHTLY MADE WAS THAT EVEN IF HE WAS HELD GUILTY OF MIS-UTILIZATION OF THE GOODS PROCURED AGAINST 'C' FORMS, THE GOODS COULD NOT BE TAXED IN TERMS OF PROVISIONS OF THE CST ACT, BUT PENALTY COULD BE IMPOSED — MATTER REMANDED BACK TO VATO

ADMISSION OF FORMS AT APPELLATE STAGE – 'C' FORMS & 'I' FORMS WITH CERTIFICATE OF GAZETTE NOTIFICATION REGARDING SEZ / EPZ SUBMITTED – APPELLANT WAS IN POSSESSION OF FORMS WHICH COULD BE ADMITTED – MATTER REMANDED BACK

TRANSIT SALES – REJECTION OF CLAIM OF CONCESIONAL RATE OF TAX ON SALE MADE UNDER SECTION 6(2) OF CST ACT – CLAIM RIGHTLY REJECTED – NAME OF THE PURCHASER WAS ALREADY MENTIONED ON THE SALE INVOICE – NO DOCUMENT OR EVIDENCE PLACED ON RECORD TO SHOW HOW THE CONTRACT CAME INTO EXISTENCE DURING THE MOVEMENT OF GOODS – ORDER OF VATO UPHELD.

Facts

These appeals were directed against the impugned order dated 24.09.2012 passed by the Special Commissioner-I, hereinafter called

Objection Hearing Authority (in short the OHA) who partly allowed the objections and the Assessing Authority was directed to reframe assessment accordingly. The VATO (Ward-206) earlier to the impugned orders had carried out default assessment of tax & interest u/s 32 of the DVAT Act and penalty u/s 33 r/w Sec. 86(12) & 86(14) of the DVAT Act for the year 2008-09 as well as default assessment of tax & interest u/s 9(2) of the CST Act and penalty u/s 9(2) of the CST Act r/w Sec. 86(12) of the DVAT Act for the year 2008-09 creating the following demands:

S.No.	***A.Y. (2008-09)***	***Tax & Interest***	***Penalty***
1	*Under the DVAT Act*	*51,33,898/-*	*37,14,202/-*
2	*Under the CST Act*	*5,50,831/-*	*2,92,580/-*

Facts of the case briefly stated were that the appellant dealer was engaged in the business of sale and purchase of lubricants and grease etc. and had made Central Sales against statutory forms during the year 2008-09. While making default assessment for the period 2008-09, the Assessing Authority had disallowed decrease in output tax due to change in agreed consideration by way of credit notes. AA had observed that while issuing credit notes the dealer did not ensure that the purchasing dealers carried out reversal of ITC for these transactions. Tax was also imposed on goods issued to dealers free of cost under a promotional scheme on the ground that the transaction amounted to sale for all purposes. AA also rejected claims of concessional rate of tax on sale made u/s 6(2) of the CST Act as well as claim of sales against "I" form.

Held

The issue of credit notes on account of revision in the MRP rates, VATO had observed that the explanation tendered was not plausible explanation and there was no documentary evidence to show that when there was no change in quality and make how there could be change in agreed consideration. The VATO has termed this variation as old MRP rates and new MRP rates. He further observed that the appellant has no where directed the buyers on the Credit Notes to reduce their input tax and thereby attracting the provisions of Sec.40A of DVAT Act 2004.

In support of his contention regarding supply of free gifts the Counsel for appellant submitted that the same OHA in another case of M/s Castrol India Ltd Vide orders dated 17.09.2012 in respect of assessment period 2007-08 allowed the plea regarding free gifts.

It was really interesting that the OHA who disallowed the free gifts and upheld the imposition of tax on these treating them as sales, allowed the

plea of free gifts in the case of M/s Castrol India and remanded the matter back to the Ld VATO for reframing the assessment. The relevant para of the orders dated 17.09.2012 passed by the same OHA in the case of M/s Castrol India were extracted as below:-

> *"Ld Counsel for the Objector also submitted that the supply of items free of cost was as per the trade practice followed by the company for encouraging the dealers for achieving higher sales. No ITC was claimed on the items supplied under FOC scheme. The contention of the Objector was therefore allowed."*

Here in the present case also the submission of the appellant was that he has not availed any Input Tax credit on the goods given as free gifts as these were either brought into the state against C Forms or brought as stock transfer against F Form. His further submission rightly made was that even if he was held guilty of mis-utilization of the goods procured against C Form, the goods could not be taxed in terms of provisions of the CST Act, but penalty could be imposed on him for mis-utilization of the Registration certificate.

Appellant's submission was that the OHA passed different orders in two cases viz his case and that of Castrol India in respect of same facts and circumstances. While the claim in respect of free gifts made in the case of Castrol India was accepted, in his case it was rejected. The contention advanced was that the Revenue could not take different views in different cases on the same facts and circumstances and for this has relied upon the decisions of The Commissioner of Central Excise Vs M/s. EID Parry (I) Ltd. 2013 (293) E.L.T. 10 (Mad.) and M/s SL Enterprises decided by this Tribunal.

Similarly, in another decision of the Apex Court reported in 2007 (13) SCC 807 (Jayaswals Neco Limited Vs. Commissioner of Central Excise, Nagpur), it has been observed as follows:-

> *"This Court in Birla Corpn. Ltd. V.CCE (2005 (6) SCC 95 relying upon an earlier decision of this Court, held that the Department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. In para 5 of the said judgment it was observed, thus:*
>
> > *"In the instant case the same question arised for consideration and the facts were almost identical. We could not permit the Revenue to take different stand in this case. The earlier appeal*

involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd., (2001 (130) E.L.T 193 (CEGAT) could not be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary."

Since the point involved in the present case was identical to the point decided in Hindustan Gas and Industries case (1996 (88) E.L.T 413 (CEGAT) and the Department having accepted the principle laid therein to the effect that the inserts did not require any precision machining or that any such machining was done by the appellant, cannot be permitted to take a stand different than the principles laid down in the earlier case. "

Going by the above decisions of the Apex Court, we were of the firm view that the Revenue could not pick and choose between the assessees of same nature to file appeal in respect of the very same issue. The Tribunal had also pointed out that the Commissioner who had taken the view in this case in favour of the Revenue was the very same Commissioner, who as an appellate authority took different view in favour of the assessee in another case. This sort of inconsistency needed to be avoided.

Ratio of the above decisions was that the Revenue could not be permitted to take different stands on the basis of same facts and circumstances

Next argument of the appellant was that there was no provision in the CST Act which permitted for imposition of tax in case the goods brought against C Forms or branch transfers were not sold. Only action that could be taken was under section 10A of the CST Act which provided for imposition of penalty if the goods purchased against C Forms were not utilised for the purposes indicated in the C Forms. While the penalty for the said lapse could be imposed, the tax could not be imposed, there being no sale as such. As no Input Tax credit was claimed under the DVAT Act against these purchases, there could not be any reversal or denial of the input tax or charging of tax on these grounds. We agreed with the submission of the appellant that for mis-utilising the goods purchased against C Forms, the goods so used could not be taxed but penalty could be imposed under section 10A the CST Act. There was no provision in the CST Act like the one under the erstwhile DST Act under section 4(2(a)(v) under which the goods purchased against ST-1 Form if not utilised for the declared purpose were added back to the GTO of the purchasing dealer

and taxed. Hence imposition of tax in respect of goods purchased against C Forms or brought against F Forms was not legal as such goods could not be taxed in the manner these had been done in the impugned orders and were accordingly unsustainable. However, the Revenue if the law so permits could initiate action for imposition of the penalty for mis-utilisation of the Forms issued under the Central Act.

As per amended provisions of CST Act, sales made in EPZ to the developer or the unit located in the SEZ were exempted from sales tax subject to the production of "I" Forms alongwith the proof of movement of goods in pursuance to the inter-state sale so made. Claim of the Appellant was rejected on the ground that he had not filed the copy of Gazette notification regarding SEZ/EPZ. Appellant has now submitted copy of gazette notification as stated above. As such the claim of the appellant with regard to sales in questions needed to be examined for which the matter was remanded back to the VATO.

While assailing the impugned orders in respect of tax imposed due to non-furnishing of the C forms, the appellant had submitted that he was in possession of 'C' forms of Rs 1,56,152/- and placed photocopies of the same on record and pleaded for admission of the same and grant of benefit of concessional rate of tax in respect of transactions covered by these C Forms. In view of the decision in the case of M/s Kirloskar Electric Co 83 STC 485 and State of Andhra Pradesh Vs. Hyderabad Asbestos Cement Production Ltd.:1994-(094) STC 410(SC) matter was remanded back to the VATO for examination of the claim in this regard and grant of benefit in respect of forms in possession of the appellant after examination of the same in accordance with law.

In the instant case, the name of the purchaser was already mentioned on the sale invoice of the original seller when the goods first moved. No document or evidence had been placed on record by the appellant to establish as to how the contract came into existence during the movement of the goods when the name of the ultimate buyer was already known and given on the GRs. As such the appellant had failed to establish his claim under section 3(b) of the CST Act and we did not find any reason to interfere with the orders passed by the authorities below.

In view of the foregoing discussion the appeals were partly allowed. While impugned orders were upheld in respect of rejection of claim against Goods returned and sale against E-I Form, the impugned orders to the extent the tax was imposed in respect of sales made against C Forms for which the forms were available with the appellant; sale made against

'I' Forms and goods sold as free gift the matter was remanded back to reframe the assessment in accordance with law after giving an opportunity of hearing to the appellant for which the appellant should appear before VATO on 26.07.2017.

Present For The Appellant : Sh. Balram Sangal, Adv.,

Present For The Respondent : Sh. C.M. Sharma, Adv.,

Order

1. These appeals are directed against the impugned order dated 24.09.2012 passed by the Special Commissioner-I, hereinafter called Objection Hearing Authority (in short the OHA) who partly allowed the objections and the Assessing Authority was directed to reframe assessment accordingly. The VATO (Ward-206) earlier to the impugned orders had carried out default assessment of tax & interest u/s 32 of the DVAT Act and penalty u/s 33 r/w Sec. 86(12) & 86(14) of the DVAT Act for the year 2008-09 as well as default assessment of tax & interest u/s 9(2) of the CST Act and penalty u/s 9(2) of the CST Act r/w Sec. 86(12) of the DVAT Act for the year 2008-09 creating the following demands:

S.No.	***A.Y. (2008-09)***	***Tax & Interest***	***Penalty***
1	*Under the DVAT Act*	*51,33,898/-*	*37,14,202/-*
2	*Under the CST Act*	*5,50,831/-*	*2,92,580/-*

2. Facts of the case briefly stated are that the appellant dealer is engaged in the business of sale and purchase of lubricants and grease etc. and had made Central Sales against statutory forms during the year 2008-09. While making default assessment for the period 2008-09, the Assessing Authority had disallowed decrease in output tax due to change in agreed consideration by way of credit notes. Ld. AA had observed that while issuing credit notes the dealer did not ensure that the purchasing dealers carried out reversal of ITC for these transactions. Tax was also imposed on goods issued to dealers free of cost under a promotional scheme on the ground that the transaction amounted to sale for all purposes. Ld. AA also rejected claims of concessional rate of tax on sale made u/s 6(2) of the CST Act as well as claim of sales against "I" form.

3. Appellant with regard to the Rejection of claim of decrease in output tax submitted that he is selling the goods in packs on which MRP is printed which is revised from time to time. For this reason, the appellant Company's

stock of goods consists of packs bearing old MRP and packs bearing new MRP. The appellant Company is maintaining its account of SAP system of accounting and as and when the prices are increased the same is updated in the accounting system for generating invoices. Once the price in system is updated invoices issued after updating the price SAP are generated at the prevalent/revised prices and invoices cannot be generated at earlier MRP irrespective of the fact that whether the goods being sold through a particular Tax/ Retail Invoice are from batch bearing lower MRP or from the new pack bearing increased MRP. Due to price variation, in view of these facts, necessarily takes place in the invoices issued after updating the prices in SAP and the buyer to whom the goods were supplied and invoiced from the old stock but invoiced at revised price becomes entitled to get credit of the price difference between the price of old packs and new pack.

4. Hence Credit Notes had necessarily to be issued by the appellant to the buyers to the extent of such price difference between old pack and new pack or due to increase in amount of discount. Many times such variation takes place due to the reason that by mistake initially discount is allowed in a particular invoice at lower percentage at which it should have been allowed at the time of issue of original invoice.

5. The appellant assailed the impugned orders passed by Ld. OHA on the following grounds:-

1. That the orders of the authorities below are wrong in law and on facts of the case.

2. That the Ld. VATO erred in rejecting the claim of decreasing output tax of the appellant Company by a sum of Rs. 3,44,494/- and further in levying tax on a sum of Rs. 1,65,98,562/- on the allegation that the goods supplied by the appellant Company to this extent free of cost were liable to be taxed being sales. The Ld. OHA equally erred in sustaining the findings of the Ld. VATO on this score.

3. That taking into consideration the facts and circumstances of the case, the appellant Company under a legal obligation to issue Credit notes to the buyers who were legally entitled to the same since the value of goods sold to them was invoiced at a higher price as against the consideration for which the goods were sold.

4. That the appellant Company was under an obligation to issue such credit notes not for the purpose of discharging its legal obligation

but also with an objective to keep correct accounts of its sales and purchases.

5. That the levy of tax on Rs. 1,65,98,562/- being the value of goods supplied free of cost to the buyers could not be subjected to tax by way of treating the same as sale in as much as none of the ingredients of sale existed in supply of material free of cost.

6. That the basis of the Ld. VATO to levy tax on material supplied free of cost stating that the goods received on transfer basis had to be sold in the receiving State, has no legal basis as the provisions of Sec.6A of the Central Act dealing with stock transfer nowhere places any such condition or restrictions and consequently the findings of the Ld. VATO being contrary to law should not have been sustained by the Ld. Spl. Commissioner.

7. That tax amounting to Rs. 3,051/-plus Rs. 1,224/- i.e. Rs. 4,275/- included in tax demand raised appears to be due to calculation mistake and same deserves to be rectified.

8. That a sum of Rs. 14,69,696/- has illegally been charged as interest in the impugned order of Default assessment and since the appellant Company had deposited the amount of tax due, the question of levying any interest upon the appellant Company could not arise.

9. That the appellant Company reserves right to urge such other ground or grounds of appeal as may be so advised either before or at the time of hearing of this appeal.

6. We have heard Shri Balram Sangal, Adv., Ld. Counsel for appellant, Shri C.M.Sharma, Adv., Ld. Counsel for Revenue and gone through the record of the case.

7. Ld. Counsel for appellant submitted that there was nothing abnormal in issue of credit note in the daily routine transaction in trade as such the appellant company was under legal obligation to issue credit notes to the buyers who were legally entitled to the same since the value of goods sold to them was invoiced at a higher price as against the consideration for which the goods were sold. It is so because the appellant company is selling the goods in packs on which MRP is printed which is revised from time to time and as such appellant company's stock of goods consists of packs bearing old MRP and packs bearing new MRP. Submissions

also made that rejection of claim of decreasing output tax of the appellant company by a sum of Rs.3,44,494/- and further in levying tax on a sum of Rs 1,65,98,562/- on the allegation that the goods supplied by the appellant company to this extent free of cost were liable to be taxed being sales. Reference made to the case of Commissioner of Central Excise, Pondicherry Vs EID Parry Ltd 2013 (293) ELT 10 (Mad) decided by the Hon. High Court of Judicature at Madras and the order dated 07.06.2010 passed by this Tribunal in case of M/s S.L. Enterprises Vs Commissioner of Trade & Taxes.

8. To counter the submissions, Ld. Counsel for Revenue submitted that the C forms worth Rs. 30 Lacs are still pending and I Form was rejected because of non-production of document of special economic zone unit. Submissions also made that it is not the choice of the appellant to change the MRP as per practice of the appellant as in fact the appellant is selling the goods on MRP as such impugned orders suffers no illegality and infirmity.

9. Further submission made is that the appellant is not able to show even on the strength of authority in case of Commissioner of Central Excise, Pondicherry Vs EID Parry Ltd 2013 and the M/s S.L. Enterprises Vs Commissioner of Trade & Taxes as nothing pointed out as to how uniformity is not maintained by the Ld. OHA in the context of the impugned order in appeal before us. The reference made to the order dated 17.09.2012 passed in case of M/s Castrol India Ltd wherein objector's contentions were allowed as no ITC was claimed on the items supplied free of cost under encouraging scheme to the dealer for achieving higher sale is of no help in this context to the appellant so as to submit that there was no universal application of law to the appellant by the Department. To that effect also no grounds have been taken to assail the impugned orders as also only apprehension is shown about calculation mistake.

10. Coming to the issue of credit notes on account of revision in the MRP rates, Ld. VATO has observed that the explanation tendered is not plausible explanation and there is no documentary evidence to show that when there is no change in quality and make how there could be change in agreed consideration**.** The Ld. VATO has termed this variation as old MRP rates and new MRP rates. He further observed that the appellant has no where directed the buyers on the Credit Notes to reduce their input tax and thereby attracting the provisions of Sec.40A of DVAT Act 2004.

11. Appellant' submission is that the agreed consideration between the parties was the sale price at which the goods of a particular old pack are

sold but when old pack are invoiced at increased price due to updating of price in SAP System, the buyer necessarily becomes entitled to get credit of the difference between the two prices of the goods of same product i.e. difference between price of old pack invoiced at increased price and in case if for this reason Credit Notes were issued to the buyers, the observation of the Ld. VATO to the contrary becomes meaningless. There was no question for the Ld. VATO to suggest the invoking of Sec.40A of DVAT Act in the case which is applicable only where there is an agreement between the parties to defeat the intention and application of the Act. However, in the present case, existence of such an Agreement is totally ruled out since credit notes has necessarily to be issued to the buyers due to advancement in IT industry.

12. Further submitted that the appellant issued Credit Notes to the buyers for whatever increased price or lower discount was reflected in the Tax / Retail Invoice and in this manner, the reduction in tax liability of the appellant was passed on to the buyer, who was lawfully entitled to the same. It was the responsibility of the buyer to reduce input tax credit at his end to the extent for which the Credit Notes were issued to him by the appellant and the appellant could not be blamed for failure of the buyer to do so and due to act of omission and commission of the buyers. Further submission made that it is only a wild guess of the Ld. VATO that the buyers did not reverse ITC at their end. There is no evidence to this effect on record excepting mere version of the Ld. VATO but without any material available with him to make such observation.

13. Further submitted that VAT laws were introduced in the country on the background that each person, may be a dealer or VAT Deptt, will discharge his obligation in accordance with the provisions of law. In case someone breaks the chain of compliance, it is bound to result in complications. The remedy thus lies to censure the person, who-so-ever one is the defaulter (here buyer) and he should be compelled to comply with his obligations under the Act and not the other person (here the appellant) to be penalized for failure on the part of the buyer to discharge his obligation under the Act. The remedy thus lies somewhere else and not in punishing the appellant in as much it could not be alleged that there is some error or manipulation on the part of the appellant in issuing Credit Notes. It may be added here that the Appellant in periodicals returns filed duly reflects the credit notes issued by the appellant in a particular month by the appellant.

14. Regarding Levy of tax @ 20% on supply of material of Rs.1,65,98,562/- free of cost (FOC), Appellant submitted that tax @ 20% with interest on Rs. 1,65,98,562/- has been levied on the allegation that the appellant supplied material free of cost to its buyers though for all

intent and purposes it is a sale liable to be taxed @ 20%. According to the Ld. VATO the definition of term 'sale' both under DVAT Act and Central Act, does not contemplate discount in the form of supply of goods free of cost. There is no such section or rule under the two Acts which permits to give discount in the form of free of cost. The goods so given FOC to the customers were either out of goods received on stock transfer against 'F' forms or from goods purchased against 'C' form. According to the Ld. VATO the spirit against stock transfer is that the goods transferred from one states to another are to be sold in another State. Further, goods against C form are purchased for resale and not for supply free of cost. Supplying / transferring the goods free of cost by a dealer falls under the definition of term 'Sale'.

15. It is submitted that the definition of 'sale' very clearly provides transfer of property in goods for valuable consideration. However, the goods delivered free of cost is without such consideration and there is no agreement between the parties to purchase and sell such goods. By no stretch of imagination goods supplied free of cost could be termed as sales under the provisions of either of the two Acts. It is urged that there being no such provision in the Acts, the findings of the Ld. VATO to the contrary are not sustainable.

16. Further submitted that goods that were supplied free of cost were goods received on stock transfer basis or purchased against 'C' forms. Major part of the goods supplied free of cost say 95% is comprised of the stock received on stock transfer basis and approx 5% out of goods purchased against 'C' forms. The assumption of the Ld. VATO that goods received on Stock Transfer from other states had to be sold in the receiving state is not correct. In fact a dealer is at liberty to deal with the goods received by him on transfer basis in such manner as he may desire and there is no restriction upon him under the Act to sell or to deal such goods in a particular manner. It may be added here that restrictions / conditions are placed in VAT Act of the State from where the goods are transferred and tax due thereon is paid there.

17. Further submission made that in case the goods purchased against C forms are not utilized for the purpose for which the goods were purchased as mentioned in the Registration Certificate of the purchasing dealer but are utilized by him for some other purpose or in any other manner, the price of such goods so purchased but mis-utilized is not liable to be subjected to tax in the hands of the purchasing dealer and on the contrary under the provisions of Central Sales Tax Act, the defaulting dealer is liable to be penalized by way of levying penalty or prosecution in accordance with the provisions of Section 10A of the said Act.

18. In support of his contention regarding supply of free gifts the Counsel for appellant submitted that the same OHA in another case of M/s Castrol India Ltd Vide orders dated 17.09.2012 in respect of assessment period 2007-08 allowed the plea regarding free gifts.

19. It is really interesting that the Ld OHA who disallowed the free gifts and upheld the imposition of tax on these treating them as sales, allowed the plea of free gifts in the case of M/s Castrol India and remanded the matter back to the Ld VATO for reframing the assessment. The relevant para of the orders dated 17.09.2012 passed by the same OHA in the case of M/s Castrol India are extracted below:-

> "Ld Counsel for the Objector also submitted that the supply of items free of cost is as per the trade practice followed by the company for encouraging the dealers for achieving higher sales. No ITC was claimed on the items supplied under FOC scheme. The contention of the Objector is therefore allowed."

20. Here in the present case also the submission of the appellant is that he has not availed any Input Tax credit on the goods given as free gifts as these were either brought into the state against C Forms or brought as stock transfer against F Form. His further submission rightly made is that even if he is held guilty of mis-utilization of the goods procured against C Form, the goods cannot be taxed in terms of provisions of the CST Act, but penalty can be imposed on him for mis-utilization of the Registration certificate.

21. Appellant's submission is that the Ld OHA passed different orders in two cases viz his case and that of Castrol India in respect of same facts and circumstances. While the claim in respect of free gifts made in the case of Castrol India was accepted, in his case it was rejected. The contention advanced is that the Revenue cannot take different views in different cases on the same facts and circumstances and for this has relied upon the decisions of The Commissioner of Central Excise Vs M/s. EID Parry (I) Ltd. 2013 (293) E.L.T. 10 (Mad.) and M/s SL Enterprises decided by this Tribunal.

22. It is apposite to refer to the decision of M/s EID and of M/s SL enterprises which are fully applicable to the facts of the case. In case of The Commissioner of Central Excise Vs M/s. EID Parry (I) Ltd. 2013 (293) E.L.T. 10 (Mad.) following observations were made by the court:-

> "31. The Tribunal had in fact extracted two decisions of the Commissioner of Appeals, wherein they have taken the view in

favour of the assessees therein in respect of similar issue. Only in this case, one of the very same Commissioner, who passed an order in favour of the assessee in other case, has taken a different stand. We fail to understand as to how the Department is justified in taking different stand for different assessees in respect of the same issue. Certainly there must be some consistency. They are entitled to take a different view or stand only when there is change of law or any other binding decision of the superior forum warranting such change of view. We have already noted that the very same Tribunal considered the same issue and given a finding in favour of the assessee in the case reported in 2008 (232) ELT 633 (Tri Chennai) (Commissioner of Central Excise, Tirunelveli Vs. Dharani Sugars & Chemicals Ltd.,). It is also claimed by the assessee and not disputed by the Revenue that the said decision of the Tribunal had become final and conclusive. If that being the position, we wonder as to how the Revenue is justified in contesting the very same issue in this appeal in respect of another assessee. If an issue is decided in favour of any party and had attained finality and accepted by the parties, the affected party in that case is certainly precluded from questioning its correctness in an another case. At this juncture, the decision of the Apex Court reported in 2006 (202) E.L.T 213 (SC) (Commissioner of Central Excise, Navi Mumbai Vs. Amar Bitumen & Allied Products Pvt. Ltd.,) is relevant to be quoted. Paragraphs 4 to 7 are usefully extracted hereunder:-

> "4. The Tribunal relying upon an earlier decision of another Bench of the Tribunal in Commissioner of Central Excise, Calcutta -I V.Bitumen Products (India) (1999(107) E.L.T. 58 (T), held that 'Bituminised Hessian based felt' is covered under Chapter Heading 59.09 as contended by the assessee and not under 68.07 as contended by the revenue.
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> 5. Admittedly, no appeal was filed by the Revenue against the earlier decision of the Tribunal in Bitumen Products (India) (supra) and the same has become final.
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> 6. This Court in a catena of cases has consistently taken the view that if an earlier order is not appealed against by the Revenue and the same has attained finality, then it is not open to the Revenue to accept judgment/ order on the same question in the case of one assessee and question its correctness in the case of some other assessees. The Revenue cannot pick and choose. (See: Union of India and Others V.Kaumudini Narayan Dalal and another (2001 (10) sec 231); Collector of Central

Excise, Pune V.Tata Engineering & Locomotives Co. Ltd. (2003 (158) E.L.T 130 (S.C.); Birla Corporation Ltd V. Commissioner of Central Excise (2005 (186) E.L.T. 266 (S.C.); Jayaswals Neco Ltd., V. Commissioner of Central Excise, Nagpur (2006 (195) E.L.T. 142 (S.C.) etc.,)

7. It was held in Birla Corporation Ltd., (Supra) as under:

> "In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was, therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd., (2001 (130) E.L.T 193) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary."

32. Similarly, in another decision of the Apex Court reported in 2007 (13) SCC 807 (Jayaswals Neco Limited Vs. Commissioner of Central Excise, Nagpur), it has been observed as follows:-

> "7. This Court in Birla Corpn. Ltd. V.CCE (2005 (6) SCC 95 relying upon an earlier decision of this Court, held that the Department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. In para 5 of the said judgment it was observed, thus: (SCC p.97)
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> > "5. In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd., (2001 (130) E.L.T 193 (CEGAT) cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary."
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> 8. Since the point involved in the present case is identical to the point decided in Hindustan Gas and Industries

case (1996 (88) E.L.T 413 (CEGAT) and the Department having accepted the principle laid therein to the effect that the inserts did not require any precision machining or that any such machining was done by the appellant, cannot be permitted to take a stand different than the principles laid down in the earlier case."

33. Going by the above decisions of the Apex Court, we are of the firm view that the Revenue cannot pick and choose between the assessees of same nature to file appeal in respect of the very same issue. The Tribunal has also pointed out that the Commissioner who had taken the view in this case in favour of the Revenue is the very same Commissioner, who as an appellate authority took different view in favour of the assessee in another case. This sort of inconsistency need to be avoided.

34. In the result, the appeal filed by the Revenue is dismissed by answering the questions of law in favour of the assessee and against the Revenue."

23. It is also apposite to refer to the decision of the Tribunal in M/s SL Enterprises (Appeal No. 94/ATVAT/09-10) dated 30.06.2010 the Tribunal observed as under:-

"Having heard the Ld Counsel for the parties and having gone through record on file , and relying upon the judgments in the case of Birla Corporation Ltd Vs Commissioner of Central Excise :2005 (186) ELT 166 SC, which was relied upon in another judgment reported as Commissioner of Central Excise, Hyderabad Vs Novapan Industries Ltd: 2007 (209) ELT 166 (SC), wherein their Lordships have already held that uniformity in law should be maintained and the Revenue cannot be permitted to take a different stand in a different case, we remand all the 36 appeals with the direction to pass order in accordance with law, as already accepted by the department . The appellant shall appear before the Ld VATO (Spl Zone) on 29.07.2010."

24. Ratio of the above decisions is that the Revenue cannot be permitted to take different stands on the basis of same facts and circumstances

25. Next argument of the appellant is that there is no provision in the CST Act which permits for imposition of tax in case the goods brought

against C Forms or branch transfers are not sold. Only action that can be taken is under section 10A of the CST Act which provides for imposition of penalty if the goods purchased against C Forms are not utilised for the purposes indicated in the C Forms. While the penalty for the said lapse can be imposed, the tax cannot be imposed, there being no sale as such. As no Input Tax credit was claimed under the DVAT Act against these purchases, there could not be any reversal or denial of the input tax or charging of tax on these grounds. We agree with the submission of the appellant that for mis-utilising the goods purchased against C Forms, the goods so used cannot be taxed but penalty can be imposed under section 10A the CST Act. There is no provision in the CST Act like the one under the erstwhile DST Act under section 4(2(a)(v) under which the goods purchased against ST-1 Form if not utilised for the declared purpose were added back to the GTO of the purchasing dealer and taxed. Hence imposition of tax in respect of goods purchased against C Forms or brought against F Forms is not legal as such goods cannot be taxed in the manner these have been done in the impugned orders and are accordingly unsustainable. However, the Revenue if the law so permits can initiate action for imposition of the penalty for mis-utilisation of the Forms issued under the Central Act.

26. Coming to the observation made by the VATO while making the default assessment that the appellant ought to have given cash discount or other form of incentive and it is not explained as to why the practice of free gifts was adopted, it is also apt to refer to the following observations of the Hon'ble Allahabad High Court in the case of M/s Hemraj Udyog v. Commissioner of Trade Tax, U.P., Lucknow [1997] 105 STC 0418:-

> "7. It is settled law that it is not the business of the taxing officers to guide the businessmen about the manner in which the latter should conduct his business. A businessmen is not expected to earn more so as to able to pay higher income tax nor can the Sales Tax Officer force a trader to sell his goods at a particular price. It is for the dealer to chose at what price he will sell the goods and how much of the goods he will sell and how much he will consume for himself or donate. If the assessing officer feels that a particular trader is behaving in a manner which is different from the other traders in the line the only course open to him is to raise an eye of suspicion and make an investigation. But if he does not investigate or if after investigation he does not find anything adverse to the assessee he cannot reject the dealer's results simply on suspicion or conjecture. Such views have been expressed by the courts for a long time and the members of the Tribunal must have known this basic concept of tax jurisprudence. Such view were recently

repeated by this Court in the case of Saurashtra Chemicals [1996] 100 STC 448. It is painful that a higher judicial body like the Sales Tax Tribunal should uphold such perverse enhancement in the turnover."

27. Impugned orders have also been assailed on the ground that rejection of claim of sale made against "I" Forms is not sustainable as the appellant fulfilled all the requirements of law. In his support the Appellant has submitted a copy of the Notification issued by the GOI which reads as under:-

"S.O.2076(E) – Whereas M/s Gurgaon Infospace Limited, a fully private organization in the State Of Haryana, has proposed under Section 3 of the Special economic Zones Act, 2005 (28 of 2005), (hereinafter referred to as the said Act) to set up a sector specific Special Economic Zone for information technology and information technology enabled services at Village Dundahera, Distt. Gurgaon in the State of Haryana;

And whereas, the Central government is satisfied that requirements under sub-section (8) of Section 3 of the said Act, and other related requirements are fulfilled and it has granted letter of approval under-subsection (10) of Section 3 of the said Act for development and operation of the sector specific Special Economic zone for information technology and information technology enabled services at the said Village Dundahera, District Gurgaon in the State of Haryana on 19th June, 2007;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Special Economic Zones Act, 2005 and in pursuance of rule 8 of the Special Economic Zones Rules, 2006, the Central Government hereby notifies the following area at Village Dundahera, District Gurgaon in the State of Haryana, comprising of the Survey numbers and the area given in the Table below, as a Special Economic Zone, namely:-"

28. Section 8(6) to 8(8) of the CST Act, 1956 introduced vide CST Amendment Act 2005 read as under:-

(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting

up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.

(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as specified in the certificate of registration of the registered dealer referred to in that sub-section.

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6) duly filled in and signed by the registered dealer to whom such goods are sold."

29. As per amended provisions of CST Act, sales made in EPZ to the developer or the unit located in the SEZ are exempted form sales tax subject to the production of "I" Forms alongwith the proof of movement of goods in pursuance to the inter-state sale so made. Claim of the Appellant was rejected on the ground that he had not filed the copy of Gazette notification regarding SEZ/EPZ. Appellant has now submitted copy of gazette notification as stated above. As such the claim of the appellant with regard to sales in questions needs to be examined for which the matter is remanded back to the VATO.

30. While assailing the impugned orders in respect of tax imposed due to non-furnishing of the C forms, the appellant has submitted that he is in possession of C of Rs 1,56,152/- and placed photocopies of the same on record and pleaded for admission of the same and grant of benefit of concessional rate of tax in respect of transactions covered by these C Forms. In view of the decision in the case of M/s Kirloskar Electric Co 83 STC 485 and State of Andhra Pradesh Vs. Hyderabad Asbestos Cement Production Ltd.:1994-(094) STC 410(SC) matter is remanded back to the VATO for examination of the claim in this regard and grant of benefit in respect of forms in possession of the appellant after examination of the same in accordance with law.

31. Appellant has assailed the impugned orders so far as the claim of appellant in respect of E-1 sale was rejected being a pre-determined sale. At this stage it is pertinent to notice the provisions of Section 3 of the CST Act which reads as under:-

Section 3 –

"When is a sale or purchase of goods said to take place in the course of inter-state trade or commerce. A sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase –

(a) occasions the movement of goods from one state to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one state to another."

Section 6(2) of the CST Act provides as under:-

Section 6(2) –

"Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-state trade or commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during their movement from one state to another, any subsequent sale during such movement effected by a transfer of document of title to such goods; -

(a) to a Government, or

(b) To a registered dealer other than Government, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempted from tax under this Act.

32. While making a distinction between the sale under section 3(a) and 3(b) the Hon'ble Apex Court in the case of A & G Projects Ltd Case observed as under:-

"…The dividing line between sales or purchases under section 3(a) and those falling under section 3(b) is that in the former case the movement is under the contract whereas in the latter case the contract comes into existence only after the commencement and before termination of the inter-State movement of the goods…"

33. In Larson & Toubro Vs State of Andhra Pradesh one of the question that came for consideration before the Hon'ble High Court was whether the

law declared by the Supreme Court, in "A & G Projects and Technologies Ltd. v. State of Karnataka [2009] 19 VST 239 (SC); [2009] 2 SCC 326" is binding on the High Court and the Hon'ble High Court answered the question as under:-

> It is contended, on behalf of the petitioners, that the Supreme Court in A & G Projects and Technologies Ltd. [2009] 19 VST 239 (SC); [2009] 2 SCC 326 was neither dealing with transactions under section 3(b) nor under section 6(2), but only under section 3(a); while a general analysis of section 6(2) of the CST Act was made therein, the Supreme Court neither stated that a section 6(2) sale is a section 3(b) sale nor has it concluded that a contract should emerge subsequent to movement for a sale to qualify as a transit sale, i.e., as a section 6(2) sale ; when it refers to emergence of a contract subsequent to movement, the Supreme Court has identified this condition only for a section 3(b) sale, and not a section 6(2) sale ; and there is nothing in the judgment to show that the sale, under section 3(b), cannot have a predetermined customer.
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> It is no doubt true that the Supreme Court, in A & G Projects and Technologies Ltd. [2009] 19 VST 239 (SC); [2009] 2 SCC 326, proceeded on the premise that all the three sales were section 3(a) sales. Nevertheless the scope of section 6(2) of the CST Act was considered therein. Once a judgment is rendered by the Supreme Court, it should not be contended later that a particular point was not raised or considered by the learned judges or that it is open to the High Court to reconsider the same. (Delhi Cloth General Mills v. Shambunadh 1978] 1 LLJ 1 (SC), Government of Andhra Pradesh v. N. Chowdhary [1993] 2 APLJ 479; [1993] 3 ALT 391).
>
> Even if the scope of section 6(2) of the CST Act was not in issue in A&G Projects and Technologies Ltd. [2009] 19 VST 239 (SC); [2009] 2 SCC 326, it is nonetheless binding as the High Court is bound even by the *obiter dicta* of the Supreme Court. An "obiter dictum", as distinguished from a ratio decidendi, is an observation by the court on a legal question suggested in a case before it, but not arising in such manner as to require a decision. (State of Haryana V. Ranbir [2006] 5 SCC 167, ADM, Jabalpur V. Shivakant Shukla [1976] 2 SCC 521, Gimar Traders [2011] 3 SCC 1 ; Divisional Controller, KSRTC v. Mahadeva Shetty [2003] 7 SCC 197 ; [2003] SCC (Cri) 1722, Director of Settlements, A. P. v. M. R. Apparao [2002] 4 SCC 638). Obiter dicta of the Supreme Court

> is binding upon other courts in the country (Sanjay Dutt V. State through CBI, Bombay [1994] 5 sec 402) in the absence of a direct pronouncement on that question elsewhere by the Supreme Court (Oriental Insurance Company Limited v. Meena Variyal [2007] 137 Comp Cas 116 (SC) ; [2007] 5 SCC 428), and is entitled to considerable weight. (Commissioner of Income-tax v. Vazir Sultan & Sons [1959] 36 ITR 175 (SC); [1959] Supp (2) SCR 375; AIR 1959 SC 814). We must express our inability to agree with the submission, urged on behalf of the petitioners, that the scope of section 6(2), as analysed therein, need not be followed."

34. In the instant case, the name of the purchaser was already mentioned on the sale invoice of the original seller when the goods first moved. No document or evidence has been placed on record by the appellant to establish as to how the contract came into existence during the movement of the goods when the name of the ultimate buyer was already known and given on the GRs. As such the appellant has failed to establish his claim under section 3(b) of the CST Act and we do not find any reason to interfere with the orders passed by the authorities below.

35. In view of the foregoing discussion the appeals are partly allowed. While impugned orders are upheld in respect of rejection of claim against Goods returned and sale against E-I Form, the impugned orders to the extent the tax is imposed in respect of sales made against C Forms for which the forms are available with the appellant; sale made against 'I' Forms and goods sold as free gift the matter is remanded back to reframe the assessment in accordance with law after giving an opportunity of hearing to the appellant for which the appellant should appear before VATO on 26.07.2017.

36. Order announced in the open court.

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

[2018] 56 DSTC 67 – (Delhi)

IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
[Justice A.K.Sikri And Justice Ashok Bhushan]

Civil Appeal Nos. 1335-1358 of 2015

Commissioner of Service Tax Etc. ... Appellant

Versus

M/s. Bhayana Builders (P) Ltd. Etc ... Respondent

Date of Order: 19.02.2018

CONSTRUCTION SERVICE U/S 65(105)(ZZQ) OF FINANCE ACT, 1994 – VALUATION OF TAXABLE SERVICE U/S 67 OF THE ACT – NOTIFICATION NO. 15/2004-ST DT 10.09.2004 & AMENDED NOTIFICATION NO. 4/2005-ST DT 01.03.2005. RESPONDENT ASSESSEE DID NOT INCLUDE THE VALUE OF GOODS SUPPLIED FREE OF COST BY SERVICE RECIPIENT – REVENUE CONTENDED THAT BENEFIT OF NOTIFICATION COULD NOT BE GIVEN. FURTHER ARGUED THAT SINCE BUILDING CONSTRUCTION CONTRACT WAS A COMPOSITE CONTRACT OF PROVIDING SERVICE AS WELL AS SUPPLY OF GOODS – COMPONENT OF GOODS & SERVICES INTO 67% : 33% AND TO A READY FORMULA FOR PAYMENT OF SERVICE TAX ON 33% OF GROSS AMOUNT.

WHETHER VALUE OF GOODS SUPPLIED OR PROVIDED FREE OF COST BY A SERVICE RECIPIENT IS TO BE INCLUDED IN COMPUTATION OF GROSS AMOUNT FOR VALUATION OF THE TAXABLE SERVICE U/S 67 OF THE ACT – FOR AVAILING THE BENEFIT UNDER NOTIFICATION NO. 15/2004-ST DT 10.09.2004 AS AMENDED BY NOTIFICATION NO. 4/2005-ST DT 01.03.2005 – HELD-NO.

Facts of the Case

The respondents herein were engaged in the business of construction and, in the process, providing the services known as 'Commercial or Industrial Construction Service'. This service was exigible to service tax as per the provisions of Section 65(105) (zzq) of the Finance Act, 1994 (hereinafter referred to as the 'Act'). The assessees accepted that they were covered thereby and, therefore, were paying service tax as well. The dispute, however, was with regard to the valuation of taxable service provided by them. Under Section 67 of the Act deals with such a valuation.

It was a matter of common knowledge that for undertaking construction projects, the assessees not only rendered services, lot of materials/ goods were also used in the construction of building or civil structure etc. For valuation of taxable services, the material/goods element had to be

excluded. In order to make the things easier for the assessees as well as the Assessing Officers (AOs), the Government issued the Notification No. 15/2004-ST dated September 10, 2004 as per which service tax was to be calculated on the value which was equivalent to 33% of the gross amount charged from any person by such commercial concern for providing the taxable service. This notification was amended vide another Notification No. 4/2005-ST dated March 01, 2005 whereby an explanation was added to the original notification.

This explanation mentioned that the 'gross amount charged' shall include the value of goods and material supplied and provided or used by the provider of construction services for providing such service. It was made optional for the assessees to take advantage of the aforesaid notification and get the value calculated as per the aforesaid formula provided therein. The assessees had availed the benefit and paid the service tax @33% of the gross amount which they had charged from the persons for whom construction was carried out, i.e., the service recipients. It so happened that in all these cases where the construction projects were undertaken by the assessees, some of the goods/materials (particularly, steel and cement) were supplied or provided by the service recipients. As these materials were to be utilised in the projects meant for service recipients themselves, obviously, no costs thereof was charged from the assessees. The Department wanted that value of such goods/materials even when supplied or provided free should be included, while calculating the "gross value" and 33% thereof be treated as value for the purpose of levying service tax.

Held

According to these notifications, service tax was to be calculated on a value which is 33% of the gross amount that was charged from the service recipient. Obviously, no amount was charged (and it could not be) by the service provider in respect of goods or materials which were supplied by the service recipient. It also made it clear that valuation of gross amount had a causal connection with the amount that was charged by the service provider as that became the element of 'taxable service'. Thirdly, even when the explanation was added vide notification dated March 01, 2005, it only explained that the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of construction service. Thus, though it took care of the value of goods and materials supplied by the service provider/assessee by including value of such goods and materials for the purpose of arriving at gross amount charged, it did not deal with any eventuality whereby value of goods and

material supplied or provided by the service recipient were also to be included in arriving at gross amount 'gross amount charged'.

Matter could be looked into from another angle as well. In the case of Commissioner, Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. The Court was concerned with exemption notifications which were issued in respect of 'taxable services' covered by sub-clause (zzq) of clause (105) read with clause (25b) and sub-clause (zzzh) of clause (105) read with 1 (2016) 1 SCC 170 clause (30a) and (91a) of Section 65 of Chapter V of the Act. This Court in the aforesaid judgment in respect of five 'taxable services' [viz. Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh)] has held as under:

> *"23. A close look at the Finance Act, 1994 would show that the fixed taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines 'taxable service' as 'any service provided'.*
>
> *Further, while referring to exemption notifications, it observed:*
>
> *"42. … Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise."*

It was cleared from the above that the service tax was to be levied in respect of 'taxable services' and for the purpose of arriving at 33% of the gross amount charged, unless value of some goods/materials was specifically included by the Legislature, that could not be added.

It was to be borne in mind that the notifications in questions were exemption notifications which had been issued under Section 93 of the Act. As per Section 93, the Central Government was empowered to grant exemption from the levy of service tax either wholly or partially, which was leviable on any 'taxable service' defined in any of sub-clauses of clause (105) of Section 65. Thus, exemption under Section 93 could only be granted in respect of those activities which the Parliament was competent to levy service tax and covered by sub-clause (zzq) of clause (105) and sub-clause (zzzh) of clause (105) of Section 65 of Chapter V of the Act under which such notifications were issued.

For the aforesaid reasons, the Court found in agreement with the view taken by the Full Bench of CESTAT in the impugned judgment dated September 6, 2013 and dismissed these appeals of the Revenue.

Judgment

A.K. SIKRI, J.

Delay condoned in Diary No. 42349 of 2016.

2) The respondents herein are engaged in the business of construction and, in the process, providing the services known as 'Commercial or Industrial Construction Service'. This service is exigible to service tax as per the provisions of Section 65(105) (zzq) of the Finance Act, 1994 (hereinafter referred to as the 'Act'). The assessees accept that they are covered thereby and, therefore, are paying service tax as well. The dispute, however, is with regard to the valuation of taxable service provided by them. Under Section 67 of the Act deals with such a valuation.

3) It is a matter of common knowledge that for undertaking construction projects, the assessees not only render services, lot of materials/goods are also used in the construction of building or civil structure etc. For valuation of taxable services, the material/goods element has to be excluded. In order to make the things easier for the assessees as well as the Assessing Officers (AOs), the Government issued the Notification No. 15/2004-ST dated September 10, 2004 as per which service tax is to be calculated on the value which is equivalent to 33% of the gross amount charged from any person by such commercial concern for providing the taxable service. This notification was amended vide another Notification No. 4/2005-ST dated March 01, 2005 whereby an explanation was added to the original notification. This explanation mentions that the 'gross amount charged' shall include the value of goods and material supplied and provided or used by the provider of construction services for providing such service. It is made optional for the assessees to take advantage of the aforesaid notification and get the value calculated as per the aforesaid formula provided therein. The assessees have availed the benefit and paid the service tax @33% of the gross amount which they have charged from the persons for whom construction was carried out, i.e., the service recipients. It so happened that in all these cases where the construction projects were undertaken by the assessees, some of the goods/materials (particularly, steel and cement) were supplied or provided by the service recipients. As these materials were to be utilised in the projects meant for service recipients themselves, obviously, no costs thereof was charged from the assessees. The Department wants that value of such goods/materials even when supplied or provided free should be included, while calculating the "gross value" and 33% thereof be treated as value for the purpose of levying service tax.

4) The question, therefore, which has fallen for consideration is as to whether, the value of goods/material supplied or provided free of cost by a service recipient and used for providing the taxable service of construction or industrial complex, is to be included in computation of gross amount (charged by the service provider), for valuation of the taxable service, under Section 67 of the Act and for availing the benefits under Notification No. 15/2004-ST dated September 10, 2004 as amended by Notification No. 4/2005-ST dated March 01, 2005 (whereby an Explanation was added to Notification No. 15/2004-ST).

5) We may mention here that different benches of the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT') had given conflicting views on the aforesaid question and, therefore, the matter was referred to the Larger Bench which has, by impugned judgment dated September 6, 2013 rendered in a batch of matters, has decided the issue in favour of the assessees by holding that the value of the goods/materials cannot be added for the purpose of aforesaid notification dated September 10, 2004, as amended by notification dated March 01, 2005. It is the said judgment of the Larger Bench dated September 6, 2013, correctness whereof is the subject matter of present appeals.

6) For answering the question, it would be necessary to refer to the relevant provisions of the Act and the Notifications, which are as under:

As mentioned above, 'commercial or industrial construction service' is a taxable service enumerated under Section 65(105) (zzq) of the Act. Section 65(25b) of the Act defines construction or industrial construction service to mean:

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and meal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is-

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;"

7) Section 67 of the Act deals with valuation of taxable services. This Section was amended w.e.f. April 18, 2006. Unamended provision reads as under:

"67. Valuation of taxable services for charging service tax.-For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.

Explanation 1.-For the removal of doubts, it is hereby declared that the value of a taxable service, as the case may be, includes,-

(a) the aggregate of commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

(b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

(c) the amount of premium charged by the insurer from the policy holder;

(d) the commission received by the air travel agent from the airline;

(e) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

(f) the reimbursement received by the authorised service station from manufacturer for carrying out any service of any

motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer; and

(g) the commission or any amount received by the rail travel agent from the Railways or the customer, but does not include-

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

(iii) the cost of parts or accessories, or consumable such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, light motor vehicle or two wheeled motor vehicles;

(iv) the airfare collected by air travel agent in respect of service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service;

(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loans.

Explanation 2.-Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.

Explanation 3.-For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service."

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, bet he amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.- For the purposes of this section.

(a) “consideration” includes any amount that is payable for the taxable services provided or to be provided;

(b) “money” includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) “gross amount charges” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited,

as the case may be, to any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]"

8) After the amendment, Section 67 of the Act is as follows:

Section 67. Valuation of taxable services for charging service tax

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation.-For the purposes of this section,-

[(a) "consideration" includes-

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and 2[book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]"

9) Exemption Notifications:

(a) Notification No. 12/2003-ST dated June 26, 2003, issued by the Central Government, exercising powers under Section 93(1) of the Act exempted the value of goods and materials sold by a service provider to a recipient of service from the tax leviable thereon, subject to documentary proof specifically indicating the value of such goods and material. This notification was specified to come into force w.e.f. July 01, 2013.

(b) By Notification No. 15/2004-ST dated September 10, 2004, a further exemption was granted in respect of taxable service provided by a commercial concern to any person in relation to construction service. This Notification reads:

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central

Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a commercial concern to any person, in relation to construction service, from so much of the service tax leviable thereon under Section 66 of the said Act, as is in excess of the service tax calculated on a value which is equivalent to thirty-three per cent of the gross amount charged from any person by such commercial concern for providing the said taxable service"

Provided that this exemption shall not apply in such cases where-

(i) the credit of duty paid on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2004;

or

(ii) the commercial concern has availed the benefit under the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503(E), dated the 20th June, 2003]."

(c) Notification No. 4/2005-ST was issued on March 01, 2005, introducing an Explanation at the end of Notification No. 15/2004-ST. This Explanation reads:

"Explanation. – For the purposes of this notification, the "gross amount charged" shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service."

10) We may also note at this stage that the Board has also issued the Circular dated September 17, 2004 clarifying the scope of these services. In para 13.5 thereof, reasons for issuing the exemption notifications were given. This para reads as under:

"13.5 The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents.

Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-S.T.) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (Refer Notification No. 15/2004-S.T. dated 10-9-2004). This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under Notification No. 12/2003-S.T.) of exemption towards cost of goods are availed."

11) As already pointed out in the beginning, all these assessees are covered by Section 65(25b) of the Act as they are rendering 'construction or industrial construction service', which is a taxable service as per the provisions of Section 65(105)(zzq) of the Act. The entire dispute relates to the valuation that has to be arrived at in respect of taxable services rendered by the assessees. More precisely, the issue is as to whether the value of goods/materials supplied or provided free of cost by a service recipient and used for providing the taxable service of construction or industrial complex, is to be included in computation of gross amount charged by the service provider, for valuation of taxable service. For valuation of taxable service, provision is made in Section 67 of the Act which enumerates that it would be 'the gross amount charged by the service provider for such service provided or to be provided by him'. Whether the value of materials/ goods supplied free of cost by the service recipient to the service provider/ assessee is to be included to arrive at the 'gross amount', or not is the poser. On this aspect, there is no difference in amended Section 67 from unamended Section 67 of the Act and the parties were at ad idem to this extent.

12) On a reading of the above definition, it is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients:

a. Service tax is payable on the gross amount charged:- the words "gross amount" only refers to the entire contract value between the service provider and the service recipient. The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the

value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.

b. The amount charged should be for "for such service provided": Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined"

13) A plain meaning of the expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the obvious conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' simply, because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. This further gets strengthened from the words 'for such service provided or to be provided' by the service provider/ assessee. Again, obviously, in respect of the goods/materials supplied by the service recipient, no service is provided by the assessee/service provider. Explanation 3 to sub section (1) of Section 67 removes any doubt by clarifying that the gross amount charged for the taxable service shall include the amount received towards the taxable service before, during or after provision of such service, implying thereby that where no amount is charged that has not to be included in respect of such materials/goods which are supplied by the service recipient, naturally, no amount is received

by the service provider/assessee. Though, sub-section (4) of Section 67 states that the value shall be determined in such manner as may be prescribed, however, it is subject to the provisions of sub-sections (1), (2) and (3). Moreover, no such manner is prescribed which includes the value of free goods/material supplied by the service recipient for determination of the gross value.

14) We may note at this stage that Explanation (c) to sub-section (4) was relied upon by the learned counsel for the Revenue to buttress the stand taken by the Revenue and we again reproduce the said Explanation hereinbelow in order to understand the contention:

> (c) "gross amount charges" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]"
>
> [emphasis supplied]

15) It was argued that payment received in 'any form' and 'any amount credited or debited, as the case may be...' is to be included for the purposes of arriving at gross amount charges and is leviable to pay service tax. On that basis, it was sought to argue that the value of goods/materials supplied free is a form of payment and, therefore, should be added. We fail to understand the logic behind the aforesaid argument. A plain reading of Explanation (c) which makes the 'gross amount charges' inclusive of certain other payments would make it clear that the purpose is to include other modes of payments, in whatever form received; be it through cheque, credit card, deduction from account etc. It is in that hue, the provisions mentions that any form of payment by issue of credit notes or debit notes and book adjustment is also to be included. Therefore, the words 'in any form of payment' are by means of issue of credit notes or debit notes and book adjustment. With the supply of free goods/materials by the service recipient, no case is made out that any credit notes or debit notes were issued or any book adjustments were made. Likewise, the words, 'any amount credited or debited, as the case may be', to any account whether called 'suspense account or by any other name, in the books of accounts of a person liable to pay service tax' would not include the value of the goods supplied free as no amount was credited or debited in any account. In fact, this last portion is related to the debit or credit of the account of an associate enterprise and, therefore, takes care of those amounts which

are received by the associated enterprise for the services rendered by the service provider.

16) In fact, the definition of "gross amount charged" given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider.

17) Faced with the aforesaid situation, the argument of the learned counsel for the Revenue was that in case the assessees did not want to include the value of goods/materials supplied free of cost by the service recipient, they were not entitled to the benefit of notification dated September 10, 2004 read with notification dated March 01, 2005. It was argued that since building construction contract is a composite contract of providing services as well as supply of goods, the said notifications were issued for the convenience of the assessees. According to the Revenue, the purpose was to bifurcate the component of goods and services into 67%:33% and to provide a ready formula for payment of service tax on 33% of the gross amount. It was submitted that this percentage of 33% attributing to service element was prescribed keeping in view that in the entire construction project, roughly 67% comprises the cost of material and 33% is the value of services. However, this figure of 67% was arrived at keeping in mind the totality of goods and materials that are used in a construction project. Therefore, it was incumbent upon the assessees to include the value of goods/material supplied free of cost by the service recipient as well otherwise it would create imbalance and disturb the analogy that is kept in mind while issuing the said notifications and in such a situation, the AO can deny the benefit of aforesaid notifications. This argument may look to be attractive in the first blush but on the reading of the notifications as a whole, to our mind, it is not a valid argument.

18) In the first instance, no material is produced before us to justify that aforesaid basis of the formula was adopted while issuing the notification. In the absence of any such material, it would be anybody's guess as to what went in the mind of the Central Government in issuing these notifications and prescribing the service tax to be calculated on a value which is equivalent to 33% of the gross amount. Secondly, the language itself demolishes the argument of the learned counsel for the Revenue as it says '33% of the gross amount 'charged' from any person by such commercial concern for providing the said taxable service'. According to these notifications, service tax is to be calculated on a value which is 33% of the gross amount that is charged from the service recipient. Obviously, no amount is charged (and it could not be) by the service provider in respect of goods or materials which are supplied by the service recipient. It also makes it clear that valuation of gross amount has a causal connection with the amount that is charged by the service provider as that becomes the element of 'taxable service'. Thirdly, even when the explanation was added vide notification dated March 01, 2005, it only explained that the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of construction service. Thus, though it took care of the value of goods and materials supplied by the service provider/assessee by including value of such goods and materials for the purpose of arriving at gross amount charged, it did not deal with any eventuality whereby value of goods and material supplied or provided by the service recipient were also to be included in arriving at gross amount 'gross amount charged'.

19) Matter can be looked into from another angle as well. In the case of *Commissioner, Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd.*[1] This Court was concerned with exemption notifications which were issued in respect of 'taxable services' covered by sub-clause (zzq) of clause (105) read with clause (25b) and sub-clause (zzzh) of clause (105) read with clause (30a) and (91a) of Section 65 of Chapter V of the Act. This Court in the aforesaid judgment in respect of five 'taxable services' [viz. Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh)] has held as under:

> "23. A close look at the Finance Act, 1994 would show that the fixed taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines 'taxable service' as 'any service provided'.

Further, while referring to exemption notifications, it observed:

1 (2016) 1 SCC 170

> "42. …Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise."

It is clear from the above that the service tax is to be levied in respect of 'taxable services' and for the purpose of arriving at 33% of the gross amount charged, unless value of some goods/materials is specifically included by the Legislature, that cannot be added.

20) It is to be borne in mind that the notifications in questions are exemption notifications which have been issued under Section 93 of the Act. As per Section 93, the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, which is leviable on any 'taxable service' defined in any of sub-clauses of clause (105) of Section 65. Thus, exemption under Section 93 can only be granted in respect of those activities which the Parliament is competent to levy service tax and covered by sub-clause (zzq) of clause (105) and sub-clause (zzzh) of clause (105) of Section 65 of Chapter V of the Act under which such notifications were issued.

21) For the aforesaid reasons, we find ourselves in agreement with the view taken by the Full Bench of CESTAT in the impugned judgment dated September 6, 2013 and dismiss these appeals of the Revenue.

22) Insofar as Civil Appeal No. 3247 of 2015 is concerned, where the assessee is Gurmehar Construction, it may additionally be noted (as pointed out by the learned counsel for the respondent) that the assessee was a sole proprietorship concern of Mr. Narender Singh Atwal, who died on February 24, 2014. This is so stated in the counter affidavit filed by the respondent on May 16, 2017 and this position has not been disputed by the Department. This appeal, in any case, has abated as well in view of the judgment of this Court in *Shabina Abraham & Ors. v. Collector of Central Excise & Customs*[2]

23) As a result, all appeals stand dismissed.

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2 (2015) 10 SCC 770

[2018] 56 DSTC 84 – (Delhi)

IN THE SUPREME COURT OF INDIA
Civil Appellate Jurisdiction
[Dr. D Y Chandrachud, J.]

Civil Appeal Nos. 357-367 of 2018

M/s Maya Appliances (P) Ltd now known as
Preethi Kitchen Appliances Pvt. Ltd. ... Appellant

Versus

Addl. Commissioner of Commercial Taxes & Ors ... Respondent

Date of Order: 06.02.2018

SPECIAL LEAVE PETITION – TRADE DISCOUNT – POST SALE DISCOUNT THROUGH ISSUANCE OF CREDIT NOTES – PERFORMANCE BASED DISCOUNT GIVEN WHICH WAS NOT RELATABLE WITH RELEVANT TAX INVOICES – DEFINITION OF TURNOVER U/S 2(34) OF KARNATKA VALUE ADDED TAX ACT READ WITH RULE 3(2)(C) OF KARNATAKA VALUE ADDED RULES.

WHETHER RECOGNIZING ONLY DISCOUNTS MENTIONED IN THE TAX INVOICE ELIGIBLE FOR DEDUCTION FROM TOTAL TURNOVER. HELD NO – SALES RELATING TO SUCH DISCOUNT COULD NOT BE CONSTRUED TO MEANS THAT THE DISCOUNT WOULD BE INADMISSIBLE AS A DEDUCTION UNLESS THE TAX INVOICE PERTAINING TO THE GOODS ORIGINALLY ISSUED SHOWN THE DISCOUNT.

BURDEN FASTENED ON PETITIONER TO ESTABLISH FROM HIS ACCOUNTS THAT THE DISCOUNT RELATED SPECIFICALLY TO THE SALES WITH REFERENCE TO WHICH IT WAS ALLOWED.

Facts of the Case

The appellant manufactures home appliances such as mixer grinders, wet grinders and gas stoves. According to the appellant, based on a regular trade practice, it allowed discounts to its distributors. These discounts may take the form of a scheme discount or, as the case may be, a quantity discount. The appellant claimed the discount as a deduction from the total turnover while arriving at the taxable turnover under the Karnataka Value Added Tax Act 2003 ('the Act').

On 29 May 2010, the Deputy Commissioner of Commercial Taxes, Bengaluru disallowed the quantity discount accorded by the appellant to its distributors on the ground that the discount was not relatable to the sales effected by the relevant tax invoices. The assessing authority held that the quantity discount offered by the appellant could not be allowed under Rule

3(2)(c) of the Karnataka Value Added Tax Rules 2005 ('the Rules'). The period in question was 1 April 2006 to 31 March 2007, 1 April 2007 to 31 March 2008 and 1 April 2008 to 31 March 2009.

On appeal, the Joint Commissioner of Commercial Taxes (Appeals – 1), Bengaluru set aside the order of the assessing authority, holding that the quarterly scheme discount given by the appellant was an allowable deduction since the appellant had realized the consideration from the purchaser towards the sale of goods after deducting the amount of discount and, VAT was charged only on the net amount shown in the tax invoice after allowing the benefit of discount.

The order of the first appellate authority dated 12 October 2010 was revised under Section 64 (1) of the Act by the Additional Commissioner on the ground that the quarterly discount given by the appellant was in respect of the performance of the previous quarter and not in respect of the sales offered under the same invoices.

The appellant instituted Sales Tax Appeals before the High Court of Karnataka. By a judgment dated 19 March 2014, a Division Bench of the Karnataka High Court dismissed the appeals.

Held

This view was rendered by a bench of two learned Judges, including the learned Chief Justice. Having regard to the construction which has been placed on the provisions of Rule 3(2)(c) of the Rules in ***Southern Motors****, the judgment of the High Court in the present case was accordingly unsustainable.*

The liability to pay tax was on the taxable turnover. Taxable turnover was arrived at after making permissible deductions from the total turnover. Among them were "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The expression "the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as such discount" was not happily worded. The words "in respect of the sales relating to such discount" could not be construed to mean that the discount would be inadmissible as a deduction unless the tax invoice pertaining to the goods originally issued shows the discount. This was a matter of ascertainment. The assessee must establish from its accounts that the discount related specifically to the sales with reference to which it was allowed. In the first part of the

proviso, Rule 3(2)(c) recognizes trade practice or, as the case may be, the contact or agreement of the dealer. The latter part which provided a methodology for ascertainment does not override the earlier part. Both must be construed together. Above all, it must be remembered that taxable turnover was turnover net of deductions. All trade discounts were allowable as permissible deductions.

The Court accordingly allowed the appeals and set aside the judgment of the High Court. The Court directed that in computing the taxable turnover for the relevant years, the appellant would be entitled to a deduction of the trade discount, following the parameters laid down in paragraph 40 of the judgment in ***Southern Motors*** *and as explained above. There shall be no order as to costs.*

J U D G M E N T

Dr D Y Chandrachud, J.

1. The appellant manufactures home appliances such as mixer grinders, wet grinders and gas stoves. According to the appellant, based on a regular trade practice, it allows discounts to its distributors. These discounts may take the form of a scheme discount or, as the case may be, a quantity discount. The appellant claims the discount as a deduction from the total turnover while arriving at the taxable turnover under the Karnataka Value Added Tax Act 2003 ('the Act').

2. On 29 May 2010, the Deputy Commissioner of Commercial Taxes, Bengaluru disallowed the quantity discount accorded by the appellant to its distributors on the ground that the discount was not relatable to the sales effected by the relevant tax invoices. The assessing authority held that the quantity discount offered by the appellant could not be allowed under Rule 3(2)(c) of the Karnataka Value Added Tax Rules 2005 ('the Rules'). The period in question was 1 April 2006 to 31 March 2007, 1 April 2007 to 31 March 2008 and 1 April 2008 to 31 March 2009.

3. On appeal, the Joint Commissioner of Commercial Taxes (Appeals – 1), Bengaluru set aside the order of the assessing authority, holding that the quarterly scheme discount given by the appellant was an allowable deduction since the appellant had realized the consideration from the purchaser towards the sale of goods after deducting the amount of discount and, VAT was charged only on the net amount shown in the tax invoice after allowing the benefit of discount.

4. The order of the first appellate authority dated 12 October 2010 was revised under Section 64 (1) of the Act by the Additional Commissioner on the ground that the quarterly discount given by the appellant was in respect of the performance of the previous quarter and not in respect of the sales offered under the same invoices.

5. The appellant instituted Sales Tax Appeals before the High Court of Karnataka. By a judgment dated 19 March 2014, a Division Bench of the Karnataka High Court dismissed the appeals.

6. The case of the appellant is that it offers a quantity discount to its distributors depending on their performance during the previous quarter. This is part of a marketing/sales strategy under which the appellant allows a certain percentage as a quarterly discount to its dealers on the basis of the sales turnover generated by a dealer in every quarter of the financial year. The discount is given by the appellant to its dealers in the sales invoices raised in the subsequent quarter. The amount of the discount is deducted from the gross sale price and VAT is collected and remitted on the net sale price. According to the appellant, the discount is offered in the regular course of business and the amount which it receives towards sales consideration is only the net amount exclusive of discount, on which VAT is collected. Sales tax is leviable on the sale consideration received/receivable. Section 2 (36) defines the expression 'turnover' as the aggregate amount for which the goods are sold and the term 'aggregate' means the net amount for which the goods are sold. The appellant claims that allowing a discount on the basis of the quarterly performance of its dealers is only a measure adopted by it for the computation of the discount. However, the discount is given in a sales bill and VAT is collected on the net sale consideration after the deduction of the discount. The High Court, it has been submitted, erred in rejecting the case of the appellant on the ground that the discount is given in respect of the performance of the previous quarter and not in respect of the sales transaction for which the invoice is raised. The High Court, it has been submitted, has failed to notice that Section 2(36) mandates that turnover be computed as the aggregate amount for which goods are sold. It has been urged that deductions on account of trade discounts are given under agreement; or under terms of sale or by established practice and should not be disallowed only because they are not payable at the time of each invoice or deducted, from the invoice price **(Union of India v Bombay Tyre International Ltd[3])**. Moreover, periodical discounts such as half yearly discounts cannot, by their very nature, be shown on the face of each invoice as the discount is known only at the end of the relevant

3 (2005) 3 SCC 787

period. Since the discount is known and understood at the time of the removal of goods, though quantified later, it was held to be eligible for deduction as held in Government of India v Madras Rubber Factory Ltd2[4]. In sum and substance, the case of the appellant is that the sale price received by it is the net amount exclusive of discount. It is understood at the time of the sale itself that the customer would be entitled to a discount, the quantum being computed at the end of the quarter. Hence, the real sale price charged by the appellant for parting with the goods is the net amount exclusive of discount and hence the trade discount given by the appellant cannot form a part of the sales turnover. Finally, it has been urged that a literal construction of Rule 3 (2)(c) would render it unworkable and practically impossible to implement.

7 On the other hand, it has been urged on behalf of the respondents that under Rule 3 (2)(c) an amount which has been allowed as discount is permissible as a deduction in computing the taxable turnover only if the tax invoice issued in respect of the sales relating to such discount shows the amount allowed as discount. The taxable event is the sale and the sale price has to be determined on the basis of the tax invoice or sales bill issued at the time of sale from the seller to the purchaser. The sale price cannot be altered or modified subsequent to the date of issuance of the tax invoice or sales bill. According to the respondents, Rule 3 (2)(c) makes it mandatory that only a discount reflected in the sales invoice is eligible for deduction. Admittedly, the discounts shown in the invoices of the appellant were not for sale but for the performance of the previous period of three to six months before the date of the invoice. In the submission of the respondents, a harmonious reading of Section 3, the charging section, along with the definition of 'taxable turnover' in Section 2(34), 'total turnover' in Section 2(35) and 'turnover' in Section 2 (36) read with Rule 3(2)(c) would show that a performance-based discount, issued at a much later date after assessing the performance of the dealer for a given period would not fall within the purview of eligible discount. In order to arrive at the taxable turnover under Rule 3(2)(c), the discount has to be shown in respect of the sales in the tax invoice or the bill of sale.

8. Section 3 of the Act provides for the levy of tax. It provides that the tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered in accordance with the provisions of the Act. Every such dealer is under Section 4 liable to pay tax on his taxable turnover. The expression 'turnover' is defined in Section 2(36) thus:

4 (1995) 4 SCC 349

"2(36). 'Turnover' means the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (29) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, and includes the aggregate amount for which goods are purchased from a person not registered under the Act and the value of goods transferred or despatched outside the State otherwise than by way of sale, and subject to such conditions and restrictions as may be prescribed the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.

Explanation: The value of the goods transferred or despatched outside the State otherwise than by way of sale, shall be the amount for which the goods are ordinarily sold by the dealer or the prevailing market price of such goods where the dealer does not ordinarily sell the goods."

The expression 'taxable turnover' is defined in Section 2(34) as follows:

"2(34) 'Taxable turnover' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale."

The above definitions indicate that turnover is defined to mean the aggregate amount for which goods are sold, distributed, delivered or otherwise disposed of. The taxable turnover is computed after making such deductions from the total turnover and in such manner as may be prescribed ('total turnover' is defined by Section 2(35) to mean the aggregate turnover in all goods of a dealer at all places of business in the States). In arriving at the taxable turnover, the statute contemplates deductions, as prescribed, are to be made from the total turnover. The liability to pay tax is on the taxable turnover. Taxable turnover is the net amount that remains upon making deductions as prescribed from the turnover.

9. Rule 3 of the Rules provide for the determination of turnover. Clause

(1) of Rule 3 provide for the determination of the total turnover of a dealer. Clause (2) provide for the determination of the taxable turnover. Taxable turnover is arrived at by making the deductions which are stipulated in clause (2) from the total turnover. Rule 3(2)(c) provides as follows:

> "(2) The taxable turnover shall be determined by allowing the following deductions from the total turnover:-
>
> (c) All amounts allowed as discount:'
>
> PROVIDED that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case 3[and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount:."

10. In **Southern Motors v State of Karnataka**[5], a Bench of two learned judges of this Court considered the provisions of Rule 3(2)(c) of the Rules. In that case, the appellant who was a registered dealer with a business in motor vehicles issued tax invoices to its purchasers. After the sales were completed, credit notes were issued to the customers granting them discounts. As a result, the appellant retained only the net amount of the invoice less the discount reflected in the credit notes. During the course of the assessment, the appellant was subjected to orders of rectification, disallowing the deduction of post-sale discounts. This Court held thus:

> "28. It is a matter of common experience that in the present contemporary competitive market, trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of the original sale/purchase so as to be coevally reflected in the tax invoice or the bill of sale, as the case may be. The actual quantification of the trade discount, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be deferred till the happening of a contemplated event, so much so that the benefit thereof is extended at a point of time subsequent to that of the original sale/ purchase. That by itself, subject to proof of such regular trade practice and the contract/agreement entered into between the parties, would not render the trade discount otherwise legal and acceptable, either non est or fictitious for evading tax liability. In the above factual premise, the interpretation as sought to be provided

5 (2017) 3 SCC 467

by the Revenue would evidently reduce Section 3(2)(c) to a dead letter, ineffective and unworkable and would defeat the objective of permitting deductions from the total turnover on account of trade discount." (Id at page 485) (emphasis supplied)

Relying on the earlier decisions of this Court, it was held that a trade discount ought not to be disallowed merely on the ground that it is not payable at the time of each invoice or deducted from the invoice price. In the of view of this Court :

"29…Perceptionally, if taxable turnover is to be comprised of sale/ purchase price, it is beyond one's comprehension as to why the trade discount should be disallowed, subject to the proof thereof, only because it was effectuated subsequent to the original sale but evidenced by contemporaneous documents and reflected in the relevant accounts." (Id at page 485)

The Legislature, the Court held, would not be unaware of the prevalent practice of offering trade discounts in commercial dispensations. In the view of the Court:

"38…To insist on the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/ bill of sale, would be to demand the impossible for all practical purposes and thus would be illogical, irrational and absurd." (Id at page 492)

This Court accordingly read down the first proviso to Rule 3(2)(c) in the following manner:

"40. On an overall review of the scheme of the Act and the Rules and the underlying objectives, in particular of Sections 29 and 30 of the Act and Rule 3 of the Rules, we are of the considered opinion that the requirement of reference of the discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the final sale/purchase price and not limited to the original sale sans the trade discount. However, the transactions allowing discount have to be proved on the basis of contemporaneous records and the final sale price after deducting the trade discount must mandatorily be reflected in the accounts as stipulated under Rule 3(2)(c) of the Rules. The sale/ purchase price has to be adjudged on a combined consideration of the tax invoice or bill of sale, as the case may be, along with the

> accounts reflecting the trade discount and the actual price paid. The first proviso has thus to be so read down, as above, to be in consonance with the true intendment of the legislature and to achieve as well the avowed objective of correct determination of the taxable turnover. The contrary interpretation accorded by the High Court being in defiance of logic and the established axioms of interpretation of statutes is thus unacceptable and is negated." (Id at page 493)

11. This view was rendered by a bench of two learned Judges, including one of us (the learned Chief Justice). Having regard to the construction which has been placed on the provisions of Rule 3(2)(c) of the Rules in **Southern Motors** (supra), the judgment of the High Court in the present case is accordingly unsustainable.

12. The liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The expression "the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as such discount" is not happily worded. The words "in respect of the sales relating to such discount" cannot be construed to mean that the discount would be inadmissible as a deduction unless the tax invoice pertaining to the goods originally issued shows the discount. This is a matter of ascertainment. The assessee must establish from its accounts that the discount relates specifically to the sales with reference to which it is allowed. In the first part of the proviso, Rule 3(2)(c) recognizes trade practice or, as the case may be, the contact or agreement of the dealer. The latter part which provides a methodology for ascertainment does not override the earlier part. Both must be construed together. Above all, it must be remembered that taxable turnover is turnover net of deductions. All trade discounts are allowable as permissible deductions.

13. We accordingly allow the appeals and set aside the judgment of the High Court. We direct that in computing the taxable turnover for the relevant years, the appellant would be entitled to a deduction of the trade discount, following the parameters laid down in paragraph 40 of the judgment in Southern Motors (supra) and as explained above. There shall be no order as to costs.

[2018] 56 DSTC 93

– (Delhi)

IN THE HIGH COURT OF JUDICATURE AT MADRAS
[Honourable Justice T.S.Sivagnanam]

W.P.(C) 24853/2017

Coimbatore Corporation Contractors
Welfare Association ... Petitioner

Versus

State of Tamil Nadu & Ors. ... Respondents

Date of Order: 05.10.2017

WRIT PETITION SEEKING DIRECTION TO PASS ORDERS ON REPRESENTATION FILED BEFORE REVENUE BY PAYING THE PAYMENT OF 12% GST IN ADDITION TO THE VALUE OF WORK DONE (I) FOR ALL WORKS CONTRACTS WHICH WERE EXECUTED PRIOR TO 01.07.2017 AND THE WORK IS UNDER PROGRESS, (II) FOR THE TENDERS CALLED AND AGREEMENT EXECUTED AFTER 01.07.2017 WITHOUT ANY GST PROVISION IN THE ESTIMATE AND TENDER, (III) THE LEVY OF 12% GST PROVISIONS TO BE INCLUDED IN ESTIMATES ITSELF FOR FURTHER TENDERS AND HAS TO BE PAID IN ADDITION TO THE VALUE OF WORK DONE FOR ALL WORKS CONTRACTS – DIRECTION ISSUED TO COMMISSIONER.

Facts of the Case

The petitioner was an association registered under the provisions of the Tamil Nadu Societies Act bearing Registration No.81/2012. The Association was formed for the Welfare of the members of the Road Contractors, who had been carrying on works for the National Highways and Highways department and other Governmental Organisation.

The contractors used to remit 2% tax on value for the works executed by them towards the Works Contract Tax under the Tamil Nadu Value Added Tax, 2006 in terms of Section 6 of the TNVAT Act.

After the enactment of the Central Goods and Services Tax Act, 2017 with effect from 01.07.2017, certain problems had arisen, which has compelled the petitioner to submit representations to the respondent.

Held

In the light of the stand taken by the respective parties there would be a direction to the Commissioner of Commercial Taxes to consider the representation given by the petitioner/ association and passed orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

The authorised representative of the petitioner/ association may be afforded an opportunity of personal hearing by the Commissioner. The petitioner/ association was directed to communicate the copies of the representation along with a copy of this order to the Commissioner of Commercial Taxes for due and effective compliance of the above directions.

Present for Petitioner	:	Mr. S.Doraisamy
Present for Respondents	:	Mr. A.Sri Jayanthi, Special Government Pleader Mr. K.Venkatesh, Government Advocate

O R D E R

The petitioner is an association registered under the provisions of the Tamil Nadu Societies Act bearing Registration No.81/2012. The Association was formed for the Welfare of the members of the Road Contractors, who have been carrying on works for the National Highways and Highways department and other Governmental organisation.

2. The contractors used to remit 2% tax on value for the works executed by them towards the Works Contract Tax under the Tamil Nadu Value Added Tax, 2006 [hereinafter called as "the TNVAT"] in terms of Section 6 of the TNVAT Act.

3. After the enactment of the Central Goods and Services Tax Act, 2017 with effect from 01.07.2017, certain problems have arisen, which has compelled the petitioner to submit representations to the respondent.

4. The petitioner would state that on 22.08.2017, the Central Government issued notification notifying that 6% of the tax is leviable by the Central Government towards Works Contract.

5. The State Government is empowered to levy towards works contract tax in addition to the works contract tax imposed by the Central Government. Therefore, the contractor would be liable to pay 12% of tax towards works contract.

6. Therefore, the petitioner/association made representations on 05.07.2017 10.07.2017, 11.07.2017 and 11.09.2017 to the respondents stating that the contract works for which the agreements were executed prior to 01.07.2017 GST cannot be imposed and 2% VAT alone is applicable.

7. Alternatively the association stated that if the petitioners are compelled to pay anything over and above 2%, the respondent in addition to the value of the work done, has to remit the GST as per the notification, since the representations submitted by the petitioner/ association have not been considered and no orders were passed.

8. When the case came up for hearing on 18.09.2017, the petitioner was directed to implead the Secretary to Government, Commercial Taxes Department and the Commissioner of Commercial Taxes. Accordingly, an application was filed to implead and the same was ordered by order dated 20.09.2017.

9. Mr.K.Venkatesh, learned Government Advocate [Taxes] accepted notices for the newly impleaded respondents and it appears that he had personally spoken to the Commissioner of Commercial Taxes, from which, it is seen that the Government also is in the process of discussing as to how the modality has to be worked out and what is the relief petitioner/ association entitled to.

10.In any event, since the petitioner's representations are pending, it is appropriate for the respondent to respond to the same by giving them a reply. The appropriate person who would be in a position to give reply is that the Commissioner of Commercial Taxes shall give a reply. Because all other authorities are the department of Highways and National Highways etc., who would not be in a position to specifically address the issue pointed out by the petitioner.

11.The learned Government Advocate has drawn the attention of this Court to G.O. Ms.No.264, Finance [Salaries] Department, dated 15.09.2017. The operative portion of the Government Order reads as follows :-

> "5. Under the new tax regime, GST (comprising CGST, SGST and IGST) on works contracts for Government work was intially notified at 18 percent. This had resulted in representations from contractors of ongoing works for compensation by procuring entity for increased tax liability over and above the contracted value of work. The difficulties arising out of increased GST on works contracts for Government work was deliberated in the GST Council Meetings held on 20th August 2017 and 9th September 2017. Consequently, the GST on works contracts for Government work is being reduced to 12 percent. This move more or less balances the taxes on works contracts in the pre GST and post GST regime.
>
> 6. Pending notification of guidelines in the matter, the Government now direct that all departments and procuring entitles shall made

'on account' payment of bills presented by contractors, restricting the payments to the value due as per existing contract agreements. Any difference on account of final payment due based on the guidelines to be issued and the 'on account' payment make as above may be adjusted from out of the 5 percent amount retained with procuring entity. The payment of final bill in cases where on account payments have been made shall be made only after the notification of the guidelines."

12. In the light of the stand taken by the respective parties there will be a direction to the Commissioner of Commercial Taxes to consider the representation given by the petitioner/ association and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

13. The authorised representative of the petitioner/ association may be afforded an opportunity of personal hearing by the Commissioner. The petitioner/ association is directed to communicate the copies of the representation along with a copy of this order to the Commissioner of Commercial Taxes for due and effective compliance of the above directions.

[2018] 56 DSTC 96 – (Delhi)

IN THE HIGH COURT OF RAJASTHAN
[Justice Jainendra Kumar Ranka]

S.B.Sales Tax Revision/Reference No. 229-230, 236-237 of 2012, 2,4,5 of 2013 and 196 of 2014

Johnson & Johnson Ltd. ... Petitioner

Versus

CTO, Anti-Evasion, Jaipur ... Respondent

Date of Order: 13.01.2017

ENTRIES IN SCHEDULE – RAJASTHAN VALUE ADDED TAX ACT, 2003 – WHETHER SHOWER TO SHOWER, LISTERINE MOUTH WASH AND SAVLON ARE HAVING MEDICINAL QUALITIES AND ARE DRUGS OR MEDICINE TO BE COVERED UNDER ENTRY NO. 43 OF SCHEDULE IV OF RVAT ACT – PRODUCTS SHOWER TO SHOWER AND LISTERINE MOUTH WASH HELD AS COSMETICS AND PRODUCT SAVLON HAD MEDICINAL PROPERTIES AND IT WAS COVERED UNDER ENTRY NO. 43 OF SCHEDULE IV OF RVAT ACT – PENALTY IS NOT LEVIABLE ISSUE DEBATABLE.

Facts of the Case

The petitioner was a Limited Company and was carrying on business of manufacture/production of cosmetics, toilet articles and medicinal goods. It was the case of petitioner that insofar as products which carry medicinal properties, were manufactured under a license issued under the Drugs & Cosmetics Act, 1940, and the issue raised in the present petitions was about three products, namely "Shower to Shower", "Listerine Mouthwash, Listerine Cool Mint Mouthwash", and one product "Savlon". While the assessee had challenged applicability of rate on two products "Shower to Shower", and "Listerine Mouthwash", as above, however, the Revenue had preferred cross appeals where the Tax Board held insofar as "Savlon", was concerned that it was a drug and the Revenue has also challenged deletion of penalty u/s 61.

Held

Though under Central Excise, Courts might have come to a conclusion that similar products were drugs or medicines, but insofar as Sales Tax laws or VAT provisions were concerned, *prima facie*, they had to be independently decided on the basis of entries prescribed in the Schedule to charge certain rates as prescribed in Sales Tax/VAT laws. Taking aforesaid reasoning these two products, were nothing more than cosmetics and even every cosmetic which was used to remove the body smell or odour will certainly contain some medicinal properties like acid, etc. and even if the licensing authorities may grant permission to the producers/manufacturers as drug but they could not be treated as a drug or medicine when specific entries under the Sales Tax laws were required to be looked into and considered. A minor percentage of acid/ethanol which may be available in almost all cosmetics as well, could not justify the claim as raised by assessee that they had to be classified as drugs/medicine.

Insofar as "Shower to Shower" and "Listerine Mouth Wash" were concerned, the finding reached by all the three authorities in unison was not required to be interfered with and the claim of the petitioner was required to be rejected and accordingly the petitions insofar as the assessee was concerned, was required to be dismissed.

Insofar as the issue raised by the Revenue about "Savlon" was concerned, I did agree with the finding reached by the Tax Board that it was entirely a different product and it had medicinal value for it was used when there was some cut or injury on the skin and the same was used as an antiseptic. A product which was used mainly for curing or treating

ailments or diseases and contains curative ingredients was required to be branded as a medicament.

Insofar as the penalty was concerned, which has been raised by the Revenue, the finding reached by the Tax Board was just and proper and was not required to be interfered with. Admittedly, it was a case where an issue of classification of entries was there and the issue becomes debatable once the assessee claims that it was a drug/medicine and Revenue may dispute to be falling in the general category or as a cosmetic but at least penalty could not be levied in such a case. Though it was a case of survey and some material was gathered by the AO during the course of survey but that by itself did not mean that the assessee had concealed the particulars so as to be visited with penalty u/s 61. Admittedly, also the AO had disturbed only as to what proper rate should be there and had not disturbed or tinkered or found any sale to be unrecorded even after conducting survey, and it was also a finding of fact that all the relevant entries have been found to be recorded in the books of account. The Apex Court as well as Rajasthan High Court have in identical cases held that when there was an issue of classification and issue being debatable, the penalty was not leviable/imposable/sustainable.

Present for Petitioner	:	P.K. Kasliwal and Priyesh Kasliwal, Advocates
Present for Respondents	:	Ms. Tanvi Sahai and Ms. Meenal Ghiya, Advocates

JUDGMENT

1. The petitions are admitted on the following questions of law:

Petitions filed by assessee

'(i) Whether, in the facts and circumstances of the case, the learned Tax Board was justified in holding that "Shower to Shower", "Listerine Mouthwash" & "Listerine Cool Mint Mouthwash" are not taxable as per the Entry 43 of "Drugs and Medicines" appearing in Schedule-IV of the RVAT Act and are taxable in residuary entry at the rate of 12.5% as per Schedule-V of the RVAT Act?'

Petitions filed by Revenue

"(ii) Whether in the facts and circumstances of the case the learned Tax Board was justified in law in holding that the

product of respondent "Savlon" falls within the ambit of drug and medicine despite of the fact that the assessing authority as well as appellate authority have categorically held same to be falling in residuary entry liable to be taxed at higher rate.

(iii) Whether in the facts and circumstances of the case the learned Tax Board was justified in law and has not acted illegally and perversely deleting the penalty u/s 61 of the Act despite of the fact that the tax at the lesser rate was deposited contrary to the applicable rate of tax on the goods sold by the respondent assessee."

2. Heard learned counsel for the parties finally.

3. Since all these petitions involve common questions, with the consent of parties all the petitions are being decided by this common order. It relates to assessment years 2006-07 to 2009-10.

4. Brief facts noticed are that the petitioner is a Limited Company and is carrying on business of manufacture/production of cosmetics, toilet articles and medicinal goods. It is the case of petitioner that insofar as products which carry medicinal properties, are manufactured under a license issued under the Drugs & Cosmetics Act, 1940, and the issue raised in the present petitions is about three products, namely "Shower to Shower", "Listerine Mouthwash, Listerine Cool Mint Mouthwash", and one product "Savlon". While the assessee has challenged applicability of rate on two products "Shower to Shower", and "Listerine Mouthwash", as above, however, the Revenue has preferred cross appeals where the Tax Board held insofar as "Savlon", is concerned that it is a drug and the Revenue has also challenged deletion of penalty u/s 61.

5. The Assessing Officer, during a survey, taking into consideration the products after analysing the medicinal value and in particular test of common parlance, held that the three products named above, cannot be said to fall as drugs and a residuary rate is applicable and accordingly charged differential rate and held that the rate of 12.5% being the general rate or residuary rate, is required to be applied, accordingly charged differential rate on the sales recorded. The AO also levied interest u/s 55 and also imposed penalty u/s 61 of the Act holding that the assessee concealed the particulars and furnished inaccurate particulars by paying a lower rate of tax.

6. The matter was assailed before the Dy. Commissioner (Appeals), who was also not satisfied with the contention raised by assessee and upheld the order of AO. On a further appeal, the Tax Board, taking into

consideration the material placed on record, insofar as the product "Savlon" is concerned, held that it has medicinal value as held in the case of Reckitt & Benckiser (India) Ltd. - (2011) 31 Tax Update 37, which was producing "Dettol" and the same ingredients/ composition being there, held that rate of 4% or 5% is applicable as against residuary rate of 12.5%. However, insofar as the two other products, namely "Shower to Shower" and "Listerine Mouthwash" are concerned, the Tax Board was also not satisfied with the contention of assessee and upheld the orders of the AO as well as DC(A).

7. The Tax Board also held that the penalty is not imposable u/s 61 and accordingly deleted the penalty, however, insofar as interest is concerned, upheld the same.

8. Learned counsel for the petitioner contended that all the three items under challenge whether by the assessee or by the Revenue, has medicinal value and they are not ordinary products as held by the lower authorities. Learned counsel contended that the license granted by the competent authority brings out clearly that in the product "shower to shower prickly heat powder" it contain "salicylic acid", "jasad bhasma", "tankanamla", "starch & its derivatives", "perfume AL 5729","dugdhapashana", and other ingredients which prove that these are special products for specific purposes. Learned counsel contended that a similar product by the name Nycil having the same ingredients has been considered to be a medicine/ drug in the case of B. Shah & Co. v. State of Gujarat [1971] 28 STC 5 (Guj.), and when the same ingredients or contents are available in the said product as that of Nycil, the claim of assessee is well justified and reasoned.

9. Learned counsel also contended that the product manufactured by the assessee of "Listerine Mouthwash" as also "Cool Mint Listerine Mouthwash" contains "Thymol IP", "Eucalyptol PCs", "Menthol IP", and other ingredients and all these are used for specialised purpose and are used as a medicine and not in ordinary sense. Learned counsel also contended that "Vicks" which also contains ethanol as in "Listerine" has been held to be a drug. Even "Vicco Vajradanti" and "Lal Tel" have been held to be drug/medicine by the various Courts. Learned counsel also contended that the authorities below are not technical persons to judge as to whether they have some medicinal value or not, rather when the drug authorities have held them to be of medicinal value as a drug/medicine, the claim deserves to be allowed.

10. Learned counsel for the petitioner contended that the finding reached insofar as "Savlon" is concerned, the Tax Board has rightly held it

to be a drug and taken into consideration the antiseptic value which it has to protect against germs in cuts, abrasions, minor burns and other infective skin conditions and the same is just like "Dettol", and supported the order of Tax Board in this regard.

11. Learned counsel also relied on *Naturalle Health Products (P.) Ltd. v. Collector of Central Excise 2003 taxmann.com 340 (SC), CCE v. Sharma Chemical Works 2003 taxmann.com 1240 (SC), Puma Ayurvedic Herbal (P.) Ltd. v. CCE 2006 taxmann.com 1591 (SC), Dabur India Ltd. v. Collector of Central Excise 2005 taxmann.com 1222 (SC), Ponds India Ltd. v. CTT 2009 taxmann.com 934 (SC), Union of India v. Vicco Laboratories 2008 taxmann.com 520 (SC), CCE v. Vicco Laboratories 2005 taxmann. com 447 (SC), ICPA Health Products (P.) Ltd. v. CCE 2004 taxmann.com 745 (SC), CCE v. Hindustan Lever Ltd. [2015] 60 taxmann.com 470/51 GST 818 (SC), CCE v. Ciens Laboratories [2013] 38 taxmann.com 337/42 GST 21 (SC), CCE v. Ishaan Research Lab (P.) Ltd. 2008 taxmann.com 939 (SC), Muller & Phipps (India) Ltd. v. Collector of Central Excise 2004 taxmann.com 821 (SC), B. Shah & Co. (supra), Union of India v. G.D. Pharmaceuticals Ltd. 1998 taxmann.com 2037 (All.), State of Orissa v. Reckitt & Colman of India Ltd. [1995] 97 STC 279, Asstt. Commissioner, Anti Evasion v. Camlin Ltd. 2015 (4) RLW 3130 (Raj.), Asstt. Commissioner, Commercial Taxes Department v. Khandelwal Drug Agencies [S.T.R. No. 151 of 2005, dated 25-11-2016 (Raj.)]*

12. Learned counsel also contended that the penalty was rightly deleted by the Tax Board and there is no case made out of imposition of penalty as all facts were available before the AO and insofar as classification is concerned, penalty u/s 61 is not leviable or imposable and relied upon the judgments of *Sree Krishna Electricals v. State of Tamil Nadu [2009] 11 SCC 687*, of the Apex Court so also judgment of this Court in the case of *CTO v. Bambino Agro Industries Ltd. [STR No. 59 of 2010, dated 29-9-2015]*.

13. *Per contra*, learned counsel for the respondent vehemently contended that a minor percentage of acid or ethanol contained in the product cannot be said to be a drug or a medicine. Learned counsel contended that the lower authorities have insofar as "Shower to Shower" and "Listerine" has in unison come to the conclusion that they contain no medicinal value or drugs and even are freely available in general stores, whereas, if they can be said to be drug/medicines, they can only be sold by a licensed trader or under the prescription of a medical Doctor. Learned counsel contended that these products can be merely termed as cosmetics and nothing more. Learned counsel also contended that even applying the

test of common parlance it does not show or prove that these are to be considered as medicines or drugs. Learned counsel contended that even Savlon is not a drug and both the AO as well as DC(A) have rightly held that these are not drugs and the findings reached by the Tax Board is required to be reversed as claimed in the petition preferred by the Revenue.

14. Learned counsel for the respondent also contended that all the cases relied upon by the learned counsel for the petitioner are under Excise Act and reliance cannot be placed on the findings reached under Excise Act as they are entirely different provisions. Learned counsel also contended that various Courts have held that even if some ingredients of medicinal value or use are there, it cannot be said to be a medicine and even the common parlance test does not justify that these products can be said to be drugs/medicines.

15. Learned counsel also justified imposition of penalty u/s 61 as it is a clear cut case of evasion of tax and on the material found during the course of survey it can clearly and safely be said that the assessee is paying tax at lower rate, and contended that the penalty was rightly imposed by the AO and upheld by the DC(A) and wrongly deleted by Tax Board, which is required to be upheld.

16. I have considered the arguments advanced by the learned counsel for the parties and have perused the material on record and have gone through the judgments.

17. In my view the findings reached by the Tax Board is just and proper and is not required to be interfered with as the Tax Board has gone into the issue elaborately after taking into consideration the ingredients in all the three items. Insofar as "Shower to Shower" and "Listerine Mouth Wash" are concerned, in my view these two products can be used by any person irrespective of prescribing by a medical doctor for one to feel fresh and to avoid/remove body odour or to remove bad smell in body/mouth and in my view these are products which are freely available in the market and merely because there may be some percentage of acid or ethanol or similar ingredients, it cannot be said that they can be said to be like a medicine or even can be said to be a medicine or a drug. The Apex Court has time and again held that in the matters of classification, or products like this, common parlance test can be applied and in my view even by applying common parlance test, these two products, namely "Shower to Shower" and "Listerine Mouth Wash" cannot be said to be drugs or medicine. "Shower to Shower" is just like a cosmetic, may be it has some medicinal value, similar is "Listerine Mouth Wash" and by both these products one may merely feel good or fresh but these products certainly cannot be said

to be medicines or remotely even drugs and these two products cannot improve any ailment, sufferance, disease of body/mouth.

18. In my view, though under Central Excise, Courts may have come to a conclusion that similar products are drugs or medicines, but insofar as Sales Tax laws or VAT provisions are concerned, prima facie, they have to be independently decided on the basis of entries prescribed in the Schedule to charge certain rates as prescribed in Sales Tax/VAT laws. Taking aforesaid reasoning in my view these two products, are nothing more than cosmetics and even every cosmetic which is used to remove the body smell or odour will certainly contain some medicinal properties like acid, etc. and even if the licensing authorities may grant permission to the producers/manufacturers as drug but they cannot be treated as a drug or medicine when specific entries under the Sales Tax laws are required to be looked into and considered. A minor percentage of acid/ethanol which may be available in almost all cosmetics as well, cannot justify the claim as raised by assessee that they have to be classified as drugs/medicine.

19. Accordingly, in my view insofar as "Shower to Shower" and "Listerine Mouth Wash" are concerned, the finding reached by all the three authorities in unison is not required to be interfered with and the claim of the petitioner is required to be rejected and accordingly the petitions insofar as the assessee is concerned, is required to be dismissed.

20. Insofar as the issue raised by the Revenue about "Savlon" is concerned, I do agree with the finding reached by the Tax Board that it is entirely a different product and it has medicinal value for it is used when there is some cut or injury on the skin and the same is used as an antiseptic. A product which is used mainly for curing or treating ailments or diseases and contains curative ingredients is required to be branded as a medicament.

20.1 The Apex Court in the case of *Commissioner of Central Excise v. Sharma Chemical Works* (supra), which was related to "Banphool Oil", after taking into consideration the tests laid down, held that the mere fact that a product is sold across the counters and not under a doctor's prescription, does not by itself lead to the conclusion that it is not a medicament. Generally the percentage of dosage of the medicament will be such as can be absorbed by the human body. The main criteria for determining classification is normally the use it is put to by the customers who use it, and taking into consideration the usage of "Banphool Oil" the Court held that the oil can be used for treatment of headache, eye problem, night blindness, reeling, head weak memory, hysteria, amnesia, blood pressure,

insomnia etc. and the product was registered with the Drug Controller and is being manufactured under a drug license.

20.2 Another company Reckitt Benckiser (India) Ltd. which is manufacturing "Dettol" having same ingredients as that in "Savlon", the Kerala High Court in *Reckit Benckiser (India) Ltd. v. State of Kerala* [Cr. M.C. Nos. 4997 of 2010 and 541 of 2011] vide judgment and order dated 24-3-2011, though deciding a matter relating to Criminal Misc. Case, had extensively taken into consideration the antiseptic value and has considered medical dictionary, and observed as under :—

> "'Disinfection' is defined as "the process of killing pathogenic organisms or of rendering them inert". The above descriptions persuades me to hold that the function of a 'Disinfectant' which is a chemical or mixture of chemicals of appropriate percentage is destruction or making inert micro organisms particularly on inanimate objects. But that does not mean that a Disinfectant could be used only on inanimate objects and the moment it could be used on animate objects also, it ceases to be a 'Disinfectant' and became an 'Antiseptic'. Its use on animate objects is only external with the same purpose-destruction or making inert micro organisms.
>
> It includes sterilisation of instruments and general disinfection of wards and theatre, hands, face, masks, soiled hospital linen, etc. (i.e., on inanimate objects). It can also be used for bathing and irrigation of abscesses and boils, not to say about its use to prevent dandruff. 'Dettol' can be used for bathing as well. It is stated (on the label) that a little Dettol added to bath water is pleasant, refreshing and deodorising. A deodorant is a substance that destroys or masks odors (smell). The mere fact that 'Dettol' can also be used for pre-operative preparation of patient's skin or as antisepsis in obstetrics and midwifery, on cuts and wounds (also bites, scratches and insect sting), all externally, and all for the purpose of destruction or making inert micro organisms in my view does not make 'Dettol' anything other than a 'Disinfectant'.
>
> Dettol is a 'Disinfectant' used to treat inanimate objects and materials though it may also be applied to agents used to treat the skin and other body membranes and cavities (externally). Dettol contains some chemicals which are antiseptic but does not loose its character as a Disinfectant for the said reason or that it can be used to treat skin and other body membranes and cavities…"

20.3 The Apex Court in the case of ICPA Health Products (P.) Ltd. (supra) was considering a case of Hexiperp, Hexiscrub (Surgiscrub) and Hexiaque, which also contain Chloral Hex dine Gluconate Solution BP, which is also available in "Savlon" and held it to be a medicine. 20.4 Taking into consideration the aforesaid, the finding reached by the Tax Board, in my view, is just and proper and is not required to be interfered with.

21. Insofar as the penalty is concerned, which has been raised by the Revenue, in my view the finding reached by the Tax Board is just and proper and is not required to be interfered with. Admittedly, it is a case where an issue of classification of entries is there and the issue becomes debatable once the assessee claims that it is a drug/medicine and Revenue may dispute to be falling in the general category or as a cosmetic but at least penalty cannot be levied in such a case. Though it is a case of survey and some material was gathered by the AO during the course of survey but that by itself does not mean that the assessee has concealed the particulars so as to be visited with penalty u/s 61. Admittedly, also the AO has disturbed only as to what proper rate should be there and has not disturbed or tinkered or found any sale to be unrecorded even after conducting survey, and it is also a finding of fact that all the relevant entries have been found to be recorded in the books of account. The Apex Court as well as this Court have in identical cases held that when there is an issue of classification and issue being debatable, the penalty is not leviable/imposable/sustainable. The judgment in the case of *Sree Krishna Electricals* (supra) of the Apex Court so also judgment of this Court in the case of *Bambino Agro Industries Ltd.* (supra) are sufficient to refer for non-imposition of penalty. It would be appropriate to quote the relevant para of the judgment in *Sree Krishna Electricals* (supra):—

> "7. So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealers' turnover disallowing the exemption penalty cannot be imposed. The penalty levied stands set aside."

This Court in the case of *CTO v. Bambino Agro Industries* (supra) observed as under :—

> "Though it is claimed on the part of the assessee that it was paying tax in accordance with the rate where the registered office of the limited company is situated, i.e., Andhra Pradesh but certainly it was the duty of the assessee to have known the exact rate of tax being

applicable in the State of Rajasthan when admittedly the case falls under the Rajasthan Value Added Tax Act, 2003. Nevertheless, in my view, it is not a case where the Revenue claims that the assessee did not pay any tax or concealed the particulars of sales, rather there could be a bona fide error about classification of entry as to in which entry the goods do fall. In my view, merely because the rate of 12.5% may have been applicable on the items which were being manufactured/sold by the assessee and the assessee having shown 4%, in my view, at least penalty u/s 61 may not be leviable in the instant case and on the facts noticed."

22. In view of the observations made hereinbefore, the questions raised by the assessee are answered in favour of the Revenue and against the assessee, and the questions raised by the Revenue are answered in favour of the assessee and against the Revenue. Resultantly, all the petitions, both of the assessee as well as by the Revenue, stand dismissed with no order as to costs.

[2018] 56 DSTC 106 – (Delhi)

IN THE HIGH COURT OF KERALA

[Justice K.Vinod Chandran]

W.P.(C)36413/2017

Sameer Mat Industries ... Petitioner

Versus

State of Kerala ... Respondent

Date of Order: 20.11.2017

SEARCH AND SEIZURE U/S 67 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 - WHETHER GOODS DETAINED BY DETAINING AUTHORITY ON GROUND OF MIS-CLASSIFICATION AND ALSO UNDER VALUATION WERE TO BE PERMITTED TO BE RELEASED ON EXECUTION OF SIMPLE BOND WITHOUT SURETIES, AS ISSUE OF MISCLASSIFICATION AND UNDER VALUATION OF GOODS HAS TO BE GONE INTO BY RESPECTIVE ASSESSING OFFICERS AND NOT BY DETAINING OFFICER - HELD, YES.

Facts of the Case

The petitioner the consignor of certain goods had approached the Court against the notice issued by the detaining authority under the CGST/SGST Act. After detention when verification was made, it was found that there was mis-classification as also under valuation. The mis-classification was in so far as the goods being described as falling under HSN Code 4601 as per the invoice. On verification of the goods transported, it was seen that it could only fall under HSN Code 3926. There was a rate difference in so far

as HSN Code 4601 attracting tax @18% while HSN Code 3926 attracting tax @28%. Further ground was the mis-classification which the detaining authority assumed on the basis of the market value of the goods as known to him but not verified with any material. The detention notice also directed payment of CGST and SGST each @14% totaling 28% and the GST @5% for one other commodity as also a security deposit of an equal amount.

The essential contention taken up by the petitioner was that the goods were transported inter-State and neither CGST nor SGST was applicable to such goods. It was also contended that the HSN Code as disclosed in the invoice was the one used by the manufacturer. The petitioner having purchased the goods from the manufacturer at Delhi could not change the HSN Code in which event there would be a violation of the provisions of the tax statutes. It was further contended that the E-way Bill uploading procedure as provided in the Rules to the CGST which has been adopted under the IGST was not implemented as of now. The same was deferred till 31.12.2017. Hence to support the case of the inter-State transport the petitioner need accompany the goods only with an invoice which has been done in the present case.

Held

There is no doubt that the authorities appointed by the State had been empowered to implement the provisions of the enactments which regulates the inter-State as also the intra-State trade. However the specific power invoked in issuing the impugned notice was under the CGST/SGST which was applicable only to the intra-state movement of goods. Admittedly the petitioner had consigned the goods from Tamil Nadu and was transporting it to the 3rd respondent at Pattambi. The 3rd respondent also appeared and submits that they were ready to accept the consignment. The issue of mis-classification and under valuation had to be gone into by the respective assessing officers and not by the detaining officer. In such circumstances, the Court was not inclined to permit the further detention of the goods. The petitioners shall be permitted release of the goods on the execution of simple bond without sureties as expeditiously as possible. The detaining officer shall inform the assessing officer of the 3rd respondent who would be entitled to take appropriate proceedings at the time of assessment of the 3rd respondent. The assessing officer of the petitioners at Tamil Nadu would also be intimated, the details of whom shall be furnished by the petitioners before release of the goods.

The writ petition was allowed making it clear that the petitioners and the 3rd respondent shall co-operate in the adjudication proceedings under the

IGST Act. The notice shall be deemed to be one under the IGST Act. No observation on merits and the parties left to suffer their respective costs.

Present for Petitioner	:	M. Gopikrishnan Nambiar, P. Gopinath, K. John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham and Raja Kannan, Advocates
Present for Respondents	:	Dr. Thushara James, Sr. Govt. Pleader and Bobby John, Advocate

JUDGMENT

The petitioner the consignor of certain goods has approached this Court against the notice issued by the detaining authority under the CGST/SGST Act. After detention when verification was made, it was found that there was misclassification as also under valuation. The mis-classification was in so far as the goods being described as falling under HSN Code 4601 as per the invoice. On verification of the goods transported, it was seen that it could only fall under HSN Code 3926. There was a rate difference in so far as HSN Code 4601 attracting tax @18% while HSN Code 3926 attracting tax @28%. Further ground was the mis-classification which the detaining authority assumed on the basis of the market value of the goods as known to him but not verified with any material. The detention notice also directed payment of CGST and SGST each @14% totaling 28% and the GST @5% for one other commodity as also a security deposit of an equal amount.

2. The essential contention taken up by the petitioner is that the goods were transported inter-State and neither CGST nor SGST was applicable to such goods. It is also contended that the HSN Code as disclosed in the invoice is the one used by the manufacturer. The petitioner having purchased the goods from the manufacturer at Delhi could not change the HSN Code in which event there would be a violation of the provisions of the tax statutes. It is further contended that the E-way Bill uploading procedure as provided in the Rules to the CGST which has been adopted under the IGST is not implemented as of now. The same is deferred till 31.12.2017. Hence to support the case of the inter-State transport the petitioner need accompany the goods only with an invoice which has been done in the present case.

3. The learned Government Pleader however submits that the release of goods be permitted only on the payment of the amounts demanded, especially since the petitioners consignors are not dealers within the State.

The authorities appointed under the IGST and the CGST/SGST are one and the same and it is the authorities of the State, who have been empowered to implement the provisions of the goods and service tax enactments. It is also contended that the supply of goods with an invoice without proper description being made attracts penalty.

4. There is no doubt that the authorities appointed by the State have been empowered to implement the provisions of the enactments which regulates the inter-State as also the intra-State trade. However the specific power invoked in issuing the impugned notice is under the CGST/SGST which is applicable only to the intra-state movement of goods. Admittedly the petitioner has consigned the goods from Tamil Nadu and was transporting it to the 3rd respondent at Pattambi. The 3rd respondent also appears and submits that they are ready to accept the consignment. The issue of misclassification and under valuation has to be gone into by the respective assessing officers and not by the detaining officer. In such circumstances, this Court is not inclined to permit the further detention of the goods. The petitioners shall be permitted release of the goods on the execution of simple bond without sureties as expeditiously as possible. The detaining officer shall inform the assessing officer of the 3rd respondent who would be entitled to take appropriate proceedings at the time of assessment of the 3rd respondent. The assessing officer of the petitioners at Tamil Nadu would also be intimated, the details of whom shall be furnished by the petitioners before release of the goods.

5. With the above observations the writ petition is allowed making it clear that the petitioners and the 3rd respondent shall co-operate in the adjudication proceedings under the IGST Act. The notice shall be deemed to be one under the IGST Act. No observation on merits and the parties left to suffer their respective costs.

[2018] 56 DSTC 109 – (Delhi)

IN THE HIGH COURT OF DELHI
[Justice S. Muralidhar and Justice Chander Shekhar]

W.P.(C) 4385/2017

Swastik Polymers ... Petitioner

Versus

Commissioner of Trade & Taxes & Anr. ... Respondent

Date of Order: 19.05.2017

NOTICES, ADJUSTMENT ORDER AND NOTICES OF DEFAULT ASSESSMENT UPLOADED ON SYSTEM AS SOON AS WERE ISSUED – NO ORDER SHEET

MAINTAINED – WHETHER JUSTIFIED, HELD – NO. DIRECTIONS ISSUED TO COMMISSIONER OF TRADE & TAXES TO GIVE INSTRUCTIONS TO VATO AND AVATO THAT THEY WOULD SIGN ANY ORDER AND UPLOAD A DIGITALLY SIGNED THEREOF ON SYSTEM.

Present for Petitioner : Mr. Raj K. Batra, Advocates

Present for Respondents : Mr. Avtar Singh, Advocate

O R D E R

CM No.19176/2017

1. Allowed, subject to all just exceptions.

WP(C) No.4385/2017

2. Notice. Mr. Avtar Singh, Advocate accepts notice.

3. One of the issues raised by Mr. Raj K. Batra, learned counsel for the Petitioner is that, till 30th March, 2017, the Petitioner was not informed of the demands that had been created by the Department pertaining to the periods 2010-2011 and 2012 and 2013 or even of the Adjustment Order dated 9th December, 2016 in relation to the earlier demands for the periods 2007-2008 and 2008-2009.

4. Learned counsel for the Respondents, who is instructed by the Assistant Value Added Tax Officer ('AVATO'), present in Court, asserts that the Adjustment Order and the notices of default assessments were uploaded on the system as soon as they were issued. However, there is no noting on the file brought to the Court to indicate that they were uploaded as soon as they were issued.

5. Learned counsel for the Respondents states that the VATO will file a detailed affidavit, giving parawise reply to the petition, but also specifically dealing with the above issue on the exact date on which the Adjustment Order and notices of default assessments in the case of the Petitioner, copies of which were enclosed with the letter dated 30th March, 2017 addressed to the Petitioner, were in fact uploaded on the system. If there is any instruction/circular issued by the Commissioner, Delhi Value Added Tax ('DVAT') in this regard, that also should be enclosed with the affidavit.

6. Meanwhile, a direction is issued to the Commissioner, DVAT to issue, if not already issued, clear instructions to the VATOs and AVATOs that, as and when they sign any order and upload a digitally signed copy thereof on the system, there must be a noting on the file as to the date and time when it was so uploaded. Further, the software must facilitate online

verification of the date and time of the order being digitally signed. If not already issued, a circular to the above effect should be issued and a copy thereof be placed before the Court by the next date of hearing.

7. Further the Commissioner must put in place a system by which simultaneous with the uploading of an order, an intimation will be sent to the registered dealer concerned by SMS and/or e-mail. The log of the conformation of dispatch of the SMS or e-mail should also be preserved by the Department.

8. The Commissioner VAT will send to this Court on the next date a compliance report on the above two issues as in paras 5 and 6 by the next date.

9. List on 24th July, 2017. A certified copy of this order be delivered by Special Messenger to the Commissioner, VAT forthwith for compliance.

[2018] 56 DSTC 111 – (Delhi)

IN THE HIGH COURT OF DELHI

[Justice Sanjiv Khanna And Justice Chander Shekhar]

W.P.(C) 7837/2016

Cellular Operators Association of India and Others ... Petitioner

Versus

Union of India and Another ... Respondent

Date of Order: 15.02.2018

WRIT PETITION FOR QUASHING OF NOTIFICATION NO. 22/2015-CE(NT) DT 29.10.2015 – AS VIOLATING ARTICLES 14, 19(1)(G), 265 AND 300A OF CONSTITUTION OF INDIA – SEEKING DIRECTION FOR CREDIT ACCUMULATED ON ACCOUNT OF EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS SHOULD BE ALLOWED TO BE UTILISED FOR PAYMENT OF SERVICE TAX LEVIABLE AND PAYABLE ON TELECOMMUNICATION SERVICES –

CENVAT CREDIT RULES, 2004 – CREDIT OF EC AND SHE WAS ADMISSIBLE AND COULD BE UTILISED FOR PAYMENT OF EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS RESPECTIVELY – NOTIFICATION NO. 14/2015-CE AND 15/2015-CE DT 01.03.2015 – EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS WERE ABOLISHED AND WERE NOT PAYABLE W.E.F. 01.03.2015 – EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS WERE ALSO ABOLISHED AND CEASED TO BE PAYABLE ON TAXABLE SERVICES W.E.F. 01.06.2015 – PETITIONERS CLAIMED TO AVAIL BENEFIT OF THE UNUTILIZED AMOUNT OF EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS CREDIT FOR PAYMENT OF TAX ON EXCISABLE GOODS AND TAXABLE SERVICES – CREDIT OF EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS COULD BE ONLY ALLOWED AGAINST EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS AND

COULD NOT BE CROSS-UTILISED AGAINST THE EXCISE DUTY OR SERVICE TAX – WRIT PETITION DISMISSED.

Facts of the Case

Cellular Operators Association of India, a society registered under the Societies Registration Act, and nine others, had filed the writ petition for quashing of Notification No. 22/2015-CE(NT) dated 29th October, 2015 as violating Articles 14, 19(1)(g), 265 and 300A of the Constitution of India, and for direction that the credit accumulated on account of Education Cess (EC, for short) and Secondary and Higher Education Cess (SHE, for short) should be allowed to be utilised for payment of service tax leviable and payable on telecommunication services.

Finance (No. 2) Act, 2004 had introduced levy of EC on excisable goods and taxable services. SHE on excisable goods and taxable services was imposed vide Finance Act, 2007.

Under the CENVAT Credit Rules, 2004 (CCR, for short), credit of EC and SHE was admissible and could be utilised for payment of EC and SHE respectively. In other words, CENVAT credit on EC and SHE on inputs, capital goods and input services could be utilised and availed of for payment of EC and SHE on manufactured goods and output services. Input EC and SHE credit had the effect of preventing cascading effect on EC and SHE payable down the line. It was an accepted and admitted case that benefit of EC and SHE on inputs, etc. could not have been utilised for payment of excise duty service tax on the output, i.e., manufactured goods or taxable services. Thus, cross utilisation of EC and SHE towards excise duty or service tax was impermissible and not permitted.

EC and SHE were abolished and were not payable on excisable goods with effect from 1st March, 2015 vide Notification Nos. 14/2015-CE and 15/2015-CE both dated 1st March, 2015. EC and SHE were also abolished and ceased to be payable on taxable services when Section 95 of Finance Act (No. 2) 2004 and Section 140 of Finance Act, 2007 were omitted by Finance Act, 2015. The omission was to take effect from 1st June, 2015 vide Notification No.14/2015-ST dated 19th May, 2015. As a result, levy of EC and SHE on excisable goods was withdrawn with effect from 1st March, 2015 and in respect of taxable services with effect from 1st June, 2015. The petitioners did not have any grievance against the withdrawal or abolition of levy of EC and SHE.

The grievance of the petitioners was, and they claimed a vested right to avail benefit of the unutilized amount of EC or SHE credit, which

was available and had not been set off as on 1st March, 2015 and 1st June, 2015 for payment of tax on excisable goods and taxable services respectively. The contention was that EC and SHE were subsumed in the Central Excise Duty, the general rate of which was increased from 12% to 12.5%, and service tax, which was increased from 12.36% to 14%.

Held

Credit of EC and SHE could be only allowed against EC and SHE and could not be cross- utilized against the excise duty or service tax. In fact, what the petitioners seek was an amendment of the scheme to allow them to take cross utilization of the unutilized EC and SHE upon the two cesses being withdrawn against excise duty and service tax, though this was not the position even earlier. Both EC and SHE were withdrawn and abolished. They ceased to be payable. In these circumstances, it was not possible to accept the contention that a vested right or claim existed and legal issue was covered against the respondents by the decision in **Eicher Motors Limited and Another** *and* **Samtel India Limited***. The said decisions were distinguishable and inapplicable.*

The decision in **Eicher Motors Limited and Another** *was distinguished in the case of* **Osram Surya (P) Ltd. Versus Commissioner of Central Excise, Indore***, 2002 (142) ELT 5 (SC), wherein proviso to Rule 57 introducing six months time limit for claiming MODVAT credit benefit was challenged. Arguments predicated on vested right being annulled and reduced to nothing were rejected, recording as under -*

"7. Having heard the arguments of the parties and after considering the Rule in question, we think that by introducing the limitation in the said proviso to the Rule, the statute has not taken away any of the vested rights which had accrued to the manufacturers under the Scheme of MODVAT. That vested right continues to be in existence and what is restricted is the time within which the manufacturer has to enforce that right. The appellants, however, contended that imposition of a limitation is as good as taking away the vested right. In support of their argument, they have placed reliance on a judgment of this Court in Eicher Motors Ltd. v. Union of India (1999) 2 SCC 361 wherein this Court had held that a right accrued to an assessee on the date when it paid the tax on the raw materials or the inputs would continue until the facility available thereto gets worked out or until those goods existed. In that background, this Court held that by Section 37 of the Act, the authorities concerned cannot make a rule which could take away the said right on goods manufactured prior to the date specified in the rule concerned. In the facts of Eicher case (1999) 2

SCC 361 it is seen that by introduction of Rule 57-F(4-A) to the Rules, a credit which was lying unutilized on 16-3-1995 with the manufacturer was held to have lapsed. Therefore, that was a case wherein by introduction of the Rule a credit which was in the account of the manufacturer was held not to be available on the coming into force of that Rule, by that the right to credit itself was taken away, whereas in the instant case by the introduction of the second proviso to Rule 57-G, the credit in the account of a manufacturer was not taken away but only the manner and the time within which the said credit was to be taken or utilized alone was stipulated. It is to be noted at this juncture that the substantive right has not been taken away by the introduction of the proviso to the Rule in question but a procedural restriction was introduced which, in our opinion, is permissible in law. Therefore, in our opinion, the law laid down by this Court in Eicher case (1999) 2 SCC 361 does not apply to the facts of these cases. This is also the position with regard to the judgment of this Court in CCE v. Dai Ichi Karkaria Ltd.(1999) 7 SCC 448

8. It is vehemently argued on behalf of the appellants that in effect by introduction of this Rule, a manufacturer in whose account certain credit existed, would be denied of the right to take such credit consequently, as in the case of Eicher (1999) 2 SCC 361 a manufacturer's vested right is taken away, therefore, the Rule in question should be interpreted in such a manner that it did not apply to cases where the credit in question had accrued prior to the date of introduction of this proviso. In our opinion, this argument is not available to the appellants because none has questioned the legality or the validity of the Rule in question, therefore, any argument which in effect questions the validity of the Rule, cannot be permitted to be raised. The argument of the appellants that there was no time whatsoever given to some of the manufacturers to avail the credit after the introduction of the Rule also is based on arbitrariness of the Rule, and the same also will have to be rejected on the ground that there is no challenge to the validity of the Rule.

9. Without such a challenge, the appellants want us to interpret the Rule to mean that the Rule in question is not applicable in regard to credits acquired by a manufacturer prior to the coming into force of the Rule. This we find difficult because in our opinion the language of the proviso concerned is unambiguous. It specifically states that a manufacturer cannot take credit after six months from the date of issue of any of the documents specified in the first proviso to the said sub-rule. A plain reading of this sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the Rule and to cases where the manufacturer is seeking to do so after a period of six months from the

date when the manufacturer received the inputs. This sub-rule (sic proviso) does not operate retrospectively in the sense it does not cancel the credits nor does it in any manner affect the rights of those persons who have already taken the credit before coming into force of the Rule in question. It operates prospectively in regard to those manufacturers who seek to take credit after the coming into force of this Rule. Therefore, in our opinion, the Tribunal was justified in holding that the Rule in question only restricts the right of a manufacturer to take the credit beyond the stipulated period of six months under the Rule. Therefore, this appeal will have to fail."

This decision, and the distinction drawn, supports the observations recorded hereinabove by the Court in this case.

The Court did not find any merit in the writ petition and the same was dismissed.

Present for Petitioner	:	Mr. S.K. Bagaria, Sr. Advocate with Ms. Manya Bhardwaj, Mr. Abhinav Agrawal, Ms. Gunika Gupta and Mr. Ajeet Singh, Advocates
Present for Respondents	:	Ms. Suparna Srivastava, CGSC & Mr. Tushar Mathur, Advocate for UOI. Mr. Sameer Jain, Jr. Standing Counsel for respondent No. 2-CBEC.

JUDGMENT

Sanjiv Khanna, J.:

Cellular Operators Association of India, a society registered under the Societies Registration Act, and nine others, have filed the present writ petition for quashing of Notification No. 22/2015-CE (NT) dated 29th October, 2015 as violating Articles 14, 19(1)(g), 265 and 300A of the Constitution of India, and for direction that the credit accumulated on account of Education Cess (EC, for short) and Secondary and Higher Education Cess (SHE, for short) should be allowed to be utilised for payment of service tax leviable and payable on telecommunication services.

2. Finance (No. 2) Act, 2004 had introduced levy of EC on excisable goods and taxable services. SHE on excisable goods and taxable services was imposed vide Finance Act, 2007.

3. Under the CENVAT Credit Rules, 2004 (CCR, for short), credit of EC and SHE was admissible and could be utilised for payment of EC

and SHE respectively. In other words, CENVAT credit on EC and SHE on inputs, capital goods and input services could be utilised and availed of for payment of EC and SHE on manufactured goods and output services. Input EC and SHE credit had the effect of preventing cascading effect on EC and SHE payable down the line. It is an accepted and admitted case that benefit of EC and SHE on inputs, etc. could not have been utilised for payment of excise duty service tax on the output, i.e., manufactured goods or taxable services. Thus, cross utilisation of EC and SHE towards excise duty or service tax was impermissible and not permitted.

4. EC and SHE were abolished and were not payable on excisable goods with effect from 1st March, 2015 vide Notification Nos. 14/2015-CE and 15/2015-CE both dated 1st March, 2015. EC and SHE were also abolished and ceased to be payable on taxable services when Section 95 of Finance Act (No. 2) 2004 and Section 140 of Finance Act, 2007 were omitted by Finance Act, 2015. The omission was to take effect from 1st June, 2015 vide Notification No.14/2015-ST dated 19th May, 2015. As a result, levy of EC and SHE on excisable goods was withdrawn with effect from 1st March, 2015 and in respect of taxable services with effect from 1st June, 2015. The petitioners do not have any grievance against the withdrawal or abolition of levy of EC and SHE.

5. The grievance of the petitioners is, and they claim a vested right to avail benefit of the unutilized amount of EC or SHE credit, which was available and had not been set off as on 1st March, 2015 and 1st June, 2015 for payment of tax on excisable goods and taxable services respectively. The contention is that EC and SHE were subsumed in the Central Excise Duty, the general rate of which was increased from 12% to 12.5%, and service tax, which was increased from 12.36% to 14%. Reliance is placed upon the Budget Speech of the Finance Minister and the memorandum explaining provisions of Finance Bill, 2015, which reads:-

> "11.8. As part of the movement towards GST, I propose to subsume the Education Cess and the Secondary and Higher Education Cess in Central Excise duty. In effect, the general rate of Central Excise Duty of 12.36% including the cesses is being rounded off to 12.5%
>
> 121..... It is proposed to increase the present rate of Service Tax plus education cesses from 12.36% to a consolidated rate of 14%."
>
> Education Cess and Secondary & Higher Education Cess leviable on excisable goods are being subsumed in Basic Excise duty. Consequently, ...

> The standard ad valorem rate of Basic Excise Duty is being increased from 12% to 12.5% and specific rates of Basic Excise Duty on petrol, diesel, cement, cigarettes & other tobacco products (other than biris) are being suitably changed....
>
> the Service Tax rate is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, effective increase in Service Tax rate will be from existing rate of 12.36% (inclusive of cesses) to 14%. The new Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015. Till the time the revised rate comes into effect, the levy of 'Education cess' and 'Secondary and Higher Education cess' shall continue to be levied in Service Tax".

Reference is also made to the Explanation given by the Joint Secretary, Tax Research Unit, Ministry of Finance, Government of India, vide letter F.No.334/5/2015-TRU dated 28th February, 2015, which reads:-

> "The rate of Service Tax is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses"

The contention is that EC and SHE, which were earlier imposed and then withdrawn from 1st March, 2015 and 1st June 2015 for excisable goods and taxable services respectively, had been subsumed and included in the excise duty and service tax, and therefore, the amount lying in the credit towards EC and SHE should be available for availing CENVAT credit. This was not a case of abolition of EC and SHE, but the cesses were added and became part of the excise duty or service tax. Reliance is placed on the dictionary definition of the term "subsumed", which means to include, absorb in something else or incorporated into something larger or more general. Therefore under law, unutilised EC and SHE should be allowed to be utilised for payment of basic excise duty in excisable goods and service tax on taxable service, for otherwise the action would be clearly arbitrary, capricious and tantamount to lapsing of credit accrued on the input, though higher excise duty or service tax was payable on the output. The petitioners, it is asserted, have a vested right to claim benefit of utilization of the unutilized credit. Reliance is placed upon the judgment of the Supreme

Court in *Eicher Motors Limited and Another versus Union of India and Others*, (1999) 2 SCC 361 and *Samtel India Limited versus Commissioner of Central Excise, Jaipur,* (2003) 11 SCC 324.

6. The petitioners have pointed out that the issue with regard to utilisation of accumulated credit of EC and SHE as on 1st March, 2015 for excisable goods and 1st June, 2015 for taxable services was considered in the Tariff Conference held on 28th and 29th October, 2015 and post the said conference, Central Board of Excise and Customs had issued instructions vide letter No. 96/85/2015-CX.I dated 7th December, 2015 stating, inter alia,:-

> "B.21 – 'Hyderabad, Coimbatore, Vadodara, Vishakhapatnam, Delhi Zone-Cenvat Credit – Balance of Education Cess and Secondary & Higher Education Cess lying in the CENVAT Credit Account:
>
> Issue:
>
> Exemption from levy of Education Cess and Secondary & Higher Education Cess has been provided w.e.f. 01.03.2015 vide notification no. 14/2015-CE & 15/2015-CE both dated 01.03.2015, Sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004, specifies that CENVAT credit of specified duties shall be utilized for payment of those specified duties only. CENVAT Credit of Education Cess and Secondary & Higher Education Cess can be utilized only for payment of Education Cess and Secondary & Higher Education Cess, respectively. Consequent upon grant of exemption there is issue of utilization of the accumulated credit of the past. It is suggested that an amendment to sub-rule 7(b) of Rule 3 of CENVAT Credit Rules, 2004 may be made to allow the utilization of balance CENVAT Credit of Education Cess and Secondary & Higher Education Cess towards payment of either duty of excise or Service Tax.
>
> Discussion & Decision
>
> The conference after discussion and briefing from the officers from the Board noted that it was Government's conscious policy 'decision to withdraw the Education Cess and Secondary & Higher Education Cess. It is a policy decision to not allow utilization of accumulated credit of education cess and secondary and higher education cess after these Cesses have been phased out. As these Cesses have been phased out and no new liability to pay

such Cess arises, no vested right can be said to exist in relation to the accumulated credit of the past. The rule and notifications as they exist need to be followed and do not need any amendment."

It is submitted that the aforesaid reasoning is fallacious and contrary to law in view of the admission that EC and SHE were subsumed in the increased or higher excise duty and service tax rates applicable, which coincide with the withdrawal of EC and SHE.

7. In support of the said contention, reference was made by the petitioners to the amended CC Rules, i.e., CENVAT Credit Rules, 2004, which partially permit utilization of EC and SHE by adding six provisos in Rule 3, sub-rule (7) in clause (b), which reads as under:-

"**Cenvat Credit Rules, 2004-Second Amendment of 2015**

In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944) and Section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

(1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2015.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the second proviso, the following shall be substituted, namely:-

"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act:

Provided also that the credit of balance fifty per cent Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act:

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act."

"**Cenvat Credit Rules, 2004-Fifth Amendment of 2015**

In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944) and Section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Fifth Amendment) Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the fifth proviso, the following proviso shall be inserted, namely:-

"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service:

Provided also that the credit of balance fifty per cent Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15 can be utilized for payment of service tax on any output service:

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015 can be utilized for payment of service tax on any output service."

It is accordingly submitted that the respondents themselves in some cases have permitted credit of EC and SHE and utilization of accumulated credit for payment of excise duty and service tax.

8. The respondents have contested the petition on several grounds and, *inter alia*, asserted that credit of EC and SHE towards payment of excise duty or service tax is not a vested right. The effect of the legislation withdrawing EC and SHE was to abolish the cess, though while presenting the Bill, etc. and giving reasons for increase in the excise duty and service tax, it was stated that EC and SHE would not be henceforth levied and would get subsumed in the higher rate of tax. Cross-utilization of EC and SHE credit was never permitted and allowed under the earlier provisions. The two notifications incorporating provisos (3) to (8) to Rule 3, sub-rule (7) in clause (b) have a very limited application as they apply to cases of excise duty where capital goods or inputs or input services on which EC and SHE had been paid were received by the purchaser/manufacturer of the final product on or after 1st day of March, 2015 or were manufactured after 1st day of March, 2015. In case of service tax, credit of EC and SHE was given where inputs or capital goods were received by the provider of output services on or after 1st day of June, 2015 or where credit of EC and SHE paid on input service in respect of invoice, bill, challan or service tax certificate or transportation of goods by levy was received by the provider of output service on or after 1st day of June, 2015. Credit of balance fifty percent of EC and SHE paid on capital goods received in the factory of a manufacturer of final product in the financial year 2014-15 for payment of excise duty and service tax was also provided. These, as elucidated and explained, were new benefits and concessions granted, as cross utilization was earlier not permitted and allowed. Any new concession or benefit given, would not in law on stand-alone basis, confer a legal right to claim vested right to a concession or benefit which has not been granted. Of course, this amended provisions can be relied as a secondary fact to support the main argument that EC and SHE were subsumed.

9. The first aspect to be examined is the statutory effect of withdrawal of EC and SHE on excisable goods and taxable services with effect from 1st March, 2015 and 1st June, 2015 respectively, pursuant to the Finance Act, 2015. By Notification No. 14/2015-CE dated 1st March, 2015, the Central Government in public interest had granted exemption to all goods falling in the First Schedule of the Central Excise Tariff Act, 1885 from whole of EC leviable thereon under Section 93 of the Finance (No.2) Act, 2004. Similarly, vide Notification No.15/2015-CE dated 1st March, 2015, the Central Government in public interest had exempted all goods falling in the First Schedule of the Central Excise Tariff Act, 1985 from whole of SHE

leviable under Section 138 of the Finance Act, 2007. In respect of taxable services, the Finance Act, 2015 had omitted Section 95 of the Finance (No. 2) Act, 2004, which imposed EC on taxable services, vide Section 153 and Section 140 of Finance Act, 2007 and SHE on taxable services vide Section 159, with effect from the date as notified by the Central Government in the Official Gazette. These exemptions and omissions were given effect from 1st March, 2015 for excisable goods and 1st June, 2015 for taxable services, as mentioned earlier.

10. Omission of a provision signifies deletion of that provision and is normally not treated as different from repeal. The repeal/omission in the present case was not made retrospectively, but applied prospectively. Manufacturers and output service providers were entitled to take benefit of EC and SHE credit on the EC and SHE payable on manufactured goods and output services on or before the cut off date, i.e., 1st March, 2015 in case of manufactured goods and 1st June, 2015 in case of taxable services. They have not been allowed to take credit after the said two dates for the simple reason that EC and SHE ceased to be applicable and were no longer payable after the said dates. The provisos added to Rule 3, sub-rule (7) in clause (b) are really in the nature of concessions confined to a limited and narrow set of cases and are not of general application. Noticeably, they expand the scope and give benefit of utilization of accumulated EC and SHE against payment of excise duty and service tax, which was not the position prior to 1st March, 2015 and 1st June, 2015, respectively. It is also easily apparent as to why the said benefit or concession was granted. These cases certainly fall in a distinct and separate class. The said classification would not fall foul of vice of discrimination. Article 14 is not offended. In fact the petitioners do not challenge and question the provisos, *albeit* seek additional benefit and concession beyond those granted, even though they were never available earlier.

11. It is in the aforesaid context and background that the petitioners have harped and heavily relied upon the word "subsumed" used in the speech of the Finance Minister while presenting the Budget Speech, as also in the explanation memorandum to the Finance Bill, 2015 and the TRU letter. It would not be correct to understand and interpret the word "subsumed" used as asserted by the petitioners. A Finance Bill or a Budget has financial and tax implications. It is an economic, political and policy statement. Interplay of politics and economics gets reflected in the statement made and relied. Raising or increasing taxes often meets resistance, and on most occasions has to be justified and explained. The statements and explanations given in the present context would show that the Government had decided to increase excise duty and service tax marginally and at the

same time had decided to withdraw or abolish EC and SHE. Any exercise of increasing taxes and withdrawing a cess or a tax is undertaken keeping in mind several aspects. This can include revenue collection in the form of increased taxes on one hand, and withdrawal or reduction of cess or another tax so as to curtail the adverse impact due to increase. Budgets do, and are, a balancing exercise. We would not read and hold that EC and SHE for excisable goods and taxable services had continued and were applicable even after 1st March, 2015 or 1st June, 2015 respectively, in the manner that they got included in, and formed a part of, the higher tax rate applicable to excise duty and service tax. Noticeably, the service tax rate had gone up by 2%, from 12% to 14%, with the intent to increase it further in view of implementation of the General Goods and Services Tax in future. In the case of excise duty, the increase was only marginal, from 12% to 12.50%. Pertinently, no statement or assertion was made that the benefit of unutilized EC and SHE credit would be given against excise duty and service tax. The use of the words "subsumed" with reference to the two cesses could well indicate that there would not be an increased tax burden being put on the payers or the consumers, as EC and SHE were being withdrawn. Noticeably, the two cesses and the excise duty and the service tax were always treated as different and separate and cross-utilization was never permitted.

12. It is no doubt true that the two cesses, in the present case, were in the nature of taxes and not fee, but it would be incorrect and improper to treat the two cesses as excise duty or service tax. They were specific cesses for the objective and purpose specified. A Constitution Bench of five Judges in *Hingir-Rampur Coal Company Limited and Others versus State of Orissa and Others,* (1961) 2 SCR 537 had elucidated that a cess can be in the form of a tax or a fee, though both are compulsory extraction of money. In case of a fee, there is an element of *quid pro quo,* while in tax this is not required, even if the tax being collected is used to constitute a specific fund, which does not become part of the Consolidated Fund, and its application can be regulated and confined to its purpose.

13. More relevant and important for the present context and issue would be the judgment of the Supreme Court in *B.K. Industries and Others versus Union of India and Others,* 1993 Supp (3) SCC 621, wherein validity of levy of cess under Vegetable Oil Cess Act, 1983 was challenged. The cess was levied for the purpose of National Oil-seeds and Vegetable Oils Development Board Act, 1983 and was in addition to excise duty leviable under the Central Excise Act or law for the time being in force. In the Budget Speech delivered on 28th February, 1986 for the year 1986-87, it was decided to dispense with the cess on vegetable oil. It was also stated in the

Budget Speech that cess collected since 1st April, 1986 would be refunded. However, the cess was withdrawn vide repeal Act, effective from 1st April, 1987. Relying upon the aforesaid speech on the Floor of the House, the submission was that the statement made constitutes an enforceable right and vegetable oil cess paid between 1st March, 1986 and 31st March, 1987, when the repeal Act was made effective, should be refunded. Plea of enforceable right was rejected in the following words:-

> "**9.** We find it difficult to agree. It is not brought to our notice that the budget proposals contained in the Finance Minister's speech were accepted by the Parliament. The cess having been imposed by a Parliamentary enactment could be rendered inoperative only by a Parliamentary enactment. Such repealing enactment came only in the year 1987 with effect from April 1, 1987. Not only that. The repealing Act expressly provided in Section 13 that the cess due before the date of said repeal, but not collected, shall be collected according to law as if the Cess Act is not repealed. This provision amounts to a positive affirmation of the intention of the Parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act. In the face of the said statutory provisions, no rights can be founded — nor can the levy of the cess be said to have been dispensed with — by virtue of the alleged decision referred to in the Finance Minister's speech or on account of the letter dated August 11, 1986. The Finance Minister's speech is not law. The Parliament may or may not accept his proposal. Indeed, in this case, it did not accept the said proposal immediately but only a year later. It is only from the date of the repeal that the said levy becomes inoperative."

We did not go as far in the present case for the explanation and reasons elucidated and given in paragraph 11 above. Use of the word "subsumed" in the context of the present case does not help and assist the petitioners in the manner asserted. No promise and statement that cross utilization of EC and SHE would be permitted was made. The petitioners seek an addition and expansion to what was stated and intended.

14. In *Shashikant Laxman Kale and Another versus Union of India and Another*, (1990) 4 SCC 366, constitutional validity of clause (10-C) of Section 10 of the Income Tax Act was challenged, as benefit under the said Section was not available to employees of private sector on voluntary retirement. Reliance was placed upon the Explanatory notes appended to the Statement of Objects and Reasons of the Bill. The Supreme Court held that the petitioner therein could not draw support from the heading in the explanatory note and explanatory memorandum would usually not be

an accurate guide of the final enactment. Distinction was drawn between purpose and object of a legislation and the legislative intention, which was significant, and it was emphasized that usually it was not permissible to use these external aids, yet it was permissible to look into historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The Court, while examining the latter aspect, can look into the entire gamut of material for determining the purpose and object of the legislation. It need not be restricted to the explanatory memorandum. Thus, it is permissible to look into the object and reasons of the bill for the limited purpose of appreciating the background and antecedent factual matrix leading to the legislation, not as the sole material, but with other material and external aids. Significantly, it was observed:-

> "23. A catch phrase possibly used as a populist measure to describe some provisions in the Finance Bill in the explanatory memorandum while introducing the Bill in the Parliament can neither be determinative of, nor can it camouflage the true object of the legislation. It is not unlikely that the phrase ‗welfare measures' was used to emphasise more on the effect of the provisions thereunder on the tax prayer for populism."

15. In *Tarlochan Singh Flora versus Wakom (Heathrow) Ltd*., [2006] EWCA Civ 1103, Brooke LJ, succinctly elucidated the legal position regarding explanatory notes after referring to the earlier case law as under:-

> The use that courts may make of explanatory notes as an aid to construction was explained by Lord Steyn in *R (Westminster City Council) v National Asylum Support Service* [2002] 1 WLR 2956 **,** paras 2–6; see also *R (S) v Chief Constable of the South Yorkshire Police* [2004] 1 WLR 2196 **,** para 4. As Lord Steyn says in the National Asylum Support Service case, explanatory notes accompany a Bill on introduction and are updated in the light of changes to the Bill made in the parliamentary process. They are prepared by the government department responsible for the legislation. They do not form part of the Bill, are not endorsed by Parliament and cannot be amended by Parliament. They are intended to be neutral in political tone; they aim to explain the effect of the text and not to justify it.
>
> The text of an Act does not have to be ambiguous before a court may be permitted to take into account explanatory notes in order to understand the contextual scene in which the Act is set: see the

National Asylum Support Service case, para 5. In so far as this material casts light on the objective setting or contextual scene of the statute, and the mischief to which it is aimed, it is always an admissible aid to construction. Lord Steyn, however, ended his exposition of the value of explanatory notes as an aid to construction by saying [2002] 1 WLR 2956 , para 6:

"What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of Parliament. The aims of the Government in respect of the meaning of clauses as revealed in explanatory notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted."

16. The decision in the case of *Eicher Motors Limited and Another* (supra) is distinguishable, for in the said case, what was subject matter of challenge was Rule 57-F(4-A), which had stipulated that unutilized credit as on 16th March, 1995 lying with the manufacturers of tractors under Heading 87.01 or motor vehicles 87.02 and 87.04 or chassis of tractors or motor vehicles under Heading 87.06 shall lapse and shall not be allowed to be utilized for payment of duty on excisable goods. The proviso, however, had stipulated that nothing shall apply to the credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock as on 16th March, 1995, thereby creating an anomalous situation. Credit of tax paid on inputs and even finished products was available, but not in respect of the sold products. This was clearly taking away a vested right in the form of an amendment to the Rule. There was lapse of credit, which could not be utilized, though the tax/duty had not been withdrawn. The Supreme Court noticed that the credit attributable to inputs had already been used in manufacture of final products that had been cleared, and this alone was sought to be lapsed, notwithstanding the fact that the right had become absolute. On a holistic reading of the entire scheme, it was observed that when acts have been done by the parties concerned on the strength of the Rules, incidence following thereto must take place in accordance with the scheme or the Rules, otherwise it would affect the rights of the assessees. Further, right had accrued on the date when the assessee had paid tax on the raw materials or inputs and the same would continue till the facility available thereto got worked out or until the goods existed. As noticed above, tax/duty had not been withdrawn. Lastly and more importantly, Section 37 of the Central Excise Tariff Act, 1985 did not enable the authorities to make the Rule impugned therein. The legal ratio in *Eicher Motors Limited and Another* (supra) was followed in *Samtel India Limited* (supra) wherein amended Rule 57-F(17) of the Central Excise

Rules, 1944 was challenged. The Rules had postulated lapsing of credit in case of manufactured goods falling under sub-heading 8540.12, though the proviso had provided for credit of duty in respect of inputs lying in stock or contained in finished goods lying in stocks. It was held that the said scheme of credit of input tax, in view of amended provision, could not be made applicable to goods which had already come into existence and under which the assessee had claimed credit facility. As noticed above, in the present case, credit of EC and SHE could be only allowed against EC and SHE and could not be cross- utilized against the excise duty or service tax. In fact, what the petitioners seek is an amendment of the scheme to allow them to take cross utilization of the unutilized EC and SHE upon the two cesses being withdrawn against excise duty and service tax, though this was not the position even earlier. Both EC and SHE were withdrawn and abolished. They ceased to be payable. In these circumstances, it is not possible to accept the contention that a vested right or claim existed and legal issue is covered against the respondents by the decision in *Eicher Motors Limited and Another* (supra) and *Samtel India Limited* (supra). The said decisions are distinguishable and inapplicable.

17. The decision in *Eicher Motors Limited and Another (supra)* was distinguished in the case of *Osram Surya (P) Ltd. Versus Commissioner of Central Excise, Indore*, 2002 (142) ELT 5 (SC), wherein proviso to Rule 57 introducing six months time limit for claiming MODVAT credit benefit was challenged. Arguments predicated on vested right being annulled and reduced to nothing were rejected, recording as under -

> "7. Having heard the arguments of the parties and after considering the Rule in question, we think that by introducing the limitation in the said proviso to the Rule, the statute has not taken away any of the vested rights which had accrued to the manufacturers under the Scheme of MODVAT. That vested right continues to be in existence and what is restricted is the time within which the manufacturer has to enforce that right. The appellants, however, contended that imposition of a limitation is as good as taking away the vested right. In support of their argument, they have placed reliance on a judgment of this Court in *Eicher Motors Ltd.* v. *Union of India* (1999) 2 SCC 361 wherein this Court had held that a right accrued to an assessee on the date when it paid the tax on the raw materials or the inputs would continue until the facility available thereto gets worked out or until those goods existed. In that background, this Court held that by Section 37 of the Act, the authorities concerned cannot make a rule which could take away the said right on goods manufactured prior to the date specified in the rule concerned.

In the facts of *Eicher case* (1999) 2 SCC 361 it is seen that by introduction of Rule 57-F(4-A) to the Rules, a credit which was lying unutilized on 16-3-1995 with the manufacturer was held to have lapsed. Therefore, that was a case wherein by introduction of the Rule a credit which was in the account of the manufacturer was held not to be available on the coming into force of that Rule, by that the right to credit itself was taken away, whereas in the instant case by the introduction of the second proviso to Rule 57-G, the credit in the account of a manufacturer was not taken away but only the manner and the time within which the said credit was to be taken or utilized alone was stipulated. It is to be noted at this juncture that the substantive right has not been taken away by the introduction of the proviso to the Rule in question but a procedural restriction was introduced which, in our opinion, is permissible in law. Therefore, in our opinion, the law laid down by this Court in *Eicher case* (1999) 2 SCC 361 does not apply to the facts of these cases. This is also the position with regard to the judgment of this Court in *CCE* v. *Dai Ichi Karkaria Ltd.*(1999) 7 SCC 448

8. It is vehemently argued on behalf of the appellants that in effect by introduction of this Rule, a manufacturer in whose account certain credit existed, would be denied of the right to take such credit consequently, as in the case of *Eicher* (1999) 2 SCC 361 a manufacturer's vested right is taken away, therefore, the Rule in question should be interpreted in such a manner that it did not apply to cases where the credit in question had accrued prior to the date of introduction of this proviso. In our opinion, this argument is not available to the appellants because none has questioned the legality or the validity of the Rule in question, therefore, any argument which in effect questions the validity of the Rule, cannot be permitted to be raised. The argument of the appellants that there was no time whatsoever given to some of the manufacturers to avail the credit after the introduction of the Rule also is based on arbitrariness of the Rule, and the same also will have to be rejected on the ground that there is no challenge to the validity of the Rule.

9. Without such a challenge, the appellants want us to interpret the Rule to mean that the Rule in question is not applicable in regard to credits acquired by a manufacturer prior to the coming into force of the Rule. This we find difficult because in our opinion the language of the proviso concerned is unambiguous. It specifically states that a manufacturer cannot take credit after six months from the date of issue of any of the documents specified in the first proviso to the

said sub-rule. A plain reading of this sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the Rule and to cases where the manufacturer is seeking to do so after a period of six months from the date when the manufacturer received the inputs. This sub-rule (*sic* proviso) does not operate retrospectively in the sense it does not cancel the credits nor does it in any manner affect the rights of those persons who have already taken the credit before coming into force of the Rule in question. It operates prospectively in regard to those manufacturers who seek to take credit after the coming into force of this Rule. Therefore, in our opinion, the Tribunal was justified in holding that the Rule in question only restricts the right of a manufacturer to take the credit beyond the stipulated period of six months under the Rule. Therefore, this appeal will have to fail."

This decision, and the distinction drawn, supports the observations recorded hereinabove by us in the present case.

18. For the aforesaid reasons, we do not find any merit in the present writ petition and the same is dismissed. However, in the facts of the case, there would not be any order as to costs.

[2018] 56 DSTC 131 – (Chandigarh)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

[Hon'ble Mr. Justice S.J. Vazifdar, Chief Justice Hon'ble Mr. Justice Avneesh Jhingan]

CWP No. 29437 of 2017

Carpo Power Limited ... Petitioner

Versus

State of Haryana and others ... Respondents

Date of Decision : 28 March, 2018

WITH HOLDING OF 'C' FORMS – ENTRY 54 OF STATE LIST OF SEVENTH SCHEDULE TO CONSTITUTION OF INDIA AS AMENDED BY THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016 – DEFINITION OF GOODS UNDER CST ACT AFTER IMPLEMENTATION OF GST ACT W.E.F 01.07.2017 – SECTION 9 (2) OF CGST ACT – SECTION 174 OF HGST ACT, 2017 – SECTION 8 OF CST ACT READ WITH RULE 12 OF CST RULES

THE PETITIONER PURCHASED NATURAL GAS AGAINST 'C' FORMS IN THE COURSE OF INTER-STATE TRADE FOR GENERATION OF ELECTRICITY – REVENUE REFUSED TO ISSUE FORMS AND STATED THAT THE PETITIONER WAS NOT ENTITLED TO MAKE INTER-STATE PURCHASE OF NATURAL GAS ON THE STRENGTH OF 'C' FORMS AFTER IMPLEMENTATION OF CGST ACT – WRIT PETITION FILED SEEKING DIRECTION FOR ISSUANCE OF FORMS

IT WAS ARGUED BY PETITIONER THAT AFTER IMPLEMENTATION OF GST ACT FROM 01.07.2017, DEFINITION OF GOODS IN CST ACT WAS AMENDED AND COVERED ONLY SIX ITEMS INCLUDING NATURAL GAS – GOVERNMENT HAS NOT ISSUED NOTIFICATION UNDER CGST ACT OR HGST ACT TO COVER ITEMS LIKE PETROLEUM CRUDE, HIGH SPEED DIESEL, MOTOR SPIRIT, NATURAL GAS AND AVIATION TURBINE FUEL UNDER GST ACT – SECTION 174 OF HGST ACT, 2017 REPEALED THE HARYANA VALUE ADDED TAX, 2003, EXCEPT IN RESPECT OF GOODS INCLUDED IN THE ENTRY 54 WHICH INCLUDED NATURAL GAS ALSO

REVENUE ARGUED THAT INGREDIENTS OF SECTION 8 (1) OF CENTRAL SALES TAX ACT WOULD BE MET ONLY IF PETITIONER WAS LIABLE TO PAY SALES TAX UNDER HVAT ACT AND THAT REGISTRATION UNDER THE HGST ACT WAS NOT RELEVANT – FURTHER ARGUED THAT THE PETITIONER WAS NOT ENGAGED IN THE BUSINESS OF RE-SELLING OF NATURAL GAS AND PETITIONER WAS NOT LIABLE TO PAY ANY TAX ON ELECTRICITY UNDER HGST, AS RATE ON ELECTRICITY HAS BEEN FIXED AT 0% AND THEREFORE CEASED TO BE A REGISTERED DEALER U/S 7(2) OF CST ACT

COURT HELD THAT THE PROVISION OF SECTION 8 OF CST ACT, RULE 12 OF CST RULES AND DECLARATION OF 'C' FORMS HAD NOT UNDERGONE ANY AMENDMENT AFTER IMPLEMENTATION OF GST ACT – THERE COULD NOT BE ANY OCCASION TO RESTRICT THE USES OF 'C' FORMS ONLY FOR THE PURPOSE OF RE-SALE – SECTION 7(2) DID NOT STIPULATE THAT ONLY A DEALER LIABLE TO

PAY TAX UNDER THE SALES TAX LAW OF THE APPROPRIATE STATE IN RESPECT OF ANY PARTICULAR GOODS WAS ENTITLED TO APPLY FOR REGISTRATION – NOR DID SECTION 7(2) STIPULATE THAT AN APPLICATION FOR REGISTRATION COULD BE MADE OR 'C' FORM COULD BE ISSUED ONLY IN RESPECT OF THE SALE OF THE SAME GOODS PRESCRIBED IN THE COURSE OF AN INTER-STATE SALE – A DEALER LIABLE TO PAY TAX UNDER THE SALES TAX LAW OF THE APPROPRIATE STATE IN RESPECT OF ANY GOODS WOULD BE COVERED BY SECTION 7(2) OF THE ACT – WRIT PETITION ALLOWED AND RESPONDENT WAS DIRECTED TO ISSUE 'C' FORMS

Facts

The petitioner was involved in the generation of electricity through its power plant at Bawal in Haryana. Natural gas was used for generation of electricity. The natural gas was supplied by M/s Bharat Petroleum Corporation Limited and M/s Indian Oil Corporation Limited from Gujarat.

The petitioner, before the Goods & Service Tax, 2017 (for short, `GST') came into force, was registered under the Haryana Value Added Tax Act, 2003 (for short, `the HVAT Act') and under the Central Sales Tax Act, 1956 (for short, `the CST Act'). The registration under the CST Act continues to date. The certificate admittedly included natural gas.

The petitioner challenged the respondents' refusal to issue `C' Forms in respect of natural gas purchased by it in the course of inter-state trade or commerce and used by it for the generation of electricity. The petitioner sought a writ of mandamus directing the respondents to issue `C' Forms under the Central Sales Tax Act, 1956 and the Central Sales Tax (Registration and Turnover) Rules, 1957 in respect of the inter-state sales of natural gas by certain oil companies based in Gujarat to the petitioner in Haryana and used by the petitioner for generating electricity.

Held

That the petitioner purchased natural gas and used it for generation of electricity. Whereas for the sale of natural gas, the liability to pay tax was of the oil companies under the CST Act, the sale of electricity in the State of Haryana was leviable to tax under the HGST Act. There was no dispute that the sale of electricity was taxable under the HGST Act, though the rate of tax had been fixed at 0%. It had been laid down that even if the rate of tax on the goods is 0%, still it was a taxable item under the Act. The HGST Act thus fall within the ambit of the words "sales tax law" of the appropriate State in Sections 7 and 8 of the CST Act. The words "sales tax law" was defined in Section 2 (i) to mean any law for

the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods. The HGST Act does so as was evident from Section 9 thereof which stipulates a tax on all intra-state supply of goods. Section 7 did not specify the state law that levy taxes on the sale or purchase of goods. Hence, any State law that did so including the HGST Act would fall within the ambit of Section 7 of the CST Act. If the HGST Act was not applicable the HVAT Act would be. Thus in either case the ingredients of Section 7 and 8 of the CST Act would be met. The petitioner therefore fulfilled all the requirements of Section 7 (2) of the CST Act. It was liable to pay tax in the State of Haryana under the HGST Act. Even though there was no liability under the CST Act, yet it would be a registered dealer under Section 7 (2) of the CST Act. The respondent then contended that the petitioner was not engaged in the business of re-selling the natural gas and was, therefore, not entitled to be issued `C' Forms. The basis of the argument was that after the CGST Act came into force, the petitioner was not liable to pay any tax on electricity under the HVAT Act and it, therefore, ceased to be a registered dealer as per Section 7 (2) of the CST Act. The respondent contended that the petitioner's registration under the CST Act lapsed on the commencement of the HGST Act and it ceased to have any effect. The respondent contended that the petitioner did not sell within the State of Haryana or otherwise the same goods, namely natural gas, that it purchased from the Oil Companies in Gujarat. According to the respondent, the provisions of the CST Act and in particular Sections 7 and 8 thereof would apply only if the petitioner sold the same goods that it purchased viz. natural gas. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C had not undergone any amendment after the implementation of the GST laws. There could not be any occasion to restrict the usage of 'C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of `goods' in Section 2 (d) of the CST Act. The purchase of the said goods for purposes of re-sale, used in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods was entitled to apply for registration. Nor does section 7 (2) stipulated that an application for registration can be made or `C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-state sale. A dealer liable to pay tax under the sales tax law of the appropriate State in respect of

any goods would be covered by Section 7 (2) of the Act. There was another aspect of the matter that the registration certificate given to the petitioner under the CST Act till date has not been cancelled. As per Section 7 (4) of the CST Act, the registration certificate granted has to be amended or cancelled. The said provisions had not been invoked. In these circumstances, the writ petition was allowed. It was held that the respondents were liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. In the event of the petitioner had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the petitioner should be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise.

Present for the petitioner	:	Mr. Puneet Bali, Senior Advocate, with Mr. Ankur Saigal, Advocate,
Present for respondent No.7. for respondent No.8.	:	Mr. Chetan Jain, Advocate, Mr. Aman Arora, Advocate, Mrs. Mamta Singla Talwar, DAG, Haryana

Avneesh Jhingan, J.

The petitioner has challenged the respondents' refusal to issue ‘C’ Forms in respect of natural gas purchased by it in the course of inter- state trade or commerce and used by it for the generation of electricity. The petitioner seeks a writ of mandamus directing the respondents to issue ‘C' Forms under the Central Sales Tax Act, 1956 and the Central Sales Tax (Registration and Turnover) Rules, 1957 in respect of the inter-state sales of natural gas by certain oil companies based in Gujarat to the petitioner in Haryana and used by the petitioner for generating electricity.

2. The petitioner is involved in the generation of electricity through its power plant at Bawal in Haryana. Natural gas is used for generation of electricity. The natural gas is supplied by M/s Bharat Petroleum Corporation Limited and M/s Indian Oil Corporation Limited from Gujarat.

3. The petitioner, before the Goods & Service Tax, 2017 (for short, ‘GST’) came into force, was registered under the Haryana Value Added Tax Act, 2003 (for short, ‘the HVAT Act’) and under the Central Sales Tax Act, 1956 (for short, ‘the CST Act’). The registration under the CST Act continues to date. The certificate admittedly includes natural gas. The certificate is in Form B which in so far as it is relevant reads:-

Form B
Certificate of Registration
[See rule 5 (1)]

TIN No. 06342708008

This is to certify that M/S CAPRO POWER LTD. whose principal place of business within the State of Haryana has been registered as a dealer under sections 7 (1) 7 (2) of the Central Sales Tax Act, 1956.

The class(es) of goods specified for the purposes of sub-sections (1) and (3) of section 8 of the said Act is/are as follows and the sales of these goods in the course of inter-State trade to the dealer shall be taxable at the rate specified in that sub-section subject to the provisions of the sub-section (4) of the said section :

(d) for use in the generation or distribution of electricity or any other form of power.

4. The issue involved in the present petition is whether after the amendment of the CST Act, the petitioner is entitled to be issued `C' Forms in respect of the natural gas purchased by it in the course of inter-state sales and used by it for the generation of electricity. We have answered the question in the affirmative, in favour of the petitioner.

5. Before adverting to the issue involved, we quote the relevant provisions of the Central Sales Tax Act, 1956 (`CST Act'), Central Sales Tax (Registration and Turnover) Rules, 1957 [`CST (R&T) Rules'], Central Sales Tax (Haryana) Rules, 1957 (`CSTH Rules'), Central Goods and Service Tax Act, 2017 (`CGST Act') and Haryana Goods and Service Tax Act, 2017 (`HGST Act') and Declaration Form C.

(A) Sections 2 (b), (d), before and after amendment, (f) (i), 3, 6 (1), 7 (1), (2), (4), 8 (1), (2), (3), (4), 9 (1), (2) and 13 (4) (e) of the Central Sales Tax Act, 1956, in so far as they are relevant read as under :

2. (b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or

for commission remuneration or other valuable consideration, and includes -

(i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

..... x x x ..... x x x ..... x x x .....

Original Section

2. (d) "goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers actionable claims, stocks, shares and securities.

After 2017 amendment

2. (d) “goods” means –

(i) petroleum crude;

(ii) high speed diesel;

(iii) motor spirit (commonly known as petrol);

(iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption.

2. (f) “registered dealer” means a dealer who is registered under section 7;

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.

2. (i) "sales tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and "general sales tax law" means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase —

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1 — Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2 — Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

6. Liability to tax on inter-State sales —

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

7. Registration of dealers —

(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and even such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in subsection (1), and every such application shall contain such particulars as may be prescribed.

Explanation — For the purposes of this sub- section, a dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.

(4) A certificate of registration granted under this section may —

(a) either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer, be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or 44classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or

(b) be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business or has ceased to exist or has failed without sufficient cause, to comply with an order under subsection (3A) or with the provisions of sub-section (3C) or sub- section (3E) or has failed to pay any tax or penalty payable under this Act, or in the case of a dealer registered under sub-section (2) has ceased to be liable to pay tax under the sales tax law of the appropriate State or for any other sufficient reason.

8. Rates of tax on sales in the course of inter- State trade or commerce.—

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall

be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within subsection (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Explanation— For the purposes of this sub- section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.;

3 The goods referred to in sub-section (1)

(a) x x x

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the tele-communications network or in mining or in the generation or distribution of electricity or any other form of power;

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

9. Levy and collection of tax and penalties — (1) The tax payable by any dealer under this Act on sales of goods effected by him in

the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provision of sub-section (2), in the State from which the movement of the goods commenced:

..... x x x ..... x x x ..... x x x ....

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly: Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

13. Power to make rules —

(4) In particular and without prejudice to the powers conferred by sub section (3), the State Government may make rules for all or any of the following purposes, namely:—

(a) to (d)

x x x

(e) the authority from whom, the conditions subject to which and fees subject to payment of which any form of certificate prescribed under clause (a) of the first proviso to sub-section (2) of section 6 or of declaration prescribed under sub-section (1) of section 6A or subsection (4) of section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished;

(B) Rules 2 (aa), (b) and (cc) and 12 (1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 in so far as they are relevant are as follows :-

2. (aa) 'authorised officer' means an officer authorised by the Central Government under clause (b) of sub-section (4) of section 8;

2. (b) 'form' means a form appended to these rules;

2. (cc) 'prescribed authority' means the authority empowered by the Central Government under sub- section (2) of section 9, or the authority prescribed by a State Government under clause (e) of sub- section (4) of section 13, as the case may be;

12 (1) The declaration and the certificate referred to in sub-section (4) of section 8 shall be in Forms 'C' and 'D' respectively:

..... x x x ..... x x x ..... x x x ....

(C) Rule 7 (1) of Central Sales Tax (Haryana) Rules, 1957 is as follows:

7 (1) Where a dealer desires the certificates of registration granted to him under these rules to be amended, he shall submit an application for this purpose to the notified authority setting out the specific matters in respect of which he desires such amendment and the reasons therefore, together with the certificate of registration and the copies thereof, if any, granted to him; and such authority may, if satisfied with the reasons given, make such amendments as it thinks necessary, in the certificate of registration and the copies thereof, if any, granted to him.

(D) Form C is as follows :-

FORM C

ORIGINAL

THE CENTRAL SALES TAX

(Registration & Turnover)

RULES, 1957

FORM 'C'

FORM OF DECLARATION

[Rule 12 (1)]

Name of issuing State .....

Officer of issue .....

Date of issue .....

Name of the purchasing dealer to whom issued alongwith his

Registration Certificate No .....

Date from which registration is valid.....

Seal of the Issuing Authority.....

Serial No. .....

To

* (Seller)

Certified that the goods **

Ordered for in our purchase

Order No. .....

dated ..... and supplied as per Bill/ Cash Memo/Challan No .....dated .....

as stated below* purchased from you as per Bill/Cash Memo

Challan No.....dated .....

are for resale .....use in manufacture/ processing of goods for sale .....use in mining ..... use in generation/distribution of power .....Packing of goods for sale/re-sale and are covered by my/our registration certificate No ..... dated ..... issued under the Central Sales Tax Act,1956.

It is further certified that I/ We am/are not registered under Section 7 of the said Act in the State of ..... in which the goods Covered by this Form are/will be delivered.

Name and address of the purchasing dealer in full .....

Date .....

The above statements are true to the best of my knowledge and belief.

(Signature)

(Name of the person signing the declaration.)

(Status of the person signing the declaration in relation to the dealer)

*Particulars of Bill/ Cash/Memo/Challan

Date .....No.....

Amount .....

Name and Address of the seller with name of the State.

** Strike out whichever is not applicable.

(Note : To be furnished to the prescribed authority in accordance with the rule framed under Section 14 (4) (e) by the appropriate State Government.)

(The counterfoil and the duplicate of Form C are to be retained by the purchasing dealer and the selling dealer respectively.)

(E) Sections 2 (52) and 9 (2) of the Central Goods and Service Tax Act, 2017 are as follows :-

2. (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;

9. (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(F) Sections 2 (52), 7 (1), 9 (1), (2) and 174 of the Haryana Goods and Service Tax Act, 2017 so far as they are relevant are as follows:-

2. (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;

7. (1) For the purposes of this Act, the expression "supply" includes

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Haryana Goods and Services Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner, as may be prescribed and shall be paid by the taxable person.

(2) The State tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, shall be levied with effect from such date, as may be notified by the Government on the recommendations of the Council.

174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act,

(i) the Haryana Value Added Tax Act, 2003 (6 of 2003), except in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution;

(ii) The Haryana Tax on Entry of Goods into Local Areas Act, 2008 (8 of 2008);

(iii) The Punjab Entertainments Duty Act, 1955 (Punjab Act 16 of 1955) as applicable to the State of Haryana, except to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council;

(iv) The Haryana Tax on Luxuries Act, 2007 (23 of 2007), (hereinafter referred to as the repealed Acts) are hereby repealed.

(2) ..... x x x ..... x x x ..... x x x .....

(3) ..... x x x ..... x x x ..... x x x .....

6. We will first have a look at the working of the CST Act before implementation of the GST laws viz The Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act and the relevant State Goods and Services Tax Act which in the present case is the Haryana Goods and Services Tax Act, 2017 and thereafter analyse the effect of the GST laws.

7. Under Section 3 (a), the sale and purchase of goods which occasions their movement from one State to another are deemed to take place in the course of inter-State trade or commerce. Such transactions are covered under the CST Act. In the present case the oil companies viz Indian Oil Company Ltd. and Bharat Petroleum Company Ltd., sold natural gas to the petitioner. The natural gas was sold in Gujarat and brought to petitioner's power plant in Haryana. The petitioner uses the natural gas as raw material for the generation of electricity. The sale and purchase of natural gas therefore takes place in the course of inter-state trade or commerce.

8. The definition of `goods' in Section 2 (d) prior to the amendment of 2017 included all material, articles, commodities and all other movable property, excluding news papers, actionable claims, stock, shares and securities. Natural gas therefore was included in the term `goods'. Under Section 6 every dealer under the CST Act is liable to pay tax on all sales of goods other than electrical energy effected by him in the course of inter-state trade or commerce. Thus the oil companies were liable to pay tax under the CST Act in respect of the sale of natural gas.

9. Under Section 9 sales tax is levied by the Government of India but is to be collected in the State, from which the movement of goods

commenced. Under Section 9 (2) the authorities empowered to re-assess, collect and enforce payment of tax under the general sales tax law of the appropriate State are to do so even on behalf of the Government of India with respect to the tax due under the CST Act.

10. As per Section 7 (1) of the CST Act, every dealer who was liable to pay tax under the CST Act was required to make an application for registration under the CST Act. The petitioner does not sell natural gas. Nor does it sell electrical energy outside the State of Haryana. It is therefore not liable to pay tax under the CST Act. However, under section 7 (2), a dealer though not liable to pay tax under the CST Act but liable to pay tax under the sales tax law of the appropriate State or where there was no such law in force in the appropriate State or any part thereof any dealer having a place of business in that State could apply for registration under the CST Act. A dealer registered under Section 7 was termed as a registered dealer for the purpose of the CST Act. The petitioner was admittedly registered under the CST Act and was therefore a “registered dealer” within the meaning of the expression in section 2 (f) read with section 2 (d) and 7 (2).

11. To sum up therefore the definition of “goods” in section 2 (d) prior to the amendment and as we will shortly indicate, even after the amendment of section 2 (d) includes natural gas. The petitioner is a dealer within the meaning of section 2 (b). The petitioner, as it was entitled to under section 7 (2), had itself registered under the CST Act. The petitioner is therefore a “registered dealer” within the meaning of section 2 (f).

12. Section 8 of the CST Act prescribes a lower rate of tax on sales in the course of inter-State trade or commerce in respect of “every dealer” who sells to a registered dealer goods of the description referred to in sub- section (3). As per sub-section (3) of Section 8 of the CST Act, the goods referred to in sub-section (1) are goods of the class or classes of goods specified in the registration certificate of the dealer being purchased for use in the generation or distribution of electricity or any other form of power. The “dealer who sells” are the oil companies who sell the natural gas to the petitioner. The “registered dealer” is the petitioner. The goods of the description referred to in sub-section (3) is the natural gas for natural gas is referred to in the petitioner's certificate of registration and is used by the petitioner in the generation or distribution of electricity. Hence under section 8 (1) the oil companies are liable to pay tax at the lower of the rates mentioned therein.

13. This however is subject to another requirement which is stipulated in section 8 (4). Sub-section (4) provides that this reduced rate of tax could

be availed only on the dealer selling the goods on furnishing a declaration in the prescribed time and in the prescribed manner viz. Form `C' in the present case.

A reading of Section 8 of the CST Act and Rule 12 of the CST (R&T) Rules along with Rule 7 of the CSTH Rules shows that `C' Form is to be issued by the tax authorities of the State in which the purchaser of goods is based. The `C' Form would be given to the seller who would in turn furnish the same to the prescribed authority for claiming a lower rate of tax.

14. In the present case, the petitioner purchased natural gas from the Oil Companies from Gujarat. The sales occasioned the movement of natural gas from Gujarat to Haryana. The petitioner is a registered dealer in the State of Haryana. The Haryana authorities had been issuing `C' Forms to the petitioner which were given to the Oil Companies in Gujarat who produced the same before the Gujarat tax authorities and were assessed at a reduced rate of tax. This continued till the implementation of the Goods & Service Tax. The question is whether the petitioner continues to be entitled to the `C' Forms after the CGST Act, 2017. We think it is.

15. Entry 54 of the State List of the Seventh Schedule to the Constitution of India as amended by the Constitution (One Hundred and First Amendment) Act, 2016, reads as under :- "54. Taxes on the sale of petroleum, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade of commerce or sale in the course of international trade or commerce of such goods."

16. After implementation of the GST Act with effect from 01.07.2017, the definition of `goods' under the CST Act was amended. The amended definition of `goods' now covers only six items. What is important is that natural gas is one of them.

17. The definition of `goods' in section 2 (52) of the CGST Act is very wide. It includes every kind of movable property, excluding money and securities but including actionable claims, 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. Section 9 (2) of the CGST Act provides that petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel shall be levied tax under the CGST Act from the date as notified by the Government on the recommendations of the Council. Sections 2 (52) and 9 (2) of the HGST Act are similar to Sections 2 (52) and 9 (2) of the CGST Act.

It is pertinent to note that till date, the Government has not issued a notification under either the CGST Act or the HGST Act. Hence inter-state sale of natural gas continues to be governed by the CST Act.

18. Section 174 of the HGST Act, 2017 repeals the Haryana Value Added Tax Act, 2003 (for short, `HVAT Act'), except in respect of goods included in the entry 54 which as noted above includes natural gas. Thus the HVAT Act, 2003 continues to remain in operation qua natural gas. Moreover under Section 9 (2) of the HGST, 2017, the State tax inter-alia on natural gas shall be levied with effect from such date as may be notified by the Government. The Government has not as yet notified a date. 19. The net effect therefore is that even after the implementation of the CGST Act, the items mentioned in amended entry 54 are governed by the CST Act. Further, a notification under Section 9 (2) of the HGST Act, 2017 not having been issued natural gas continues to be covered under the CST Act.

20. After the implementation of the CGST Act and the aforesaid amendment, the petitioner continued to make inter-state purchases of natural gas from the Oil Companies in Gujarat as before. When it applied for the issuance of `C' Forms, the Sate of Haryana refused the same. The stand taken is that after the implementation of the CGST Act, the petitioner is not entitled to make inter-state purchases of natural gas on the strength of `C' Forms.

21. Mrs. Talwar contends that the ingredients of Section 8 (1) would be met only if the petitioner is liable to pay sales tax under the HVAT Act and that registration under the HGST Act is not relevant.

22. The submission is not well founded. As Mr. Ankur Saigal, the learned counsel appearing on behalf of the petitioner rightly submitted, the contention proceeds on the erroneous basis that only a dealer registered under the HVAT Act is covered by section 7 (2). The plain language of section 7 (2) does not contain such a limitation. The petitioner is not liable to pay tax under the CST Act but it is liable to pay tax under the HGST Act, 2017 as it sells electricity within Haryana. Under Section 7 (2) of the CST Act which applies to the petitioner, a dealer liable to pay tax under the sales tax law of the appropriate State may apply for registration notwithstanding that he is not liable to pay tax under the CST Act.

'Sales tax laws' have been defined under Section 2 (i) of the CST Act to mean the law for the time being in force in any State for levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax

laws. The definition is inclusive in nature. It is not restricted to any particular sales tax enactment. The HGST Act is also a law in force in the State of Haryana for levy of taxes of sale and purchase of goods. The HGST Act is not excluded from the ambit of section 7 (2) of the CST Act either expressly or by necessary intendment. In order to accept the contention raised by the State that the petitioner ceases to be a registered dealer under the CST Act, a restricted meaning will have to be given to the definition of `sales tax law' to mean that it only covers the HVAT Act and not any other sales tax law such as the HGST Act. The taxable event under the HVAT Act was sale and under the HGST Act it is supply. It is important to note that supply includes sale. Hence, for the purpose of sales tax law, HGST Act would qualify on the same pedestal as the HVAT Act.

23. Section 9 of the HGST Act levies tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. Section 7 of the HGST Act defines the scope of supply. It is an inclusive provision and includes all types of supply of goods or services or both such as sale, transfer etc.

In this background, it would be appropriate to note that the petitioner purchases natural gas and uses it for generation of electricity. Whereas for the sale of natural gas, the liability to pay tax is of the oil companies under the CST Act, the sale of electricity in the State of Haryana is leviable to tax under the HGST Act. There is no dispute that the sale of electricity is taxable under the HGST Act, though the rate of tax has been fixed at 0%. It has been laid down that even if the rate of tax on the goods is 0%, still it is a taxable item under the Act. The HGST Act thus falls within the ambit of the words "sales tax law" of the appropriate State in Sections 7 and 8 of the CST Act. The words "sales tax law" is defined in Section 2 (i) to mean any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods. The HGST Act does so as is evident from Section 9 thereof which stipulates a tax on all intra-state supply of goods. Section 7 does not specify the state law that levies taxes on the sale or purchase of goods. Hence, any State law that does so including the HGST Act would fall within the ambit of Section 7 of the CST Act. If the HGST Act is not applicable the HVAT Act would be. Thus in either case the ingredients of Section 7 and 8 of the CST Act would be met.

24. The petitioner therefore fulfils all the requirements of Section 7 (2) of the CST Act. It is liable to pay tax in the State of Haryana under the HGST Act. Even though there is no liability under the CST Act, yet it will be a registered dealer under Section 7 (2) of the CST Act.

25. Mrs. Talwar then contended that the petitioner is not engaged in the business of re-selling the natural gas and is, therefore, not entitled to be issued `C' Forms. The basis of the argument is that after the CGST Act came into force, the petitioner was not liable to pay any tax on electricity under the HVAT Act and it, therefore, ceases to be a registered dealer as per Section 7 (2) of the CST Act. Mrs. Talwar contended that the petitioner's registration under the CST Act lapsed on the commencement of the HGST Act and it ceased to have any effect. She contended that the petitioner does not sell within the State of Haryana or otherwise the same goods, namely natural gas, that it purchases from the Oil Companies in Gujarat. According to her, the provisions of the CST Act and in particular Sections 7 and 8 thereof would apply only if the petitioner sold the same goods that it purchased viz. natural gas.

26. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of `C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of `goods' in Section 2 (d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section 7 (2) stipulate that an application for registration can be made or `C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-state sale. A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of the Act.

27. There is another aspect of the matter that the registration certificate given to the petitioner under the CST Act till date has not been cancelled. As per Section 7 (4) of the CST Act, the registration certificate granted has to be amended or cancelled. The said provisions have not been invoked.

28. In these circumstances, the writ petition is allowed. It is held that the respondents are liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms

the petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form.

[2018] 56 DSTC 152 – (Delhi)

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

Appeal Nos.66/ATVAT/16-17
Assessment Year: 2013-14
(Default Assessment of Tax, Interest & Penalty)

M/s Bansal Plywood & Laminates,
A-1/39, WHS, Kirti Nagar,
New Delhi-110015 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 28.12.2017

REFUND U/S 38(3) OF DVAT ACT – INPUT TAX CREDIT NOT VERIFIED – INPUT TAX CREDIT DISALLOWED U/S 9(2)(g) – DEFAULT ASSESSMENT ORDER FRAMED AND UNVERIFIED ITC ADJUSTED AGAINST THE REFUND.

NO MISMATCH IN ANNEXURE 2A & 2B – OBJECTION PETITION REJECTED – MATTER CARRIED BEFORE VAT TRIBUNAL – REVENUE DID NOT ESTABLISH THAT BOTH THE SELLING DEALER AND PURCHASING DEALER HAD ACTED IN COLLUSION – RATIO OF THE DECISION OF SWARAN DARSHAN IMPEX AND ON QUEST MERCHANDISING INDIA PVT. LTD. CASES APPLIED TO THE FACTS OF APPELLANT CASE – APPEAL ALLOWED – DIRECTION ISSUED TO PROCESS REFUND.

Facts of the Case

The appellant dealer claimed a refund of Rs 2,12,909/- for the Assessment year 2013-14 in 4th quarter return and the return was filed on 07.05.2014 claiming the refund of Rs 2,12,909/- which was flowing from Assessment year 2012-13 and 2013-14, out of which Rs 26,695/- has been received by the appellant as refund. .

AVATO Ward-53 Vide default assessment order passed on 14.05.2015 observed: " ITC to the tune of Rs 1,86,214/- is found unverified for the entire refund period from 1st quarter 2012-13 to 4th quarter 2013-14 and therefore the same was rejected." Dealer was directed to pay Rs 1,86,214/-.

By a separate adjustment order dated 14.05.2015 the amount of Rs 1,86,214/- was adjusted against the refund of Rs 2,12,909/-.

Default assessment under section 9(2) of the CST Act for the 4th quarter 2013 was completed vide orders dated 11.12.2014 wherein nil demand was created.

VATO while making the default assessment vide orders dated 11.12.2014 observed as under: " Present Sh M.P. Aggarwal, Advocate and filed POA, alongwith sale/purchase summary, DVAT 30/31, trading account, DVAT-51 along with H Form for the year 2013-14 which were found in order. All return filed in time. No missing H Form for the year 2013-14. Nil demand for the 1st 2nd 3rd & 4th quarter respectively. Total demand according to the DVAT module. Benefit of CST already paid is allowed. Case is assessed for the year 2013-14."

Aggrieved with these default assessment orders the appellant filed objections which were rejected by the OHA vide impugned orders dated 29.02.2016.

Held

It was clear from the bare reading of section 38(4) that as the appellant was filing monthly return, and no notices u/s 59 within a period of one month seeking additional information or no notices u/s 58 were issued for audit investigation, the VATO should have within a month from the date of filing of return or claim for refund was made, refunded the amount to the appellant, but instead of refunding the amount appellant was issued notices dated 14.05.2015.

Decision in the Swarn Darshan Impex case has been applied by the Hon'ble High Court in number of cases and directed the Revenue to process the refund claim of the dealers. In the cases of Prime Papers and Packers Vs Commissioner of VAT (2016) 54 DSTC 1, Shaila Enterprises Vs Commissioner of VAT (2016) 54 DSTC 15 and Nucleus Marketing and Communications Vs Commissioner VAT (2016) 54 DSTC 60 similar refund orders were passed.

It was also apt to refer here to the recent decision of the Hon'ble Delhi High Court in WP (C) No 6093/2017 and connected Writ Petitions in the case of On Quest Merchandising India Pvt. Ltd., and other petitioners wherein the constitutional validity of section 9(2)(g) has been examined by the High Court. Accordingly the denial of refund by the VATO and its upholding by the OHA was not in accordance with the provisions of law and was set aside and the appeal was allowed. Accordingly, the appellant was held entitled to the refund which was directed to be processed and given by the department within a period of two months from the date of this order.

Present for the Appellant	:	Sh. MP Aggarwal, Adv.
Present for the Revenue	:	Sh. Pradeep Tara, Govt. Counsel

ORDER

1. This order shall dispose of the above noted appeal filed by the appellant challenging the impugned orders dated 29.02.2016 passed by Joint Commissioner, hereinafter called the Objection Hearing Authority (in short the OHA).

2. Facts of the case briefly stated are that the appellant dealer claimed a refund of Rs 2,12,909/- for the Assessment year 2013-14 in 4th quarter return and the return was filed on 07.05.2014 claiming the refund of Rs 2,12,909/- which is flowing from Assessment year 2012-13 and 2013-14 out of which Rs 26,695/- has been received by the appellant as refund. .

3. Ld AVATO Ward-53 Vide default assessment order passed on 14.05.2015 observed: " ITC to the tune of Rs 1,86,214/- is found unverified for the entire refund period from 1st quarter 2012-13 to 4th quarter 2013-14 and therefore the same is rejected." Dealer was directed to pay Rs 1,86,214/-

4. By a separate adjustment order dated 14.05.2015 the amount of Rs 1,86,214/- was adjusted against the refund of Rs 2,12,909/-.

5. Default assessment under section 9(2) of the CST Act for the 4th quarter 2013 was completed vide orders dated 11.12.2014 wherein nil demand was created.

6. Ld VATO while making the default assessment vide orders dated 11.12.2014 observed as under: " Present Sh M.P. Aggarwal, Advocate and filed POA, alongwith sale/purchase summary, DVAT 30/31, trading account, DVAT-51 alongwith H Form for the year 2013-14 which were found in order. All return filed in time. No missing H Form for the year 2013-14. Nil demand for the 1st 2nd 3rd & 4th quarter respectively. Total demand according to the DVAT module. Benefit of CST already paid is allowed. Case is assessed for the year 2013-14."

7. Aggrieved with these default assessment orders the appellant filed objections which were rejected by the OHA vide impugned orders dated 29.02.2016.

8. Aggrieved with the impugned orders, the appellant has filed the above noted appeal and assailed the impugned orders on the following grounds:-

1. That the order of the Learned Assistant Value Added Tax Officer disallowing the claim of refund is illegal, arbitrary and void which

was further maintained by the learned objection hearing authority vide his order dated 29.02.2016.

2. That the provisions of section 38(3) uses the expression shall and therefore it is clear that the refund has to be issued within two months from the date of filing the return that is by 06.07.2014 but the same was not issued. No notice was issued u/s 59(2) within two months, no security was demanded within 15 days of filing the return and no case was selected for audit within 10 days of filing the return so the refund was to be issued within 15 days of filing the return in view of the circular No.6 dated 15.06.2005 pass by the Commissioner, VAT. This is all violation of above provisions of the Act and the orders passed for the rejection of refund by the lower authorities deserves to be set aside.

3. That the refund has been rejected only on the basis of the report obtained on Actual Tax Report with the help of computer which has no legal value in DVAT Act and there is no provision in the Act to decide the issue of refund on Actual Tax Report. The department may be asked under what provision of then Act, system of Actual Tax Report is being used and in case, no satisfactory reply is received than all the cases decided on computer for refund may be declared illegal and void and all the orders passed for the rejection of refunds may be set aside.

4. That the lower authorities were requested to call all the sellers to examine the records of their sales with the dealer but they refused to do so in spite of the facts that all the record were ready for inspection with the purchasing dealer and the sellers have either deposited the due tax with the government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period in view of section 9(2)(g) of DVAT Act, 2004, so the rejection of input tax may be set aside, when there is no violation of section 9(2)(g) of the DVAT Act, 2004.

5. That the purchasing dealer has claimed the input tax on his purchases against tax invoices issued by the different sellers who are registered with the Department in different wards and the same are recorded in the books of accounts maintained by the purchasing dealer in normal course of business.

6. That the department has failed to produce any evidence which goes to show that there was collusion between the appellant and the selling dealers. So, the claim of input may be allowed.

7. That the orders passed by the lower authorities are not their independent judgments and they are the orders of the higher authorities who have given them directions to pass the judgments and they never heard the aggrieved party. So such type of orders may be set aside.

8. That the refund of Rs.18,62,214/- may be issued along with interest as per section 42 of DVAT Act, 2004 on account of delay in payment of refund claimed.

9. That there are so many judgements on the issue of refund and shall be discussed at the time of hearing with your kind approval.

9. We have heard Sh. M.P. Aggarwal, Adv. Ld Counsel for the Appellant and Sh. Pradeep Tara, Adv., Ld Counsel for the Revenue and gone through the record of the case.

10. Ld Counsel for the appellant submitted that:-

(i) That the refund belongs to Assessment Year 2013-14 and the return for the 4th quarter was filed on 07.05.2014 claiming refund of Rs 2,12,909/- which is flowing from Assessment Year 2012-13 and 2013-14 out of which Rs 26,695/- has been received as refund.

(ii) That the assessment for the period 2013-14 has already been completed on 11.12.2014 at nil demand under CST Act. The refund of Rs. 2,12,909/-was due on 06.07.2014 in view of section 38 (3) of DVAT Act 2004, i.e. after two months of claiming the refund but the same was not issued on the pretext that the same shall be issued after completion of assessment and verification of input tax in view of the circulars and instructions from the department .

(iii) No notice u/s 59(2) of DVAT Act 2004 was issued within two months of filling the return. No security was demanded within 15 days from the filling of the return. As per Circular No. 6 dated 15.06.2005 issued by the Commissioner VAT the refund should be issued within 15 days of filling the return unless the case is selected for audit within 10 days of filing the return and none of the above conditions have been complied.

(iv) That there is no mismatch of purchasing transaction from sales transaction as per the verification report of annexure 2A & 2B for

the above mentioned period as available on the website of the department of trade & taxes. That all the return have been filed in time and the output tax has either been paid or legally adjusted against the input tax received against purchases on tax invoices in view of section 9(2)(g) of the DVAT Act 2004. That the books of accounts have been maintained in the normal course of business and all the sales and purchases are duly recorded in the DVAT-30/31 filed at the time of assessment.

(v) Appellant has filed the copy of purchases vouchers, copy of accounts, 2A & 2B report, copy of return and bank statements.

(vi) That refund has been rejected on the basis of the report given by the computer as Actual Tax Report which was not favourable and the same was made basis for acceptance/rejection of refund and more over it has no legal value and it is only preliminary step for deciding the issue of refund. That no proper verification of purchases/input tax was carried out neither by the ward officer nor by the objection hearing authority in spite of the request from the dealer.

(vii) That the lower authorities have failed to prove any fraud, collusion or connivance of the purchasing dealer with the registered selling dealers so no liability can be fastened on the purchasing registered dealer if the selling dealers have not paid the tax and moreover the purchasing dealer has no control over the affairs and functioning of the selling dealers as observed by the Hon'ble Delhi High Court in the case of M/s Shanti Kiran India Pvt. Ltd. Department should take the legal action against the tax defaulter to save the honest dealers because the department has registered those dealers.

(viii) That it appears that the Lower Authorities have not given the judgment independently and same is controlled by the directions given by the others so it is a misnomer to call their order as their judgment. These are the judgments of the authorities who are giving the direction without hearing the aggrieved parties.

(ix) That all the selling dealers are working dealers and doing their business and are filing the returns in their respective wards and can be called for any quarry/verification of sales and submission of required papers in support of the refund clamed.

(x) That the VAT returns of the selling dealers reveal that the tax has either been deposited on their sales with the government or has

been lawfully adjusted against out-put tax liability and correctly reflected in the return filed for the respective tax period.

11. Ld Counsel for the Revenue submitted that the orders passed were legal and correct and urged for upholding the same.

12. Ld OHA has noticed in its order that the appellant praying for refund cited the decisions of Swarn Darshan Impex Pvt Ltd Vs Commissioner VAT; Crane Control Equipment Vs Commissioner Trade and Taxes and JSN Trading Co Vs Commissioner Trade & Taxes. The OHA ignoring these decisions cited, upheld the denial of refund on the ground that the decisions cited pertained to period prior to the introduction of section 9(2)(g). In our considered opinion the reason given by the OHA in upholding the denial of Refund is misplaced, illegal and contrary to the provisions of law. Grant of refund is governed by the provisions of section 38 of the DVAT Act and it can only be denied in accordance with the provisions of this Section by observing the procedure/process laid down therein.

13. At this stage before proceeding further it is apposite to see the legal provisions concerning grant of refund.

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.

(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 sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.

39 Power to withhold refund in certain cases

(1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

(2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of

the appeal or further proceeding, or any other proceeding he becomes entitled to the refund.

34 Refund of excess payment section: *38* Forms: *21 to 22A*

(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 DV AT-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 subsection (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.

(9) Before allowing the claim for refund to a dealer under section 38 of the Act, the Authority concerned shall satisfy himself that the conditions laid down in clause (g) of sub-section (2) of section 9 of the Act are fulfilled.

14. Issue of refund and the interpretation of section 38 and other relevant provisions, was the subject matter of decision in the case of Swaran Darshan Impex Pvt Ltd Vs Commissioner VAT in which the following observations of the Hon'ble High Court are relevant:-

"10. Such a situation does not arise in the present case inasmuch as the provisions of Section 38 do not contemplate a situation where the Commissioner does not grant a refund within the stipulated period. The decision in Behl Construction (supra) was in the context of the provisions of Section 74 and those circumstances do not arise in the present case. As pointed out above, what this court has to determine is: what is the legislative intent behind the provisions of Section 38? It is this intent which shall determine whether the stipulations as to time are merely directory or they are mandatory as suggested by the use of the word "shall". On going through all the sub-sections of Section 38 of the said Act, the legislative intent that is clearly discernible is that refunds must be granted to a person entitled within the specific time period stipulated in sub-section (3) thereof.

This intention is further fortified by a look at the provisions of sub-section (7) of Section 38 which stipulates that for calculating the period prescribed in clause (a) of sub-section (3), the time taken to furnish the security under sub-section (5) to the satisfaction of the Commissioner or to furnish the additional information sought under Section 59 or to furnish returns under Sections 26 and 27, "shall be excluded". This provision as to exclusion of time taken in doing the aforesaid acts, is in itself an indication that the legislature was dead serious about the stipulation as to time for making refunds under

> Section 38 (3) of the said Act. For, if the legislative intent were not so, what was the need or necessity for providing for exclusion of time? Thus, not only do the provisions of Section 38 employ the word "shall", which is usual in mandatory provisions, the legislative intendment discernible from the said provisions also points towards the mandatory nature of the said provisions. Clearly, subject to the exclusion of time provided under sub-section (7) of Section 38, in a case falling under Section 38(3)(a)(ii), the refund has to be made within two months from the date of the return."

15. It is clear from the bare reading of section 38(4) that as the appellant was filing monthly return, and no notices u/s 59 within a period of one month seeking additional information or no notices u/s 58 were issued for audit investigation, the Ld VATO should have within a month from the date of filing of return or claim for refund was made, refunded the amount to the appellant, but instead of refunding the amount appellant was issued notices dated 14.05.2015.

16. Decision in the Swarn Darshan Impex case has been applied by the Hon'ble High Court in number of cases and directed the Revenue to process the refund claim of the dealers. In the cases of Prime Papers and Packers Vs Commissioner of VAT (2016) 54 DSTC 1, Shaila Enterprises Vs Commissioner of VAT (2016) 54 DSTC 15 and Nucleus Marketing and Communications Vs Commissioner VAT (2016) 54 DSTC 60 similar refund orders were passed.

17. It is also apt to refer here to the recent decision of the Hon'ble Delhi High Court in WP (C) No 6093/2017 and connected Writ Petitions in the case of On Quest Merchandising India Pvt. Ltd., and other petitioners wherein the constitutional validity of section 9(2)(g) has been examined by the High Court. Para 53 and 54 of the judgement are extracted as under:

> "53. In light of the above legal position, the Court hereby holds that 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 transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 28. Unless the expression "dealer or class of dealers" in Section 9 (2) (g) is "read down" in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.
>
> 54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny

ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. 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 the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. 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."

18. In the case before us the appellant has clearly submitted that there is no mismatch between 2A and 2B and the same has not been denied by the Revenue. It is also not the case of the Revenue that both the selling dealer and the purchasing dealer have acted in collusion. In our considered view the ratio of the decision of Swaran Darshan Impex and other cases referred above applies to the facts of the present case.

19. Accordingly the denial of refund by the VATO and its upholding by the OHA is not in accordance with the provisions of law and is set aside and the appeal is allowed. Accordingly, the appellant is held entitled to the refund which should be processed and given by the department within a period of two months from the date of this order.

20. Order pronounced in the open court.

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

[2018] 56 DSTC 164 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI

[Diwan Chand: Member (A) And M.S. Wadhwa: Member (J)]

Appeal No.651-655/ATVAT/13-14

M/s Foam Home,
4273, Gali Bahuji, Pahari Dhiraj, Delhi ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 28.11.2017

SEARCH AND SURVEY – SEIZED LOOSE PAPERS AND VARIATION IN CASH AND STOCK FOUND – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST

AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OBJECTION PETITION FILED AND WAS REJECTED – BEFORE TRIBUNAL IT WAS ARGUED THAT NO DIFFERENCE FOUND IN THE QUANTITY OF STOCK AT THE TIME OF VISIT OF ENFORCEMENT STAFF AND DIFFERENCE ARRIVED ON ACCOUNT OF VALUE TAKEN AND CALCULATED BY SURVEY TEAM. VALUE DECIDED OF STOCK WAS ON THE BASIS OF THE ORAL STATEMENT AND NOT ON THE BASIS OF ACTUAL VALUE – EXPLANATION OF EVERY SEIZED PAPER TENDERED – NEITHER VATO NOR OHA HAD TAKEN TROUBLE TO EXAMINE THE EXPLANATION – ADDITION IN SALES FOUND DEVOID OF REASON AND UNSUSTAINABLE – EXPLANATION OF SHORTAGE OF CASH WAS WITHOUT DOCUMENTARY EVIDENCE REGARDING ILLNESS HAD BEEN CORRECTLY REJECTED.

APPPEAL PARTLY ALLOWED.

Facts of the Case

The appellant was a registered dealer with TIN No. 07090008522 and trading in PU Foam Sheet, mattresses, adhesives etc. taxable @ 5% and 12.5% and is filling his return quarterly. A survey of the appellant was conducted by the enforcement branch of Trade & Tax Department on 16.11.2011 and during such survey visiting team seized 14 (fourteen) loose papers and found cash short by Rs.33,420/- and also took the physical stock at the time of survey which was found short by Rs 23,10,065/-. Default assessment of tax, interest and penalty was carried out by the VATO creating following demands:-

Tax Period	Tax	Interest	Total	Penalty	u/s
1st qtr	1,40,296	15,740	1,56,036	1,40,296	86(10)
3rd qtr	2,03,940	7,459	2,03,940	2,03,940	86(10)
	-	-	-	50,000	86(13)

Objections filed by the appellant were rejected by the Additional Commissioner/OHA vide orders dated 24.04.2012. Aggrieved with the orders passed by the OHA, appellant had come in appeal before the Tribunal.

Held

The appellant by giving the details of stock position and explanation in respect of each of the seized paper had tried to explain these with reference to the record, it was apparent that neither the VATO nor the OHA had taken trouble to examine each of the explanation with reference to the record maintained by the appellant and by summoning the record of the sister concern if necessary and then give findings on the grounds taken by the appellant. Instead the explanation had been rejected by simply

treating these as afterthought without looking into the records and critically examining the explanations of the appellant with reference to the record maintained and produced. The orders passed by both the authorities were devoid of reason and were unsustainable on these accounts.

Now coming to the shortage of cash, on physical counting it was found to be Rs.19,500/- as against Rs 52,900/- as per books of accounts and the explanation given by the appellant was that Shri Pankaj Gupta son of the proprietor who was sick took Rs 33,000/- with him while leaving the office. The difference of Rs.420/- was due to the fact that loose money of small denomination was missed to be counted at the time of survey.

Assessing Authority rejecting the explanations of cash shortage observed that the clarification given by the dealer in respect of variation in cash was considered as afterthought and unconvincing.

Assessing Authority noticed that as per the survey report appellant did not record the sale properly which was confirmed by the dealer in his statement given to the survey team and was reproduced as under:

> "that for the purpose of local cash sales, the electronic cash register with bill issuing facility is being used by the firm and we are not issuing retail invoices for the same. This electronic cash register is being used on day to day basis and no record is maintained by the firm i.e. only one day entries are available as sales records."

The explanation of the appellant did not stand and had been correctly rejected. No documentary evidence regarding illness and the requirement of the money allegedly required for that purpose has been adduced by the appellant. The explanation tendered by the appellant for not maintaining the daily account of cash transactions and retaining only the daily account only for one day was without an rationale and was also sufficient to reject the explanation with reference to the shortage of cash.

In view of the foregoing the appeals were partly allowed. While the appeal was accepted in respect of creation of demand on rejection of enhancement made on account of loose papers and the variation in stock the plea on account of variation of cash was rejected. The matter was remanded back to the VATO to reframe the assessment in respect of stock variation and loose papers seized after examining the record of the case and give specific findings in respect of each of the paper after referring to the facts of the case. Further the matter was also remanded back to the VATO to reframe the assessment in respect of imposition of penalty after giving an opportunity of hearing to the appellant.

Present for the Appellant : Sh. RL Gupta, Adv.

Present for the Revenue : Sh. SB Jain, Adv.

ORDER

1. This order shall dispose of the above noted appeals filed by the appellant challenging the impugned orders dated 31.07.2013 passed by Additional Commissioner Zone III & V upholding the default assessment of tax, interest and penalty passed by VATO Ward-207 Spl Cell vide orders dated 24.04.2012.

2. Facts of the case briefly stated are that the appellant is a registered dealer with TIN No. 07090008522 and trading in PU Foam Sheet, mattresses, adhesives etc. taxable @ 5% and 12.5% and is filling his return quarterly. A survey of the appellant was conducted by the enforcement branch of Trade & Tax Department on 16.11.2011 and during such survey visiting team seized 14 (fourteen) loose papers and found cash short by Rs.33,420/- and also took the physical stock at the time of survey which was found short by Rs 23,10,065/-. Default assessment of tax, interest and penalty was carried out by the VATO creating following demands:-

Tax Period	Tax	Interest	Total	Penalty	u/s
1st qtr	1,40,296	15,740	1,56,036	1,40,296	86(10)
3rd qtr	2,03,940	7,459	2,03,940	2,03,940	86(10)
	-	-	-	50,000	86(13)

3. Objections filed by the appellant were rejected by the Additional Commissioner/OHA vide orders dated 24.04.2012. Aggrieved with the orders passed by the OHA, appellant has come in appeal before the Tribunal and assailed these on the following grounds:-

(i) That the Ld. VATO-Ward 207 (Special Cell) has erred in law under the circumstances and facts of the case in not accepting the explanations and documents submitted in support of his contentions.

(ii) That the Ld. VATO-Ward 207 (Special Cell) has not given any calculation about how he has arrived at the concealment of sales amount total valuing Rs. 36,43,245/- and bifurcating the same in 2 (two) periods i.e. 1st Quarter (2011-2012) and 3rd Quarter (2011-2012) amounting to Rs. 24,39,950/- and Rs. 12,03,295/- respectively and that such concealment of sales has been arrived without giving any basis of calculation and as such has no locus

standi in the eyes of law and such estimate of sale without any proper basis of calculation deserves to be deleted.

(iii) That the Ld. VATO-Ward 207 (Special Cell) has not accepted the clarifications and explanation given about each loose paper seized by the department and such explanations and clarifications have been rejected without giving any reasons thereof and simply stating that the clarifications "given by the dealer in his reply with respect to the seizure documents reveals that dealer in its attempt to avoid facing consequences of accepting the liability of paying the due amount of evaded tax and penalty thereof arising out of these loose paper, has given several excuses on one or another vague ground and therefore is not acceptable. This ultimately confirms the fact that the dealer has made all unaccounted transactions through these documents and entries on each page reflects the same".

(iv) That as per the provisions and procedures of law in case of seizure of loose papers and other documents the Assessing Authority has to consider each and every loose paper independently and to give its finding accordingly which has not been done in the present case and as such the assessment of tax and interest so framed under section 32 of the Act deserves to be set aside as it has no locus standi in the eyes of law.

(v) That the Ld. VATO-Ward 207 (Special Cell) has also rejected explanation given regarding shortage in cash in hand at the time of survey of Rs. 33,420/- which has been again rejected summarily and treating the same as concealment of sales. It could not be understood that how cash short found in the Galla can be considered as concealment of sales and as such the concealment of sales considered on this ground deserves to be deleted. Appellant relied on the decision of the Tribunal in the case of M/s Juglal Amir Chand (1989-90) DSTC XXIX.

(vi) That there is no difference in the quantity of stock taken at the time of visit of enforcement staff but even after that the addition is made on account of the difference in value arrived by the staff of department on the quantity of stock taken at the time of survey and the submissions made by the dealer about the value of such stock with the supporting evidence has again been rejected summarily without giving any specific reasons thereon and therefore the additions so made treating the same as concealment of sales deserves to be deleted.

(vii) That the Ld. VATO-Ward 207 (Special Cell) has also charged interest under sub-section (2) of section 42 which is also wrong and deserves to be deleted since there is no short payment of tax.

(viii) That an order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so.

(ix) That the penalty levied of Rs. 50,000/- under section 86 (13) of DVAT Act 2004 for not preparing and retaining the sale record is wrong. Since it was submitted at the time of survey that electronic cash sale register is not in regular use and is newly bought and it was practically under trial to get acquainted fully with the operation of machine as the appellant was not acquainted. The machine was there for trial purpose and it has been finalized and purchased vide bill No. 384 dated 31.12.2011 of Smart Solutions from whom this machine has been purchased finally. Photocopy of Purchase bill and Challan has been attached;

(xii) That the Ld OHA has wrongly confirmed the notice of default assessment of tax and interest passed by VATO ward 207 special cell by not accepting and assigning any reason thereof and deserves to be set aside and so also deserve to be set aside tax, interest and penalty levied.

4. We have heard Sh. RL Gupta Adv., Ld Counsel for the appellant and Sh. SB Jain, Adv., Ld Counsel for the Revenue and gone through the record of the case.

5. Ld Counsel for the Appellant reiterating the grounds of appeal submitted that orders are totally silent as to how the value has been arrived/ calculated for each of the 14 (fourteen) loose papers seized. That during the proceedings in compliance to notice under section 59(2) the appellant dealer filed/submitted explanation and replies of the loose papers besides the shortage in cash in hand and stock valuation which has been rejected summarily without giving any reasons thereof.

6. Ld Counsel for the Revenue submitted that the default assessment orders dealt in detail with the explanations submitted by the appellant and

there is no infirmity or illegality in the orders passed and the same deserve to be upheld.

7. At this stage it is relevant to see the explanation of the appellant with reference to the seized loose papers and the view taken on it in the default assessment order dated 24.04.2012 for tax period First Quarter of 2010-11.

8. The Assessment order records the explanations of the appellant with respect to seized documents as under:-

"..Loose Papers S. No. 1 to 14:

Page No. 1 - This is an estimate prepared while talking on telephone namely Shri Rakesh Ji (a new customer). M/s Deepak Printer, Badli Industrial Area, Gate No.5, Phase-II, Delhi. He was making enquiry about the HD Grade Foam Sheets which he later on did not purchase. This fact can be enquired on the telephone number mentioned on the estimate prepared itself.

Page No. 2 - The paper pertains to a routine of the firm to count physical stock randomly and this detail pertains to the physical stock counted on 05.11.2011.

Page No. 3 - The same explanation as of page No. 2 but of dated 15.11.2011.

Page No. 4 - The same explanation as of page No. 2 but of dated 14.11.2011.

Page No. 5 - It pertains to a discussion with a labour doing contractual job for stitching the cover of single and double quilts covers and number mentioned in the sheet is pertaining to how much production he can give per day and the rate that will be paid, as he wanted to start such business also.

Page No.6 - This paper pertains to one of the new customer M/s. R.S. Solution who made the enquiry and wanted to buy cut of size 33 mm foam sheets with a different length and width. He has purchased the goods vide Invoice No.392 dated 15.10.2011 which has been duly accounted for and reflected in the sales tax returns filed. Appellant enclosed copy of the Sale invoice enclosed.

Page No. 7- This paper pertains to appellant's principals M/s. R.P. Foam Home Pvt. Ltd., who has their Registered Office at

the same business premises No.4415, Gali Bahuji, Pahari Dhiraj, Sadar Bazar, Delhi-110006. This fact has been duly recorded in the statement given at the time of survey on dated 16.11.2011. This loose paper contains the names of Four parties relating to M/s. R.P. Foam Home Pvt. Ltd. and rest is about their loan facility from the bank with Car/Vehicle number etc. except one Car Name – Civic (Honda) that relates to Foam Home and seven saving A/c of the family members of the group. This paper has nothing to do with the business activity of the firm.

Page No. 8 to 13 - These paper pertain to their principals M/s R.P. Foam Home Pvt. Ltd. who have their Registered/ Corporate Office in the same premises. All these details in these loose papers pertain to the said company. It is further submitted that all these papers were lifted from the office premises of the said company, which is also in the same building but having separate adjoining independent office in the separate room. Appellant has enclosed Sales Invoices issued to the parties mentioned therein. Page No.9 pertains to the details of Ledger A/c of M/s Libra International Ltd. A copy of the account as appearing in the books of account of the company alongwith copy of the Sale invoices has been enclosed.

Page No. 14 - This page pertains to the saving A/c of one of the employee namely Mr. Sanjay Kumar Kant with Canara Bank. It has no links with business activity.

9. Regarding Stock variation the Appellant has enclosed the details of the Stock in Hand submitting that the quantity of the stock position taken at the time of survey tallied with the quantity as per books of accounts of the appellant and the difference is only on account of value taken and calculated by the survey team. The value taken of each product and quality is very much based on the selling price i.e. the transfer price as made by the consigner.

10. Assessing Authority disposing of the clarifications of the appellant observed that “Perusal of the clarification given by the dealer in its reply with respect to seizure documents revealed that the dealer in its attempt to avoid facing the consequences of accepting the liability of paying the due amount of evaded tax and penalty thereof arising out of these loose papers has given several excuses on one or another vague ground and therefore is not acceptable. This ultimately confirms the fact that the dealer has made all unaccounted transactions through these documents and entries on each page reflect the same.” Ld Assessing Authority rejected

the explanation given by the dealer in respect of variation in stock as well, as afterthought and unconvincing.

11. According to the appellant there is difference between the physical quantity taken at the time of survey and that is only of 2 Pillows valuing Rs.444.22 per piece i.e. Rs.888.44 and in the quantity of adhesive is of 23 pieces of 500 grams the value of which comes to Rs.3,322/-. The one packet contains of 10 packets of 500 grams each. There were 23 pieces loose lying which could not be considered/ counted at the time of Survey".

12. Submission of the appellant is that quantity of the stock position taken by the visiting officers was tallied with the quantity thereof as per books of accounts whereas the difference between the two was on account of value taken and calculated by enforcement staff and that the value taken of each product and quality was very much based on his selling price i.e. the transfer price as made by the consignee. His submission was that value decided of stock was on the basis of the oral statement of the appellant and not on the basis of the actual value whereas there is no effect of shortage of cash on the assessment. Regarding loose papers it has been submitted that the entries on the loose papers are all linked with bills and tally with the account books.

13. Appellant in support of his submissions has submitted the stock statement as per books of accounts on 16.11.2011; copy of stock statement taken by the department team on 16.11.2011; details of stock register item-wise, quantity wise and value thereof as on goods received on consignment basis ; copies of loose papers seized alongwith copies of stock as on 05.11.2011, 15.10.2011, 14.11.2011 relatable to loose papers 2,3 and 4 and copies of bills relatable to loose papers 6,10,11,12,13 and other related papers in support of his explanation towards seized papers.

14. While the appellant by giving the details of stock position and explanation in respect of each of the seized paper has tried to explain these with reference to the record, it is apparent that neither the VATO nor the OHA has taken trouble to examine each of the explanation with reference to the record maintained by the appellant and by summoning the record of the sister concern if necessary and then give findings on the grounds taken by the appellant. Instead the explanation has been rejected by simply treating these as afterthought without looking into the records and critically examining the explanations of the appellant with reference to the record maintained and produced. The orders passed by both the authorities are devoid of reason and are unsustainable on these account.

15. Now coming to the shortage of cash, on physical counting it was found to be Rs.19,500/- as against Rs 52,900/- as per books of accounts and the explanation given by the appellant is that Shri Pankaj Gupta son of the proprietor who was sick took Rs 33,000/- with him while leaving the office. The difference of Rs.420/- is due to the fact that loose money of small denomination was missed to be counted at the time of survey.

16. Ld Assessing Authority rejecting the explanations of cash shortage observed that the clarification given by the dealer in respect of variation in cash is considered as afterthought and unconvincing.

17. Assessing Authority noticed that as per the survey report appellant did not record the sale properly which is confirmed by the dealer in his statement given to the survey team and is reproduced as under:

> "that for the purpose of local cash sales, the electronic cash register with bill issuing facility is being used by the firm and we are not issuing retail invoices for the same. This electronic cash register is being used on day to day basis and no record is maintained by the firm i.e. only one day entries are available as sales records."

18. In view of these specific facts, the explanation of the appellant does not stand and has been correctly rejected. No documentary evidence regarding illness and the requirement of the money allegedly required for that purpose has been adduced by the appellant. The explanation tendered by the appellant for not maintaining the daily account of cash transactions and retaining only the daily account only for one day is without an rationale and is also sufficient to reject the explanation with reference to the shortage of cash.

19. In the case of Jug Lal Amir Chand, the additional demand of Rs 5936/- was created by enhancing turnover of the dealer by Rs 20,000/- per quarter by rejecting the books of accounts on the ground that during visit by the STI, the cash was found short by Rs 466.34 as compared to that shown in the cash book. Facts of the case are distinguishable in as much no enhancement has been made. Further the facts are distinguishable as it is admitted by the appellant that he has not been maintaining the daily accounts of the cash sales on regular basis and has only with him sale of one day only. In such facts and circumstances the explanation of the appellant is not acceptable.

20. In view of the foregoing the appeals are partly allowed. While the appeal is accepted in respect of creation of demand on rejection of enhancement made on account of loose papers and the variation in stock the plea on account of variation of cash is rejected. The matter is remanded

back to the VATO to reframe the assessment in respect of stock variation and loose papers seized after examining the record of the case and give specific findings in respect of each of the paper after referring to the facts of the case. Further the matter is also remanded back to the VATO to reframe the assessment in respect of imposition of penalty after giving an opportunity of hearing to the appellant. Appellant shall appear before the VATO on 20.12.2017. Ordered accordingly.

21. Order pronounced in the open court.

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

[2018] 56 DSTC 174 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI

[Diwan Chand: Member (A) And M.S. Wadhwa: Member (J)]

Appeal No.233-240/ATVAT/16-17

M/s ITC Ltd
25, Community Centre,
Basant Lok, Delhi-110057 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 20.11.2017

DISALLOWANCE OF INPUT TAX CREDIT U/S 9(2)(g) OF DELHI VALUE ADDED TAX ACT – MISMATCH OCCURRED IN ANNEXURE 2A WITH 2B – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OBJECTION PETITION PREFERRED AND PARTLY ALLOWED – BEFORE TRIBUNAL ARGUMENTS WERE MADE THAT AUTHORITIES BELOW RELIED UPON THE ANNEXURE 2B OF THE SELLING DEALER WITHOUT VERIFYING THE CONTENTS AND NO SUMMON TO SELLING DEALER WAS SENT.

IT WAS HELD THAT CONDITIONS OF SECTION 9(2)(g) WERE FULFILLED WHICH COULD ONLY BE FOUND AFTER EXAMINING THE RECORDS OF SELLING DEALER – NEITHER VATO NOR O.H.A. VERIFIED THE RECORDS OF SELLING DEALER – ORDERS SET ASIDE VATO TO REFRAME ASSESSMENT AFRESH AND TO VERIFY WHETHER SELLING DEALER HAD DEPOSITED OUTPUT TAX IN THE MATTER.

Facts of the Case

On the basis of mismatch of Annexure 2A & 2B the VATO, Ward-205 vide orders dated 15.06.2015 passed the default assessment orders of tax and interest u/s 32 of the DVAT Act and default assessment of penalty u/s 33 r/w section 86(12) and created the following demands:-

Tax period	Tax	Interest	Penalty
1st qtr 2013	1,74,152	49,669	1,74,152
2nd qtr 2013	8,47,878	2,09,762	8,47,878
3rd qtr 2013	63,448	13,298	63,448
4th qtr 2013	36,573	6,312	36,573

Aggrieved with the default assessment orders the appellant filed objections before the OHA which were disposed of by the VATO/Spl. OHA vide orders dated 07.11.2016 and after taking note of reconciliation shown before him Ld. OHA partly allowed the objections, reviewed the assessment order and modified the demands as under:-

Tax period	Tax	Interest	Penalty
1st qtr 2013	14,849	7,317	14,849
2nd qtr 2013	26,973	12,271	26,973
3rd qtr 2013	29,060	12,122	29,060
4th qtr 2013	16,729	6,359	16,729

Aggrieved with the impugned orders passed by the OHA appellant has come in appeal before the Appellant Tribunal, VAT, Delhi.

Held

Whether the selling dealer had lawfully adjusted the tax paid to him or paid in the Govt. account and correctly reflected in the returns could only be examined from the record maintained by the selling dealer. There was no mechanism with the purchasing dealer to know whether the selling dealer had submitted correct particulars or he had deposited the tax collected from the purchasing dealer, or lawfully adjusted as Hon'ble High Court observed in the case of Shanti Kiran. According to appellant, he was expected to file the tax invoice of purchases and that he had complied with the provisions of section 9 to claim the benefit of ITC. In these circumstances and in view of the provisions of Rule 6A (2) which mandated the VATO to be satisfied that the conditions of 9(2)(g) were fulfilled, which could only be found after examining the records of the selling dealer, notices should have been given to the selling dealer to confirm whether he has deposited tax recovered from the appellant and then only VATO should have framed assessment. VATO having failed in doing so it was incumbent upon the OHA to examine the case on merits and summon the records of the selling dealers. There was total non-application of mind on the part of the OHA in upholding the default assessment orders.

The tribunal was of the view that tax was wrongly imposed by the VATO and confirmed by the Ld. OHA in these circumstances, without giving notice to the selling dealer.

The Tribunal set aside the impugned order passed by the OHA and remand the matter back to the concerned VATO to reframe assessment afresh after giving opportunity of hearing to the appellant and after verifying from the selling dealer whether he had deposited output tax in the matter.

Present for the Appellant : Sh. Mayur Bhargava, Adv.

Present for the Revenue : Sh. CM Sharma, Adv.

Order

1. This order shall dispose of the above noted appeals filed by the appellant M/s ITC Ltd. challenging the impugned orders dated 07.11.2016 passed by VATO, hereinafter referred as Special Objection Hearing Authority (in short the OHA).

2. Brief facts of the case are that on the basis of mismatch of Annexure 2A & 2B the VATO Ward-205 vide orders dated 15.06.2015 passed the default assessment orders of tax and interest u/s 32 of the DVAT Act and default assessment of penalty u/s 33 r/w section 86(12) and created the following demands:-

Tax period	Tax	Interest	Penalty
1st qtr 2013	1,74,152	49,669	1,74,152
2nd qtr 2013	8,47,878	2,09,762	8,47,878
3rd qtr 2013	63,448	13,298	63,448
4th qtr 2013	36,573	6,312	36,573

3. Aggrieved with the default assessment orders the appellant filed objections before the OHA which were disposed of by the VATO/Spl OHA vide orders dated 07.11.2016 and after taking note of reconciliation shown before him Ld OHA partly allowed the objections, reviewed the assessment order and modified the demands as under:-

Tax period	Tax	Interest	Penalty
1st qtr 2013	14,849	7,317	14,849
2nd qtr 2013	26,973	12,271	26,973
3rd qtr 2013	29,060	12,122	29,060
4th qtr 2013	16,729	6,359	16,729

4. Aggrieved with the impugned orders passed by the OHA appellant has come in appeal before us and assailed the impugned orders on the following grounds:-

1. That the notice of default assessment order dated 07.11.2016 passed by the VAT Officer/VATO (Special OHA) is illegal, perverse and unsustainable under law and facts and circumstances of the case.

2. That the VAT Officer/VATO(Special OHA) erred in disallowing the input tax credit and creating additional demand of tax and interest without property verifying the purchases of the appellant , allegedly on the basis of Annexure 2B filed by the selling dealer and without verifying the contents of Annexure 2B filed by the selling dealer.

3. That the appellant is entitled to input of the tax paid on purchases. Section 2(r) of the Delhi VAT Act, 2004 defines input tax as **"**input tax" in relation to the goods, means the proportion of the price paid by the buyer for the goods which represents tax for which the selling dealer is liable under this Act; the VAT Officer/VATO (Special OHA) before disallowing input credit has not considered the provisions of the Act. The VAT Officer/VATO (Special OHA) has not challenged the genuineness of purchase.

4. That the VAT Officer/VATO(Special OHA) erred in not verifying the purchases before creating demand of tax and interest against the appellant. The entire demand has been created on the presumption that the seller has correctly filed Annexure 2B.

5. That the order passed on mere presumption cannot stand in eye of law and the objector craves leave of this court to summon the respective selling dealers.

6. That the VAT Officer/VATO (Special OHA) erred in not verifying the fact as to whether all the selling dealers who are part of the mismatch report had correctly filed their returns. All the dealer, who are part of mismatch report are registered dealer and have admittedly filed returns. The registration under the Delhi Value Added Tax Act, 2004 was granted by the Trade and Taxes Department and before disallowing the claim of input credit the VAT Officer/VATO (Special OHA) ought to have conducted enquiries about the correctness of the returns filed by the selling dealers.

7. That the VAT Officer/VATO(Special OHA) erred in framing the default assessment order, presuming that the details furnished by the selling dealer in Annexure 2B are correct in all material particulars.

8. That the appellant is in possession of tax invoices and has claimed input credit in accordance with the provisions of law. The appellant is entitled to input credit on the purchases made from registered dealers holding TIN number granted by the Department of Trade and Taxes, Delhi.

9. That it is well established that Tax is leviable on the sale of goods. It must be collected by a dealer as an agent of the State at such rate as may be specified.

10. That in Gheru Lal Bal Chand Vs. State of Haryana and another, Hon'ble High Court of Punjab and Haryana interalia held that the purchasing dealers cannot be disallowed ITC on the ground that the seller has not paid the tax collected by him from the purchaser. The judgment makes it clear that the selling dealer collects tax as an agent of the Government and if he makes any default to deposit the same with the treasury then innocent purchasing dealer cannot be disallowed the claim of such tax as ITC.

11. That the assessee to establish that the registered selling dealer has correctly filed its Annexure 2B with respect to the purchases made by the assessee, it is an onerous condition which is not capable of performance as the purchasing dealer has no control over the registered selling dealer or its predecessors. The State has all the machinery at its command to effect recovery from the real defaulter and no person other than the defaulting person can be penalized for somebody else's lapses.

12. That liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, the Act nowhere envisages to impose any penalty either directly or vicariously where a person is not connected with any such event or an act. The Act cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of requisite invoices as specified in Section 9(8), which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In

the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer thereto, no liability can be imposed on the principle of vicarious liability.

13. That the rule of interpretation requires that such meaning should be assigned to the provisions which would make the provision of the Act effective and advance the purchase of the Act. This should be done wherever possible without doing any violence to the language to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse off, the interpretation would give result to an absurdity.

14. That once it is established that the raw material or incidental goods have been purchased from a registered dealer that shows that the goods are tax-paid and if the goods have not suffered the tax, it is open for the assessing authority to ask the registered dealer. Therefore, by virtue of conjoint reading Section 9(8), 50(2) along with Rules, 27(1) and 27(2), once the purchasing dealer produces the bill of registered dealer then it shall be presumed that the goods have suffered the incidence of tax. If there is any doubt about it then the correct approach is to pursue the selling dealer instead of driving the assessee from pillar to post in order to collect evidence for availing input credit. The assessing authority in the event of any suspicion, should call upon that whether the goods have suffered the tax or not. Once the law defines the registered dealer and tax-paid goods, the assessee, i.e. purchasing dealer, produced the bill issued by the registered dealer then his burden is discharged and he cannot be held responsible for he cannot be forced to go around from pillar to post to collect the material in order to avail the input credit. Rather, it should be on the assessing authority to obtain the necessary particulars if any suspicion arises.

15. The purpose of a Value Added Tax is to avoid a cascading effect and the tax is an indirect tax. The purchasing dealer does not factor the tax that is actually paid. Consequently, even if the immediate selling dealer has not paid tax, a set off would be available to the purchasing dealer against the tax paid in the earlier link in the chain.

16. That the appellant crave leave to produce tax invoices and liberty to summon selling dealers.

17. That the appellant cannot be held liable for the faults/omissions or any other reasons of the selling dealers.

18. That the default assessment order has been passed with a predetermined, prejudice mind with an intention to create demand in as much as no action has been taken against the selling dealers who had issued tax invoices and have been authorized to collect tax from the appellant by the department.

19. That the VAT Officer/VATO (Special OHA) erred in not verifying the details of purchases of the appellant with the selling dealer before creating demand. Admittedly the selling dealers have been/are revising their Annexure-2B time and again. Annexure-2B filed by selling dealer cannot be relied upon unless verified by the VAT Officer/VATO (Special OHA).

20. That the VAT Officer/VATO(Special OHA) erred in levying interest on the additional demand created by disallowing claim of input tax credit. The appellant had deposited tax according to returns furnished and there was no tax deficiency at the time of filing of returns. The VAT Officer/VATO (Special OHA) without pointing any tax deficiency in returns levied interest on the additional demand created.

21. That the additional demand has been created by the VAT Officer/ VATO(Special OHA) by disallowing the claim of input credit vide his order and prior to this there was no tax due warranting levy of interest. Even the alleged tax deficiency considered by the VAT Officer/VATO (Special OHA) does not tally with data on site of the appellant.

22. That entire approach of the VAT Officer/VATO (Special OHA) is illegal and contrary to the provisions of the Act.

23. That the appellant reserves its right to amend, alter, add or delete any or all grounds of appeal.

24. That the appellant would like to have a personal hearing on the objections preferred.

5. We have heard Sh. Mayur Bhargava, Adv. Ld Counsel for the Appellant and Sh. CM Sharma, Adv., Ld Counsel for the Revenue and gone through the record of the case.

6. Ld Counsel for the appellant reiterating the grounds of appeal prayed for setting aside the impugned orders.

7. Ld Counsel for the revenue submitted that there was no irregularity or illegality in the impugned orders. In the absence of proof regarding deposit of tax by the selling dealer no credit can be given to the appellant.

8. We have carefully considered the record of the case. Provisions of section 9 of the DVAT relevant for the disposal of this appeal are extracted below:-

Section 9 Tax credit

(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act 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 and the goods are to be used by him directly or indirectly for the purpose of making -

(a) sales which are liable to tax under section 3 of this Act; or

(b) sales which are not liable to tax under section 7 of this Act.

Explanation.- Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.

(2) No tax credit shall be allowed –

(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.

9. Input Tax Credit that arises under section 9(1) of the Act is subject to the provisions of sub-section (2) and such conditions, restrictions and

limitations as may be prescribed. Clause (g) of sub-section 2 of section 9 specifically provides that no tax credit shall be allowed 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.

10. But then the question arises whether in the facts and circumstances of the present case, ITC was rightly denied to the appellant without giving any opportunity of hearing to him. On the basis of facts of the present case, while it can be said that it is a case of mismatch but unless it is proved beyond doubt that corresponding output tax was not deposited by the selling dealer, in our considered view, ITC cannot be denied to the appellant. For this purpose it was necessary for the concerned VATO to issue notices before framing assessment against the appellant. Provisions of section 9 (2)(g) can only be attracted when selling dealer had failed to deposit the tax collected from the purchasing dealer. But in the present case only on the basis of mismatch in online return submitted by appellant and selling dealer, tax has been imposed.

11. It is relevant to refer to the provisions of Rule 6A(2) of the DVAT Rules which provides as under:-

6A Restriction and conditions governing tax credit

(1) ***

(2) Before allowing the claim of input tax credit to a dealer, the assessing authority may satisfy itself that the conditions laid down in clause (g) of sub-section (2) of section 9 of the Act are also satisfied.

12. Whether the selling dealer has lawfully adjusted the tax paid to him or paid in the Govt account and correctly reflected in the returns can only be examined from the record maintained by the selling dealer. There is no mechanism with the purchasing dealer to know whether the selling dealer has submitted correct particulars or he had deposited the tax collected from the purchasing dealer, or lawfully adjusted as Hon'ble High Court observed in the case of Shanti Kiran. According to appellant, he was expected to file the tax invoice of purchases and that he has complied with the provisions of section 9 to claim the benefit of ITC. In these circumstances and in view of the provisions of Rule 6A(2) which mandated the VATO to be satisfied that the conditions of 9(2)(g) were fulfilled, which could only be found

after examining the records of the selling dealer, notices should have been given to the selling dealer to confirm whether he has deposited tax recovered from the appellant and then only Ld. VATO should have framed assessment. Ld VATO having failed in doing so it was incumbent upon the Ld OHA to examine the case on merits and summon the records of the selling dealers. There is total non-application of mind on the part of the OHA in upholding the default assessment orders.

13. On the basis of aforesaid discussion, we are of the view that tax was wrongly imposed by the Ld. VATO and confirmed by the Ld. OHA in these circumstances, without giving notice to the selling dealer.

14. On the basis of aforesaid discussion, we set aside the impugned order passed by the Ld. OHA and remand the matter back to the concerned VATO to reframe assessment afresh after giving opportunity of hearing to the appellant and after verifying from the selling dealer whether **he has** deposited output tax in the matter. Appellant is directed to appear before the concerned VATO on 10th December 2017 who will dispose off the matter in the light of observations made in this order as soon as possible.

15. Order pronounced in the open court.

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

[2018] 56 DSTC 183 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
M.S. Wadhwa, Member (J) And Diwan Chand, Member (A)

Appeal Nos.206/ATVAT/17-18

M/s Zareen Traders,
2592, Lal Darwaza, Sirki Walan,
New Delhi – 110006 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 15.12.2017

REFUND U/S 38(3) OF DVAT ACT – DEALER ENTITLED FOR REFUND WITHIN A PERIOD OF ONE ONE MONTH FROM DATE OF FILING OF RETURN - DEFAULT ASSESSMENT ORDER FRAMED AND DEMAND CREATED AND ADJUSTED AGAINST THE REFUND.

OHA REMANDED THE MATTER BACK TO THE CONCERNED VATO DESPITE BEING CONVINCED THAT APPELLANT WAS ENTITLED FOR CLAIM OF REFUND AS WELL AS INTEREST THEREON – RATIO OF THE DECISION OF SWARAN DARSHAN IMPEX, PRIME PAPERS AND PACKERS, SHAILA ENTERPRISES AND NUCLEUS MARKETING AND COMMUNICATION CASES APPLIED TO THE FACTS OF APPELLANT CASE – APPEAL ALLOWED – DIRECTION ISSUED TO PROCESS REFUND TOGETHER WITH INTEREST.

Facts of the Case

The appellant filed objections against the orders dated 6/6/2014 passed by VATO. The OHA vide impugned orders dated 20/7/2017, accepted the objections and remanded back the matter to the concerned VATO, inspite of being convinced that the refund was wrongly rejected by the VATO.

Aggrieved by the impugned order dated 20/7/2017 passed by OHA, appellant had filed appeal before the Tribunal.

Held

Section 11 of the DVAT Act provided that in case there was excess input tax credit after set off against output Value Added Tax / Central Sales Tax liability, claimant dealer had option to either carry-forward it to next tax period or claim refund of the same in return filed under DVAT Act for respective tax period. The appeal related to assessment year 2010-11. Appellant claimed a refund of Rs. 1,49,768/-. The appeal had a chequered history. Initially, vide order dated 22/2/2014 demand of Rs. 7,783/- (Rs. 5,325/- towards CST and Rs. 2,458/- towards interest) was created against appellant, which was later on reduced to nil vide order dated 19/8/2014 by VATO. Later on vide order dated 6/6/2014 VATO passed adjustment orders and refund of Rs. 1,49,768/- was adjusted. Vide orders dated 6/6/2014 Notices of default assessment of tax and interest of Rs. 1.49.768/- were issued. The appellant assailed these orders before the OHA who vide impugned order dated 20/7/2017 remanded the matter back to the concerned VATO. According to appellant, OHA should have directed VATO to pay refund amount along with interest but despite, OHA being convinced that appellant was entitled for refund along with interest remanded the matter to the concerned VATO. Appellant had prayed before the Tribunal to direct the revenue to refund the amount claimed by the appellant along with interest.

It was clear from the bare reading of section 38(4) that as appellant was filing monthly return, and no notices U/s 59 within a period of one month seeking additional information or no notices U/s 58 were issued for

audit investigation, the VATO should have within a month from the date of filing of return or claim for refund was made, refunded the amount to the appellant, however instead of refunding the amount appellant was issued time barred notices dated 6/6/2014.

The Delhi High Court, applying the ratio of Sawarn Darshan Impex Case, recently in a number of cases directed revenue to process the refund claim of the dealers. In the case of Prime Papers and Packers Vs. Commissioner of VAT (2016) 54 DSTC-1, in Shaila Enterprises Vs. Commissioner of VAT (2016) 54 DSTC-15 and Nucleus Marketing and Communication Vs. Commissioner VAT (2016) 54 DSCT - 60, similar refund orders were passed.

The Tribunal was of the view that the ratio of the cases applied to the appeal, so direction was issued to the respondent to process the refund claims made by the appellant for the above mentioned period and issue appropriate orders granting refund together with interest in terms of section 38 of DVAT Act within a period of 2 months from the date of passing of these orders. If there was any failure by the respondent to comply with these orders, appellant shall seek appropriate relief in accordance with law. Accordingly the appeal was allowed and impugned orders dated 20/7/2017 passed by OHA were set-aside.

Present for the Appellant : Sh. Wahaj Ahmed Khan, Adv.

Present for the Revenue : Sh. P. Tara, Advocate

O R D E R

1. The present appeal has been filed against the impugned orders dated 20/7/2017 passed by Ld. Addl. Commissioner, hereinafter called Objection Hearing Authority (in short OHA) , who vide these orders remanded back the matter to the concerned VATO to pass speaking orders after careful consideration of the facts on record and relevant provisions of the Act.

2. The brief facts of the present appeal are that appellant filed objections against the orders dated 6/6/2014 passed by Ld. VATO. The Ld. OHA vide impugned orders dated 20/7/2017, accepted the objections and remanded back the matter to the concerned VATO, inspite of being convinced that the refund was wrongly rejected by the Ld. VATO.

3. Aggrieved by that impugned orders dated 20/7/2017 passed by Ld. OHA, appellant has filed present appeal on following grounds before this Tribunal:

(i) That the orders of the Ld. OHA are highly arbitrary illegal and against the facts of the case.

(ii) That the issue involved in the present case is squarely covered by the judicial decision of Hon'ble Delhi High Court in the case of Swaran Darshan Impex (P) Ltd. Vs. Commissioner Value Added Tax, (2010) 8 VSTI – B – 467, which has been followed by this Tribunal in number of cases.

(iii) That the assessment orders are against the provisions of section 38 of DVAT Act, which provides that refund claimed by a dealer in monthly return, shall be refunded within one month from the date of filing of return for respective tax period. Further, section 38 of DVAT Act provides that where a notice has been issued U/s 58 or 59 of the DVAT Act, time taken to furnish information sought under the same shall be excluded for calculating period for issuing refund. Plain reading of section 38 DVAT Act gives understanding that notice prescribed is required to be issued within one month from furnishing of return for relevant tax period. In case no notice has been issued, refund claimed by a dealer in returns shall be issued within the said period of one month from date of filing of return.

(iv) In the instant case, it is evident from the assessment orders that the notices alleged to have been issued, were issued beyond limitation period as given in section 38 DVAT Act.

(v) That the Ld. OHA erred in remanding the matter in as much as the Ld. OHA, inspite of being convinced that assessment orders are not legally tenable and are squarely covered by the judgments has remanded the matter back to the Ld. VATO.

(vi) That the impugned orders have been passed without application of mind, hence are liable to be set-aside.

4. On the basis of the above facts and grounds of appeal, it has been prayed that impugned orders dated 20/7/2017 passed by Ld. OHA be set-aside and concerned VATO be directed to refund the amount claimed by the appellant alongwith the interest.

5. Heard to appellant's Ld. counsel Wahaj Ahmed Khan, Adv. and Mr. P Tara on behalf of the Revenue and perused the file and the case law cited by the appellant in support of his arguments, on the basis of which present appeal is being disposed of as follows.

6. The issue raised in this appeal is that instead of allowing refund to the appellant within a period of one month, Ld. VATO vide orders dated

6/6/2014 issued notices of tax and interest amounting to Rs. 1,49,768/-, against which objections were filed and Ld. OHA vide orders dated 20/7/2017 remanded the matter back to the concerned VATO despite being convinced that appellant was entitled for claim of refund as well as interest thereon. Before proceeding further, it would be appropriate to reproduce section 38 DVAT Act which relates to refund and which is as follows:

> "(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.

(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) or 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 sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.''

Section 39 - Power to withhold refund in certain cases

(1) *"Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the, opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.*

(2) *Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund."*

7. Section 11 of the DVAT Act provides that in case there is excess input tax credit after set off against output Value Added Tax / Central Sales Tax liability, claimant dealer has option to either carry-forward it to next tax period or claim refund of the same in return filed under DVAT Act for respective tax period. The present appeal relates to assessment year 2010-11. Appellant claimed a refund of Rs. 1,49,768/-. The present appeal has a chequered history. Initially, vide order dated 22/2/2014 demand of Rs. 7,783/- (Rs. 5,325/- towards CST and Rs. 2,458/- towards interest) was created against appellant, which was later on reduced to nil vide order dated 19/8/2014 by Ld. VATO. Later on vide orders dated 6/6/2014 Ld. VATO passed adjustment orders and refund of Rs. 1,49,768/- was adjusted. Vide orders dated 6/6/2014 notices of default assessment of tax and interest of Rs. 1.49.768/- were issued. The appellant assailed these orders before the Ld. OHA who vide impugned orders dated 20/7/2017 remanded the matter back to the concerned VATO. According to appellant, Ld. OHA should have directed Ld. VATO to pay refund amount alongwith interest but despite being convinced that appellant is entitled for refund alongwith interest remanded the matter to the concerned VATO. Appellant has prayed before this Tribunal to direct the revenue to refund the amount claimed by the appellant alongwith interest.

8. It is clear from the bare reading of section 38(4) that as appellant was filing monthly return, and no notices U/s 59 within a period of one month seeking additional information or no notices U/s 58 were issued for audit investigation, the Ld. VATO should have within a month from the date of filing of return or claim for refund was made, refunded the amount to the appellant, but instead of refunding the amount appellant was issued time barred notices dated 6/6/2014.

9. Issue of refund and the interpretation of Section-38 and other relevant provisions, was the subject matter of the decision in the case of M/s Sawarn Darshan Impex Case (supra), in which the following observations of Hon'ble Delhi High Court are relevant for the disposal of this appeal which are as follows :-

> "27. A plain reading of Section 38, which deals with refunds, makes it clear that by virtue of sub-section (3) thereof, in the case where a person is assessed quarterly, the refund is to be made to the dealer within two months after the date on which the return is furnished or the claim for the refund is made. Of course, it is the dealer's option to elect as to whether the refund is to be made in case or the said amount is to be carried forward to the next tax period as a tax credit in that period. In the present case, the petitioner has elected for the grant of refunds in case and has not elected for carrying forward the refund amount to the next tax period. The provisions of Section 38(3) uses the expression "shall" and, therefore, it is clear that the refund has to be made within two months from the date of the return."

10. In the said judgment the Hon'ble High Court has also further observed as under : -

> 9. "Thus; whether a provision is mandatory or directory, has to be gathered from the real intention of the legislature and after examining the scope and purpose of the statute and no hard and fast rule can be laid down for such a determination. Consequently, the fact that the word "shall" as appearing in Section 74(7) was taken to be directory and not mandatory in Behl Construction (supra), does not ipso facto mean that the word "shall" as appearing in Section 38(1) and 38(3), also ought to be construed as being merely directory. The provisions of Section 74 and those of Section 38 operate in entirely different fields and deal with different situations. The legislative intent that is discernible in respect of Section 74(7), in the context of its related provisions, does not necessarily mean that

the same legislative intent ought to be applied to the provisions of Section 38. In Behl Construction (supra), this court had observed that :-

"8. In sub-section (8) and (9) of section 74, the legislature has provided for the situation where the commissioner does not dispose of the objections during the applicable period. This, in itself, is indicative of the fact that the legislature was mindful of such a situation and that the mere passage of the applicable period without the commissioner disposing the objections one way or the other did not mean that the objections could be deemed to have been accepted or allowed. For this to happen, something more is required and that is exactly what is stipulated in sub-sections (8) and (9). In sub-section (9) it is provided that where the Commissioner has not notified the objector of his decision within the, time specified, under sub-section (7) (i.e., the applicable period), the objector may serve a written 'notice requiring him to make a decision within fifteen days. And, by virtue of sub-section (9), if the decision is not made by the end of the period of fifteen days after being given the notice referred to in subsection."

then, at the end of that period, the commissioner shall be deemed to have allowed the objection. So, 'the deeming fiction or sub-section (9) gets triggered only if a notice as stipulated in sub-section (8) is given and the period of fifteen days specified therein expires without any decision from the Commissioner. Not otherwise. This is the clear legislative intendment which we can gather upon a plain reading of the provisions of sub-sections (7), (8) and (9) of section 74 of the said Act."

10. "Such a situation does not arise in the present case in as much as the provisions of Section 38 do not contemplate a situation where the Commissioner does not grant a refund within the stipulated period. The decision in Behl Construction (supra) was in the context of the provisions of Section 74 and those circumstances do not arise in the present case. As pointed out, what this court has to determine is : what is legislative intent behind the provisions of Section 38. It is this intent which shall determine whether the stipulations as to time are merely directory or they are mandatory as suggested by the use of the word "shall". On going through all subsections of Section 38 of the said Act, the legislative intent that is clearly discernible is that refunds must be granted to a person entitled within the specific time period stipulated in sub-section (3) thereof."

"This intention is further fortified by a look at the provisions of sub-section (7) of Section 38 which stipulates that for calculating the period prescribed in clause (a) of subsection (3), the time taken to furnish the security under sub-section (5) to the satisfaction of the Commissioner or to furnish the additional information sought under section 59 or to furnish returns under sections 26 and 27, "shall be excluded". This provision as to exclusion of time taken in doing the aforesaid acts, is in itself an indication that the legislature was dead serious about the stipulation as to time for making refunds under section 38(3) of the said Act. For, if the legislative intent were not so, what was the need or necessity for providing for exclusion of time? Thus, not only do the provisions of section 38 employ the word "shall", which is usual in mandatory provisions, the legislative intendment discernible from the said provisions also points towards the mandatory nature of the said provisions. Clearly, subject to the exclusion of time provided under sub-section(7) or section 38, in a case falling under section 38(3)(a)(ii), the refund has to be made within two months from the date of the return."

11. Our jurisdictional Delhi High Court, applying the ratio of Sawarn Darshan Impex Case, recently in a number of cases directed revenue to process the refund claim of the dealers. In the case of Prime Papers and Packers Vs. Commissioner of VAT (2016) 54 DSTC-1, in Shaila Enterprises Vs. Commissioner of VAT (2016) 54 DSTC-15 and Nucleus Marketing and Communication Vs. Commissioner VAT (2016) 54 DSCT - 60, similar refund orders were passed.

12. In our considered view, the ratio of above cases applies to present appeal, so direction is issued to the respondent to process the refund claims made by the appellant for the above mentioned period and issue appropriate orders granting refund together with interest in terms of section 38 of DVAT Act within a period of 2 months from the date of passing of these orders. If there is any failure by the respondent to comply these orders, appellant shall seek appropriate relief in accordance with law. Accordingly the present appeal is allowed and impugned orders dated 20/7/2017 passed by Ld. OHA are hereby set-aside.

13. Order pronounced in the open court.

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

15. File be consigned to record room.

[2018] 56 DSTC 193 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice Sanjiv Khanna Hon'ble Mr. Justice Chander Shekhar]

W. P. (C) No. 4551/2017

Reserved on: 16th February, 2018

M/s Santani Sales Organisation ... Petitioner

Versus

Central Excise, Customs And
Service Tax Appellate Triubnal, Delhi And Others ... Respondents

Date of Order: 31 May, 2018

APPEALS TO APPELLATE TRIBUNAL U/S 86 OF FINANCE ACT, 1994 – PRE-DEPOSIT – CIRCULAR DIRECTING APPELLANTS TO DEPOSIT ADDITIONAL 10% OF THE DUTY AND PENALTY IN DISPUTE FOR SECOND APPEAL TO BE HEARD OVER AND ABOVE 7.5% PRE-DEPOSIT MADE FOR FILING OF FIRST APPEAL – WRIT PETITION CHALLENGING THE VALIDITY OF THE CIRCULAR – WHETHER CORRECT HELD; NO – CIRCULAR DT. 27TH APRIL, 2017 QUASHED WHICH WAS ISSUED BY TRIBUNAL AND ALSO CLARIFIED THAT ON FILING SECOND APPEAL BEFORE THE TRIBUNAL DEPOSIT OF 10% OF THE AMOUNT OF DUTY/ PENALTY AS CONFIRMED BY THE FIRST APPELLATE AUTHORITY INCLUSIVE OF 7.5% PRE-DEPOSIT MADE FOR THE FIRST APPEAL.

SECTION 35F OF THE CENTRAL EXCISE ACT ALSO APPLIES TO SERVICE TAX APPEALS AND PRE-DEPOSIT IS REQUIRED.

Facts of the Case

The Petitioner had preferred second appeals bearing Nos. ST 52898/2016 and ST 50372/2017 before the Tribunal against the orders passed in the first appeal by the Commissioner (Appeals). Disputed duty demand including Education and Secondary and Higher Education Cess confirmed by Commissioner (Appeals) under challenge in Appeal No. ST 52898/2016 was Rs.15,05,046/- and Rs.27,46,819/-, and in Appeal No. ST 50372/2017 was Rs.24,44,138/-. The petitioner had deposited 7.5% of the total duty and cess demand, amounting to Rs.3,19,000/- and Rs.1,83,310/- respectively for the two appeals, as a pre-deposit before the Commissioner (Appeals). While filing the second appeal before the Tribunal, the petitioner made a further deposit of 2.5% of the duty and cess demand under challenge of Rs.1,06,296/- and Rs.61,000/- respectively in order to reach a figure of 10% of the disputed tax demand.

The petitioner contended that they were required to make pre-deposit of the balance 2.5%, of the duty and penalty, i.e., difference between 10% as mandated for filing of second appeal before the Tribunal and 7.5% as mandated for filing of first appeal before the Commissioner (Appeals).

The petitioner had challenged validity of circular dated 27th April, 2017 issued by the Tribunal, based on the larger Bench decision of the Tribunal in In Re: Quantum of Mandatory Deposit*, reported as 2017 (349) ELT 477 (Tri.-LB), stipulating that while preferring an appeal against an order of Commissioner (Appeals), the appellants are required to deposit 10% of the amount of duty and penalty imposed and confirmed separately and over and above pre-deposit of 7.5% for filing first appeal before Commissioner (Appeals).*

Second contention of the petitioner was that requirement of pre-deposit mandated vide Section 35F of the C.E. Act, did not apply to service tax appeals preferred under Sections 85 and 86 of the Finance Act, 1994.

Held

Section 86 of the Finance Act provides for an appeal before the Tribunal and Section 83 of the Finance Act makes Section 35F of the Central Excise Act equally applicable. Section 35F of the Central Excise Act is the provision which related to pre-deposit, a mandatory provision for the appeal to be maintainable and heard. If the interpretation given by petitioner was accepted part of Section 83 of the Finance Act referring to Section 35F of the C.E. Act altogether otiose and redundant. Decision in Glyph International Limited was in different context of right to appeal before the Tribunal given vide Section 86 of the Finance Act, and whether the right to appeal before the Tribunal was subsequently taken away and withdrawn. The court felt that reference to Section 33 EE of the C.E. Act in Section 83 of the Finance Act would not make any difference and the Tribunal continued to possess jurisdiction vide Section 86 of the Finance Act to decide matters relating to rebate or refund. This decision was of no avail and did not help us to decide the controversy in question. Second contention raised by the petitioner was accordingly decided against them.

The Court allowed the writ petition and set aside the order and direction of the Tribunal that the petitioner must deposit additional 10% of the duty and penalty in dispute for the second appeal to be heard and adjudicated. The Court also quashed the circular dated 27th April, 2017 issued by the Tribunal. It was directed that the petitioner and others on filing second appeal before the Tribunal are required to deposit 10% of the amount of duty/ penalty as confirmed by the first appellate authority inclusive of 7.5% pre-deposit made for the first appeal. 10% would not be in addition to and over and above 7.5% of pre deposit made for the first appeal. However, contention that Section 35F of the C.E. Act did not apply to service tax appeals and therefore no pre-deposit was required to be made was rejected.

Present for the Petitioner : Mr. J. K. Mittal, Advocate

Present for the Respondents : Mr. Rajender Sahu, Advocate
for respondent Nos. 1 & 3.

Mr. Harpreet Singh, Sr. Standing Counsel
for Respondent No. 2

Order

Sanjiv Khanna, J.:

Question raised in the present writ petition is whether as per Section 35F of the Central Excise Act, 1944 (C.E. Act, for short) the petitioner-assessee on filing of second appeal before the Central Excise, Customs and Service Tax Appellate Tribunal (Tribunal, for short) is required to make an additional pre-deposit of 10% of the duty and penalty in dispute, over and above 7.5% pre-deposit made for filing of first appeal before the Commissioner (Appeals).

2. The petitioner contends that they are required to make pre-deposit of the balance 2.5%, of the duty and penalty, i.e., difference between 10% as mandated for filing of second appeal before the Tribunal and 7.5% as mandated for filing of first appeal before the Commissioner (Appeals).

3. The petitioner has challenged validity of circular dated 27th April, 2017 issued by the Tribunal, based on the larger Bench decision of the Tribunal in *In Re: Quantum of Mandatory Deposit*, reported as 2017 (349) ELT 477 (Tri.-LB), stipulating that while preferring an appeal against an order of Commissioner (Appeals), the appellants are required to deposit 10% of the amount of duty and penalty imposed and confirmed separately and over and above pre-deposit of 7.5% for filing first appeal before Commissioner (Appeals).

4. Second contention of the petitioner is that requirement of pre-deposit mandated vide Section 35F of the C.E. Act, does not apply to service tax appeals preferred under Sections 85 and 86 of the Finance Act, 1994.

5. In view of the limited controversy and question for consideration, we need not refer to the factual matrix in detail, except notice that the writ petitioner - M/s Santani Sales Organisation has preferred second appeals bearing Nos. ST 52898/2016 and ST 50372/2017 before the Tribunal against the orders passed in the first appeal by the Commissioner (Appeals). Disputed duty demand including Education and Secondary and Higher Education Cess confirmed by Commissioner (Appeals) under challenge in Appeal No. ST 52898/2016 is Rs.15,05,046/- and Rs.27,46,819/-, and in

Appeal No. ST 50372/2017 is Rs.24,44,138/-. The petitioner had deposited 7.5% of the total duty and cess demand, amounting to Rs.3,19,000/- and Rs.1,83,310/- respectively for the two appeals, as a pre-deposit before the Commissioner (Appeals). While filing the second appeal before the Tribunal, the petitioner made a further deposit of 2.5% of the duty and cess demand under challenge of Rs.1,06,296/- and Rs.61,000/- respectively in order to reach a figure of 10% of the disputed tax demand.

6. The contention of the respondent-Revenue is that in terms of Section 35F of the C.E. Act, which is applicable to appeals before the Tribunal against adjudication orders-in-original and appeals against the first appellate orders, there has to be a fresh and separate deposit of 10% of total tax demand and/or penalty in dispute. In other words, in case of second appeal, the assessee would have to deposit 10% of the disputed duty demand and penalty in addition to the pre-deposit of 7.5% already made before the first appellate authority. Therefore, 17.5% of the duty demand and penalty has to be paid.

7. In order to decide the controversy, we would like to reproduce Section 35F of the C.E. Act, as it exists, after amendment made vide Finance (No. 2) Act, 2014. The Section reads:-

> **"35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.**-The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal—
>
> (i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner of Central Excise or Commissioner of Central Excise;
>
> (ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;
>
> (iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in

dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores: Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014. Explanation.— For the purposes of this section "duty demanded" shall include,—

(i) Amount determined under section 11D;

(ii) Amount of erroneous Cenvat credit taken;

(iii) Amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004."

Section 35F requires mandatory deposit of specified percentage of duty demanded or penalty imposed before filing an appeal and stipulates that the Tribunal or Commissioner (Appeals) shall not entertain any appeal, unless pre-deposit of 7.5% or 10%, as the case may be, has been made. The said provisions are not applicable to stay applications or appeals pending before any appellate authority prior to commencement of the Finance (No. 2) Act, 2014.

8. In order to interpret these clauses and the requirements stipulated therein, we would like to first reproduce Section 35B(1) of the C.E. Act, which reads as under:-

"Section 35B. Appeals to the Appellate Tribunal. -

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under Section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) (hereafter in this Chapter referred to as the Board) or the Appellate Principal Commissioner of Central Excise or

Commissioner of Central Excise under Section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Principal Commissioner of Central Excise or Commissioner of Central Excise , either before or after the appointed day, under Section 35A, as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty ;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No. 2) Act, 1998:

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where - (i) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; (ii) the amount of fine or penalty determined by such order, does not exceed Two lakh rupees;"

9. As per clause (a) to Section 35B (1), any person aggrieved by an order or decision of the Principal Commissioner of Central Excise or Commissioner of Central Excise as the adjudicating authority, can file

an appeal before the Tribunal. In terms of clause (ii) of Section 35F, the appellant, while filing an appeal against order referred to in clause (a) of sub-section (1) of Section 35B, is required to deposit 7.5% of the duty, or duty and penalty, or penalty, which is in dispute.

10. As per clause (b) to sub-section (1) of Section 35B, an assessee can also file an appeal before the Tribunal against an order passed by the Commissioner (Appeals), which is the first appellate authority in some cases. As per clause (iii) of Section 35F, where an appeal is preferred against an order referred to in clause (b) to sub-section (1) of Section 35B, the appellant has to deposit 10% of the duty, or duty and penalty, or penalty, which is in dispute in pursuance of the decision and order appealed against. The distinction between clause (ii) and clause (iii) of Section 35F is predicated on whether an appeal has been preferred against the order-in-original or against the order passed by the first appellate authority, i.e., Commissioner (Appeals). In the former case, 7.5% of the duty and penalty which is in dispute is to be pre-deposited. In the latter case, 10% of the duty and penalty in dispute has to be pre-deposited. Thus, Section 35F draws distinction on the quantum of pre-deposit depending on whether the appeal is the first or the second appeal. In case decision of the first appellate authority is challenged before the Tribunal, the pre-deposit is to be at the higher figure of 10%, as opposed to a pre-deposit of 7.5%, which is required to be made when the order-in-original is challenged in the first appeal before the Tribunal.

11. Clause (1) of Section 35 relates to appeals before Commissioner (Appeals). Section 35(1) of the C.E. Act reads as under:-

> **"Section 35. Appeals to Commissioner (Appeals). -**
>
> (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise , may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order :
>
> ***Provided*** that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

As per clause (i) of Section 35F, the appellant-assessee is required to deposit 7.5% of the duty and penalty in dispute pursuant to the order passed by an officer below the rank of Principal Commissioner or Commissioner of Central Excise.

12. It is clear from the aforesaid provisions that a graded scale of pre-deposit has been provided. In case of first appeal, whether before the Tribunal or before the Commissioner (Appeals), 7.5% of the duty and penalty in dispute must be deposited. In case of second appeal before the Tribunal, the amount gets enhanced from 7.5% to 10%.

13. An appeal, whether first or second, is continuation of original proceedings. Further, appeal being a substantive right created by the statute can be circumscribed by the conditions imposed by the Legislature, including condition of pre-deposit. However, there are rulings that condition of pre-deposit should not be so onerous and harsh so as to amount to an unreasonable restriction, thereby rendering and making the right of appeal illusory and delusive [See *Seth Nand Lal And Another Vs. State of Haryana And Others* AIR 1980 SC 2097 and *Mardia Chemicals Ltd. And Others Vs. Union of India And Others* (2004) 4 SC 311]. In Law and practice appeals are remedial right of critical importance because it empowers the superior forum or court to come to the aid and redress error and mistakes of the authority or courts below (See *Sita Ram And Others Vs. State of Uttar Pradesh* AIR 1979 SC 745). Appellate Courts and Tribunals in accord and in terms of the discretion vested by the statute and depending on factual matrix would not impose conditions which are disproportionate as to pare down this right to invoke a remedy and correct any error and, therefore, violate the provisions creating the right i.e. reducing the right to appeal to a farce and rendering it unrealistic. What would be harsh, onerous and disproportionate depends on the facts and circumstances of each case and what is stipulated and mandated by the statute.

14. It would be appropriate here to refer to the two judgments of the Supreme Court on the question of court fees in *Lakshmi Ammal Vs. K.M. Madhavakrishnan And Others*, (1978) 4 SCC 15, and *Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. And Others* (1979) 1 SCC 193. In Lakshmi Ammal (supra) it was observed as under:

> "2. It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, the court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser court fee alone be paid."
>
> (emphasis supplied)

In Gujarat State Financial Corporation (supra) it was observed as under:

> "11. ……Let it be recalled at this stage that if the Court Fees Act is a taxing statute its provisions have to be construed strictly in favour of the subject litigant (vide *State of Maharashtrav. Mishri Lal Tarachand Lodha*). In a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability [vide *Joint Commercial Tax Officer, Harbour Div. II, Madras v. Young Men's Indian Association (Regd.), Madras*]. If it is a fee, the enormity of the exaction will be more difficult to sustain. While we do not pronounce, we indicate the implication of the High Court's untenable view.
>
> XXXX
>
> 15. When dealing with a question of court fee, the perspective should be informed by the spirit of the magna carta and of equal access to justice which suggests that a heavy price tag on relief in Court should be regarded as unpalatable." (emphasis supplied)

These decisions relate to interpretation of Statutes imposing court fees and taxing enactments on charging provisions in general. Charging provision of the taxing law must be strictly construed. In taxing enactment one should normally look at what is said in the provision, without reading anything into it impliedly or on the basis of presumption, for there is no room for any intendment [Federation of A.P. Chambers of Commerce of Industry Vs. State of A.P, (2001) 247 ITR 36 (SC)]. We would keep the said principles in mind while interpreting the provisions of law relating to pre-deposit which curtails the right to appeal.

15. Language of Section 35F of the C.E. Act is unchallenging and meaning of words and conditions placed is plain and lucid. Requirement is to pre-deposit 7.5% of the duty and penalty in dispute; and in case of the second appeal pre-deposit of 10% of the duty and penalty in dispute is mandated. We say so because of syntactic and adverbial clarity which is apparent. The provision suffers from no ambiguity and is not open to diverse interpretations. Section 35F of the C.E. Act should not be construed by adding or substituting words to clarify and iron out assumed doubts. Intent as cogently reflected in simple words is that the assessee on second appeal should pre-deposit 10% of the total tax and penalty subject matter of the appeal. It is not to ignore the pre-deposit of 7.5% already made to file first appeal. There is logic in increasing pre-deposit by 2.5% when second appeal is filed, but we would be adding words to the plain and unambiguous provision if we stipulate that 10% pre-deposit will be over and

above 7.5% pre-deposit made at the time of the first appeal. Expression or words 17.5% or an additional 10% deposit instead of using mere 10% pre deposit have not been used. Appropriateness of the meaning attached to 10% pre-deposit in the context is apparent. In this context, two decisions of the Supreme Court in *Lakshmi Ammal (supra) and Gujarat State Financial Corporation* (supra) on strict construction of statutes relating to Court fee and charging section of tax enactments are relevant and support our interpretation on pre-deposit of tax. In *Sita Ram and Others* (supra) it was observed:-

> "43. Of course, procedure is within the Court"s power, but where it pares down pre-judicially the very right, carving the kernel out, it violates the provision creating the right. Appeal is a remedial right and if the remedy is reduced to a husk by procedural excess, the right became a casualty. That cannot be."

16. On careful perusal of the aforesaid provisions as elucidated, it is difficult to accept the plea and contention of the Revenue and the reasoning given by the Larger Bench of the Tribunal in *In Re: Quantum of Mandatory Deposit* (supra), which is as under:-

> "6.1 It can be seen from the above reproduced Sections, the dispute is basically only on the point as to the pre-deposit mandated for preferring second appeal before the Tribunal. It was submitted that CBEC"s Circular dated 16-9-2004 (sic) indicates the clear intention of legislature. On reading the said Circular we find in Paragraph No. 2, more specifically 2.1, the Circular only states that in the event of appeal of appellant against order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). In fact, the clarification given by the Board does not indicate what is in the mind of the law makers enacting while the provisions of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962. Be that as it may, we find that the said provisions of pre-depositing an amount for preferring 1st appeal against the adjudication order needs to be done so, at the rate of 7.5% of the duty confirmed or the penalty imposed as the case may be. This would mean that the first appeal can be entertained only deposit of such an amount and on conclusion of the proceedings, he has option to go further in appeal before first appellate authority or if the appeal is disposed of, amount pre-deposited by him which is equivalent to 7.5% of the duty confirmed or penalty imposed as the case may be, needs to be refunded in accordance with law.

> 6.2 As regards the second appeal preferred against the first appellate authority's order, the quantum of pre-deposit has been set at 10% instead of 7.5% of the duty confirmed or penalty imposed. In our view both the appellate proceedings i.e. before the first appellate authority and before the Tribunal, it is to be treated as an independent provisions then deposits as mandated needs to be made. In short, in order to prefer an appeal before the Tribunal, an assessee/appellant needs to deposit 10% of the amount of duty confirmed or the penalty imposed as the case may be irrespective of the amounts equivalent to 7.5% deposited by them for preferring an appeal to the first appellate authority. On reading of provisions of pre-deposits under Central Excise Act, 1944 and Customs Act, if an assessee or importer wishes to exercise his statutory right of second appeal, then the said exercise of right it needs to be considered as an independent right and proceeding subsequent to pre-deposit of the amount to exercise first appeal needs to be considered as having come to closure. In that case, an assessee or importer as the case may seeks legal remedies available to them, as regards mandatory pre-deposits made before first appellate authority, it needs to be decided in accordance with law."

Paragraph 6.1 of the order in *In Re: Quantum of Mandatory Deposit* (supra) refers to the circular issued by the Central Board of Excise and Customs dated 16th September, 2014, which we will refer to subsequently. Thereafter, reference is made to the statutory provisions and the requirement to pre-deposit 7.5% or 10%, as the case may be, in case of first appeal and second appeal. It is observed that on decision of an appeal being in favour of the assessee, the amount deposited has to be refunded in accordance with law. Paragraph 6.2 refers to second appeal and states that the quantum of deposit has been set at 10% instead of 7.5% of the duty confirmed or penalty imposed. This is the correct legal position, as noticed above, on which there cannot be any lis. Thereafter, in our opinion, it has been erroneously observed that this deposit of 10% has to be independent of the deposit at the first appellate stage, or a fresh deposit for once the duty or penalty has been confirmed, the pre-deposit of 7.5% made for preferring an appeal before the first appellate authority stands obliterated and is of no consequence. The reasoning correctly observes the legal position that the right to second appeal is a statutory right, but then states that second appeal is independent of the right of first appeal. Appeals whether first or second are continuation of the original proceedings.

17. In the counter affidavit filed on behalf of the first respondent, reference is made to a decision of the Principal Bench of the Tribunal dated 27th

March, 2015 in the case of *M/s Balajee Structural (India) Private Limited versus CCE, Raipur*, Interim Order No. IO/14/2015-[CR], holding that if the appellant had deposited 10% of the duty confirmed before preferring the appeal before the Tribunal, there would be sufficient compliance of the provision for mandatory deposit. The decision does not support the stand and stance of the Revenue.

18. However, similar view in favour of the Revenue was expressed by the Tribunal, Eastern Zonal Bench, Kolkata in *Hindalco Industries Limited and Others versus Commissioner of Central Excise, Kolkata-II*, 2016-TIOL-3050-CESTAT-KOL. The reasoning given by the Tribunal in this case, which is in paragraph 4.2, is rather interesting and reads as under:-

> "4.2 It is observed from the case records that neither Section 35F(iii) of the Central Excise Act, 1944 nor CBEC Circular dated 16.09.2014 specifically mention whether 10% deposit required before appeal is entertained should be inclusive or exclusive of 7.5% deposit made before the first appellate authority. It is a well known fact that success rate of departmental cases before the appellate authorities is very poor. That is the reason that percentage of deposit required to be made before the first appellate authorities is as low as 7.5% of the disputed amounts or penalties. After success at the level of first appellate authority may be Legislature wants that the case has passed one test of first appeal successfully and Revenue deserves an additional 10% of the duty or penalty as deposit till the issue is finally decided in the second appellate stage. In any case, Appellant is not at a loss in the above procedure of paying additional 10% of deposit, because in case Appellant wins then appellant is eligible to interest from the date of deposit it made, as per Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962, all introduced w.e.f. 06.08.2014. In case appellant looses(sic) the case, then also Appellant will have to pay lesser interest for the period when amount was lying with the department as deposit."

The Tribunal in the aforesaid paragraph records that the success rate of departmental cases before the Tribunal was very poor. This was the reason why pre-deposit of 7.5% in case of first appeal, and 10% in case of second appeal, was required to be made. Higher deposit of 10% was justified as the demand had survived test of first appeal. Reasoning observes that the assessee would not be at loss even if they were asked to pay an additional amount of 10%, for the amount would be refunded to the assessee with applicable interest in case they succeed.

19. It is difficult to accept and appreciate the second part of reasoning, for we have to interpret the provision as it exists. When required and necessary, principles applicable to jurisprudence and law of appeals can be applied for assistance and clarification in interpretation. Refunds are always paid when tax, duty or penalty is not due and payable. It is not a grace or peculiar. Interest is compensatory in character, as the compulsory pre-deposit denies and deprives the assessee of the right to utilize his money. The two grounds recorded would not matter and help us in interpreting Section 35F of the C.E. Act.

20. Our opinion and ratio that difference between 7.5% and 10% is required as a pre-deposit, gets affirmation in view of Circular No.984/08/2014-CX dated 16th September, 2014, which has been referred to by the Tribunal in *In Re: Quantum of Mandatory Deposit* (supra). Paragraphs 2 and 3 of the said Circular read as under:-

> **"2. Quantum of pre-deposit in terms of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962:**
>
> 2.1 Doubts have been expressed with regard to the amount to be deposited in terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal). This need not be the same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.
>
> 2.2 In a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.
>
> 2.3 In case of any short payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed is liable for rejection.

3. Payment made during investigation:

3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs.10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.

3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal shall be deemed to be the date of deposit made in terms of the said sections.

3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection."

Paragraph 2.1 above supports interpretation propounded by the petitioner, for it stipulates pre-deposit of 10% of the duty or penalty is payable on an appeal filed against an order of the Commissioner (Appeals). The quantum to be deposited should be computed based on the amount of duty demanded or penalty imposed confirmed by the Commissioner (Appeals), and need not be the same as the duty or demand of penalty imposed in the order-in-original. Thus, where the amount of duty or penalty is partly reduced, computation of 10% pre-deposit for filing a second appeal would be done from the reduced amount, and not on the basis of duty and penalty imposed in the order-in-original. Paragraph 3 stipulates that the pre-deposit would include deposits or payments made prior to the passing of the order-in-original. This is relevant. Deposits made during the pendency of the proceedings, or even after the order-in-original is passed, have to be taken into consideration for determining and deciding whether condition of pre-deposit of 7.5% or 10% has been satisfied. Earlier deposits do not get obliterated and are not to be treated as inconsequential. Equally pertinent is the second sentence in paragraph 3.1, which states that any

shortfall from the amount stipulated in the Section shall have to be paid before filing of an appeal before the appellate authority.

21. Second contention of the petitioner relating to inapplicability of section 35F of the C.E. Act, i.e. Central Excise Act, to appeals preferred before the Tribunal under Section 86 of the Finance Act, is however, without merit and has to be rejected. Sections 83, 85 and 86 of the Finance Act, as they presently are, read as under:

> **"83. Application of certain provisions of Act 1 of 1944.**—The provisions of the following sections of the Central Excises Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:—
>
> > [sub-section (2-A) of Section 5-A, sub-section (2) of Section 9-A], 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, [12E, 14, [15, 15A, 15B], 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F] [35FF] to 35-O (both inclusive), 35Q, [35R,] 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.
>
> xxx
>
> **85. Appeals to the Commissioner of Central Excise (Appeals).—**
>
> (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).
>
> (2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
>
> (3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter made before the date on which the Finance Bill, 2012 receives the assent of the President:
>
> > Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3-A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this chapter:

> Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

(4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:

> Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944.

86. Appeals to Appellate Tribunal.—(1) Save as otherwise provided herein, an assessee aggrieved by an order passed by a Commissioner of Central Excise under Section 73 or Section 83-A xxx, or an order passed by a Commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order:

> Provided that where an order, relating to a service which is exported, has been passed under Section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of Section 35-EE of the Central Excise Act, 1944:

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the

coming into force of the Finance Act, 2012 and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of Section 35-EE of the Central Excise Act, 1944

(1-A)(i) The Board may, by order, constitute such Committees as may be necessary for the purposes of this Chapter.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Chief Commissioners of Central Excise] may, if it objects to any order passed by the Commissioner of Central Excise under Section 73 or Section 83-A [xxx], direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order:

Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

(2-A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under Section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order:

Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

Explanation.—For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner having

jurisdiction over the concerned adjudicating authority in the matter.

(3) Every appeal under sub-section (2) or sub-section (2-A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.

(4) The Commissioner of Central Excise or [any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2-A) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in [sub-section (1) or sub-section (3)] or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to

which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2-A) or a memorandum of cross-objections referred to in sub-section (4).

(6-A) Every application made before the Appellate Tribunal,—

(a) in an appeal [xxx] for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees: Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, under this sub-section.]

(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944."

Section 83 of the Finance Act states that stipulated provisions of the C.E. Act, as in force from time to time and as they apply in relation to a duty of excise, shall apply in relation to service tax. Section 35F of the C.E. Act by virtue of Section 83 of the Finance Act equally applies to service tax appeals. The words or expression "as in force from time to time" and "as they apply to in relation to duty of excise" in Section 83 of the Finance Act with reference to the stated provisions of the C.E. Act, clearly reflects and clinches the issue that the legislature wanted subsequent amendments in the enumerated sections of the C.E. Act, would equally apply to service tax. This is the case of reference or citation of one or more sections into other statute and not reference by incorporation. Sometimes distinction between incorporation by reference and adoption of provisions by mere reference or citation is difficult to draw, but in the present case in view of the clear legislative mandate and the language used in Section 83 of the Finance Act, this difficulty does not arise. We, therefore, need not expound and refer to

the said distinction in detail in the present case. Contention of the petitioner that Section 35F of the C.E. Act, has undergone drastic amendments w.e.f. 6th August, 2014 and the new stipulations in Section 35F of the C.E. Act are completely different, whereas reference under Section 83 of the Finance Act to Section 35F of the C.E. Act was with reference to earlier Section 35F, consequently fails and has to be rejected. As already indicated above, this is a case of reference or citation, therefore, the amended provisions of Section 35F would apply, as it is specifically stipulated in Section 83 of the Finance Act that relevant provisions of C.E. Act indicated therein as in force from time to time will apply. No doubt, Section 35F of the C.E. Act as quoted above refers to appeals under Section 35(1) or Section 35 of the C.E. Act but this quotation and reference is to the C.E. Act. In the context of service tax appeals, Sections 85 and 86 of the Finance Act apply, albeit by virtue of Section 83 of the Finance Act stipulations and requirements of Section 35F of the C.E. Act will get attracted and apply.

22. Reliance was placed by counsel for the petitioner on decision of the Delhi High Court in *M/s.Glyph International Limited Vs. Union of India 2014* (34) STR 727 (Delhi). In the said case the Tribunal had ruled that an appeal in respect of refund or rebate claim was not maintainable before them in view of Section 35EE of the C.E. Act, which section finds mention in Section 83 of the Finance Act after its amendment in the year 2011 (sic, 2012). The said ruling was over-turned and set aside, observing that the Parliament had always intended that the remedy should be available in respect of refund or rebate claims and amendment of Section 83 in 2012 did not disturb the appeal remedy under Section 86 of the Finance Act. The amendment did not limit the appellate power in any manner whatsoever and reliance was placed upon the decision of the Supreme Court in *Subal Paul Vs. Malina Paul and Another* (2003) 10 SCC 361, wherein it has been held as under:

> "21. If a right of appeal is provided for under the Act, the limitation thereof must also be provided therein. A right of appeal which is provided under the Letters Patent cannot be said to be restricted. **Limitation of a right of appeal in absence of any provision in a statute cannot be readily inferred.** It is now well-settled that the appellate jurisdiction of a superior court is not taken as excluded simply because subordinate court exercises its special jurisdiction. In G.P. Singh's „Principles of Statutory Interpretation". It is stated:
>
> > "The appellate and revisional jurisdiction of superior courts is not taken as excluded simply because the subordinate court exercises a special jurisdiction. The reason is that when a special

> Act on matters governed by that Act confers a jurisdiction to an established court, as distinguished from a persona designata, without any words of limitation then, the ordinary incident of procedure of that court including any general right of appeal or revision against its decision is attracted."
>
> 22. But an exception to the aforementioned rule is on matters where the special Act sets of it a self-contained Code the applicability of the general law procedure would be impliedly excluded. (See Upadhyaya Hargovind Devshanker v. Dhirendrasinh Virbhadrasinnhji Solanki). (emphasis supplied)"

23. Section 86 of the Finance Act provides for an appeal before the Tribunal and Section 83 of the Finance Act makes Section 35F of the C.E. Act equally applicable. Section 35F of the C.E. Act is the provision which relate to pre-deposit, a mandatory provision for the appeal to be maintainable and heard. If the interpretation given by petitioner is accepted we would be rendering a part of Section 83 of the Finance Act referring to Section 35F of the C.E. Act altogether otiose and redundant. Decision is *Glyph International Limited* (supra) is in different context of right to appeal before the Tribunal given vide Section 86 of the Finance Act, and whether the right to appeal before the Tribunal was subsequently taken away and withdrawn. The court felt that reference to Section 33 EE of the C.E. Act in Section 83 of the Finance Act would not make any difference and the Tribunal continues to possess jurisdiction vide Section 86 of the Finance Act to decide matters relating to rebate or refund. This decision is of no avail and does not help us to decide the controversy in question. Second contention raised by the petitioner is accordingly decided against them.

24. Accordingly, we would allow the present writ petition and set aside the order and direction of the Tribunal that the petitioner must deposit additional 10% of the duty and penalty in dispute for the second appeal to be heard and adjudicated. We would also quash the circular dated 27th April, 2017 issued by the Tribunal. It is directed that the petitioner and others on filing second appeal before the Tribunal are required to deposit 10% of the amount of duty/ penalty as confirmed by the first appellate authority inclusive of 7.5% pre-deposit made for the first appeal. 10% would not be in addition to and over and above 7.5% of pre deposit made for the first appeal. However, contention that Section 35F of the C.E. Act does not apply to service tax appeals and therefore no pre-deposit is required to be made is rejected. In the facts of the case there would be no order as to costs.

[2018] 56 DSTC 214 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice Sanjiv Khanna & Hon'ble Mr. Justice Chander Shekhar]

W.P.(C) 5447/2017

Rajdhani Furnitures And Interiors ... Petitioner

versus

Commissioner Of Trade And Taxes & Anr. ... Respondents

Date of Order : 11 April, 2018

INTEREST UNDER SECTION 42 OF DVAT ACT – WRIT PETITION FOR SEEKING DIRECTION OF REFUND – REFUND ORDER ISSUED WITHOUT INTEREST – DIRECTIONS ISSUED TO CREDIT INTEREST WITHIN A PERIOD OF TWO WEEKS IF INTEREST NOT GIVEN THEN THERE SHALL BE COST OF RS.5,000/-

Present for Petitioner	:	Mr. Nitin Gulati, Advocate
Present for Respondent	:	Ms. Iram Majid and Ms. Sakshi Bajaj, Advs. with Mr. Rajesh Rawal, AVATO

Order

Counsel for the respondents on instructions states that they would pay interest for the period 07.04.2015 to 06.06.2017 on refund of Rs. 28,53,179/- within a period of two weeks. In case interest is not credited to the account of the petitioner within a period of two weeks, the respondents would also be liable to pay costs of Rs.5,000/-.

The next issue relates to refund of Rs.53,815/-. There is confusion and dispute whether the petitioner had filed and furnished the relevant papers or not. Without going into the said controversy, the authorised representative of the petitioner is directed to appear before the Special Commissioner to be nominated by the Commissioner before whom the relevant papers/ documents would be submitted.

The authorised representative of the petitioner would appear before the Special Commissioner on 26.04.2018 at 02:00 p.m.

Within 07 days thereafter an order would be passed by the Special Commissioner and communicated to the petitioner. The said direction has been issued with the consent of the counsel for the parties.

Recording the aforesaid, writ petition is disposed of with liberty to the petitioner to challenge the order passed by the Special Commissioner. In case of default and delay in passing of the order, the petitioner would be at liberty to ask for revival of the present writ petition.

[2018] 56 DSTC 215 – (Bombay)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

[Hon'ble Mr. Justice S.C. Dharmadhikari & Hon'ble Ms. Justice Anuja Prabhudessai, JJ.]

Padmavati Enterprise ... Petitioner

Versus

The Union of India & Anr. ... Respondent

Date : 24th April, 2018

EXTENSION OF TIME FOR COMPLETION OF PROCESS OF FILING TRAN-1 STUCK DUE TO IT RELATED GLITCHES- FACILITY PROVIDED TO THOSE DEALERS WHO COULD NOT COMPLETE THE PROCESS OF TRAN-1 – NECESSARY PROOF REQUIRED OF THEIR INABILITY TO ACCESS THE PORTAL-

WPL 424/2018

Present for Petitioner	:	Mr. Vinayak Patkar a/w. Mr. Ishaan Patkar, Mr. Shashank Dhond, Ms. Sneha Raut i/b Roshni Naik
Present for Respondent	:	Mr. Anil Singh, Addl. Solicitor General a/w. Mr. Pradeep S. Jetly and Mr. Jitendra B. Mishra

WPST 2230/18

Present for Petitioner	:	Mr. Vinayak Patkar i/b. Roshni Naik
Present for Respondent	:	Mr. V.A. Sanpal, Special counsel a/w. B.V. Samant, AGP for the State/ Respondent Nos.1 and 2.

WP 3695/18 AND WP 3953/18

Present for Petitioner	:	Mr. Sridharan, Sr. Counsel a/w. Prakash Shah i/b. PDS Legal
Present for Respondent	:	Mr. Pradeep S. Jetly a/w. Amol Joshi

WP 4584/18, WP 4604/18, WP4613/18 AND 4615/18

Present for Petitioner	:	Ms. Gunjan Jayakar a/w. Miheer Jaykar
Present for Respondent	:	Mr. Pradeep S. Jetly in WP 4584/18, 4604/18 and 4615/18.
WP 5092/18 :		
Present for Petitioner	:	Mr. Sridharan, Sr. Counsel a/w. Prakash Shah I/b. PDS Legal for the petitioner.

P.C.:

We have taken on record the additional affidavit in reply filed in Writ Petition (L) No.424 of 2018 and in Writ Petition (St.) No.2230 of 2018.

2. Mr. Milind Gawai, Commissioner of Central Tax Punel Commissionerate in his additional affidavit in reply filed in Writ Petition (St.) No.2230 of 2018 has, firstly, indicated that the system error or fault or what is called IT related glitch would be a grievance definitely looked into and is being looked into by Grievance Redressal Committee. In his affidavit, he has indicated as to how Nodal Officers have been appointed in terms of several circulars, copies of which are at Exhibits 'A', 'B' and 'C' to this petition. The tax payers can make an application to the Field Officers or the Nodal Officers where there was a demonstrable glitch on the common portal (GST portal) in relation to an identified issue due to which the tax payer could not comply with the provisions of law. The Nodal Officer, upon receipt of such an application, even online but with some proof or evidence therewith, would definitely look into the same and take the remedial steps. He would forward it to the GST network. Though, the Nodal Officer would give a formal acknowledgement, even online, beyond this he would not assist the applicant so as to enable the tax payer / applicant to make a record for himself and then he can avoid further complications or eventual liabilities that may be foisted upon him for alleged non compliance with the provisions of law.

3. Apart from the above, we repeatedly inquired as to how much time all this would take, but the Additional Solicitor General says that the circular gives the tax payer time till 30th April, 2018 to access the network. This time cannot be extended. Various circulars have been issued and the deponent and such other officers at the commissionerate level will not be in a position to make a definite statement as to whether the tax payer can access the online portal beyond 30th April, 2018 or even if accesses it before this date, his grievance / complaint would be decided within a given time frame.

4. We inquired from the Additional Solicitor General whether any time limit can be prescribed so that these complaints made to the Nodal Officer can be disposed of expeditiously and promptly. That would assist both the assessee as well as the revenue and would not delay the tax collection.

5. The Additional Solicitor General, after speaking to the officers present in Court, stated that presently there is nothing which has been evovled as a time frame within which the grievance raised before the Nodal Officer could be finally resolved and determined.

6. In relation to both these matters, we feel that this Court ought not be flooded with writ petitions and particularly more in number than what is already on our file. We find that in today's affidavit it is indicated that the tax payers shall complete the process of filing of TRAN1 stuck due to IT related glitches by 30th April, 2018 and the process of complete filing of GSTR3B which could not be filed for such TRAN1 shall be completed by 31st May, 2018.

7. We are not disturbing the date which has been determined for filing of GSTR3B for that is prescribed as 31st May, 2018. Presently that is adequate and sufficient for redressing the grievance of all those who could not access the online website portal due to the technical glitches. However, given that only 25th, 26th and 27th April, 2018 are the working days available before 30th April, 2018 and 30th April, 2018 is declared to be a public holiday, interest of justice would be served if we extend this date of 30th April, 2018 in relation to filing of TRAN1 and which filing was not possible due to technical glitches / IT related glitches. We extend it to 10th May, 2018.

8. It is clear that this facility is extended only to those tax payers who could not access the system due to technical glitches. It is very clearly stated in the affidavit that only in the case of tax payers who could not complete the process of TRAN1 filing either at the stage of original or revised filing due to IT related glitches, for those the facility is extended and that the last date is extended only in their case. However, those tax payers would have to provide necessary proof of their inability to access the portal due to technical glitches or a Information Technology related matter which prevented them from accessing the system earlier. This is not a facility which could be availed of for any other reason and not attributable to such glitches or system faults / errors. We accept and endorse this stand of the respondents. The writ petitions in which the complaint was that the petitioners could not access the system on account of no fault of theirs but due to the technical glitches / IT related glitches are disposed of in these terms. We clarify that our order and direction are not a expression

of opinion on the legal or other factual issues related to the returns. If the return is in any way otherwise deficient or defective in the opinion of the revenue, but not so in the submission of the assessee, then, such issues have to be resolved independently and on their own merits. Their outcome shall not be influenced by our directions. In other words, whether strict or substantial compliance is contemplated in law is a matter which must be addressed and decided in the facts and circumstances of each case independent of this direction. There would definitely be a compliance required with the provisions of law and aggrieved parties have forums to approach for redressal of other grievances arising out of the orders or directions in relation to their returns.

9. The Writ Petitions accordingly stand disposed of. No order as to costs.

[2018] 56 DSTC 218 – (Allahabad)

In the High Allahabad High Court
[Hon'ble Krishna Murari,J. and Hon'ble Ashok Kumar,J.]

Writ Tax No. - 637 of 2018

VSL Alloys (India) Pvt. Ltd. ... Petitioner

Versus

State Of U.P. And Another ... Respondent

Date of Order : 13 April, 2018

WRIT PETITION - IRREGULARITY IN FILLING E-WAY BILL- BONAFIDE MISTAKE- NO INTENTION TO EVADE TAX - DETENTION ORDER OF VEHICLE AND GOODS PASSED - TAX AND PENALTY ORDER PASSED - WHETHER JUSTIFIED HELD NO ; PETITIONER WAS CARRIED ALL THE DOCUMENTS WITH GOODS NO REASONS WERE RECORDED NOR ANY DISCUSSION WAS MENTIONED IN THE IMPUNGED ORDER OF SEIZURE AND NOTICE OF PENALTY.

Present for Petitioner : Amit Mahajan

Present for Respondent : C.B. Tripathi

Order

Per: Hon'ble Ashok Kumar, J.

We have heard the learned counsel for the petitioner and Sri C.B. Tripathi, learned Special Counsel for the State.

Brief facts of the case are that the petitioner is a private limited company and is engaged in manufacture and supply as well as export of industrial SS Tube, fittings and pipe fittings etc. The petitioner is registered under the provision of GST. The petitioner's office is situated at Industrial Area Sahibabad, District Ghaziabad. An order has been received by the petitioner from one M/s Kansara Laljibhai Mohanlal, 7, Parsana Society, R.K. Watch Stree, 50 Feet Road, Rajkot, Gujarat for supply of 4942 kg of stainless steel welded pipes against the tax invoice dated 07.04.2018. The goods were being sold to the consignee situates at Rajkot for a sum of Rs.5,43,631/-. The petitioner has charged the IGST @ 18% on the aforesaid amount. The aforesaid goods were booked through M/s Jai Hind Tempo Transport Service, Sahibabad, Ghaziabad. The goods were loaded in vehicle U.P.16-AT-5489 against the challan/GR no. 1116 dated 07.04.2018. The petitioner has downloaded e-way bill having Unique No.431003252396 dated 07.04.2018 at 08.05 P.M. from the web portal of the Central Government and e-way bill consisted of all the details of the consignor, consignee, the challan number, its date, value of the goods, its HSN Code, the place of delivery of goods and the reason for its transportation.

It is submitted by learned counsel for the petitioner that the validity of the e-way bill showed that it is not valid for movement as Part B is not entered.

After loading the goods, the vehicle proceeded at about 8.33 P.M. on 07.04.2018 and the vehicle has procured a Kata Purchi and movement at about 9.20 P.M. from Sahibabad towards its destination namely Rajkot, Gujarat. During the course of transportation from Sahibabad i.e. from the factory of the petitioner upto the transporter, the vehicle has been intercepted at Mohan Nagar, Ghaziabad on 08.04.2018 by the respondent no.2, the Assistant Commissioner (in-charge), Commercial Tax, Mobile Squad, Unit-III, Ghaziabad at 12.15 A.M. and respondent no.2 issued interception memo which was drawn by the respondent no.2 under Section 129(1) of the UPGST Act, 2017 (hereinafter referred as 'the Act'). The respondent no.2 was of the opinion that the goods, namely Stainless Steel welded pipes which were found loaded on the vehicle during intra-state transportation, were accompanied with e-way bill having Unique Code, however, Part-B of the said e-way bill was not filled up and no vehicle number has been quoted/mentioned. The respondent no.2 has directed for physical verification of the goods.

On physical verification held on 09.04.2018, the respondent no.2 has found alleged irregularity, that Part-B of e-way bill was incomplete and, therefore, the respondent no.2 has detained the vehicle as well as goods

by passing an order under Section 129(1) of the Act by which he has assessed the value of goods to the tune of Rs.5,43,631/-. Consequently, a notice under Section 129(3) of the Act has been issued by which the respondent no.2 has directed the petitioner to pay a sum of Rs. 97,854/- towards the tax liability as well as the same amount towards the penalty.

Aggrieved by the said seizure order and issuance of the penalty notice, the instant writ petition has been filed.

Learned counsel for the petitioner has submitted that though all the documents were accompanied the goods even then the same was intercepted and it has been categorically submitted before the respondent no.2 that both the consignor and consignee are registered dealers and IGST @ 18% has been charged by the petitioner and that petitioner is registered bonafide dealer, therefore, objection with regard to non filling Part-B of e-way bill is nothing but clearly an abuse of process of law.

The contention of the petitioner before the authority below was that there was no intention on the part of the petitioner to evade payment of tax during the course of intra-state sale of the goods. The contention of the petitioner before the authority below as well as before this Court is that, in fact, the goods loaded in vehicle No. U.P. 16-AT 5489 was only for the purpose of transporting the goods from petitioner factory up to transport company, and as such, the petitioner at the time of generation of national e-way bill could not fill the vehicle number in Part-B due to the fact and for the reason that after unloading of the goods at the transport company the same were to be loaded in another vehicle which was supposed to transport from the godown of the transport company to place of consignee situate at Rajkot, Gujarat, by another vehicle the number whereof was not known to the petitioner. Counsel for the petitioner has also placed reliance on a Notification No.12/2008-Central Tax dated 07.03.2018 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs which provides further to amend CGST Rules, 2017 and substituted Rule 138 which is quoted below;

> "138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill".-
>
> (3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM

GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generated and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees.

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometres within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1.- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

The contention of the learned counsel for the petitioner is that as per the Notification No.12/2018 dated 07.03.2018 in Rule 138(3) third proviso which clearly states that where the goods are transported for a distance of upto 50 kms within the State from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, as the case may be, the transporter may not furnish the details of conveyance in Part-B of Form GST EWB-01. As such, at the time of filling of the e-way bill, the petitioner was not under an obligation to fill Part-B of the eway bill, therefore, the petitioner has not committed any error of law at the time of downloading e-way bill.

On the other hand, learned counsel for the respondent, though has supported the order of seizure but, has admitted that all the requisite documents were accompanied the goods when the vehicle has been intercepted and seizure order has been passed, but the Part-B of the e-way bill was found unfilled. He has also accepted that prima facie there

appears no intention to evade payment of tax for the reason that in the invoice the petitioner has charged IGST @ 18%.

We have heard the learned counsel for the respective parties and perused the documents which are enclosed along with the writ petition.

We are in full agreement with the submission of learned counsel for the petitioner and after perusal of the relevant documents, we find no ill intention at the hands of the petitioner nor the petitioner was supposed to fill up Part-B giving all the details including the vehicle number before the goods are loaded in a vehicle, which is meant for transportation to the same to its end destination.

In the present case, all the documents were accompanied the goods, details are duly mentioned which reflects from the perusal of the documents. Merely of none mentioning of the vehicle no. in Part-B cannot be a ground for seizure of the goods. We hold that the order of seizure is totally illegal and once the petitioner has placed the material and evidence with regard to its claim, it was obligatory on the part of the respondent no.2 to consider and pass an appropriate reasoned order. In this case, no reasons are assigned nor any discussion is mentioned in the impugned order of seizure and notice of penalty. The respondent no.2 has also not considered the above notification dated 07.03.2018

In view of the aforesaid facts, the impugned seizure order dated 09.04.2018 passed under Section 129 (1) and also the consequential show cause notice dated 09.04.2018 passed/issued under Section 129 (3) of the Act are quashed. The respondents are directed to release the goods as well as vehicle, seized on 09.04.2018, forthwith in favour of the petitioner.

The writ petition stands **allowed**.

[2018] 56 DSTC 223 – (Delhi)

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

Appeal No. 344/ATVAT/17-18
Assessment Period: 2nd quarter 2010-11
Refund

M/s Karan Enterprises
C/o H L Madan, CA
A-3/76, Sector-3, Rohini, New Delhi- 110085 ... Appellant

Versus

Commissioner, Value Added Tax, Delhi ... Respondent

Date of Order: 19 April, 2018

REFUND U/S 38 OF DVAT ACT – NO NOTICE SERVED WITHIN 60 DAYS FROM FILING THE RETURN – DEFAULT ASSESSMENT FRAMED WITHOUT SERVING OF NOTICE – REFUND DISALLOWED – OBJECTION PETITION WAS FILED AFTER RECEIVING CERTIFIED COPY OF ORDER – OHA REJECTED THE OBJECTION PETITION AS TIME BARRED – OHA CALCULATED 2 MONTH TIME FROM THE DATE OF PASSING THE ORDER – NO PROOF FOR SERVICE OF ORDER PLACED ON RECORD – WHETHER OHA WAS JUSTIFIED IN REJECTING THE OBJECTION PETITION. HELD NO – DIRECTION ISSUED TO VATO TO GRANT REFUND.

Facts of The Case

1. Facts of the case briefly stated were that the Appellant who was registered with the department of Trade & Taxes in ward-53 with TIN No. 07750332430 and was engaged in the business of manufacturing of home appliances parts and claimed refund of Rs 3,34,996/- in the return for the period 01.07.2010 to 30.09.2010 filed on 27.10.2010.VATO Ward-53 vide orders dated 23.08.2012 rejected the refund claim of the appellant for second quarter 2010 by passing default assessment of Tax & Interest observing as under: -

> *"Notice was sent to the dealer but the dealer did not file the required documents till date, Hence the claim of the refund is disallowed.*

Held That

The refund was claimed in the Assessment Year 2010-11 as per return filed by the appellant and the assessment of the appellant stood finalised

as no default assessment has been made. There being no additional demand created the return version of the appellant in respect of sales and purchases as reflected in the return stood accepted as the same is visible from the orders passed where there is no additional tax demand created over and above the figures reflected in the return. Hence there was force in the submission of the appellant that demand against the appellant not being in existence simply on account of non-appearance/ non-submission of the documents the refund could not have been rejected as the refund could only be denied in terms of provisions of section 39 of the DVAT Act

In such circumstances the denial of refund to the appellant was contrary to the provisions of law and not sustainable.

The order was set aside and the matter was remanded back to the VATO to grant refund to the appellant within two months from the date of this order.

Present for the Appellant : Sh. H L Madan, Adv.,

Present for the Respondent : Sh. S B Jain, Adv.,

ORDER

1. This order shall dispose of the above noted appeal filed by the appellant M/s Karan Enterprises challenging the impugned orders dated 11.12.2017 by Joint Commissioner, hereinafter referred as Objection Hearing Authority (in short the OHA).

2. Facts of the case briefly stated are that the Appellant who is registered with the department of Trade & Taxes in ward-53 with TIN No. 07750332430 and is engaged in the business of manufacturing of home appliances parts and claimed refund of Rs 3,34,996/- in the return for the period 01.07.2010 to 30.09.2010 filed on 27.10.2010. Ld VATO Ward-53 vide order dated 23.08.2012 rejected the refund claim of the appellant for second quarter 2010 by passing default assessment of Tax & Interest observing as under: -

> "Notice was sent to the dealer but the dealer did not file the required documents till date, Hence the claim of the refund is disallowed.

The dealer is hereby directed to pay an amount of Rs 0/- and furnish details of such payment in form DVAT 27A alongwith proof of payment to the undersigned on or before 23.08.2018 for the following tax period:-

Tax period	Turnover reported by the dealer	Turnover assessed	Tax reported/ paid
(1)	(2)	(3)	(4)
Second quarter 2010	0	0	-4,45,752/-
Tax Assesses	**Additional Tax Due (5-4)**	**Interest**	**Total Amount due (6+7)**
(5)	(6)	(7)	(8)
0	0	0	0

3. Aggrieved with the orders passed by the VATO rejecting the refund appellant filed objections before the OHA who rejected these objections by observing as under: -

> "I have also seen the orders passed by the VATO ward-53. The impugned orders were passed on 23.08.2012 whereas the objections has been filed on 09.03.2017 i.e. after a span of 5 years of the passing of orders. The objector was asked as to why the case be not rejected on account of maintainability of case as being barred by time. The counsel of the objector failed to furnish any suitable reply on maintainability or condonation of delay. Therefore, I dismiss both the objections as filed by the objector on the ground that the case is barred by time."

4. Appellant's case is that the assessment order dated 23.08.2012 was never served upon him and he obtained the certified copy of the order on 08.03.2017 and filed the objections on 09.03.2017 which was within time. The Ld OHA dismissed the objections as time-barred, ignoring the facts of the case that the dealer filed the objection within time after receipt of certified copy of the order as he was not served with the original order by the Ld VATO.

5. Aggrieved with the impugned orders dated 11.12.2017, the appellant has come in appeal and assailed the impugned orders on the following grounds: -

1. That Ld. OHA has erred both in law as well as on facts of the case in rejecting the objection filed by the appellant against Notice of Default Assessment of Tax & Interest raising demand of Rs. Zero and disallowing the refund of Rs.3,34,996/- claimed by the dealer.

2. That Ld. OHA erred in law ignoring the fact of the case that the refund claimed by the appellant in the return filed on 27.10.2010

should have been issued within 60 days of filing of return as mentioned by section 38 of DVAT Act, 2004 instead of rejecting the objection as time-barred. The orders of Ld.OHA and Ld. AA, both, are bad in law and deserve to be quashed and they be directed to issue the refund.

3. That the Ld. OHA also erred in not appreciating that the table below the assessment order dated 23.08.2012 shows that the Ld. AA assessed the turnover at Zero, tax assessed is Zero and no Input Tax Credit is refused and accordingly Ld. VATO erred in disallowing the refund.

4. That Ld. OHA has also erred in rejecting the objection filed by the appellant for the reason as time-barred ignoring the fact that the appellant filed the objection well in time on 09.03.2017 after having received certified copy of the order on 08.03.2017. The certified copy was issued by the Ld. AA after making requests by the dealer on 08.03.2017.

5. That Ld. AA also erred in rejecting the objection ignoring the fact that no notice was ever issued to the dealer to file necessary documents as mentioned in the assessment order. Accordingly, order passed is bad in law and deserved to be set aside.

6. That the appellant craves leave to add/amend/delete any of the grounds at the time of hearing.

6. We have heard Sh H L Madan Ld Counsel for the Appellant and Sh S B Jain, Adv., Ld Counsel for the Revenue and gone through the record of the case.

7. Ld Counsel for the Appellant reiterating the grounds of appeal submitted that in the facts and circumstances of the case the objections filed were in time and that as per decision of the Hon'ble High of Delhi in the case of Swarn Darshan Impex and several other decisions of the jurisdictional High Court he was entitled for refund which have been denied to him illegally and the orders of rejection of refund and the impugned orders are unsustainable. Appellant has filed copy of the return which was filed on 27.10.2010. As per return the Total tax credit is Rs 4,45,752/- and after adjusting the Central Tax liability of Rs 1,10,756/- appellant has claimed a refund of Rs 3,34,996/- In the Form DVAT 38 A the appellant has claimed the disputed demand as Rs 3,34,996/-

8. Ld Counsel for the Revenue supporting the impugned orders submitted that the refund had been rightly rejected as the appellant failed

to submit the requisite documents and that objections have also been correctly rejected and argued for upholding the impugned orders.

9. While the appellant has alleged that the orders rejecting the refund were never served upon him, Revenue has not led any evidence to show that due service of the orders in accordance with provisions of law was made upon the appellant. Orders passed by the VATO as well do not state as to on which date the notice was issued and what was the date fixed for furnishing of the document on which the appellant did not appear. In such circumstances the rejection of objections being time barred is illegal and unsustainable.

10. Further, from the perusal of the orders passed by the OHA it is noticed that it is a totally non-speaking order. It does not state as to what was the explanation given by the Appellant before the OHA and why it was not found suitable and rejected. Impugned orders are unsustainable on this account also.

11. Appellant has also assailed the impugned orders on the ground that the orders dated 23.08.2012 are system generated and unsigned and are liable to be set aside in terms of decision of the Hon'ble High Court in the case of Bhumika Enterprises Vs. Commissioner Value Added Tax and Anr.

12. Hon'ble Delhi High Court in the said case of Bhumika Enterprises noticing that the default assessment notices were system generated, set aside the notices. So, in the light of this judgement the orders dated 23.08.2012 are liable to be set aside as they are also system generated orders.

13. Coming to the issue of rejection of refund vide orders dated 23.08.2012 before we proceed further it is apposite to notice the provisions concerning refund which are extracted 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.

(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 sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.

Section 39: Power to withhold refund in certain cases

(1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to

recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

(2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund.

14. The refund has been claimed in the Assessment Year 2011-12 as per return filed by the appellant and the assessment of the appellant stood finalised as no default assessment has bene made. There being no additional demand created the return version of the appellant in respect of sales and purchases as reflected in the return stood accepted as the same is visible form the orders passed where there is no additional tax demand created over and above the figures reflected in the return. Hence there is force in the submission of the appellant that demand against the appellant not being in existence simply on account of non-appearance/ non-submission of the documents the refund could not have been rejected as the refund can only be denied in terms of provisions of section 39 of the DVAT Act

15. In such circumstances the denial of refund to the appellant is contrary to the provisions of law and not sustainable.

16. In view of the foregoing facts and circumstances the orders passed by the OHA as well those passed by the VATO are set aside and the matter is remanded back to the VATO to grant refund to the appellant within two months from the date of this order.

17. Order pronounced in the open court.

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

[2018] 56 DSTC 231 – (Delhi)

BEFORE OBJECTION HEARING AUTHORITY

OHA, Zone - II, VI, Embassy Refund, Enf - I & II
Department of Trade & Taxes, New Delhi
[M.T.Kom, Additional Commissioner]

Sai Traders
Shop No. 2, Ground Floor,
Rithala, Delhi - 110085

NO.ACTT/Zone-IV/OHA-Zone-VI/2018/1749-1752 Dated: 24/04/2018

BANK GUARANTEE U/S 38(5) OF DVAT ACT TO PROCESS THE REFUND – ORDER ASKING TO FURNISH BANK GUARANTEE AFTER LONG EXPIRY OF MORE THAN 730 DAYS – NO OPPORTUNITY OF HEARING WAS GRANTED – VIOLATION OF PRINCIPLES OF NATIONAL JUSTICE – WHETHER JUSTIFIED – HELD NO – ASSESSING AUTHORITY OUGHT TO HAVE TAKEN INTO ACCOUNT THE 45 DAYS LIMITATION AS PRESCRIBED UNDER THE ACT – ORDER REQUIRING BANK GUARANTEE WAS NOT MAINTAINABLE

Facts of the case

The objector filed Writ Petition before Delhi High Court to seek direction to issue the refunds. During the pendency of Writ , the Value Added Tax Officer demanded bank Guarantee to process the refund. The objector challenged the order of seeking bank guarantee before Hon'ble Delhi High Court. The court directed the objector to file objection against the order seeking Bank Guarantee. The Petition was filed and the same was accepted on the basis of order was time barred.

Held

Section 38(5) laid down the condition as well as the period within which the notice may be issued by the VATO to demand security from the person on the basis of the power conferred in section 25 of this Act. Further, the notice under section 38(5) had to be issued within forty five days from the date on which the return was furnished or claim for the refund was made. DVAT Rules 2005, Rule 34(3) laid down that reasons had to be recorded in writing while issuing the notice under form DVAT 21A.

As far as section 38(5) was concerned in the objection, the A.A. ought to have taken into account the forty five days limitation period as prescribed before issuances of the said notice, though the issues raised in the notice dated 03.02.2017 were of significant and relevant to safeguard interest of revenue in the context of refund claim.

ORDER

Name & Address of the objector: M/s. Sai Traders, Shop No.2, Ground Floor, Rithala, Delhi-110085; TIN: 07556933455; Ward No.:63; Tax Period to which objection pertains: Third Quarter-2013-14; Name of Authorized Representative: Sh. M. L. Garg, Advocate; Name of Person making the objection: Smt. Maya Jindal, Objector.

The objector, M/s. Sai Traders has filed one objection against the order No.AC/VAT/Ward -63/2016-17/1987 dated 03.02.2017 of VATO/AC, Ward-63.

The Ld. VATO/AC Ward-63 issued a letter No.AC/VAT/Ward-63/2016-17/1987 dated 03.02.2017 regarding refund application for II & III Qtr. 2014-15 wherein it is mentioned by the VATO/AC-Ward-63 that "firm M/s. Sai Traders (07556933455) was registered on 22.08.2014 and was cancelled on 20.04.2015. Moreover, in the process of verification of refund application, it came to notice after verification from Excise & Taxation Department, Haryana, that the Central Sales were effected to cancelled dealers in Haryana. Keeping in view the status of both selling and purchasing dealers, as cancelled dealers and also the fact that the assessment of firm is not yet done, the firm is required to submit a security in the form of Bank Guarantee for an amount of Rs. 34,00,000/- (Rs. Thirty Four Lakh only) to safeguard the revenue. The firm is requested to submit necessary security in the form of Bank Guarantee (for a period of 90 days) at the earlier to process refunds as per of provision of law."

The objector filed an objection, in form DVAT-38, on 12.02.2018 before the OHA against the said letter dated 03.02.2017 in compliance of the Hon'ble High Court of Delhi order dated 29.01.2018 in the matter of "M/s. Sai Traders v/s. Commissioner of Trade & Taxes & Anr., W.P. (C) 11016/2016 & WP (C) No. 11034/2016" wherein the Hon'ble Court ordered that the petitioner is given liberty to file objection against the order, which directs them to furnish bank guarantees. The copy of the said order of Hon'ble High Court of Delhi was provided by the objector.

Sh. M. L. Garg, Advocate, who appeared before the undersigned on 19.02.2018, 20.03.2018 & 11.04.2018 on behalf of the objector/dealer submitted that the impugned order having been issued, without any reference as to the relevant provisions of law, by the Ld. VATO is bad in law and contrary to the facts of the case. The Ld. VATO has failed to take note that the assessment was pending resultant of inaction on the part of the Assessing Authority. The Ld. A.A. erroneously recorded the reason

for demand of bank guarantee with a predetermined mind to nullify the effect of order dated 21.11.2016 passed by the Hon'ble High Court. The impugned order is liable to be quashed on the short ground that the same have been issued in violation of the principles of natural justice without affording adequate opportunity of hearing to the objector. The impugned order is liable to be quashed as the same have been issued in a mechanical manner without application of mind and the same are passed without jurisdiction. As per section 38(5) of the DVAT Act, 2004 which confers power within the VATO to demand for surety in case of refund within 45 days from the date of filing of refund return whereas the Ld. VATO passed the impugned order asking to furnish bank guarantee after long expiry of more than 730 days. Hence, the impugned order is without authority of law and barred by limitation. The basis for issue of impugned order is that (a) the status of both selling and purchasing dealer,as cancelled dealers; & (b) the assessment of firm is yet not done. In respect of first reason or the basis for asking for the bank guarantee is contrary to the facts of the case as neither the objector/selling dealers nor the purchasing dealer were cancelled dealer by the department. However, both parts duly surrendered their registration certificates as per law after the date of transactions involved in the cases under refund. Further, with regards to second ground for requiring the dealer to furnish bank guarantee was ordered as the assessment of the objector firm has yet not been made. Although the order asking for bank guarantee on the ground is contrary to the law as nowhere in the Act, such power is given to the Ld. VATO to ask for bank guarantee in case assessment is pending. Moreover, now at this stage this basis has lost its weight as the assessment in the said cases have already been made vide order dated 10.03.2017.

A report/ comments, on the objections/ grounds filed by the objector, were asked From the AC/VATO, Ward-63 vide U.O.No.ACTT/Z-IV/OHA/ Z-VI/2017/1594 dated 15.03.2018. The Assistant Commissioner(Ward63) submitted the comments vide dated 13.04.2018 that "The dealer was registered w.e.f. 22.08.2014 and was cancelled on 20.04.2015. The dealer is dealing in trading of Cigarette, which is taxable @20% as per DVAT Act. The dealer has submitted documents of processing of refund claims for the Year 2014-15. The copies of DVAT-30, DVAT-31, copies of statutory forms for 2014-15 (02 Forms), Copies of Tax Invoice with copies of GRs (06) along with copy of Bank Statement. The dealer has also uploaded the Form-09 giving details of central sales effected. On verification of statutory forms filed by the dealer on online TINSYS it came to notice that the dealer M/s Anand Sales is a cancelled dealer. The findings of verification of statutory forms was apprised through the Govt. Counsel to the Hon'ble High Court, Delhi through affidavit filed on

06.02.2017. The statutory forms/Central Sales of the dealer for the period under reference was got verified from the Excise and Taxation Department of Haryana through the VAT Inspector vide this office letter No. AC(VAT) Ward-63/1281 dated 01.12.2016. As per the report of Excise & Taxation officer cum-Assessing Authority, Ward-06, Panipat, Haryana, issued vide letter No.1620/TI/ (W-06) dated 02.12.2016, it was informed that "It is intimated that as per office record the firm M/s Anand Sales, Ward No.09, Beniwal Mohalla, Balujay Road ,having TIN- 06202625179 is a non-existent dealer and the above mentioned firm was cancelled w.e.f. 10.03.2015. It is further stated that no tax (VAT) has been paid by the said dealer to the State Government Though C Form serial No. HR/013C/1059680 dated 07.01.2015, HR/013C/1074356 dated 25.11.2014, HR/013C/1056979 dated 07.01.2015 and HR-013C/03197523 dated 26.06.2015 have been issued to M/s Anand Sales, Ward No.09, Beniwal Mohalla, Balujay Road, District Panipat by this office. As above mentioned firm is non-existent, so above transaction should be considered merely paper transaction as no bill/bilty/GR has been furnished to this office by dealer as a proof of genuineness of transaction. It is informed accordingly. Sd/- Excise & Taxation Officer-cum-Assessing Authority, Ward-06, Panipat." For processing the refund, the dealer M/s Sai Traders was served a letter through their counsel to furnish a Bank Guarantee of the equal amount of the refund claim, as the dealer had business tenure only for about 08 months and both selling and purchasing dealers were cancelled dealers. Further, physical verification was done by the VAT Inspector of the Ward, who reported that the address of the firm i.e. Ground Floor, Shop No.2, Vill Rithala is not traceable. It is pertinent to mention here that the address Ground Floor, Shop No.2, Vill. Rithala is one of addresses mentioned/ used on the Tax Invoices issued by M/s KUNJ BIHARI ENTERPRISES (TIN-07526913764), another dealer of Ward 63 and also doing the similar nature of business practices and refunds (s) have also been claimed by M/s KUNJ BIHARI ENTERPRISES (TIN- 07526913764).Even this address of SAI TRADERS is incomplete and untraceable, as per physical verification report of VAT Inspector and Postal authorities. The dealer also failed to furnish Bank Guarantee to file any reply to the department's requisition. Also, notices u/s 59(2) were issued on 21.02.2017 for 01.03.2017 vide Ref No.10298609 and Reminder dated 06.03.2017 for 09.03.2017 vide Reference No.50060564. The first one was sent through Speed Post, which came back with the remark "pata nahi mila/ (address not traceable)" and the Second Notice u/s 59(2) was sent through VAT Inspector of the Ward, which also remained un-served as it was reported by the VAT Inspector that the address is not traceable. Hence, there are number of contradictions, in the status of physical functioning of the dealer, which has also been confirmed by the Assessing Authority Ward 06, Panipat, Haryana . The dealer's documents

of movements of goods i.e GRs, were also got verified through the VAT Inspector of the Ward, who has reported that the Transporter does not exist and also confirmation from corresponding purchasing dealer's Assessing Authorities of Excise & Taxation Department, Haryana, as detailed above, the movement of goods is not found genuine.

Hence, under the above explained circumstances and status of the selling and purchasing dealer, their short tenure of business, non-existence/ untraceable address(es) of the dealer(s), status of the transporter as non-existent, confirmatory Reports from the Excise and Taxation Department, Haryana, the movement of the goods as per section 3(a) of CST Act,1956, is not established. Therefore, all the Central Sales made by the dealer M/s Sai Traders, against the statutory forms at concessional rate was treated as local sale and taxed accordingly. Penalty u/s 86(10) of DVAT Act read with section 9(2) of CST Act.

I have gone through objection and written submissions during proceedings. Heard arguments of the counsel of objector. Subsequent to the Hon'ble High Court ordered that the petitioner is given liberty to file objection against the order, which directs them to furnish bank guarantees, the objector dealer in this objection has raised, apart from other points, the restricted power of the VATO to exercise Section 38(5) of DVAT Act.2005 beyond 45 days after filing of refund application/ return. In the instant case,the objector dealer has submitted that the refund application/returns have been filed as follows;

Period	Amount of Refund	Date of filing of Online return	Date of issuance of notices
2nd Qtr 2014-15	2390294	21.10.2014	03.02.2017
3rd Qtr 2014-15	993533	10.01.2015	03.02.2017

The Assessing officer/VATO-63 vide the letter No. AC/VAT/W-63/201-17/1988 Dated 03.02.2017 directed the objector dealer to submit a security in the form of bank guarantee for the amount of Rs 34 Lac to safeguard the revenue. The section 38(5) is reproduced below:-

> "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."

Section 38(5) laid down the condition as well as the period within which the notice may be issued by the VATO to demand security

from the person on the basis of the power conferred in section 25 of this Act. Further, the notice under section 38(5) has to be issued within forty five days from the date on which the return was furnished or claim for the refund was made. DVAT Rules 2005, Rule 34(3) laid downs that reasons to be recorded in writing while issuing the notice under form DVAT 21A.

The Assessing Authority/VATO-63 in the notice issued on 03.02.2017 has recorded the reasons for seeking security. It has been observed that vide order dated 10.03.2017 & 10.03.2017 the VATO has also framed notice of default assessment, of tax and interest of CST Act for the tax period Annual-2014 raising demand of Rs. 35,34,974 and Notice of assessment of penalty Annual-2014 under Section 9(2) of CST Act creating Penalty amount of Rs. 45,35,904.

As far as section 38(5) is concerned in the objection, the A.A. ought to have taken Into account the forty five days limitation period as prescribed before issuances of the said notice, though the issues raised in the notice dated 03.02.2017 are of significant and relevant to safeguard interest of revenue in the context of refund claim.

The objector's contention that the notice has been issued after prescribed period cannot be denied in view of given provisions of DVAT Act and Rules as explained above.

Accordingly, the notice dated 03.02.2017 issued by the A.A. under Section 38(5) is not maintainable, as far as the limitation period for issuance of notices is concerned. Order accordingly.

[2018] 56 DSTC 236 – (Delhi)

BEFORE OBJECTION HEARING AUTHORITY

Department of Trade & Taxes, New Delhi

[Anand Kumar Tiwari, Additional Commissioner]

Osian Electronics
RZ/38/174, Gali No. 3, Durga Park,
Palam - 110045

Reference Number: 79147 Date: 23.03.2018

REFUND- DEFAULT ASSESSMENT OF TAX & INTEREST U/S 32 OF DVAT ACT – INPUT TAX CREDIT DISALLOWED UNDER SECTION 9(2)(g) – NO MISMATCH IN ANNEXURE 2A & 2B SHOWN IN DEPARTMENT PORTAL – TAX INVOICE AND PROOF OF PAYMENT TO SELLING DEALER PRODUCED – VATO DID NOT PROVE ANY COLLUSION BETWEEN SELLING DEALER AND PURCHASING DEALER – OBJECTION ACCEPTED. ORDER SET ASIDE.

Facts of the case

That vide notices issued by the VATO of Ward-61 on 03.07.2017 under section 32 of DVAT Act, the refund claim of the objector was disallowed u/s 9(2)(g) of DVAT Act on account of non-verification of input tax credit amounting to Rs.1,74,242/- in respect of (1) M/s Suryadev International, having TIN- 07640351551 for Rs. 56520/-, (2) M/s Hindustan Enterprises having TIN-07180217653 for Rs.65,000/-, (3) M/s J.P. Electricals having TIN- 7260450409 for Rs.54384/-, (4) M/s Pinky Enterprises having TIN-77040405231 for Rs. 40578/-, (5) M/s Shakti Industries having TIN-7480226017

Held

According to judgement in the case of On Quest Merchandising India Pvt. Ltd., the section 9(2)(g) of DVAT Act could not be made applicable unless a distinction between the bogus purchaser and genuine purchaser was classified. The genuine purchaser who had the tax invoices and proof of the tax payment to selling dealer could not be deprived of the ITC, unless and until some collusion was proved between the selling dealer and the purchasing dealer. VAT Tribunal inclined to agree with the contentions of the objector. In view of the submission of documents and judgements of Hon'ble High Court of Delhi in the case of M/s on Quest Merchandising India Pvt. Ltd. Vs Govt. of NCT of Delhi & Ors and M/s Shanti Kiran India Ltd., objection was accepted and the impugned assessment orders for 1st & 2nd Quarter, 2014-15 were set aside. However, the Assessing Authority was directed to examine in detail the transactions of the selling dealers and wherever found fit raise the demand in respect of the such dealers, who had neither deposited the tax paid by the purchasing dealer nor adjusted against their output tax liability in the relevant period or to inform the concerned ward authority to raise the demand, if the selling dealer pertained to the other ward.

Form DVAT 40
See Rule 52

Reference Number: 79147 Date : 23-03-2018

Decision of the commissioner in respect of an objection before the Objection Hearing Authority

Objection Number	Date of filing of Objection
318572	02.02.2018
318574	02.02.2018

To,

Name of person/dealer making the objection: OSIAN ELECTRONICS

Registration Number/ TIN/
Unregistered Dealer Identification No.: 07720265953

Address: RZ/38/174 GALI NO. 3 DURGA PARK PALAM 110045

Objection Number	Period to which objection relates	Amount in dispute	Pay by Date	Payble amount
318572	First Quarter (2014-2015)	174242.00	26.04..2018	0.00
318574	Second Quarter (2014-2015)	113262.00	26.04.2018	0.00

Name of authorised representative of
Person making the objection : Vasdev Lalwani, Advocate

Order

The objector M/s Osian Electronics, Tin No. 0772026953 has filed the above two objections under section 74(1) of the DVAT Act, 2004 against the notices Of default assessment of tax and interest under section 32 of DVAT Act dated 03.07.2017 for the assessment period of 1st & 2nd Quarters of 2014-15 issued by the Assessing Authority, VATO (Ward-61) creating demand as mentioned above. Since the issues involved in both objection are the same, the same are Being disposed of by this single order.

2. Facts of the case, in brief, are that vide notices issued by the VATO of Ward-61 on 03.07.2017 under section 32 of DVAT Act, the refund claim of the objector was disallowed u/s 9(2)(g) of DVAT Act on account of non-verification of input tax credit amounting to Rs.1,74,242/- in respect of (1) M/s Suryadev International, having TIN- 07640351551 for Rs. 56520/-, (2) M/s Hindustan Enterprises having TIN-07180217653 for Rs.65,000/-, (3) M/s J.P. Electricals having TIN- 7260450409 for Rs.54384/-, (4) M/s Pinky Enterprises having TIN- 77040405231 for Rs. 40578/-, (5) M/s Shakti Industries having TIN-7480226017 for Rs.12876/- for the period 1st Quarter, 2014-15 and non-verification of input tax credit amounting TIN-07640351551 amounting to Rs.19800/-, (2) M/s Hindustan Enterprises having TIN-07180217653 amounting to Rs.18125/-, (3) M/s J.P. Electricals having TIN-7260450409 amounting to Rs.56425/-, (4) M/s Pinky Enterprises having TIN-77040405231 for Rs.57000/- and (5) M/s Raj Hans Traders having TIN-07476917623 for Rs.9000/-, & (6) M/s

Shri Gopal Overseas having TIN-7826909428 for Rs.14400/- for the 2nd Quarter, 2014-15 because the purchasing dealer as well as their extended dealer had not paid tax or paid less tax as compared to ITC claimed and resultantly demand as mentioned above in the 1st & 2nd Quarter 2014-15 was created.

3. Grounds taken by the objector in his objections are that:-

(a) The impugned notices of default assessment of tax & interest issued u/s 32 of the DVAT Act were illegal and void. There are various orders of High Court to ascertain whether u/s 9(2)(g) of DVAT Act input shall be allowed or not to the purchasing dealer, which enable to conclude that if any dealer has acted as bonafide and followed all the applicable provisions of law, then input tax credit shall be allowed to purchasing dealer.

(b) The objector has filed his DVAT Return to the department and also verified the mismatch report which shows no mismatch in the Annexure 2A & 2B as shown in the department portal with this firm.

(c) The Ld. VATO arbitrary invoked section –(2)(g) of the DVAT Act and rejected the input tax credit to purchasing dealer who has bonafide entered into a purchasing transaction with a registered selling dealer who has issued tax invoice reflecting the TIN No. 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 the defaulting selling dealer to recover such tax and not to deny the purchasing dealer the ITC.

(d) The impugned order of VATO is illegal and void as the impugned order of assessment has been framed with a malafide intention only to withhold the refunds due to the registered dealers who have claimed the refunds in their return but instead of processing the refund as per section 38(3) of the DVAT Act the default assessment are framed after various year of filing of returns only with the intention to illegally withhold or adjust the amount of demand so created against the long overdue refund.

(e) The order of the VATO is illegal and contrary to provision section 38(3) and read with section 42 of the DVAT Act that the refund was to processed within 2 months from the date of filing of the return but has been processed after more than 3 years but no interest has

been released on the amount of refund released in contravention of section 42 of the DVAT Act.

(f) Reliance is placed on the judgement of Hon'ble Delhi High Court in the cases of M/s Swarn Darshan Impex Pvt. Ltd. Vs. Commissioner of VAT, M/s Smart Mobile Technology Pvt. Ltd. Vs. Commissioner, VAT, M/s Shaila Enterprises Vs. Commissioner of VAT M/s on Quest Merchandising India Pvt. Ltd. Vs. Govt. of NCT of Delhi.

4. Sh. Vasdev Lalwani, Advocate, appeared before the undersigned on behalf of the objector and reiterated the facts & grounds mentioned in DVAT-38 application. He submitted that the objections are against the notices of assessment of tax & interest by disallowing ITC for 1st & 2nd Quarter, 2014-15. He produced copies of bank statement, tax invoice of the selling dealers and 2A & 2B mismatch report for the purchases showing no 2A & 2B mismatch for the relevant Quarters. Objector has relied upon the judgements of the Hon'ble High Court of Delhi in the aforesaid cases wherein the court's decision was in favour of the appellant and against the revenue.

5. I have heard the arguments made by the Ld. Counsel on behalf of the objector as well as gone through the impugned assessment order issued by the VATO, Ward-61 on 03.07.2017. The objection filed by the objector together with the grounds taken in them have been closely persued and seen. Judgements of the Hon'ble High Court of Delhi in the case of M/s ou Quest Merchandising India Pvt. Ltd. Vs Govt. of NCT of Delhi & Ors dated 26.10.2017 in WP(C) 6093/2017 referred to by the counsel for the objector diring hearing proceedings has also been noticed with regard wherein it is held that:

> "the words occurring in section 9(2)(g) dealers or class of dealers should be interpreted as not including a purchasing dealer who has bonafide entered into purchase transaction with validly registered selling dealer who have issued tax invoice in accordance with section 50 of Act. Where there is no mismatch of the transactions in Annexure 2A & 2B unless the expression dealer or class of dealer in section 9(2)(g) is read down in the above manner the entire provision would have to be held to be voilative of article 14 of the constitution".

6. According to the above judgement, the section 9(2)(g) of DVAT Act cannot be made applicable unless a distinction between the bogus purchaser and genuine purchaser is classified. The genuine purchaser

who has the tax invoices and proof of the tax payment to selling dealer cannot be deprived of the ITC, unless and until some collusion is proved between the selling dealer and the purchasing. I am, therefore, inclined to agree with the contentions of the objector. In view of the submission of documents and judgements of Hon'ble High Court of Delhi in the case of M/s on Quest Merchandising India Pvt. Ltd. Vs Govt. of NCT of Delhi & Ors and M/s Shanti Kiran India Ltd., objection is accepted and the impugned assessment orders for 1st & 2nd Quarter, 2014-15 are set aside.

7. However, the Assessing Authority is directed to examine in detail the transactions of the selling dealers and wherever found fit raise the demand in respect of the such dealers, who have neither deposited the tax paid by the purchasing dealer nor adjusted against their output tax liability in the relevant period or to inform the concerned ward authority to raise the demand, if the selling dealer pertains to the other ward.

8. Ordered accordingly.

[2018] 56 DSTC 241 – (West Bengal)

AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL

Switching Avo Electro Power Ltd., In re

Vishwanath And Partha Sarathi Dey, Member

Case No. 04 Of 2018

March 21, 2018

SUPPLY OF UPS ALONGWITH THE BATTERY – NATURE OF SUPPLY – WHETHER MIXED OR COMPOSITE?

A standalone UPS and a battery can be separately supplied in retail set up. A person can purchase a standalone UPS and a battery from different vendors. The applicant himself admits that he supplies the battery and UPS as separate machines as well as UPS with battery. It is, therefore, obvious that the UPS and the battery have separate commercial values as goods and should be taxed under the respective tariff heads when supplied separately.

Rule: The supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price.

Rabindra Agarwal, Director for the Applicant.

Ruling

1. The Applicant, stated to be a supplier of power solutions, including UPS, servo stabiliser, batteries etc. wants a ruling on the classification of the supply when it supplies UPS along with the battery. More specifically, he wants a ruling on whether such supplies can be treated as Composite Supply within the meaning of Section 2(30) of the CGST/WBGST Act, 2017 (hereinafter referred to as "the GST Act"). An Advance Ruling is admissible on this issue under Section 97 (1) of the GST Act.

2. The Applicant also declares that the issue raised in the application is not pending or decided in any proceedings under any provisions of the GST Act. The concerned officer, in his written response, raises no objection to the admission of the application. The application is, therefore, admitted.

3. For the purpose of taxation under the GST Act classification of the goods involved (UPS and battery) the classification of the goods has been determined in terms of Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 (1125-FT dated 28/06/2017 of the WBGST Act, 2017; (hereinafter referred to as "the State Tax"), as amended vide Notification No. 41/2017-Central Tax (Rate) dated 14/11/2017 (2019-FT dated 14/11/2017 of the State Tax) (hereinafter collectively referred to as the "Rate Notifications on Goods").

Schedule	Serial No.	Tariff Head	Description	Remarks
IV	138	8506	Primary cells and primary batteries	Omitted w.e.f 15/11/17 vide Notification No. 41/2017-Central (Rate) dated 14/11/17
IV	139	8507	Electric accumulators, including separators, whether rectangular (including square)	
III	375	8504	Transformers Industrial Electronics; Electric Transformers; Static Convertors (UPS)	
III	376A	8506	Primary cells and primary batteries	Inserted w.e.f 15/11/17 vide Notification No. 41/2017-Central (Rate) dated 14/11/17

4. Explanation (v) to Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 (1125-FT dated 28/06/2017 of the State Tax) clarifies that the Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as "the Tariff Act") including Section and Chapter Notes and General Explanatory Notes shall, insofar as may be, apply to interpretation of the above Notifications. Rules framed under Section 2 of the Tariff Act are to be followed for interpretation of the Section or Chapter Notes mentioned above.

5. Note 3 to Section XVI of the Tariff Act defines a composite machine as the *one consisting of two or more machines fitted together to form a whole*. Such machines, as well as other machines designed for the purpose of performing two or more complementary or alternative functions, are to be classified as if consisting only of that component or as being that machine, which performs the principal function.

6. Applicability of Note 3 to Section XVI of the Tariff Act (hereinafter referred to as "Note 3") is, however, not absolute, but subject to the context in which it is being applied. In the present context, Note 3 is applicable subject to the definitions of composite supply and its taxability under Section 8(a) of the GST Act.

Section 2(30) of the GST Act defines Composite Supply as " a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply".

Principal Supply is defined under Section 2(90) of the GST Act as "the supply of goods/services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary".

Note 3, therefore, is applicable, in this context, to composite machines. Other machines, designed for the purpose of performing two or more complementary or alternative functions, however, can be classified with the help of Note 3 *only if they are naturally bundled and supplied in conjunction with one another in the ordinary course of business*.

7. It appears that batteries are classified under Tariff Heads 8506 and 8507 of the First Schedule of the Tariff Act. The basic difference between the two Tariff Heads is the ability of accumulators to be recharged, whereas primary cell batteries cannot be recharged. An accumulator is an energy storage device, which accepts energy, stores it and releases it when

needed. Rechargeable batteries, flywheel energy storage, capacitors etc. are examples of accumulators. In common usage in an electrical context, an accumulator usually refers to a lead-acid battery. Hereinafter, the battery referred to by the Applicant as being supplied along with UPS will refer to these accumulators.

8. A UPS is classified under Tariff Head 8504. It is an electrical apparatus that provides emergency power to a load when the input power source or mains power fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it provides immediate protection from input power interruptions by supplying energy stored in batteries, supercapacitors or flywheels. The on-battery runtime of most UPS is relatively short but sufficient to start a standby power source or properly shut down the protected equipment. A UPS is typically used to protect hardware such as computers, data centres, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries or data loss.

9. The UPS serves no purpose if the battery is not supplied or removed. It cannot function as a UPS unless the battery is attached. However, what needs to be considered is whether or not these two items are "naturally bundled". The stated Illustration to Section 2(30) of the GST Act refers to a supply where the ancillary supplies are inseparable from the principal supply and form an integral part of the composite supply. Note 3 also refers to a composite machine as the one consisting of two or more machines fitted together to form a whole. When a UPS is supplied with built-in batteries so that supply of the battery is inseparable from supply of the UPS, it should be treated as a composite supply and as a composite machine in terms of Note 3. The UPS being the principal supply, the relevant tariff head for the composite supply will be 8504 under serial no. 375 of Schedule III in terms of Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 (1125-FT dated 28/06/2017 of the State tax).

10. But a standalone UPS and a battery can be separately supplied in retail set up. A person can purchase a standalone UPS and a battery from different vendors. The applicant himself admits that he supplies the battery and UPS as separate machines as well as UPS with battery. It is, therefore, obvious that the UPS and the battery have separate commercial values as goods and should be taxed under the respective tariff heads when supplied separately.

11. The question, however, is what should be the tariff head when the UPS and the battery are supplied as separate goods, but a single

price is charged for the combination of the goods supplied as a single contract. The UPS and the battery, being supplied as separate goods, no longer form an integral part of a composite machine, but it remains to be discussed whether or not under these circumstances they may be considered as "naturally bundled". The applicant insists that as the battery, being supplied as part of an integral contract, remains naturally bundled with UPS - the principal supply. The argument is fallacious. Goods are naturally bundled in a supply contract if the contract is indivisible. For example, a works contract within the meaning of section 2 (119) of the GST Act is a composite supply. Steel, cement and other goods and services supplied are inseparable in a contract for civil construction. The recipient has not contracted for the supply of steel, cement or architectural service, but for the service of constructing the civil structure, where all these supplies are inseparable and, therefore, naturally bundled. The contract for the supply of a combination of UPS and battery, if not built as a composite machine, is not indivisible. The recipient can split it up into separate supply contracts if he chooses. The goods supplied in terms of such contracts are, therefore, no longer naturally bundled and cannot be treated as a composite supply.

12. If a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies. Mixed supply is defined under section 2(74) of the GST Act as one where "two or more individual supplies of goods/services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply". The stated Illustration to Section 2(74) of the GST Act refers to a package of items which can be supplied separately and are not dependent on each other, but for the instant purpose are being packaged together.

13. Based on information furnished by the Applicant and the Purchase Order supplied by them as Sample of the Billing done by them it is seen that though UPS and Battery are two different and independent items, they are billed together and a single peice is quoted for the sale.

In view of the foregoing we rule as under

Ruling

The supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price.

This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act

[2018] 56 DSTC 246 – (Kerala)

AUTHORITY FOR ADVANCE RULING – KERALA

Proceedings of the Authority for Advance Ruling
u/s.98 of the Goods and Services Tax Act, 2017

M/S Synthite Industries Ltd Applicant

Date of Order : 3 March, 2018

ADVANCE RULING – IGST – HIGH SEA SALES - LEVIABLITY OF GST ON IMPORT/ HIGH SEA SALES – GOODS PROCURED FROM CHINA AND SHIPPED DIRECTLY TO USA WITHOUT ENTERING INDIA. HELD NOT LIABLE TO PAY GST - IGST IS PAYABLE AT THE TIME OF ARRIVAL OF GOODS INTO INDIA..

HELD the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods The applicant is neither liable to pay GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point.

Present : Senthil Nathan S, IRS [Member, CGST]
N. Thulaseedharan Pillai [Member, SGST]

Order No. Ct/2275/18-C3 Dated 26/03/2018

1. M/s Synthite Industries Ltd, Synthite Valley, Kadayiruppu P 0, Kolenchery, Ernakulam District, Kerala - 682311 (hereinafter called the applicant) is a registered person under GST having GSTN: 32AADCS5616E1ZQ.

2. They are in the business of trading in spices and spice products. They have two modes of transactions. In the first kind, the applicant receives order from a customer in USA for the supply of spice products. They place a corresponding order to a supplier in China for supplying the goods ordered by the customer in USA. The supplier in China, based on the request of the applicant, ship the goods directly to the customer in USA. In other words, the goods do not come to India. The Chinese supplier issues invoice to the applicant, for which, payment will be made by the applicant in due course. Subsequently, the applicant will raise invoice on the customer in USA, and collect the proceeds.

3. In the other mode of transaction, the applicant is availing storage facility in the form of a presidential warehouse in Netherlands for storing their products and subsequent delivery to their customers in and around Netherlands. The storage facility is open to all, and interested entities across the globe can keep their products there by paying applicable storage rent. The applicant is availing a portion of the storage facility as and when required. They use the facility for quick and timely delivery of their products to their customers based on demand. When an order is received from the customer by the applicant, they can immediately deliver the products from this warehouse and this reduces the freight expenses and delay in delivery. These types of transactions are legally permitted and they have obtained necessary permission from Reserve Bank of India. The applicant wants to buy materials from a company in China in bulk and store it in the presidential warehouse in Netherlands for subsequent delivery to various customers in and around the country as small and medium lots based on demand. The material is not coming to India at any point. The Chinese supplier will invoice the applicant for which payment will be given in due course. Subsequently, the warehouse authorities will arrange split deliveries to their various overseas customers as per their instructions. The applicant would issue invoice to the ultimate customers and collect the proceeds in foreign exchange.

4. The applicant in his application dated 29.01.2018 has raised following issues for determination by the Authority;

1. Whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them?
2. On the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them?
3. On procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them?

4. On the sale of goods from Netherlands warehouse to their end customers in and around Netherlands, without entering India, is GST payable by them?

5. On scrutiny of the application, it was found that applicant had only paid a fee of Rs.5000/- whereas the applicant was required to pay a fee of Rs.5,000/- each under the CGST and SGST Rules.

6. The applicant was granted a personal hearing on 13.03.2018. Shri. George Varghese, Senior Manager (Finance) appeared on behalf of the applicant. He submitted proof of payment of the balance fee of Rs. 5,000/-. In the written submission, dated 13.03.2018, the applicant has submitted that they are engaged in the manufacture and export of spice oils and oleoresins from India from 1972 and their annual turnover is more than Rs.1500 crores. They have export trading house status granted by the Ministry of Commerce and Industry, Government of India. They mainly purchase spices such as pepper, ginger, cardamom, nutmeg, chillies, turmeric, etc as raw materials and extract them with solvents / chemicals to produce spice oleoresins. They are having manufacturing facilities at Kerala, Tami Nadu, Karnataka and Andhra Pradesh. The applicant submitted that around 80% of their turnover is from exports and the foreign customers place order for various products.

7. The applicant also submitted copies of the purchase order issued by them to the Chinese supplier; the Invoice issued by the Chinese supplier; the Bill of Lading from China to USA and the invoice issued by the applicant to their customer in USA.

8. On the basis of the facts disclosed in the application, the oral and written submissions made at the time of personal hearing and the documents produced during the personal hearing, it was decided to admit the application.

9. As per Section 2(10) of the Integrated Goods and Services Tax Act, 2017, “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

As per sub-section (2) of Section 7 of the Integrated Goods and Services Tax Act, 2017, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce.

Sub - section (1) of Section 5 of the Integrated Goods and Services Tax Act, 2017 states that, subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax in all inter-state supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 of the Central Goods and Services Tax Act, and at such rates, not exceeding forty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person;

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, on the value determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.

10. The Customs Tariff Act, 1975 was amended by The Taxation Laws Amendment Act, 2017 by introducing sub-section (7) in Section 3 of the Customs Tariff Act, 1975 with effect from 01.07.2017 to enable collection of integrated tax on the goods imported. The relevant provisions of the amended Section 3 of the Customs Tariff Act, 1975 reads as follows;

> "(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).
>
> (8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of —
>
> (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
>
> (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).
>
> (12) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.

The relevant provisions of the Customs Act, 1962 are reproduced below;

SECTION 12.: Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

SECTION 15.: Date for determination of rate of duty and tariff valuation of imported goods. - (1) Rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

From a combined reading of the above provisions of the IGST Act, 2017, the Customs Tariff Act, 1975, and the Customs Act, 1962, it is evident that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e.- on the date determined as per provisions of Section 15 of the Customs Act, 1962.

11. When a question regarding the leviability of Integrated Goods and Services Tax [IGST] on High Sea Sales of imported goods and point of collection thereof was raised before the Central Board of Excise and

Customs [CBEC], the CBEC by Circular No. 33/2017-Customs dated 01.08.2017 had clarified as follows;

> Subject: Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof - regarding.
>
> Reference has been received in the Board regarding clarity on *Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods*.
>
> 2. The issue has been examined in the Board. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale. In the past, CBEC has issued various instructions regarding high sea sales appropriating the contract price paid by the last high sea sales buyer into the Customs valuation [Circular No. 32/2004-Cus., dated 11-5-2004 refers].
>
> 3. As mentioned earlier, all inter-state transactions are subject to IGST. High sea sales of imported goods are akin to inter-state transactions. Owing to this, it was presented to the Board as to whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under sub-section (7) of section 3 of Customs Tariff Act, 1975 and also separately under Section 5 of The Integrated Goods and Services Tax Act, 2017.
>
> 4. GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.
>
> 5. The above decision of the GST council is already envisioned in the provisions of sub-section (12) of section 3 of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes,

cess, etc shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. The importer (last buyer in the chain) would he required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

12. The clarification given by the CBEC in the above Circular regarding the leviability of IGST and the point of collection thereof in respect of high sea sales of imported goods is, mutatis mutandis, applicable in the case of the applicant.

13. In view of the above, we rule as under;

Ruling

The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India.

The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point.

[2018] 56 DSTC 253 – (Madras)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[S. Manikumar and R. Suresh Kumar, JJ.]

C.M.A. No. 3019 of 2007

M/s. Nandhi Spinning Mills (P) Limited,
Rep. by its Director, Mr. N. Santhakumar ... Appellant

Vs.

The Commissioner of Central Excise,
Salem Commissionerate,
No.1, Foulks Compound, Anaimedu, Salem - 636 001 ... Respondent

Date of Order: 08.11.2017

NON-SPEAKING ORDER – NO DISCUSSION FOR GROUNDS OF APPEAL – TRIBUNAL IS LAST FACT FINDING AUTHORITY AND BIND TO PASS SPEAKING ORDER – ORDER SET ASIDE AND CASE REMANDED BACK.

For Appellant : Mr. C. Saravanan

For Respondents : Mr. V. Sundareswaran, CGSC

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J)

Though Final Order made in No.40386 of 2017 dated 01.03.2017 on the file of CESTAT, Chennai, is challenged on many substantial questions of law, we are not inclined to delve into the same. But, going through the order, we are of the view that after extracting the submissions, CESTAT, Chennai, dismissed the appeal, by a non speaking order. At paragraph Nos.3 and 4, the tribunal ordered as hereunder.

> "3. When the appellate Commissioner found that there was falsification of records and appellant has no material to discard the allegation of Revenue, he held that there was clandestine clearance of the goods and there was neither any job working done nor any job worked goods cleared. We are not able to find any material from the grounds of appeal of the appellant to disturb such finding of the ld. Commissioner (Appeals). Accordingly, appeal is dismissed.
>
> 4. While deciding the above appeal, we are guided by the judgment of the Hon'ble Punjab and Haryana High Court in the case of CCE

Chandigarh Vs. Modern Alloys - 2010 (285) ELT 364 (P&H) and the judgment of Hon'ble High Court of Madras in the case of Alagappa Cements Pvt. Ltd. Vs. CEGAT, Chennai - 2010 (260) ELT 511 (Mad.). We are also conscious that any grant of relief to the evader shall be a bonus to him following the judgment of the Hon'ble High Court of Himachal Pradesh in the case of CCE Vs. International Cylinders Pvt. Ltd. - 2010 (255) ELT 68 (H.P.)."

2. The tribunal is a final fact finding authority. Though the tribunal has considered the grounds of appeal, there is no discussion. Further, by relying on the decision of Punjab and Haryana High Court in the case of CCE Chandigarh Vs. Modern Alloys - 2010 (285) ELT 364 (P&H), tribunal dismissed the appeal, which cannot be approved in the light of the decision of the Hon'ble Supreme Court in Tata Engineering & Locomotive Co. Ltd., v. Collector of Central Excise, Pune reported in 2006 (203) ELT 360 (SC).

3. At this juncture, we deem it fit to consider few decisions, on this aspect.

(i) In HVPNL v. Mahavir reported in (2004) 10 SCC 86, while dealing with an order passed by the State Consumer Disputes Redressal Commission, the Hon'ble Apex Court held that the appellate forum is bound to refer to the pleadings of the case, submissions of the counsel, necessary points for consideration, discuss the evidence, and then to dispose of the matter by giving valid reasons.

(ii) In Tata Engineering & Locomotive Co. Ltd., v. Collector of Central Excise, Pune reported in 2006 (203) ELT 360 (SC), the Hon'ble Supreme Court, dealing with a case, whereby, a cryptic and non-speaking order, the Tribunal upheld the order passed by the Commissioner, by applying the ratio of the decision of a Larger Bench in TISCO Ltd., v. CCE, Madras [2000 (118) ELT 104 (T-LB)], without recording any findings of fact. On the facts and circumstances of the case, the Hon'ble Apex Court, while holding that it is not sufficient in a judgment, to give conclusions alone, but it is necessary to give reasons, in support of the conclusions arrived at, set aside the order of the Tribunal, holding that the findings recorded by the Tribunal therein, were cryptic and non-speaking, and remitted the matter to the Tribunal for taking a fresh decision, by a speaking order, in accordance with law, after affording due opportunity to both the parties.

(iii) In Commr. of Central Excise, Bangalore-II v. Fitwel Tools & Forgings (P) Ltd., reported in 2010 (256) ELT 212 (Kar.), a Hon'ble Division Bench of Karnataka High Court, at Paragraph 5, held as follows:

"After careful perusal of the order impugned, it is manifest on the face of the order that the Tribunal has committed a grave error in passing the order impugned without assigning any valid reasons and without any discussion. By merely following the order passed in similar matters, it has proceeded to pass the impugned order, allowing the appeal filed by the respondent. Hence, we are of the opinion that the impugned order is cryptic in nature and such a non-speaking order cannot be sustained."

4. In the light of the above discussion and decisions, the impugned order is set aside and the matter is remitted to CESTAT, Chennai. CESTAT, Chennai is directed to issue notice to both parties, provide opportunity, consider the issues raised in the appeal and pass orders on the appeal on merits and in accordance with law. Tribunal is further directed to dispose of the appeal, as expeditiously as possible within a period of two months from the date of receipt of a copy of this order.

5. Civil Miscellaneous Appeal is allowed, as indicated above. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

[2018] 56 DSTC 255 – (Chhattisgarh)

HIGH COURT OF CHHATTISGARH, BILASPUR

(Hon'ble Shri Justice Sanjay K. Agrawal)

WPC No. 1231 of 2018

Natthani Infrastructures
Raipur, Chhattisgarh **...** Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Urban Administration and Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)

2. Municipal Corporation, Raipur, through Commissioner, Municipal Corporation, Raipur, Chhattisgarh.

3. The Commissioner, Municipal Corporation, Raipur, Chhattisgarh.

4. The Zone Commissioner, Zone 2, Municipal Corporation, Raipur, Chhattisgarh **...** Respondents

Date of Order: May 1, 2018

WRIT PETITION SEEKING DIRECTION FOR REIMBURSEMENT OF ADDITIONAL GST LIABILITY ON CIVIL CONTRACT AND WORKS ORDER ISSUED PRE GST PERIOD – NOTIFICATION DT 05.04.2018 ALSO NOT CONSIDERED – DIRECTIONS ISSUED TO CONSIDER THE APPLICATION FOR REIMBURSEMENT.

For Petitioner	:	Mr. Ashish Surana, Advocate.
For Respondents/State	:	Mr. Gary Mukhopadhyay, G.A.
For Respondents No.2,3, & 4	:	Mr. Pankaj Agrawal, Advocate.

Order

1. Learned counsel appearing for the petitioner would submit that petitioner has made an application on 05.04.2018 before the respondent authorities for reimbursement of additional Goods and Service Tax (GST) liability on civil contract and work order issued prior to implementation of Goods and Service Tax Act, 2017 which is not being considered and decided despite the notification dated 05.04.2018 issued by the State Government.

2. I have heard learned counsel for the petitioner.

3. Be that as it may, the Municipal Corporation, Raipur is directed to consider and dispose of petitioner's said application strictly in accordance with law, expeditiously, preferably within a period of four weeks from the date of receipt of certified copy of this order.

4. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

[2018] 56 DSTC 257 – (Delhi)

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

Appeal Nos.33-38/ATVAT/17-18
Assessment Period: 2009-10, 2010-11 & 2011-12

M/s Mahendra Industrial Corporation
2906, Gali Gandhi, G.B. Road,
New Delhi- 110006 ... Appellant

Versus

Commissioner, Value Added Tax, Delhi ... Respondent

Date of Order: 11.06.2018

IMPOSITION OF INTEREST – DEMAND CREATED ALTHOUGH HAVING EXCESS INPUT TAX CREDIT FOR WHICH REFUND WAS CLAIMED IN RETURN – WHETHER CORRECT HELD; NO – WHILE CREATING THE ADDITIONAL DEMAND VATO WAS REQUIRED TO ADJUST THE EXCESS INPUT TAX CREDIT AGAINST THE ADDITIONAL DEMAND CREATED. THE IMPOSITION OF INTEREST WAS CONTRARY TO THE PROVISIONS OF LAW AND HENCE UNSUSTAINABLE AND WAS ACCORDINGLY SET ASIDE.

Facts

The default assessments of tax and interest in respect of appellant were passed under Central Sales Tax Act by VATO vide orders dated 30.01.2017 in respect of 1st, 2nd , 3rd and 4th quarter 2011-12, Annual 2009-10 and 2010-11 creating the following demands: -

Tax Period	Date of order	Tax	Interest	Total
2009-10	27.02.14	58,417	34,918	93,335
2010-11	22.02.14	23,497	12,870	38,367
1st 2011-12	26.03.16	3,599	2,575	6,174
2nd 2011-12	26.03.16	22,466	15,225	37,691
3rd 2011-12	26.03.16	6,163	3,946	10,109
4th 2011-12	26.03.16	11,564	6,972	18,536

Aggrieved with the default assessment orders, the appellant filed objections before the OHA which were disposed off by the OHA vide orders dated 18.03.2017, vide which while the OHA admitted two C-Forms of Rs. 77,926/- and allowed the benefit of concessional rate of tax and taxed the sale amount of Rs. 42,042/- @ 3% with interest as no C-Form was produced in respect of this sale amount.

Held

A conjoint reading of section 30, 31 and 32 made it apparent that when the appellant filed the returns appellant stood self-assessed. This self-assessment was final unless it was disturbed by the default assessment carried out under section 32 of the Act. The default assessment carried out by the VATO related back to the tax period in which the returns were filed. Difference between the tax that was payable in terms of the self-assessment and the one payable under the default assessment was the tax deficiency in terms of section 86 of the Act on which the penalty was leviable under section 86(14) of the DVAT Act. Now if in the tax period for which the default assessment was made an additional tax demand was created, and if the appellant was having excess Input tax credit for which he was entitled for refund, the same was required to be adjusted against the additional demand created and the net of the two was to be paid to the appellant as refund. This was what is provided under section 38 as well.

The imposition of interest was contrary to the provisions of law and hence unsustainable and was accordingly set aside. Matter was remanded back to VATO to reframe the assessment in accordance with law.

Present for the Appellant : Sh. Wahaj Ahmed Khan, Adv.,

Present for the Respondent : Sh. M. L. Garg, Adv.

ORDER

1. This order shall dispose of the above noted appeals filed by the appellant M/s Mahendra Industrial Corporation challenging the impugned orders dated 18.03.2017 passed by VATO, hereinafter referred as Special Objection Hearing Authority (in short the OHA).

2. Facts of the case briefly stated are that default assessments of tax and interest in respect of appellant were passed under Central Sales Tax Act by VATO vide orders dated 30.01.2017 in respect of 1st, 2nd , 3rd and 4th quarter 2011-12, Annual 2009-10 and 2010-11 creating the following demands: -

Tax Period	Date of order	Tax	Interest	Total
2009-10	27.02.14	58,417	34,918	93,335
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3rd 2011-12	26.03.16	6,163	3,946	10,109
4th 2011-12	26.03.16	11,564	6,972	18,536

3. Aggrieved with the default assessment order, the appellant filed objections before the OHA which were disposed off by the OHA vide orders dated 18.03.2017, vide which while the OHA admitted two C-Forms of Rs. 77,926/- and allowed the benefit of concessional rate of tax and taxed the sale amount of Rs. 42,042/- @ 3% with interest as no C-Form was produced in respect of this sale amount.

4. Facts as stated in default assessment orders in respect of 1st quarter 2011-12 creating demand of Rs. 2302/- (Tax Rs.1261+Interest Rs.1041/-) passed by VATO/OHA while disposing of the objections are extracted as under: -

> This case was originally assessed for the Qtr. 1st 2011-12 by the A.A. on 31.03.2016 and demand created of Rs.6174/- for non-furnishing of C-Forms. The dealer has filed objection against the above said order. A notice was issued to the dealer. In response to the notice Sh. W.A. Khan, Advocate appeared before me and submitted two C-Forms of Rs.77926/- exemption claimed is allowed in view of judgment of Hon'ble High Court in the case of M/s Kirloskar electric Co. Vs. CST, Delhi (83 STC 485), the statutory forms can be accepted by OHA. Now, missing C-Forms of Rs.42042/- and same is taxable @ 3% with interest. However, in case any defect/ deficiency is found in any of forms at later stage, the dealer will be liable to pay tax and interest as per law. Original C-Forms along with assessment order will be sent to the concerned ward for office record."

5.Accordingly the Special OHA reviewed the assessment order dated 26.03.2016 suo motu and revised the demand to Rs 2302/-(Rs 1261 Tax + Rs 1041 Interest). OHA passed the orders in DVAT-24 vide orders dated 30.01.2017 and in DVAT-40 vide orders dated 18.03.2017.

6. Similar orders were passed in respect of other tax periods and following demands were created: -

Tax Period	Tax	Interest	Total
2009-10	41,412	45,048	86,460
2010-11	12,896	10,112	23,008
1st	1,261	1,041	2,302
2nd	14,188	11,177	25,365
3rd	2,499	1,874	4,373
4th	9,503	6,772	16,275

7. Aggrieved with the impugned orders passed by OHA appellant has come in appeal and assailed the impugned orders pertaining to the Tax Period. Grounds of appeal in respect of 1st quarter are as under:-

(i) That the orders of Ld. Objection Hearing Authority & of Ld. VATO are highly arbitrary, illegal and against the facts of the case.

(ii) That Ld. Objection Hearing Authority has imposed interest of Rs.1041/- upon missing C-Forms tax ofRs.1261/- which is wrong arbitrary and illegal specially under the circumstances that refund of the appellant of Rs.1,44,924/- is still pending during all four quarters of 2011-12.

(iii) That Ld. OHA and VATO should have adjusted the due tax from the claimed refund of the appellant.

(iv) That the appellant craves leave to add, alter, omit to/from the grounds of objection at the time of hearing.

8. Similar Grounds of Appeal have been taken in respect of the other tax periods as well.

9. Appellant's main contention is that when refund was pending, the interest ought not to have been levied.

10. Appellant has filed a statement showing that in every return he had the excess ITC and thus was entitled for refund and in such facts, the imposition of interest and penalty on the additional demand created was not warranted. Details of the Refund and additional demand of Tax, Interest and Penalty as detailed by the Appellant are as under: -

Year	Refund Period	Assessment Period	Tax	Interest	Total	Refund
2009-10	4th quarter	Annual	41,412/-	45,048/-	86,460/-	1,72,600/-
2010-11	1st qtr	Annual	-	-	-	2,84,937/-
2010-11	2nd qtr	1st qtr	-	-	-	1,45,824/-
2010-11	3rd qtr	2nd qtr	-	-	-	1,11,013/-
2010-11	4th qtr	Annual	12,896/-	10,112/-	23,008/-	1,02,035/-
2011-12	1st qtr	Ist qtr	1,261/-	1,041/-	2,302/-	-
2011-12	2nd qtr	2nd qtr	14,188/-	11,177/-	25,365/-	-

2011-12	3rd qtr	3rdqtr	2,499/-	1,874/-	4,373/-	1,33,743/-
2011-12	3rd qtr	4th qtr	9,503/-	6,772/-	16,275/-	1,44,475/-
Total			81,759/-	76,024/-	1,57,783/-	10,94,627/-

11. Ld Counsel for the Revenue supporting the impugned orders has relied upon the decision of this Tribunal in the case of HSIL Limited Appeal No.1260/ATVAT/13-14 decided on 10.12.2015. It has been further submitted that the prayer of the appellant cannot be granted as the appellant in his subsequent returns filed might have adjusted the excess credit in respect of liability of tax arising in that tax period and the grant of adjustment would result in upsetting the figures in the subsequent return figures and make the appellant to file the revised return which at this stage cannot be filed by the appellant.

12. Appellant's main submission is that once the excess input tax credit was available in the particular tax period for which the default assessment was made, and the refund claimed had not been granted, he could not be burdened with the imposition of interest.

13. At this stage it is necessary to see the relevant provisions of the DVAT Act.

Section 3 Imposition of tax

(1) Subject to other provisions of this Act, every dealer who is –

(a) registered under this Act; or

(b) required to be registered under this Act;

shall be liable to pay tax calculated in accordance with this Act, at the time and in the manner provided in this Act.

(2) Every dealer shall be liable to pay tax at the rates specified in section 4 of this Act on every sale of goods effected by him -

(a) while he is a registered dealer under this Act; or

(b) on and from the day on which he was required to be registered under this Act.

(3) The amount of tax payable under this Act by a dealer, is the dealer's net tax for the tax period calculated under section 11 of this Act.

(4) the net tax of a dealer shall be paid within twenty-one days of the conclusion of each calendar month:

Section 9 Tax credit

(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act 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 and the goods are to be used by him directly or indirectly for the purpose of making -

(a) sales which are liable to tax under section 3 of this Act; or

(b) sales which are not liable to tax under section 7 of this Act.

Explanation. - Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.

(2) No tax credit shall be allowed -

(a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;

(b) for the purchase of non-creditable goods;

(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.

Section 10 Adjustment to tax credit

(1) Subject to sub-section (1) and (2) of section 8 Where any purchaser has been issued with a credit note or debit note in terms of section51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates, becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned.

Explanation: while issuing of a credit note of a post sale discount or incentive by a selling dealer, where no adjustment to output tax as per the provisions of sub-section (1) and (2) of section (8) has been made, no adjustment for reduction of input tax

credit would be required by the respective buying registered dealer.

(2) If goods which have been purchased were -

(a) intended to be used for the purposes specified under sub-section (1) of section 9 of this Act and are subsequently used, fully or partly, for purposes other than those specified under the said sub-section; or

(b) intended for purposes other than those specified under sub-section (1) of said section 9 of this Act, and are subsequently used, fully or partly, for the purposes specified in the said sub-section;

the tax credit claimed in respect of such purchase shall be reduced or increased (as the case may be) for the tax period during which the said utilization otherwise has taken place.

(3) Where-

(a) goods were purchased by a dealer;

(b) the dealer claimed a tax credit in respect of the goods, and did not reduce the tax credit by the prescribed percentage; and

(c) the goods are exported from Delhi,

(i) by way of a sale made as per the provisions of sub-section (1) of section 8 of the Central Sales Tax Act, 1956; or

(ii) other than by way of a sale, to a branch of the registered dealer or to a consignment agent;

the dealer shall reduce the amount of tax credit originally claimed by the prescribed proportion.

(4) If goods which have been purchased by a dealer were -

(a) intended to be used for the purposes specified under sub-section (1) of section 9 of this Act; and

(b) are subsequently incorporated into the structure of a building owned or occupied by the person;

the tax credit claimed in respect of such purchase shall be reduced in the tax period during which such incorporation takes place.

(5) Subject to sub-section (1) and (2) of section 8 and conditions as may be prescribed Where the goods which have been

purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases shall be reduced proportionately in the tax period during which the goods are sold.

Explanation - The tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale]

Section 11 Net tax

(1) The net tax payable by a dealer for a tax period shall be determined by the formula:

Net Tax= 0- I- C

where

0 = the amount of tax payable by the person at the rates stipulated in section 4 of this Act in respect of the taxable turnover arising in the tax period, adjusted to take into account any adjustments to the tax payable required by section 8 of this Act.

I = the amount of the tax credit arising in the tax period to which the person is entitled under section 9 of this Act, adjusted to take into account any adjustments to the tax credit required by section 10 of this Act.

C = the amount, if any, brought forward from the previous tax period under sub-section (2) of this section.

(2) Where the net tax of a dealer calculated under sub-section (1) of this section amounts to a negative value, the dealer shall -

(a) adjust the said amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 (74 of 1956), if any; and

(b) be entitled to claim a refund of any surplus amount and the Commissioner shall deal with the refund claim in the manner described in section 38 and section 39 of this Act.

Explanation. -1. The dealer may elect to adjust the refund as a tax credit in the next tax period.

Section 12 Time at which turnover, turnover of purchases and adjustments arise

(1) Subject to sub-sections (2), (3) and (4) of this section, the amount of the turnover and the turnover of purchases of a

dealer which arises during any tax period shall be the amount recorded in the accounts of the dealer where those accounts are regularly and systematically prepared and maintained, give a true and fair view of his dealings, and are employed by the dealer in determining the turnover of the dealer's business for commercial or income tax purposes.

(2) The Commissioner may by notification -

(a) permit certain classes of dealer to record turnover based on amounts paid or received; and

(b) require certain classes of dealer to record turnover based on amounts payable or receivable.

(3) Where a dealer wishes to change the method of determining the turnover and turnover of purchases, he may only make the change with the consent of the Commissioner and on such terms and conditions as the Commissioner may impose.

(4) The Government may prescribe the time at which a dealer shall treat the –

(a) turnover;
(b) turnover of purchases; and
(c) adjustment of tax or adjustment to a tax credit;

as arising for a class of transactions.

30 Assessment of tax, interest or penalty

No claim may be made by the Commissioner for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an assessment for the amount.

31 Self assessment

(1) Where a return is furnished by a person as required under section 26 or section 27 of this Act which contains the prescribed information and complies with the requirements of this Act and the rules -

(a) the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the tax payable of the amount specified in the return;

(b) the return is deemed to be a notice of the assessment and to be under the hand of the Commissioner; and

(c) the notice referred to in clause (b) is deemed to have been served on the person on the day on which the Commissioner is deemed to have made the assessment.

(2) No assessment shall arise under sub-section (1) of this section, if the Commissioner has already made an assessment of tax in respect of the same tax period under another section of this Act.

Section 32 Default assessment of tax payable

(1) If any person -

(a) has not furnished returns required under this Act by the prescribed date; or (b) has furnished incomplete or incorrect returns; or

(c) has furnished a return which does not comply with the requirements of this Act; or

(d) for any other reason the Commissioner is not satisfied with the return furnished by a person;

the Commissioner may for reasons to be recorded in writing assess or re-assess to the best of his judgment the amount of net tax due for a tax period or more than one tax period by a single order so long as all such tax periods are comprised in one year.

(1A) If, upon the information which has come into his possession, the Commissioner is satisfied that any person who has been liable to pay tax under this Act in respect of any period or periods, has failed to get himself registered, the Commissioner may for reasons to be recorded in writing, assess to the best of his judgment the amount of net tax due for such tax period or tax periods and all subsequent tax periods.

(2) Where the Commissioner has made an assessment under this section, the Commissioner shall forthwith serve on that person a notice of assessment of the amount of any additional tax due for that tax period.

(3) Where the Commissioner has made an assessment under this section and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due.

Explanation- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

Section 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 [2][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 [3][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.

(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 sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.

Section 86 Penalties

(1) In this section "tax deficiency" means the difference between the tax properly payable by the person in accordance with the provisions of this Act and the amount of tax paid by the person in respect of a tax period.

14. A conjoint reading of section 30, 31 and 32 makes it apparent that when the appellant filed the returns he stood self-assessed. This self-assessment is final unless it is disturbed by the default assessment carried out under section 32 of the Act. The default assessment carried out by the VATO relates back to the tax period in which the returns were filed. Difference between the tax that is payable in terms of the self-assessment and the one payable under the default assessment is the tax deficiency in terms of section 86 of the Act on which the penalty is leviable under section 86(14) of the DVAT Act. Now if in the tax period for which the default assessment is made an additional tax demand is created, and if the appellant is having excess Input tax credit for which he is entitled for refund, the same is required to be adjusted against the additional demand created and the net of the two is to be paid to the appellant as refund. This is what is provided under section 38 as well.

15. Appellant has placed on record a statement according to which he has claimed refund in each of the tax period in which the demand has been created and the refund was pending on the date the additional demands were created. This has not been disputed by the Revenue.

16. In this regard it is also apposite to refer to the decision of the Hon'ble Gujarat High Court in the case of State of Gujarat v. Cosmos International Ltd. [2015] 5 VST-OL I (Guj) held as under (pages 14 and 15 in 5 VST-OL):

> "Section 11 of the VAT Act provides for an input-tax credit admissible and rule 18 of the Rules, 2006 provides for calculation of the input-tax credit. It cannot be disputed that for the purpose of claiming input-tax credit, an assessee/dealer is required to submit its claim in the required format, i.e., in form No. 108 and on that the assessment order is required to be passed and on assessment the input-tax credit admissible to an assessee/dealer is determined. Once on assessment it is found that dealer is entitled to a particular input-tax credit, in that case, rule 18 of the Rules, 2006 which provides for calculation of tax would come into play. On conjoint

reading of section 11 of the VAT Act read with rule 18 of the Rules, 2006, a dealer is entitled to adjust its output tax liability against its admissible input-tax credit in the current year under consideration. Thereafter and after adjusting the input-tax credit against its output tax liability of the current year under consideration, if still there is any input-tax credit available to a dealer/assessee, a dealer is entitled to adjust such balance input-tax credit against its Central sales tax liability of the current year under consideration. If thereafter still there is any input-tax credit in the credit of the assessee/dealer, such balance input-tax credit is required to be carried forward to the next subsequent year and that is the scheme of the VAT Act and the Rules, 2006 more particularly with respect to the input-tax credit. Therefore, merely because while submitting the form and raising the claim of input-tax credit, the assessee had claimed more/excess input-tax credit than admissible, is no ground to deny the assessee/dealer to adjust the admissible input-tax credit (which is held to be admissible only after assessment) against its output tax liability under the VAT Act in the current year under consideration. To deny such input-tax credit in the current year under consideration would be against the provisions of the VAT Act and the Rules, 2006 more particularly section 11 of the VAT Act read with rule 18 of the Rules, 2006. It is not in dispute that whatever is claimed by the assessee as input-tax credit by submitting form No. 108 is always subject to the assessment/reassessment and the actual amount of input-tax credit is determined only on assessment by the assessing officer. Only after assessment/reassessment, as the case may be, a final amount of input-tax credit is assessed and determined. Once on assessment or reassessment, as the case may be, a final amount of input-tax credit is assessed and determined, an assessee/dealer is entitled to such input-tax credit and on such input-tax credit the assessee is entitled to adjust such input-tax credit against its output tax liability under the VAT Act of the current year under consideration. Only in a case where the admissible available input-tax credit is less than the output tax liability of the current year under consideration, after permitting to adjust such input-tax credit against its output tax liability of the VAT Act of the current year under consideration, the assessee/dealer is liable to pay the interest on such balance due amount of output tax liability and on such amount the assessee/dealer is liable to pay the interest as provided under the VAT Act and the Rules, 2006. Under the circumstances, while declaring/holding that the appellant is entitled to adjustment of admissible input-tax credit towards its output tax liability of the current year under consideration, the

learned Tribunal has rightly observed and held that the assessee is liable to pay interest only on the dues arising on assessment after adjusting the admissible input-tax credit towards its output tax liability."

17. In the present case the appellant has shown on record that in the tax period in respect of which the default assessments have been made and the demand created the appellant was having excess input tax credit for which he had claimed refund in his return. In such factual situation , while creating the additional demand in terms of the provisions of law as explained above the Ld VATO was required to adjust the excess input tax credit against the additional demand created and once that is done and the additional created is adjusted against the excess input tax credit, there will not be any occasion to charge the interest on the additional demand so created.

18. In view of the foregoing facts and circumstances of the case, in our considered view the imposition of interest is contrary to the provisions of law and hence unsustainable and is accordingly set aside. Matter is remanded back to VATO to reframe the assessment in accordance with law for which the appellant shall appear before the VATO on 10.07.2018.

19. Order pronounced in the open court.

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

[2018] 56 DSTC 271 – (Delhi)

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

Appeal Nos.241-242/ATVAT/17-18
Cancellation of Registration

M/s Ayushi International,
M-1, 1st Floor, Gowri Building, GB Road, Delhi-110006 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 06.04.2018

APPLICATION FOR CANCELLATION OF REGISTRATION CERTIFICATES – DVAT-09 FILED – CANCELLATION ORDER WAS NOT PASSED IMMEDIATELY ON RECEIPT OF DVAT 09 – THERE WAS NO PUBLICATION OF CANCELLATION OF

R.C. OF DEALER – BUSINESS WAS RESTARTED AND RETURNS WERE FILED – ASSESSING AUTHORITY CANCELLED THE REGISTRATION CERTIFICATE WITHOUT LOOKING INTO SUBSEQUENT ACTIVITY OF THE APPELLANT – NO OPPORTUNITY WAS PROVIDED – VIOLATION OF PRINCIPLES OF NATURAL JUSTICE – WHETHER CORRECT. HELD; NO – REVENUE COULD NOT CLARIFY AS TO HOW THE APPELLANT WOULD COME TO KNOW ABOUT THE STATUS OF HIS APPLICATION FOR CANCELLATION OF REGISTRATION CERTIFICATES.

Facts

The appellant dealer due to some financial problems decided to close his business and had filed DVAT-09 online on 17.10.2015 for cancellation of his R.Cs. with effect from 30.09.2015. However, subsequently appellant re-started the business and since the RC of the appellant was not cancelled he continued with the same registration number and had regularly filed his returns in time and these were being accepted by system as usual upto 31.03.2017.

As stated by the appellant Ld. VATO, Ward-26 on 30.06.2017 had cancelled the Registration Certificates of the appellant w.e.f. 30.09.2015 on the basis of form DVAT-09 without looking into the subsequent activities and returns filed by the appellant and without providing any opportunity to him.

Aggrieved with the orders of cancellation of his Registration Certificate, the appellant filed objections which were rejected by the OHA vide orders dated 04.10.2017.

Aggrieved with the impugned orders dated 04.10.2017 Appellant had filed the above noted appeal before VAT Tribunal.

Held

A perusal of the provisions showed that when the RC was to be cancelled on the request of the dealer, he was required to surrender the RC issued to him. No such action or direction to have been issued. There was no publication of the cancellation of the RC of the appellant. There was no explanation by the Revenue as to how the RC could not be cancelled immediately on receipt of the DVAT-09 and how it was cancelled after such a long time without looking into and taking note of subsequent events of filing of returns and payment of tax.

The submission of the Revenue was that the DVAT-09 was filed online and the cancellation order was generated online and there was no procedure directing the appellant to surrender his RC and that in place of

publication of particulars of the RC cancelled the particulars were published on the website of the department. However, it was not clarified as to how the appellant would come to know about the status of his request for cancellation when no action was taken for such a long period and in what manner the appellant could withdraw the DVAT-09 and how the filing of return and payment of tax went unnoticed when everything was on system and online.

In these facts and circumstances of the case, Tribunal was of the considered view that appellant could not be made to suffer where the department had not acted in time and also not followed the provisions of law in toto. Accordingly, the impugned orders cancelling the RC of the appellant were set aside w.e.f. the date of cancellation.

Present for the Appellant : Sh. Wahaj Ahmed, Adv.,

Present for the Respondent : Sh. C M Sharma Govt. Counsel

ORDER

1. This order shall dispose of the above noted appeal filed by the appellant challenging the impugned orders dated 04.10.2017 passed by Special Commissioner-I.

2. Facts of the case briefly stated are that the appellant dealer due to some financial problems decided to close his business and has filed DVAT-09 online on 17.10.2015 for cancellation of his R.Cs. with effect from 30.09.2015.However, subsequently appellant re-started the business and since the RC of the appellant was not cancelled he continued with the same registration number and has regularly filed his returns in time and these were being accepted by system as usual upto 31.03.2017.

3. As stated by the appellant Ld. VATO, Ward-26 on 30.06.2017 has cancelled the Registration Certificates of the appellant w.e.f. 30.09.2015 on the basis of form DVAT-09 without looking into the subsequent activities and returns filed by the appellant and without providing any opportunity to him.

4. Aggrieved with the orders of cancellation of his Registration Certificate, the appellant filed objections which were rejected by the OHA vide orders dated 04.10.2017.

5. Aggrieved with the impugned orders dated 04.10.2017 Appellant has filed the above noted appeal and assailed the impugned orders on the following grounds: -

1. That Ld. Spl. Commissioner has not appreciated that the orders of VATO, Ward-26 are highly arbitrary, illegal and against the facts of the case.

2. That Ld. Spl. Commissioner has not appreciated that Ld. VATO was not justified in rejecting the registration application of the appellant without providing any opportunity as he was acting on application of the appellant after a long period of 2 and half year, specially under the circumstances that appellant was functioning and regularly filing his returns and paying taxes regularly in time.

3. That Ld. Commissioner has not appreciated that the appellant has paid taxes amounting Rs.3,81,743/- during 3rd and 4th quarter of 2015-16 and Rs.8,01,892/- during the year 2016-17.

6. We have heard Sh Wahaj Ahmed Ld Counsel for the Appellant and Sh CM Sharma, Ld Counsel for the Revenue and gone through the record of the case.

7. Appellant has submitted that since no notification of publication of the cancellation of the RC was issued and the login id of the appellant was not deactivated on deciding to restart the business he filed the returns which were accepted by the system and paid the tax due as well and it was only in 2017 when the login id was deactivated and he could not file the returns thereafter. He has prayed for setting aside the impugned orders and restore his Registration Certificate.

8. Ld Counsel for the Revenue supporting the impugned orders submitted that the Appellant himself had filed DVAT-09 and taking note of the same the RC was cancelled w.e.f 30.09.2015. Since the RC has been cancelled on the request of the appellant himself he has no ground to agitate now against the cancellation orders issued. If the appellant wanted to restart the business again he ought to have informed the department for the same which he did not do. Hence the appeal of the appellant deserves to be dismissed.

9. In rejoinder the Appellant submitted that the online system does not have provision for withdrawal of DVAT-09 and during the currency of the Registration Certificate new Registration certificate is not issued to the same person.

10. VATO of the Ward was directed to produce the relevant record which was done and copies of the DVAT 09 ,Orders of cancellation of

RC and copy of one notice issued on 08.06.2017 has been placed on record. While the Record produced by the Revenue shows that one notice dated 08.06.2017 was issued u/s 59(2) of the DVAT Act was calling upon the dealer for 01.04.2013 to 30.9.2015, the Cancellation Order does not bear any date as to on which date the Orders have been issued. One copy of DVAT-09 Part & Part B has been filed which shows the date as 17.06.2017.

11. Before proceeding further it is apposite to look into the relevant provisions concerning cancellation of the Registration Certificate which are extracted below: -

Sec.22 Cancellation of registration

(1) Where –

(a) a registered dealer who is required to furnish security under the provisions of this Act has failed to furnish or maintain such security;

(b) a registered dealer has ceased to carry on any activity which would entitle him to be registered as a dealer under this Act;

(c) an incorporated body is closed down or otherwise ceases to exist;

(d) the owner of a proprietorship business dies leaving no successor to carry on the business;

(e) in the case of a firm or association of persons, it is dissolved;

(f) registered dealer has ceased to be liable to pay tax under this Act;

(g) a registered dealer knowingly furnishes a return which is misleading or deceptive in a material particular;

(h) a registered dealer has committed one or more offences or contravened the provisions of this Act and the offence or contravention is, in the opinion of the Commissioner, of such magnitude that it is necessary to do so; or

(i) the Commissioner, after conducting proper inquiries, is of the view that it is necessary to do so;

the Commissioner may, after service of a notice in the prescribed form and after providing the dealer an opportunity of being heard, cancel the registration of the dealer with effect from the date specified by him in the notice.

(2) Where –

(a) a registered dealer has ceased to carry on any activity which would entitle him to be registered as a dealer under this Act;

(b) an incorporated body is closed down or otherwise ceases to exist;

(c) the owner of a proprietorship business dies leaving no successor to carry on business;

(d) in the case of a firm or association of persons, it is dissolved; or

(e) a registered dealer has ceased to be liable to pay tax under this Act; the registered dealer or the dealer's legal representative in case of clause (c) above, shall apply for cancellation of his registration to the Commissioner in the manner and within the time prescribed.

Explanation. **-**For the purpose of this sub-section "legal representative" has the meaning assigned to it in clause (11) of section 2 of the code of Civil Procedure, 1908 (5 of 1908).

(3) On receipt of such application, if the Commissioner is satisfied that the dealer has ceased to be entitled to be registered, he may cancel the registration.

(4) If a registered dealer ceases to be registered, the Commissioner shall cancel the dealer's registration with effect from a specified date.

(5) If a dealer's registration which has been cancelled under this section is reinstated as a result of an appeal or other proceeding

under this Act, the registration of the dealer shall be restored and he shall be liable to pay tax as if his registration had never been cancelled.

(6) If any registered dealer whose registration has been restored under sub-section (5) of this Section satisfies the Commissioner that excess tax has been paid by him during the period his registration was inoperative which but for the cancellation of his registration he would not have paid, then the amount of such tax shall be adjusted or refunded in such manner as may be prescribed.

(7) Every registered dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him and every registered dealer whose registration is cancelled otherwise than on the basis of his application shall surrender the certificate of registration within seven days of the date of communication to him of the cancellation.

(8) The Commissioner shall, at intervals not exceeding three months, host on the departmental website, such particulars as may be prescribed, of registered dealers whose registration has been cancelled.

(9) The cancellation of registration shall not affect the liability of any person to pay tax due for any period and unpaid as on the date of such cancellation or which is assessed thereafter notwithstanding that he is not otherwise liable to pay tax under this Act.

Rule 16 Cancellation of registration

(1) An application under sub-section (2) of section 22 for cancellation of registration as a dealer shall be made in Form DV AT-09 within thirty days of the following: -

(a) in cases where a registered dealer has ceased to carry on any activity which would entitle him to be registered as a dealer under the Act, from the date of cessation of the activity;

(b) in cases where an incorporated body is closed down or otherwise ceases to exist, from the date of closure or cessation of existence;

(c) in cases where the owner of a proprietorship business dies leaving no successor to carry on the business, from the date of death of the owner of the proprietorship business;

(d) in case of a firm or an association of persons being dissolved, from the date of its dissolution;

(e) in case a registered dealer has ceased to be liable to pay tax under the Act, from the date on which he ceased to be so liable.

(2) Every registered dealer who applies for cancellation of his registration shall surrender with his application the original certificate of registration and all certified copies thereof.

(3) The application shall specify the date from which the dealer desires the cancellation of registration to take effect:

PROVIDED that unless the Commissioner by notice, in writing, served on the dealer notifies another date from which registration shall be cancelled, the dealer's registration shall cease on the date specified by the dealer.

(4) Where the Commissioner proposes to cancel the registration of a dealer under sub-section (1) of section 22, the Commissioner shall serve upon the person a notice in Form DVAT-10 in the manner prescribed in rule 62.

(5) Every registered dealer whose registration is cancelled under sub-section (1) of section 22, shall deliver to the Commissioner the certificate of registration by the date stated in Form DVAT-11.

PROVIDED that where a dealer has made an objection to the Commissioner under section 74 against the cancellation of the registration, the dealer may retain the certificate of registration pending resolution of the objection.

(6) In case of cancellation of registration, the Commissioner shall specify in a notice in Form DV AT-11 the date from which the cancellation of the registration takes effect. Upon cancellation of registration, the dealer shall be required to comply with the requirements specified by the Commissioner either in the notice issued in Form DVAT-11 or by a separate communication to be served in the manner specified in rule 62.

(7) Notwithstanding the cancellation of registration, all the proceedings pending or to be initiated shall not abate.

Rule 17: Publication of particulars of cancelled certificates of registration

For the purposes of sub-section (8) of section 22 the Commissioner shall publish the particulars of dealers whose registration has been cancelled in the following form: -

(1)	(2)	(3)	(4)
Name and address of the dealer	Name of the Proprietor/ Manager/ Partner/ Director	Registration number	Date of Effect of cancellation of Registration

12. In the present case the RC has been cancelled under provisions of sub-section (2) of section 22 on the request of the Appellant who filed request for cancellation of his RC in DVAT-09. Case of the appellant is that though he had applied for cancellation of his RC by filing the DVAT-09 as he had decided to close down his business, however his RC was not cancelled and, in the meantime, he decided to start his business again and started filing his returns and conducted his business. He has been filing his returns upto 31.03.2017 after which he could not file the returns as his RC was cancelled and his log in id was deactivated.

13. His submission is that no notification has been issued publishing the particulars of cancellation of his RC as is required under section 22(8) of the Act and he has not been given an opportunity of hearing before cancellation of his Registration.

14. A perusal of the provisions shows that when the RC is cancelled on the request of the dealer, he is required to surrender the RC issued to him. No such action or direction seems to have bene issued. There is no publication of the cancellation of the RC of the appellant. There is no explanation by the Revenue as to how the RC could not be cancelled immediately on receipt of the DVAT-09 and how it was cancelled after such a long time without looking into and taking note of subsequent events of filing of returns and payment of tax.

15. The submission of the Revenue is that the DVAT-09 is filed on line and the cancellation order is generated online and there is no procedure directing the appellant to surrender his RC and that in place of publication of

particulars of the RC cancelled the particulars are published on the website of the department. However, it is not clarified as to how the appellant would come to know about the status of his request for cancellation when no action is taken for such a long period and in what manner the appellant could withdraw the DVAT-09 and how the filing of return and payment of tax went unnoticed when everything is on system and online.

16. In these facts and circumstances of the case, we are of the considered view that appellant cannot be made to suffer where the department has not acted in time and also not followed the provisions of law in toto. Accordingly, the impugned orders cancelling the RC of the appellant are set aside w.e.f. the date of cancellation.

17. Order pronounced in the open court.

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

[2018] 56 DSTC 281 – (Maharashtra)

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

[Before the Bench of Shri B. V. Borhade, Joint Commissioner of State Tax and Shri Pankaj Kumar, Joint Commissioner of Central Tax]

NO.GST-ARA-OS/2017/B-04

Date of Order: 05-03-18

M/s. JSW Energy Limited

PRINCIPAL SUPPLIED COAL OR ANY OTHER INPUTS TO JOB WORKER ON A FREE OF COST BASIS – THE JOB WORKER UNDERTOOK CERTAIN PROCESSES AND CONVERTED THE INPUTS INTO POWER – PRINCIPAL PAID JOB WORK CHARGES – WHETHER TREATMENT OR PROCESS UNDERTAKEN BY JOB WORKER WAS COVERED AS JOB WORK.

HELD; NO – THE ACTIVITY UNDERTAKEN BY THE JOB WORKER AMOUNTS TO MANUFACTURE OF ELECTRICITY FROM COAL AS SUPPLIED BY PRINCIPAL – SUPPLY OF POWER BY JOB WORKER TO PRINCIPAL IS TRANSACTIONS OF SUPPLY.

The activity, in fact, was a manufacturing of electricity. And it was found that the activity of 'manufacture' has been defined in the GST Act which was as follows:

> *"(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;"*

As could be seen the definition itself says that the emergence of a new product from the processing of the inputs would be a manufactured product. In the instant case the end product i.e., "electricity" has a distinct name, character and use than the inputs i.e., "coal". Thus, when the Legislature has provided for the definition of 'job work' as well as 'manufacture', the meaning as understood by the definition of 'manufacture' could not be read into the words 'treatment or process' as found in the definition of 'job work'. 'Treatment', 'Process' and 'Manufacture' were three different activities recognized by the Legislature. The intent of the Legislature was to restrict the scope of 'job work' to 'treatment' or 'process' and not to extend the same to 'manufacture'.

Rule: Supply of goods or services or both between Principal and Job Worker would be treated as supply even if it was made without consideration.

Supply of Power by Job Worker to Principal would be a transaction of supply.

The transaction between Job Worker and Principal is a transaction of supply of goods and a Job Worker.

GSTIN Number, if any/User-id	**271700000133ARY**
Legal Name of Applicant	**M/s JSW Energy Limited**
Registered Address/Address provided while obtaining user id	JSW Centre, Bandra Kurla Complex, Near MMRDA, Ground Bandra East, Mumbai - 400 051
Details of application	GST·ARA, Application No. 05 Dated 7.12.2017
Concerned officer	Central CST, Ranee- IV, Div-V, Ratnagiri
Nature of activity(s) (proposed/ present) in respect of which advance ruling sought	
A) Category	Service provision
B) Description (in brief)	A brief description of the nature of activity in respect of which advance ruling is sought is mentioned in the application attached herewith and marked as Annexure-I.
Issue/s on which advance ruling required	(v) determination of the liability to pay tax on any goods or services or both. (vii) whether any particular thing done by the applicant with respect to any goods and / or services or both amounts to or results in a supply of goods and / or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-OS/2017/B-04 Mumbai, dt. 05-03-18

The present application has been filed under section 97 of the Central Goods and Services Tax Act 2017 and the Maharashtra Goods and Services Tax Act,

2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s JSW Energy Limited, the applicant, seeking an advance ruling in respect of the applicability of CST on:

1. Supply of coal or any other inputs on a job work basis by JSL to JEL
2. Supply of power by JEL to JSL
3. Jobwork charges payable to JEL by JSL

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/ MGST Act would be mentioned as being under the "GST Act".

02. Facts and Contention - As Per the Applicant

The submissions, as reproduced verbatim, could be seen thus-

"ANNEXURE I – STATEMENT OF THE RELEVANT FACTS HAVING A REARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. This Application is being filed by JSW Energy Limited (**'the Applicant'/'JEL'**), The Applicant, having Good and Service Tax (**'GST'**) Registration No.27AAACJ8109N1Z8 is engaged in the business of generation of power. The Applicant's power plant is divided into four units.

2. JSW Steel Limited ("JSL"), having GST Registration No. **27AAACJ4323NIZG** is engaged in manufacture and supply of steel. JSL requires power on a continuous and dedicated basis, for manufacturing steel at its steel plant . For the said purpose, JSL and the Applicant proposed to enter into an arrangement (he rein after referred to as '**Job Work Agreement**') pertaining to Unit III and Unit IV of the power plant which are in the nature of a captive power plant.

3. In terms of the pro posed arrangement. JSL would supply coal or any other inputs (herein after collectively referred to as 'inputs') to the Applicant on a free of cost basis. On receipt of the same, JEL would undertake certain processes to convert the said inputs into power. In accordance with the Job Work Agreement, the title to the coal or any other inputs along with the power generated from the said inputs will vest with JSL.

4. The mechanics of the transaction and consideration payable by JSL to the Applicant for the generation and supply of power has been diagrammatic ally illustrated,

5. The above can he further explained as under :

   a. JSL imports coal from suppliers located outside India

   b. Required inputs (such as coal) would be supplied by JSL to JEL. For the purpose of this arrangement, JSL shall be construed as a '**Principal**'. On receiving the inputs, JEL shall undertake the activities in accordance with the Job Work Agreement

   c. Power generated from the aforesaid activities shall be supplied back to the Principal

   d. JEL would recover charges from JSL in accordance with the Job Work Agreement. Each invoice shall contain details of the inputs supplied to JEL and power supplied to JSL and the charges for services rendered during the preceding month, applicable taxe s and the date of payment for the said consideration.

6. In view of the above, the issue for determination before the Authority for Advance Ruling ('AAR') is the applicability of GST on:

   I Supply of coal or any other inputs on a job work basis by JSL to JEL

   II Supply of power by JEL to JSL

   III Job work charges payable to JEL by JSL

ANNEXURE II - STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. Issue for Determination

1.1 The questions/issues before Your Honor for determination are applicability of GST on :

   a. Supply of coal or any other inputs on a job work basis by JSL to JEL

   b. Supply of power by JEL to JSL,

   c. Job work charges payable to JEL by JSL

1.2. The questions/issues placed for determination be fore Your Honor have to be appreciated in light of the following position of law and its applicability to the proposed activity by the Applicant, discussed hereunder.

2. Position of Law

Provisions Regarding 'Job Work' Under the GST Regime

2.1 The term 'Job Work' is defined under Section 2(68) of the CGST Act, 2017 as under:

"(68) 'Job Work' means any treatment or process undertaken by a person on goods belonging to another registered person and the expression Job Worker shall be construed accordingly."

2.2 On perusal or the aforementioned definition, it can be observed that all of the following three conditions need to be fulfilled to classify an activity as a Job Work, viz:

(i) Treatment or process should be undertaken by a person;
(ii) Such treatment or process should be on goods; and
(iii) These goods should belong to another registered person

2.3 To summarize the above, under the GST Regime, a Job Worker shall undertake a treatment or process on the goods (i.e. inputs) belonging to another person for the transaction to fall within the ambit of Section 2(68) of the CGST Act.

2.4 In addition to the above, Section 143 (I) (a) of the CGST Act requires bringing back of inputs, after completion of Job Work or otherwise, within one year of their being sent out, to any place of business of the Principal. Fulfilment of such a condition would allow movement of inputs between the said entities without payment of taxes. For the said purpose, inputs include intermediate goods arising from any treatment or processes carried out on the inputs by the Principal or the Job Worker. Relevant extracts of the said Section are reproduced as follows:

143. (1) A registered person (hereafter in this section referred to as the ''principal') may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a Job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

(a) bring hack inputs, after completion of Job work or otherwise, or capital goods; other than moulds and dies, jigs and fixtures, or

tools, within one year and three years, respectively, of their being sent out to any of his places business without payment of tax;

(b) I

(c) I(5)

Explanation. For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Provisions Regarding 'Services of Treatment or Process which is Applied to Another Person's Goods' Under the GST Regime

2.5. The term 'supply' has been defined under Section 7 of the CGST Act and covers supply of goods as well as services. The said definition also seeks reference to Schedule II wherein specified supplies have been classified either as a good or a service. Entry 3 of the said schedule provides that 'Any treatment or process which is applied to another person's goods is supply of services. Accordingly, the said activity would be construed as a service.

2.6. The Applicant also seeks reference to the above classification for the purpose of levy of GST.

Provisions Regarding 'Valuation' Under the GST Regime

2.7. Section 15 of the CGST Act pertains to valuation of taxable supplies, which would be the transaction value, i.e. the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. For the said purpose, the term 'related person' shall cover:

(i) officers or directors of one another's businesses:

(ii) legally recognized partners in business:

(iii) employer and employee:

(iv) persons (including legal persons) who directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them

(v) one of them directly or indirectly controls the other:

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or they are members of the same family;

JSL and JEL would be treated as related persons on account of direct or indirect control over each other.

2.8. On account of JSL and JEL being related person, valuation of supply of goods or services or both would be determined under the prescribed rules. For said purpose the Government vide Chapter IV of CGST Rules, 2017 (`the CGST Rules') has laid down the procedure for determining the valuation of the goods/services or both.

2.9. Rule 28 of the said rules prescribe that the value of supply of goods and services or both, where the supplier and recipient are related, shall be-

- the open market value of such supply
- if the open market value is not available, the value of supply of goods or services of like kind and quality

2.10. Further the proviso to above referred rule 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 and services.

2.11. In the present case, it is submitted that JSL would be eligible to avail the credit of the GST payable on charges paid to JEL (subject to the underlying provisions of the GST legislation). Accordingly, the value attributable to the Job Work charges could be construed as the transaction value for levy of GST.

3. Relevant Clauses of the Agreement between JEL and JSL

Illustrative clauses, which would be a part of the contractual agreement are given below:

3.1. Key Definitions

Inputs - Input means Coal, or any other supplies that are required by JEL for provision ofJob Work services in terms hereto. The agreed grade, characteristics and specifications of inputs to be delivered by JSL under this Agreement are at Annexure

Job Work Services - means the activity of processing Inputs supplied by JSL to produce Pmduasl, being more particularly described in Annexure, pursuant to this Agreement and the relevant Instructions.

Power - Power shall mean electrical output generated in MW terms.

Product - Product includes power - in addition to the fly ash and other

resultant products generated at Power Plant through the Job Work Services.

3.2. Supply of Inputs

On and from the Effective Date, JR. appoints JEL, on a Job Work basis to carry out the treatments and processes comprising the Job-Work Services on supply by JSL of the Inputs (free of charge).

On occurrence of the above, JEL shall provide the Job Work Services in accordance with the terms hereof

The Parties agree that JEL shall not be able to perform the Job Work Services (which obligations are contingent upon supply of the Inputs) under the Agreement unless the Power Plant receives uninterrupted availability/accessibility, as applicable, of to the Inputs in accordance with the Agreement.

3.3. Restriction on Sale of Inputs

JEL agrees that it shall use the Inputs supplied by JSL hereunder solely for the purposes of providing the Job Work Services and shall not sell or otherwise dispose of the Inputs.

3.4. Title and Risk of Loss

JSL warrants that at all times it shall have good title to all inputs delivered to JEL, its transfer is lawful, and at the time of delivery, such Inputs will be free and clear of any lien, claim, demand, security interest or other encumbrance.

JSL shall retain title to and risk of loss with respect to the Inputs supplied to JEL.

3.5. Loading and Delivery

JSL shall supply the Inputs, as may he agreed between the Parties at such time as would enable JEL to comply with the Instructions

Delivery Procedures and detailed operational procedures to ensure smooth delivery to and loading of Inputs shall he agreed in writing between the authorised representatives of the Parties.

3.6 Measurement of Quantity

The quantity of Inputs supplied shall be as weighed on JSL's [electronic weighbridges]. A representative of JEL may be present to witness the

weighment. If the [weighbridges] fail, weight will be determined on mutually agreed volume to weight conversion basis.

JEL at its expense, shall procure, install, own and maintain two sets of Metering System separately for each transformer as per regulations of Central Electricity Authority The energy meter and associated equipment shall be of 0.2s accuracy class. These meters shall function as main meters and check meters. The general location of these meters shall be the metering point. Such equipment shall be capable of providing instantaneous output measurements to measure electrical output delivered at a specific time.

3.7 Record

Supply of Inputs, including delivery challans documenting the movement of goods, and provision of Job Work Services shall be evidenced by documentary proof, mutually agreed by the Parties in accordance with the Applicable Law. At the end of the [Month] a jointly signed report showing the challan - wise quantity delivered by JSL shall be prepared.

The above are only relevant extracts from the underlying Job Work Agreement which have been reproduced to substantiate the arrangement of the Principal and the Job Worker.

4. Submissions of the Applicant

4.1. At the outset, it is submitted that traditionally the concept of job work, which has evolved over the period clearly signifies that the same involves undertaking certain processing activities in respect of the goods supplied by the Principal, resulting in intermediate/finished product. A Job Worker typically works on behalf of and for the owner of goods on which the Job Work is being undertaken who is also termed as Principal.

The Activity Undertaken by the Applicant Fall within the Ambit of the Term `Job Work' as Defined Under the CGST Act

4.2. As per the provisions of the CGST Act mentioned above in paragraph 2.1, for treatment or process undertaken by a person to be termed as a 'Job Work', the said treatment or process should be undertaken on the goods belonging to another person. Therefore, there are three essential requirements to be fulfilled by the Company in the present case to term the present transaction as 'Job Work', namely:

a) The activity undertaken by the Applicant should qualify as a 'treatment or process',

b) The treatment or process undertaken should be on goods i.e. the inputs (coal) involved in the present case should fall within the ambit of term 'goods'

c) These inputs/goods should belong to JSL

d) Inputs should be brought back after completion of Job Work or otherwise, within one year of their being sent out, to any place of business of the Principal.

Fulfillment of the conditions mentioned above are explained hereunder:

Activity Undertaken by the Company Amounts to 'Treatment or Process'

4.3. In terms of the first condition, the activities undertaken by the Applicant should qualify as a treatment/process. Given that the terms 'treatment' or 'process' have not been defined under the GST laws, reliance is placed on various dictionary meanings and judicial precedents in this regard:

- CST v. Samodar Padmanath Rao 11968 (22) STC 187 (Bom)1: "One of the meanings that can be given to the word 'process' is to subject to a particular method or technique of preparation, handling, or other treatment designed to affect a particular result"

- Haldia Petrochemicals Ltd. v. Commissioner Of C. Ex., Haldia [2006 (197) E.L.T. 97 (Tel. - Del.)]: In this case, it has been held that the term 'processing' is a much wider terms

  "In our opinion, the expressions "further processing" and "any other purpose" mentioned in Rule 4(5)(a) are fairly wide and would take their colour from the processes mentioned in the definition of 'input'. As such the generation of power or steam as intermediate products would fall within the scope of these expressions, and would amount to Job Work"

- S.B. Sarkar's Word & Phrases or Excise, Customs & Service tax, 4th Edition: Process means "Prepared, handled, treated or produced by a special process [ ]"

- Websters Dictionary: "processing means to subject to some special process or treatment; to subject (esp. raw material) to a process of manufacture, development or preparation [ ]. "

4.4. Considering the above, it can be submitted that the activity of generation of power undertaken by the Applicant amounts to a `process' and accordingly, the Applicant is undertaking a process in the present case on the goods. Therefore, condition (a) mentioned above in paragraph 4.2 is fulfilled in the present case.

Inputs Should Fall within the Ambit of the Term 'Goods' as Defined in the CGST Act

4.5. In terms of the second condition, the inputs on which the treatment/ process is undertaken by the Applicant should qualify as 'goods'. In this regard, it is pertinent to refer to Section 2(52) of the CGST Act, which defines the term 'goods' 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"

4.6. As mentioned above, in the present case, the inputs used by the Applicant for generating power are coal or any other inputs which are supplied by JSL and consumed for the generation of power. Coal or any other inputs used by the Applicant for generation of power are movable property. Therefore, in the present case these inputs i.e. coal or any other inputs can he considered as a 'goods'.

Goods Used for Generation of Power by the Applicant Belong to JSL

4.7. In terms of the third condition, the goods should belong to JSL and should be provided to the Applicant for undertaking the activity of generation of power. Reference is also sought to the agreement between JEL and JSL, the relevant clauses of which have been set out at paragraph 3 hereinabove. Upon perusal of the said clauses, the following emerge as the key features of the contractual and commercial arrangement between the parties:

- JSL is to provide coal or any other inputs on free-of-cost basis to JEL, and the ownership of coal or any other inputs will remain with JSL at all times;
- JSL shall be the sole and absolute owner of the power generated by JEL;
- JEL cannot in any manner deal with the power that is generated from the processing which is carried out by utilizing the inputs provided by

JSL, and the mere fact that JEL processes the coal provided by JSL for generation of power does not give JEL any rights whatsoever over the power so generated;

4.8. In terms of the proposed arrangement between the parties, JSL is required to provide coal for generation of power by JEL. The said inputs are processed by JEL for generation of power by employing its plant and personnel, and JEL has no rights whatsoever to the resultant power. Accordingly, the activity undertaken by JEL on behalf of JSL would be classifiable as a Job Work activity.

4.9 The Applicant submits that there is no iota of doubt that the coal and the other inputs belongs to JSL and the ownership of same always remain with JSL only.

Back the Inputs

4.10. Under the GST regime, the condition pertaining to return of inputs to the Principal is mentioned in paragraph 4.2.The same is in line with the erstwhile CENVAT Credit Rules, 2004. For a better understanding of the scope of this condition, reference is sought to the judgment of the Apex Court in the matter of Prestige Engineering (India) Limited vs Collector of Central Excise, Meerut [1994 (73) ELT 497 (S.C.)] where the Supreme Court observed that initiating upon the same articles being returned to the customer after undergoing the manufacturing process at the hands of the Job Worker may rob the notification of any substance whatsoever'. The above principal was relied on by the CESTAT, New Delhi in the matter of Haldia Petrochemicals Ltd. Vs. Commissioner of C.Ex. 2004 (177) ELT 708 (Tri-Delhi)], wherein the appellant supplied raw materials to their Job Worker who was a power plant. In the said context, it was held that

Having regard to the fact that inputs for generation for power or steam are specifically mentioned in the definition of "input", we are of the view that the CENVAT credit is available even if the identity of the input is lost when the Job Worker returns the goods after further processing... ....

Based on the above, it can be construed that barter of inputs was also an acceptable form of receiving the inputs sent by the Principal.

4.11. Reference can also be cited to the decision of the Hon'ble High Court of Bombay in the matter of CCE, Aurangabad vs. Endurance Technologies Pvt. Ltd. I2015-TIOL-1371-HC-MUM-STI, where credit on inputs and input services used by wind mills to generate energy which is made available to the manufacturer through power board under the barter system, has been allowed. The Tribunal at Chennai in the matter of DCW Ltd vs.

Commissioner of C.Ex, Triunelveli /2016(332) ELT 142 (Tri-Chennai) land in the matter of The India Cements Ltd and Others vs CCE, Salem and Others 12015-TIOL-(982-CESTAT-MAD/ also followed the above principle. Relevant extract of the India Cement Ltd case is reproduced as follows:

Our view above is fortified from the judgment of the Hon'ble High Court of Bombay in Central excise appeal No. 14 2012 in the case of CCE, Aurangabad Vs. Endurance Technology Pvt. Ltd, disposed on 02.12.2014. The Hon'ble Court examining the meaning of the 'input' under Cenvat Credit Rules, 2004 and admissibility of credit of tar on such input held that there should not he inadmissibility of input credit on input or input services used by wind nulls to generate energy which is made available through power hoard under barter system.

In the judgment of Endurance Technologies, the High Court has concluded that input tax credit of the inputs used in generation of power under barter transaction, where the power is supplied back against the inputs, would be available.

On basis of the above mentioned judgments it can be construed that transaction of processing the coal supplied by JSL and supplying back the power generated to JSL would fulfill the condition of bringing back the inputs.

4.12. As all the conditions mentioned under paragraph 4.2 required to be fulfilled by the Applicant in order to fall under the ambit of the term 'Job Work', are satisfied, the present transaction would be construed as a Job Work transaction and the Applicant would be considered as a Job Worker of JSL.

Classification of a Job Work Arrangement as a Supply of Service

4.13. The Applicant seeks reference to Schedule II of the CGST Act and humbly submits that a job work arrangement would be in the nature of a supply of service. Entry 3 of the said schedule is reproduced as follows:

'Any Treatment or process winch is applied to another person's goals is a supply of services'.

4.14. On the basis of the above, it is respectfully submitted that for the generation of power from coal, the following processes are undertaken by the Applicant:

- A machine called a pulverizer grinds the coal into a fine powder.

- The coal powder mixes with hot air, which helps the coal burn more efficiently, and the mixture moves to the furnace.
- The burning coal heats water in a boiler, creating steam.
- Steam released from the boiler powers an engine called a turbine, transforming heat energy from burning coal into mechanical energy that spins the turbine engine.
- The spinning turbine is used to power a generator, a machine that turns mechanical energy into electric energy. This happens when magnets inside a copper coil in the generator spin.
- A condenser cools the steam moving through the turbine. As the steam is condensed, it turns back into water. The water returns to the boiler, and the cycle begins again.

On the basis of the above, the processes undertaken on JSL's coal by JEL would amount to supplying a service and subjected to tax under the GST regime.

Applicability of GST on the Present Transaction

4.15. On establishing a job work arrangement between JSL and JEL as per above, the applicability of GST on the subject transaction also needs to be examined. For the said purpose, reference is sought to Section 143(1) of the COST Act which allows movement of inputs or capital goods without payment of tax, to a job worker for job work activities. Accordingly, it is humbly submitted that movement of coal or any other inputs from JSL to JEL would not be subjected to tax on account of movement of inputs for job work activities.

4.16. As mandated under a job work arrangement, the Principal shall be required to bring back inputs after completion of job work or otherwise, within a period of one year of they being sent out without payment of tax. In the said context, the Applicant has submitted under paragraphs 4. 10 to 4.12 of this Application that the subject transaction is in accordance with the prescribed conditions of the job worker arrangement whereby inputs (i.e. coal) is being returned to the Principal.

4.17. For determining the applicability of GST on Job Work charges, reference is sought paragraphs 4.13 and 4.14 of this document. In the said context, it is humbly submitted that a job worker is engaged in supplying a service specified under Schedule II of the CGST Act and accordingly GST would be applicable on the said job worker charges.

4.18. In addition to the above, for the purpose of determining the value of job work charges subject to GST, reference is sought to Rule 28 of the CGST Rules mentioned under paragraphs 2.9 and 2.10 of this application, which pertains to valuation of supplies between related persons. As per the said rules, the value of supply of services would be the open market value of such supply. This term has been explained to mean the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made. Accordingly, it is submitted that GST would be applicable on the job work charges levied by JEL to JSL.

Submission Dt.16.02.2018

1. Meaning And Definitions

1.1. At the outset, we would like to refer to the definition of lob work' as defined under Section 2(68) of the CGST Act. The said definition is reproduced as follows:

Job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression job worker' shall be construed accordingly

Basis the aforesaid definition, any 'treatment' or 'process' undertaken on goods belonging to another person shall be construed as a job work activity.

1.2. Since the terms 'treatment' or 'process' have not been defined under the GST legislation, reference is sought to the dictionary meaning which explain the said terms and are reproduced as follows:

Process

- A natural or involuntary operation or series of handle or deal with by a particular process'
- A systematic series of actions directed to some end'

Treatment

- Subjection to the action of a chemical, physical or biological agent'
- Subjection to some agent or action'

1.3. In addition to the above, reference is also sought to judicial precedents wherein the aforesaid terms have been explained. In the matter of Collector of Central Excise vs Rajasthan State Chemicals Work s-1991(55) E.L.T. 444(SC), the Supreme Court examined the ambit of the term 'process'. Relevant extract of the judgement has been reproduced as follows:

> The natural meaning of the word 'process' is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject-matter in order to transform or reduce it to a certain stage. According to Oxford Dictionary one of the meanings of the word 'process' is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result." The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some particular stage. There is nothing in the natural meaning of the word 'process' to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving the handling tithe material and it need not he a process involving the use of material...

1.4. In light of the above cited meanings and judicial interpretation, it is submitted that the term process is wide enough to cover even a mere handling of materials. Considering the scope of the said term, the Company humbly submits that the activities proposed to be carried out by the Company would fall within the ambit of the term 'process' or 'treatment'.

1.5. In addition to the above, the other pre-requisite for categorizing the proposed activity as a 'job work' would be the said treatment or process is required to be undertaken on goods belonging to another person. As per the proposed arrangement, coal would be supplied by the Principal (i.e. JSW Steel Ltd) to the Company for the purpose of carrying out the specified processes for generation of electricity which is supplied back to the owner of the coal, including the by-product i.e. fly ash. Thus, the Company humbly submits that the pre-requisites i.e. carrying out a treatment or process on goods belonging to another would qualify the proposed transaction under the ambit of a job work.

2. Departmental Frequently Asked Question (Faq)

2.1. Without prejudice to the above, the Company humbly submits that the definition of the term 'job work' as defined under the GST legislation has

a wider meaning than the one, as existed under the pre- GST regime. This has also been clarified in the FAQ issued by the Central Board of Excise and Customs — New Delhi which is reproduced as follows:

Q 1 . What is job work?

Ans. Job work means undertaking any treatment or process by a person on goody belonging to another registered taxable person. The person who is treating or processing the goods belonging to other person is called 'job worker' and the person to whom the goods belongs is called principal'.

This definition is much wider than the one given in Notification No. 2I-1436 CE dated 23rd March, 1986. In the said notification, job work has been defined in such a manner so as to ensure that the activity of job work must amount to manufacture. Thus the definition of job work itself reflects the change in basic scheme of taxation relating to job work in the proposed GET regime.

2.2. Based on the above, the Company humbly submits that the tax authorities have sought to differentiate the ambit of the term job work as existing under the GST regime, when compared to the pre-GST era. Under the GST regime, the definition seeks to cover a wider scope of services provided by the job worker. However, the Company humbly submits that its proposed activities would squarely be covered under the definitions of the term job work as existing under the pre-GST regime and accordingly the same should not be interpreted in a restrictive manner under the GST legislation.

3. Provisions Applicable to a Job Worker Under the GST Regime

3.1. The Company seeks reference to Section 7 of the CGST Act which defines the ambit of the term 'supply'. The said Section also seeks reference to Schedule I wherein supplies of goods or services or both between related persons or between distinct persons made in the course or furtherance of business without consideration would be deemed to be a supply.

3.2. In light of the above inclusion, the Company also refers to Section 143 of the CGST Act wherein for the purpose of job work, a Principal may send inputs or capital goods without payment of tax to a job worker, subject to fulfilment of certain prescribed conditions, without any transfer of ownership permanent or temporary, defacto or dejure.

3.3. Based on a harmonious reading of Section 7 and Section 143 of the CGST Act and reiterating what was stated during the personal hearing,

the Company humbly submits that supply of goods, without payment of tax, for the purpose of a job work activity would be governed by Section 143 and subjected to the conditions mentioned therein. Further the Company humbly submits that the legislature does not exclude related parties from entering into a job work arrangement.

4. Applicable Judicial Precedents

4.1. Without prejudice to the above submissions, the Company humbly submits before Your Honor certain judicial precedents wherein the facts are squarely applicable to the present application. These can be cited as follows:

- Commissioner of Central Excise vs Indorama Textiles Ltd. [2010 (260) ELT 382 (Rom HC)]
- Haldia Petrochemicals Ltd vs CCE, Haldia [2006 (197) ELT 97 (TH.-Delhi)]
- Sanghi Industries Limited vs CCE, Rajkot [2006(206) ELT 575 (Tri.-Delhi)]
- Sanghi industries Limited vs CCE, Rajkot [2014(302) ELT 564 (Tod-Ahmd.)]

A copy of the aforesaid cases were submitted at the time of the personal hearing held on 15.02.2018.

4.2. The above judgements cover instances where materials (such as naphtha, light diesel oil, furnace oil, etc) were supplied to the job worker for carrying out a specified process for the purpose of generation of electricity. Nowhere have the Courts denied or held that the activities undertaken do not result into a job work activity. Further the Supreme Court dismissed the appeal petition filed by the Commissioner of Central Excise Nagpur against the order of the Hon'ble Bombay High Court in the matter of Indorama Textiles Ltd (supra) - Commissioner vs Indorama Textiles Ltd 2010(260) E.L.T. A83(SC).

In light of the aforesaid submissions and the submissions made earlier, it is submitted that the transaction proposed to be undertaken by the Company would be construed as a job work transaction and the Company would be considered as a job worker. Further, the GST would be payable only on the Job Work charges charged by the Company."

03. Contention - As Per the Concerned Officer

The submission, as reproduced verbatim, could be seen thus-

"Supply of Coal or Any Other Inputs on a Job Work Basis by JSL To JEL

JSL intend to supply the inputs 'coal' to JEL on job work basis to convert coal into electrical energy and pay job-work charges to receive electricity from JEL.

The term 'Job work' has been defined under Section 2(68) of the CGST Act, 2017 as any treatment or process undertaken by a person on goods belonging to another registered person and the expression job-worker shall construed accordingly.

And the provisions governing job work procedure are set out in Section 143 of the CGST Act, 2017. Therefore the scope and meaning of the term 'job work' has to be decided by taking into account provisions governing the job work procedure.

Section 143 – Job work Procedure- (1) A registered person (hereafter in this section referred to as the "Principle") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall-

(a) Bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, Jigs and fixture, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods other than moulds and dies jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of the job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case-

(i) Where the job worker is registered under section 25; or

(ii) Where the principal is engaged in the supply of such goods as may be notified buy the Commissioner

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provision of clause(a) of sub section (1) or are not supplied from the place of business of the job worker in accordance with the provision of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out

(4) Where the capital goods, other than the moulds and dies, jigs and fixtures, or tools sent for job work are not received back by the principal in accordance with the provisions of clause(a) of sub section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) with in a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-section (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation: - For the purpose of job work, Inputs include intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

From the above legal provisions read together, it implies that in job work the job worker can undertake any treatment or process on goods belonging to another registered person and after job work such goods must necessarily be returned to the principal. In another words the goods supplied by the principal to be treated and processed upon by the job worker and processed goods to be returned to the principal. Though in the definition of job work it is specified that the job worker can undertake any process or treatment, the provisions governing the job work procedure are the deciding factor to qualify whether any process or treatment amount to job work. And the basic underlying principal of job work is that the goods sent for job work **may be subjected to any process or treatment but said goods after such treatment/process must be returned to the principal. Both the definition of Job Work given**

in Section 2(68) of CGST Act, 2017 and the procedure in Section 143(a) of the CGST Act, 2017 should be read in conjunction while coming to a conclusion about whether an activity is a job work or not.

The real question to be decided in the instant matter is that whether combustion of subject goods 'coal' for generation of electricity would amount to 'treatment or processing' of coal. The answer is negative because the subject goods 'coal' being in the nature of tangible goods are **used** in this case for combustion in the boiler to convert water in to steam. The generated steam is in turn is supplied to the turbine to generate electricity. And the goods 'electricity' is intended to be supplied to JSL in lieu of coal. This itself means that the inputs supplied by the principal are not subjected to any 'treatment or process' but they are used/ consumed to generate/manufacture `electricity'. As such the processed/ treated upon goods are not returned to the principal only the ash or residue is proposed to be returned back. And the goods proposed to be returned back to the principal coal ash/residue can not be deemed as processed goods.

One illustrative example of job work on coal is conversion of' coal into Coke. Coal can be subjected to destructive distillation to be converted into Coke. This process satisfies the definition of `job-work' as well as the governing provisions stipulated u/s 143 are followed. Unlike the instant case where Coal is consumed in the boiler to generate steam which in turn is used in the generation/manufacture of a new commodity 'electricity' falling under CSFI No 2716 0000. And the new commodity 'electricity' is supplied back to the principal. It is expected in job work that goods supplied by the principal undergo 'treatment/process' at job worker's end and after such treatment/job work they are returned to the principal. The process undertaken by JEL traverse well beyond the scope of the term 'job work'. It is more than job work.

This office is of the view that the act of sending tangible goods 'coal' to be consumed in the manufacture intangible goods `electricity' is beyond the scope of term 'job work' as per GST Law. Therefore supply of Coal or any other input would not amount to supply on a job work basis and applicable GST would apply. The rest of the question put forth for decision by JEL may be decided accordingly."

04. Hearing

The case was taken up for hearing on dt.30.01.2018 and on dt.15.02.2018 when Sh. Rohit Jain (Advocate) attended alongwith

Ms. Hirva Shah, DGM and reiterated the contention as made in the written submission. Written submission was tendered during hearing and a request was made to make a further submission. The same has been tendered. Sh. M. V. Kulkarni, Superintendent attended on behalf of the concerned officer from the Central Tax Office and furnished a written submission.

Observations

We have gone through the facts of the case. The issue put before us is in respect of a future transaction which would be on the lines thus –

- JSW Limited (JSL) and JSW Energy Limited (JEL), as the applicant informs, are related persons on account of direct or indirect control over each other.

- JEL, the applicant, is engaged in the business of generation of power. The applicant's power plant is divided into four units.

- JSL is engaged in the manufacture and supply of steel. JSL requires power on a continuous and dedicated basis, for manufacturing steel at its steel plant. For the said purpose, JSL and JEL proposed to enter into a Job Work Agreement pertaining to Unit III and Unit IV of the power plant which are in the nature of a captive power plant.

- In terms of the proposed agreement, JSL would supply coal or any other inputs to JEL on a free-of-cost basis. On receipt of the same, JEL would undertake certain processes to convert the said inputs into power. In accordance with the Job Work Agreement, the title to the coal or any other inputs along with the power generated from the said inputs will vest with JSL.

- The above can be further explained as under :

  a. JSL imports coal from suppliers located outside India.

  b. Required inputs (such as coal) would be supplied by JSL to JEL. For the purpose of this arrangement, JSL shall be treated as a 'Principal'. On receiving the inputs, JEL shall undertake the activities in accordance with the Job Work Agreement.

  c. Power generated from the aforesaid activities shall be supplied back to the Principal.

  d. JEL would recover charges from JSL in accordance with the Job Work Agreement. Each invoice shall contain details of the inputs

supplied to JEL and power supplied to JSL and the charges for services rendered during the preceding month, applicable taxes and the date of payment for the said consideration.

- In the aforesaid background, we are called upon to determine the applicability of GST on:

    1. Supply of coal or any other inputs on a job work basis by JSL to JEL
    2. Supply of power by JEL to JSL
    3. Job work charges payable to JEL by JSL

We proceed with the issue thus -

The applicant before us is JEL. We refer to the GST Act to understand the mechanism of an Advance Ruling wherein clause (a) of section 95 says that –

"95. In this Chapter, unless the context otherwise requires,—

(a) "advance ruling" means **a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant-**

As can be seen the ruling is in respect of the supply undertaken or proposed to be undertaken by the applicant. If this is the case then we see that the question no.1 as posed before us pertains to supply by JSL and not JEL, the applicant. In view thereof, the same cannot be entertained by us. Further, during hearing, the applicant has also acceded to this question not being maintained by the Advance Ruling Authority in view of the supply being by JSL and not by JEL the applicant. We therefore restrict these proceedings to question nos.2 and 3 and move on to decide the same.

Supply of Power by JEL To JSL

There is a supply of power by JEL to JSL. JEL has stated that JSL and JEL are related persons. A study of the application reveals that the applicant has submitted that -

i. Movement of coal or any other inputs from JSL to JEL would not be subjected to tax on account of movement of inputs for job work activities.

ii. GST would be applicable on the job work charges levied by JEL to JSL.

We are not concerned with (i) above as it is not a supply by JEL. As regards (ii) about supply of electricity by JEL to JSL, we will have to examine the correct position after analysis of GST provisions that will be applicable in the context of the present case.

As we begin to analyse, we see that the inputs provided by JSL to JEL are coal or any other inputs and after processing these, the output is electricity which is supplied to JSL. As an immediate observation, we have to say that the goods sent for job work are coal and after the so claimed process of 'job work' by JEL, the new product 'electricity' comes into existence. It is very apparent that the goods which are received after job work are in no way identifiable with the goods which were sent for job work. Electricity is a totally new commodity which will be delivered to JSL. To ascertain whether conversion of coal into electricity would tantamount to being 'job work', we need to examine the relevant provisions under the GST. We find that the definition of job work under GST Act is as under -

"(68) 'job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker" shall he construed accordingly:

As can be seen the definition calls for application of a treatment or process to the goods. Treatment or process in this definition would mean some processes on the goods but would definitely not mean a complete transformation of the input goods into a new commodity. For this proposition, we draw support from the decision of the Hon. Supreme Court in Manganese Ore India Ltd. v. State of M.P., (2017) 1 SCC 81: 2016 SCC Online SC 1280 which has very lucidly explained the meaning of the term 'treatment and processing'.

"20. ***We are absolutely conscious that noscitur a sociis rule is not applied when the language is clear and there is no ambiguity,*** *which according to us does exist and is perceptible in the Explanation in question.* ***A*** *very broad and a wide definition of the term "processing" if applied, would include manufacture of a new or distinct product. Manufacture normally involves a series of processes either by hand or machine. If a restricted construction is not applied it would create and give rise to unacceptable consequences. It is* ***not*** *the intent to treat and regard manufacturing activities as processing. Manufacturing, as is understood, means a series of processes through different stages in which the raw material is subjected to change by different operations.*

(For difference between process and manufacturing see CIT v. Tara Agencies (2007) 6 SCC 429] , Orient Paper and Industries Ltd. v. State of M.P. [Orient Paper and Industries Ltd. v. State of MP., (2006) 12 SCC 468] and Aspinwall & Co. Ltd. Vs. CIF [CIT, (2001) 7 SCC 525].

21. The words "crushing", "treating" and "transporting" are words of narrower significance and the word "processing" used between these words should not be given a very wide meaning, for the legislative intent, according to us, is narrower. The word "processing" would take its meaning in the cognate sense. In other words, the general word "processing" will be restricted to the sense conveyed by the words "crushing", "treating" and "transporting". *The intent being that electricity tariff payable in respect of mining activities would include the mine itself all machinery situated or located in the mine or in a premises adjacent to the mine wherein crushing, processing, treatment or transportation of the minerals as mined is undertaken. The word "processing" herein would mean those processes with the help of hands or machineries connected and linked to mining activity. It would not include process by which a new or different article other than the one which has been mined, is produced. It relates and signifies the composite activity of mining and processing.* ***The intent is not to include processes which would lead to creation of a different commodity as known in the commercial world for otherwise even manufacturing activity would get covered,*** *whereas manufacturing unit is liable to pay electricity tariff at a lower rate. The intent and purpose is certainly not to compel and force a manufacturing unit being set up at an acceptable distance from the mine, for the manufacturing unit adjacent to the mine would have to pay electricity tariff at a higher rate. Pertinently, a manufacturing unit set up by another entity, whether adjacent to the mine or not, would pay a lower tariff Such absurdity and irrationality has to be avoided. In the present context, we would, therefore, hold "processing" would mean activities in order to make the mineral mined marketable, saleable and transportable, without substantially changing the identity of the mineral, as mined. When there is a substantial change at the mineral mined and the process results in a different commodity being produced or transforming and completely changing the mineral, it would fall outside the scope of the word "processing". The restricted construction will also be acceptable in view of the use of the word "mineral" at the end of the Explanation. The word "mineral" in the Explanation is the product which was mined and is put to "crushing", "processing". "treatment" and "transporting" the mineral. In other words, mineral means mineral*

which was mined and not a new product created by using or processing the mineral mined.

Applying the ratio in the above case, we see that the definition of lob work' in the GST Act uses the words 'treatment or process'. The impugned activity undertaken by the applicant to convert the coal into electricity would not be covered by the words 'treatment or process as found in the definition of 'job work'. Here, the intent of the legislation is not to cover such treatment or process as would result into a distinct commodity. The activity, in fact, is a manufacture of electricity. And we find that the activity of 'manufacture' has been defined in the GST Act which is as follows :

"(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;"

As can be seen the definition itself says that the emergence of a new product from the processing of the inputs would be a manufactured product. In the instant case the end product i.e., "electricity" has a distinct name, character and use than the inputs i.e., "coal". Thus, when the Legislature has provided for the definition of 'job work' as well as 'manufacture', the meaning as understood by the definition of 'manufacture' cannot be read into the words 'treatment or process' as found in the definition of 'job work'. 'Treatment', 'Process' and 'Manufacture' are three different activities recognized by the Legislature. The intent of the Legislature is to restrict the scope of 'job work' to 'treatment' or 'process' and not to extend the same to 'manufacture'. We need not deliberate more on the issue as the emergence of a distinct commodity is very obvious and therefore beyond the applicability of the definition of 'job work' under the GST Act.

Here, we would like to say that the applicant has placed much reliance on certain case laws under the Central Excise Act which have been reproduced above. However, the case laws deal with the provisions as were available under the said Act. Such are not the facts in the instant case. We find that these case laws relied upon by the applicant were in the context of eligibility of input tax credit vis-a-vis the definition of input. For the sake of better understanding, we would like to reproduce one such definition which was in consideration in the case of Haldia Petrochemical Ltd vs CCE, Haldia [2006 (197) ELT 97 (Tri.- Delhi)] -

"input" means all goods except high speed diesel oil and motor spirit, commonly known as petrol. used in or in relation to the manufacture

of final product whether directly or indirectly and whether contained in the final product or not, and includes accessories of the final products cleared alongwith the final product, goods used as paint, or as packing material, or as fuel or for generation of electricity or steam used for manufacture of finals products or for any other purpose within the factory of production. and also includes lubricating oils, greases. cutting oils and coolants.

As can be seen, the processes involved in the above cases required that the inputs used may or may not have been found in the final product. The facts before us and the applicable provisions are different than those found in the case laws relied upon by the applicant. Further, we observe that the facts and applicable provisions being unambiguous, we do not feel the need to comment or discuss the other case laws and provisions as relied upon by the applicant.

We are of the firm view that the activity undertaken by JEL amounts to manufacture of electricity from the coal as supplied by JSL and is squarely covered in the definition of 'manufacture' under the GST Act. It is, therefore, not covered by the scope of the definition of 'job work' under the GST Act as contended by the applicant.

We now invite attention to Section 7 of the GST Act which explains the scope of 'supply':

7. (I) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central

Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

It can be seen that sub-section (2) begins with the word ***"notwithstanding"*** and sub-section (3) begins with the words ***"Subject to the provisions of sub-sections (1) and (2)".*** The way the sub-sections (2) and (3) are framed determines the effect of the provisions in sub-section (1). Now we see that clause (c) of sub-section (1) refers to activities specified in Schedule I. It is further specified that these activities of Schedule I may be made or agreed to be made without a consideration. So we shall have a look at the Schedule I thus **–**

"SCHEDULE I [See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section *25, when made in the course* ***or furtherance of business:***

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an *employee shall not be treated as* ***supply of goods or services or both.***

3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply *such* ***goods on behalf of the principal; or***

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a taxable person from a related person or from any of his other establishments *outside India, in the course or* ***furtherance of business."***

Para 2 of the Schedule I is about supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. Further, the *Explanation* to section 15 explains 'related persons' thus **–**

"Explanation.—For the purposes of this Act,—

(a) ***persons shall be deemed to be "related persons" if—***

(i) *such persons are officers or directors of one another's businesses:*

(ii) *such persons are legally recognised partners in business;*

(iii) *such persons are employer and employee;*

(iv) *any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them:*

(v) ***one of them directly or indirectly controls the other;***

(vi) *both of them are directly or indirectly controlled by* ***a*** *third person;*

(vii) *together they directly or indirectly control a third person; or*

(viii) *they are members of the same family;"*

As can be seen the applicant has informed that in terms of sub-clause (v) of clause (a) of the *Explanation* to section 15, JSL and JEL are related persons on account of direct or indirect control over each other. In view thereof, in terms of para 2 of Schedule I, the supply of goods or services or both between JSL and JEL would be treated as supply even if made without consideration. Therefore, the supply of power by JET, to JSL would be a transaction of 'supply'. And GST would be applicable on this supply.

We would now look at the third question -

Job Work Charges Payable to JEL by JSL

As already discussed above, the transaction between JEL and JSL is a transaction of supply of goods and not a 'job work'. And hence, the question does not survive.

In view of all above deliberations, the questions can be answered thus -

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

Order

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-05/2017/B-08 **Mumbai, dt.: 05-03-2018**

For reasons as discussed in the body of the order, the questions are answered thus -

Q.1 Applicability of GST on supply of coal or any other inputs on a job work basis by JSL to JEL

A. This question pertains to supply JSL and not JEL, the applicant. In view thereof, the same is not entertained.

Q.2 Applicability of GST on supply of power by JEL to JSL.

A. This question is answered in the affirmative.

Q.3 Applicability of GST on job work charges payable to JEL by JSL.

A. The transaction between JEL and JSL is a transaction of supply of goods and not a 'job work' and therefore, the question does not survive.

[2018] 56 DSTC 310 – (Uttarakhand)

AUTHORITY FOR ADVANCE RULINGS, UTTARAKHAND
[Anil Singh And Amit Gupta, Member]

Ruling No. 04/2018-19 And Application No. 03/2018-19

IT Development Agency (ITDA), *In re*

May 29, 2018

ADVANCE RULING – WHETHER THE SERVICE OR GOODS PROCURED BY ITDA FROM GOVT. AUTHORITY IS EXEMPT FROM TAXATION OF GST – SERVICE IS EXEMPTED FROM GST BUT SUPPLY OF GOODS BY GOVT./ AUTHORITY TO OTHER GOVT./AUTHORITY IS NOT EXEMPTED FROM GST.

Present for the Applicant : Damanpreet Singh

Ruling

1. This is an application under Sub-Section (1) of Section 97 of the CGST Act and the rules made thereunder filed by Project Co-ordinator (Finance & Admin.), ITDA, Govt, of Uttrakhand, Dehradun registered under GST bearing No. 05MRTPO1359B1DC seeking an advance ruling on the question whether the services or material procured by ITDA from Govt./ Govt. Authority is exempt from GST.

2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. The Joint Commissioner, State Tax, Dehradun Circle vide his letter dated 10.05.2018 has submitted that the question raised by the applicant do not fall under Section 97(2) of UKGST ACT, 2017. In this context, we find that as per Section 97(1) of CGST/SGST Act, 2017, "An applicant. . . . . , stating the question on which the advance ruling is sought." Further as per Section 95(c) of CGST/SGST Act, 2017, "applicant means any person registered or desirous of obtaining registration under this Act." As per record, we find that the M/s. ITDA is registered under GST bearing registration no. 05MRTPO1359B1DC, therefore falls under the definition of "applicant" (supra) and can sought advance ruling on the questions mentioned in Section 97(2) of CGST/SGST Act, 2017. On going through the application we find that the applicant has sought advance ruling on the question whether the services or material procured by ITDA from Govt./ Govt. Authority is exempt from GST. In this regard we find that as per Section 97(2)(e) of CGST/SGST Act, 2017 the advance ruling can be given on "determination of the liability to pay tax on any goods or services or both. In the present case applicant has sought advance ruling in respect of leviability of GST, if any, on the services or material procured by them from Govt./Govt. Authority. Therefore, in terms of said Section 97(2)(e) of CGST/SGST Act, 2017: the present application is hereby admitted.

4. Accordingly opportunity of personal hearing was granted to the applicant on 28.05.2018. Shri Damanpreet Singh, FCA appeared for personal hearing on behalf of the applicant and reiterated his submission as given in the application.

5. In the present application, applicant has requested for advance ruling on leviability of GST on procurement of services or material from Govt./Govt. Authority which is discussed as under :

6.1 GST on "procurement of services or material from Govt./Govt. Authority" : From the documents submitted by the applicant we find that the ITDA is registered under Society Registration Act, 1860 and it is under administrative control of Information Technology Department o:: Uttrakhand Government, The Hon'ble Governor had nominated ITDA as State Nodal Organization. Its executive committee consists of Government Officers. As per definition of Government provided in Section .2(53) of the Uttrakhand Goods and Services Tax Act, 2017 " Government" means the Government of Uttrakhand. Further as per Section 2(69)(c) of Uttrakhand Goods and Services Tax Act, 2017, local authority means a Municipal Committee, a Zilla Parishad, a District Board and any other authority entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund. Thus ITDA is a local authority under the control of Uttrakhand Government.

6.1.1 Further the applicant has submitted an MOU with IIT, Mumbai which relates to design, development and field testing of "Aerostat Based Last Mile Communication System". To determine the status of IIT, Bombay, we find that the Indian Institutes of Technology (IITs) are autonomous public institutes of higher education, located in India. They are governed by the Institutes of Technology Act, 1961 which has declared them as institutions of national importance and lays down their powers, duties, and framework for governance etc. Each IIT is an autonomous institution, linked to the others through a common IIT Council, which oversees their administration. The Minister of Human Resource Development is the exofficio Chairperson of IIT Council. The President of India is the most powerful person in the organisational structure of IITs, being the ex officio Visitor and having residual powers. Directly under the President is the IIT Council, which comprises the minister-in-charge of technical education in the Union Government, the Chairmen of all IITs, the Directors of all IITs, the Chairman of the University Grants Commission, the Director General of CSIR, the Chairman of IISc, the Director of IISc, three members of Parliament, the Joint Council Secretary of Ministry of Human Resource and Development, and three appointees each of the Union Government, AICTE, and the Visitor. The amendments in the Institutes of Technology Act, 1961 is to be made by the Parliament. Thus IIT, Bombay falls under the definition of Government in terms of Section 2(53) of the Central Goods and Services Tax Act, 2017 wherein " Government" means the Central Government.

6.1.2 In view of the above, we find that the applicant is covered under local authority which is receiving services from IIT, Mumbai which is covered as Central Government (supra).

6.1.3 Now the issue to be decided whether the services received by the applicant from IIT. Mumbai is liable to GST or not. In this context, we find that serial no. B of Part 3 of GST Tariff-Services [Chapter 99] provides the list of nil rated/fully exempted services. On going through the said list, we find that Government/Authority providing services to other Government/ Authority is exempted from GST. Thus, in view of the above, the services received by the applicant from IIT, Mumbai is exempted from GST. As regard to the supply of goods by one Govt/authority to other Govt/authority is concerned, we find that there is no exemption from GST in this regard.

[2018] 56 DSTC 313 – (Kerala)

AUTHORITY FOR ADVANCE RULINGS, KERALA
[Senthil Nathan S. And N. Thulaseedharan Pillai, Member]

Advance Ruling Order No. CT/5492/18-C3

JJ Fabrics, *In re*

May 29, 2018

ADVANCE RULING – CARRY BAGS MADE OF NON-WOVEN FABRICS – CLASSIFIED UNDER ENTRY 224 OF SCHEDULE 1 OF NOTIFICATION NO. 01/2017 CENTRAL TAX (RATE) DT 28.06.2017 AND STATE NOTIFICATION NO. 360/2017 DT 30.06.2017 – HELD TAXABLE @ 5%.

Ruling

1. M/s. JJ Fabrics, Ernakulam, manufacturer of carry bags made of poly propylene non-woven fabrics, has preferred an application for Advance Ruling on the rate of tax of the same.

2. The applicant has submitted that the primary raw materials for polypropylene sheets are polypropylene granules, color master batches and filter content (calcium carbonate). These raw materials are sucked through vacuum, heated, passed through extruder and melted. The material thus obtained is filtered and passed through the spinning unit to obtain continuous single filament which is called polypropylene filament. The filament are lapped on each other on a lapper and then subjected to thermal bonding to form the polypropylene sheet.

3. The applicant has asserted that the said bags are used by industrial units, big retail outlets and textile shops for packing their commodities and that he has been granted registration by Office of Textile Commissioner for manufacturing of textile based products. Various authorities under Textile Ministry had examined the products and certified that the fabrics manufactured by applicants are technical textile fabrics.

4. The applicant has submitted a copy of the test report from Centre for Biopolymer Science & Technology wherein it is certified that non woven carry bags made by the applicant is a polypropylene product with filler content 42.29%.

5. The applicant further asserted that as per the clarification issued by the Commissioner of CGST and Central Excise, Madurai the said non-woven bags comes under HSN 6305 90 00 with 2.5% CGST & 2.5% SGST if sale value does not exceed Rs. 1,000/- per piece.

6. The applicant has also referred to the clarification order C3/17556/09 dated 29.09.2009, wherein it was clarified that packing bags, textile bags, and carry bags made out of non-woven fabrics of polypropylene is covered by the HSN code 6305.33.00 of the Customs Tariff Act.

7. The authorised representative of the applicant was heard in the matter and the contentions raised were examined. On the basis of the facts disclosed in the application and the submissions made at the time of personal hearing, it was decided to admit the application.

8. The Test Report of the Centre for Biopolymer Science & Technology reveals that the product of the applicant i.e., non woven carry bag is made of polypropylene. In Customs Tariff Act, sacks and bags made of polypropylene strip or the like is classified under Chapter 63 of the Act. The relevant portion is extracted below:

6305		SACKS AND BAGS, OF A KIND USED FOR THE PACKING OF GOODS
	-	Of man-made textile materials:
6305 33 00	-	Other, of polyethylene or polypropylene strip or the like

9. The above HSN code appears both in Schedule I and Schedule II of Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 and State Notification 360/2017 dated 30.06.2017 based on the sale value of the product. The entry reads as under:

SCHEDULE 1

224	63 [other than 6309]	other made up textile articles, sets, of sale value not exceeding Rs. 1000/- per piece

SCHEDULE 2

171	63 [Other than 6309]	Other made up textile articles, sets of sale value exceeding Rs. 1,000/- per piece [other than Worn clothing and other worn articles; rags]

10. In the present case, since the sale value of non-woven carry bags made of polypropylene is less than Rs. 1,000/- per piece, it will attract tax @ 5% vide entry No. 224 of schedule 1 of both CGST and SGST notification.

11. In the light of the above, we rule as under.

Ruling

Carry bags made of polypropylene non-woven fabrics is classified under entry 224 of Schedule 1 of the Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 and State Notification 360/2017 dated 30.06.2017, and hence taxable @ 5% [SGST -2.5%; CGST-2.5%].

[2018] 56 DSTC 315 – (Kerala)

AUTHORITY FOR ADVANCE RULINGS, KERALA

[Senthil Nathan S. And N. Thulaseedharan Pillai, Member]

Advance Ruling Order No. CT/4683/2018-C3

Veena Chemicals, *In re*

May 29, 2018

ADVANCE RULING – IMPLANTS FOR JOINT REPLACEMENT FALLING HSN CODE 90213100 IS TO BE COVERED UNDER SERIAL NO. E(9) OF LIST 3 OF ENTRY 257 OF SCHEDULE I OF NOTIFICATION NO. 1/2017 DT. 28/6/17 ATTRACTING GST 5% OR SERIAL NO. 221 OF SCHEDULE II AT THE NOTIFICATION NO. 01/2017 ATTRACTING GST 12%.

It is evident that joint replacements were specifically covered under the entry at Serial No. E(9) of List 3 of Entry 257 of Schedule I whereas the entry at Sl. No. 221 of Schedule II was a general entry that covered artificial parts of body. Therefore, applying the principle under Rule 3 of the General Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975; that the heading which provided the most specific description shall be preferred to headings providing a more general description we hold that the joint replacements falling under HSN Code 90213100 were covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.

Rule

The implants for joint replacements falling under HSN Code 90213100 are covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.

Ruling

1. Shri. Gopal Gireesh, Veena Chemicals, Thiruvananthapuram a retail dealer of implants for joint replacements (hereinafter called the applicant) is a registered person having GSTIN 32ADXPG4961E1ZF. The applicant has preferred an application for Advance Ruling on the rate of tax in respect of the commodities listed in the Annexure to the Application.

2. The applicant has stated in the application that all the commodities listed in the Annexure are implants for handicapped patients in the nature of Joint Replacements falling under HSN Code 90213100 and are included under Schedule I. The applicant further stated that the items mentioned in the Annexure are included under Schedule I; Serial No.257 - List 3E (9) - Implants for handicapped patients, joint replacements etc and the rate of GST is 5%. As per Order No. C7 4264/06/CT dated 14.12.2007 of the erstwhile KVAT Act, these items i.e.; Total Knee Implants and Total Hip Implants were falling under First Schedule of the KVAT Act and hence, were exempt from tax.

3. A personal hearing was granted to the applicant on 17.05.2018. Shri. Lalji Vijayan, Chartered Accountant represented the applicant in the personal hearing and made the following written submissions on behalf of the applicant.

4. The applicant is, inter alia, engaged in the distribution and trading of implants for Joint Replacement purchased by the applicant from M/s

Johnson 6t Johnson Pvt Ltd. The lists of products enclosed as Annexure are implants for joint replacements falling under HSN Code 90213100. The question to be decided is whether the products get covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5% or Serial No. 221 of Schedule II of the Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 12%. The products listed in Annexure are falling under Customs Tariff Head 90213100 -Artificial Joints. Such implants for joint replacement are specifically covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017.

Sl. No.	*Chapter/Heading/Sub - Heading/Tariff Item*	*Description of goods*
(1)	(2)	(3)
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule

List 3:

E(9): Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement. Schedule with identical entry is notified under SGST Act by G.O. (P) No. 64/2017/TAXES dated 30.06.2017.

On the contrary, Serial No. 221 of Schedule II attracting 12% GST is a general entry with the following description;

> "Splints and other fracture appliances, artificial parts of the body, other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts and trusses, hearing aids], "

Entry 221 of Schedule II is a generic and wider entry covering items like fracture appliances, artificial parts of the body, etc.

5. For the purpose of classification and the determination of applicable rate for a supply of goods under the CGST Act, 2017, the various Chapter Headings, sub -headings, Interpretative Rules and Chapter Notes under the Customs Tariff Act, 1975 has been adopted by Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017. The Explanation appended to the Notification No. 01/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

"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 above table."

Accordingly, the appropriate classification as determined under the Customs Tariff Act, 1975 including on an application of the Chapter Notes and General Explanatory Notes, would apply for the purpose of levy of GST.

6. As per Rule 3 of the General Rules for Interpretation of Import Tariff the heading that provides the most specific description shall be preferred to headings providing a more general description. Rule 3 reads as follows;

"Rule 3 - When by application of rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or mure headings, classification shall be effected as follows; (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. "

In view of the above, implants for joint replacement is clearly and most specifically covered under SI No. E(9) of List 3 of Entry 257 of Schedule I attracting 5% GST. Further, there is a similar entry under SI No. 578 - List 30 Entry E(9) of Notification No. 50/2017 - Customs dated 30.06.2017 where under the effective rate of Basic Customs Duty is Nil. The entry is reproduced below;

Sl. No.	*Chapter/Heading/Sub - Heading/Tariff Item*	*Description of goods*
(1)	(2)	(3)
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30 specified in List 3 appended to this Schedule

List 30:

E(9): Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.

The industry dealing in joint replacement products also avails benefit of Nil BCD on import of implants for joint replacement under the above entry.

There needs to be harmonization in the interpretation/applicability/coverage of entries under the Customs Tariff and GST. Shri. Lalji Vijayan, Chartered Accountant representing the applicant further reiterated and confirmed that all the commodities as listed in the Annexure to the application by their technical/trade names are nothing but implants for joint replacement falling under Customs Tariff Heading 90213100 - Artificial Joints. In support of the above, the applicant produced sample copies of the invoices issued by M/s Johnson and Johnson Pvt Ltd in which the items are described as per their technical/trade name and the HSN Code shown as 90213100.

7. On the basis of the facts disclosed in the application and the written and oral submissions made at the time of personal hearing, it was decided to admit the application.

8. The question that arises for consideration :s whether the implants for joint replacements falling under HSN Code/Chapter Sub-Heading 90213100 - Artificial Joints of the Customs Tariff Act, 1975 is covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5% or Serial No. 221 of Schedule II of the Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 12%.

9. On a plain reading of entry at Serial No. E(9) of List 3 of Entry 257 of Schedule I and entry at Serial No. 221 of Schedule II of Notification No. 01/2017 -Central Tax (Rate) dated 28.06.2017, it is evident that joint replacements are specifically covered under the entry at Serial No. E(9) of List 3 of Entry 257 of Schedule I whereas the entry at SI. No. 221 of Schedule II is a general entry that covers artificial parts of body. Therefore, applying the principle under Rule 3 of the General Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975; that the heading which provides the most specific description shall be preferred to headings providing a more general description we hold that the joint replacements falling under HSN Code 90213100 are covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.

Rule

The implants for joint replacements falling under HSN Code 90213100 are covered under Serial No. E(9) of List 3 of Entry 257 of Schedule I of Notification No. 01/2017 - Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5%.

[2018] 56 DSTC 321

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

[Hon'ble Mr. Justice A.K. Sikri And Hon'ble Mr. Justice Ashok Bhushan]

WRIT PETITION (CIVIL) No. 4826/2017

Reserved on: 17th August, 2018
Date of decision: 28th August, 2018

M/s Gati Kintetsu Express Pvt. Ltd. ... Petitioner(s)

Vs.

Commissioner Commercial Tax. ... Respondent(s)
of Madhya Pradesh & Ors
(IA No. 127862/2018)-Clarification/Direction)

Date : 19-09-2018 This petition was called on for hearing today.

SPECIAL LEAVE PETITION – NOTICE ISSUED – INTERIM RELIEF - DIRECTED THE DEPARTMENT OF GST TO RELEASE THE GOODS AND VEHICLE.

For Petitioner : Mr. Jay Kishor Singh, AOR

For Respondents : Ms. Swarupama Chaturvedi, AOR
Mr. B.N. Dubey, Adv.
Ms. Devika Gulati, Adv.
Ms. Vaishali Verma, Adv.

UPON hearing the counsel the Court made the following

ORDER

Having regard to the facts of the case, more particularly when the petitioner has already paid the tax and insofar as other dues are concerned, which are being demanded, a dispute is raised in this special leave petition in which notice has been issued, we are of the opinion that the vehicle which is seized along with the consignments should be released to the applicant/petitioner. This order shall be subject to further order that shall be passed by this Court in the special leave petition. Interim Application No. 127862/2018 is, accordingly, disposed of.

[2018] 56 DSTC 322

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

[Division Bench : Hon'ble Shri Justice P.K. Jaiswal & Hon'ble Shri Justice S.K. Awasthi]

W. P. No.12399 of 2018

M/s Gati Kintetsu Express Pvt. Ltd. ... Appellant

vs.

Commissioner, Commercial Tax of MP & others ... Respondents

Date of Order : 05 .07.2018

TECHNICAL ERROR – NO UPDATION MADE IN PART B OF E-WAY BILL – PROBLEM WAS NOT APPRISED BEFORE AUTHORITIES NOR GIVEN ANY WRITTEN GRIEVENCES.

THE DISTANCE WAS MORE THAN 1200-1300 KMS AND IT WAS MANDATORY TO FILL PART – B OF E-WAY BILL – COURT HELD THAT THE PENALTY WAS RIGHTLY IMPOSED.

Held

The distance was more than 1200-1300 kilometers and it was mandatory for the petitioner to file the Part-B of the e-way bill giving all the details including the vehicle number before the goods were loaded in the vehicle. Thus, petitioner admittedly violated the provisions of the Rules and Act of 2017 and, learned Authority rightly imposed the penalty and directed the petitioner to pay the same. The order was not in violation of any of the provisions of the Rules and Act of 2017. The writ petition filed by the petitioner had no merit and dismissed.

Present for Petitioner	:	Shri Vivek Dalal, learned counsel
Present for Respondent	:	Ms. Archana Kher, learned Government Advocate

Order

Per P. K. Jaiswal, J .

By this writ petition under Article 226 of the Constitution of India, the petitioner is praying for quashment of order dated 30.05.2018 passed by the respondent No.2 – GST Appellate Authority & Joint Commissioner of State Tax, Indore and order dated 04.05.2018 passed by the respondent No.3 - Assistant Commissioner of State Tax, Indore wherein demand and

penalty imposed by the respondent No.3 has been upheld and directed the petitioner to pay the amount of Rs.1,32,13,683/-. Relevant part of the order dated 04.05.2018 passed by the respondent No.3 reads as under :-

> अत : माल एवं सेवा कर अधिनियम की धाारा 68 एवं नियम 138 में निहित प्रावधानों का उल्लंघन किया जिसके लिए एकीकृत माल सेवा कर अधिनियम 2017 की धारा 20 सहपठित कन्द्रीय माल एवं सेवा कर अधिनियम 2017 की धारा 129 एवं म.प्र. माल एवं सेवा कर अधिनियम 2017 की धारा 129 अधीन माल मालिक के उपस्थित होने की दशा में उक्त माल के मूल्य रू. 1,12,61,419/- पर निर्धारित कर की दर के अनुसार रू. 19,52,264/- IGST एवं इस कर के समतुल्य रू.19,52,264/- शास्ति सहित कुल देय राशि रू. 39,04,529/- आरोपित की जाती है एवं माल मालिक की अनुपस्थिति की दशा में नियमानुसार कर राशि रू. 19,52,264/- IGST है एवं एकीकृत माल एवं सेवा कर अधिनियम 2017 की धारा 20 के चतुर्थ परन्तु के अनुसार राशि 1,12,61,419/- की शस्ति सहित कुल देय राशि रू. 1,32,13,683/- आरोपित की जाती है।

2. This order has been challenged by filing an appeal before the respondent No.2. The respondent No.2 vide impugned order dated 30.05.2018 came to the conclusion that the petitioner has violated the provisions of Section 68 r/w Rule 138 of the Central Goods and Service Tax Act, 2017 and M. P. Goods and Service Tax Act, 2017 and dismissed the appeal.

3. Facts of the case are that the petitioner is a Private Limited company engaged in the business of multi model transportation of shipments, supply chain management and other allied services such as door to door pick-up and delivery of the shipments etc.

4. On 01.07.2017, M. P. Goods and Service Tax Act, 2017 came into force and was published in the M. P. Gazette on the same day to make provisions for levy and collection of tax on Inter and Intra State Supply of Goods or Services or both by the State of M. P. and the matters connected therewith and or incidental thereto.

5. Section 68 of the Act provides for inspection of goods in movement, which reads as under :-

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

> to 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.

From perusal of the aforesaid provision, it is clear that the government is empowered 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.

6. In the light of the power conferred under Section 68, the vehicle of the petitioner company was checked on 27.04.2018. On enquiry, the driver (person incharge of a conveyance) of the vehicle bearing registration No.HR-47-C-2647 produced the bill and challan, but eway bill on enquiry, it was found that the petitioner transporter company who was transporting the goods from Pune(Wadki), Maharashtra to Noida via Indore and other different places has not uploaded/updated the part-B of the e-way bill which is a required condition to be fulfilled in accordance with Rule 138(5) of the M. P. Goods and Service Tax Rules, 2017. Rule 138(5) of the Rules of 2017 reads as under :-

> 138(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the Form GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of Form GST EWB-01.

7. Annexure-P/6 is the e-way bill. The details as mentioned in paras-2, 3, 4 & 5 are relevant, which reads as under :-

2. Address Details

From	To
GSTIN : 27AAE DA945 6D1ZM SAVA HEATHCARE LIMITED CFA MIRCOPARK LOGISTICS 1ST FLOOR GATE NO.1232, WADKI, MAHARASHTRA-412308	GSTIN :D9CFE PS825 3Q12F M/S ANNAPURNA PHARMA DAYA COMPLEX, OPP. SHRI TALKIES BYPASS ROAD, UTTAR PRADESH -282003

3. Goods Details

HSN Code Product	Description	Quantity Taxable	Amount Rs.	Tax Rate (C+S+I+Cess)
30049086		10976.00	2226598.00	0+0+12+0

Net Taxable Amount : 2226598.00
CGST Amount Rs.0.00 SGST Amount Rs.0.00
IGST Amount Rs.267191.52 Cess Amount Rs.0.00

4. Transportation Details

36AADCG2096A1ZY & GATI-KINTETSU EXPRESS PVT. LTD.
Transporter ID & Name :
Transporter Doc. No. & Date : 229076616 & 25/04/2018

5. Vehicle Details

Mode Vehicle/ Trans	Doc No. & Dt.	From Entered	Date	Entered BY	CEWB No. (if any)
Road	MH14EM1313	Pune	25/04/2018 07.49 PM	36AADCG2 096A12Y	1410467481
Road	MH14EM1313	Bhursungi	25/04/2018 07.43 PM	36AADCG2 096A12Y	
Road	MH04CG8538 & 229076818 & 25/04/2018	Wadki	25/04/2018 03.26 PM	27AAECA9 456D1ZM	

8. In the light of Section 164 of the M. P. Goods and Service Tax Act, the State Government has framed the M. P. Goods and Service Tax Rules, 2017 which were further amended vide notification dated 07.03.2017 and the amendment came into force w.e.f. 01.04.2018 which substituted the earlier Rules of 138 by the new Rules.

9. As per Rule 138 of the Rules of 2017, any registered person who causes movement of goods or assignment valuation exceeding Rs.50,000/- must upload the information in a shape of e-way bill containing Part-A and Part-B. Sub-caluse 5 of Rule 138 provides for updating the Part-B which contains the details about the vehicle and transporter.

10. In the case in hand, admittedly, the petitioner has failed to give the details in Part-B of the e-way bill i.e., the details of conveyance in the e-way bill and the common portal in Part-B of Form GST EWB-01. The petitioner violated the provisions of Rule 138 and Section 68 of the Act, therefore, proceeding was initiated under Section 129 of the Act and penalty was imposed under Section 122 of the Act since he was transporting the taxable goods without the cover of documents.

11. The Department, after following due procedure, issued show cause notice and penalty case was registered. The petitioner submitted its reply

by stating that due to technical error, Part-B of the e-way bill cannot be updated.

12. Learned adjudicating Authority considering the fact that the petitioner has failed in performing the statutory provisions, penalty was imposed, which was assailed by filing an appeal and the same was also dismissed by the respondent No.2.

13. The stand of the respondents is that the petitioner company is a leading transportation company and the explanation submitted by him that due to technical error, Part-B of the e-way bill cannot be updated has not been accepted by the authority because the portal of the goods or service tax provides for an option of grievance in case the petitioner was having any problem in updating the Part-B of the e-way bill. No such grievance has been raised by the petitioner and he has never given any written grievance so that the grievance with regard to the updating the technical error could not have been considered.

14. It is also stated by the learned authority that the petitioner is a National Level Courier company and engages the employees who are expert in uploading e-way bills. As per the Rules, it is a mandatory requirement that Part-B must be updated in the e-way bill and in case the Part-B is not updated, the e-way bill is not genuine/legal and therefore, it is not a minor mistake or cannot be treated as a technical error when there is an option of raising a grievance on the GST portal itself.

15. The Assessing Officer as well as the learned Authority rejected the contention that they should have imposed minor penalty. Their stand is that the minor penalty can only be in cases where the tax is upto Rs.5,000/-.

16. In the present case, tax liability is more than lac of rupees and, therefore, they have refused to impose minor penalty and prayed for dismissal of the writ petition.

17. From the aforesaid facts of events, it is clear that while loading the goods valued at Rs.1,12,61,419/- (including transportation charges), during Inter and Intra State of Supply of Goods or Services from Wadki, Maharashtra to Noida were accompanied by e-way bill The respondent No.2 has directed for physical verification. On physical verification, respondent No.3 has found the alleged irregularity that Part-B of the e-way bill was incomplete and, therefore, he has detained the vehicle as well as the goods by passing an order under Section 129 (1) of the Act. by which he assessed the value of the goods.

18. Consequently, a notice under Section 129(3) of the Act has been issued by which he has directed the petitioner to pay the same towards the tax liability as well as the same amount towards penalty.

19. On 04.05.2018, an order was passed and being aggrieved by the aforesaid order, he filed an appeal, which was also dismissed and, thereafter, instant writ petition has been filed.

20. The contention of the petitioner before the learned Authority was that there was no intention on the part of the petitioner to evade payment of tax during Inter and Intra State Supply of Goods or Services. The goods loaded in the vehicle was for the purpose of transportation of goods from Wadki, Maharashtra to Noida and as such, the petitioner at the time of generation of national e-way bill could not fill the vehicle number in the Part-B due to inadvertence and it was a technical error therefore, the objection with regard to non-filling of the Part-B of e-way bill is nothing but a clear abuse of process of law.

21. Learned counsel for the petitioner has placed reliance on the Division Bench decision of Allahabad High Court in the case of ***VSL Alloys (India) Pvt. Ltd. vs. State of UP & others*** reported in ***(2018) 67 NTN DX 1*** and submitted that in identical circumstances, the Division Bench found that there was no ill intention at the hands of the petitioner nor the petitioner was supposed to fill up Part-B giving all the details including the vehicle number before the goods are loaded in the vehicle, which is meant for transportation to the same to its end destination.

22. In the case of **VSL Alloys (India) Pvt. Ltd.** (supra), the distance was within 50 kilometeres and, therefore, the petitioner therein was not under an obligation to fill the Part-B of the e-way bill and the Division Bench of the Allahabad High Court has rightly quashed the order.

23. In the present case, the distance was more than 1200-1300 kilometers and it is mandatory for the petitioner to file the Part-B of the e-way bill giving all the details including the vehicle number before the goods are loaded in the vehicle. Thus, he admittedly violated the provisions of the Rules and Act of 2017 and, learned Authority rightly imposed the penalty and directed the petitioner to pay the same. The order is not in violation of any of the provisions of the Rules and Act of 2017. The writ petition filed by the petitioner has no merit and is accordingly, dismissed.

[2018] 56 DSTC 328 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice Sanjiv Khanna Hon'ble Mr. Justice Chander Shekhar]

WRIT PETITION (CIVIL) No. 4826/2017

Reserved on: 17th August, 2018
Date of decision: 28th August, 2018

Union of India & Anr. ... Petitioners

Vs.

Amazon Seller Services Pvt. Ltd ... Respondent

Date of Decision : 28.08.2018

EXEMPTION NOTIFICATION NO. 25/2005 – CUSTOMS DT 1.03.2005 AS AMENDED BY NOTIFICATION NO. 133/2006 CUSTOMS DT 30.12.2006 – SERIAL NO. 26 OF THE EXEMPTION NOTIFICATION COVERING ELECTRICAL MACHINES WITH TRANSLATION OR DICTIONARY FUNCTIONS EXEMPT FROM BASIC CUSTOMS DUTY – AAR DEALT WITH AND INTERPRETED EXEMPTION GRANTED UNDER SERIAL NO. 26 WITH REFERENCE TO THE KINDLE E-READING DEVICES – REVENUE CONTENTION WAS REJECTED AS THE PRODUCT HAD NO PRIMARY FUNCTION TO TRANSLATE OR DICTIONARY FUNCTIONS.

WRIT PETITION FILED – REVENUE ARGUED THAT AAR DID NOT EXAMINE AND INTERPRET SERIAL NO. 26 OF THE EXEMPTION NOTIFICATION – PRINCIPLES OF INTERPRETATION TO EXEMPTION NOTIFICATION NOT DISCUSSED – RESPONDENT ASSESSEE ARGUED ON THE DIFFERENCE BETWEEN THE LANGUAGE AND THE USE OF THE WORD 'WITH' IN NOTIFICATION AT SERIAL NO. 26 AND TO OTHER ITEMS WHEREIN THE WORD 'FOR' AND NOT WITH HAD BEEN USED – WHETHER KINDLE E-READING DEVICES WOULD FALL WITHIN THE AMBIT OF ELECTRICAL MACHINES WITH TRANSLATION OR DICTIONARY FUNCTIONS WHICH WERE GRANTED AND ALLOWED EXEMPTION.

HELD: NO – THE WORDS 'WITH TRANSLATION OR DICTIONARY FUNCTIONS' HAD BEEN USED TO RESTRICT AND KEEP THE BENEFIT OF THE EXEMPTION NOTIFICATION WITHIN BOUNDS AND NOT EXPAND SCOPE OF EXEMPTION. THE PRODUCT WAS DEVELOPED AND DESIGNED TO FUNCTION AS AN E-BOOK READER AND WAS SOLD AND BOUGHT AS A E-BOOK READER AND NOT AS A TRANSLATOR OR AS A DICTIONARY. THE E-BOOK READER HAD AN IN-BUILT DICTIONARY FEATURE, WHICH WAS A SECONDARY OR ADDITIONAL FEATURE WOULD NOT MAKE IT AND QUALIFY THE E-READING MACHINE AS AN ELECTRICAL MACHINE WITH TRANSLATION OR DICTIONARY FUNCTION.

WRIT PETITION ALLOWED AND QUASHED – THE ORDER OF AAR. ALSO GRANTED PARTIAL RELIEF TO THE RESPONDENT BY HOLDING THAT PETITIONER WOULD NOT BE ENTITLED TO RECOVER BASIC CUSTOMS DUTY FOR THE PERIOD BETWEEN 15.05.2015 TILL 11.05.2017 I.E. THE DATE ON WHICH THE IMPUGNED ORDER WAS PASSED AND TILL THE PRESENT WRIT PETITION WAS FILED.

Facts

The Principal Commissioner of Customs, Air Cargo Complex (Import) and the Union of India, through Ministry of Finance, had filed the writ petition for setting aside and quashing the Order No. AAR/CUS/01/2015 dated 15th May, 2015 passed by the Authority for Advance Rulings (the AAR, for short).

The impugned order held that Kindle e-reading devices imported by the respondent and the applicant before the AAR, being "electrical machines with translation or dictionary functions" were exempt from basic customs duty vide serial No. 26 of the Exemption Notification No. 25/2005-CUS dated 1st March, 2005 as amended by notification No. 133/2006-CUSTOMS dated 30th December, 2006 (hereinafter collectively referred to as 'the exemption notification').

Held

The exemption notification was to allow import of 'electrical machines with translation or dictionary functions' at nil rate of duty. Interpretation should not be irrational and arbitrary. Chapter 85 dealt with the electrical machinery and equipment and parts thereof. The electrical machine apparatus were classified under tariff item heading 8543. These included electronic equipments like video special effect equipment, video typewriter, audio-visual stereo encoders, radio frequency power transformers, etc. It was undisputed and unchallenged, as stated above, that Kindle devices would fall under the basket or residuary heading 8543 89/8543 7099. Thus, the only issue was whether the said device was 'with translation or dictionary functions'. The words "with translation or dictionary functions" had been used to restrict and keep the benefit of the exemption notification within bounds and not expand scope of exemption. Kindle device was an electronic device designed for use as an electronic book reader. As an electronic book reader, it had several e-books pre-installed in the device and other e-books can be downloaded. The product was developed and designed to function as an e-book reader and was sold and bought as a e-book reader and not as a translator or as a dictionary. The e-book reader has an inbuilt dictionary feature, which was a secondary or additional feature, useful for the reader. This secondary or additional feature would not make it and qualify the e-reading machine as an "electrical machine with translation or dictionary function". The word 'with' can have diverse and varied meaning depending upon the context in which it is used. The Court observed and held that the words 'translation' and 'dictionary' functions qualified the words 'electrical machines' with the mandate that translation

or dictionary function should be the primary and relevant function of the said machine for which they were purchased and used. The exemption was restricted to machines which translate or perform dictionary functions and not to other machines that primarily perform some other function.

E-book readers were granted specific exemption vide Budget of 2014 which was withdrawn by the Budget of 2016-17. This benefit/exemption would obviously apply. The Court would, in view of the delay and laches on the part of the petitioner in approaching the Court, held that the respondent would not be liable to pay basic customs duty re-introduced by the Budget of 2016-17 for the period post-Budget 2016-17 till the filing of the present writ petition on 11th May, 2017.

For Petitioner	:	Mr. Sanjeev Narula, Standing Counsel.
For Respondents	:	Mr. L. Badri Narayanan, Mr. Karan Sachdev & Ms. Saumya Dubey, Advocates

JUDGMENT

Sanjiv Khanna, J.

The Principal Commissioner of Customs, Air Cargo Complex (Import) and the Union of India, through Ministry of Finance, have filed the present writ petition for setting aside and quashing the Order No. AAR/CUS/01/2015 dated 15th May, 2015 passed by the Authority for Advance Rulings (the AAR, for short).

2. The impugned order holds that Kindle e-reading devices imported by M/s Amazon Seller Services Private Limited, the respondent before us and the applicant before the AAR, being "electrical machines with translation or dictionary functions" were exempt from basic customs duty vide serial No. 26 of the Exemption Notification No. 25/2005-CUS dated 1st March, 2005 as amended by notification No. 133/2006-CUSTOMS dated 30th December, 2006 (hereinafter collectively referred to as 'the exemption notification').

3. Counsel for petitioner-Revenue has confined and restricted his challenge to the interpretation given to the expression "electrical machines with translation or dictionary functions" in Serial No. 26 of the exemption notification i.e. whether Kindle e-reading devices were "electrical machines with translation and dictionary function". Revenue does not dispute the

finding that Kindle devices are electrical machines under the residuary clause, i.e., "others" under the residuary Custom Tariff Heading (CTH, for short) 8543 89/8543 7099.

4. Revenue submits that the primary function of Kindle e-reading devices was not to translate or perform dictionary functions and hence, they would not be covered under the expression "electrical machine with translation or dictionary function". Reliance is placed on the Constitution Bench decision of the Supreme Court in ***Commissioner of Central Excise, New Delhi versus Hari Chand Shri Gopal And Others,*** (2011) 1 SCC 236 and ***Commissioner of Customs (Import), Mumbai versus Dilip Kumar,*** in Civil Appeal No. 3327/2007 decided on 30th July,2018, to urge that exemption notifications should be construed and interpreted strictly and in case of ambiguity and doubt interpretation in favour of the Revenue, rather than the assessee is mandated and required.

5. Counsel for respondent, on the other hand, submits that the Serial No. 26 of the exemption notification has been rightly interpreted by the AAR, for the expression used in the notification was, 'electrical machines with translation or dictionary functions' and the word “with”, indicates that translation or dictionary function need not be the dominant or the primary purpose of the electrical machines. It would be sufficient if the electrical machines could perform and have translation or dictionary function, a feature admittedly present in the Kindle e-reading devices. Distinction and difference in use of the word "for" in the exemption notification with reference to other exempted items was highlighted. This was the core reasoning given by the AAR in paragraphs 2 and 3 of the impugned order.

6. Respondent has highlighted that a number of other contentions and arguments were raised by the Revenue before the AAR, including question of classification under the CHA 8543 89/8543 7099, which were examined and dealt with in the impugned order. Contentions now raised are somewhat different from the primary and core submission before the AAR.

7. At the outset, we may record that the Revenue has not contested and questioned classification of Kindle e-reading devices under the CHA 8543 89/8543 7099. Thus, two sides are ad idem that Kindle ereading devices would be covered under the residuary tariff item CHA 8543 89/8543 7099, i.e., "others", under the Chapter 85 heading "electrical and electronic machinery and equipment".

8. In order to appreciate and understand the contention raised on interpretation of exemption notification, we would like to quote relevant portion from the notification dated 30th December, 2006 which reads :-

"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts following the goods of the description specified in column (3) of the Table below and falling within the heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, form the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

S. No.	Heading, Sub-heading or Tariff item	Description of goods
26.	8543	7099 Electrical machines with translation or dictionary functions

"

9. The AAR had dealt with and interpreted exemption granted under Serial No. 26 with reference to the Kindle e-reading devices in the following words:-

"2. The application is opposed by the Revenue, Customs Department on the ground that the Kindle Device which is imported does not have the translation or as the case may be dictionary functions as it is the main feature. The contention of the Revenue is that the Notification would be applicable only to such Kindle devices which have the translation or as the case may be dictionary functions as its main function.

3. The interpretation of the Revenue is completely incorrect if the Tariff entry 8543 7099 is accepted, then it is clear that all such electrical machines which have the translation or its dictionary functions will be entitled to be benefitted by the Notification as stated above. When the entries are to be read, the plain meaning have to be given to those entries. We do not find anything anywhere in the Notification which admits of any other interpretation much less offered by the Revenue to the effect that the function of translation

or dictionary as the case may be, should be a main feature of the electrical machine like Kindle device. We, therefore, reject the contention of the Department on this point."

10. Clearly, the AAR has interpreted serial No. 26 of the notification, inasmuch as it has accepted the interpretation placed by the respondent. The contention of the petitioner that the AAR did not examine and interpret Serial No. 26 of the notification is, therefore, incorrect and mistaken. However, it could be urged that detailed elucidation of the expression "electrical machines with translation or dictionary functions" is absent and principles of interpretation applicable to exemption notification have not been discussed.

11. In the application dated 8th June, 2012 filed before the AAR, the respondent had described the Kindle devices as under:-

"2. Applicant proposes to enter into a new business activity wherein the applicant will be importing among other things, various models of e-book readers for resale in India. The various models of e-book readers shall be sold as Kindle e-book readers and include models such as Kindle, Kindle Touch, etc. These various models of Kindle e-book reader are hereinafter referred to as "Kindle Devices". Applicant proposes to import these e-book readers for reselling the same to distributors and other wholesale dealers who will ultimately sell these products to the end users or individual customers.

3. The Kindle Devices are electronic book readers which allows a (sic allows) user to (sic user to) read e-books. The Kindle devices simulate the experience of reading a physical book to a reader through a patented e-link technology and e-ink display screen. Readers can purchase/download e-books, newspapers and magazines onto (sic magazine) the Kindle Devices from the Amazon Kindle web store. The details of the product description and specification are provided as Annexure-IV.

4. The following are the features of the Kindle Devices:

(a) Screen size of 6"- 10" (depending upon model) with e-ink display screen;

(b) Weight: 5.98 – 18.9 Ounces (depending on model);

(c) 5-Way Controller and/or Touch Capability;

(d) Battery Life with wireless switched-off: 1 month or 2 months (depending on model)

(e) Storage: 2 GB/4GB on device to store about 1,400/3,000 books (depending on model)

(f) Text-to-Speech capability;

(g) In-Built Dictionary Function;

(h) Proprietary software specifically designed for e-books: Bookmarks and Annotation on the e-books; Personal documents service; Highlighting of passages; Sharing of meaningful passages via social networking sites such as Facebook, Twitter, etc.;

Lending books between users;

(i) Content Formats: Kindle (AZW), TXT, PDF, unprotected MOBI, PRC natively; HTML, DOC, DOCX, JPEG, GIF, PNG, BMP through conversion;

(j) Network connectivity is via Wi-Fi, WAN, 3G and network via USB 2.0;

(k) No voice or other data communication function is available. For example readers cannot make voice calls, or send messages over the wireless network. No other form of transmission of data is available other than downloading of e-books and those mentioned at S. No. (h) above;

(I) Experimental Web Browser via Wi-Fi connection only.

5. The main feature/function of the Kindle Devices is to allow reading of books/newspapers/magazines in electronic format. Accordingly, the operating system and proprietary software built into the Kindle Devices also have limited functions and much lower processing capabilities than personal computers. In other words, the Kindle Devices are not designed to perform computing functions. The Kindle Devices allow for viewing of different files but do not allow for easy creation of content. Therefore, the Kindle Devices are not comparable or substitutable for (sic) personal computers or tablets or other

hand-held computers. The readers purchase Kindle Devices primarily for reading books/newspapers/magazines in (sic) electronic form.

6. The Kindle Devices have limited communication functionality. The Kindle Devices connect to the internet via Wi-Fi or 3G mainly for the purpose of downloading the ebooks onto the device. The Kindle Devices contain an experimental web browser that is not designed for extensive internet browsing. The Kindle Devices do not have any voice or image communication built in. The users of the Kindle Devices pre-dominantly consume content that is present on the device and not content that is generally available on the internet.

7. The Kindle Device also contain an in-built dictionary function. At the time of reading ebooks, users can select a particular word on the page and an in-built dictionary displays the meaning of the word at the bottom of the page. The dictionary is stored on the device and there is no requirement to connect to the internet for accessing the dictionary. Therefore, the Kindle Devices contain an in-built dictionary."

12. The respondent had accepted in the application before the AAR that Kindle devices were primarily e-book readers, albeit also have inbuilt dictionary in the device, which the reader can use to understand meaning of the selected word. We would observe that no false or misleading representation regarding nature and use/function of the e book device was made. Nature and functions performed by a Kindle device are not under challenge and a matter of dispute before us.

13. Given the nature of dispute, we had called upon the petitioner to produce the original file under which the exemption notification was processed and issued. The respondent was also given liberty to file copy of the Information Technology Agreement as it was argued that the exemption Notification No. 25/2005-Cus dated 1st March, 2005 was issued pursuant to and in terms of the Information Technology Agreement to which India is a signatory.

14. Petitioners have not been able to produce the relevant file and stated that in-spite of efforts made the file is untraceable. However, the petitioner state that all signatory countries including India to the Ministerial declaration on Trade and Information Technology Products, Singapore dated 13th December, 1996 (ITA-1) were to eliminate customs duties

and other duties and charges of any kind, within the meaning of Article II: I(b) of the General Agreement of Tariff and Trade, 1994 with respect to the products annexed to the declaration. India being a signatory to the ITA-I was bound to classify and grant exemption to 217 items, including "Electrical machines with translation or dictionary functions", covered by the agreement on which nil basic customs duty was prescribed. The Notification No. 25/2005-Cus dated 1st March, 2005 was accordingly issued, exempting certain products from customs duty. The petitioner state that the subheading 8543 89 "others" would cover electrical machines and apparatus having individual functions not specified or included elsewhere in Chapter 85. The said entry was a residual entry, as was clear from the word “others”. The exemption or nil duty, vide the exemption notification was, however, prescribed and applicable to "electrical machines with specific translation or dictionary functions" only and not for all machines falling under the residual entry "others". Subsequently, there were changes to the Customs Tariff Act, 1975 with effect from 1st January, 2007, and tariff item 8543 89 was substituted by sub-heading 8543 70 and the residual entry of “others” 8543 89 (99) was substituted by tariff item 8543 70 99. Accordingly, Notification No. 25/2005-Cus was amended by Notification No. 133/2006-Cus dated 30th December 2006 w.e.f. 1st January, 2007 and the relevant tariff item 8543 89 (99) was substituted by tariff No. 8543 70 99. Consequently, the description of the exemption goods was also slightly changed and was recorded as “electrical machines with translation or dictionary functions”.

15. The petitioner reiterate that e-book readers were/are products/ items covered under the residuary tariff item "others", be it 8543 89 or 8543 70 99 that would attract basic customs duty of 12.5%, reduced to 7.5%. in January, 2007. However, vide the Budget of 2014, basic excise duty on e-readers was reduced from 7.5% to nil on general consideration as such and wishes of such readers. Subsequently, vide Budget of 2016-17 this exemption for e-readers was withdrawn and as a result e-readers were to attract basic customs duty of 7.5%. It is also the case of the petitioner that the products covered under the ITA-1 dated 13th December, 1996 to which India is signatory, would not cover modern information technology products.

16. We would note that for decision of the present case, we have to adjudicate and decide whether e-reading devices like "Amazon kindle devices" would fall within the ambit of "electrical machines with translation or dictionary functions" which were granted and allowed exemption. Suffice, for the present consideration and decision, is to notice the contention of

the petitioner that it is the primary or the main function and not ancillary or secondary function, which would entitle a product to claim exemption under the exemption notification covering "electrical machines with translation or dictionary function." The respondent contests the said submission, and rely on the word "with" with reference to dictionary function, to urge that no distinction could be drawn between primary and ancillary function.

17. Our research has shown that the issue of classification and exemption of ―e-reading devices for electronic books‖ under the Combined Nomenclature (CN, for short) Code 8543 70 10 ―electrical machines with translation and dictionary functions‖ on which no conventional rate of duty was payable was raised before the Court of Justice of European Union in the case of Amazon EU Sarl on reference made in terms of request made by Principal Customs Office, Hanover, Germany. Contention of the Customs Office, Germany was that the CN Code 8543 70 90 applicable to "others" on which conventional duty @ 3.7% was payable, would apply to "e-reading devices for electronic books". Decision of the Court of Justice of European Union dated 11th June, 2015 opines that "e-reading devices for electronic books" in addition to hardware and software for reading e-books have a speech output option and a programme for reproduction of audio formats. E-reading devices also have a dictionary function, which can be pre-installed with option to download and install additional dictionaries. European Court referred to Rule 3 of Part-I of sub-section A of the General Rules, titled "General Rules for interpretation of CN", which reads as under:-

> “3. When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:
>
> (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;”

The Court of Justice of the European Union while applying the said Rule and principle, also applied their earlier rulings that for the purpose of classifying a product it was necessary to take into account what the consumers would consider to be ancillary or principal function. It was held

that a product should be classified having regard to the principal function and not one of the ancillary functions. The Court of Justice of the European Union held that in the absence of the CN of sub-heading corresponding to the principal function of the product, electronic book readers would be classifiable under the residuary sub-head, i.e., “others” and not under the CN code “electrical machines with translation or dictionary functions”.

18. However, there is contra ruling by the United States International Trade Commission in the case of Thomson Multimedia, Inc. regarding the e-book reader RCA REB 1100 and 1200 Amazon, HQ 9647 79 dated 27th February, 2002, wherein the electronic e-book readers were classified under the sub-heading 8543.89.92 “electrical machines with translation or dictionary functions”. Referring to comparison with sub-heading 8543 89 96, i.e., “others”, which was described as the basket provision, it was observed that use of the word “with” in the sub-heading, 8543 89 92 indicates combination, accomplishment, presence or addition or omissions inclusive of all and, therefore, this sub-heading did not require that the dictionary should serve as the principal function of the electronic machines. Rather, the word “with” indicates mere presence of dictionary function, that was all that was required.

19. To grapple with "with" and explain the expression "electrical machines with translation or dictionary functions", we will strictly go by the words used in the exemption notification and give natural and normal meaning to the said words for there is no indication as to the object and purpose behind providing such exemption or concessions, except the obligation in terms of ITA-I. The first aspect to be noticed is that exemption has been granted to a limited category of items/products covered by the residuary entry "others" enlisted as CHA 8543 89/8543 7099 under Chapter V under the heading “electrical and electronic machinery and equipment”. The products covered under the residuary clause CHA 8543 89/8543 7099 are products not specified and included elsewhere in the chapter 8543 89 10 to 8543 89 95. In other words, what would be covered by the exemption notification are items or goods, which fall under the residuary clause and not any item which falls under a specific clause of the tariff items. The issue of classification of Kindle Devices under Tariff Item 8543 89/8543 7099 was raised before the AAR, but the said position has not been argued and contested before us. There is no dispute or debate that Kindle Devices fall under the residuary clause, i.e., “others” covered by item No. 8543 89/8543 7099.

20. However, the exemption granted vide exemption notification, relates to a category of “other” goods classified under Tariff Item 8543

89/8543 7099; namely, “electrical machines with translation or dictionary functions”. The exemption has not been granted to all products/items covered by the residuary clause 8543 89 / 8543 70 99. Therefore mere classification of the e-readers under CHA 8543 89/8543 7089 as "others", is not sufficient to claim benefit of exemption. The requirement and stipulation in the exemption notification under the heading “Description of Goods”, is restricted to "electrical machines with translation or dictionary functions". Translation or dictionary function, we would observe, qualifies the term “electrical machines” and two stipulations are connected and joined with word “with”. The word “with” has been interpreted below, but at this stage, it may be stated that translation or dictionary functions would not exist in “electrical machines”, until and unless they have ability to function as a translator or perform dictionary function. It is an accepted and admitted position that there were/are electrical/electronic machines pre-loaded with translation or dictionary software with the exclusive or primary function of translator or dictionary.

21. We now turn to the connecting word “with” and interpret the same. Dictionary meaning of the word “with” in *Webster’s Comprehensive Dictionary* is “in the company of; as a member or associate of”. The word "with" is also used, by means of or aid of, as is apparent when we use the word “with” in the sentence; to write "with" a pencil. Therefore, the word “with” can in the context mean, adding or having a material or quality or endowed with the particular character. In Oxford Advanced Learners Dictionary the word “with” has been defined as having or carrying, which in the present context would mean an electrical machine which carries, i.e., works and functions as a translator or has a dictionary function. The Dictionary also states that the word “with” may have reference to having possessing or showing a particular thing or quality or a feeling. The word “with” as per Words and Phrases, Permanent Edition, Volume 46 published by West Publishing Company, denotes or expresses some situation or relation of nearness, proximity, contiguity or association, connection or the like. It can be used to denote the accompaniment of a cause, means or instruments, etc.; sometimes equivalent to “by”. It is stated that the word “with” is frequently used in the same sense of “in addition to” i.e., word “with” has a dual meaning and may be defined to mean either inclusive of or by way of addition or supplement.

22. Referring and interpreting the word “with” with reference to the eligibility criteria in the recruitment rules on years of service, the Supreme Court in ***A.K. Raghumani Singh and Others versus Gopal Chandra Nath and Others***, (2000) 4 SCC 30 had observed and held:-

> "7. The word "with" has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means: "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and' — 'as well'."
>
> 8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years' experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word "subsequent" after the word "with".

In the said case, the Supreme Court had observed that use of the word "with" would depend on the context in which it is used. The word "with" could mean "accompanied by", as having an additional function, albeit frequently is used as to convey "and".

23. Reference on question of interpretation of exemption provisions can be made to ***Star Industries versus Commissioner of Customs (Import) Raigad,*** (2016) 2 SCC 362, which had quoted the following passage from ***Novapan India Limited versus CEC & Customs, Hyderabad*** 1994 Supp (3) SCC 606:-

> "16. We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals* [*Mangalore Chemicals and Fertilisers Ltd. v. CCT,* 1992 Supp (1) SCC 21] and in *Union of India v. Wood Papers Ltd.* [*Union of India v. Wood Papers Ltd.,* (1990) 4 SCC 256 : 1990 SCC (Tax) 422] , referred to therein— represents the correct view of law. *The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee—assuming that the said principle is good and sound— does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals [Mangalore Chemicals and Fertilisers Ltd. v. CCT, 1992 Supp (1) SCC 21] and other decisions viz. each such exception/exemption increases the tax burden on other members of the community correspondingly.* Once, of course, the provision is found applicable to him, full

effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. CCE and Customs [Hansraj Gordhandas v. CCE and Customs, AIR 1970 SC 755 : (1969) 2 SCR 253] , that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption."

24. In ***IVRCL Infrastructure and Projects Limited versus Commissioner of Customs,*** (2015) 13 SCC 198, it was observed that eligibility clause in relation to exemption notification is to be given strict meaning, thereby meaning that the notification is to be interpreted in terms of the language and once the assessee satisfies the eligibility clause, exemption clause therein has to be construed liberally. Thus, eligibility condition deserves strict construction although construction of a condition may be given a liberal meaning. ***G.P. Ceramics (P) Limited versus CTT***, (2009) 2 SCC 90, which refers to several earlier decisions, elucidating on interpretation of tax exemptions had observed that exemption given with a beneficent objective would be in public interest and for public purpose. Sometimes, the Courts take into consideration the object and purpose to clear an ambiguity and doubt and make exemption clause effective. Courts have taken a pragmatic and a practical view so as to avoid any anomaly or absurdity as was held in ***Union of India versus Ranbaxy Laboratories Limited and Others***, (2008) 7 SCC 502 and ***Oxford University Press versus Commissioner of Income Tax***, AIR 2001 SC 886. In ***Commissioner of Central Excise, Jaipur versus Mewar Bartan Nirmal Udyog***, (2010) 13 SCC 753, the Supreme Court observed that when a dichotomy is introduced by an exemption provision/clause, the same has to be interpreted in terms of its language.

25. In ***Hari Chand Shri Gopal*** (supra), Constitution Bench of the Supreme court had examined several earlier rulings, including decision in ***Collector of Central Excise, Jaipur versus J.K. Synthetics, 2000*** (120) ELT 54 (SC) and ***Novopan India Limited*** (supra) and had held as under:-

"29. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which

the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.

30. In *Novopan India Ltd.* [1994 Supp (3) SCC 606] this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. CCE and Customs* [AIR 1970 SC 755 : (1969) 2 SCR 253] held that (*Novopan India Ltd.* case [1994 Supp (3) SCC 606] , SCC p. 614, para 16)

> "16. … such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption."

31. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature. A distinction between the provisions of a statute which are of substantive 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. In *TISCO Ltd.* [(2005) 4 SCC 272] this Court held that the principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature."

26. Recent decision of the Supreme Court in ***Commissioner of Customs (Import), Mumbai versus M/s Dilip Kumar and Company and Others,*** Civil Appeal No. 3327/2007 dated 30th July, 2018 overrules the ratio in ***Sun Export Corporation, Bombay versus Collector of Customs, Bombay*** (1997) 6 SCC 564 and holds that there is a difference between three components of a taxing statute, namely, subject of tax; person liable to tax; and rate at which tax is to be levied. In the case of ambiguity of taxation provision relating to the subject matter of tax and the person liable to tax, the State has to prove the liability and in case of ambiguity, benefit would go to the assessee. One has to look merely at the words stated and there is no room for any intendment or presumption to bring the subject matter and the person to tax. However, the same principle would not apply in case of tax exemption, where and when in case of doubt the issue should be decided in favour of the Revenue. Here again, the Supreme Court referred to the decision in ***Hari Chand Shri Gopal*** (supra) to draw distinction between conditions which require strict compliance, the non-compliance of which would render the assessee ineligible for exemption and procedural provisions which require substantial compliance to be entitled for exemption. The two situations are different and while considering an exemption notification, this distinction cannot be ignored. To sum up, the Supreme Court in ***M/s Dilip Kumar and Company*** (supra) had observed:-

> "60. To sum up, we answer the reference holding as under-
>
> Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
>
> When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
>
> The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands over-ruled."

27. In the present case, the exemption notification was to allow import of "electrical machines with translation or dictionary functions" at nil rate of duty. In whatever manner we interpret the said words the interpretation should not be irrational and arbitrary. Chapter 85 deals with the electrical

machinery and equipment and parts thereof. The “electrical machine apparatus” are classified under tariff item heading 8543. These include electronic equipments like video special effect equipment, video typewriter, audio-visual stereo encoders, radio frequency power transformers, etc. It is undisputed and unchallenged, as stated above, that Kindle devices would fall under the basket or residuary heading 8543 89/8543 7099. Thus, the only issue is whether the said device is “with translation or dictionary functions”. The words "with translation or dictionary functions" have been used to restrict and keep the benefit of the exemption notification within bounds and not expand scope of exemption. Kindle device is an electronic device designed for use as an electronic book reader. As an electronic book reader, it has several e-books pre-installed in the device and other e-books can be downloaded. The product is developed and designed to function as an e-book reader and is sold and bought as a e-book reader and not as a translator or as a dictionary. The e-book reader has an inbuilt dictionary feature, which is a secondary or additional feature, useful for the reader. This secondary or additional feature would not make it and qualify the e-reading machine as an "electrical machine with translation or dictionary function". The word ‘with’ can have diverse and varied meaning depending upon the context in which it is used. A restricted meaning to the word “with” is in consonance with the judgments of the Supreme Court on strict construction of exemption notification. In the context of the present notification, we observe and hold that the words ‘translation’ and ‘dictionary’ functions qualifies the words “electrical machines’ with the mandate that translation or dictionary function should be the primary and relevant function of the said machine for which they are purchased and used. The exemption is restricted to machines which translate or perform dictionary functions and not to other machines that primarily perform some other function.

28. This is not a case where the exemption notification creates a dichotomy so as to attract a challenge under Article 14 of the Constitution. For legal purposes, classification of goods in the subheading of the heading is determined according to the items of those sub-headings and any related sub-heading notes. Exemption granted is in terms of the international obligation on signing ITA-1, which obligation is duly fulfilled when exemption was granted to devices with primary and relevant function to act as translator or dictionary. The electronic dictionary provided is pre-installed in the Kindle device. Downloading of additional dictionaries though not stated in the application before the AAR could be optional, as in case of several electronic devices. E-reading devices are designed, purchased and used for reading text and not as a dictionary or translator.

29. Considerable emphasis was laid by the respondent on the difference between the language and the use of the word 'with' in the exemption Notification No. 25/2005-Cus at Serial No. 26 'electrical machines with translation or dictionary functions' and with reference to other items wherein the word "for' and not "with" has been used. According to us, this would not make any difference when we apply the principles of law as expounded by the Constitution Bench of the Supreme Court in the case of ***M/s Dilip Kumar and Company*** (supra). As noticed above, the word "with" is equally capable of referring to the dominant or the main purpose and not the ancillary or the secondary function. For reasons stated in paragraphs 27 and 28 above, the restrictive interpretation would be appropriate and inconsonance with principles of interpretation applicable to tariff items. Broad and wide ambit propounded by the respondent unintelligibly articulates a rather far-fetched interpretation.

30. In other words, our conclusion is that the exemption notification would apply where the device is an electrical machine covered under tariff item No.8543 89/8543 7099, and its primary and basic function should be to translate or perform dictionary function. Primary function of kindle device is to enable the user to read e-books. It is an e-book reading device and not a translator, and is not procured or purchased to perform dictionary function. No one purchases a kindle device because it is a translator or device "with" a dictionary function. Ebook readers are purchased because a person wants to read e-books which are pre-loaded or can be downloaded from internet. Dictionary in a Kindle device enables the reader to make use of the dictionary while reading the e-book. E-book reader as such is not a dictionary or translator device. E-book readers would be appropriately classified in "others" as distinct from "electrical machines with translation and dictionary function".

31. We are conscious and aware that pronouncements or decisions by the AAR should not be interfered with as the scope of judicial review is narrow and limited. However, in the context of the present case and after referring to the reasoning given by the AAR, we feel that the language of the notification under the heading 'description of goods' i.e. "electrical machines with translation or dictionary functions" has been erroneously rejected, holding that the dictionary and translation function may not be the main feature of the electrical machine. There has been failure to consider the legal ratio which mandates strict interpretation of exemption notification and also the legal position that the word 'with' is a chameleon which changes colour in the context in which it is used. The word "with" need not have a static and have a universal interpretation and the construction put forward by the Revenue was creditable and worthy of acceptance.

The interpretation by the AAR would falter when we apply the ratio in ***Hari Chand Shri Gopal*** (supra) and ***M/s Dilip Kumar and Company*** (supra) in the context of the present exemption notification. Accordingly, the writ petition is to be allowed holding that Kindle devices are not covered under the exemption notification as they were/are not "electrical machines with translation or dictionary functions".

32. The last issue, which arises for consideration, is whether our judgment should be made applicable with effect from the date on which the writ petition was filed or should have retrospective effect i.e. from the date of filing of the application by the Respondent before the AAR. Judgment and decisions by the Courts interpret and declare the law as it exists and they do not create and enact any new law. In this sense, judgments of the Courts would be always retrospective, unless for special reasons, the judgment is given prospective effect [see ***Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Limited***, (2008) 14 SCC 171]. In the context of the present case, we would notice that there has been considerable delay and laches on the part of the Union of India in challenging the order of the AAR dated 15th May, 2015, as the present writ petition was filed only on 11th May, 2017. The order dated 15th May, 2015 had its consequences. The respondent could have verily believed that the government had accepted the order. As noticed above, e-book readers were granted specific exemption from basic excise duty vide Budget of 2014, but subsequently by Budget of 2016-17 the exemption was withdrawn with the e-readers attracting basic customs duty of 7.5%. The respondent had filed their application before the AAR on 8th June, 2012 and the pronouncement was by way of order the dated 15th May, 2015, when the e-book readers were themselves not attracting any basic customs duty. Given the aforesaid facts and background, we direct that the respondent would not be entitled to benefit of exemption notification on e-book readers till 15th May, 2015 for this was a risk which the respondent had knowingly taken. Possibly they would have passed on the burden of the basic customs duty on the consumers as decision of the AAR was pronounced on 15th May, 2015. E-book readers were granted specific exemption vide Budget of 2014 which was withdrawn by the Budget of 2016-17. This benefit/exemption would obviously apply. We would, in view of the delay and laches on the part of the petitioner in approaching the Court, hold that the respondent would not be liable to pay basic customs duty re-introduced by the Budget of 2016-17 for the period post-Budget 2016-17 till the filing of the present writ petition on 11th May, 2017.

33. Accordingly, the present writ petition is allowed setting aside and quashing the Order No. AAR/CUS/01/2015 dated 15th May, 2015 passed

by the AAR i.e. Authority of Advance Ruling, but we grant partial relief to the respondent by holding that the petitioner would not be entitled to recover basic customs duty for the period between 15th May, 2015 till 11th May, 2017, i.e., the date on which the impugned order was passed and till the present writ petition was filed. In the facts of the case, there would be no order as to costs.

[2018] 56 DSTC 347 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Ravindra Bhat Hon'ble Mr. Justice A.K.Chawla]

WP(C) 4952/17

E.I. Dupont India Private Limited ... Petitioner

Vs.

Commissioner, Vat, Delhi & Anr. ... Respondents

Date of Judgment: 13.09.2018

PROVISION OF REVISE RETURN U/S 28 OF DVAT ACT, 2004 - INTERPRETATION OF TIME PERIOD FOR CORRECTION OF ERRORS IN REVISE RETURN AND PENALTY PROVISION U/S 86(9)(C) OF THE ACT – DETAILS FOR INWARD BRANCH TRANSFER AGAINST "F" FORMS NOT FILED CORRECTLY IN 2A ANNEXURE OF DVAT 16 – "F" FORMS COULD NOT BE DOWNLOADED – PERMISSION WAS SOUGHT TO FILE REVISE RETURN – PERMISSION WAS DENIED DUE TO TIME LIMIT PRESCRIBED IN SECTION 28 HAD LAPSED – WHETHER CORRECT. HELD NO.

RESPONDENTS DID NOT CONTEST THE GENUINENESS OF THE TRANSACTIONS – PETITIONER DISTINGUISHED THE INGRAM MICRO PVT. LTD. CASE – SECTION 86(9)(C) SUGGESTED IF SOME PARTICULARS NOT SHOWN IN THE RETURN THE TAX PAYER WAS LIABLE BY WAY OF PENALTY OF RS. 200/- PER DAY FROM THE DATE OF FAILING DUE UNTIL THE FAILURE IS RECTIFIED – DIRECTIONS ISSUED TO ISSUE FORM AND LIBERTY WAS ALSO GIVEN TO RESPONDENT TO ASK TO FILE INDEMNITY BOND IF RESPONDENTS REQUIRED.

Facts

The Petitioner made genuine inter-state inward branch transfer for the period of A.Y. 2012-13 against "F" Forms for Rs. 1.79 Crores. The Petitioner dealer in correctly reflected in 2A filed online with DVAT return for June, 2012 in DVAT 16. The petitioner sought permission to rectify the error but he was not allowed due to the basis of time prescribed to file revised return. The petitioner filed Writ Petition before Delhi High Court.

Held

What was set up as a bar to the relief was that the time period prescribed in Section 28 has elapsed. Section 86(9)(c) facially suggested that if some particulars which should have been disclosed in the return were not disclosed, the tax payer was liable by way of penalty Rs. 200 per day from the date falling the due date until the failure was rectified. The respondent's argument that Ingram Micro India Pvt. Ltd. dealt with C-Forms whereas the claim today was in respect of F-Forms, in the opinion of the Court was without merit. Undoubtedly, while F-Forms related to the stock available with the dealer, which the petitioner did not dispute was in its knowledge, nevertheless in argument, it was not disputed that the transactions claimed for which examination was sought were not genuine. No doubt, the petitioner might have been aware but its case was that the incorrect particulars were reflected in the final return filed. Keeping these broad similarities in mind, the Court was of the opinion that the petitioner was entitled to relief of the kind that Ingram Micro India Pvt. Ltd. provided to the tax payers in the judgment.

The respondent was directed to issue the concerned F-Forms pertaining to the transactions undertaken by the petitioner in the concerned quarter of Financial Year 2012-13 within four weeks from today. In case the respondents wish to secure an indemnity bond from the petitioner in this regard, a letter or communication should be addressed to the petitioner within two weeks. Subject to these, the F-Forms shall be released within the time spelt out. It was made clear that these directions were subject to the final decision of the Supreme Court in Ingram Micro Pvt. Ltd. and the other pending appeals.

For Petitioner	:	Mr Ashok K.Bhardwaj and Mr Manish Kumar Hirani, Advocates.
For Respondents	:	Mr Satyakam, Standing Counsel.

JUDGEMENT

S.Ravindra Bhat, J.

1. In this writ petition, a direction to quash the letter/order issued by the second respondent i.e. the Assistant Commissioner, Department of Trade and Taxes (hereafter referred to as "DVAT Authority") is sought. A further direction to the respondents to grant permission for the revision of returns for the tax period 2012-13, is also claimed.

2. The petitioner states that it had made genuine inter-state inward branch transfers for the period 2012-13 against F-Form. These transfers amounted to ₹1.79 crores but were incorrectly reflected in Annexure 2A filed online with the return for June, 2012 and in Column F11.1.3 of Form DVAT 16. Section 28 of the Delhi Value Added Tax Act, 2004 (hereafter as "*DVAT Act*") prescribes a time limit for furnishing revised returns i.e. one year from the date end of the Financial Year to which the transactions pertain. The procedure for obtaining F-Forms under the DVAT Act, is through a website which is automated. The details are in terms of Annexure 2A filed online. If inward transfers details are missing in the Annexure 2A filed online, the corresponding F-Forms for the said inwards transfers cannot be generated. Upon realizing this problem, the petitioner approached the respondent-DVAT authorities on 26.05.2016 to permit it to revise the returns and include the omitted transfers which could enable it to download the F-Forms. This was based on its understanding of the DVAT provisions which conferred the Assessing Officer with discretionary powers under Section 33 read with Section 86(9)(c) of the DVAT Act to impose penalty for failure to furnish the revised returns, by the due date.

3. Much later on 23.05.2017, the petitioners request was rejected on the ground that the time period for filing the revised returns under Section 28 of the DVAT Act had elapsed. The petitioner contends that the revision sought does not cause any prejudice to the revenue and that its inability to file the revised returns in time was not on account of any deliberate omission but it was because of the very nature of the online facility portal**,** which automatically reflects in Form F, the inaccurate particulars provided in the corresponding Annexure to the DVAT Forms. It is submitted that the default or omission in not providing the correct or accurate details is not so glaring or absolute that it cannot be condoned in the exercise of discretionary powers to impose a penalty under Section 86(9)(c) of the DVAT Act. The petitioner relies upon Section 28 and 86(9) for this purpose.

4. The petitioner relies upon the judgment of this Court dated 01.02.2016 in *Ingram Micro India Pvt. Ltd. v. Commissioner, Department of Trade and Taxes* (2016) 89 VST 312(Delhi). It is submitted that in that case undoubtedly, the Court was not dealing with C-Forms but, with respect to delay in the claiming of correct credit or concession and the inconsequential nature of the relief on the part of the department, it was held that the request for issuance of form had to be given.

5. The Government of NCT resists the petition stating that the decision in *Ingram Micro Pvt. Ltd*. (supra) pending consideration before the Supreme Court which has granted special leave to appeal against it.

It is stated that Section 26 of the DVAT Act requires a dealer to pay tax under the Act and furnish returns in the prescribed form. Furthermore, Rule 5(iv) read with Rule 8(ii) of the Central Sales Tax (Delhi) Rules, empowers the VAT Department to withhold issuance of F-Form to dealers in the case of concealment of purchase particulars or for furnishing inadequate particulars. It is stated that the right of a dealer in respect of purchased goods to not pay tax or without furnishing a prescribed declaration is not a vested right but is conditional upon fulfillment of all the requirements spelt out by the Statute. In this case, since the petitioner did not fulfill the conditions, the question of granting it the F-Forms, after a time prescribed for revision of the returns, cannot be granted.

6. Learned counsel also distinguished that the judgment in *Ingram Micro Pvt. Ltd.* (supra) stating that in that case the dealer sought issuance of C-Forms whereas in the present case F-Forms have been sought which are for providing information of transfer of stocks – a fact always within the knowledge of a dealer. It is also pointed that while whereas purchase amounts were included in the original returns they were reflected in the revised returns in *Ingram Micro Pvt. Ltd.* (supra) which is not the case in the present instance. It is also stated that the petitioner has not shown any material to substantiate its averment that selling dealers, had sought declarations in the statutory form.

7. Sections 28 and 86 of the DVAT Act, reads as follows:

*"**28 Correction of deficiencies***

Rule: 29	*Forms:16, 17*

[If a person discovers a discrepancy in a return furnished by him for a tax period under this Act, he shall remove such discrepancy and furnish a revised return within the year following the year of such tax period:

PROVIDED that if, as a result of the discrepancy, the person has paid less tax than was due under this Act, he shall, pay the tax owed and interest thereon:

PROVIDED FURTHER that for the years 2008-09, 2009-10 and 2010-11, except for those returns pertaining to any tax period of 2010-11, which were scheduled to be furnished in the year 2011-12, the revised return shall be required to be furnished by 31st December, 2012.]

86 Penalties

Rule: Nil	*Form: Nil*

[(1) In this section “tax deficiency” means the difference between the tax properly payable by the person in accordance with the provisions of this Act and the amount of tax paid by the person in respect of a calendar month.

Explanations-1 - ‘Tax properly payable’ includes the amount of tax assessed under section 32 of the „Act‟.

2. Due tax paid after the period specified in sub-section

(4) of section 3 of the Act, is also a tax deficiency.]

(2) The Government may, from time to time, if it deems it necessary, vary the amount of any penalty due under this section by a notification to that effect in the official Gazette:

PROVIDED that any penalty which is increased under this section shall have effect only for offences or failures occurring after the date of such notification;

(3) Where two or more penalties arise under this Act in respect of the same conduct of a person, the person shall be liable to pay only the greater penalty.

(4) Where a person who is required to be registered under this Act has failed to apply for registration within one month from the day on which the requirement arose, the person shall be liable to pay, by way of penalty, an amount equal to one thousand rupees per day from the day immediately following the expiry of the said period until the person makes an application for registration in the prescribed form, containing such particulars and information and accompanied by such fee, security and other documents as may be prescribed:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed one lakh rupees.]

(5) If, a registered dealer fails to comply with the provisions of sub-section (1) of section 21 of this Act, the person shall be liable to

pay, by way of penalty, a sum of 1 [five] hundred rupees per day of default subject to a maximum of 2 [ten] thousand rupees.

(6) If a registered dealer –

(a) fails to comply with the provisions of sub-section (2) of section 22 of this Act; or

(b) fails to surrender his certificate of registration as provided in sub-section (7) of section 22 of this Act;

the registered dealer shall be liable to pay, by way of penalty, a sum equal to one 3 [thousand] rupees for every day of default subject to a maximum of 4 [twenty five] thousand rupees.

(7) If any person falsely represents that he is registered as a dealer under this Act, he shall be liable to a penalty equal to the amount of tax wrongly collected or one lakh rupees, whichever is the greater.

(9) If a person required to furnish a return under Chapter V or to comply with a requirement in a notification issued under section 70 of this Act –

(a) fails to furnish any return by the due date; or

(b) fails to furnish with a return any other document that is required to be furnished with the return; or

(c) being required to revise a return already furnished, fails to furnish the revised return by the due date; or

(d) fails to comply with a requirement in a notification issued under section 70; the person shall be liable to pay, by way of penalty, a sum of five hundred rupees per day from the day immediately following the due date until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed fifty thousand rupees.] …."

8. In *Ingram micro India Pvt. Ltd.*, this Court stated as follows:

"19. Turning to the facts of the present case it is not the stand of the Respondents that the inter-state purchase transactions in respect

of which the C-Forms are being asked for by the Petitioner are not genuine. As far as the furnishing of bank statements is concerned, it is stated that the Petitioner has by a letter dated 10th July 2015 furnished the said documents. As regards the apprehension expressed by Mr. Ghose that this would open a pandora"s box and make it difficult for proper administration of collection of taxes by the Respondents, it is trite that each such request for issuance of C-Forms would have to be individually examined on a case to case basis. It is incumbent on the authority while examining such request in light of Rule 5(4) of the CST Delhi Rules to satisfy himself whether any of the grounds spelt out therein is actually attracted. In the present case there is a valid explanation offered regarding the mistake made by it in not including the aforementioned inter-state purchases in the revised returns filed. Also, the authorities appear to be satisfied that these are genuine inter-state purchase transactions with no adverse impact on the revenue of the State. Thirdly, the authority is not precluded from issuing the C-Forms subject to any condition, like the furnishing of an indemnity bond by the dealer. Indeed the Petitioner enclosed such an indemnity bond with its letter dated 10th June 2015.

20. For the aforementioned reasons, the Court holds that this was not a case where the Respondent No. 2 was justified in declining to issue C-Forms to the Petitioner. Consequently, the impugned order dated 12th June 2015 issued by Respondent No. 2 is hereby set aside and a direction is issued to the Respondent No. 2 to issue to the Petitioner a C-Form pertaining to the aforementioned inter-state purchase transactions undertaken by it in the third and fourth quarter of FY 2010-11 within a period of three weeks from today.

21. If the Respondents desire an indemnity bond to be furnished by the Petitioner in any other format, they will communicate such requirement to the Petitioner not later than two weeks from today and proceed to issue the aforementioned C-Form not later than three weeks from today subject to the Petitioner furnishing such indemnity bond in revised format."

9. In the present case, to what the respondents are not per se contesting the genuineness of the transactions which the petitioner claims to have actually entered into. What is set up as a bar to the relief is that the time period prescribed in Section 28 has elapsed. Section 86(9)(c) facially suggests that if some particulars which should have been disclosed in the return are not disclosed, the tax payer is liable by way

of penalty `200 per day from the date falling the due date until the failure is rectified. The respondent's argument that *Ingram Micro India Pvt. Ltd.* dealt with C-Forms whereas the claim today is in respect of F-Forms, in the opinion of this Court is without merit. Undoubtedly, while F-Forms relate to the stock available with the dealer, which the petitioner does not dispute was in its knowledge, nevertheless in argument, it is not disputed that the transactions claimed for which examination is sought are not genuine. No doubt, the petitioner might have been aware but its case is that the incorrect particulars were reflected in the final return files. Keeping these broad similarities in mind, this Court is of the opinion that the petitioner is entitled to relief of the kind that *Ingram Micro India Pvt. Ltd.* provided to the tax payers in the judgment.

10. For the above reasons, the respondent is directed to issue the concerned F-Forms pertaining to the transactions undertaken by the petitioner in the concerned quarter of Financial Year 2012-13 within four weeks from today. In case the respondents wish to secure an indemnity bond from the petitioner in this regard, a letter or communication should be addressed to the petitioner within two weeks. Subject to these, the F-Forms shall be released within the time spelt out. It is made clear that these directions are subject to the final decision of the Supreme Court in *Ingram Micro Pvt. Ltd.* (supra) and the other pending appeals.

11. The writ petition is allowed in the above terms. Order dasti.

[2018] 56 DSTC 354 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Ravindra Bhat Hon'ble Mr. Justice A. K. Chawla]

W.P.(C) 3118/2018

MRF LTD. ... Petitioner

Vs.

The Commissioner Of Trade And Taxes & Anr. ... Respondents

Date of decision: 10.08.2018

PRE-DEPOSIT BEFORE APPELLATE AUTHORITY TO ENTERTAIN THE APPEAL – APPEAL PARTLY ALLOWED – REFUND AND INTEREST APPLIED – REFUND GRANTED WITHOUT ANY INTEREST – WRIT PETITION FILED – RESPONDENT ARGUED THAT THE INTEREST AMOUNT WOULD BE DUE ONLY FROM THE DATE

OF FILING ST – 21 AS PER PROVISION OF SECTION 30(4) OF THE DELHI SALES TAX ACT, 1975 – WHETHER CORRECT, HELD NO.

FILING OF ST – 21 WHICH WAS PURELY FOR THE PURPOSE OF ADMINISTRATIVE CONVENIENCE AND COULD NOT BE IN ANY MANNER FIX THE PERIOD OF LIMITATION. PRE-DEPOSIT SUMS DID NOT BEAR THE STAMP OR CHARACTER OF TAX. PETITION ALLOWED INTEREST TO BE CALCULATED FROM THE DATE WHEN ITS APPEAL WAS ALLOWED.

Facts

Petitioner made payment for entertainment of appeal before appellate authority. The appeal allowed – Petitioner sought refund plus interest. The refund of Principal amount was granted but without interest. Writ Petition filed.

Held

That pre-deposit sums which the petitioner was compelled to pay to seek recourse to an appellate remedy, did not necessarily bear the stamp or character of tax, especially when it succeeded on the particular plea. That being the case, the insistence upon a procedural step, i.e. filing of a form which was purely for the purpose of administrative convenience could not in any manner fix the period or periods of limitation when the amounts became due on the question of interest. The fact that the amounts were due and payable from the date the appeal was allowed was not in dispute. In these circumstances, the postponement of the period from when interest became calculable was incomprehensive and illogical. For these reasons the petitioner was entitled to interest calculable from the date when its appeal was allowed.

For Petitioner	:	Sh. Tarun Gulati, Sh. Shashi Mathews, Sh. Vasu Nigam, Ms. Rachana Yadav and Sh. Abeer Kumar, for petitioner, in Item Nos. 4 and 5.
For Respondents	:	Sh. Satyakam, Advocate

ORDER

S. Ravindra Bhat, J.

1. The facts are not in dispute. The petitioner succeeded partly in an appeal, which resulted in its claim for exclusion of certain amounts in its taxable turnover. Its appeal was allowed by a detailed judgment and order

of this Court on 14.05.2015 - *MRF v. Commissioner of T&T* (Sales Tax Appeal Nos. 1 & 2/2015, decided on 14.05.2015). The relevant extract of that decision accepting the petitioner's plea is as follows:

> "33. On facts, the Revenue does not refute that in the scheme of turnover discount applied by the assessee here each of its dealers would be entitled to 1% rebate in the sale price irrespective of any particular sales target. It makes no difference, as held in the case of Madras Rubber Factory Ltd. (supra), that the discount was calculated at quarterly basis and accorded through "credit notes". The credit notes, issued pursuant to the understanding indicated in the sale invoices declaring upfront the entitlement of the purchaser for such trade discount, would get effectuated by suitable adjustment in the payment of the sales price collected in their wake. The net effect apparently has been of the price being correspondingly varied, the amount received or receivable, thus, not being inclusive of the discount allowed.
>
> 34. The Tribunal having failed to comprehend the law laid down in Advani Oerlikon (supra), fell into error, because it proceeded on the wrong premise that the assessee had been in receipt of the sale price equivalent to the catalogue price from which it would subsequently allow reimbursement on the basis of turnover. Since the said assumption is factually incorrect and the turnover discount occurred "apart from and outside" the calculation of the sale price, rather "prior to it", as in the case of Advani Oerlikon (supra), no question arises for deduction of any trade discount from the sale price.
>
> 35. In our view, thus, the turnover for the assessment years in question was correctly computed by the appellant herein after deducting the turnover discount granted to its dealers and rightly so declared in the returns. The assessing authorities have unjustly denied the benefit of deduction on such account. The first question of law, noted in para 2 noted above is, therefore, answered in the affirmative in favour of the assessee."

2. In this background, the petitioner complains that despite its success, so to say, in the appeal, while accepting the refund plea, the respondent GST authorities did not permit any interest. Relying on the judgment of the Bombay High Court in *Suvidhe Ltd. v. UOI* 1996 (82) ELT 177 (Bom), which was confirmed by the Supreme Court in Civil Appeal proceedings reported as *Union of India v. Suvidhe Ltd.* 1997 94 ELT A 159 (SC), and the later

judgment of the Karnataka High Court in *Nestle India Limited v. Assistant Commissioner of Central Excise* 2003 (154) ELT 567. It was submitted that the amounts paid during the interregnum period, i.e. rejection of the turnover discount claimed by the original assessment order resulting in predeposit of the amounts before the appellate authority did not amount to payment of tax as it did not bear such character. It is emphasized that the refund ought to have carried interest. Learned counsel relied upon a 2017 vintage judgment of the Karnataka High Court [*M/s. W.S. Retail Services v. State of Karnataka* W.P.(C) 33176/2017 and connected cases, decided on 14.11.2017].

3. Learned counsel for the Revenue contends that the local sales tax authorities' decision not to grant interest on refund amount is justified because the provision of Section 30 of the Delhi Sales Tax Act, 1975 requires that the assessee who wishes to claim refund of tax paid should approach the authority in a particular manner (by filing form ST 21). It is submitted that the interest amounts would be due only from the time that procedure was followed and not before and that interest would be permissible only in accordance with that provision, i.e. Section 30(4) in the event the 90 days elapse. In this case, the judgment of the Court was delivered on 14.05.2015 and the petitioner approached the Sales Tax Department on 22.07.2015 and 20.11.2015. The Delhi Sales Tax authority's appeal by way of special leave before the Supreme Court was disposed of on 28.11.2016. In this background, the Revenue's burden of the song as it were is that since the 21 form was only filed on 25.05.2018 (as without prejudice measure) by virtue of this Court's order dated 09.05.2018, the interest on the refund can be granted having regard to the express provisions of Section 30 of Delhi Sales Tax Act with reference to the date concerned, i.e. 25.05.2018. The Revenue's contention, in this Court's opinion, is untenable. The judgment in *Suvidhe* (supra) emphasized – although in the context of Section 11B (of the Central Excise Act) where the assessee had to approach and make a pre-deposit to the appellate authority- that such deposit sums would not amount to depositing or paying excise duty but rather to avail remedy of an appeal. The Bombay High Court observed as follows in *Suvidhe Ltd. v. UOI* 1996 (82) ELT 177 (Bom):

> 1. Rule. By consent rule is made returnable forthwith. Heard parties.
>
> 2. Show cause notice issued by the Superintendent (Tech.) Central Excise to the petitioner to show cause why the refund claim for Excise Duty and Redemption fine paid in a sum of Rs. 14,07,410/- should be denied under Section 11B of the Central Excise Rules and

Act, 1944 (sic) is impugned in the present petition. The aforesaid amount is deposited by the Petitioners not towards Excise Duty but by way of deposit under Section 35F for availing the remedy of an appeal. Appeal of the petitioners has been allowed by the Appellate Tribunal by its Judgment and order passed on 30th of November, 1993 with consequential relief. Petitioners' prayer for refund of the amount deposited under Section 35F has not received a favourable response. On the contrary the impugned show cause notice is issued why the amount deposited should not be forfeited. In our judgment, the claim raised by the Department in the show cause notice is thoroughly dishonest and baseless. In respect of a deposit made under Section 35F, provisions of Section 11B can never be applicable. A deposit under Section 35F is not a payment of Duty but only a pre-deposit for availing the right of appeal. Such amount is bound to be refunded when the appeal is allowed with consequential relief.

3. In respect of such a deposit the doctrine of unjust enrichment will be inapplicable. In the circumstances, the petition succeeds. The impugned show cause notice, which is annexed at Exhibit-F to the petition, is quashed and the respondents are directed to forthwith refund the aforesaid amount of Rs. 14,07,410/- along with interest thereon at the rate of 15% p. a. from the date of the order of the Appellate Tribunal i.e. from 30th November, 1993 till payment.

4. Rule is made absolute in the aforestated terms. Respondents will pay the petitioners the cost of the petition."

4. The Supreme Court endorsed the view of the Bombay High Court. In Nestle India Limited (supra), the Karnataka High Court following the same thread of reasoning, held that the pre-deposit amount was not towards tax but rather to avail the remedy of an appeal. The subsequent judgment in W.S. Retail(supra)was rendered especially in the context of the provisions of the Karnataka VAT Act and other enactments. It relied upon the logic in Suvidhe (supra) and Nestle (supra) and stated as follows:

"42. To the same effect, the Division Bench of the Delhi High Court in Voltas Limited v. Union of India [1999 (112) ELT 34 (Delhi)], also held that the pre-deposit under Section 35F of the Act is a deposit pending appeal and it is not available for appropriation or disbursal by the Revenue Department.

Paragraph-7 of the said judgment is also quoted below for ready reference:-

"7. It cannot be denied that the demand against the petitioner was raised consequent to the order of adjudication. Section 35F of the Act under which the petitioner was required to deposit the amount of ` 50 lakhs speaks of „deposit pending appeal." It is clear that the amount so deposited remains a deposit pending appeal and is thereafter available for appropriation or disbursal consistently with the final order maintaining or setting aside the order of adjudication."

43. The learned Single Judge of the Kerala High Court in M/s. Alwaye Sugar Agency v. Commercial Tax Officer, Alwaye and Others 2011 (42) VST 517 also dealt with a similar controversy as is involved in the present case and under the provision of „Amnesty Scheme" announced in Kerala in the Budget Speech of 2010,the learned Single Judge directed that a sum of ` 75,000/- deposited by the petitioner-assessee under the said Scheme, cannot be adjusted against the interest portion under Section 55C of the Act, which is also akin to Section 42(6) in KVAT Act and the Court allowed the Writ Petition with the following observations:-

"More so since, once the Scheme is announced and specified to be commenced from the 1st day of the relevant financial year, for a specified period, it may not be proper for the State/ Department to augment the revenue collection by resorting to coercive steps before the defaulters get an opportunity to apply for and obtain the benefit of the Scheme, which otherwise can only defeat or frustrate the Scheme itself and in turn, the „Policy" of the Government. In the above circumstances, this Court finds that the course pursued by the respondents; issuing Ext. PA rejecting Ext. P2 preferred by the petitioner seeking the amount deposited as a token of willingness to clear the liability availing the benefit of the Scheme proposed in Ext. PI and consciously appropriating the said amount against 'interest' portion under the cover of Section 55C, is not correct or sustainable. Accordingly, Ext.P4 is set aside. The respondents are directed to pass fresh orders quantifying the liability of the petitioner, in the application preferred for extending the benefit under the "Amnesty Scheme", giving credit to a sum of ` 75,000/- paid by him vide Ext. P2, as payment towards a portion of the liability under the scheme, and effect appropriation, in tune with the terms of the Scheme."

5. It is clear from the above discussion that pre-deposit sums which the assessee is compelled to pay to seek recourse to an appellate remedy,

do not necessarily bear the stamp or character of tax, especially when it succeeds on the particular plea. That being the case, the insistence upon a procedural step, i.e. filing of a form which is purely for the purpose of administrative convenience cannot in any manner fix the period or periods of limitation when the amounts became due on the question of interest. The fact that the amounts were due and payable from the date the appeal was allowed is not in dispute. In these circumstances, the postponement of the period from when interest became calculable is incomprehensive and illogical. For these reasons the petitioner is entitled to interest calculable from the date when its appeal was allowed by this Court by order dated 14.05.2015. The respondents shall ensure that the amounts are processed and credited to the petitioner's account within four weeks. The petition is allowed in these terms.

[2018] 56 DSTC 361 – (Delhi)

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

Appeal Nos.127-128/ATVAT/14-15

M/s. Ruchika Service Station,
New Kondli, Mayur Vihar, Phase-II
Delhi-110 096 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date : 27.11.2015

EVAPORATION LOSS IN HANDLING OF PETROL AND DIESEL DUE TO NATURAL PROCESS – REVENUE APPLIED RULE 7(3) OF DELHI VALUE ADDED TAX RULES, 2005 – ITC DISALLOWED ON VAPORATED QUANTITY – NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST AND NOTICE OF ASSESSMENT OF PENALTY ISSUED – OHA UPHELD THE ORDER OF VATO (AUDIT) – WHETHER CORRECT; HELD NO – LOSSES DUE TO EVAPORATION WERE NATURAL AND INEVITABLE BECAUSE IT WAS THE CHEMICAL QUALITY OF PETROL AND DIESEL THAT CERTAIN QUANTITY OF PETROL AND DIESEL WAS LOST DUE TO EVAPORATION WHILE LEFT IN OPEN – APPEAL ALLOWED AND DIRECTIONS ISSUED TO MAKE FRESH ASSESSMENT AND TO VERIFY WHETHER ITC, WHICH WAS CLAIMED ON LOSSES DUE TO EVAPORATION WERE REASONABLE AND AS PER NORMS SET BY OIL COMPANIES.

Facts

The appellant was registered under the DVAT Act as well as under the Central Sales Tax Act (in short CST Act) vide Registration No.07510171154. The petitioner was running a petrol pump having IOC dealership. The petitioner filed monthly returns according to the provisions of the DVAT Act. That the petitioner filed return for the tax period 01.03.2012 to 31.03.2012 on 25.04.2012. The petitioner dealer was dealing in petrol, diesel etc. which were liquids and had tendency of evaporation due to natural process. The stock register of the appellant for the year 2011-12 had shown that there had been evaporation loss of 45692 litres of petrol and 16018 litres of diesel. The prices of petroleum products are administered by the Ministry of Petroleum. That the petrol dealer had no control over the price at which petrol was purchased from the refinery and the price at which it was to be sold to customers as both purchase and sale prices are fixed by the Ministry of Petroleum, Govt. of India. That formula for computing prices of petrol and diesel was formulated in such a way that it covered loss due to

evaporation, hence VAT was charged even on evaporation loss. In this way VAT was duly and fully paid by the petitioner dealer even on evaporation loss as it was included within administered price, as determined from time to time by the Ministry of Petroleum. That benchmark set for this by oil marketing companies as considered in price loss, is 0.6% in petrol and 0.2% in diesel. That evaporation loss claimed by the dealer was well within the norms thus laid down.

That petitioner received notice of audit of business affairs of the firm dated 11.06.2013 and detailed audit culminating with the assessment order dated 27.12.2013 was conducted. The petitioner submitted all the documents asked for by the audit team.

That the petitioner received notice of default assessment of tax and interest u/s 32 of the DVAT Act and for the tax period of March 2012. The details of demand created as per notice of default assessment of tax and interest are as under:

Tax Period	Tax	Interest	Total Demand
March, 2012	5,53,629/-	1,38,331/-	6,91,960/-

That Input Tax Credit on evaporation loss of 45692 litres of petrol (value computed by Assessing Authority in his order at Rs.24,39,741/-) and 16018 litres of diesel (value computed by Assessing Authority in his order at Rs.5,25,446/-) had been reduced by the VATO (Audit) and hence default assessment u/s 32 of the DVAT Act had been framed by the VATO by applying additional tax of 20% on petrol Rs.24,39,741/- and 12.5% on diesel Rs.5,25,446/-. The VATO Audit had not only created demand for tax and interest but also imposed penalty for the above mentioned period u/s 86 (12) of the DVAT Act for Rs.4,76,096/-. That during the course of audit proceedings VATO (Audit) never asked the dealer as to why Input Tax Credit on evaporation loss had not been reduced by the dealer u/s 9(1) of the DVAT Act or Rule 7(3) of the DVAT Rules, 2005.

Aggrieved by the order of VATO of default assessment of tax u/s 32 and penalty u/s 33 of the DVAT Act, appellant preferred objections u/s 74 of the DVAT Act before the OHA, who vide impugned order dated 20.05.2014, rejected the objections hence these appeals had been filed.

Held

It was clear from the facts of the case that nature of the commodity which was being sold by the appellant was such that losses due to

evaporation were natural and inevitable because it was the chemical quality of petrol and diesel that certain quantity of diesel and petrol was lost due to evaporation while left in open. The only question which was to be decided was whether the quantity which was reduced by the appellant in his account books was as per the criteria and within parameters set by the oil companies in this regard. According to the appellant while making purchases of these commodities he made payment of that quantity also, which was supposed to evaporate during the course of business. Appellant was entitled to the benefit of Input Tax Credit on that quantity also which was lost due to evaporation.

The appellant had also assailed the impugned order dated 20.05.2014 passed by the OHA on the ground that VATO reduced ITC on evaporation of petrol & diesel for the whole year 2011-2012, in addition to month of March, 2012 for which default assessment of tax & interest u/s 32 and penalty u/s 33 of the DVAT Act had been issued. The order of the OHA dated 20.05.2014 which affirmed the orders of VATO dated 27.12.2013 was also liable to be set aside, because excess ITC was disallowed to the appellant vide impugned orders.

The VATO's order which had been affirmed by OHA has been assailed on this ground also that while framing default assessment, ITC was disallowed on estimated basis without giving breakup for purchased amount at different rates of VAT which in our considered view VATO was also supposed to consider while framing the default assessment at different rates of VAT for purchases made during the disputed period.

The impugned order dated 20.05.2014 passed by OHA was hereby set aside and appeal was remanded back to the VATO with the directions to make fresh assessment after giving opportunity of hearing to the appellant. While framing the assessment, VATO will see whether the ITC, which was claimed on losses due to evaporation were reasonable and within parameters as set by the oil companies in this regard.

Present for the Appellant : Shri H.L. Madan, C.A.

Present for the Respondent : Shri M.L. Garg, Advocate/Govt. Counsel

ORDER

1. These two appeals are directed against the impugned order dated 20.05.2014 passed by the Ld. Additional Commissioner (HR & FM), hereinafter called the Objection Hearing Authority (in short OHA), who vide this order, upheld the notice dated 27.12.2013 of default assessment of

tax and interest u/s 32 and notice of assessment of penalty u/s 33 of the Delhi Value Added Tax Act (in short DVAT Act) passed by the Ld. VATO. As common question of law and facts are involved in these two appeals, hence these are being disposed off by this common order.

2. Brief facts giving rise to present appeals are that the petitioner is a registered under the DVAT Act as well as under the Central Sales Tax Act (in short CST Act) vide Registration No.07510171154. The petitioner is running a petrol pump having IOC dealership. The petitioner files monthly returns according to the provisions of the DVAT Act. That the petitioner filed return for the tax period 01.03.2012 to 31.03.2012 on 25.04.2012. The petitioner dealer is dealing in petrol, diesel etc. which are liquids and had tendency of evaporation due to natural process. The stock register of the dealer for the year 2011-12 has shown that there has been evaporation loss of 45692 litres of petrol and 16018 litres of diesel. The prices of petroleum products are administered by the Ministry of Petroleum. That the petrol dealer has no control over the price at which petrol is purchased from the refinery and the price at which it is to be sold to customers as both purchase and sale prices are fixed by the Ministry of Petroleum, Govt. of India. That formula for computing prices of petrol and diesel is formulated in such a way that it covers loss due to evaporation, hence VAT is charged even on evaporation loss. In this way VAT is duly and fully paid by the petitioner dealer even on evaporation loss as it is included within administered price, as determined from time to time by the Ministry of Petroleum. That benchmark set for this by oil marketing companies as considered in price loss, is 0.6% in petrol and 0.2% in diesel. That evaporation loss claimed by the dealer is well within the norms thus laid down.

3. That petitioner received notice of audit of business affairs of the firm dated 11.06.2013 and detailed audit culminating with the assessment order dated 27.12.2013 was conducted. The petitioner submitted all the documents asked for by the audit team.

4. That the petitioner received notice of default assessment of tax and interest u/s 32 of the DVAT Act and for the tax period of March 2012. The details of demand created as per notice of default assessment of tax and interest are as under :

Tax Period	Tax	Interest	Total Demand
March, 2012	5,53,629/-	1,38,331/-	6,91,960/-

5. That Input Tax Credit on evaporation loss of 45692 litres of petrol (value computed by Ld. Assessing Authority in his order at Rs.24,39,741/-)

and 16018 litres of diesel (value computed by Ld. Assessing Authority in his order at Rs.5,25,446/-) has been reduced by the VATO (Audit) and hence default assessment u/s 32 of the DVAT Act has been framed by the Ld. VATO by applying additional tax of 20% on petrol Rs.24,39,741/- and 12.5% on diesel Rs.5,25,446/-. The Ld. VATO VATO has not only created demand for tax and interest but also imposed penalty for the above mentioned period u/s 86 (12) of the DVAT Act for Rs.4,76,096/-. That during the course of audit proceedings Ld. VATO (Audit) never asked the dealer as to why Input Tax Credit on evaporation loss has not been reduced by the dealer u/s 9(1) of the DVAT Act or Rule 7(3) of the DVAT Rules, 2005.

6. Aggrieved by the order of Ld. VATO of default assessment of tax u/s 32 and penalty u/s 33 of the DVAT Act, appellant preferred objections u/s 74 of the DVAT Act before the Ld. OHA, who vide impugned order dated 20.05.2014, rejected the objections hence these appeals have been filed on the following grounds challenging the impugned order passed by the Ld. OHA:

(i) That the Ld. Assessing Authority, VATO (Audit) has erred both in law as well as on facts of the case in assessing tax deficiency of Rs.6,91,960/- towards tax and interest and penalty of Rs.4,76,096/- u/s 86 (12) of the DVAT Act.

(ii) That the Ld. OHA has erred in passing the order in a mechanical manner without giving any reason as to why the full claim by the dealer towards ITC is not acceptable and he simply rejected the objections by saying that Ld. VATO has examined the case on individual basis on merits and there is no infirmity nor any irregularity in the order passed by the Ld. Assessing Authority. The order of the Ld. OHA being without reasons deserves to be set aside.

(iii) That the Ld. OHA has erred in confirming disallowance of ITC on mere suspicion, conjectures, surmises and not on the basis of provisions of the DVAT Act and without considering the facts, documents, evidences, arguments, submissions and case laws cited by the appellant during objection proceedings.

(iv) That the Ld. VATO has grossly erred in framing the default assessment order which smacks of mere suspicion and unjustly enriches the State in utter violation of the scheme of the DVAT Act, the legislative intention and principles of equity and natural justice as well.

(v) That the Ld. VATO has grossly erred in law in disallowing the ITC on wrong application of DVAT Rule. That the Ld. VATO has also grossly erred in law in disallowing ITC on wrong application of section 9(1) of the DVAT Act. Loss due to evaporation of petrol and diesel is a natural process beyond control of any dealer and cannot be equated with goods lost or destroyed. Further, the evaporation loss pf petrol and diesel as claimed by the dealer is within limits as prescribed by the Ministry of Petroleum, Govt. of India, which is .6% in case of petrol and .2% in case of diesel.

(vi) That the Ld. VATO has grossly erred in law by framing the default assessment wherein ITC has been disallowed on estimated basis without giving break up for purchases made at different rates of VAT and disregarding the books of accounts and details furnished. Hence excess ITC has been disallowed to which Ld. OHA has not taken note while confirming the order of Ld. Assessing Authority.

(vii) That Ld. VATO has grossly erred in law by framing the default assessment without considering the petitioner dealer generates output tax on deemed quantity of evaporation loss and is thus not to reduce the ITC.

(viii) That the Ld. OHA has failed to appreciate as explained to him that VAT is charged even on evaporation loss as the price determination mechanism of Oil Ministry considers evaporation loss for calculation of petrol and diesel prices, hence VAT is duly and fully paid by the dealer even on evaporation lass as it is included within administered price.

(ix) That the Ld. OHA has failed to appreciate under these facts and circumstances, if the dealer is required to reverse ITC on alleged evaporation loss, it would amount to twice taxing the same sale again.

(x) That the Ld. VATO and Ld. OHA failed to appreciate that normal losses are inherent in every business and in absence of any specific provision under the Act, it would be unjust to deny a part of ITC to dealers of petrol and diesel

(xi) That the Ld. VATO has erred in reducing ITC on evaporated petrol and diesel for the whole year 2011-12 instead of month of March, 2012 for which notice of default assessment of tax and interest u/s 32 and penalty u/s 33 of the DVAT Act has been issued. The

order being wrong on account of excess ITC disallowed need to be set aside.

(xii) That the Ld. VATO has erred in imposing penalty u/s 86 (12) as the basis on which the tax has been assessed is totally illegal and bad in law for the reasons specified in the above grounds.

(xiii) That for the above reasons the dealer has reasonable cause to comply with the provisions of the DVAT Act as the evaporation loss is a natural loss and not the case of any goods lost or destroyed and he is fully covered by proviso of section 86 (12) of the DVAT Act and hence penalty needs to be remitted.

On the basis of above facts and grounds of appeal, it is submitted that the present appeals be allowed and the impugned order passed by the Ld. OHA be quashed and set aside.

7. Heard to Shri H.L. Madan, C.A. on behalf of appellant and Shri M.L. Garg on behalf of Revenue and perused the file and cases cited by the appellant in support of the arguments on the basis of which these appeals are being disposed off as under.

8. As is clear from the facts that appellant is running a petrol pump having Indian Oil Corporation dealership. He files monthly return. Audit of his business was conducted and it was found that appellant has claimed Input Tax Credit for evaporation loss of 45692 litres of petrol and 16018 litres of diesel. This assessment relates to the period of March 2012. So Ld. VATO reduced the Input Tax Credit and imposed tax, interest and penalty as given above. The short controversy with which we are seized with is whether appellant rightly claimed Input Tax Credit on the quantity of petrol and diesel which evaporated in the natural course of business. Ld. VATO applying Rule 7 (3) of DVAT Rules, 2005 refused Input Tax Credit claimed by the appellant in the return and imposed tax, interest and penalty on the appellant.

9. It will be appropriate to reproduce section 9(1) of the DVAT Act and Rule 7 (3) of the DVAT Rules for the just decision of this case.

Section 9 (1)

"Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act 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 and the goods are to be used by him directly or indirectly for the purpose of making –

(a) sales which are liable to tax under section 3 of this Act; or

(b) sales which are not liable to tax under section 7 of this Act"

Rule 7 (3)

"Where any goods or goods manufactured out of such goods are lost or destroyed, the dealer shall not be eligible to claim tax credit on such goods and the credit taken in any earlier tax period shall be reversed in the tax period in which goods are claimed to have been lost or destroyed."

10. As is clear from the bare reading of section 9(1) that a dealer who is registered under this Act shall be entitled to tax credit in respect of turnover of purchases occurring during the tax period in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under section 3 of this Act. While Rule 7 (3) of DVAT Rules provide that where any goods or goods manufactured out of such goods are lost or destroyed, the dealer shall not be eligible to claim tax credit on such goods and the credit taken in any earlier tax period shall be reversed in the tax period in which goods are claimed to have been lost or destroyed.

11. Now the question arises whether in the facts and circumstances of the present case, Rule 7 (3) is applicable or not. According to appellant, the prices of petrol and diesel are controlled by the Ministry of Petroleum. They are fixed by the Ministry at which price refinery will sell the petrol and diesel to the dealer and at which price dealer will sell to the ultimate customers. According to appellant, Petroleum Ministry fixes the prices keeping in view the evaporation loss of these items and even on the quantity which evaporates, prices are paid by the dealers. So they are entitled to the benefit of Input Tax Credit in these circumstances. In this regard, appellant's Ld. Counsel drew attention to the order dated 28th December, 1998 of Ministry of Petroleum & Natural Gas which provides for what is the meaning of stock variation. According to which it means "variation beyond the norms for permissible variation in stock as given in Schedule II. Schedule II provides for details of norms for permissible stock variation. According to it, variation in stock in underground tanks is

considered to be beyond operational level when the inspection establishes that the variation in stock in the underground tanks is beyond 4% of tank stock over and above the evaporation/handling loss is in motor spirits as follows - 0.6% on annual average sales of 600 kilo litres and in case of handling loss in high speed diesel .20% on annual average sales of above 600 kilo litres" It means that Ministry also admits that there is evaporation loss in case of petrol and diesel and to the extent provided in this order, it will not be deemed a variation in stock.

12. Appellant's Ld. Counsel also drew attention of Tribunal towards an application moved under the RTI Act by the General Secretary, Delhi Petrol Dealers Association asking certain queries for reply from Indian Oil Corporation. I.O.C. admitted that while considering the dealer's commission, one of the parameters they take into consideration is evaporation loss of the product and it was also replied that percentage of stock loss taken into account in calculating dealer's commission for M.S. is .59% and for H.S.D. it is 0.18%.

13. It is clear from the reply given above that concerned Ministry as well as supplier Indian Oil Corporation admits that there is natural loss by evaporation of petrol and diesel which is inevitable. It is in our considered view also one of the characteristics of these items that while handling or leaving them in the open, they evaporate. In our considered view also Rule 7 (3) is not applicable to the facts and circumstances of the present case because Rule 7 (3) is applicable when some new product is manufactured out of the goods and there is loss in the manufacturing process of certain goods, then on that quantity of goods which have been lost in the manufacturing process, ITC cannot be claimed but so far as facts of the present case are considered, the appellant sold petrol and diesel in the same condition in which it was purchased by him to the buyer and in the natural course, there was evaporation loss of petrol and diesel. According to appellant, he paid ITC on the whole quantity of petrol and diesel including the quantity which in due course of time evaporated. In our view, in these circumstances, Ld. VATO wrongly refused ITC and imposed tax, interest and penalty.

14. Before proceeding further, it would be appropriate to refer certain decisions cited by the appellant in support of his arguments. In case of Commissioner of Sales Tax, Maharashtra State, Bombay Vs. East Asiatic Commercial Company 1985 STC Page 10 Vol. 59, Hon'ble Bombay High Court held as follows :

> "It is clear that there has been a loss of very small quantity of castor oil purchased by the assesse under form 16 in the course of these

goods being resold or being exported. In other words, the loss has occurred while the assesse was carrying out the terms of the certificate, which he had given in form 16. The loss in these cases is such that it was an inevitable loss arising while dealing with the goods in the normal manner in the course of export or resale. The goods so lost form less than ½% of the goods which were purchased under form 16. If, while carrying out the terms of the certificate, by reselling or exporting the goods, there is some such inevitable loss which arises either because a very small quantity of oil remains at the bottom of the container or leaks out or spills while the oil is being transferred from one container to another, it cannot be said that the assessee has failed to carry out the terms of the certificate in not reselling or exporting this small quantity of oil which is thus lost. Looking to the nature of the commodity and the manner in which it was required to be transported for the purpose of resale or export, such a loss was inevitable."

15. It is clear from the above observation that ratio of the above case applies to the facts of the present case keeping in mind the nature of the product. Losses due to evaporation are inevitable and natural and that is why appellant reduced the quantity accordingly in the accounts books though he claimed ITC on the quantity of the product which he originally bought from the refinery. In these circumstances only the question to be seen is whether evaporation loss, which has been claimed by the appellant in his tax return reducing the quantity of the product sold, come under the parameters as prescribed by the Ministry of Petroleum and even admitted by the Indian Oil Corporation or not?

16. During the course of arguments , the appellant's Ld. Counsel also referred to the case of State of Tamilnadu Vs. Tata Oil Mills Co. Ltd. No. 1994 STC 218 (Madras), M/s Ruby Laboratories Vs. Commissioner of Sales Tax 1971 Sales Tax case page 326, in the case of *State of Punjab & Others Vs. Set Ganpat Ram Cotton Ginning and Pressing Factory* case No. 74 STC(SC) page 1 and the orders passed by this Tribunal in the case of Appeal No. 1835-1858/11-12 dated 03.04.2014 *M/s Swastik Polymers Vs. Commissioner of Trade & Taxes,* Appeal No. 177-78/8-9 M/s Saurabh Service Station Vs. CTT dated 07.05.2015.

17. In our view the case of *M/s Tata Oil Mills, M/s Seth Ganpat Ram Cotton Ginning and Pressing Factory* and *Rubi Laboratories* (Supra) support the arguments of the appellant's Ld. Counsel, though they are not directly applicable to the facts of the present case.

18. In State of Tamilnadu Vs. Tata Oil Mills Co. Ltd. the question before the Hon'ble High Court was whether by cleaning, cutting, freezing and packing prawns became different kind of commercial commodity from prawns got fresh from the sea and purchased from the local fishermen, and therefore, the exemption under Section 5(3) of the Central Sales Tax, Act, 1956 would not be available to these items. Hon'ble High Court decided in favour of M/s Tata Oil Mills Co. Ltd. holding that

> "While cleaning, cutting, and freezing as also packing, some marginal loss was bound to occur and considering the total turnover of the dealer for the years in question, the loss claimed was reasonable and the Tribunal rightly deleted the additions made by the assessing authority treating the wastage as unaccounted."

19. Similarly in the case of M/s Ruby Laboratories (Supra), question was whether supply of free samples of medicines after manufacture was contrary to purpose mentioned in form 15 under Bombay Sales Tax Act. Hon'ble Gujrat High Court held that

> "The distribution of some of the manufactured goods as free samples by an assessee manufacturing medicines for sale does not amount to any use, which is contrary to the purpose (viz., purchases for being used in the manufacture of goods for sale) mentioned in the certificate issued by the assessee in form No. 15 under Section 12(1)(b) of the Bombay Sales Tax Act 1959 or in form 'C' under section 8(4) of the Central Sales Tax Act, 1956. By supplying some of the samples of the manufactured lot freely, the assessee has not committed any breach of the undertaking given by it either in form No. 15 or form 'C' so as to attract the penal provisions of Section 36 of the Bombay Act and Section 10-A of the Central Act."

20. Similarly, in the case of State of Punjab Vs. Seth Ganpat Ram Cotton Ginning and Pressing Factory (Supra), the question was whether cotton seeds which were retained by the dealer after ginning the cotton were liable to purchase tax. Hon'ble Supreme Court affirming the decision of the High Court held as under:-

> "Under section 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948, the entire purchase price of the cotton could be claimed by the respondent as a deduction because no part of the cotton after ginning was retained by the respondent. The entire ginned cotton was sold by the respondent to registered dealers. The retention

of cotton seeds made no difference. The assessing authority was not entitled to take into account cotton seeds for the purpose of the deduction to which the respondent was entitled."

21. In the case of M/s Swastik Polymers also there was evaporation loss during the manufacturing process and to the quantity of this loss ITC was denied by the lower authority but this Tribunal held that benefit of ITC cannot be denied to the dealer on the quantity of the loss on account of evaporation which is a natural process.

22. Coming back to the case in hand, as is clear from the facts of the present case that nature of the commodity which is being sold by the appellant is such that losses due to evaporation are natural and inevitable because it is the chemical quality of petrol and diesel that certain quantity of diesel and petrol is lost due to evaporation while left in open. The only question which is to be decided is whether the quantity which was reduced by the appellant in his account books was as per the criteria and within parameters set by the oil companies in this regard. According to the appellant while making purchases of these commodities he made payment of that quantity also, which was supposed to evaporate during the course of business. So, in our considered view he is entitled to the benefit of Input Tax Credit on that quantity also which was lost due to evaporation.

23. The appellant has also assailed the impugned order dated 20.05.2014 passed by the Ld. OHA on the ground that Ld. VATO reduced ITC on evaporation of petrol & diesel for the whole year 2011-2012, in addition to month of March, 2012 for which default assessment of tax & interest u/s 32 and penalty u/s 33 of the DVAT Act had been issued. On this ground, in our considered view, the order of the Ld. OHA dated 20.05.2014 which affirmed the orders of Ld. VATO dated 27.12.2013 is also liable to be set aside, because excess ITC was disallowed to the appellant vide impugned orders.

24. The Ld. VATO's order which has been affirmed by Ld. OHA has been assailed on this ground also that while framing default assessment, ITC was disallowed on estimated basis without giving breakup for purchased amount at different rates of VAT which in our considered view Ld. VATO was also supposed to consider while framing the default assessment at different rates of VAT for purchases made during the disputed period.

25. In the light of aforesaid discussion, the impugned order dated 20.05.2014 passed by Ld. OHA is hereby set aside and appeal is remanded back to the Ld. VATO with the directions to make fresh assessment

after giving opportunity of hearing to the appellant. While framing the assessment, Ld. VATO will see whether the ITC, which was claimed on losses due to evaporation were reasonable and within parameters as set by the oil companies in this regard. The appellant is directed to appear before the concerned VATO on 28.12.2015 who will decide the case as expeditiously as possible, preferably, within a month from the date of appearance of the appellant.

26. Order pronounced in the open court.

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

28. File be consigned to record room.

[2018] 56 DSTC 375

In the High Court of Delhi at New Delhi
[Justice S. Ravindra Bhat and Justice A.K. Chawla]

W.P.(C) 10287/2018

Napin Impex Private Ltd. ... Petitioner

Vs.

Commissioner of DGST, Delhi & Ors. ... Respondents

Date of Order: 28.09.2018

SEALING OF BUSINESS PREMISES U/S 67 OF CGST ACT, 2017 – BOOKS OF ACCOUNT NOT PRODUCED – TEMPORARY SEALING OF THE PREMISES WAS ORDERED AND THEREAFTER PREMISES WERE COMPLETELY SEALED. WHETHER JUSTIFIED HELD; NO.

SECTION 69(4) OF THE ACT AUTHORIZED THE OFFICER TO SEARCH THE PREMISES AND BREAKDOWN THE LOCK FOR CONTAINING THE BOOKS AND DOCUMENTS – COMPLETELY SEALING WAS ILLEGAL.

Facts

The petitioner was a registered dealer, which trades *inter alia* in PVC raisins and other food items such as beverages. The petitioner alleged that its premises were visited by the Revenue authorities on 29.08.2018 when the DGST officials directed production of books of accounts and other documents. Since the petitioner was not in possession of those, it sought 24 hours time for the same. Apparently a temporary sealing of the premises was ordered. On the next date i.e. 30.08.2018, the premises were completely sealed. It was contended that the DGST lacks statutory power and authorization to indefinitely seal the premises in a manner it had proceeded to do so.

Held

It was claimed that the authorization did not name the assessee; it only lists the two premises i.e. the business premises at Netaji Subhash Place and the DSIDC Unit at Narela. Given the plain text of the statute i.e. especially Section 69(4), which merely authorized the concerned officials to search the premises and if resistance was offered, break-open the lock or any other almirah, electrical device, box, etc. containing books and documents, the complete sealing of the premises, in the opinion of the court was *per se* illegal. Even if it were assumed that the respondents

temporarily restrained the petitioner from using its premises, for a few hours, till the books of accounts were made available in order to secure the evidence available in the premises, that could not have assumed the life on "*its own*", at least indefinitely. In these given circumstances, this petition had to succeed. Since the premises had been in the possession of the respondents for over a month, a direction was issued to remove the seal forthwith – within the next 12 hours and hand over the premises to the petitioner.

This writ petition was allowed in the above terms.

Present for the Petitioner	:	Surendra Kumar and A.K. Babbar, Advocates
Present for Respondents	:	Gautam Narayan, ASC, GNCTD

O R D E R

Issue notice to the respondents.

Mr. Gautam Narayan, Additional Standing Counsel accepts notice on behalf of the respondents.

The petitioner's grievance is that the sealing of its business premises on behalf of the Delhi Goods and Services Tax (DGST), ostensibly under Section 67 of the Central Goods and Services Tax Act, 2017, is illegal.

The brief facts are that the petitioner is a registered dealer, which trades inter alia in PVC raisins and other food items such as beverages. The petitioner alleges that its premises were visited by the Revenue authorities on 29.08.2018 when the DGST officials directed production of books of accounts and other documents. Since the petitioner was not in possession of those, it sought 24 hours time for the same. Apparently a temporary sealing of the premises was ordered.

On the next date i.e. 30.08.2018, the premises were completely sealed. It is contended that the DGST lacks statutory power and authorization to indefinitely seal the premises in a manner it has proceeded to do so.

Learned counsel for the DGST, appearing on advance notice, submitted that till date the petitioner has not cooperated as it has neither produced the books of accounts nor other materials. It is further submitted that according to the instructions available to them, the premises can be immediately de-sealed provided the petitioner cooperates. Section 67, to the extent relevant, is extracted below :

"67. (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 subsection (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."

In this case, the authorization to break-open seals, etc. and carry out search of the premises – under Rule 139(1) in Form GST INS-I relied upon by the Revenue states as follows :

"Government of National Capital Territory of Delhi
Department of Trade & Taxes
Enforcement Branch
Vyapar Bhawan, I.P. Estate, New Delhi-02

No.72 Date : 29/08/2018

FORM GST INS-1
AUTHORISATION FOR INSPECTION OR SEARCH
[See rule 139(1)]

To,
Sh. Ajay Chaturvedi,
Asstt. Commissioner (E-1)

Whereas information has been presented before me and I have reasons to 'believe that-

(i) 405, 4th Floor, KLJ Tower,
Netaji Subhash Place, New Delhi.

- has suppressed transactions relating to supply of goods and / or services
- has suppressed transactions relating to the stock of goods in hand
- has claimed input tax credit 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 thereunder to evade tax under this Act.

OR

Goods liable to confiscation/ documents relevant to the proceedings under the Act are secreted in the business/residential premises detailed herein below:-

H-1419 Basement, DSIDC, Narela

Therefore, -

In exercise of the powers conferred upon me under subsection (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 subsection (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 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 j search operation, making of false statement or providing false evidence is punishable with imprisonment and for fine under the Act read with section 179, 181, 191 and 418 of the Indian Penal Code .

Given under my hand & seal this 29th day of August, 2018.

Valid for 03 Day(s)."

It is claimed that the authorization does not name the assessee; it only lists the two premises i.e. the business premises at Netaji Subhash Place and the DSIDC Unit at Narela. Given the plain text of the statute i.e.

especially Section 69(4), which merely authorizes the concerned officials to search the premises and if resistance is offered, break-open the lock or any other almirah, electrical device, box, etc. containing books and documents, the complete sealing of the premises, in the opinion of the court is per se illegal. Even if it were assumed that the respondents temporarily restrained the petitioner from using its premises, for a few hours, till the books of accounts are made available in order to secure the evidence available in the premises, that could not have assumed the life on "its own", at least indefinitely. In these given circumstances, this petition has to succeed. Since the premises have been in the possession of the respondents for over a month, a direction is issued to remove the seal forthwith – within the next 12 hours and hand over the premises to the petitioner.

This writ petition is allowed in the above terms.

[2018] 56 DSTC 380

Before the High Court of Allahabad
[Sudhir Agarwal and Ifaqat Ali Khan, JJ.]

Writ Tax Nos. 87,454,455,458,462,464,478,
551,559,560 & 587 of 2018

Godrej & Boyce Manufacturing Co. Ltd. & Ors. ... Petitioners

Vs.

State of U.P. ... Respondent

Date of Order: 18.09.2018

WRIT PETITION UNDER ARTICLE 226 – SECTION 129 OF THE CGST ACT, 2017 READ WITH RULE 138 OF THE CGST RULES, 2017 – DETENTION, SEIZURE AND RELEASE OF THE GOODS AND CONVEYANCES IN TRANSIT – SEIZURE ORDERS AND SHOW CAUSE NOTICES ISSUED FOR NON-ACCOMPANYING OF E-WAY BILL – NOTICES WERE CHALLENGED ON THE GROUND THAT THERE WAS NO REQUIREMENT OF ACCOMPANYING E-WAY BILL AS MECHANISM WAS NOT IN OPERATION BY CENTRAL GOVERNMENT – THERE COULD NOT BE A GROUND FOR SEIZURE OR IMPOSITION OF PENALTY AND VIOLATION OF ANY PROVISIONS OF ACT OR RULES – CONCERNED AUTHORITY REFERRED TO GOVERNMENT'S NOTIFICATION DT 21.07.2017 AND COMMISSIONER'S CIRCULAR DT 09.08.2017, DESPITE OF THE FACT THAT FORMS WERE ALREADY CHANGED & DIFFERENT PROCEDURES WERE ALSO TAKEN PLACE UNDER RULE 138 VIDE NOTIFICATION DT 31.01.2018 W.E.F. 01.02.2018 WHICH WAS OPERATIVE DURING THE PERIOD OF TRANSACTIONS – LEGISLATIVE CHANGES WERE MADE IN SUCH A QUICK SUCCESSION THAT FIELD AUTHORITIES COULD NOT TRACK THEMSELVES WITH SUCH CHANGES – COMPLIANCE OF PROVISIONS WHICH STOOD ALREADY SUBSTITUTED BY NEW PROVISIONS

AND EARLIER ONES HAD BECOME INEFFECTUAL – WHETHER THE INSISTENCE UPON PETITIONERS, AT THE TIME OF ISSUE OF SEIZURE MEMOS AND SHOW CAUSE NOTICES TO HAVE DOWNLOADED E-WAY-BILL 01 AND 02 AND ITS NON-COMPLIANCE BY REFERRING TO GOVERNMENT'S RELEVANT NOTIFICATION AND COMMISSIONER'S CIRCULARS AND ALSO RULE 138 AS SUBSTITUTED VIDE GOVERNMENT NOTIFICATION DT 20.09.2017 WAS CLEARLY INCORRECT AND UNLAWFUL – HELD, YES.

WHETHER THE SEIZURE ORDERS AND SHOW CAUSE NOTICES ALLEGING THAT GOODS WERE NOT ACCOMPANIED BY E-WAY BILL AT THE TIME OF INTERCEPTION WITHIN STATE OF U.P. OR INTERSTATE TRANSPORTATION WERE TO BE QUASHED – HELD, YES.

NEITHER IT CAN BE SAID THAT PETITIONERS HAVE DELIBERATELY COMMITTED ANY FAULT OR DISOBEYED LAW INTENTIONALLY OR FRAUDULENTLY, PARTICULARLY WHEN RESPONDENT-AUTHORITIES THEMSELVES WERE NOT VERY CLEAR ON THE RELEVANT PROVISIONS.

Facts

Seizure orders and notices issued under sections 129 (1) and (3), respectively, by various authorities, mainly on the ground that E-Way Bill-01 under U.P. Goods and Service Tax Act 2017 read with Integrated Goods and Services Tax Act 2017 and Rules framed there under were not accompanied by Transporters when goods were intercepted within State of U.P. during Intra State or Inter State transportation, have been challenged on the ground that there was no requirement of accompanying said E-Way Bill; provisions of Provincial Statute could not override provisions of Central Statue and, in any case, omission was only indeliberate and unintentional.

Held

Petitioners had not deliberately committed any fault or disobeyed law intentionally or fraudulently, particularly when respondent-authorities themselves were not very clear. It also could not be said that there was any intention of evasion of tax on the part of the petitioners. In the facts and circumstances, in all the writ petitions (except Writ Petition No. 87 of 2018), the Court was clearly of the view that seizure orders, show-cause notices issued under section 129 (3) and final orders, if any, were not sustainable in law.

The Court had already discussed relevant provisions of various Statutes and it was evident that the provisions were pari materia. Officers of State were also competent for search, seizure and imposition of penalty in respect of violation of Central Enactments. Moreover, provisions relating to search and seizure were not for the purpose of imposition of a new

liability but to regulate fiscal statutory provisions in order to avoid evasion of tax. Nothing had been placed on record to show that similar requirement of relevant documents was not provided by Central Government also in respect of inter-state transactions. There was also a principle that mere mention of a wrong provision will not make an order bad, if otherwise, power exists in the Statute. In the circumstances, the Court was not satisfied that the provisions made by Governor vide Rule 138 read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017 were ultra vires of any Statute. The argument otherwise was rejected. Submission that non observance was not intentional or deliberate, needs an investigation into facts. The Court found that only a show cause notice had been issued which was under challenge. Petitioner had remedy of submitting reply to the same before authority concerned and if final order was passed even thereafter there was remedy of appeal. The Court therefore found no reason to interfere with the seizure order and show-cause notice impugned in writ petition no. 87 of 2018. Instead the Court relegated petitioner to avail remedy provided under the Statute. With the aforesaid liberty writ petition no. 87 of 2018 was liable to be dismissed.

Writ Tax No. 587 of 2018, 454 of 2018, 455 of 2018, 462 of 2018, 458 of 2018, 559 of 2018, 560 of 2018, 478 of 2018, 464 of 2018 and 551 of 2018 were hereby allowed to the extent that seizure orders, show-cause notices and final orders, impugned in these writ petitions were hereby set aside.

Writ Tax No. 87 of 2018 was hereby dismissed with the liberty to petitioner to submit reply to show cause notice, and, if any final order was passed, thereafter to avail remedy of appeal provided in the Statute.

Present for Petitioner : Praveen Kumar

Present for Respondent : C.S.C.

ORDER

Delivered by Hon'ble Sudhir Agarwal, J.

1. In all these writ petitions seizure orders and notices issued under sections 129 (1) and (3), respectively, by various authorities, mainly on the ground that E-Way Bill-01 under U.P. Goods and Service Tax Act 2017 (hereinafter referred to as U.P.G.S.T ACT) read with Integrated Goods and Services Tax Act 2017 (hereinafter referred to as I.G.S.T. Act 2017) and Rules framed thereunder were not accompanied by Transporters when

goods were intercepted within State of U.P. during Intra State or Inter State transportation, have been challenged on the ground that there is no requirement of accompanying said E-Way Bill; provisions of Provincial Statute cannot override provisions of Central Statue and, in any case, omission is only indeliberate and unintentional.

(I) Writ Tax No. 587 of 2018

2. This writ petition under Article 226 of Constitution of India has been filed challenging order dated 21st March 2018 passed by Assistant Commissioner, State Commercial Tax, Mobile Squad, Unit-I, Shamli in purported exercise of powers under Section 129 (1) of UPGST Act, 2017 on the allegation that in respect of goods transported by Vehicle No. DL-1LW-5527, aforesaid authority has reason to believe that for evasion of State Goods and Service Tax (hereinafter referred to as "SGST") goods have been transported by said vehicle. Estimated value of goods constituting machines and parts, mentioned in the order is Rs. 9,85,000/-. Petitioner M/s. Godrej and Boyce Manufacturing Company Limited has transported six loading/unloading machines from its manufacturing unit situated at Thane, (State of Maharashtra) through two tax invoices dated 16.03.2018, to its Ghaziabad office, for the purpose of being used at Warehouse of M/s. Alstom Manufacturing India Pvt. Limited, Saharanpur as inter unit stock. Aforesaid goods were transported through M/s. Delhi Bombay Goods Carrier, Mumbai vide GR No. 41448 dated 16.03.2018 by vehicle no. DL-1LW-5527. Petitioner company downloaded Central Government E-Way Bill at its Thane unit for invoice no. B020101800000130 dated 16.03.2018. Due to bonafide omission, no Central E-Way Bill for remaining goods could be downloaded. Aforesaid E-Way Bill was for four items of machines mentioned therein. Remaining two items of machines were subjected to tax invoice no. D020101800000131 but no E-Way-Bill with respect to aforesaid invoice was downloaded. In transit goods were intercepted by respondent authorities on 20.03.2018 and finding that E-Way Bill in respect of Government of U.P. was not available with goods, same were detained. Thereafter, Transporter downloaded said E-Way Bill on 21.03.2018 and presented the same before Assistant Commissioner but on the same date he passed seizure order impugned in present petition. A show cause notice under section 129 (3) has also been issued by Assistant Commissioner, requiring petitioner to show cause up to 28.03.2018 as to why tax and penalty of Rs. 1,87,300/- may not be imposed upon the petitioner. The aforesaid order of seizure has been challenged on the ground that mistake was unintentional, Assistant Commissioner has no jurisdiction to pass order of seizure as there is no requirement of carrying any other E-Way Bill under U.P.G.S.T Act, 2017 and Rules framed thereunder.

(II) Writ Tax No. 454 of 2018

3. This writ petition has been filed by M/s. LG Electronics India Limited assailing interception memo dated 15.03.2018, seizure order dated 16.03.2018 and show cause notice dated 16.03.2018 issued by Assistant Commissioner, State Commercial Tax Division Mobile Squad III, Sonbhadra. This writ petition has also challenged Notification dated 21.07.2017 issued by State of U.P. making carrying on E-Way Bill-01 for import of goods worth Rs. 50,000/- from out side the State in State of U.P. mandatory, and also letters dated 06.02.2018 and 18.02.2018 issued by State Government. Petitioner is a Private Limited Company engaged in manufacturing of electronic goods and items having its principal place of business at Plot No. 51, Udyog Vihar, Surajpur Kasna Road, Greater Noida, Gautam Budh Nagar (State of U.P.). It has several manufacturing units as well as Warehouses in different States across the country. Petitioner is registered in State of Jharkhand with Goods and Service Tax Department (hereinafter referred to as "G.S.T. Department") and has been allotted GSTIN-20AAACL1745QIZI. In State of U.P. also petitioner is duly registered with U.P.G.S.T Department and has been allotted GSTIN-09AAACL1745QIZ2. Petitioner has a warehouse in Ranchi (State of Jharkhand). Goods in dispute were transported from Ranchi to Gautam Budh Nagar and intercepted. The goods were transported by M/s. Saluja Freight Carriers which is also registered with G.S.T Department bearing GSTIN-06AUKPS7618E1ZC. The goods were loaded on vehicle no. HR3SV0769 against G.R. No. 3001-3002 dated 14.03.2018 issued by Transporter to petitioner. Tax invoices issued in respect to aforesaid goods were numbered as STNAKW2018647, STNAKW2018648 and STNAKW2018649 dated 13.03.2018. All the requisite details of transportation of said goods were mentioned in receipts issued by Transporter. Requisite documents were with driver of vehicle. The vehicle was intercepted by Mobile Squad Team of Uttar Pradesh Commercial Tax Division, (hereinafter referred to as "UPCTD") and detained at Raparganj, District Sonbhadra by Assistant Commissioner Mobile Squad III. Interception memo dated 15.03.2018 at 10:30 A.M was issued and handed over to driver of vehicle. Memo of interception was issued on the ground that driver of vehicle was not carrying E-Way Bill 01, though in possession of original tax invoices issued by Consignor and LR receipts issued by Transporter. Thereafter physical verification was made by Assistant Commissioner who submitted report dated 16.03.2018 stating that goods worth more than Rs. 50,000/- being interstate supply were being transported but not accompanied by E-Way Bill-01. Subsequently, Assistant Commissioner passed a seizure order under section 129 (1) of U.P.G.S.T. Act 2017 on 16.03.2018 and issued a show cause notice proposing recovery of tax of Rs. 1163472/- and penalty

of the same amount i.e. total Rs. 2326944/-. It has been challenged on the ground that there is no provision for carrying of E-Way Bill-01, while the goods are in transit for interstate transfer and impugned orders are without jurisdiction.

(III) Writ Tax No. 455 of 2018

4. This writ petition has been filed by M/s. Bharti Airtel Telecommunication Company, having its registered office at New Delhi. It is engaged in providing cellular telephony services in different areas of telecom pursuant to telecom license granted by Government of India Department of Telecommunication. It has various offices in State of U.P. including at Lucknow and Varanasi. It is duly registered under U.P.G.S.T Act 2017 having GSTIN No. 09AAACB2894GIZP. Petitioner transferred stock by two consignments of eight boxes each, of telecom goods from its New Delhi office to Varanasi. It generated two separate E-Way Bill-01 giving details of both the transactions including details of goods and vehicle number. These two E-Way Bills numbered as 1803W177918800367522 and 1803W177918800369265 dated 12.03.2018. The goods were transported through GIR Movers Pvt. Limited by vehicle no. UP32F/N6684. Petitioner also issued invoices-Cum-Challan no. DLG25723 and DLG25727 dated 12.03.2018 for two transactions after charging Integrated Goods and Service Tax (hereinafter referred to as "I.G.S.T Act") at the rate of 18%. When goods were in transit from Delhi to Varanasi, the vehicle in which they were being transported i.e. UP32F/N6684, broke down. Hence goods were transferred to another vehicle no. DL1GC/3360 at Hathras. Aforesaid vehicle DL1GC/3360 while crossing Commercial Tax Department check post, at about 4:30 P.M. on 13th March 2018 was intercepted by Assistant Commissioner. Finding different vehicle number in the documents, goods were detained. Interception memo dated 13.03.2018 issued by Assistant Commissioner mentioned this fact. Though Transporter explained reason for transportation of goods in different vehicle, but Assistant Commissioner i.e. respondent 3 passed seizure order dated 14.03.2018 under section 129 (1) and also issued notice dated 14.03.2018 under section 129 (3) of UPGST Act 2017, requiring petitioner to show cause why tax of Rs. 12,76,155/- and penalty of same amount be not realized from petitioner. Seizure order dated 14.03.2018 and show cause notice of the same date have been challenged by this petitioner on the ground that goods were transported in interstate transaction governed by provisions of IGST Act and therefore, governed by Central Goods and Service Tax Act 2017 (hereinafter referred to as "CGST Act") and Rules framed thereunder. The mechanism of E-Way Bill under Central Goods and Service Tax Rules 2017 (hereinafter referred to as "CGST Rules 2017") have not been

implemented by Central Government. Hence, E-Way Bill alongwith goods were not carried by Transporter and that cannot be a ground for seizure or imposition of penalty. Hence, there is no violation of any provisions of IGST Act 2017/CGST Act 2017 or the Rules framed thereunder. Therefore, provisions of section 129 (1) of UPGST Act cannot be invoked against petitioner. UPGST Act 2017 cannot transgress upon field occupied by IGST Act 2017 and Notification issued under Rule 129 is beyond the power conferred by UPGST Act 2017.

(IV) Writ Tax No. 46 2 of 2018

5. This writ petition has been filed under Article 226 of Constitution of India by M/s. Guala Closures (India) Pvt., Ltd., having its Registered Office D-1, Sesa Ghor, Patto, P.O. Box No. 101, Panjim, Goa, challenging order of seizure dated 05.03.2018 and show cause notice of same date. Petitioner Company, engaged in manufacturing Nip Cap (Bottle Cap), has its manufacturing unit at Survey No. 4/44, 4/14, National Highway, No. 8, Kerala Village, Bavia Taluka, District Ahmadabad, (Gujarat). M/s. Pernod Ricard India, (P) Ltd., Daurala, Meerut, U.P. issued a purchase order and pursuant thereto for transporting goods, petitioner issued invoice No. A2094 dated 23.02.2018 for Rs. 882,961.00/- after charging IGST at the rate of 18%. Petitioner also generated E-Way Bill dated 23.02.2018. Goods were transported by M/s. Agarwal Packers & Movers Ltd., who issued G.R. dated 23.02.2018 and transported goods vide vehicle No. DL-IM-9213. Purchaser, also provided E-Way Bill-01 dated 26.02.2018, prescribed under U.P. Goods and Services Tax Rules 2017 (hereinafter referred to as “Rules”) which was valid up-to 15.03.2018 and same was given by petitioner to Transporter. The vehicle was intercepted on 5th March, 2018 by Assistant Commissioner VI, Ghaziabad and goods were detained on the ground that State E-Way Bill- 01, was not being carried by transporter. Thereafter a seizure order was issued on 05.03.2018 alleging that without E-Way Bill- 01 goods were being transported in State of U.P. from outside U.P. A show cause notice under section 129 (3) of U.P.G.S.T. 2017 was also issued on 05.03.2018. It is also challenged on the ground that respondents have no authority to intercept goods, detain, and pass order of seizure as there was no requirement of carrying E-Way Bill- 01 and provisions of provincial Statute cannot override provisions of Central Statute.

(V) Writ Tax No. 458 of 2018

6. This writ petition has been filed by M/s. RAS Polytex Pvt. Ltd having its manufacturing unit E-II, Ramnagar, Industrial Area, Chandauli (State of U.P.). It has assailed seizure order dated 09.03.2018 passed by Deputy Commissioner/Assistant Commissioner, Unit Chandauli and notice dated

09.03.2018 passed under section 129 (3) of U.P.G.S.T. Act 2017. It has also sought a writ of certiorari for quashing Notification No. KA.NI.-1014/ XI-9(52)/17-U.P. and U.P. Act-1-2017 ORDER-(31)-2017 dated July 21, 2017. The facts in brief, are that petitioner is a Pvt. Ltd. Company engaged in manufacture and sale of HDPE/P.P. bags and registered under G.S.T Act 2017. P.P. Compound is used by petitioner as raw material for manufacturing of bags and for said purpose placed an order of supply of P.P. compound to M/s. Kalpana Industries (India) Limited, situated at Village & Post Chaturbhujkathi, Kandua, P.S. Sankrail, Howrah (State of West Bengal). The aforesaid supplier booked consignment for transport of raw material to petitioner by Transporter M/s. Swastik Cargo Movers. Goods were being transported by truck no. UP63T-3207. Driver of vehicle was carrying requisite documents i.e. tax invoices, bilty and Central E-Way Bill. Goods were intercepted and detained on 09.03.2018 at 4:00 A.M. at Chandauli on the ground that same were imported in the State of U.P. from out side U.P. without E-Way Bill-01. Seizure order was passed under section 129 (1) on 09.03.2018 and it is also mentioned that U.P. E-Way Bill was not accompanied and Central E-Way Bill dated 07.03.2018 was generated on trial basis, therefore, it was not legally acceptable. Respondent 4 also issued notice under section 129 (3) proposing imposition of tax of Rs. 1,07,460/- and penalty of same amount i.e. Rs. 1,07,460/-.

(VI) Writ Tax No. 559 of 2018 & Writ Tax No. 560 of 2018

7. Both these writ petitions have been filed by same petitioner M/s. Rimjhim Ispat Limited, having its manufacturing unit at Industrial Area, Sumerput, District Hamirpur (U.P.) and registered office at 123/360, Fazalganj, Kanpur. In Writ Petition No. 559 of 2018 seizure order dated 11.03.2018 and show cause notice issued under section 129 (3) dated 17.03.2018 have been challenged, which have been passed by Assistant Commissioner GST/State Tax, Mobile Squad, 7th Unit Kanpur. Here petitioner sold Stainless Steel Bright Bars to M/s. M.R.S. Corporation Aligarh for which tax invoice no. 008573 dated 08.03.2018 was generated for a total amount of Rs. 10,13,673/-. The said goods were transported from petitioner's factory at Hamirpur to M/s. M.R.S Corporation, Kanpur through Shree Balaji Transport Company by truck no. UP78CT 4540 E-Way Bill-02 dated 08.03.2018 was generated giving all requisite information. However, respondent 2 intercepted the vehicle and detained at Kanpur on the ground that since E-Way Bill-02 had already expired therefore, there was no valid E-Way Bill-02 being carried by Transporter. Consequently seizure order dated 11.03.2018 was passed and a show cause notice proposing tax of Rs. 77,314/- (CGST), 77,314/- (SGST) and penalty of same amount was issued.

8. In Writ Petition No. 560 of 2018 seizure order dated 07.03.2018 and notice under section 129 (3) is dated 13.03.2018 issued by Assistant Commissioner Mobile Squad Kannauj are under challenge. Here S.S. Rods purchased by M/s. Bansal Wire Industries Limited Unit-II, B-3, Site II, Loni Road Industrial, Mohan Nagar District Ghaziabad were being transported through Transporter M/s. Buland Road Transport Company by Truck no. UP78BT2199. Petitioner has generated tax invoice no. 08440 dated 28.02.2018 for goods worth Rs. 21,31,051/- which includes IGST. E-Way Bill-02 dated 28.02.2018 was also generated by petitioner giving all details. Same were intercepted and detained by Assistant Commissioner Mobile Squad, Kannauj on the ground that E-Way Bills had already expired. Consequently seizure order was passed on 07.03.2018 and a show cause notice under section 129 (3) were issued on the same date, proposing tax of Rs. 3,27,420/- and penalty of same amount.

(VII) Writ Tax No. 478 of 2018

9. This writ petition has been filed by M/s. Gaurang Products Pvt. Ltd., having its Unit at Industrial Area, Ghaziabad challenging, seizure order dated 19.03.2018 and show cause notice of the same date issued by Assistant Commissioner, State/Commercial Tax, Mobile Squad, Unit-12, Kanpur. Petitioner is engaged in manufacturing M.S. Tubes & Pipes and duly registered with GST Department of U.P. having GSTIN No. 09AACCG0182L120. It has supplied 4300 Meters of M.S. Tubes and Pipes to U.P. Jal Nigam and same was to be delivered at Jal Nigam office at Allahabad. Petitioner prepared invoice no. 5267 dated 16.03.2018 in respect of 266.71 meters of M.S. Tubes & Pipes after charging IGST. The goods were handed over to M/s. Pragati Logistic Pvt. Ltd., Transporter against GR dated 16.03.2018 and same were transported by truck no. UP13T-0693. E-Way Bill-02 was also downloaded by petitioner on 16.03.2018 at 7:01 PM and it was carried by driver of vehicle. On 19.03.2018 at 08:44 AM vehicle was intercepted at Kanpur by respondent 3, who found that validity period of E-Way Bill-02 had already expired. The goods were accordingly seized by him and seizure order was passed on 19.03.2018. Same day notice under section 129 (3) of UPGST was also issued proposing to impose tax of Rs. 1,23,764/- and equivalent amount of penalty.

(VIII) Writ Tax No. 464 of 2018

10. This writ petition has been filed by M/s. Aditya Birla Fashion and Retail Ltd., Rave Multiplex Complex, V.I.P. Road, Kanpur. Petitioner placed an order for supply of certain goods (advertising material) to M/s. J.K. Advertising, J-10, Jahangeerpuri, New Delhi in respect of said goods. 7 invoices were prepared on 11/12.03.2018 and goods were transported through Transporter M/s. Maa Chamunda Devi Transport Service, Tilak Nagar, New Delhi, through truck no. HR55AA-0252. Transporter issued four

separate GRs on 12.03.2018 and also downloaded a consolidated E-Way Bill for the aforesaid transaction from the website of Central Government on 12.03.2018. While in transit, goods were intercepted by Assistant Commissioner Mobile Squad Unit, Etah, in the morning on 13.03.2018 and same were detained on the ground that E-Way Bill-01 of U.P. Government was not available alongwith goods. After getting knowledge seven E-Way Bill- 01 were downloaded from the website of Commercial Tax Department of Government of U.P. on 13.03.2018 and placed before respondent 3. However, respondent 3 has passed seizure order on 14.03.2018 under section 129 (1) and also issued notice under section 129 (3). Copy of notice has not been filed. Petitioner is only challenging seizure order 14.03.2018.

(IX) Writ Tax No. 551 of 2018

11. This writ petition has been filed by M/s. Navyug Air Conditioning, Hotel Rainbow Market, Railway Road, Bazaria, Ghaziabad. It is a proprietorship firm engaged in trading of Air conditioners and its parts. Petitioner placed purchase order of compressor assembly with accessories-FOW to M/s. Tecumseh Products India Private Limited, 38 Km Stone Delhi-Mathura Road, Ballabgarh (Haryana). The said suppler prepared invoice no. IBW/DOM/SALE1555 dated 23.03.2018 for Rs. 10,14,139/- including IGST at 18%. The goods were handed over for transportation by truck no. DL-ILY-2278 for delivery at Ghaziabad. The goods were intercepted by Assistant Commissioner Mobile Squad, Unit-V, Noida on 24.03.2018 and detained on the ground that goods did not accompany E-Way Bill-01 prescribed under UPGST Rules 2017. A seizure order was passed on 25.03.2018 and notice under section 129 (3) was also issued on the same date proposing levy of tax of Rs. 1,54,699/- and penalty of the same amount.

(X) Writ Tax No. 87 of 2018

12. This writ petition has been filed by M/s. Proactive Plast Pvt. Ltd., Plots No. 274, 275, 280, 281, Ecotech-1 Extension, Kasna, Greater Noida, District Gautam Budh Nagar. He has filed this writ petition challenging seizure order dated 20.01.2018 and notice issued on same date under section 129 (1) and (3) of UPGST Act 2017. Petitioner company is engaged in manufacture of packing material and registered under UPGST Act 2017, having GST TIN No. 09AADCP5536C1ZJ. Petitioner placed purchase order of raw material i.e. 2,500 Kg of NUCREAL AE Resin and 7,500 Kg of SURLYN SR Resin to a Ex-U.P. Registered dealer i.e. M/s. Fibro Plast Corporation, Mumbai, Maharashtra. The supplier who has registered office at Mumbai and its godown at Bhiwandi, (Maharashtra) had issued proforma on invoice dated 15.01.2018, indicating all the details. Goods

were handed over to Transporter for transporting the same from Bhiwandi (State of Maharashtra) to Greater Noida by truck no. HR55X4835. For the purpose of E-way Bill Form 01, petitioner also generated Intermediate no. 1801W166944700522219 from online portal on 15.01.2018 and provided the same to supplier for transportation of goods. Supplier however, mentioned alongwith invoice, the details of documents supplied by petitioner as E-Way Bill-01. When vehicle entered U.P., it was intercepted at Noida, by Assistant Commissioner Mobile Squad, Sixth Unit, Noida and he detained goods on the ground of absence of E-Way-Bill-01, vide interception memo dated 19.01.2018. Thereafter, seizure order was passed on 20.01.2018 under section 129 (1) and notice under section 129 (3) was also issued on the same date proposing tax of Rs. 31,17,500/- and penalty of same amount.

13. In order to give a consolidated bird eye view of details of invoices, seizure orders, show-cause notices and the amount of tax/penalty proposed, a chart is being given as under:

S. N.	Writ Petition No.	Name of petitioner	Date of invoice	Date of interception /seizure order	Date of show cause notice	Amount of tax/ penalty proposed	Date of Final order
1.	587/2018	M/s Godrej and Boyce Manufacturing co. Ltd. Hapur.	16.3.18	21.3.18	21.3.18	374600/-	---
2.	454/2018	LG Electronics India Pvt. Ltd.	13.3.18	15.3.18/ 16.3.18	16.3.18	2326944/-	---
3.	455/2018	Bharti Airtel Limited	12.3.18	14.3.18	14.3.18	2552310/-	---
4.	462/2018	Mrs. Guala Closures (India) Pvt. Ltd.	23.2.18	5.3.18	5.3.18	269378/-	---
5.	458/2018	M/s RAS Polytex Pvt. Ltd.	7.3.18	9.3.18	9.3.18	209520/-	---
6.	559/2018	Rimjhim Ispat Ltd.	8.3.18	11.3.18	11.3.18	309256/-	17.3.18
7.	560/2018	Rimjhim Ispat Ltd.	28.2.18	6.3.18/ 7.3.18	7.3.18	654840/-	13.3.18
8.	478/2018	M/s Gaurang Products Pvt. Ltd.	16.3.18	19.3.18	19.3.18	247528/-	---

9.	464/201	M/s Aditya Birla Fashion and Retail Ltd. Kanpur	11.3.18 &12.3.18	14.3.18	----	461450/- (Approx value of seized goods)	---
10.	551/2018	M/s Navyug Airconditioning	23.3.18	24.3.18/ 25.3.18	25.3.18	154699/-	---
11.	87/18	Proactive Plast Pvt. Ltd.	15.1.18	19.1.18/ 20.1.18	20.1.18	1122300/-	---

14. Seizure orders passed by authorities concerned as also notices issued under section 129 (3) are challenged by different counsels appearing in these writ petitions broadly on following grounds;

(i) There was no requirement of e-way-bill under UPGST Act 2017 and Rules framed thereunder to be accompanied by the Transporters, hence, authority concerned has no jurisdiction to pass orders under Section 129 and orders impugned in this writ petition are patently without jurisdiction.

(ii) Provisions of U.P.G.S.T Act 2017 will have to sub-serve to the provision of I.G.S.T Act 2017 when goods are transported in an Inter-State transaction, which is governed by I.G.S.T Act 2017.

(iii) Fault in any case is unintentional and therefore, there could have been no seizure or imposition of penalty in the exercise of powers under Section 129.

(iv) Tax having already been paid and shown in tax invoices, there is no occasion to levy tax again on aforesaid goods and it is wholly without jurisdiction and illegal.

(v) Demand of penalty is illegal since applicable tax had already been paid prior to transportation of goods in the matters where the allegation is that e-way-bill has expired.

(vi) The fact is that vehicle transporting the goods broke down hence, goods were transferred to another vehicle or after repair transportation resumed therefore delay was neither intentional nor deliberate and hence penalty is not attracted.

(vii) Notification no. 1014 dated 21.07.2017 prescribed e-waybill- 02 for Intra-State movement of goods and Circular no. 1102 dated 9th August 2017 prescribed 48 hours time period in respect of e-way-

bill-02. On account of substitution of Rule 138 by UPGST (13th Amendment) Rules 2018 which came into force on 01.02.2018, earlier Notification dated 21 July 2017, and Circular dated 9th August 2017 became unenforceable and seizure thereafter for violation of circular dated 09 August 2017 is without jurisdiction.

(viii) Under Rule 138, power has been conferred upon State Government to specify documents which in charge of conveyance shall carry, when goods are in movement. The State Government not only prescribe e-way-bill-02 as document for intra-State movement, but also sub-delegated procedure to be prescribed by Commissioner for downloading e-way-bill-02. In the garb of prescription of procedure for downloading e-way-bill- 02, Commissioner vide circular dated 9 August, 2017 also prescribed 48 hours time period during which e-way-bill-02 shall remain valid and this prescription by Commissioner is ultra-vires and beyond the power conferred upon him as it is not contemplated either under the Act or the Rules or even Notification dated 21 July, 2017 issued by State Government. Prescription of time period of validity of e-way-bill-02 could have been done only by the State Government and not the Commissioner and this power exercised by Commissioner vide circular dated 09th August, 2017 is wholly ultra-vires.

(ix) Rule 138 confers no power upon State Government to subdelegate power to Commissioner.

(x) Commissioner in its circular dated 09th August 2017 has prescribed time period of validity for e-way-bill-01 for Inter- State movement and also for e-way-bill-02 for Intra-State movement. However, for the same distance, time period for eway- bill-02 is only 48 hours while for e-way-bill-01 it is ten days. This distinction/different period of time is clearly discriminatory and arbitrary having no rationale and nexus with the object sought to be achieved. In any case in the substituted Rule 138 made effective from 01.02.2018, time period specified for validity of e-way-bill-01 is one day for 100 km, and, therefore, reliance on Commissioner's Circular applying different time period is clearly illegal.

(xi) In the matter of inter-state transactions State Government cannot prescribe e-way-bill-01 and this prescription is wholly without jurisdiction. Where the transaction is inter-state, it is governed

by IGST Act 2017. In the tax invoices IGST was charged and transaction is not covered under UPGST Act 2017, hence, it cannot be said that there is any contravention of provisions of UPGST Act 2017 and Rules framed thereunder.

(xii) UPGST Act 2017 is applicable to transactions within the State of U.P. i.e. Intra-state and not to the Inter-State transactions. It would be covered by the provisions of IGST Act 2017 and CGST Act 2017, hence, respondent-authorities had no jurisdiction to impose any conditions on Intra-State transactions and seizure orders and notices issued are wholly without jurisdiction.

15. Per-Contra learned Standing Counsel argued that a valid Notification was issued under Section 129 and petitioners having flouted the provisions thereof, in order to give opportunity, show cause notices have been issued after passing seizure orders and the same warrant no interference.

16. We have heard Sri V.K. Upadhyay, learned Senior Advocate assisted by Sri Praveen Kumar, Sri Nishant Mishra, Sri Ritvik Upadhyay, Sri Tanmay Sadh and Sri Atul Gupta, learned counsel for Petitioners and Sri Manish Goyal, Additional Advocate General assisted by Sri C.B. Tripathi, learned counsel for the respondents. We have also perused record of all writ petitions and relevant statutes in depth.

17. Concept of Goods and Services Tax (hereinafter referred to as "G.S.T.") has been brought by Parliament through One Hundred and First Constitution Amendment vide "Constitution (One Hundred and First Amendment) Act, 2016. G.S.T has been introduced so as to replace various indirect taxes levied by Central Government and State Governments i.e. Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparation (Excise Duties) Act 1955, Service Tax Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services. It includes State Government's Taxes like State Value Added Tax/Sales Tax, Entertainment Tax, (other than the tax levied by the local bodies), Central Sales Tax levied by Centre and collected by States), Octroi and Entry-Tax Purchase Tax, Luxury Tax, Taxes on lottery, betting and gambling and State Cesses and surcharges in so far as they relate to supply of goods and services. Aforesaid Constitutional Amendment inserted Articles 246-A and 269-A which read as under.

"246-A. Special provision with respect to goods and services

tax,-(1) Notwithstanding anything contained in Articles 246 and 254, **Parliament**, and, **subject to clause (2)**, the **Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.**

(2) **Parliament** has **exclusive power** to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes **place in the course of Inter-state trade or commerce.**

Explanation.- The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article- 279-A take effect from the date recommended by the Goods and Services Tax Council."

"269-A. Levy and collection of goods and services tax in course of inter-State trade or commerce.-(1) **Goods and services tax on supplies in the course of Inter-State trade or commerce shall be levied and collected by the Government of India** and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendation of the Goods and Services Tax Council.

Explanation- For the purposes of this clause, supply of goods, or of services, or both in the course of **import into the territory of India shall be deemed to be supply of goods, or of services**, or both in **the course of inter-State trade or commerce.**

(2) The amount apportioned to a State under clause (1) shall not form part of the consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the lax levied by a State under Article 246-A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under Article 246-A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5). Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

18. There are corresponding amendments in Articles 248, 249, 250, 268, 269, 270, 271, 286, 366, 368 and in Sixth and Seventh Schedules of the Constitution. Article 268-A has been omitted by the aforesaid Amendment. Provision of Constitution of Goods and Services Tax Council has been made by insertion of article 279-A.

19. Definitions of "Goods and Service Tax" and "Services" had been provided by insertion of clauses 12-A and 26-A in Article 366 and the aforesaid two clauses read as under:

> "(12-A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;',
>
> (26-A) "Services" means anything other than goods;"

20. Section 1 (2) of One Hundred and First Amendment Act 2016 provides that the aforesaid amendment of Constitution shall come into force on such date as Central Government may, by Notification in the Official Gazette. appoint and different dates may be appointed for different provisions of the said Act. Provisions of aforesaid Amendment have been made effective with effect from 16th September, 2016.

21. Parliament thereafter enacted certain statutes in respect of G.S.T and in the present cases, we are concerned with C.G.S.T Act 2017 and I.G.S.T Act 2017.

22. C.G.S.T Act 2017 makes provisions to levy tax on all Inter State supplies of goods or services or both, except supply of alcoholic liquor for human consumption, at a rate to be notified not exceeding 20% as recommended by Goods and Services Tax Council (hereinafter referred to as "G.S.T.C"); to broad base input tax credit by making it available in respect of taxes paid on supply of any goods and services or both; "to impose obligation on electronic commerce operators to collect tax at source at such rate not exceeding one percent or not any net value of taxable supplies; to provide sale-assessment of taxes payable by registered person; to provide for conduct of audit of registered persons in order to verify compliance with the provisions of Act; to provide for recovery of arrears of tax using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person; to provide for powers of inspection search, seizure and arrest to the officers; to establish G.S.T Appellate Tribunal by Central Government; to make provision for penalties for contravention of the credit; to provide for an anti-profiteering clause in order

to ensure that business passes on the benefit of reduced tax incidence on goods and services or both to the consumers and to provide for elaborate for transitional provisions.

23. IGST Act 2017 to some extent has replaced Central Sales Tax Act 1956. Article 269 of Constitution empowered Parliament to make laws on the taxes to be levied on the sale or purchase taking place in the course of Inter-State Trade or Commerce. Consequently Central Sales Tax 1956 for levying Central Sales Tax on sales taking place during the course of Inter-State Trade or Commerce, was enacted. Central Sales Tax was collected and retained by exporting States. Crucial aspect of the above tax was that it was non-vatable i.e. credit of this tax was available as set off for future tax liability to be discharged by purchaser. Further since rate of Central Sales Tax was different from Value Added Tax being levied on Intra-State sale, it credited a tax arbitrage which was exploited by unscrupulous elements. Thus, after the constitutional amendment as stated above Parliament enacted IGST Act 2017, with the objective to levy tax on all Inter-State supplies of goods or services or both except supply of alcoholic liquor for human consumption at a rate to be notified not exceeding 40% as recommended by G.S.T Council; levy of tax on goods imported into India in accordance with the provisions of Customs Tariff Act 1975 read with Customs Act 1962; levy of tax on import of services on reverse charge basis; empower Central Government to grant exemptions; determination of nature of supply as to whether it is an Inter-State or an Intra-State supply; to provide elaborate provisions for determining place of supply in relation to goods or services or both; payment of tax by a supplier of online information and data-base access or retrieval services; refund of tax paid on supply of goods to tourist leaving India; apportionment of tax and settlement of funds and for transfer of input tax credit between Central Government, State Government and Union Territory; application of certain provisions of C.G.S.T Act 2017; and transitional transactions in relation to import of services made on or after appointed day.

24. Sections 1, 2, 3, 14, 20 and 22 of IGST Act 2017 were enforced w.e.f 22.06.2017. Sections 4 to 13, 16 to 19, 21, and 23 to 25 were enforced w.e.f 01.07.2017. For the purpose of execution of provisions of CGST Act 2017, Sections 3 to 5 make provisions for appointment and power of Officers and Section 6 makes provision, authorizing officers of State tax or Union Territory tax as proper officers in certain circumstances. Above provisions are reproduced as under:-

> "3. Officers under this Act.— The Government shall, by Notification, appoint the following classes of officers for the purposes of this Act, namely:—

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(b) Chief Commissioners of Central Tax or Directors General of Central Tax,

(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(i) any other class of officers as it may deem fit:

PROVIDED that the officers appointed under the Central Excise Act, 1944 (1 of 1944) shall be deemed to be the officers appointed under the provisions of this Act.

4. Appointment of officers.— (1) The Board may, in addition to the officers as may be notified by the Government under Section 3, appoint such persons as it may think fit to be the officers under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of Section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

5. Powers of officers.— (1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.— (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by Notification, specify.

(2) Subject to the conditions specified in the Notification issued under sub-section (1),

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

25. We may notice that Sections 3, 4 and 5 of CGST Act 2017 were enforced w.e.f 22.06.2017 and section 6 was enforced w.e.f 01.07.2017.

26. Similarly in IGST Act 2017 there are two provisions i.e. Sections 3 and 4, and same read as under:-

> **"3. Appointment of officers.—** The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.
>
> **4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.**— Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by Notification, specify."

27. Section 20 of IGST Act 2017 applies provisions of CGST Act 2017 in relation to various aspects, detailed therein, in relation to Integrated Tax in the same manner as CGST Act 2017 applies in relation to Section 20 of IGST Act 2017 which reads as under:-

> **"20. Application of provisions of Central Goods and Services Tax Act.—** Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—
>
> (i) scope of supply;
> (ii) composite supply and mixed supply;
> (iii) time and value of supply;
> (iv) input tax credit;
> (v) registration;
> (vi) tax invoice, credit and debit notes;
> (vii) accounts and records;
> (viii) returns, other than late fee;
> (ix) payment of tax;
> (x) tax deduction at source;
> (xi) collection of tax at source;
> (xii) assessment;
> (xiii) refunds;

(xiv) audit;
(xv) inspection, search, seizure and arrest;
(xvi) demands and recovery;
(xvii) liability to pay in certain cases;
(xviii) advance ruling;
(xix) appeals and revision;
(xx) presumption as to documents;
(xxi) offences and penalties;
(xxii) job work;
(xxiii) electronic commerce;
(xxiv) transitional provisions; and
(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

PROVIDED that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent from the payment made or credited to the supplier:

PROVIDED FURTHER that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

PROVIDED ALSO that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

PROVIDED ALSO that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties."

28. As we have already said section 3 of IGST Act 2017 was made effective from by 22.06.2017 and section 4 was made effective from 01.07.2017. Section 164 of CGST Act 2017 confers Rule framing power upon Central Government and pursuant thereto CGST Rules 2017 were

made and enforced w.e.f 22nd June 2017. Similarly section 22 of IGST Act 2017 confers power upon Central Government to makes Rules and pursuant thereto Integrated Goods and Service Rules 2017 (hereinafter referred to as "IGST Rules 2017") were framed and came into force w.e.f 22.06.2017. It is a small set of Rules containing only two Rules. Rule 1 relates to short title and commencement Rule 2nd applies provisions of CGST Rules 2017 for carrying out provisions specified in Section 20 IGST Act 2017 in so far as the same may apply in relation to Integrated Tax, as they apply in relation to Central Tax.

29. So far as UPGST Act 2017 is concerned, it was made effective with effect from 22.06.2017 in its entirety. Section 164 of UPGST Act 2017 confers power upon Governor to make Rules and in exercise thereto, UPGST Rules 2017 were framed which came into force on 29.06.2017. Since, in the present case, dispute relates to e-way-bill i.e. documents to be carried by a person in charge of a conveyance carrying any consignment of goods, we are confining ourselves only to relevant provisions in this regard.

30. It is Section 129 of CGST Act 2017 and UPGST Act 2017 which provides for detention seizure and release of goods and conveyance intransit. The provisions in both statutes are pari-materia and therefore, are being reproduced in the form of a comparative chart, as under:

CGST Act 2017	UPGST Act 2017
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,—	**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 the applicable tax and penalty equal to one 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;	(a) on payment of the applicable tax and penalty equal to one 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 of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;	(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five 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.	(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) The provisions of sub-section (6) of Section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.	(2) The provisions of sub-section (6) of Section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.
(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).	(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).
(4) No tax, interest or penalty shall be determined under subsection (3) without giving the person concerned an opportunity of being heard.	(4) No tax, interest or penalty shall be determined under subsection (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.	(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 tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130:	(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130:
PROVIDED 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 seven days may be reduced by the proper officer.	Provided 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 seven days may be reduced by the proper officer.

31. In CGST Act 2017 as well as in UPGST Act 2017, Section 68 provides for "Inspections of goods in movement" and the provisions are pari-materia. For conveyance, we are reproducing the same below in the form of a comparative chart, and as already said both these provisions came into force w.e.f 01.07.2017.

Section 68 CGST Act	Section 68 U.P. GST Act
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 subsection (1) shall be validated in such manner as may be prescribed.	**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 subsection (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.	(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.

32. In both sets of Rules i.e. CGST Rules 2017 and UPGST Rules 2017 Chapter VI deals with "Tax invoices, Credit and Debit Notes." Similarly, Chapter XVI deals with "E-Way-Bill Rules". Rule 138 which was pari-materia in both the sets of Rules as initially enacted, read as under.

CGST Rules 2017	UPGST Rules 2017
138. E-way Rule- Till such time as an E-way-Bill system is developed and approved by the Council, the Government may, by Notification, specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage.	**138. E-way Rule-** Till such time as an E-way-Bill system is developed and approved by the Council, the Government may, by Notification, specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage.

33. U.P. Government in purported exercise of powers under Rule 138 of UPGST Rules 2017, issued a Notification no. KA.NI-1014/XI-9(52)/17-UPGST-Rules-2017-Order-(31)-2017-Lucknow dated 21st July 2017 specifying documents required be carried by a person in charge of conveyance carrying any consignment of goods while in movement or in

transit, storage in U.P. and it reads as under:-

"Uttar Pradesh Shashan
Sansthagat Vitta, Kar Evam Nibandhan Anubhag -2
Notification
No.-K.A.NI.-1014/XI-9(52)/17-U.P.GST Rules-2017-
Order-(31)-2017
Lucknow : 21 July 2017

In exercise of the powers under Rule 138 of the Uttar Pradesh Goods and Services Tax Rules, 2017 framed under the Uttar Pradesh Goods and Services Tax Act, 2017 (U.P. Act No. 1 of 2017) the Governor is pleased to **specify the following documents that a person incharge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage in Uttar Pradesh :-**

(1) In case of transportation of taxable goods valuing Rs. 5000 or more from a place outside Uttar Pradesh into the State the enclosed Form e-way bill 01 shall be carried with the goods during the transportation or transit storage of the goods:

Provided that if a person transports goods **valuing less than Rs. 50,000** for his personal use as a personal luggage by a personal vehicle or by any public passenger transport vehicle with his personal identification documents, the form **e-way bill-01 shall not be required.**

(2) In case of transportation of **taxable goods valuing rupees 1 lakh or more mentioned** as follows within Uttar Pradesh or from a place **within the State to a place outside the State, the enclosed Form e-way bill 02** shall be carried with the goods during the transportation or transit storage of the goods:

a) Mentha Oil, Menthol and D.M.O.,
b) Supari,
c) Iron and Steel,
d) All types of edible oils and Vanaspathi ghee.

(3) In case of transportation of taxable **goods by ecommerce operators or their authorized transporters, courier agents or agents for delivery to a person within Uttar Pradesh**, the

enclosed **form e-way bill-03 shall be carried** with such goods during the transportation of goods or transit storage within State.

(4) In case of transportation of **taxable goods valuing Rs. 5,000 or more from a place outside Uttar Pradesh to a place outside the State, the form TDF-01 shall be carried with such goods** during the transportation of goods or their transit storage within the State and on the exit of goods from the State, the information shall be provided in Form TDF-02.

(5) The **forms** mentioned in clauses (1), (2), (3) and (4) above **shall be downloaded by the procedure prescribed by the Commissioner State Tax/Commercial Tax** from the website of Commercial Tax Department-http://comtax. up.nic.in

This **Notification shall be effective from such date as the** Commissioner State Tax/Commercial Tax **may mention in the circular prescribing the procedure of** downloading the said forms."

34. In view of requirement of Circular of Commissioner so as to give effect to the provisions of Notification dated 21.07.2017, Commissioner issued Circular No. Sa.Da.GST/Maal Parivahan/2017- 18/2017/Vanijya Kar dated 22.07.2017 laying down procedure for downloading E-way-bills. Commissioner also notified 26.07.2017 from which date Notification dated 21.07.2017 would become effective. Subsequently, by another Circular No. Sa.Da.GST/Maal Parivahan/2017-18/1028/Vanijya Kar dated 27.07.2017, date for giving enforcement to Notification dated 21.07.2017 was deferred and instead of 26.07.2017 it was declared to be effective from 16.08.2017. Then another Circular No. GST/Maal Parivahan/2017-18/1102/Vanijya Kar dated 09.08.2017 was issued amending procedure for downloading relevant forms and it was also declared that Government Notification dated 21.07.2017 shall be effective from 16.08.2017.

35. Further in exercise of powers under Section 164 of UPGST Act 2017, U.P. Goods and Services Tax (Fourth Amendment) Rules 2017 (hereinafter referred to as 'UPGST (Fourth Amendment) Rules 2017') were published vide Notification no. KA.NI-2-1359/XI-9(42)/17- UPGST-Rules-2017-Order-(45)-2017-Lucknow dated 20th September 2017 and Rule 138 was substituted by following Sub Rule 1 to 14:-

"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 reason 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 in Part-A of FORM GST EWB-01 electronically, on the common portal.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the eway bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, as the case may be. the transporter may. at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule

Provided also that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation I. For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of movement of goods.

Explanation 2 -The information in Part A of FORM GST EWB- 01 shall be furnished by the consignor or the recipient of the supply as consignee where the goods are transported by railways or by air or by vessel.

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update thedetails of conveyance in the e-wav bill on the common portal in FORM GST EWB-01: Provided that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of subrule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate FORM GSTEWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier in FORM GST EWB-01. he shall he informed electronically, if the mobile number or the e mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance the goods have to be transported, as mentioned in column (2):

Table

Sr. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km	One day
2.	For every 100 km or part thereof thereafter	One additional day

Provided that the Commissioner may, by Notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of e-way bill, the transporter may generate another e-way bill after updating the details in Part B of FORM GST EWB-01

Explanation.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as twenty-four hours.

(11) The details of e-way bill generated under sub-rule (1) shall be made available to the recipient, if registered, on the common

portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the recipient referred to in sub-rule (11) does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under rule 138 of the Central Goods and Services Tax rules or Goods and Services Tax rules of any other Slate shall be valid in the State.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated-

(a) where the goods being transported are specified in Annexure.

(b) where the goods are being transported by a nonmotorised conveyance:

(c) where the goods are being transported from the port, airport, aircargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs: and

(d) in respect of movement of such goods and within such areas in the State and for values exceeding such amount as the Commissioner of State Tax in consultation with the Chief Commissioner of Central Tax may notify.

Explanation- The facility of generation and cancellation of eway bill may also be made available through SMS."

36. Rules 1 (2) of UPGST (4th Amendment) Rules 2017 provides that amendment in the Rules notified on 20th September 2017 shall come into force on such date as State Government may by Notification in official gazette appoint, By the aforesaid Amendment it also inserted Rules 138-A, Rule 138-B, Rule 138-C and Rule 138-D.

37. In furtherance of Rule 1 (2) of UPGST (4th Amendment) Rules 2017 read with section 164 of UPGST Act 2017 and 21 of U.P. General Clauses Act, Governor by Notification No. KA.NI-2-138/XI-9(42)/17- U.P. Act-1-2017-Order-(101)-2018 dated 30.01.2018 appointed 1st February 2018 enforcing the amendment made in the provisions at serial no. 10 and 11 of notification no. KA.NI-2-1359/XI-9(42)/17- UPGST-Rules-2017-

Order-(45)-2017-Lucknow- dated "20th September 2017". However, what we find is that instead of date 20th September 2017, in Notification dated 30th January 2018, date of the notification no. KA. NI-2-1359/XI-9(42)/ 17-UPGST-Rules-2017-Order-(45)-2017- Lucknow it was mentioned as "20th October 2017". At serial no. 10 and 11, Rule 138 was substituted and Rule 138-A was inserted by U.P. GST(4th Amendment) Rules 2017. Notification dated 30th January 2018 reads as under:

"Notification

No. KA.NI.-2-138/XI-9(42)/17-U.P. Act-1-2017-Order- (101)-2018

Lucknow : Dated : January 30, 2018

In exercise of the powers conferred by section 164 of the Uttar Pradesh Goods and Services Tax Act, 2017 (U.P. Act no. 1 of 2017) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904), the Governor hereby appoints the 1st day of February, 2018 as the date from which the provisions of serial number 10 and 11 of Notification No. KA.NI-2- 1359/XI-9(42)/17-U.P. GST Rules-2017-Order-(45)-2017 dated 20-10-2017, shall come into force."

38. Perhaps this mistake was noticed by Government subsequently and, therefore, it issued another Notification no. KA.NI-177/XI-9- (42)/17-UP Act-1-2017-Order-(109)-2018-Lucknow- dated 6th February 2018, whereby Notification no. KA.NI-2-138/XI-9(42)/17-UP-Act-1- 2017-Order-(101)-2018-Lucknow dated 30th January 2018 was rescinded. Notification dated 6th February 2018 reads as under:

"Notification

KA.NI.177/XI-9(42)/17-U.P. ACT-1-2017-ORDER (109)-2018,

DATED 6-2-2018

In exercise of the powers conferred by section 164 of the Uttar Pradesh Goods and Services tax Act, 2017 (U.P. Act no 1 of 2017) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904), the Governor hereby rescinds, except as respects things done or omitted to be done before such rescission, the Notification no. KA.NI.-2-138/XI- 9(42)/17-U.P.Act-l-2017-Order-(101)-2018 dated 30-1-2018."

39. Before 06.02.2018, another Notification KA.NI-2-155/XI-9(42)/ 17-UPGST-Rules-2017-Order-(103)- 2018- Lucknow dated 31.01.2018 in purported exercise of powers under Section 164 of UPGST Act 2017 read with Section 21 of UPGST Act, 2017 was issued with a view to amend UPGST Rules, 2017 and it is called UPGST (13th Amendment) Rules 2018.

40. At serial no. 12 of Notification dated 31.01.2018, Rule 138 was sought to be substituted with effect from 01.02.2018 and relevant extract thereof reads as under:-

"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 or 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 or 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 at the common portal and a unique number will be generated on the said portal:

Provided that where goods are sent by a principal located in one State to a job worker located in any other State, the e-way bill shall be generated by tie principal irrespective of the value of the consignment:

Provided further that where handicraft goods are transported from one State in another by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment,

Explanation 1.—For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in Notification No. KA.NI.-2-1414/XI-9(15)/17-U.P. Act-1-2017- Order-(48)-2017 dated 27-09-2017 as amended from time to time.

Explanation 2.—For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the ease may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the eway bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01:

Provided that where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall furnish, on the common portal, the-

(a) information in Part B of FORM GST EWB-01; and

(b) the serial number and date of the Railway Receipt or the Air Consignment Note or Bill of lading, as the case may be.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter, as the case may be may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of less than ten kilometers within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1.—For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.—The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consigner or the recipient, who has provided information in Part- A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01:

Provided that where the goods are transported for a distance of less than ten kilometers within the State or Union Territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part-A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part-B of FORM GST EWB-01 for further movement of consignment:

Provided that once the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the

consignor or recipient, as the case may be, who has furnished the information in Part-A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of subrule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case maybe, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator, the information in Part A of FORM GST EWB-01 may be furnished by such ecommerce operator.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, within 24 hours of generation of the e- way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further the unique number generated under subrule (1) shall be valid for 72 hours for updation of Part B of FORM GST EWB-01.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance within the country, the goods have to be transported, as mentioned in column (2) of the said Table:—

Sr. No.	Distance	Validity period
(1)	(2)	(3)
1	Upto 100 km	One day
2	For every 100 km or part thereof thereafter	One additional day

Provided that the Commissioner may, by Notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of FORM GST EWB-01.

Explanation.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as twenty-four hours.

(11) The details of e-way bill generated under sub-rule (1) shall be made available to the —

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in subrule (11) has been made available does not communicate his

acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in, Schedule given below;

(b) where the goods are being transported by a nonmotorised conveyance;

(c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(d) in respect of movement of such goods and within such areas in the State as the Commissioner of state tax, in consultation with the Principal Chief Commissioner/Chief Commissioner of central tax, may notify;

(e) where the goods, other than de-oiled cake, being transported are specified in the Schedule appended to Notification No.KA. NI-2-837/XI-9(47)/17-UP Act-1-2017- Order-(07)-2017 dated 30.6.2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel; and

(g) where the goods being transported are treated as no supply under Schedule III of the Act.

Explanation- The facility of generation and cancellation of eway bill may also be made available through SMS."

41. To complete the chain of the events, we may mention that UPGST (Fourteenth Amendment) Rules 2018 (hereinafter referred to as "(Fourteenth Amendment) Rules 2018") has been published vide Notification no.

KA.NI.-2-487/XI-9(42)/17-U.P.GST Rules-2017- Order-(120)-2018 dated 26.03.2018 whereby again Rule 138 has been substituted and it reads as under.

"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 consign--ment 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:

Provided that the transporter, on an authorization received from the registered person, may furnish information 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:

Provided further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining

registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1— For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in Notification No. KA.NI.—2- 1414/XI-9(15)/17-U.P.Act-I-2017- Order-(48)-2017 dated 27-09-2017 as amended from time to time.

Explanation 2.— For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the eway bill required under these rules is produced at the time of delivery,

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees: Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.—The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal. (5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that where the goods are transported for a distance of upto fifty kilometers within the State or Union Territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill. (5A) The consignor or the recipient, who has furnished

the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill: Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:—

Sr. No.	Distance	Validity period
(1)	(2)	(3)
1	Upto 100 km.	One day in cases other than Over Dimensional Cargo
2	For every 100 km. or part thereof thereafter	One additional day other than Over Dimensional Cargo
3.	Upto 20 km.	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo:

Provided that the Commissioner may, on the recommendations of the Council, by Notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required.

Explanation 1.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted

as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.—For the purposes of this rule, the expression "Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in subrule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union Territory shall be valid in every State and Union Territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

(b) where the goods are being transported by a nonmotorised conveyance;

(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland

container depot or a container freight station for clearance by Customs;

(d) in respect of movement of such goods and within such areas in the State and for values not exceeding such amount as the commissioner of State Tax, in consultation with the principal Chief Commissioner/Chief Commissioner of Central Tax, may, subject to condtions that may be specified, notify;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to Notification No. KA.NI.—2-837/XI-9{47)/17-U.P.Act-I- 2017-Order-(07)-2017 dated 30-06-2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;

(h) where the goods are being transported—

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(i) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under Notification No. KA.NI.—2-853/XI-9(47)/17-U.P.Act-I-2017-Order-(20)-2017 dated 30-06-2017 as amended from time to time and Notification No. KA.NI.—2-1425/XI-9(47)/17-U.P.Act-1-2017-Order-(53)-2017 dated 04-10-2017 as amended from time to time;

(k) any movement of goods caused by defence formation under Ministry of Defence as a consignor or consignee;

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) where empty cargo containers are being transported; and

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

Explanation.— The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be."

42. Rule 1 (2) of 14th Amendment Rules, 2018 provides that the provisions in said Notification shall come into force on such date as State Government may by Notification in the gazette, appoint. In furtherance thereof, State Government has issued Notification no. KA.NI-2-498/XI-9(42)/17-UP-Act-1-2017-Order-(121)-2018-Lucknow dated 27.03.2018 appointing 01.04.2018 for giving effect to Rule 3 [other than sub-rule(7)] and rules 4, 5, 6, 7 and 8 on (Fourteenth Amendments) Rules 2018. The said Notification reads as under:-

"Notification

KA.NI.-2-498/XI-9(42)/17-U.P. ACT-1-2017-ORDER-(121)-2018, Lucknow Dated March 27, 2018

In exercise of the powers under sub-rule (2) of rule 1 of the Uttar Pradesh Goods and Services Tax (Fourteenth Amendment) Rules, 2018 published with Notification No. KA.NI.-2-487/XI- 9(42)/17-U.P. GST Rules-2017, Order-(120)-2018 dated March 26, 2018, the Governor is pleased to appoint the 1st day of April, 2018 as the date from which the provisions of rule 3 [other than sub-rule (7)] and rules 4, 5, 6, 7 and 8 of the said rules shall come into force."

43. Above legislative history would disclose that constitutional amendment relating to GST was made effective from 16.09.2016. Thereafter, relevant statutes were enacted by Parliament as well as Provincial Legislature which came into force on different dates i.e. 22.06.2017 and 01.07.2017. Rule framing power under IGST Act, 2017

contained in Section 22 and under CGST Act, 2017 contained in Section 164, came into force on 22.06.2017 but U.P. GST Act, 2017 in its entirety came into force on 22.06.2017 which included Section 164, conferring Rules framing power upon Governor. First set of Provincial Rules namely U.P. GST Rules, 2017 came into force on 29.06.2017.

44. Rule 138 as was initially framed under U.P. GST Rules, 2017 was in primitive form, stating that till such time e-way bill system is developed and approved by GSTC, the Government may, by Notification, specify the documents that a person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage. This rule 138 in U.P. GST Rules, 2017 came into force on 29.06.2017. In furtherance of Rule 138 of U.P. GST Rules, 2017, first Notification was issued by Governor on 21.07.2017 but this Notification also declares that Notification itself shall be effective from such date as Commissioner, State Tax/Commercial Tax may mention in the circular prescribing procedure of downloading the forms mentioned in the said Notification. Thus in furtherance of Rule 138 of U.P. GST Rules, 2017, which came into force on 29.06.2017, first Notification though issued on 21.07.2017 but it was not made effective from that date and, on the contrary, it was to be declared by Commissioner State Tax/Commercial Tax. In furtherance of State Government's Notification No. KA-NI-1014/ XI- 9(52)/17-U.P.GST Rules-2107-order(31)-2017 dated 21.07.2017, Commissioner issued Circular No. Sa.Da.GST/Maal Parivahan/2017-18/2017/Vanijya Kar dated 22.07.2017 laying down procedure for downloading of E-way bill 01, E-way-bill 02, E-way-bill 03 and T.D.F. 01 and made Government Notification effective from 26.07.2017. On representation of Traders and Transporters Association Commissioner issued another Circular No. Sa.Da.GST/Maal Parivahan/2017- 18/1028/ Vanijya Kar dated 27.07.2017, modifying date of making Government Notification dated 21.07.2017 effective and new date was 16.08.2017, the reason being that traders found a lot of difficulties in downloading relevant Forms. Taking note of difficulties Commissioner also issued Circular No. Sa. Da. GST/Maal Parivahan/2017- 18/1102/Vanijya Kar dated 09.08.2017 amending procedure for downloading relevant Forms and it was declared that Government Notification dated 21.07.2017 shall be effective from 16.08.2017.

45. Then comes amendment by substitution of Rule 138 by Notification dated 20.09.2017. However, it was not made effective and operative since for the said purpose, Rule-1(2) of U.P. GST (Fourth Amendment) Rules 2017 requires another Notification by State Government, appointing date of enforcement of substituted Rule 138. This substituted Rule 138 as notified

on 20.9.2017 was sought to be enforced with effect from 01.02.2018 by Notification dated 30.01.2018 but a glaring error was committed and instead of giving effect to Notification dated "20.09.2017", it mentioned the date as "20.10.2017". Thus Notification dated 20.09.2017 did not come into effect and Rule 138 as sought to be substituted by Notification dated 20.09.2017 remained unenforced and inoperative. On 31.01.2018 UPGST (Thirteenth Amendment) Rules 2018, were published which came into force w.e.f. 23.1.2018, except otherwise provided in the Notification dated 31.01.2018. Substituted Rule 138 made by Notification dated 31.01.2018 was made effective from 01.02.2018. Therefore, Rule 138, as initially enacted and made effective from 29.6.2017 read with Government Notification dated 21.7.2017, prescribing procedure, came into force on 16.08.2017 by Commissioner's Circular dated 22.07.2017 read with Circulars dated 27.02.2017 and 09.08.2017, stood replaced by Rule 138 by Notification dated 31.01.2018 which came into force on 01.02.2018.

46. Since Rule 138 which came into force on 01.02.2018 vide Notification dated 31.01.2018 provided a complete procedure itself including the Forms we have no hesitation in observing that Rule 138 read with all subordinate legislation namely, Government's Notification dated 21.07.2017 and Commissioner's Circular dated 22.07.2017, 27.07.2017 and 09.08.2017 insofar as not consistent with Rule 138 (made effective from 01.02.2018), ceased to be operative on and after 01.02.2018. After 01.02.2018, Form Numbers required under Rule 138 (as came into force on 1.2.2018), were different than what was alleged to be non-possessed or obtained by Petitioners or Transporters, carrying goods in dispute by making reference to Government's Notification dated 21.07.2017 and Commissioner's Circular dated 09.08.2017. Even the authorities concerned, it is evident, were not clear as to what are the correct Forms in these cases.

47. Further, it is not the case of respondents that the Forms consistent with Rule 138 made effective from 01.02.2018 were made available on the portal.

48. We also find that under Rule 138 (10) period of validity of e-way bill was clearly different than what was mentioned in Commissioner's Circulars dated 09.08.2017. Thus, Rule 138 as was brought in by Notification dated 31.01.2018 w.e.f. 01.02.2018 was operative during the period of transactions with which we are concerned in the present set of writ petitions, except writ petition no. 87 of 2018 which is governed by Rule 138, as initially enacted read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017, 27.07.2017 and 09.08.2017 since the invoice herein is dated 15.01.2018 and seizure was made on 20.01.2018.

49. Seizure orders, show cause notices and final orders (wherever passed) in writ petitions under consideration, (except Writ Petition No. 87 of 2018) we find that concerned authority, in all above documents, has referred to Government's Notification dated 21.07.2017 and Commissioner's Circular dated 09.08.2017, though the Forms were already changed, procedure was also made different vide Rule 138 brought in by Notification dated 31.01.2017, made effective from 01.02.2018. These orders, therefore, passed by authorities concerned are clearly erroneous due to mistake of relevant provisions, hence apparently it is difficult to sustain the same.

50. It appears that legislative changes were made in such a quick succession that field authorities could not track themselves with such changes and, hence, adhered to compliance of provisions which stood already substituted by new provisions and earlier ones had become otiose. Insistence upon petitioners, at the time of issue of seizure memos and show cause notices to have downloaded E-way-bill 01 and/or 02 and its non compliance by referring to Government's Notification dated 21.07.2017 read with Commissioner's Circulars dated 22.07.2017 and 09.08.2017 and also Rule 138 as substituted vide Government Notification dated 20.09.2017, though it was never imposed and made operative, was/ is clearly erroneous and illegal. Notification dated 31.01.2018 whereby Rule 138 was completely changed by substitution and made effective from 01.02.2018, it appears, escaped attention of authorities concerned, though it is this provision which had to be complied by petitioners. Unfortunately, authorities concerned have completely failed to observe the same. It appears that for the field authorities there was a gross chaos on account of quick changes in relevant provisions, hence, authorities concerned could not appreciate, what provision is supposed to be followed by concerned person and what is actual default, if any, which has been committed by such person. Petitioners (except Writ Petition No. 87 of 2018) in the present cases, when goods in transit were intercepted and impugned orders were issued, met an unauthorized act and suffered illegal order.

51. To complete the story, we may observe that Rule 138 again stood substituted by Notification dated 26.03.2018 which has come into force on 01.04.2018 but here also sub rule (7) has not been made effective.

52. Counsel for the petitioners contended that Notification dated 20.09.2017 having been rescinded subsequently will not result in revival of earlier provision but the submission, in our view, does not arise at all in view of discussions made above, showing that Rule 138 as substituted by U.P. GST (Fourth Amendment) Rules 2017 (Notification dated 20.09.2017), as a matter of fact, never became operative. The first amendment by substitution

of Rule 138 is by way of U.P. GST (Thirteenth Amendment) Rules 2018 vide Notification dated 31.01.2018 which came into force on 01.02.2018 and it continued upto 31.03.2018. Thereafter, it stands substituted by another Rule 138 vide U.P. GST (Fourteenth Amendment) Rules 2018, Notification dated 26.03.2018, made effective from 01.04.2018. Probably, the above pace of change derailed respondent authorities also in their understanding as to which provision has to be followed and implemented and what has to be observed/applied/obeyed by Petitioners and their Transporters. That is how impugned orders have been passed under a clear misconception of non-downloading of e-way bill 01 or 02, as the case may be, though under Rule 138, which had come into force on 01.02.2018, the Form(s) required to be downloaded by Dealers or Transporters are different.

53. In these peculiar facts and circumstances of the case, in our view, neither it can be said that Petitioners have deliberately committed any fault or disobeyed law intentionally or fraudulently, particularly when respondent-authorities themselves were not very clear. It also cannot be said that there is/was any intention of evasion of tax on the part of these petitioners. In the facts and circumstances, in all the writ petitions (except Writ Petition No. 87 of 2018), we are clearly of the view that seizure orders, show-cause notices issued under section 129 (3) and final orders, if any, are not sustainable in law.

54. So far as, Writ Petition no. 87 of 2018 is concerned, here orders of seizure and show-cause notices are referable to Rule 138 as came into force on 29.06.2017 read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017. In this regard submission has been made that goods were transported from Bhiwandi (State of Maharashtra) to Gautam Budh Nagar and transaction being inter-State, provisions could not have been made by State Government of U.P. GST Act, 2017, hence Rule 138 of U.P. GST Rules, 2017 read with Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017 are ultra vires.

55. We have already discussed relevant provisions of various Statutes and it is evident that the provisions are pari materia. Officers of State are also competent for search, seizure and imposition of penalty in respect of violation of Central Enactments. Moreover, provisions relating to search and seizure are not for the purpose of imposition of a new liability but to regulate fiscal statutory provisions in order to avoid evasion of tax. Nothing has been placed on record to show that similar requirement of relevant documents was not provided by Central Government also in respect of inter-state transactions. There is also a principle that mere mention of a

wrong provision will not make an order bad, if otherwise, power exists in the Statute. In the circumstances, we are not satisfied that the provisions made by Governor vide Rule 138 read with Government's Notification dated 21.07.2017 and Commissioner's Circulars dated 22.07.2017 and 09.08.2017 are ultra vires of any Statute. The argument otherwise is rejected. Submission that non-observance is not intentional or deliberate, needs an investigation into facts. We find that only a showcause notice has been issued which is under challenge. Petitioner has remedy of submitting reply to the same before authority concerned and if final order is passed even thereafter there is remedy of appeal. We therefore find no reason to interfere with the seizure order and showcause notice impugned in writ petition no. 87 of 2018. Instead we relegate petitioner to avail remedy provided under the Statute. With the aforesaid liberty writ petition no. 87 of 2018 is liable to be dismissed.

56. In the ultimate result, Writ Tax No. 587 of 2018, 454 of 2018, 455 of 2018, 462 of 2018, 458 of 2018, 559 of 2018, 560 of 2018, 478 of 2018, 464 of 2018 and 551 of 2018 are hereby allowed to the extent that seizure orders, show-cause notices and final orders, impugned in these writ petitions are hereby set aside.

57. Writ Tax No. 87 of 2018 is hereby dismissed with the liberty to petitioner to submit reply to show-cause notice, and, if any final order is passed, thereafter to avail remedy of appeal provided in the Statute.

58. Costs made easy.

[2018] 56 DSTC 429

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[Justice Dama Seshadri Naidu]

W.P. (C) No. 35868/2018

Saji S. (Proprietor)
Adithya and Ambadi Tradres & Anr. ... Petitioners

Vs.

The Commissioner, State GST Department & Anr. ... Respondents

Date of Order: 12.11.2018

DETENTION OF GOODS - NOTICE ISSUED FOR TAX AND PENALTY UNDER GST ACT – PETITIONER DEPOSITED AMOUNT UNDER THE HEAD SGST – REVENUE

REFUSED TO RELEASE THE GOODS AS REMITTANCE WAS NOT MADE UNDER IGST – WRIT PETITION FILED AND DREW ATTENTION TO SECTION 77 OF GST ACT AND ALSO RULE 4(1) OF GST REFUND RULES, 2017 – WRIT ALLOWED AND DIRECTED RESPONDENT TO GET THE AMOUNT TRANSFERRED FROM SGST TO IGST AND RELEASE THE GOODS ALONG WITH THE VEHICLE.

Present for the Petitioners : Sri. S. Santhosh Kumar.
Smt. Anjana S. Santhosh and
Smt. P. Lissy Jose (Advocates)

Present for Respondents : DR Thushara James, GP

This Writ Petition (Civil) having come up for admission on 12.11.2018, the court on the same day delivered the following:

JUDGMENT

The petitioner, a registered dealer, purchased certain goods from Chennai. He had them transported to Kerala. When the goods were in transit, the Assistant State Tax Officer (ASTO), for the reasons not germane here, detained the goods and issued the Ext.P3 notice, dated 30.09.2018.

2. Based on the demand in the Ext.P3 notice, the consignor paid the tax and penalty, as is evident from Ext.P4 payment receipt. But the remittance was made under the head ‘SGST’.

3. The petitioner, who is the consignee and transporter, insists that the consignor paid the tax and penalty under that only based on the ASTO's directions. But the fact remains that the remittance must have been under the head 'IGST'. So the authorities have refused to release the goods. Aggrieved, the petitioner has filed this writ petition.

4. The petitioner's counsel has drawn my attention to Section 77 of the GST Act and also Rule 4(1) of the GST Refund Rules, 2017, especially the proviso appended to the Rule. To hammer home his contentions that even if the remittance were to treated as a mistake on the consignor's part, the statute empowers the authorities to transfer the deposit from one head to another: from SGST to IGST.

5. The Government Pleader, on the other hand, submits that the petitioner could as well pay the amount under 'IGST' and then claim a refund from the head 'SGST'. According to her, if the authorities have to go for an adjustment, it will take more than a couple of months.

6. Heard the learned counsel for the petitioner as also the Government Pleader.

7. I reckon the facts are not in dispute. The petitioner, as a consignee and transporter, purchased goods from the consignor in Chennai. While those goods were in transit, they were detained. Further not in dispute is the fact that the consignor paid the tax and penalty. Either on the ASTO's advice or on its own, it remitted the amount under the head 'SGST', instead of 'IGST'. In this context, we may refer to Section 77 of the GST Act. And it reads:

> **Section 77: Tax wrongfully collected and paid to Central Government or State Government:**
>
> (1) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
>
> (2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable."

8. We may as well examine Rule 4(1) of the GST Refund Rules, for much turns upon it. And it reads:

> **"4. Order sanctioning refund**
>
> (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06, sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:
>
> PROVIDED that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under

any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07."

(italics supplied)

9. As seen, Section 77 provides for the refund of the tax paid mistakenly under one head instead of another. But Rule 4 speaks of adjustment. Where the amount of refund is completely adjusted against any outstanding demand under the Act, an order giving details of the adjustment is to be issued in Part A of FORM GST RFD-07. The petitioner's counsel lays stress on this process of adjustment and asserts that the amount remitted under one head can be adjusted under another head, for the demand can be any amount under the Act.

10. Under these circumstances, I find no difficulty for the respondent officials to allow the petitioner's request and get the amount transferred from the head 'SGST' to 'IGST'. It may, as the Government Pleader has contended, take some time, but it is inequitable for the authorities to let the petitioner suffer on that count.

11. So I hold that the 2nd respondent will release the goods forthwith along with the vehicle and, then, ensure that the tax and penalty already stood remitted under the 'SGST' is transferred to the head 'IGST'.

The writ petition is disposed of accordingly.

[2018] 56 DSTC 432

In the High Court of Kerala at Ernakulam
[Justice Dama Seshadri Naidu]

W.P. (C) No. 37082/2018

Pioneer Polyleathers Limited ... Petitioner

Vs.

Assistant State Tax Officer & Anr. ... Respondents

Date of Order: 16.11.2018

MODE OF PAYMENT UNDER GST – IGST WAS PAID THROUGH THE PORTAL – REVENUE INSISTED TO PAY CASH OR THROUGH DEMAND DRAFT AND REFUSED TO RELEASE GOODS – WHETHER JUSTIFIED HELD NO – THAT INSISTENCE APPEARED TO BE ARCHAIC AND OUT OF TUNE WITH THE VERY SPIRIT OF THE GST REGIME AND DIRECTION ISSUED TO RELEASE GOODS & VEHICLE.

Present for the Petitioner : Sri. Anil D. Nair, Sri. R. Sreejith, Smt. Arya Anil and Smt. Niloofar O. Nizam (Advocates)

Present for Respondents : Sri. P.R. Sreejith SC and M.M. Jasmine, GP

This writ petition (civil) having come up for admission on 16.11.2018, The court on the same day delivered the following:

JUDGMENT

The petitioner, a registered dealer, suffered the detention of its goods, under Section 129(3) of the GST Act. The Assistant State Tax Officer issued the Ext.P2 notice, demanding the petitioner to pay IGST @ 18% and IGST @ 18%, both amounting to Rs.5,28,834/-.

2. The record reveals that the petitioner paid the amount through the portal, and obtained the Ext.P3 payment receipt. But the Assistant State Tax Officer refused to release the goods, for he insists that the petitioner ought to have paid the tax and penalty either through cash or through Demand Draft. Aggrieved, the petitioner has filed this writ petition.

3. Yesterday, the learned Government Pleader submitted, on instructions, that the amount must be apportioned between the Centre and the State, as the liability is under the head IGST. It is not within the State's purview to effect that apportionment. Therefore, she suggested that if the Court could have before it the GST Network, it will solve the problem. Therefore, I suo motu added GST Network as the 2nd respondent and notified the Standing Counsel.

4. Today, the Standing Counsel has appeared and submitted that the GST Network is only an infrastructure provider. It has no statutory role to play in apportionment of the taxes between the State and the Centre. In this backdrop, the petitioner's counsel draws my attention to the Ext.P4 judgment, which is said to have attained finality. I reckon under identical circumstances, this Court, in the Ext.P4 judgment, that is Fashion Marble and Granite Company Pvt. Ltd. v. Assistant State Tax Officer and Others1, has held as follows:

> “14. Under these circumstances, the Court declares that the 1st respondent's insistence that the petitioner should pay the amount either in cash or through demand draft cannot be sustained. As is further evident from Ext.P7, the petitioner is a dealer registered under the CGST. Cumulatively viewed, the petitioner's paying the penalty under Ext.P5 receipt to the portal of GST is eminently sustainable. Therefore, I direct that the 1st respondent authority,

release the goods, after receiving Ext.P5 receipt. With these observations, the writ petition stands disposed of."

5. Given the submissions advanced by the Standing Counsel for the GST Network, evidently it is only a service provider, having no role to pay in the apportionment. Further, the Government both at the Centre and in the State, have ushered in the GST Tax regime to ensure that everything is made online with minimum manual interventions. Yet strangely, the authorities still insist that the payment should be by physical means: either in cash or through Demand Draft. That insistence seems to be archaic and out of tune with the very spirit of the GST regime. In apportionment, there may be delays and difficulties, but the tax payer cannot be made to suffer, on that count.

6. Under these circumstances, applying the ratio of the judgment in Fashion Marbles and Granites Pvt. Ltd. v. Assistant State Tax Officer, I hold that the Assistant State Tax Officer shall release the goods and the vehicle forthwith.

The Writ Petition is disposed of accordingly.

[2018] 56 DSTC 434

Before the High Court of Allahabad
[Ashok Kumar, J.]

Writ Tax No. 1300 of 2018

Rajavat Steels ... Appellant

Vs.

State of U.P. ... Respondent

Date of Order: 27.09.2018

INITIATION OF SEIZURE PROCEEDINGS U/S 129 OF CGST ACT, 2017 – INSPECTION OF GOODS IN MOVEMENT – COMPETENT AUTHORITY HAD SEIZED GOODS AND VEHICLE ON GROUND THAT TRUCK NUMBER WAS MENTIONED BEING U.P. - 78 - DN 7983 INSTEAD OF U.P. - 78 - DN 7938 – WHETHER MISTAKE WAS DUE TO INADVERTENT OR HUMAN ERROR – HELD, YES – CLEAR CUT CASE OF HARASSMENT - VEHICLE NUMBER WAS MENTIONED DIFFERENT, COMPETENT AUTHORITY WAS DIRECTED TO RELEASE GOODS AND VEHICLE ON FURNISHING INDEMNITY BOND TO THE EXTENT OF AMOUNT OF PENALTY DEMANDED.

Present for Petitioner : Rahul Agarwal

Present for Respondent : C.S.C.

Hon'ble Ashok Kumar, J.

Heard learned counsel for the petitioners and learned Standing Counsel for the State.

This writ petition is filed with prayer to quash the notice dated 18.09.2018 passed by respondent no.3 and further to release the goods and the vehicle.

Prima facie, this Court finds that on totally frivolous grounds the goods in question are seized by the Mobile Squad-9, Kanpur.

The counsel for the petitioners has placed a copy of the circular dated 14.09.2018 being Circular No. 64/34/2018-GST issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing which is one of the highest authority, which clearly indicates in Clause 5 that the proceedings under Section 129 of the CGST Act may not be initiated, inter alia, in the situation which are mentioned in the said circular.

Learned counsel for the petitioner has placed reliance on Clause 5(f) of the said circular which provides that in the event on error in one or two digits/characters of the vehicle number the proceedings under Section 129 of the CGST Act may not be initiated.

In the instant case, the proceedings under Section 129 of the CGST Act read with Section 20 of the IGST Act are initiated while the goods were proceeded from Kanpur and were to be delivered at the purchaser, who situates at Udhamnagar, Uttrakhand and immediately after proceeding from the business place of the petitioner, the respondent no.4, Mobile Squad Authority has detained the truck and goods at Kalyanpur and initiated the seizure proceeding and has passed the seizure order.

The ground for seizing the goods is that in the invoice, E-way bill and weigh slip the Truck number was mentioned being U.P.-78-DN 7983 instead of U.P.-78-DN 7938.

Learned counsel for the petitioner contended that the said mistake was due to inadvertent human error by the person who has prepared the documents including E-way bill, as the vehicle no. is mentioned by him what he has noticed in the tax invoice and further that he has mentioned the same in all other papers/documents subsequent to issuance of invoice.

Surprisingly, neither the mobile squad authority nor the appellate authority appreciated the claim of the petitioner that it is due to mistake or

human error the vehicle number (particularly last two digits) are mentioned different which in the instant case are 83 in place of 38.

This Court is unhappy with the conduct of the authorities and it is nothing but a clear cut case of harassment of the petitioner/dealer.

In view of the aforesaid fact, the goods and vehicle are directed to be released forthwith and since the petitioner is a registered dealer, therefore, in the interest of justice, this Court directs the petitioner to furnish the indemnity bond to the extent of the amount of penalty asked/demanded.

The writ petition is allowed.

[2018] 56 DSTC 436

In the Calcutta High Court
[Justice Shivakant Prasad]

CRM No. 3327-3328/2018

Sanjay Kumar Bhuwalka & Anr. ... Petitioners

Vs.

Union of India ... Respondent

Date of Order: 09.07.2018

OFFENCES AND PROSECUTION UNDER GST ACT – ARREST AND DETENTION – APPLICATION FOR BAIL – FAKE TAX INVOICES CREATED WITHOUT SUPPLY OF GOODS OR SERVICES TO FACILITATE IRREGULAR AVAILMENT AND UTILISATION OF FAKE INPUT TAX CREDIT.

"REASONABLE BELIEF" – DOES NOT REQUIRE AS MUCH EVIDENCE AS PRIMA FACIE CASE – INVESTIGATION REVEALED MORE THAN 40 SHELL COMPANIES WERE OPERATED BY ARRESTED PERSONS FOR ISSUED FAKE TAX INVOICES – EVEN AFTER LAPSE OF 60 DAYS FROM ARREST THE INVESTIGATION WAS GOING ON – OFFENCE COMPOUNDABLE – ACCUSED PERSONS TO BE ENLARGED ON BAIL ON FURNISHING OF BOND OF RS. 50 LAKH EACH ON CONDITION TO DEPOSIT RS. 39 CRORE TO THE EXCHEQUER AND DIRECTED TO APPEAR BEFORE INVESTIGATING AUTHORITY TILL FINAL INVESTIGATION.

Facts

The *petitioners were arrested on 12.05.2018 due to their involvement in the business of generating and selling of fake tax invoices to various entities without supplying the underlying goods or services, thereby facilitating irregular availment and utilization of input tax credit by such entities to whom such fake invoices were issued.*

Summons were issued to the petitioners under Section 70 of the CGST Act, 2017 read with Section 174(2) of the said Act and in their statements, they had admitted that they were looking after and controlling the business activities of the companies.

It was further revealed that various companies were controlled by them who had passed on fake input GST credit to the tune of Rs. 27 crore and Rs. 12 crore respectively to the recipient entities the Additional Director General had reasons to believe that the petitioners had committed the offences stipulated under Section 132 sub-section (1)(a), (b) and (c) of the said Act for having evaded payment of tax in excess of rupees five hundred lakh which was an offence punishable with imprisonment for a term which may be extended to five years and with fine under Section 69 of the said Act. Based on such reasonable belief, the Additional Director General directed the officers concerned to arrest the petitioners in terms of the provisions stipulated under Section 69 of the said Act and they were arrested on 12.05.2018.

Held

'Reasonable Belief' or reason to believe as a standard to arrest required that arresting officer subjectively believe that the suspect had committed the offence and that objectively reasonable person would reached the same conclusion.

Grounds did not require as much evidence as a prima facie case but do require that things believed to be more likely than not. It was crystal clear that during the investigation, it was found that more than 40 such fake/shell companies were being operated by the accused persons against whom investigation was under process.

The economic offence having deep rooted conspiracy and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country. While granting bail, the Court had to keep in mind the nature of the accusations, the nature of evidence in support thereof the severity of the punishment which conviction will entailed, the character of the accused, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and others similar consideration were required to be taken into consideration. Nevertheless, bearing in mind the evidence having been collected so far by the Investigating Agency and in consideration of the compounding nature of the offence, this Court was pleased to enlarge

the petitioners on bail on furnishing bond of the sum of Rs. 50,00,000/- each on condition to deposit of Rs. 39 crore to the Government Exchequer through the competent authority with direction to appear before the I.O./ Authority holding investigation to assist the investigating machinery as and when called upon to appear before the authority concerned till final investigation or till the offence was compounded under the provision subject to satisfaction of the learned Additional Chief Judicial Magistrate, Sealdah.

Present for the Petitioners	:	Mr. Shekhar Basu, Mr. Debasish Roy, Mr. Rajdeep Majumder, Mr. Danish Haque, Arindam Dey, Mr. Mayukh Mukherjee, Mr. K.L. Mukherjee, Mrs. Aroshi Rathore and Mrs. Kriti Mehorotra
Present for Respondent	:	Mr. K. K. Maity

Judgment

Shivakant Prasad, J.

The above two cases under provision of Section 439 Cr.P.C. have been filed by two separate petitioners under the same Memo of Arrest by the opposite party, Union of India whereunder petitioners have prayed for enlarging them on bail, inter alia, on the grounds stated in the petitions. Both the cases were heard analogously as the legal issue and the factual aspects of the case are common. So they can be disposed of by a common judgment.

To speak precisely, the applications are directed against the order dated 28.05.2018 passed by the Additional Chief Judicial Magistrate, Sealdah in connection with Case No. C 216 of 2018 arising out of DGCEI F. No. 29/ KZU/KOL/GR.D/2018 dated 12.5.2018 under Section 132(1)(a), (b) and (c) of the Central Goods and Services Tax Act, 2017 whereby prayer of the petitioners to enlarge them on bail was turned down.

Mr. K.K. Maity learned Advocate for Union of India opposite party herein submitted that the petitioner in CRM 3327 of 2018 Shri Sanjay Kumar Bhuwalka and in CRM 3328 of 2018 Neeraj Jain were arrested on 12.05.2018 due to their involvement in the business of generating and selling of fake tax invoices to various entities without supplying the underlying goods or services, thereby facilitating irregular availment and utilization of input tax credit by such entities to whom such fake invoices were issued.

It is submitted that during investigation, it was revealed that M/s. Mecon Engineering Works, M/s. Amazonite Steel Pvt. Ltd., M/s. Corandum Impex Pvt. Ltd., M/s. Cuprite Marketing Pvt. Ltd. and M/s. Binky Exim Pvt. Ltd. were all part of a well thought out conspiracy aimed at duping the exchequer by way of creation of a complex web of inter-connected companies engaged in fraudulent issuance of tax invoices without supply of goods or services to enable the recipient companies to avail and utilize fake input tax credit leading to loss of Government revenue.

It is contended that the investigation revealed that all the above fake companies were being controlled and run by a group of persons including Shri Sanjay Kumar Bhuwalka and Shri Neeraj Jain being the petitioners herein.

Summons were issued to the petitioners under Section 70 of the CGST Act, 2017 read with Section 174(2) of the said Act and in their statements, they have admitted that they were looking after and controlling the business activities of the companies.

It was further revealed that various companies were controlled by them who have passed on fake input GST credit to the tune of Rs. 27 crore and Rs. 12 crore respectively to the recipient entities.

Accordingly, it is submitted by Mr. Maity that in view of such fraudulent activities by the petitioners, the Additional Director General had reasons to believe that the petitioners have committed the offences stipulated under Section 132 sub-section (1)(a), (b) and (c) of the said Act for having evaded payment of tax in excess of rupees five hundred lakh which is an offence punishable with imprisonment for a term which may be extended to five years and with fine under Section 69 of the said Act. Based on such reasonable belief, the Additional Director General directed the officers concerned to arrest the petitioners in terms of the provisions stipulated under Section 69 of the said Act and they were arrested on 12.05.2018.

It would be profitable to reproduce the provision of Section 69 of the CGST Act which deals with Power to Arrest as under :

“69. Power to Arrest –

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 174),—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station."

Mr. Sekhar Basu, learned senior counsel for the petitioners stressed on the word reasons to believe appearing in section 69(1) of the Act contending that a Statute, be it of any nature, civil, criminal, quasi criminal or quasi civil has a definite destination to reach which in legal parlance is described as "attainment of the object for which the law has been enacted for" and to analyse the character of a statute, it has to be read as a whole and then and then only its true character and application can be understood.

I do agree with such contention of Mr. Basu that the GST Act of 2017 is essentially a fiscal statute and the statement of object and reason has to be read together which is aimed at realization of revenue. Revenue is the monetary payment due to the government and non-payment, whatever be the means applied for such non-payment confers right on the government, both Central and State, to realize the revenue whereas penal provision of arrest and detention is only when there is violation of the provision under the statute which is not the intention of the legislature to achieve the fiscal object regardless of the existence of a provision for the arrest of the offender in the Act.

It has been argued that it is trite law that a provision of law which seeks to apply will lead to deprivation of liberty of a citizen, ought to be construed strictly regard being had to the mandate of Article 21 of the Constitution of India, namely, the observance of "procedure established by law".

Under Section 69 of the Act the functionary is the Commissioner as defined in Section 2(24) of the Act, “Commissioner” means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act.” My attention is invited to the said provision contending that there has been a delegation of the power of the Commissioner or Additional Director General Goods and Service Tax Intelligence and that delegatee has exercised the power of the delegator under Section 69 of the Act. Common law principles which are in vogue in our country accepts and in law enumerates the concept of "right implies duty". Whoever steps into the shoes of the Commissioner to exercise his authority under the Act must remain alive to and be fully conscious of the duty entrusted on the Commissioner by section 69 of the Act. Duties are two-fold - to form "reasonable belief" and "by order authorize any officer of central tax to arrest such person" as contained in section 69(1) of the Act.

Mr. Basu fortifies his argument contending that reasonable believe has not been properly dealt with by the Additional Director rather he has simply endorsed on the Memo of Arrest with the sentence “proposal at A approved”. It is further submitted that while interpreting penal law protection of liberty has to be accepted as the provision of the statute provides that the authority must have reasonable believe and relied on the expression "reason to believe" means jurisprudentially as observed by the Hon'ble Supreme Court in the case of Joti Parshad vs. State of Haryana reported in 1993 Supp(2) Supreme Court Cases 497 at paragraph 4 of extract of the observation in the cited judgment which reads thus—

> “4. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe'" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 I.P.C. explains the meaning of the words "reason to believe" thus:

> 26. "Reason to believe" - A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.
>
> In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case……"

Bearing in mind the principle laid in the said observation, it is suffice to say such "reasons to believe" has to be formed by the Commissioner after the records of such inspection and search are communicated to him under sub-section 10 of section 67 of the Act or in any other manner the materials are placed before him for the formation of his "reason to believe". When the Commissioner or the delegatee has reason to believe that the person concerned has committed an offence which necessitates arrest, an order has to be passed and such order logically, reasonably and prudentially must be informed by reasons or must contain the reasons which have emanated from "reasons to believe" entertained by the authority concerned.

Adverting to the Memo of Arrest and the order endorsed thereon it is urged by Mr. Basu that in unmistakable terms the Additional Director General Goods and Service Tax Intelligence has merely exercised his authority and was completely oblivious of and irresponsible in the duty to be discharged by him. The document placed before the Court shows that the officers subordinate to the Additional Director General Goods and Service Tax Intelligence in their own way and as per their understanding, prepared official note and at the bottom of the said note the Additional Director General Goods and Service Tax Intelligence is the last signatory and the same is preceded by a sentence "proposal of (A) above approved". Nothing can be more threatening and detrimental to the execution of law than the ignorance of law or non-observance of law by those who are assigned the job by the statute to observe the law. What appears from the document is, can be aptly described as what the English adage says "putting the cart before the horse". It was for the Additional Director General Goods and Service Tax Intelligence to consider all the materials available with regard to the accusations of commission of the offences mentioned in section 69 of the Act and come to his own conclusion for effecting arrest unhindered, unaffected by interference from any quarter.

It is further contended that the entire exercise by the officers sub-ordinate to the Additional Director General Goods and Service Tax Intelligence and the ultimate signature on the document by the Additional Director General Goods and Service Tax Intelligence are merely topsy-turvy, deplorable administrative exercise of power and a threat to the Constitutional observance of "procedure established by law". It is further submitted that despite delegation of powers of the Commissioner on officers sub-ordinate to him, the structural edifice of the statute presents the Commissioner to be at the helm of affairs.

To buttress such contention, the attention of this Court has been drawn to Section 134 of the Act which is couched in a negative language and says that no cognizance of any offence punishable under the Act shall be taken without the previous sanction of the Commissioner. Further Section 138 is a corroboration of the nature and character of the Act, being a fiscal statute and the sections says without any reservation that any offence can be compounded either by the Central government or by the State government, as the case may be and can be compounded on the payment of the "compounding amount" which expression shall mean the revenue due to be paid to the Central or State government as the case may be. This provisions of law highlights and enlivens the character of the statute to be a fiscal statute enacted with the object of realization of dues.

In reply to contention made by Mr. Basu that petitioners were arrested not by proper authority under the Act, Mr. Maity invited my attention to Notification No. 14/2017 dated 01.07.2017, the Central Board of Excise and Customs appointed the officers in the Directorate General of Goods and Services Tax Intelligence as Central Tax officers and invested them with all the powers under the said Act and the Rules made thereunder. In terms of the said Notification, the post of Additional Director General, Goods and Services Tax Intelligence, is equivalent to the post of Commissioner. Accordingly, the said Additional Director General, Directorate General of Goods and Services Tax Intelligence, has been empowered under section 69 of the Act to exercise all the powers invested in the Commissioner of Central Tax. Therefore, he was well within his jurisdiction while directing the concerned officers to arrest the said persons.

In response to the interpretation as to reasonable belive Mr. Maity submitted that the office note reveals that the said Additional Director General, based on the facts brought out from the investigation conducted by the DGGI, had reasons to believe that the petitioners have committed the offence specified under clauses (a), (b) and (c) of subsection (1) of section 132 of the said Act. Based on such reasonable belief, the said

Additional Director General approved the proposal to arrest by his officers to arrest the said persons. It is inferred on plain reading of section 69 of the Act that no formal procedure or format has been prescribed under the Act requiring the Commissioner to use any particular format while ordering for such arrest and the legislature, in its own wisdom, has refrained from imposing any procedural obligation on the part of the Commissioner while ordering for arrest of persons based on his reasonable belief. Accordingly, the two persons were arrested by the Intelligence Officers through 'Arrest Memo' under the provision of 69 of the Act read with Sections 132(1)(a), 132(1)(b), 132(1)(c) and 132(5) of the Act.

Mr. Maity relied on a decision in the case of Tirupati Trading Corporation -Vs- Collector of Customs reported in 1998(104) E.L.T 618 Calcutta wherein the Hon'ble Division Bench held that whether the seizure under Section 110 of the Customs Act, 1962 was under a reasonable belief or not is a justiceable one, but once it is held that there was material, relevant and germen the sufficiency of the material is not open to judicial review.

Having regard to rival contentions I am of the considered opinion that ‘reasonable belief’ or reason to believe as a standard to arrest requires that arresting officer subjectively believe that the suspect has committed the offence and that objectively reasonable person would reach the same conclusion. Reasonable grounds do not require as much evidence as a prima facie case but do require that thing believed to be more likely than not.

Therefore, in the light of the aforesaid contentions, the submission of the petitioners that no reason has been assigned for arrest has no legs to stand upon, particularly in view of the fact that the said office note itself clearly provides the reasons to believe that such arrests were warranted.

In the given facts of the case as per the Memo of Arrest it is crystal clear that during the investigation, it was found that more than 40 such fake/shell companies were being operated by the accused persons against whom investigation is under process.

Mr. Maity submitted that in the said case investigation have been conducted by the Delhi Zonal Unit, Mumbai Zonal Unit, Patna Zonal Unit, Ludhiana Zonal Unit of the DGGI and new evidences of irregular availment of input credit by various entities on the strength of fake invoices issued by the shell companies, controlled by the accused persons have been unearthed. The Department has started a pan India investigation with respect to fraudulent passing of GST input credit by issuing fake GST

invoices. As a result of the investigation, the Department has unearthed evasion of GST involving huge government revenue in Delhi, Meerut, Jaipur and Mumbai and six persons involved in the fraud have been arrested and further investigation is required to reveal whom the petitioners have supplied all these fake invoices.

It is also submitted that they are either labourer of jute mill or tea seller or unemployed aged between 20 to 30. In their statement, they stated that through agent of the accused Shri Sanjay Bhuwalka they met the accused and submitted copies of their personal documents like PAN Card, Voter Id Card etc. and signed many other documents. In exchange, the accused promised to pay them Rs. 4,000/- per month. Further, the Department has recorded statement of Bank Manager of Laxmivilas Bank on 11.05.2018, where he categorically mentioned that Bank accounts relating to the fake/ shell companies were operated either by the accused themselves or by their employee and in the event petitioners are enlarged on bail, there is every probability of tampering the documents and the recipient who have received the fake tax invoices from them and wrongfully availed the input tax credit will destroy the documents resulting in loss of Government revenue to the Exchequer.

It is further submitted that during investigation on 12.05.2018 Shri Sanjay Bhuwalka paid Rs.1 Crore on behalf of the above said companies. But it is ultimately verified and found that the said amount has not been transferred to the credit of the Central Government. Such type of fraudulent activities has been practiced by the said petitioners and therefore, they are not entitled to get any order of bail.

To fortify his stand Mr. Maity relied on decision in case of Amal Mubarak Salim Al Reiyami -Vs- Union of India reported in 2015 (321) E.L.T. page 590 Raj wherein it is held that so far as grant of bail to the petitioners on merits is concerned, looking to the gravity of the offence and likelihood of the repetition of the same petitioners are not entitled to bail on merit too. In economic offence as in the present case interest of the National economy is adversely affected and therefore, while considering the question of grant of bail to an accused it should be seen whether it is desirable in National interest or not.

In the case of Rajesh Goyal -Vs- Union of India reported in 2012 (284) E.L.T. 164 Raj it has been observed that the accused petitioner has evaded the excise duty causing a great loss to the public exchequer. Hence, the offence being of grave nature, the petitioner should not be allowed bail. The Hon'ble Court also held that the act of the petitioners may be termed

as `Royal Thievery' which is opposed to both democracy and society.

In the case of Subhas Chandra Bal Chandra Badjata -Vs-- DGCE (Intelligence) Mumbai reported in 2015(324) E.L.T 307-Born the Hon'ble Court has observed that the material collected shows that false record was created for evasion of excise duty. Thus it is case of forgery and fraud.

In the case of Directorate of revenue Intelligence -Vs- Chander Prakash Verma reported in 2016 (332) E.L.T 693 Del. the Hon'ble Court has held that custody of accused person in a case like the instant one is not to be measured in days but it has to be seen whether the grant of bail would hamper the investigation and if it is found to be so, then bail is not to be granted in such cases.

It is settled position of law that grant of bail is a rule and rejection of bail is an exception. Maximum punishment provided in the Act is for a term of five years. The accused persons were arrested on 12.5.2018 and investigation has to be concluded within 60 days from the date of arrest as per provision of Section 167(2) of Cr.P.C.

In view of submission of Mr. Maity investigation is still going on and will take a considerable period of time in conclusion of investigation to submit a final report against the accused petitioners to face the trial in open Court. 60 days period is going to lapse on 10.7.2018 so obviously he would be entitled to statutory bail. That apart, I have considered the submission of Mr. Basu in regard to Section 134 and 138 of the Act the object and reason of this Act is obviously to realise the revenue to the Government Exchequer and bearing in mind the provision of compounding nature of the offence under Section 138 of the Act.

I am fully aware of the observation of the Hon’ble Supreme Court that economic offences constitute a class apart and need to be visited with a different approach in the mater of a bail. The economic offence having deep rooted conspiracy and involving huge loss of public funds needs to be viewed seriously and considerd as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country. While granting bail, the Court has to keep in mind the nature of the accusations, the nature of evidence in support thereof the severity of the punishment which conviction will entail, the character of the accused, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and others similar consideration are requied to be taken into consideration. Nevertheless, bearing in mind the evidence having been collected so far by the Investigating Agency and

in consideration of the compounding nature of the offence, this Court is pleased to enlarge the petitioners on bail on furnishing bond of the sum of Rs. 50,00,000/- each on condition to deposit of Rs. 39 crore to the Government Exchequer through the competent authority with direction to appear before the I.O./Authority holding investigation to assist the investigating machinery as and when called upon to appear before the authority concerned till final investigation or till the offence is compounded under the provision subject to satisfaction of the learned Additional Chief Judicial Magistrate, Sealdah.

Thus, the CRM 3327 of 2018 and CRM 3328 of 2018 are hereby allowed and disposed of.

Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[2018] 56 DSTC 447

In the High Court of Delhi at New Delhi
[Justice S. Ravindra Bhat and Justice A.K. Chawla]

W.P.(C) 7540/2018

Veena Devi Karnani ... Petitioner

Vs.

Income Tax Officer ... Respondent

Date of Order: 14.09.2018

SERVICE OF NOTICE – RULE 127(2) OF INCOME TAX RULES, 1962 – ASSESSEE SHIFTED HER RESIDENCE – REASSESSMENT NOTICE SENT ON OLD ADDRESS – ASSESSEE UNAWARE OF THE SERVICES OF THE NOTICE SENT AT OLD ADDRESS – LATEST ADDRESS WAS MENTIONED IN NEXT YEAR RETURNS – A.O. DID NOT CARE – EX-PARTE ASSESSMENT WAS FRAMED U/S 144 OF THE IT ACT – RULE 127(2) CLEARLY STATES FOR ADDRESSES TO WHICH A NOTICE OR SUMMON TO BE DELIVERED – WRIT PETITION ALLOWED – REASSESSMENT NOTICES & ORDER U/S 144/148 AND CONSEQUENTIAL ACTIONS SET ASIDE.

Facts

The petitioner was a resident of WZ 1110, Rani Bagh, Shakur Basti, Delhi-110034. Her PAN returns for A.Y. 2010-11 (PAN No. AAGPK5730M) also disclosed an e-mail ID. The return was processed and intimation received by the petitioner in this regard. Subsequently, it appeared that the petitioner shifted her residence for the A.Y. 2011-12, under the same PAN

number, she filed the returns in Form ITR-V disclosing the changed address to be Flat No.68, First Floor, Sandesh Vihar, Pitampura, Delhi. The same e-mail ID was reflected in this return as well. The concerned Assessing Officer [ITO Ward 25(2)] also continued to be same as reflected in this return. This position continued in respect of succeeding Assessment Years (A.Y. 2012-13 dated 31.12.2012 and in A.Y. 2013-14 dated 31.12.2013). The AO claiming that material information was not disclosed and that reassessment was necessary, issued notice on 24.12.2013 at the old address.

The Assessing Officer addressed a series of notices, to the petitioner in the old address under Section 140(3) (1) (i.e. on 23.02.2014, 23.04.2014, 19.08.2014 and 30.12.2014). Since the petitioner did not and could not respond because the notices were sent to the old address and therefore, she was in the dark. A final notice was issued on 15.01.2015 proposing to pass an ex parte assessment order under Sections 144/147. Further, the assessment was completed on 13.02.2015. It was much later i.e. upon issuance of an attachment order to satisfy the demand, raised by virtue of the re-assessment under Sections 144/148 (by an order dated 08.05.2018) that the petitioner became aware of these findings. The petitioner urged that the entire reassessment proceedings were a nullity because the notice was never served upon her and rather the AO instead of proceeding to comply with the provisions with respect of the notice (i.e. Rule 127 by examining the PAN Data base or the subsequent year returns to ascertain the correct address) merely dug out the old address and proceeded to complete the assessment.

Held

The Court recollected the decision of the Privy Council in Nazir Ahmed v. King Emperor (1936) 38 BOM LR 987 which had been followed subsequently in several Supreme Court rulings that where the law mandates doing something in a particular manner, that was the only manner permissible in law and no other mode could be considered legal. Therefore, the AO was circumscribed and bound by the express mandate of Rule 127 which was clearly addressed to the authorities of the Revenue vis-à-vis the mode of communication. Given these compulsions, the Revenue's argument was a desperate "fall back" of the last resort i.e. the notice which was never under Section 292-B of the Act was one of despair. It amounts to saying that a notice which was never sent or received was deemed to have been sent and all proceedings despite such lack of notice and despite the Revenue's fragrant violation of law were deemed to be justified. In such circumstances, the argument, i.e. the Revenue's invocation of Section 292-B only needs to

be noticed in order to be rejected as countenancing it, would mean that all illegalities were deemed to be tapered over, in its favour. Section 292-B in the opinion of the Court would admit that no controversy with respect to the question of notice or proper service of summons, if at all were issued in the proper manner, known to law. Here clearly that was not the case.

The narrative of facts and the behaviour of the AO in this case was disturbing to say the least. The AO appeared to have completely and mechanically proceeded on the information supplied to him by the bank without caring to address himself to the correct position in law and deduced to ensure that the reassessment notice was issued properly and served at the correct address in the manner known to law. The petitioner had relied upon a screenshot of the PAN database at the stage when the petition was filed to say that the Revenue always had the wherewithal to access the correct address, PAN number and all other relevant details including the email ID as well as the bank account. The omissions of the AO deserves, therefore, to be not only adversely noticed but appropriately reflected in his or her confidential reports and appropriate proceedings initiated by the Revenue authorities, which was so directed. The concerned Commissioner, Principal Commissioner or other superior authorities, as the case may be, were directed to file a report in this regard within eight weeks.

The writ petition was allowed, the impugned reassessment notice as well as the order under Section 144/148, and the consequential action i.e. attachment of the petitioner's accounts were hereby quashed.

Present for the Petitioner	:	Mr. S. Krishnan, Advocate
Present for Respondents	:	Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue with Mr. Deepak Anand, Jr. Standing Counsel

O R D E R

1 The assessee herein questions an Assessment Order dated 13.02.2015 for A.Y. 2010-11 and all consequent proceedings. This assessment was completed under Section 144 of the Income Tax Act, 1961, upon reassessment notice issued in this regard on 24.12.2013. The brief facts are that the assessee was a resident of WZ 1110, Rani Bagh, Shakur Basti, Delhi-110034. Her PAN returns for A.Y. 2010-11 (PAN No.AAGPK 5730M) also disclosed an e-mail ID. The return was processed and intimation received by the assessee in this regard. Subsequently,

it appears that the assessee shifted her residence for the A.Y. 2011-12, under the same PAN number, she filed the returns in Form ITR-V disclosing the changed address to be Flat No.68, First Floor, Sandesh Vihar, Pitampura, Delhi. The same e-mail ID was reflected in this return as well. The concerned Assessing Officer [ITO Ward 25(2)] also continued to be same as reflected in this return. This position continued in respect of succeeding Assessment Years (A.Y. 2012-13 dated 31.12.2012 and in A.Y. 2013-14 dated 31.12.2013). The AO claiming that material information was not disclosed and that reassessment was necessary, issued notice on 24.12.2013 at the old address in the following terms:

NOTICE UNDER SECTION 148 OF THE INCOME TAX ACT, 1961

PAN/GIRNo. Office of the

Income Tax Officer
Ward-25(2) New Delhi
Dated 24/12/2013

To

VEENA DEVI KARNANI
WZ 1110, RANI BAGH, DELHI.

Sir/Madam,

Whereas I have reason to believe that your income in respect of which you are assessable/ chargeable to income tax for the A.Y. 2010-11 has escaped assessment within the meaning of section 148 of the Income Tax Act, 1961.

I therefore, propose to assess/reassess the income/ re-compute, loss/depreciation for the said assessment .year and I hereby require you to deliver to me within 30 days from the date of services of this notice, a return in the prescribed from of your income in respect of which you are assessable.

(Raj Kumar)
Income Tax Officer,
Ward-25(2), New Delhi
Room No.1708, 17th Floor,
E-2 Block, Civic Center,
Minto Road, JLN Marg,
New Delhi.

2. Apparently, the Assessing Officer addressed a series of notices, to the assessee in the old address under Section 140(3) (1) (i.e. on 23.02.2014, 23.04.2014, 19.08.2014 and 30.12.2014). Since the assessee did not and could not respond because the notices were sent to the old address and therefore, she was in the dark. A final notice was issued on 15.01.2015 proposing to pass an ex parte assessment order under Sections 144/147. Further, the assessment was completed on 13.02.2015. It was much later i.e. upon issuance of an attachment order to satisfy the demand, raised by virtue of the re-assessment under Sections 144/148 (by an order dated 08.05.2018) that the assessee became aware of these findings. The assessee urges that the entire reassessment proceedings were a nullity because the notice was never served upon her and rather the AO instead of proceeding to comply with the provisions with respect of the notice (i.e. Rule 127 by examining the PAN Data base or the subsequent year returns to ascertain the correct address) merely dug out the old address and proceeded to complete the assessment.

3. Learned counsel for the Revenue (which has filed a counter affidavit) relies upon Section 292B. It is submitted besides that the annual information reports with respect to non-PAN transactions reported by the banks and other agencies, discloses list of account holders. It is stated that from that list the assessee's name and particulars were extracted and notices issued and therefore, the AO cannot be faulted for the same.

4. The record bears out the assessee's submissions. The returns for A.Y. 2010-11 were no doubt filed, reflecting her old (Rani Bagh) address. Nevertheless, all successive year returns (A.Y. 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17, all of which are on record) consistently reflect the changed Pitampura address. The Assessing Officer (AO) continued to be the same i.e. ITO Ward 25(2) till November, 2014. In these circumstances the assessee complains that the AO should have done most to exert himself in the course of the law i.e. to ascertain the correct address at which the reassessment notice (issued on 13.12.2013) to be served. Rule 127 of the Income Tax Rules, which prescribes mode of service of notices, summons, requisitions and other communications states as follows:

> "127.(1) For the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the Act (hereafter in this rule referred to as "communication") may be delivered or transmitted shall be as per sub-rule (2).

(2) The addresses referred to in sub-rule (1) shall be—

(a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section (1) of section 282—

(i) the address available in the PAN database of the addressee; or

(ii) the address available in the income-tax return to which the communication relates; or

(iii) the address available in the last income-tax return furnished by the addressee; or

(iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs:

Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication:

Provided further that where the communication cannot be delivered or transmitted to the address mentioned in item (i) to (iv) or any other address furnished by the addressee as referred to in first proviso, the communication shall be delivered or transmitted to the following address:—

(i) the address of the assessee as available with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of the said Act); or

(ii) the address of the assessee as available with the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(iii) the address of the assessee as available with the insurer as defined in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938); or

(iv) the address of the assessee as furnished in Form No.61 to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation) under sub-rule (1) of rule 114D; or

(v) the address of the assessee as furnished in Form No.61A under sub-rule (1) of rule 114E to the Director of Income-tax (Intelligence and Criminal Investigation) or to the Joint Director of Income-tax (Intelligence and Criminal Investigation); or

(vi) the address of the assessee as available in the records of the Government; or

(vii) the address of the assessee as available in the records of a local authority as referred to in the Explanation below clause (20) of section 10 of the Act.

(b) for communications delivered or transmitted electronically—

(i) e-mail address available in the income-tax return furnished by the addressee to which the communication relates; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee; or

(iii) in the case of addressee being a company, e-mail address of the company as available on the website of Ministry of Corporate Affairs; or

(iv) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority."

5. Rule 127(2) clearly states that the addresses to which a notice or summons or requisition or order or any other communication may be delivered or transmitted shall be either available in the PAN database of the assessee or the address available in the income tax return to which the communication relates or the address available in the last income tax return filed by the assessee - all these options have to be resorted to by the concerned authority – in this case the AO. Therefore, in the facts of this case when the AO issued the reassessment notice, as he did on 13.12.2013 – he was under a duty to access the available PAN data base of the addressee or the address available in the income tax return to which

the communication related or the address available in the last income return filed by the addressee. The returns for A.Y. 2011-12 and 2012-13 had already been filed on 22.02.2012 and 13.12.2012 respectively, reflecting the changed address but with the same PAN and before the same AO. The AO omitted to access the changed PAN database and going by the explanation of the Revenue, he merely mechanically sent notices at the old address. Even after issuing the reassessment notice, all succeeding notice under Section 142(1), were sent to the old address. It was in these circumstances that the reassessment was completed on best judgment basis.

6. This Court recollects the decision of the Privy Council in Nazir Ahmed v. King Emperor (1936) 38 BOM LR 987 which had been followed subsequently in several Supreme Court rulings that where the law mandates doing something in a particular manner, that is the only manner permissible in law and no other mode can be considered legal. Therefore, the AO was circumscribed and bound by the express mandate of Rule 127 which is clearly addressed to the authorities of the Revenue vis-à-vis the mode of communication. Given these compulsions, the Revenue's argument is a desperate "fall back" of the last resort i.e. the notice which was never under Section 292-B of the Act is one of despair. It amounts to saying that a notice which was never sent or received is deemed to have been sent and all proceedings despite such lack of notice and despite the Revenue's fragrant violation of law are deemed to be justified. In such circumstances, the argument, i.e. the Revenue's invocation of Section 292-B only needs to be noticed in order to be rejected as countenancing it, would mean that all illegalities are deemed to be tapered over, in its favour. Section 292-B in the opinion of the Court would admit that no controversy with respect to the question of notice or proper service of summons, if at all were issued in the proper manner, known to law. Here clearly that is not the case.

7. The narrative of facts and the behaviour of the AO in this case is disturbing to say the least. The AO appears to have completely and mechanically proceeded on the information supplied to him by the bank without caring to address himself to the correct position in law and deduced to ensure that the reassessment notice (which is a matter of moment as far as the assessee is concerned) was issued properly and served at the correct address in the manner known to law. The assessee has relied upon a screenshot of the PAN database at the stage when the petition was filed to say that the Revenue always had the wherewithal to access the correct address, PAN number and all

other relevant details including the email ID as well as the bank account. The omissions of the AO deserves, therefore, to be not only adversely noticed but appropriately reflected in his or her confidential reports and appropriate proceedings initiated by the Revenue authorities, which is so directed. The concerned Commissioner, Principal Commissioner or other superior authorities, as the case may be, are directed to file a report in this regard within eight weeks from today.

8 Subject to the above observations, the writ petition is allowed, the impugned reassessment notice as well as the order under Section 144/148, and the consequential action i.e. attachment of the assessee's accounts are hereby quashed.

9 List on 30.11.2018 for compliance.

[2018] 56 DSTC 456 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI

[Diwan Chand: Member (A) And M.S. Wadhwa: Member (J)]

Appeal No. 1092-1093/ATVAT/13-14
Assessment Period: Feb 2013
Default assessment of Tax, Interest & Penalty

Seven Seas Hospitality Pvt. Ltd. ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 04.07.2018

SURVEY & SEARCH UNDER DELHI VALUE ADDED TAX ACT, 2004 – UNACCOUNTED SLIPS RECOVERED AT THE TIME OF SURVEY – ON ASSESSMENT PROCEEDING BILLS WERE PRODUCED FOR UNACCOUNTED SLIPS – DEFAULT ASSESSMENT ORDER FRAMED AND AMOUNT OF UNACCOUNTED SLIP WERE TAXED AND PENALTY IMPOSED – OHA REJECTED THE OBJECTION – OBJECTION PETITION WAS REJECTED MERELY FOR THE REASON OF DIFFERENCE FOUND IN THE NAME AND AMOUNT MENTIONED IN THE ESTIMATION SLIP MADE AT THE TIME OF BOOKING AND SALE INVOICE – ORDERS OF OHA WERE SET ASIDE – MATTER REMAND BACK TO VATO TO PASS FRESH ORDERS AFTER PROVIDING OPPORTUNITY OF HEARING TO THE APPELLANT.

Facts

The appellant was engaged in the business of running of a banquet and providing outdoor catering. The appellant was registered with the Trade & Taxes Department since February 2006 and had an accepted history. The appellant had been filing the returns regularly in time and had also been paying the tax due as per the returns in time. The books of accounts of the appellant were liable to compulsory statutory audit.

Notice of default assessments of tax & interest u/s 32 and notice of assessment of penalty u/s 33 of the Delhi Value Added Tax Act, 2004 were issued for the period February, 2013 against the appellant by the VATO, Ward-204 creating the following demands:

Period	Tax	Interest	Total
February 2013	10,28,410/-	22,400/-	10,50,810/-

Default Assessment Order passed on 17.07.2013 noticed the following facts: -

The team of Enforcement Branch-I surveyed the premises of M/s Seven Seas Hospitality on 14.02.2013. The firm was engaged in business of banquet and catering taxable @ 12.5%. As per the reports of team 14 (Fourteen) unaccounted slips of catering were found during the survey totaling value Rs 77,67,000/-. Sh Jagan Nath the director of the company could not explain / show the invoices of these slips at the time of survey. Besides this there was cash variation of Rs 4,60,279/-(Excess) in comparison to cash book of that day. Sh Anil Kumar Jain CA and Sh Ram Janak Sr Accountant of the company produced requisite documents on behalf of the dealer in compliance to the notice dated 22.10.2013. He further produced copies of sale invoices against the said unaccounted slips. However, these invoices were issued on dates later than the date of survey except two bills dated 24/12/12 of basic value of Rs 4,00,000/- and dated 30.11.2012 of basic value of Rs 5,00,000/- As these bills were not produced before the visiting team submission of the dealer was not considered and total amount of Rs 77,67,000/- was taxed @ 12.5% with equal amount of penalty.

Being aggrieved from the notice of default assessment of tax & interest u/s 32 and the notice of assessment of penalty u/s 33, the appellant preferred objections before the Additional Commissioner (Zone III & V) and produced the evidence in the form of copies of DVAT-16 Returns, DVAT-31 Register, copies of sale invoices relating to the 14 slips, copies of ledger accounts of the concerned parties together with detailed chart of 14 seized slips to establish that the appellant had not only issued invoices relating to 14 slips containing the bookings/estimates but had also deposited the tax on outdoor caterings provided to the customers. The appellant had also deposited even service tax on these sales. Copies of receipts in proof of having received the cash on 14.02.2013 were also filed.

OHA vide impugned orders dated 04.11.2013 rejected the objections by improving upon the case of the VATO. The appellant was never confronted with any of the observations made by the Objection Hearing Authority in the order.

Held

The Tribunal had gone through the record and was of the view that the record produced by the appellant could not be dismissed as an after thought and had to be examined in detail with reference to the submissions made by the appellant with reference to the record maintained and produced. It was a settled position in law that if the dealer was not in a position to explain some of the issues at the time of survey he had the opportunity to

explain and substantiate the same at the time of assessment and same had to be examined with reference to the record maintained. To hold that his failure to submit and show the relevant record at the time of survey and production of record at a later stage was only an after thought without examining the same would mean negation of the very concept of providing an opportunity of hearing before making of assessment.

The impugned orders deserved to be set aside alongwith orders of default assessment of Tax, interests and penalty which the Tribunal accordingly do and remand the matter back to the VATO to pass orders afresh after giving an opportunity of hearing to the appellant and examining the record produced by the Appellant for which the appellant shall appear before the VATO.

Present for the Appellant : Sh. H C Bhatia, Advocate

Present for Respondent : Sh. Pradeep Tara, Advocate

ORDER

1. This order shall dispose of the above noted appeals filed by the appellant challenging the impugned orders dated 04.11.2013 passed by the Additional Commissioner-(III & V), hereinafter called the Objection Hearing Authority (in short the OHA) rejecting the objections filed by the appellant against notice of default assessment of tax & interest u/s 32 and notice of assessment of penalty u/s 33 of the Delhi Value Added Tax Act, 2004 for the period February, 2013 passed by VATO Ward-204 vide orders dated 17.07.2013.

2. Facts of the case briefly stated are that the appellant is engaged in the business of running of a banquet and providing outdoor catering. The appellant is registered with the Trade & Taxes Department since February 2006 and has an accepted history. The appellant has been filing the returns regularly in time and has also been paying the tax due as per the returns in time. The books of accounts of the appellant are liable to compulsory statutory audit.

4. Notice of default assessments of tax & interest u/s 32 and notice of assessment of penalty u/s 33 of the Delhi Value Added Tax Act, 2004 were issued for the period February, 2013 against the appellant by the VATO, Ward-204 creating the following demands:

Period	Tax	Interest	Total
February 2013	10,28,410/-	22,400/-	10,50,810/-

5. Notice of default assessment of tax & interest u/s 32 was issued without giving any reasons by merely stating "As detailed in DVAT 24A" which establishes that the VATO acted with a pre-determined mind and disposition by first imposing a penalty and then framed the assessment on the basis of notice of assessment of penalty. In the notice of assessment of penalty issued u/s 33 the Ld. VATO even after observing that the appellant had "produced requisite documents" and had "further produced copies of sale invoices" against the alleged unaccounted slips recovered at the time of survey on 14.02.2013, subjected the amount of Rs.77,67,000/- to tax @ 12.5% with equal amount of penalty on which interest was also charged and equal amount of penalty was imposed, thus, subjecting the same transaction to tax for the second time.

6. During the assessment proceedings, the appellant had filed complete chart reconciling the corresponding sales booked against the aforesaid 14 slips alongwith copies of invoices, ledger accounts, DVAT- 31 Register and the relevant DVAT Returns. Regarding cash variation of Rs.4,57,383/-, it was explained that on 14.02.2013, an amount of Rs.4,57,383/- was received from three customers i.e. Rs.2,53,528/- from Mr. Shyam Sunder Goyal, Rs. 79,920/- from Mr. Gurpreet Singh and Rs. l, 23,935/- from Mr. J.K. Mittal but on account of engagement of Accounts Department of the appellant company with the survey team, entries thereof could not be made on 14.02.2013 itself and it was only on 15.02.2013 that entries of these receipts were made in the account books and in evidence of it, copies of receipts were submitted.

7. However, ignoring all this material and evidence, the Ld. VATO merely going by the report of the survey team framed the assessment in a mechanical manner.

Default Assessment Order passed on 17.07.2013 noticed the following facts: -

> The team of Enforcement Branch-I surveyed the premises of M/s Seven Seas Hospitality on 14.02.2013. The firm is engaged in business of banquet and catering taxable @ 12.5%. As per the reports of team 14 (Fourteen) unaccounted slips of catering were found during the survey totaling value Rs 77,67,0001-. Sh Jagan Nath the director of the company could not explain / show the invoices of these slips at the time of survey. Besides this there was cash variation of Rs 4,60,279/-(Excess) in comparison to cash book of that day. Sh Anil Kumar Jain CA and Sh Ram Janak Sr Accountant of the company produced requisite documents on behalf of the

dealer in compliance to the notice dated 22.10.2013. He further produced copies of sale invoices against the said unaccounted slips. However, these invoices are issued on dates later than the date of survey except two bills dated 24/12/12 of basic value of Rs 4,00,000/- and dated 30.11.2012 of basic value of Rs 5,00,000/- As these bills were not produced before the visiting team submission of the dealer is not considered and total amount of Rs 7,67,000/- is taxed @ 12.5% with equal amount of penalty.

8. Being aggrieved from the notice of default assessment of tax & interest u/s 32 and the notice of assessment of penalty u/s 33, the appellant preferred objections before the Ld. Additional Commissioner (Zone III & V) and produced the evidence in the form of copies of DVAT-16 Returns, DVAT-31 Register, copies of sale invoices relating to the 14 slips, copies of ledger accounts of the concerned parties together with detailed chart of 14 seized slips to establish that the appellant had not only issued invoices relating to 14 slips containing the bookings/estimates but had also deposited the tax on outdoor caterings provided to the customers. The appellant had also deposited even service tax on these sales. Copies of receipts in proof of having received the cash on 14.02.2013 were also filed.

9. Ld OHA vide impugned orders dated 04.11.2013 rejected the objections by improving upon the case of the VATO. The appellant was never confronted with any of the observations made by the Ld. Objection Hearing Authority in the order.

10. Being aggrieved from the order passed in objections by the Ld. Additional Commissioner, Zone-(III & V), the appellant has come in appeal before the Tribunal and assailed the impugned orders on the following grounds: -

1. That the order dated 04.11.2013 passed in objections by the Ld. Additional Commissioner-III & V as well as notice of default assessment of tax & interest u/s 32 and notice of assessment of penalty u/s 33 of the Delhi Value Added Tax Act, 2004 issued by the VATO for February 2013 are contrary to law and the facts of the case.

2. That the impugned Notice of default assessments of tax & interest and Notice of assessment of penalty are bad in law and liable to be set aside as the VATO had failed to record the reasons before issuing the same which was a condition precedent for exercise of jurisdiction u/s 32 and 33 of the Act.

3. That the impugned notice of default assessments of tax & interest are bad in law as the VATO had failed to point out the contingency for which the default assessments had been made - whether it was for non-filing of returns or for filing incorrect returns or for filing returns which did not comply with the requirement of the Act.

4. That the impugned notice of default assessments of tax & interest u/s 32 and notice of assessment of penalty u/s 33 are liable to be quashed on the short ground that the same had been issued in violation of the principles of natural justice without confronting the appellant with the proposed action.

5. That the impugned notice of default assessment of tax & interest u/s 32 and notice of assessment of penalty u/s 33 are also liable to be quashed as the same had been issued in a mechanical manner without application of mind.

6. That the impugned orders are liable to be set aside as the same are merely based on assumptions, presumptions, surmises and conjectures without any material to support the same.

7. That the notice of default assessment of tax & interest u/s 32 and notice of assessment of penalty u/s 33 of the Act are liable to be quashed on the ground that the same are not speaking orders and therefore, the same lack the requisites of quasi-judicial orders.

8. That the impugned notice of default assessment of tax & interest u/s 32 of the DVAT Act is liable to be set aside as the same does not contain any reasons and is solely based on the notice of assessment of penalty which establishes that the Ld. VATO acted with a pre-determined mind and disposition thereby first imposing the penalty and then framing the assessment.

9. That the impugned notice of default assessment of tax & interest is liable to be set aside as the Ld. VATO without at all considering the evidence adduced before him by the appellant has merely gone by the report of the Survey Team in a mechanical manner.

10. That the order passed by the objection hearing authority is liable to be set aside as the objection hearing authority has failed to consider the various submissions and evidence adduced before him by the appellant.

11. That the best judgment assessment framed by the VATO is arbitrary, capricious, unjustified, unwarranted and contrary to the principles of making such an assessment in as much as:

    i) the appellant has a clean past accepted history;

    ii) the books of accounts of the appellant are liable to compulsory audit;

    iii) no inquiry whatsoever was conducted by the VATO before issuing the notices of default assessment of tax;

    iv) the appellant had established that sales on the basis of the seized slips were duly accounted for and tax thereon had also been deposited;

    v) the burden of establishing a taxable event liable to tax was on the VATO and the VATO has failed to discharge the said burden.

12. That the appellant had already deposited tax with regard to bookings recorded in 14 slips and, therefore, the same transactions could not have been subjected to tax for the second time by the Assessing Authority.

13. That the customers of the appellant are confirming that the sale invoices issued to them by the appellant related to the bookings recorded in the slips because at the time of giving the estimate/ booking, the name of the person who comes to make the booking is recorded while the invoice is issued in the name of the customers to whom the catering is provided at the function.

14. That regarding cash variation the appellant had explained that the appellant had received certain amount from 3 parties on the date of survey, entries relating to which could not be made in the cash book on account of survey process being going on.

15. That the Ld. Additional Commissioner also failed to appreciate that a customer is interested in receipt whether printed or on letter head. Sometimes if the receipt book is not available, the receipt is issued on the letter head of the appellant.

16. That the jurisdiction of Ld. Objection Hearing Authority was confined to the notice of default assessment of tax before him and he could not improve upon the same.

17. That the order passed in objection is liable to be set aside, as the appellant was never confronted with the doubts in the mind of the Ld. Objection Hearing Authority. Had the appellant been confronted with the same, the appellant would have clarified the position and cleared the doubts.

18. That the orders passed by the authorities below are liable to be set aside as the Ld. VATO as well as Objection Hearing Authority have failed to consider the mass of evidence adduced before them.

19. That there being no tax due according to the returns filed by the appellant, the VATO has wrongly charged interest on the tax assessed.

20. That the Ld. VATO in charging interest failed to note the distinction between the tax due and tax assessed and has charged interest on the tax assessed.

21. That charging of interest is also contrary to the judgment of the Supreme Court in J. K. Synthetic & Frick India Ltd.

22. That the impugned penalty u/s 86 (10) of the Act is contrary to law and the facts of the case and has been wrongly imposed.

23. That the VATO also failed to note and appreciate that levy of penalty is not automatic.

24. That the impugned penalty is also liable to be quashed as the same has been imposed in a mechanical manner without application of mind.

25. That the impugned notice of assessment of penalty imposing penalty under section 86 (10) of the DVAT Act is liable to be quashed as the Ld. V ATO acted with a pre-disposed mind by first imposing the penalty and then framing the assessment.

26. That VATO also failed to note that section 86(10) was not applicable at all as merely because the VATO had made the enhancement it could not be said that the returns filed by the appellant were false, misleading or deceptive.

27. That the levy of penalty is also contrary to the decision of Delhi High Court in Jitender Mittals's case.

28. That the orders passed in objection is also liable to be set aside on the ground that the objection hearing authority has failed to consider all the issues raised before him, particularly, issue regarding imposition of penalty. Hence, the objections against notice of assessment of penalty should be deemed to have been accepted. It may be so directed by this Hon'ble Tribunal,

29. That without prejudice to the above grounds, the impugned penalty is highly excessive.

30. That the appellant craves leave to add, alter, omit to/from the grounds at the time of hearing.

11. Appellant has relied upon the decisions of The State of Kerala vs C Velukutty (1966) 17 STC 465 SC and M Appukutty Vs Sales Tax Officer Kozekode 17 STC 380 (ker) on the principles to be followed for making best judgement assessment. Reliance is placed on the decisions of Ram Krishna Kulwant Rai Vs The State of Andhra Pradesh (1983) 54 STC 1 (AP); N Ramanna Reddy Vs The Joint Commercial tax officer (1971) 39 STC 30 SC on the point that the burden of establishing a taxable event is on the assessing authority. Further reliance is placed on the decision of Capri Bathaid P Ltd 90 VST 143 that VATO Enforcement has no authority to frame the assessment.

12. While rejecting the objections the Ld. Objection Hearing Authority has not accepted the explanation of the appellant with regard to 14 slips mainly on the ground that there was difference in the name and the amount mentioned in the slips and the invoices, without appreciating that in the estimate of bookings the name of the person who comes for the booking is mentioned, while the invoice is issued in the name of the customer for whom catering is provided at the function. The customers are confirming the names of the persons who had made the booking. Similarly, the number of persons and the rates are only tentative at the time of booking, the invoice is issued depending upon the actual number of plates used/persons eating the food. The Ld. Additional Commissioner has also observed that in the business of catering, generally sale bill is issued after the function, but normally, part payment is received before the function. It is submitted that this observation of Ld. Additional Commissioner supports the case of the appellant, as in most of the cases the part payment even through cheque had been received before the function and invoices were issued after the function. Regarding the observation of the Ld. Additional Commissioner that there is difference in amount of sale invoice and the advance, the Ld. Additional Commissioner failed to note and appreciate that the sale

invoice is issued for the entire amount and amount of advance received is reflected in the ledger account of that party and the balance remaining amount received is also recorded in the ledger account of the party. The Ld. Additional Commissioner had also observed that in the slip the word/ stamp "Estimate" is written/marked but these are booking instruments. It is submitted that the appellant has no quarrel with this observation of the Ld. Additional Commissioner as these slips related to the bookings made by the various customers for which the invoices were issued and due tax was deposited thereon. Regarding advance of Rs.4,70,000/- reflected in the slip, it is submitted that this advance was on account of flower decoration which amount was directly paid to florist. Confirmation from the florist is enclosed. Regarding the payment received from 3 persons on the date of survey, the Ld. Additional Commissioner has observed that in some cases the printed receipt is issued while in some cases the receipt has been issued on the letter head. It is submitted that firstly, the customer requires is a receipt - whether it is on printed receipt book or letter head does not make a difference to him. Secondly, if, for some reason printed receipt is not available, the receipt is given on the letter head.

13. Without prejudice to the above submissions, it is submitted that the appellant was never confronted on any of these issues by the Ld. Additional Commissioner and in case the appellant had been confronted with the same the appellant could have explained the position and removed the doubts in the mind of the Ld. Additional Commissioner.

14. Appellant has placed on record copies of seized slips , invoices, ledger, confirmation certificates issued by the parties, confirmation issued by the by florist, details of sales in Form DAVT-31 for the month of November 2012, December 2012, January 2013 and February 2013; copies of return filed by the appellant for the month of February 2013 under the DVAT and CST Act, copy of Trading Account for the period ending 14.02.2013 and copy of Auditor report for the period ending 31.03.2013.

15. We have gone through the record and are of the view that the record produced by the appellant cannot be dismissed as an after thought and has to be examined in detail with reference to the submissions made by the appellant with reference to the record maintained and produced. It is a settled position in law that if the dealer is not in a position to explain some of the issues at the time of survey he has the opportunity to explain and substantiate the same at the time of assessment and same has to be examined with reference to the record maintained. To hold that his failure to submit and show the relevant record at the time of survey and production of record at a later stage is only an after thought without examining the

same would mean negation of the very concept of providing an opportunity of hearing before making of assessment.

16. Hence we are of the considered view that the impugned orders deserved to be set aside alongwith orders of default assessment of Tax, intrests and penalty which we accordingly do and remand the matter back to the VATO to pass orders afresh after giving an opportunity of hearing to the appellant and examining the record produced by the Appellant for which the appellant shall appear before the VATO on 27.07.2018

17. Ordered accordingly

18. Order pronounced in the open court.

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

[2018] 56 DSTC 466

Before the Appellate Tribunal, Value Added Tax, Delhi
[M. S. Wadhwa, Member (J)]

Appeal No. 221/ATVAT/17-18

H.A. Logistics (P) Ltd. ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 14.09.2018

REFUND OF PRE-DEPOSIT AMOUNT – OBJECTION HEARING AUTHORITY REMANDED THE CASE TO THE ASSESSING AUTHORITY – BUT NOT ORDERED FOR REFUND – WHETHER JUSTIFIED, HELD NO – MERE PENDING OF THE REMAND CASE DID NOT ENTITLE THE RESPONDENTS TO RETAIN THE AMOUNT DEPOSITED BY THE PETITIONER.

Facts

Default assessment orders dated 2/9/2015 passed u/s 32 and 33 DVAT Act, creating demand of tax and interest of Rs. 29,12,712/- and Rs. 1,15,84,198/- respectively, appellant filed objections. The OHA, as a pre-condition to entertain the objections, directed appellant to deposit a sum of Rs. 5.00 lakhs vide order dated 9/11/2015, which were complied with by the appellant. The Assessing authority, while passing the assessment orders said that the business premises of the appellant at Plot No. 3 Khasra No. 4957, Khera Road, near Titan Marriage lane, Choudhary Dharam

Kanta, Sourastra Roadways Wali Gall, Siraspur, Delhi were surveyed by enforcement officials on 15/7/2015. That certain documents were seized by enforcement officials from appellant's premises. In spite of the fact, that these seized papers depict the name and address of person to whom the goods belong and purpose for which goods were lying there i.e. either they were for job work of sheet cutting or storage in godown of the appellant for which rent was charged, the same had been taxed. The said documents were in possession of respondent as the same had been seized by them. It was the value of goods which had been taxed by Assessing authority. The appellant had categorically stated before the visiting team that appellant was not liable for registration under DVAT Act, as he was only engaged in the business of doing job work of sheet cutting for which proper machine was installed at premises, besides he was earning his income from leasing of godown for storage purposes to different business entities and as such was not liable for registration under DVAT Act / CST Act, being outside scope of section 3 of the DVAT Act. It was also pleaded that the appellant was not indulging in the business of sale or purchase of goods which made him liable for registration. The Assessing authority even without establishing that appellant was engaged in sale / purchase of goods or falls under charging section created huge demand, ignoring the vital fact that appellant was an unregistered dealer and, even, without fixing the date of liability and validity of the, appellant from which appellant was held liable for registration under DVAT Act, had taxed the inventory lying at premises which on record does not belong to him and document seized support the appellant's contentions. A challenge to the impugned orders dated 2/9/2015, creating demand on account of tax, interest and penalty was made before OHA. OHA vide impugned orders dated 31/8/2017 passed the following orders —

"In view of what has been stated above, the case is referred back to the Assessing Authority of the ward with the direction to re-frame the Notices of Default Assessment in respect of tax & interest as well as penalty after giving an opportunity to the objector. While refraining the notices of default assessment, the assessing authority shall fix liability and validity of the objector keep in view the points raised by the objector and DR during the proceedings as well as various judgments of the Hon'ble Court / High Court / ATVAT including the cases objection proceedings. The objector will appear before the assessing authority of the ward on 29/8/2017 and the assessing authority shall reframe the assessment within 90 days of the aforesaid date."

According to appellant, as OHA had set-aside the impugned order passed by assessing authority and remanded the matter back to the

assessing authority, had erred in not ordering for refund of the entire amount deposited as a condition precedent to entertainment objections which was Rs. 5.00 lakhs for the year 2013-14 under DVAT Act. According to appellant, appellant was aggrieved only to the extent of not ordering for refund of pre-deposit amount of Rs. 5.00 lakhs and had prayed in the appeal to direct the respondent to refund the amount of Rs. 5.00 lakhs, in a time bound manner with interest.

Held

Respondent was directed to refund the amount of Rs. 5.00 lakhs deposited by the appellant as a precondition to dispose off objections on merit within a period of two months.

Before parting, it would be fruitful to reproduce following observations by Hon'ble Bombay High Court in the .case of NELCO LTD. Vs. Union of India 2002 (144 E.L.T. P-56) —

"We come across cases of citizens trying to dodge their revenue dues by resorting to endless series of litigation. This time the boot is on the other foot. It is revenue which is trying to dodge and postpone the evil day."

Appellant had also claimed interest on the security amount. As observed by the Hon'ble Punjab & Haryana High Court in the above case of M/s Surya Synthetics, appellant was free to raise this plea before the remand officer.

The appeal was allowed.

Present for the Appellant : Sh. A.K. Babbar, Advocate

Present for the Respondent : Sh. M. L. Garg, Advocate

ORDER

1. The present appeal has been filed against the impugned orders dated 31/8/2017 passed by Ld. Spl. Commissioner-IL hereinafter called Objection Hearing Authority (in short OHA), who vide these orders remanded the matter back to the assessing authority of the Ward to reframe the assessment. The appellant in the present appeal has not assailed the remand order but has sought the relief of refund of Rs. 5.00 lakhs, which was deposited by him under third proviso to section 74(1) of the DVAT Act as per orders dated 9/4/2015 of the then ld. Spl. Commissioner-II.

2. The brief facts of the present appeal are that against a default assessment orders dated 2/9/2015 passed u/s 32 and 33 DVAT Act, creating demand of tax and interest of Rs. 29,12,712/- and Rs. 1,15,84,198/- respectively, appellant filed objections.

3. The ld. 01-1A, as a pre-condition to entertain the objections, directed appellant to deposit a sum of Rs. 5.00 lakhs vide order dated 9/11/2015, which were complied with by the appellant.

4. The ld. assessing authority, while passing the assessment orders said that the business premises of the appellant at Plot No. 3 Khasra No. 4957, Khera Road, near Titan Marriage lane, Choudhary Dharam Kanta, Sourastra Roadways Wali Gall, Siraspur, Delhi were surveyed by enforcement officials on 15/7/2015.

5. That certain documents were seized by enforcement officials from appellant's premises. In spite of the fact, that these seized papers depict the name and address of person to whom the goods belong and purpose for which goods were lying there i.e. either they were for job work of sheet cutting or storage in godown of the appellant for which rent was charged, the same had been taxed. The said documents are in possession of respondent as the same had been seized by them. It is this value of goods which had been taxed by id. assessing authority.

6. The appellant had categorically stated before the visiting team that appellant is not liable for registration under DVAT Act, as he is only engaged in the business of doing job work of sheet cutting for which proper machine is installed at premises, besides he is earning_ his income from leasing of godown for storage purposes to different business entities and as such is not liable for registration under DVAT Act / CST Act, being outside scope of section -3 of the DVAT Act. It was also pleaded that the appellant is not indulging in the business of sale or purchase of goods which makes him liable for registration.

7. However, the ld. assessing authority even without establishing that appellant is engaged in sale / purchase of goods or falls under charging section created huge demand, ignoring the vital fact that appellant is an unregistered dealer and, even, without fixing the date of liability and validity of the, appellant from which appellant is held liable for registration under DVAT Act, had taxed the inventory lying at premises which on record does not belong to him and document seized support the appellant's contentions.

8. Being aggrieved, a challenge to the impugned orders dated 2/9/2015, creating demand on account of tax, interest and penalty was made before ld. OHA. Ld. OHA vide impugned orders dated 31/8/2017 passed the following orders —

> In view of what has been stated above, the case is referred back to the Assessing Authority of the ward with the direction to re-frame the Notices of Default Assessment in respect of tax & interest as well as penalty after giving an opportunity to the objector. While refraining the notices of default assessment, the assessing authority shall fix liability and validity of the objector keep in view the points raised by the objector and DR during the proceedings as well as various judgments of the Hon'ble Court / High Court / ATVAT including the cases objection proceedings. The objector will appear before the assessing authority of the ward on 29/8/2017 and the assessing authority shall reframe the assessment within 90 days of the aforesaid date.

9. According to appellant, as ld. OHA has set-aside the impugned order passed by assessing authority and remanded the matter back to the assessing authority, had erred in not ordering for refund of the entire amount deposited as a condition precedent to entertainment objections which was Rs. 5.00 lakhs for the year 2013-14 under DVAT Act. According to appellant, appellant is aggrieved only to the extent of not ordering for refund of pre-deposit amount of Rs. 5.00 lakhs and has prayed in the present appeal to direct the respondent to refund the amount of Rs. 5.00 lakhs, in a time bound manner with interest.

10. Heard to appellant's ld. counsel Mr. A.K. Babbar and Mr. M.L. Garg on behalf of the revenue and perused the record and judgments cited by the appellant in support of his arguments.

11. Appellant's ld. counsel during the course of arguments reiterated the above facts and prayed that only relief which appellant is seeking from this Tribunal is that as matter has been remanded back to the concerned VATO, hence amount deposited by him as a pre-condition to here the objections on merit, be directed to be refunded to the appellant and appeal be allowed.

12. While ld. counsel of the revenue, submitted that the appellant has not made proper refund application and that matter is- still pending, hence impugned orders warrant no interference and present appeal be dismissed.

13. Appellant in support of his arguments referred to the judgment by Hon'ble Punjab & Haryana High Court in the case of M/s Surya Synthetics, Darbar Sahib Road, Amritsar Vs. State of Punjab and another, where similar question arose and matter was remanded back to the Asstt. Excise & Taxation Commissioner, hence amount of Rs. 88,000/- deposited by the appellant at the time of filing appeal was directed to be refunded to him as it was observed that the mere pendency of the remand case, does not entitle the respondents to retain the amount deposited by the petitioner. As a consequence, the writ petition was allowed and the respondents were directed to refund Rs. 88,000/- to the petitioner. It was also observed that the petitioner may, if so advised, raise a plea with respect to interest on delayed refund of Rs. 88,000/- in the remand proceedings.

14. Applying the ratio of the above case, respondent is directed to refund the amount of Rs. 5.00 lakhs deposited by the appellant as a precondition to dispose off objections on merit within a period of two months.

15. Before parting, it would be fruitful to reproduce following observations by Hon'ble Bombay High Court in the .case of NELCO LTD. Vs. Union of India 2002 (144 E.L.T. P-56) —

> We come across cases of citizens trying to dodge their revenue dues by resorting to endless series of litigation. This time the boot is on the other foot. It is revenue which is trying to dodge and postpone the evil day.

16. Appellant has also claimed interest on the security amount. As observed by the Hon'ble Punjab & Haryana High Court in the above case of M/s Surya Synthetics (supra), appellant is free to raise this plea before the remand officer.

17. On the basis of above discussion, present appeal is allowed. Respondent is directed to refund the amount of Rs. 5.00 lakhs to the appellant within a period of two months.

18. Order pronounced in the open court.

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

[2018] 56 DSTC 472

Before the Appellate Tribunal, Value Added Tax, Delhi
[M.S.Wadhwa, Member (J)]

Appeal Nos. 257-264/ATVAT/16-17
265-270/ATVAT/16-17 &
271-278/ATVAT/16-17
Assessment Yr. 2012-13, 2013-14 & 2014-15
Default Assessment of Tax, Interest & Penalty

MR Gupta & Co. (P) Ltd. ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 01.08.2018

INTER-STATE SALE - CLAIM OF CONCESSIONAL RATE OF TAX WAS DENIED AND TREATED AS LOCAL SALE – NO OPPORTUNITY WAS GIVEN TO PROVE INTER-STATE SALES – REVENUE DID NOT PRODUCE MATERIAL AGAINST THE APPELLANT – WHETHER CORRECT HELD; NO. VATO DIRECTED TO PROVIDE OPPORTUNITY TO APPELLANT TO PROVE INTER-STATE SALES AND RE-FRAME ASSESSMENT AFRESH WITH CLEAR FINDING ON SALES EITHER INTER-STATE OR INTRA-STATE.

Facts

The appellant was engaged in the trading of plastic raw material. The company sales goods intra-state as well as in the course of inter-state trade and commerce and the company was duly registered under the DVAT Act and CST Act with TIN NO. 07430170131and were filing returns and paying taxes as per provisions of law.

The company filed returns for 2012-13 on monthly basis and for 2013-14 and 2014-15 on quarterly basis.

The company made inter-state sales to M/s PRO Technology, Sivakasi-Tamil Nadu and the purchasing dealer issued C-forms for the years 2012-13, 2013-14 and 2014-15 bearing official seal of the issuing department.

The VAT Department, Enforcement Wing conducted survey at the premises of the company on 30/1/2016 and noticed some variation in cash as well as stock in hand. The team forwarded their report to the VATO ward-103 for framing assessment after due verification of the C-forms and inter-state sales made for the years 2012-13, 2013-14, 2014-15 and 2015-16.

The VATO (Ward-103) examined the returns filed, C-forms produced and made enquiry from the Asstt. Commissioner, Commercial Taxes, Tamil Nadu, who intimated that the registration certificate of M/s Pro Technology was cancelled w.e.f. 18/6/2014 as the said dealer filed nil returns for 2011-12 and 2012-13. Further, it was reported that for 2013-14, the said dealer has not filed the returns. It was also reported that C-forms produced had not been issued to this dealer and letter dated 27/7/2015 produced also had not been issued by the Department.

The AVATO (Ward-103) finalized the assessment u/s 32 DVAT Act vide order dated 25/5/2016 for the period 2012-13, 2013-14 and 2014-15 and had also imposed penalties u/s 86(10) DVAT Act, for the relevant periods.

Against these assessment orders, appellant filed objections before the OHA which were rejected vide impugned orders dated 28/11/2016 against which these appeals had been filed.

Held

It was clear from the facts that appellant made inter-state sales to M/s PRO Technology. The VATO treated them as local sales on the basis of the letter from the Asstt. Commissioner, office of Commercial Tax Department, Tamil Nadu that no C-forms were issued to the M/s PRO Technology during the relevant period and the registration of this dealer had already been cancelled on 18/6/2014 and the letter dated 27/7/2015 said to be issued by him was false and not genuine. Now the question arised whether in these circumstances the course adopted by the VATO was correct and as per law, which was affirmed by the OHA by the impugned orders dated 28/11/2016. According to appellant, the authorities by treating inter-state sales as local sales has prejudiced the cause of the appellant to collect fresh C-forms or to collect differential tax from the purchasing dealer, so the finding by the authorities was perverse. The Tribunal agreed to the submissions made by the appellant's counsel. Initial burden to prove that these sales were inter-state sales, was on the appellant and when appellant failed to discharge this burden, inter-state sales could not be treated as local sales without any evidence. Revenue side had not produced any evidence to prove that to whom these goods were sold locally. Only on the basis of conjectures and surmises, inter-state sales had been treated as local sales. If appellant failed to prove that C-forms were not genuine and registration of the purchasing dealer was cancelled before the date of the sale, then VATO should have refused concessional rate of tax to the appellant but only on this basis, these sales could not be treated as local sales and taxed accordingly. Appellant's counsel in support of his

arguments referred to a judgment passed by Hon'ble Madras High Court in the case of Inbios Petroleum (P) Ltd. Vs. Commercial Tax Officer, Adyar-1 Assessment Circle, Chennai and Another, (2013) 63 VST 485, where similar question for consideration arose and the Hon'ble High Court, set-asided the impugned orders. The following observations by the Hon'ble Madras High Court are relevant –

> *"The next finding is that the goods had been received by the Coimbatore branch, taken to stock and then delivered to customers in Tamil Nadu and this was done only to avoid the local tax. The plea of the petitioner is that neither there is any evidence nor has the officer relied upon any material document. It is therefore, clear that all these allegations are mere conjectures and surmises on the part of the authority, without analyzing the documents produced by the petitioner and what makes the matter worse is that, there are no reasons recorded as to which of the documents are invalid under law and which of the documents have been camouflaged to show the inter-state sales and how those documents are inadmissible in law. The original authority, namely, the Commercial Tax Officer, cannot give a finding against an assesses on mere ipse dixit, as has been done in the present case. All the documents referred to by the petitioner have been brushed aside by stating as not applicable. It is also surprising to note that the officer has merely brushed aside the Central Sales Tax paid in other state by stating that it does not alter the transaction, namely local sales in Tamil Nadu. Unless and until it is shown by material document as to which document established the case of local sales, the authority cannot unilaterally come to the conclusion that the sale in this case was local sales exigible to tax under the provisions of the State Act."*

This Tribunal's own jurisdictional Hon'ble Delhi High Court in the case of Bajrang Fabrics (P) Ltd. Vs. Commissioner of VAT & Anr. (2015) 53 DSTC 168, on the similar issue, made following observations which were relevant for disposal of these appeals –

> *The second obvious error is that the impugned notices of default assessment claim that the petitioner made inter-state sales to the dealer in Rajasthan who was found to be a 'suspicious/bogus' dealer. The notices proceeds to state that "since the dealer has made ISS of fabrics to the tune of……..", he is being asked to pay additional tax and penalty u/s 86(10) of the DVAT Act. If indeed the sale was an inter-state one, then only the CST Act would apply and not the DVAT Act.*

Faced with this difficulty, Mr. Gautam Narayan, learned Additional Standing counsel for the DT&T, sought to suggest that what the VATO meant to convey was that since the dealer in Rajasthan was found to be a 'suspicious/bogus' dealer, the sale made by the petitioner were not inter-state sales but local sales. However, the impugned notices state the contrary. The question of bringing such inter-state sales within the ambit of the DVAT Act does not arise. There has been an obvious non-application of mind by the VATO. He (or the computer) has mechanically framed identical notices of default assessments without bothering to examine what has been written therein.

It was clear from the above observations, that ratio of the above cases applied to appeals in hand. VATO was required to give opportunity to appellant to prove inter-state sales and on failure to claim differential tax regarding these inter-state sales. Without any evidence on behalf of the revenue to prove that these were local sales, they could not be treated as such.

Appellant had also assailed the impugned orders on the ground that VATO had not mentioned which of the condition in section 32 applied to these appeals and it was against the judgment in the case of M/s Samsung India Electronics (P) Ltd. Vs. Govt. of NCT passed by Hon'ble Delhi High Court. The Tribunal agreed to the above submissions. VATO had passed the impugned orders without application of mind and on this ground also the impugned orders were liable to be set-aside.

The impugned orders dated 28/11/2016 passed by OHA were hereby set-aside and the matter was remanded to the concerned VATO for re-consideration of the entire issue after giving an opportunity of hearing to the appellant. VATO was directed to re-frame the assessment afresh and give a clear finding whether these sales were inter-state sales or intra-state sales and on what basis they had been treated as such. Accordingly, these appeals were disposed off. Appellant was directed to appear before the concerned VATO.

Present for the Petitioner : Sh. S.K. Sarwal, Advocate

Present for Respondents : Sh. P. Tara, Advocate

ORDER

1. The above appeals have been filed against the impugned orders dated 28/11/2016 passed by Ld. Spl. Commissioner-I, hereinafter called

Objection Hearing Authority (in short OHA), who vide these orders upheld the assessment order of tax, interest and penalty passed by ld. AVATO (Ward-103) on 25/5/2016 for the assessment 2012-13, 2013-14 & 2014 – 15. As common question of law and facts are involved in these appeals, hence they are being disposed of by following common orders. Let copy of this order be placed in file of two other appeals also.

2. The factual matrix of the present appeals is that the appellant is engaged in the trading of plastic raw material. The company sales goods intra-state as well as in the course of inter-state trade and commerce and the company is duly registered under the DVAT Act and CST Act with TIN NO. 07430170131and is filing returns and paying taxes as per provisions of law.

3. The company filed returns for 2012-13 on monthly basis and for 2013-14 and 2014-15 on quarterly basis.

4. The company made inter-state sales to M/s PRO Technology, Sivakasi-Tamil Nadu and the purchasing dealer issued C-forms for the years 2012-13, 2013-14 and 2014-15 bearing official seal of the issuing department.

5. The VAT Department, Enforcement Wing conducted survey at the premises of the company on 30/1/2016 and noticed some variation in cash as well as stock in hand. The team forwarded their report to the VATO ward-103 for framing assessment after due verification of the C-forms and inter-state sales made for the years 2012-13, 2013-14, 2014-15 and 2015-16.

6. The VATO (Ward-103) examined the returns filed, C-forms produced and made enquiry from the Asstt. Commissioner, Commercial Taxes, Tamil Nadu, who intimated that the registration certificate of M/s Pro Technology was cancelled w.e.f. 18/6/2014 as the said dealer filed nil returns for 2011-12 and 2012-13. Further, it was reported that for 2013-14, the said dealer has not filed the returns. It was also reported that C-forms produced have not been issued to this dealer and letter dated 27/7/2015 produced also has not been issued by the Department.

7. The ld. AVATO (Ward-103) finalized the assessment u/s 32 DVAT Act vide order dated 25/5/2016 for the period 2012-13, 2013-14 and 2014-15 and has also imposed penalties u/s 86(10) DVAT Act, for the relevant periods.

8. Against these assessment orders, appellant filed objections before the ld. OHA which were rejected vide impugned orders dated 28/11/2016 against which present appeals have been filed.

9. According to appellant, brief illegalities of facts / law which render the order void abinito are as under -

i) Assessment order for Sept. 2012 – in this assessment order, according to appellant turnover reported in the order is local sales disclosed as per return i.e. Rs. 5,12,35,600/-.

ii) Turnover assessed is Rs. 2,12,25,375/- which as per return is inter-state sales against C-form.

Tax reported paid as per order	Tax/ interest due as per order	Tax actually paid as per return
Rs. 4,24,507/-	Rs. 10,09,399/-	Rs. 25,61,780/-

10. According to appellant, so there cannot be any tax due. Similar discrepancies exist in every order of assessment.

11. According to appellant, as per section 31(1)(a), the day on which return is furnished, the Commissioner is taken to have made the assessment. If Commissioner finds any irregularity in the return as mentioned in section 32(1) DVAT Act, then he can make assessment or re-assessment to the best of his judgment. This jurisdiction can be exercised by the VATO or AVATO Ward by attracting section 58, DVAT Act.

12. Present impugned order dated 25/5/2016 is passed by AVATO (Enforcement). The assessment u/s 31 DVAT Act, has already been framed when return was filed. So, this order is a re-assessment order where in earlier assessment order u/s 31(1) DVAT Act, do not survive.

13. In response to notice, the company produced books of account, C-forms and a confirmation letter forwarded by the purchasing dealer, GR and invoices. The assessing officer has not confronted any report in regard to verification of GR or invoices. The claim of inter-state sales has been denied and treated as local sales.

14. The ld. OHA rejected the objections on the ground that the RC of the purchasing dealer stood cancelled w.e.f. 18/6/2014 and C-form produced have not been issued to the purchasing dealer. The ld. OHA's observations could lead to rejection of concessional rate, but this was not a

ground to treat it as local sales. The company has written to the purchasing dealer to issue C-forms after obtaining from the Department or else pay the differential tax.

15. The appellant has already filed DVAT 51 form for assessment year 2012-13, Form-9 for 2013-14, 2014-15 as per requirement of the law. The discrepancy, if any, is not under DVAT Act but under CST Act, as made basis to treat the alleged sales as local sales. It was therefore, necessary for the assessing officer to examine the returns under the CST Act and consider DVAT -51 and Form 9 filed for examining the claim of inter-state sales. Unless this is done, the sales made under the Central Act cannot be treated as State sales. So, the order under the State Act is not sustainable.

16. The appellant has assailed the impugned orders dated 28/11/2016 passed by ld. OHA, on following grounds before this Tribunal which are as follows-

i) In the absence of delegation of power by the Commissioner, the deployment order issued by the Jt. Commissioner is without authority of law. The report of enforcement team to the ward officer to frame assessment vitiates the impugned order of assessment.

ii) The Enforcement team forwarded its report to AVATO ward 103 with a direction to frame assessment for 2012-13, 2013-14, 2014-15 and 2015-16 and also calculated differential tax liability of Rs. 1,32,11,916/- in his report.

This report by enforcement team cannot confer jurisdiction on ward officer to frame assessment as suggested in the report.

The recourse to Sec 58 alone could confer jurisdiction to frame assessment and this information could be used under sub section (4) of section 58 to frame re-assessment or review of assessment order already passed u/s 31(1) DVAT Act.

iii) Two independent orders of assessment one u/s 31(1) and second u/s 32(1) cannot exist for the same period and based on the same return. The first order ceased to exist and has merged with the second order.

iv) The enforcement team verified five GRs and two were found defective. The entire inter-state sales cannot be treated as local

sales on the basis of test check report without verification of each and every GR.

v) As per books produced, payment were received through bank, so delivery of goods in question cannot be doubted and interstate sales cannot be treated as local sales.

vi) The onus to prove that the said sales were local was entirely on the department. For a turnover of more than Rs. forty crores disallowed, not even a single customer in the state could be located who has taken delivery of these goods and has made the payments. Thus, requirement of local sales is not complied.

vii) That in view of information from Tamil Nadu, the Assessing Officer should have allowed time and opportunity to produce genuine C-forms before disallowing the claim of inter-state sales.

viii) The turnover determined, tax reportedly paid, tax calculated to be due by ignoring tax paid as per return vitiates the orders of assessment.

ix) Ld. Spl. Commissioner has noticed the issues and case law cited but has not applied mind while rejecting the objections.

x) Neither the Assessing Authority nor the Spl. Commissioner has cared to notice that there is no finding that return filed under DVAT Act, are false or misleading or there is any omission in the return furnished to attract penalty u/s 86(10) DVAT Act. The returns under CST Act have not been examined.

xi) The computer has framed assessment and imposed penalties mechanically without proper application of mind by the authorities. Ld. Spl. Commissioner has also failed to appreciate the manner in which orders have been passed before rejecting the objections.

xii) The authorities by treating inter-state sales as local sales have prejudiced the cause of the appellant to collect fresh C-forms or to collect differential tax from the purchasing dealer. The finding is perverse.

17. The present appeals were heard on merit after compliance of orders dated 18/9/2017 passed by this Tribunal u/s 76(4) DVAT Act.

18. Heard to appellant's ld. counsel Mr. S.K. Sarwal & Mr. P. Tara on behalf of the revenue and perused the files, on the basis on which these appeals are being disposed off as follows.

19. As stated above, a survey of the appellant's business premises was conducted by the Enforcement Team on 30/1/2016. The Enforcement Team during the course of survey observed that appellant has made central sales on concessional rate (on 2%) against C-forms to the cancelled dealer, namely, M/s. PRO Technology (Tin No. 33455963113) during 2013-14. Further, during the course of survey the director of appellant had submitted a copy of certificate dated 27/7/2015 issued by the Asstt. Commissioner, office of Commercial Tax Department, Tamil Nadu, showing that M/s PRO Technology is discontinuing business activity due to personal reasons w.e.f. 30/6/2015. The Enforcement Team checked the status of M/s PRO Technology on TINXYS and the firm was found cancelled w.e.f. 30/8/2014. So, the team suggested to Ward Incharge-103 to verify the paradoxical status of the said certificate. Then, a letter was issued to the Asstt. Commissioner, Commercial Tax Deptt. Sivakasi, Tamil Nadu for verification of the said certificate and the C-forms issued to M/s PRO Technology. In response to that, a reply letter dated 9/5/2016 was received from the above authority on 12/5/2016, vide which it was confirmed that M/s PRO Technology having Tin No. 33455963113 has filed 'NIL' returns for the period 2011-12, 2012-13 and no returns in the assessment year 2013-14 and their RC has been cancelled w.e.f. 18/6/2014 and no C-form was issued to the dealer from their office. Further the letter dated 27/7/2015 produced by the appellant was also not issued by their office. In response to the notice issued by the ld. VATO, for the verification of the bills, DVAT 30-31 and C-forms related to M/s PRO Technology, the appellant submitted the relevant documents and the ld. VATO noted that the GRs submitted in respect of M/s PRO Technology are not verified and on the other hand it had been confirmed from the authority concerned that the central sales made by the appellant to M/s PRO Technology was not against the genuine C-forms. So the ld. VATO treated the sales made against the C-forms as local sales and taxed them @ 5% creating demand on account of differential rate of tax @ 3% and created the following demands-

S.No.	Tax Period	Tax & Interest	Penalty
1.	Sept. 2012-13	10,09,339/-	6,36,762/-
2.	Dec. 2012-13	22,52,868/-	14,55,908/-
3.	March 2012-13	8,66,806/-	5,74,200/-
4.	1st Qtr. 2013-14	18,36,409/-	12,47,050/-
5.	2nd Qtr. 2013-14	8,04,074/-	5,60,250/-
6.	3rd Qtr. 2013-14	33,53,104/-	23,99,535/-
7.	4th Qtr. 2013-14	12,64,397/-	9,29,985/-
8.	1st Qtr. 2014-15	13,35,563/-	10,09,172/-

9.	2nd Qtr. 2014-15	11,23,164/-	8,73,359/-
10.	3rd Qtr. 2014-15	27,90,494/-	22,35,580/-
11.	4th Qtr. 2014-15	3,97,075/-	3,28,050/-

20. It is clear from the above facts that appellant made inter-state sales to M/s PRO Technology. The ld. VATO treated them as local sales on the basis of the letter from the Asstt. Commissioner, office of Commercial Tax Department, Tamil Nadu that no C-forms were issued to the M/s PRO Technology during the relevant period and the registration of this dealer has already been cancelled on 18/6/2014 and the letter dated 27/7/2015 said to be issued by him is false and not genuine. Now the question arises whether in these circumstances the course adopted by the ld. VATO was correct and as per law, which was affirmed by the ld. OHA by the impugned orders dated 28/11/2016. According to appellant, the authorities by treating inter-state sales as local sales has prejudiced the cause of the appellant to collect fresh C-forms or to collect differential tax from the purchasing dealer, so the finding by the authorities is perverse. I agree to the submissions made by the appellant's ld. counsel. Initial burden to prove that these sales were inter-state sales, was on the appellant and when appellant failed to discharge this burden, inter-state sales cannot be treated as local sales without any evidence. Revenue side has not produced any evidence to prove that to whom these goods were sold locally. Only on the basis of conjectures and surmises, inter-state sales have been treated as local sales. If appellant failed to prove that C-forms were not genuine and registration of the purchasing dealer was cancelled before the date of the sale, then ld. VATO should have refused concessional rate of tax to the appellant but only on this basis, these sales cannot be treated as local sales and taxed accordingly. Appellant's ld. counsel in support of his arguments referred to a judgment passed by Hon'ble Madras High Court in the case of Inbios Petroleum (P) Ltd. Vs. Commercial Tax Officer, Adyar-1 Assessment Circle, Chennai and Another, (2013) 63 VST 485, where similar question for consideration arose and the Hon'ble High Court, set-asided the impugned orders. The following observations by the Hon'ble Madras High Court are relevant –

> "The next finding is that the goods had been received by the Coimbatore branch, taken to stock and then delivered to customers in Tamil Nadu and this was done only to avoid the local tax. The plea of the petitioner is that neither there is any evidence nor has the officer relied upon any material document. It is therefore, clear that all these allegations are mere conjectures and surmises on the part of the authority, without analyzing the documents produced by

the petitioner and what makes the matter worse is that, there are no reasons recorded as to which of the documents are invalid under law and which of the documents have been camouflaged to show the inter-state sales and how those documents are inadmissible in law. The original authority, namely, the Commercial Tax Officer, cannot give a finding against an assesses on mere ipse dixit, as has been done in the present case. All the documents referred to by the petitioner have been brushed aside by stating as not applicable. It is also surprising to note that the officer has merely brushed aside the Central Sales Tax paid in other state by stating that it does not alter the transaction, namely local sales in Tamil Nadu. Unless and until it is shown by material document as to which document established the case of local sales, the authority cannot unilaterally come to the conclusion that the sale in this case was local sales exigible to tax under the provisions of the State Act."

21. Our own jurisdictional Hon'ble Delhi High Court in the case of Bajrang Fabrics (P) Ltd. Vs. Commissioner of VAT & Anr. (2015) 53 DSTC 168, on the similar issue, made following observations which are relevant for disposal of these appeals –

26. The second obvious error is that the impugned notices of default assessment claim that the petitioner made inter-state sales to the dealer in Rajasthan who was found to be a 'suspicious/bogus' dealer. The notices proceeds to state that "since the dealer has made ISS of fabrics to the tune of…….", he is being asked to pay additional tax and penalty u/s 86(10) of the DVAT Act. If indeed the sale was an inter-state one, then only the CST Act would apply and not the DVAT Act.

27. Faced with this difficulty, Mr. Gautam Narayan, learned Additional Standing counsel for the DT&T, sought to suggest that what the VATO meant to convey was that since the dealer in Rajasthan was found to be a 'suspicious/bogus' dealer, the sale made by the petitioner were not inter-state sales but local sales. However, the impugned notices state the contrary. The question of bringing such inter-state sales within the ambit of the DVAT Act does not arise. There has been an obvious non-application of mind by the VATO. He (or the computer) has mechanically framed identical notices of default assessments without bothering to examine what has been written therein.

22. It is clear from the above observations, that ratio of the above cases applies to appeals in hand. Ld. VATO was required to give opportunity to appellant to prove inter-state sales and on failure to claim differential tax

regarding these inter-state sales. Without any evidence on behalf of the revenue to prove that these are local sales, they cannot be treated as such.

23. Appellant has also assailed the impugned orders on the ground that ld. VATO has not mentioned which of the condition in section 32 applies to the present appeals and it is against the judgment in the case of M/s Samsung India Electronics (P) Ltd. Vs. Govt. of NCT passed by Hon'ble Delhi High Court. I agree to the above submissions. Ld. VATO has passed the impugned orders without application of mind and on this ground also the impugned orders are liable to be set-aside.

24. For all the above reasons, the impugned orders dated 28/11/2016 passed by ld. OHA are hereby set-aside and the matter is remanded to the concerned VATO for re-consideration of the entire issue after giving an opportunity of hearing to the appellant. Ld. VATO is directed to re-frame the assessment afresh and give a clear finding whether these sales are inter-state sales or intra-state sales and on what basis they have been treated as such. Accordingly, present appeals are disposed off. Appellant is directed to appear before the concerned VATO on 29/8/2017.

25. Order pronounced in the open court.

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

[2018] 56 DSTC 483

Before the Appellate Tribunal, Value Added Tax, Delhi
[Diwan Chand: Member (A) and M.S. Wadhwa: Member (J)]

Review No.
Appeal No. 335-343/ATVAT/15-16
Assessment Period: 2007-08

Persys Punj Llyod Joint Venture ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 04.07.2018

REVIEW PETITION U/S 76(13) OF DVAT ACT, 2004 READ WITH RULE 24 OF DVAT (APPELLATE TRIBUNAL) REGULATION, 2005 – INTEREST U/S 42 OF DVAT

ACT – DIRECTIONS HAD GIVEN TO GRANT REFUND IN ORIGINAL ORDER INADVERTENTLY MISSED OUT THE ISSUE OF INTEREST AND DID NOT DECIDE THE SAME – REVIEW PETITION ALLOWED DIRECTION GIVEN TO GRANT INTEREST ON THE REFUND.

Facts

The Appellant M/s Persys Punj Lloyd Joint Venture was a joint venture of Persys SDN. BHD, a Malaysian Company and Punj Lloyd Ltd. Companies incorporated under the Malaysian Companies Act, 1965 and the Companies Act, 1956 respectively vide joint venture agreement dated October 10, 2003. The Company was registered under the Delhi Value Added Tax Act, 2004 vide TIN: 07713000534. Appellant filed during assessment year 2007-2008 periodical returns declaring turnover on account of works executed. Section 11 of the Delhi VAT Act provides that in case there was excess input tax credit after set-off against output Value Added Tax/ Central Sales Tax liability, claimant dealer had option to either carry forward to next tax period or claim refund of the same in return filed under the Delhi VAT Act for respective tax period. As the JV had excess ITC at the time of filing the Returns, the Company claimed refunds of the same as per under mentioned details:

Tax Period	Acknowledgement Date	Refund Claimed
June 2007	06.07.2007	24,09,121
August 2007	01.10.2007	16,76,410
September- 2007	27.10.2007	5,52,000
October 2007	29.11.2007	13,89,619
November 2007	02.01.2008	14,54,360
December 2007	28.01.2008	8,00,919
January 2008	18.03.2008	9,00,952
February 2008	25.03.2008	8,26,395
March 2008	14.07.2008	15,25,319
Total		**1,15,35,095**

Appellant's case was that Refunds due to him were disallowed by passing ex-parte orders as the appellant did not respond to the notice

dated January 4, 2011 issued under Section 59(3) of the Delhi VAT Act. Aggrieved by the Assessment Orders the Appellant filed objections before Special Commissioner-II/Objection Hearing Authority, who vide orders dated December 8, 2015 remanded the matter to VATO for passing fresh assessment order.

Being aggrieved by the Impugned Order the Appellant filed appeals before the Tribunal which were disposed of vide orders dated 01.07.2016 and allowed refund but missed out interest issue.

Held

The Appellant in his grounds of appeal had prayed for grant of refund with interest. However, while passing the impugned orders, inadvertently the Tribunal missed out the issue of interest and did not decide the same.

In view of the foregoing the Tribunal of the considered view that the instant Review petition falls within the parameters of Regulation 24 of the DVAT (Appellate Tribunal) Regulation, 2005 and was accordingly allowed.

In view of the provisions of interest and the facts and circumstances stated in the orders dated 01.07.2016 passed by this Tribunal the appellant petitioner was found eligible for grant of interest along with the refund. Accordingly the impugned orders were reviewed and the VATO was directed to grant interest on the refund. The same shall be paid within two months from the date of this order.

Present for the Appellant : Sh. Ravi Chandhok, Advocate

Present for Respondent : Sh. Pradeep Tara, Advocate

ORDER

1. This order shall dispose of the above noted miscellaneous application seeking review of the orders dated 01.07.2016 passed by this Tribunal whereby the appeal of the appellant was allowed and the matter was remanded back to the VATO.

2. Facts of the case briefly stated are that the Appellant M/s Persys Punj Lloyd Joint Venture is a joint venture of Persys SDN. BHD, a Malaysian company and Punj Lloyd Ltd. companies incorporated under the Malaysian Companies Act, 1965 and the Companies Act, 1956 respectively vide joint venture agreement dated October 10, 2003. The Company was registered

under the Delhi Value Added Tax Act, 2004 vide TIN: 07713000534. Appellant filed during assessment year 2007-2008 periodical returns declaring turnover on account of works executed. Section 11 of the Delhi VAT Act provides that in case there is excess input tax credit after set-off against output Value Added Tax/ Central Sales Tax liability, claimant dealer has option to either carry forward to next tax period or claim refund of the same in return filed under the Delhi VAT Act for respective tax period. As the JV had excess ITC at the time of filing the Returns, the Company claimed refunds of the same as per under mentioned details:

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January 2008	18.03.2008	9,00,952
February 2008	25.03.2008	8,26,395
March 2008	14.07.2008	15,25,319
Total		1,15,35,095

3. Appellant's case is that Refunds due to him were disallowed by passing ex-parte orders as the appellant did not respond to the notice dated January 4, 2011 issued under Section 59(3) of the Delhi VAT Act. Aggrieved by the Assessment Orders the Appellant filed objections before Special Commissioner-II/Objection Hearing Authority, who vide orders dated December 8, 2015 remanded the matter to VATO for passing fresh assessment order.

4. Being aggrieved by the Impugned Order the Appellant filed appeals before the Tribunal which were disposed of vide orders dated 01.07.2016 by observing as under:-

"14. It is apparent from the details placed by the appellant on record that though the returns were filed by him in time in the respective

months, 2007-2008 and the first notice that the department claims to have issued under section 59 (3) of the DVAT Act, 2004 is issued on 4th January 2011 while the mandate under section 38 of the Act is to grant the refund within two months of filing the return. Facts of the case are squarely covered by the decision of the Hon'ble High in the case of M/s swan Darshan Impex case and the appellant is entitled for the refund which has been withheld illegally as no action as contemplated in terms of provisions of section 38 of the DVAT Act had been taken within the time limit provided. In view of the facts and circumstances of the case, the Ld. VATO is directed to grant the refund to the appellant within a period of one month from the date of this order."

5. Petitioner Appellant has filed the above noted Review petition seeking review of the orders submitting that section 42 of the DVAT Act deals with entitlement of a person to receive interest and that in terms of section 42 , where a person is entitled for refund thereof , which is not paid within the limitation prescribed for the same , the said person is also entitled to receive interest. As per section 42 of the Act interest on delay in payment of refund is payable from the date when refund claimed was due to be paid.

6. That the Hon'ble Tribunal vide impugned orders dated 01.07.2016 has held that the appellant is entitled to receive the refunds and directed the VATO to issue the same. However, in the impugned order no direction with respect to interest accrued on the refund has been given. Since the Tribunal has upheld the eligibility of the appellant for the refunds in terms of section 42 of the Delhi VAT Act appellant is also entitled to receive interest on the refunds.

7. Appellant's submission is that where there is some apparent mistake or error in order passed by the Tribunal, the said order can be reviewed by the Hon'ble Tribunal suo moto or on an application filed in ths regard. Hence the order is liable to be reviewed to grant interest to the appellant petitioner

8. Appellant has prayed that the Tribunal may kindly review the order and direct the VATO to issue refund claimed in the returns alongwith interest.

9. Ld Counsel for the Revenue opposing the Review Petition submitted that:

1. The only issue involved in the said review petition is regarding entitlement of interest u/s. 42 of DVAT Act on refund due to the dealer.

2. The main ground on merits taken by the Appellant in support of review petition is that the person is entitled to seek interest automatically u/s 42 of DVAT Act on the late payment of refund payable from the date when refund claimed was due to be paid. However, the fact of the matter is that section 38(3) of DVAT Act relied upon by the appellant is subject to the exclusion of time contained under section 38(7) of DVAT Act. The Hon'ble Vat Tribunal in the original order has also taken note on section 38 of DVAT Act and in particular section 38(3) of DVAT Act and 38(7) of DVAT Act in para 13 of its judgement. However, in previous para 9 to 13 of its judgement and also in para 14 of the judgment the Hon'ble VAT Tribunal has relied upon the Judgement of M/s. Swaran Darshan Impex case.

3. That there are series of judgments by Hon'ble Delhi High Court on the subject under consideration by ATVAT and in that series one of the latest judgement passed by Hon'ble Delhi High Court is in the matter of M/s. Prime Papers and Packers wherein Hon'ble Delhi High Court has elaborated on different provisions of law governing the refunds under DVAT Act. Feeling aggrieved by the judgement of M/s. Prime Papers and Packers the Government of NCT of Delhi through Commissioner Trade and Taxes has challenged the said judgment before Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India was pleased to pass the following orders in the said case vide its order dated 18/11/2016 :-

> "Issue Notice.
>
> In the meantime, operation of the impugned judgement shall remain stayed.
>
> Tag with SLP(C) No. 3052512016 and SLP (CJ No. 22867 of 2016".

4. Moreover from the contents of orders passed by ATVAT against which a review petition has been preferred it is very much clear that the appellant during the course of arguments in main appeal only pressed for the issue of refund and he never pressed on the ground of issue of interest on the

said refund, therefore, the order under review is otherwise correct since appellant has failed to press for the ground of interest at the time of original hearing on merits. In these circumstances there is nothing in the case which attracts the provision of regulation 24 of Tribunal regulations.

10. Ld Counsel for the Revenue referring to decision of the Apex Court in which the orders passed by the High Court were stayed, submitted that till the issue is decided by the Hon'ble Apex court the issue of interest need not be decided or the review petition may be dismissed.

11. On the other hand the Appellant Portioner has relied upon submitted that the issue in those case where the orders were stayed pertained to the cases where the interstate sale was involved and the C Forms were submitted. In his case there is no interstate sale involved and hence cannot be linked with those cases. Further even after the case of Prim Papers and the stay granted by the Apex Court in number of case refund alongwith interest has been allowed by the High Court as well as this Tribunal. Further submission made by the Appellant is that provision regarding exclusion of time envisaged by section 38(7) read with section 38(3) applies only to the cases where the C Forms involved and that in his case there is no interstate sale and no C Forms issue is there and hence his case does not come within the provisions of the said provisions and he may granted the interest on the refund due to him.

12. We have carefully considered the rival submission and the decision cited by both sides. After having gone through the record of the case we do not find any merit in the submission of the Revenue and are inclined to agree with the submission of the appellant that there is no stay on the operation of the decision of the Hon'ble High Court in the case of M/s Swaran Darshan Impex case and that he is entitled for interest on refund. Even this Tribunal in many cases passed subsequent to the decision pointed out by the Revenue has granted refund with interest.

13. We also do not find any merit in the submission of the Revenue that the appellant did not press for the interest during hearing of the appeal as in the grounds of appeal the appellant had specifically prayed for grant of refund with interest.

14. In the case of Moranmar Basselios Cathalicos and Anr. Vs Most Rev. Mar Paulose Athanasius and Ors., reported in AIR 1954 SC 526/ it was observed that a review may be allowed on three specified grounds, namely, (i) discovery of new and important matter or evidence which:, after

the-exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the· record and (iii) for any other sufficient reason. Regarding the term 'any other sufficient reason', the Supreme court observed-

> "It has been held by the Judicial Committee that the words "any other sufficient reason" mean ''a reason sufficient on grounds, at least analogous to those specified in the rule". See- Chhajju Ram Vs Neki, AIR 1922 pc 112 (D). This conclusion was reiterated by the Judicial Committee in- Bisheshwar Pratap Sahi Vs Parath Nath, AIR 1934 PC 213 (E) and was adopted by our Federal Court in Hari Shankar Vs Anath Nath, AIR 1949 FCJ06at pp.110,)."

15 In the case of S. Nagraj Vs State of Karnataka, reported in 1993 Supp (4) SCC 595, the Supreme Court observed:

> "Justice is a virtue which transcends all barriers. Neither the 'rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial· to anyone; Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on- any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake, and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. I(is either statutory or inherent. The latter is available where the· mistake is of the court. In administrative Law the scope is still wider. Technicalities apart ·if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai,J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record.
>
> But 'that obviously cannot stand in the way of the court correcting its mistake. Such inequitable consequences 'as have surfaced

now due to vague affidavit filed by the State cannot be permitted to continue."

16. In M/s special cables Pvt Ltd Review No. 32/ATVAT/05-06 decided on 12.03.2007, the Tribunal reviewed the order passed in appeal taking note of the submission of the appellant-petitioner that though the voluminous and most Important documents having great bearing on the case viz. sale invoices, purchase order GRs etc. were on file at the time of hearing of the appeal but these were not looked into in detail while disposing of the appeal and the Tribunal by not disposing off all the grounds raised by the appellant and also by not referring to and adjudicating upon all voluminous documents placed on file had rather rendered itself liable to commit an inadvertent bonafide error which needs correction in the interest of justice as it has caused prejudice to the appellant.

17. Reverting back to the facts of the present case, the Appellant in his grounds of appeal had prayed for grant of refund with interest. However, while passing the impugned orders, inadvertently the Tribunal missed out the issue of interest and did not decide the same.

18. In view of the foregoing we are of the considered view that the instant Review petition falls within the parameters of Regulation 24 of the DVAT (Appellate Tribunal) Regulation, 2005 and is accordingly. allowed.

19. In view of the provisions of interest and the facts and circumstances stated in the orders dated01.07.2016 passed by this Tribunal the appellant petitioner is found eligible for grant of interest alongwith the refund. Accordingly the impugned orders are reviewed and the VATO is directed to grant interest on the refund. The same shall be paid within two months from the date of this order.

20. Order pronounced in the open court.

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

[2018] 56 DSTC 492

Before the Appellate Tribunal, Value Added Tax, Delhi
[M.S. Wadhwa: Member (J) and Diwan Chand: Member (A)]

Appeal No. 309/ATVAT/17-18

Royal Trading Co. ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 11.05.2018

NOTICE OF ASSESSMENT OF PENALTY U/S 86(14) OF DVAT ACT – FAILURE TO COMPLY WITH NOTICE U/S 59(2) – NOTICE NOT RECEIVED – NOTICE PASTED ON THE WEB PAGE ON THE APPELLANT AND SENT ON REGISTERED MOBILE NUMBER – REQUIRED DVAT-31 AS PER THE NOTICE WHICH ALREADY SUBMITTED – NO REVENUE LOSS TO THE DEPARTMENT – PENALTY REDUCED FROM RS. 50,000/- TO RS. 10,000/-.

Facts

The Appellant was a registered dealer of Ward-64 under DVAT Act holding Tin No. 07030459702. Penalty of Rs. 50,000/- was imposed vide order dated 02.07.16 under section 86 (14) of DVAT ACT for alleged failure to comply with a notice under section 59 (2) dated 20.05.16 by VATO and later on a show cause notice dated 14.06.16 which was actually dispatched on 23.06.16 and received by the appellant on 28.06.16.

The VATO vide notice dated 20.05.16 required certain documents specially DVAT 31 for the period 01.03.16 to 30.04.16. As appellant failed to comply with the above notices, a penalty of Rs. 50,000 u/s 86 (14) DVAT Act was imposed. Against these penalty orders, appellant filed objections before OHA which were also rejected vide order dated 8/6/2017.

Held

Revenue argued that notices were pasted on the log in ID of appellant and show cause notice was also received by the appellant before the imposition of penalty, hence it could not be said that appellant was not aware of the notices, before the date of imposition of penalty by the VATO. The writ petition of Swastic Polymers was decided on 19/5/2017, while the appeal pertained to assessment year 2015, so directions given in the above writ petition could not be said to be violated by the Department of Revenue. Appellant had also assailed the impugned orders dated

8/6/2017 passed by OHA on the ground that in the circumstances, heavy penalty of Rs. 50,000/- had been imposed and there was no revenue loss to the Department because appellant had already submitted DVAT-31 in the Department.

Ends of justice will be met if amount of penalty was reduced from Rs. 50,000/- to Rs. 10,000/-. The appeal partially allowed.

Present for the Appellant : Sh. Rakesh Kr. Aggarwal, Advocate

Present for Respondent : Sh. M. L. Garg, Advocate

ORDER

1. The present appeal has been filed against the impugned Orders dated 08.06.2017 passed by Ld. Additional Commissioner, herein after called Objection Hearing Authority (in short OHA), who vide these orders upheld the penalty imposed by Ld. VATO u/s 33 r/w section 86 (14) DVAT Act.

2. The brief facts of the present appeal are that appellant is a registered dealer of Ward-64 under DVAT Act having Tin No. 07030459702. Penalty of Rs. 50,000/- was imposed vide order dated 02.07.16 under section 86 (14) of DVAT ACT for alleged failure to comply with a notice under section 59 (2) dated 20.05.16 by Ld. VATO and later on a show cause notice dated 14.06.16 which was actually dispatched on 23.06.16 and received by the appellant on 28.06.16.

3. The Ld. VATO vide notice dated 20.05.16 required certain documents specially DVAT 31 for the period 01.03.16 to 30.04.16. As appellant failed to comply with the above notices, a penalty of Rs. 50,000 u/s 86 (14) DVAT Act was imposed. Against these penalty orders, appellant filed objections before Ld. OHA which were also rejected vide order dated 8/6/2017, against which appellant has filed present appeal on various grounds, which are as follows.

(i) Because the impugned order has been passed without proper application of law on the facts of the present appeal and the impugned order is not sustainable under the law.

(ii) Ld. OHA has not considered that service of notice has never been verified before imposing penalty u/s 86(14) of the DVAT Act. Penalty u/s 86(14) may be imposed for non compliance with notice u/s 59(2) of DVAT Act, only if service of notice is made as per Rule 62 of DVAT Rules.

(iii) Because the appellant has not received any notice as alleged and if it is assumed although denied, the notice has been pasted on the web-page of the appellant then also the same should have been seen by the appellant. But without verifying the service, the penalty has been imposed which is against the letter and spirit of provisions of Act.

(iv) Because ld. OHA has considered that show cause notice has been served on 23/6/2016. Although the show cause notice dated 14/6/2016 has been dispatched only on 23/6/2016 which was served upon the appellant on 28/6/2016 only.

(v) Because the ld. OHA had not appreciated that ld. VATO had not waited for seven days before passing the impugned order as given in the show cause notice itself. The impugned order has been passed within four days as notice was served on 28/6/2016 and the impugned order was passed on 2/7/2016. Therefore, the order has been passed in haste and not sustainable under the law.

(vi) Because the ld. OHA failed to consider that notice u/s 59(2) of the DVAT Act dated 20/5/2016 has not been signed by ld. VATO either digitally or by hand and therefore, the impugned order is liable to be set aside.

4. Heard to appellant's Ld. Counsel Mr. R K Aggarwal and Mr. M L Garg on behalf of the revenue and perused the file on the basis of which present appeal is being disposed off as follows-

5. According to appellant, notice u/s 59 (2) DVAT Act dated 20.05.16 requiring appellant to file certain documents including DVAT-31 for the period 01.03.16 to 30.04.16 was never received by the appellant. Without verifying the fact that whether notices were received or not, Ld. VATO imposed penalty u/s 86 (14) DVAT Act to the tune of Rs. 50,000 and show cause notices dated 23.06.16 were received on 28.06.16 and appellant filed requisite information on 01.08.16. Appellant's ld. counsel further submitted that notice of assessment of penalty u/s 33 r/w section 86(14) was not signed by the VATO Mr. Vikas Kumar of Ward-64 and monthly notice was given while assessment order was passed for the whole year. Appellant has already submitted DVAT-31 and there is no loss of revenue to the Govt. Appellant's ld. counsel further submitted that in view of these facts, penalty imposed may be set-aside. In support of his arguments appellant's ld. counsel referred to the case of Hon'ble Delhi High Court in

the case of Swastik Polymers Vs. Commissioner of Trade and Taxes & Anr. Appellant's ld. counsel submitted that as per this judgment, if the notices were issued then noting on the file should have been made as to the date and time when notices were uploaded on the log-in ID of the dealer. As revenue side has failed to produce any evidence in support of this fact and no notices were served on the appellant, hence appeal be allowed and impugned orders dated 8/6/2017 passed by ld. OHA be set aside.

6. While Ld. Counsel for the revenue submitted that notices dated 20/5/2016 u/s 59 (2) were duly served on the appellant by pasting the same on the log in ID of the dealer and simultaneously notice was also sent to registered Mobile number of the appellant, hence justifying the impugned orders dated 8/6/2017 passed by ld. OHA, ld. counsel for the revenue prayed that appeal be dismissed.

7. As stated by the ld. counsel for the revenue that notices were pasted on the log in ID of appellant and show cause notice was also received by the appellant before the imposition of penalty, hence it cannot be said that appellant was not aware of the notices, before the date of imposition of penalty by the ld. VATO. The writ petition of Swastic Polymers (supra) was decided on 19/5/2017, while present appeal pertains to assessment year 2015, so directions given in the above writ petition cannot be said to be violated by the Department of Revenue. Appellant's ld. counsel has also assailed the impugned orders dated 8/6/2017 passed by ld. OHA on the ground that in the present circumstances, heavy penalty of Rs. 50,000/- has been imposed and there was no revenue loss to the Department because appellant has already submitted DVAT-31 in the Department.

8. In view of above facts and circumstances, ends of justice will be met if amount of penalty is reduced from Rs. 50,000/- to Rs. 10,000/-. Appellant is directed to deposit remaining amount of Rs. 5,000/- after adjusting Rs. 5,000/- already deposited by the appellant in compliance of orders dated 15/1/2018 passed by this Tribunal under section 76(4) DVAT Act within a period of 30 days. Accordingly present appeal is partially allowed.

9. Order pronounced in the open court.

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

[2018] 56 DSTC 496

Before the Appellate Tribunal, Value Added Tax, Delhi
[Diwan Chand: Member (A) and M.S. Wadhwa: Member (J)]

Appeal No. 216/ATVAT/16-17
Assessment Period: 3rd Quarter 2011-12
(Default Assessment of Tax, Interest & Penalty)

Sai Ram Enterprises ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 28.06.2018

RULE 12(1) OF CENTRAL SALES TAX RULES, 1957 – COVERAGE OF TRANSACTIONS FOR TWO QUARTERS IN A SINGLE DECLARATION FORM – ISSUED NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST – TRANSACTION OF 2ND & 3RD QUARTER CLUBBED IN ONE FORM – ASSESSING AUTHORITY DENIED TO GRANT THE CONCESSIONAL RATE OF TAX – WHETHER CORRECT, HELD NO – NO DEFECT HAD BEEN POINTED OUT BY THE REVENUE AS REGARD TO GENUINENESS OF THE TRANSACTION. APPEAL ALLOWED.

Facts

The appellant was 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.

Aggrieved with the default assessment orders the appellant preferred objections and during the course of hearing before OHA had submitted that clubbing of 2nd quarter bills of Rs. 2,43,381/- in 3rd quarter 'C' form did not invalidated the claim of the appellant and the exemption of concessional rate of tax could not be denied to the appellant solely on this ground alone. The appellant had 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. The Objection Hearing Authority rejected the objections vide order dated 16.09.2016.

Held

In Tribunal's View the ratio of the decision of the Tribunal in the case of M/s. Indian Petrochemicals Corporation Ltd. that requirement under the rules was a directory one and it did not affect the legality or validity of the C Form applied to the facts of the case and the issue of genuineness of

the transactions in question was not there. Authorities below had 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 2nd quarter and this could not be allowed in view of the provisions of the CST Rules. It was not the case of the Revenue that C Form presented was not genuine nor was the case of the Revenue that the transactions reflected in the C Form were not genuine. Accordingly the appeal was allowed and the matter was remanded back to the VATO to reframe the assessment in accordance with legal position stated above. Appellant should appear before the VATO.

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

Present for Respondent : Sh. C M 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 transaction 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 not 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.

[2018] 56 DSTC 500

Before the Appellate Tribunal, Value Added Tax, Delhi
[M.S. Wadhwa, Member (J)]

Appeal No. 39-43/ATVAT/17-18

Stic Pens Ltd. ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 12.09.2018

NOTICE OF DEFAULT ASSESSMENT FOR TAX & INTEREST – "SKETCH PEN" WAS HELD TO BE UNCLASSIFIED GOODS AND NOT COVERED UNDER ENTRY 76 OF

III[RD] SCHEDULE OF DVAT ACT, 2004 – WHETHER CORRECT. HELD; NO. REVENUE SIDE HAD NOT PRODUCED ANY EVIDENCE TO PROVE THAT SKETCH PEN WAS NOT A WRITING INSTRUMENT.

Facts

The appellant Company was engaged in the business of manufacture and sale of writing instruments like pens, ball pens, marker pens, highlighter pens, sketch pens, crayons etc. The appellant Company was collecting and depositing tax @ 5% on its products which were covered by Entry 76 of III rd Schedule of DVAT Act, 2004 which from 1.4.2010 to 20.6.2012 read as under:

> **"76. 1.4.2010 to 20.6.2012**
>
> Writing instruments costing upto rupees one thousand per piece, geometry boxes, colour boxes; crayons and pencil sharpeners."

The appellant Company was subjected to Default assessment of tax and interest u/s 32 of the DVAT Act, 2004 and a tax demand of Rs. 36,62,633/- i.e. tax amount of Rs, 24,12,359/- and interest of Rs. 12,50,274/- was raised by way of levying tax @ 12.5% on one of appellant's product i.e. 'sketch pen' on the ground that the same was not covered by Entry 76 or any of the Entry of any Schedules under DVAT Act, 2004. On the contrary, the appellant Company contended that 'sketch pens' were taxable @ 5% being covered by Entry 76 of IIIrd Schedule of DVAT Act, 2004 since the sale price of sketch pens manufactured and sold (below Rs. 1-10 per pc) by the appellant Company was much below Rs. 1000/- per piece. In fact, the selling price of each sketch pen was only around 1.10 to 1.20 per pen.

Held

Applying the ratio of the cases "*Union of India Vs. Garware Nylons Ltd. (1996) 10 SCC 413 and Puma Ayuervedic Herbal (P) Ltd. Vs. Commissioner, Central Excise, Nagpur (2006) Sales Tax Cases 200*" to the appeals in hand, the Tribunal found that revenue side had not produced any evidence to prove that sketch pen was not a writing instrument. Mere assertion on the part of revenue that sketch pen was not a writing instrument was not sufficient. On the contrary, appellant had filed evidence of various stationary dealers to prove that sketch pen was a writing instrument. The Tribunal agreed with the argument of appellant's counsel that an item in fiscal

statute could not be considered to fall in residuary classification unless expedient to do so. It was settled principle of law that where an item could be covered under specific entry, resort to the residuary entry could not be had. In this regard, following observation by Hon'ble supreme Court in the celebrated case of Dunlop India Ltd. Vs. Union of India 1983 (13) ELT 1566 were relevant for disposal of these appeals –

> "It was reiterated that "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule; it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause".

Similarly, in the case of State of Gujrat Vs. Bhagwati General Agency (1991) 83 STC 347, it was held that –

> "When there is a specific entry in the description of which entry the product in question can more appropriately fall, it is not permissible to have resort to a residuary entry."

In these appeals, in the category of writing instruments, sketch pen also falls, revenue side had wrongly placed it in the residuary entry and imposed tax @ 12.5%.

Appellant had also assailed imposition of interest. As tax had been wrongly imposed @ 12.5% on sketch pens, hence no default had been made by the appellant in payment of taxes, consequently interest had also been wrongly imposed as no taxes were due.

Impugned orders dated 21/3/2017 passed by OHA were hereby set-aside.

Present for the Petitioner : Sh. B. Sangal, Advocate

Present for Respondents : Sh. M.L. Garg, Advocate

ORDER

1. The instant appeals have been filed against impugned orders dated 21/3/2017 passed by ld. Spl. Commissioner-II, here-in-after called Objection Hearing Authority (in short OHA), who vide these orders upheld the assessment orders of tax, interest and penalty dated 26/5/2015 passed by ld. VATO (Audit).

2. The brief facts of the present appeals are that the appellant Company is engaged in the business of manufacture and sale of writing instruments like pens, ball pens, marker pens, highlighter pens, sketch pens, crayons etc. The appellant Company is collecting and depositing tax @ 5% on its products which are covered by Entry 76 of IIIrd Schedule of DVAT Act, 2004 which from 1.4.2010 to 20.6.2012 read as under:

"76. 1.4.2010 to 20.6.2012

Writing instruments costing upto rupees one thousand per piece, geometry boxes, colour boxes; crayons and pencil sharpeners."

3. The appellant Company was subjected to Default assessment of tax and interest u/s 32 of the DVAT Act, 2004 and a tax demand of Rs. 36,62,633/- i.e. tax amount of Rs, 24,12,359/- and interest of Rs. 12,50,274/- was raised by way of levying tax @ 12.5% on one of appellant's product i.e. 'sketch pen' on the ground that the same is. not covered by Entry 76 or any of the Entry of any Schedules under DVAT Act. On the contrary, the appellant Company contended that 'sketch pens' are taxable @ 5% being covered by Entry 76 of IIIrd Schedule of DVAT Act, 2004 since the sale price of sketch pens manufactured and sold (below Rs. 1-10 per pc) by the appellant Company is much below Rs. 1000/- per piece. In fact, the selling price of each sketch pen is only around 1.10 to 1.20 per pen.

4. It is submitted that the Ld. VATO in the Default order of tax and interest, has referred to the dictionary meaning of the term 'writing instruments' and has observed that every dictionary specifies 'sketch' A rough or unfinished drawing or painting, often made to assist in making a more finished pictures and A hasty un-detailed drawing or painting often made as a preliminary study. The Ld. VATO has further observed that the tip of the sketch pen looks like brush being very soft on edge and is not as thin as nib or pointed tip as fitted into a metal or plastic holder and even the students are using the sketch pen for making drawing or making pictures and some time colouring of pictures and are not even like highlighter or fluorescent highlighter and sketch pen having soft tip, writing on paper from it or on copies and affixing signatures is difficult. Hence the item 'Sketch pen' is not covered by Entry 76 IIIrd Schedule of DVAT Act, 2004.

5. It is submitted that the reasoning adopted by the Ld. VATO to tax 'sketch pens' @ 12.5% is patently wrong. He has wrongly observed in

the impugned order that sketch pen looks like a brush being very soft on edge and also not thin as nib or pointed tip and as such cannot be termed as Writing Instruments. On the contrary, the appellant Company urged that sketch pen neither looks like a brush and neither its edge is soft, as alleged and on the contrary it has a thin tip. According to Wikipedia (free encyclopaedia) writing instruments / implements have been defined as an object used to produce writing can be used for painting, drawing and even for technical drawing. One of the critical characteristic of a writing implement is the ability to produce a smooth, 'controllable line and hence the item 'Sketch pen' is covered by Entry 76 of IIIrd Schedule of DVAT Act, 2004.

6. The Ld. VATO has referred to two Determination Orders passed by the Ld. Commissioner VAT. In Determination order No. 361/CVAT/2014/251 dated 24.3.2014 in the case of M/s Amit Chawla, the Ld. Commissioner VAT held that whereas lead pencil is covered by Entry 76 of IIIrd Schedule of DVAT Act, coloured pencil is not covered under the said entry. In the other Determination order No. 266/CDVAT/2010/30 dated 3.6.2000 in the case of Luxor Writing Instruments Pvt. Ltd., the Ld. Commissioner held that different kinds of writing instruments viz ball pens, fountain pens, gel pens marker pens, highlighter pens, sketch pen, fluorescent highlighter pens and super fluorescent pens are writing instruments. The Ld. VATO following the Determination order passed in the case of M/s Amit Chawla held that when coloured pencils are being used for art /drawing purposes and are not considered as writing instruments, in the similar manner, 'sketch pen' cannot be treated as writing instruments. However, the Ld. VATO has made contradictory observations in the Default order in his attempt to somehow hold that 'sketch pen' sold by the Objector Company is not a writing instrument and is not covered by Entry 76 of IIIrd Schedule.

7. The appellant Company filed objections against the Default order of tax and .interest which were dismissed by the Ld. Special Commissioner VAT in his capacity as OHA (for short SOHA).

8. In the course of arguments, the Ld. SOHA sought reply from the appellant Company to the following queries:

1. Whether the items Sketch pen is covered under Determination order of the Commissioner (VAT) dated 24.3.2014?

2. Whether Sketch pens is a writing instrument or not?

3. Whether his case is squarely covered under the judicial pronouncement like Camlin Ltd. Vs. Commissioner (Excise)?

9. In response thereto, the appellant Company filed Written arguments and submitted that the Hon'ble High Court of Rajasthan in. the case of Asstt. Commissioner, Anti Evasion, Rajasthan Vs. Camlin India Ltd & anr. reported as (2015) 4 VST OL 485 held as under:

> "The category of all types of fountain pens, ball' pens and accessories thereof under notification dated March 4, 1992 was changed to all types of pens including parts and accessories thereof, drawing materials and poster colours" under notification No. F.4(8)FDGR.IV/94-49 dated March 7, 1994. Thus the scope of pen was enlarged. Marker and highlighter can fall within the meaning of a pen and the definition of marker and highlighter as given in various dictionaries also confirms the same. By highlighting as well as marker one can certainly write though the flow by writing from a marker or a high lighter may not be to that extent. These are definitely instruments of writing. Therefore, the marker as well as highlighter will literally fall in the category of all types of pens."

10. According to appellant, the Hon'ble Supreme Court of India in the case of Camlin Ltd Vs. Commissioner of Central Excise, Mumbai reported as (2009)11 VAT Reporter 28 SC observed as under:

> "In view of the above definition of the words 'write and writing' it reveals that the method by which the ideas are transformed into symbols, characters, letters or words on any surface including paper is to be considered as writing. Accordingly, fountain pens, marker pens, croquill letting pens, sketch pen etc. are the instruments which are being used of transforming the ideas into symbols, characters, letters or words on paper and in that sense these are definitely the instruments of writing."

11. On the above basis, the Ld. SOHA has observed in the impugned order as under:

> "1 have heard both the parties and also perused the Determination orders passed and the judgment cited by the objector and am of the view that sketch pens are writing instruments and perusal of the Determination order passed by the then Ld. Commissioner, T&T supports the case of the objector that sketch pens fall in entry 76 of the IIIrd Schedule."

12. In later part of this order the Ld. SOHA reproduced para 9 of the judgment of Hon'ble Supreme Court of India delivered in the case of Camlin India Ltd Vs. Commissioner of Central Excise, Mumbai which reads as under:

> "9. The aforesaid contentions of the assessee which were taken in appeal were accepted by the Commissioner (Appeals) vide his order dated 28th March 1999. After referring to the numerous dictionaries to ascertain the meaning of various terms, it was held that:
>
> "In view of the above definition of the words "write and writing" it reveals that the method by which the ideas are transformed into symbols, characters, letters or words on any surface including paper is to be considered as writing. Accordingly fountain pens, Marker pens, Croquill Lettering Pens, Sketch Pens etc. are the instruments which are being used for transforming the ideas into symbols, .characters, letters or words on paper and in that sense these are definitely the instruments of writing.
>
> Even if we see the uses of these instruments, we noticed that they are of multipurpose uses viz Marker Pens are used for bold writing on notice board, packages, files, envelopes, charts etc. as well the same can be used in drawing also. The same case is with sketch pens, croquill letter pens also. It can be used for writing purposes also……. "

13. In view of the above para of the judgment of Hon'ble Supreme Court of India in the case of M/s. Camlin Ltd, the Ld. SOHA observed as under:

> "However, as per entry only those writing instruments which costs below rupees one thousand per piece are taxable @ 5%. As per objector they are selling pens well below Rs. 1000/- per piece, then there seems no issue in charging the tax rate of 5% as writing pens are writing instruments." (The words 'writing pens has been wrongly mentioned here in place of Sketch pens).

14. According to appellant, strangely enough the Ld. SOHA suddenly took a U turn and concluded his order as under:

> "So it comes out that Sketch means drawing and not basically meant for writing, hence different from pen or writing instrument.

For classification of any product into a particular category, the basic object for which it is meant has to be taken into account. The contention of the objector that pen is completely a writing instrument also fails as pen can be used for writing as well as drawing but the basic function of pen is for writing. As regards the Determination order dated 24.3.2014 passed by the CVAT is concerned, the Ld. CVAT held that the coloured pencil as unspecified item, and to be taxed @ 12.5% has to be followed in principle as the current order has to be followed. So the order of the Ld. AA is upheld."

15. The Ld. SOHA has thus apparently acted contrary to law and illegally held that the orders of Determination dated 24.3.2014 passed by the Ld. Commissioner VAT shall prevail over the judgment of Hon'ble Supreme Court of India in the case of Camlin India Ltd. This judgment of Hon'ble Supreme Court of India in the case of Camlin India Ltd. was followed by Hon'ble Rajasthan High Court and the Ld. SOHA had no locus standi to hold that the current order which he means 'Determination order' has to be followed, is absolutely baseless and contrary to the judgment of Hon'ble Supreme Court of India. Consequently, the impugned order dated 21.3.2017 passed by the Ld. SOHA deserves to be quashed and the Ld. SOHA need to be reprimanded for passing such orders.

16. In addition thereto, the appellant Company submits that the Ld. SOHA has not decided major part of objections and arguments of the appellant Company. It was contended by the appellant Company that:

A. On principles of common trade, i.e, the. class of goods have to be construed in the sense as it is understood in common trade parlance,

B. The burden to prove that a product falls within a class is always on the revenue; and

C. The principle to interpret commodities in Fiscal Statutes is that an item cannot be considered to fall in residuary classification unless expedient to do so.

17. In support of the above contentions, the appellant Company filed substantial evidence and cited a number of judgments in support of the above proposition. However, none of these contentions or reference of judgments find place in the impugned order passed by the Ld. SOHA. In the circumstances, the appellant Company is filing the present appeal on the following amongst other grounds -

i) That the orders of the authorities below are wrong in law and on facts of the case.

ii) That the Ld. VATO has wrongly held that sketch pens do not fall within the ambit of Entry 76 of IIIrd Schedule since it looks like a brush and its edge is soft. In fact, the tip of Sketch pen is thin and it is not like a brush. Sample of Sketch pen was produced before the Ld. SOHA.

iii) That according to Wikipedia, Sketch pen is a writing instrument / implement and is an object used to produce writing and can be used for painting, drawing and even for technical drawing. It is thus contended that Sketch pen also falls within the ambit of 'writing instruments' and the finding of the Ld. SOHA to the contrary is not sustainable.

iv) That the Ld. VATO referred to two Determination Orders passed by the Commissioner VAT i.e. one in the case of M/s. Amit Chawla in which the Ld. Commissioner held that whereas that led pencils are covered by Entry 76 of IIIrd Schedule, coloured pencils are not covered by the said Entry. The other Determination order is in the case of Luxor Writing Instruments Pvt Ltd in which the Ld. Commissioner held that different kinds of writing instruments are ball pens, fountain pens, gel pens, marker pens, highlighter pens, sketch pens, fluorescent highlighter pens and super fluorescent pens. However, the Ld. VATO followed the Determination orders given in the case of M/s. Amit Chawla and held that 'Sketch pens' are not writing instruments since the Ld. Commissioner VAT held in the case of M/s. Amit Chawla that coloured pencils are not writing instruments.

v) That the appellant Company disputed the correctness of the findings of the Ld. VATO in the course of arguments and referred to the following two judgments which squarely covers the contention of the appellant Company that sketch pens are writing instruments:

(i) Asstt. Commissioner, Anti Evasion, Rajasthan Vs. Camlin India Ltd & anr reported as (2015) 4 VST OL 485; and

(ii) Camlin India Ltd Vs. Commissioner of Central Excise; Mumbai reported as (2009) 11 VAT Reporter 28 SC.

vi) That in the course of arguments, the Ld. SOHA specifically required the appellant Company to explain as to whether the judicial

pronouncement in the case of Camlin India Ltd covers the case of the appellant Company or not. In response thereto, the appellant Company reproduced the relevant extract from the judgment of Camlin India Ltd and stressed that since sketch pens have been held to be writing instruments by the Hon'ble Supreme Court of India, the contention of the appellant Company in this behalf had to be accepted.

vii) That the Ld SOHA whereas agreed with the contention of the appellant Company that the case of Camlin India Ltd is applicable in the instant case. Suddenly took a U turn and in contradiction to the judgment in the case of Camlin India Ltd concluded that the Determination order passed by the Commissioner VAT in the case of M/s. Amit Chawla according to which coloured pencils were held not to be writing instruments would be applicable and thus sketch pens would be taxable @ 12.5%.

viii) That the Ld. SOHA did not decide many of the objections filed by the appellant Company and particularly the objection relating to the principle of common trade parlance, burden to prove that a product falls within a class is always on the revenue and item in fiscal statute cannot be considered to fall in residuary classification unless expedient to do so. For this reason, the orders of the Ld. SOHA are not sustainable in law.

ix) That examining the case from all possible angle the inescapable conclusion is that sketch pens manufactured and sold by the appellant Company costing below of Rs. 1000/- are covered by Entry 76 of IIIrd Schedule and as such are liable to be taxed @ 5%.

x) That whereas the Ld. SOHA has referred the details of filing of ten objections by the appellant Company i.e. five relating to quantum of tax and interest and the other five relating to levy of penalty against which Objections were filed, he has disposed of only five objections filed against quantum of assessment as stated by him in the opening part of the impugned order. Hence the present appeal is being filed covering five objections filed against Quantum of tax and interest holding that the levy of tax on sketch pens @ 12.5%.

xi) That the interest of Rs. 12,50,274/- charged in Default order and upheld by the Ld. SOHA is also illegal and uncalled and deserves to be deleted.

18. I have considered the arguments advanced by counsel for the parties and have gone through the material available on the record including the judgments relied upon by the appellant.

19. The ld. VATO (Audit) imposed tax, interest and penalty vide orders dated 26/5/2015, on the appellant, which was upheld by the ld. OHA vide impugned orders dated 21/3/2017. The moot question to be decided in these appeals is whether 'sketch pens' being manufactured and sold by the appellant are covered by Entry-76 of IIIrd schedule of DVAT Act, which entry at the relevant time was as under.

Entry-76. (1.4.2010 to 20.6.2012)

Writing instruments costing upto rupees one thousand per piece, geometry boxes, colour boxes; crayons and pencil sharpeners."

20. So the dispute in the present appeals is relating to classification of product, i.e. sketch pens. According to ld. VATO, as they are not covered under any entry of any schedule, hence they are liable to be tax @ 12.5 % and at this rate ld. VATO imposed tax to the tune of Rs. 24,12,359/- and interest of Rs. 12,50,274/-. According to ld. VATO, sketch pens are not writing instruments. The basis on which, ld. VATO held that "sketch pen" is not a writing instrument was the Determination order passed by ld. Commissioner in the case of M/s. Amit Chawla, dated 24/3/2014. According to appellant, one more Determination order dated 3/6/2000 was passed by the then ld. Commissioner, in the case of Luxore Writing Instruments (P) Ltd. case, which was applicable in the facts of the present appeals but ld. VATO applied the Determination order passed in the case of M/s Amit Chawla (supra). In this Determination order ld. Commissioner held that "lead pencil" is covered by Entry-76 of schedule-III of DVAT Act but "coloured pencil" is not covered under the said entry. According to appellant's ld. counsel, ld. VATO wrongly applied the above Determination order in the present case and held that "sketch pens" are not covered under the above entry because sketch pen is also used for drawing/ art purposes and cannot be considered as writing instruments.

21. I agree with the submissions made by the appellant's ld. counsel in this regard, as by no stretch of imagination "sketch pen" can be compared with coloured pencils. Ld. OHA wrongly upheld the assessment orders passed by ld. VATO. The perusal of impugned orders dated 21/3/2017 passed by ld. OHA shows that it is a contradictory order. While at one place, following the judgment passed by Hon'ble Supreme Court in the

case of Camlin India Ltd. Vs. Commissioner of Central Excise, Mumbai (supra). Ld. OHA held that "sketch pens" are writing instruments and perusal of the Determination order passed by the then Commissioner, T & T support the case of the objector that sketch pens fall in Entry-76 of the IIIrd Schedule, and on the other hand while concluding the impugned orders, he took a U turn, as rightly submitted by the appellant's ld. counsel and held that "sketch" means "drawing" and not basically meant for writing, hence different from pen or writing instruments. For classification of any product into a particular category, the basic object for which it is meant has to be taken into account. The contention of the objector that pen is completely a writing instrument also fails as pen can be used for writing as well as drawing but the basic function of pen is for writing. As regards the Determination order dated 24.3.2014 passed by the CVAT is concerned, the Ld. CVAT held that the coloured pencil as unspecified item, and to be taxed @ 12.5% has to be followed in principle as the current order has to be followed. So the order of the Ld. AA is upheld.

22. Before proceeding further, it would be appropriate to reproduce following observations by Hon'ble Supreme Court in the case of Camlin Ltd. (supra), which have been referred by appellant's ld. counsel in support of his arguments and which are as follows –

> "In view of the above definition of the words 'write and writing', it reveals that the method by which the ideas are transformed into symbols, characters, letters or words on any surface including paper is to be considered as writing. Accordingly, fountain pens, marker pens, croquill lettering pens, sketch pens etc. are the instruments which are being used for transforming the ideas into symbols, characters, letters or words on paper and in that sense these are definitely the instruments of writing."

23. It is astonishing that ld. OHA in the impugned orders dated 21/3/2017 has said that the judgments passed by Hon'ble Supreme Court are binding on all courts and authorities of the country as per Article 141 of the Constitution of India, even then ignoring the above judgment, he preferred to apply the Determination order dated 24/3/2014 passed by ld Commissioner in the case of M/s Amit Chawla and decided the objections on the basis of this Determination order.

24. According to appellant's ld. counsel, Wikipedia, defines a sketch pen as follows –

> A marker pen, fine liner, marking pen, felt tip marker, felt tip pen, flow marker or texta (in Australia) or sketch pen (in India), is a pen

which has its own ink source, and a tip made of porous, pressed fibres such as felt.

25. According to appellant's ld. counsel, it is not found where it has been mentioned in the search for 'writing instruments' that writing instruments excludes sketch pen. Likewise, the search for sketch pen is said to be reported on Google as excluding writing instruments is not correct. The fact remains that search on Google by the respondent neither proves anything against the appellant company and nor it advances the cause of the respondents. Appellant's ld. counsel further submitted that sketch pen being produced by the appellant can create smooth controllable line, hence it is also a writing instrument. Marker pen in India is called as sketch pen and whereas 'texta' in Australia and 'koki' in South Africa.

26. Appellant's ld. counsel, further submitted that ld. SOHA did not decide many of the objections raised by the appellant company and particularly the objection relating to the principle of common trade parlance, burdon to prove that a product falls within a class is always on the revenue and an item in fiscal statute cannot be considered to fall in residuary classification unless expedient to do so.

27. So far as, principle of common trade parlance is concerned, according to appellant's ld. counsel, the class of goods have to be construed in the sense as it is understood in common trade parlance. Appellant's ld. counsel further submitted that persons who are dealing in sketch pen, they consider them as writing instruments. In support of this fact, appellant has filed the certificates from various stationary dealers vide paper book dated 1/8/2017 from page No. 10 to 20 which amply prove that "sketch pens" are treated as writing instruments by traders and consumers alike. In this regard, appellant has also referred to certain judicial pronouncements. In the case of Commissioner of Commercial Tax Vs. Modern Agency (2006) 146 STC 1, Hon'ble Madhya Pradesh High Court made following observations which are relevant for the disposal of present appeals –

> "While interpreting the entry for the purposes of taxation, recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. That is what is known as "common parlance test". The sales tax enactment is one which touches the common man and his everyday life. Therefore, the terms in the said enactment must be in the manner in which the common man will understand them. In other words, the test is as to what a common man viewing or dealing with the article will understand it to be."

28. In my considered view, the ld. VATO wrongly referred to dictionary meaning of sketch pen, while interpreting it. Ld. VATO was expected to apply, popular meaning, that meaning which traders and users apply about sketch pen. Ld. VATO made literal interpretation while defining sketch pen, while Hon'ble Supreme Court in the case of Camlin India Ltd. (Supra) has expended the definition of the word 'writing instrument' and has included in its scope not only traditional item like pen, pen ball etc. but marker pens, sketch pen etc. because they are being used for transforming the ideas into symbols, characters, letters or words on paper and in that sense they are the instruments of writing.

29. The ld. VATO also wrongly held that sketch pen are not writing instruments as tip of the sketch pen looks like a brush being very soft on edge and is not as thin as nib or pointed tip as fitted into a metal or plastic holder. Appellant has shown the sketch pen being manufactured by him, during the course of arguments. In my view, tip of sketch pen does not look like brush but it is thin and pointed. If we apply the broader meaning as given by Hon'ble Supreme Court to it, the irresistible conclusion would be that it is a writing instrument. It is a multi-purpose instrument, used not only for drawing sketch but writing also.

30. Appellant has also assailed the impugned orders passed by ld. OHA on the ground that no evidence has been produced by the revenue side to prove that sketch pen is not a writing instrument. Appellant raised this plea, before the ld. OHA but no finding has been given by the ld. OHA in the impugned orders. In this regard, appellant referred a series of cases to prove that burden lies on the revenue to prove that sketch pen is not covered by any entry of any schedule, hence it is an unspecified item, liable to be taxed @ 12.5%. So far as, classification of goods is concerned, the Hon'ble Supreme Court in the case of HPL Chemicals Ltd. (2006) 6 RC 508, has held as follows –

> Classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof.

31. The Hon'ble Apex Court, in the case of Union of India Vs. Garware Nylons Ltd. (1996) 10 SCC 413, made following observations in this regard–

> The burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It further observed that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.

32. Similarly in the case of Puma Ayurvedic Herbal (P) Ltd. Vs. Commissioner, Central Excise, Nagpur (2006) Sales Tax cases, 200, Hon'ble Supreme Court held that it is settled law that the burden of showing correct classification lies on the revenue.

33. Applying the ratio of above cases to the appeals in hand, I find that revenue side has not produced any evidence to prove that sketch pen is not a writing instrument. Mere assertion on the part of revenue that sketch pen is not a writing instrument is not sufficient. On the contrary, appellant has filed evidence of various stationary dealers to prove that sketch pen is a writing instrument. I agree with the argument of appellant's ld. counsel that an item in fiscal statute cannot be considered to fall in residuary classification unless expedient to do so. It is settled principle of law that where an item can be covered under specific entry, resort to the residuary entry cannot be had. In this regard, following observation by Hon'ble supreme Court in the celebrated case of Dunlop India Ltd. Vs. Union of India 1983 (13) ELT 1566 are relevant for disposal of present appeals –

> "It was reiterated that "when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule; it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause".

34. Similarly, in the case of State of Gujrat Vs. Bhagwati General Agency (1991) 83 STC 347, it was held that –

> "When there is a specific entry in the description of which entry the product in question can more appropriately fall, it is not permissible to have resort to a residuary entry."

35. As in the present appeals, in the category of writing instruments, sketch pen also falls, revenue side has wrongly placed it in the residuary entry and imposed tax @ 12.5%.

36. Appellant has also assailed imposition of interest. As tax has been wrongly imposed @ 12.5% on sketch pens, hence no default has been made by the appellant in payment of taxes, consequently interest has also been wrongly imposed as no taxes were due.

37. On the basis of above discussion, impugned orders dated 21/3/2017 passed by ld. OHA are hereby set-aside and present appeals are allowed.

38. Order pronounced in the open court.

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

[2018] 56 DSTC 516

Before the Objection Hearing Authority
Department of Trade & Taxes, New Delhi

Gupta Traders
108, Bldg No. 4, Vardhman Shopping Centre,
Derawal Nagar, Delhi – 110009
TIN: 07932003059

Date of Order: 06.09.2018

NOTICE OF DEFAULT ASSESSMENT OF PENALTY U/S 33 OF DVAT ACT READ WITH SECTION 86(10) – OBJECTOR CLAIMED TAX FREE SALE IN THE RETURNS UNDER THE BONAFIDE BELIEF THAT THE FIRM WAS MAINLY EXECUTING AMC CONTRACT AND THE SAME WAS NOT TAXABLE – TDS DEDUCTED MORE THAN TAX LIABILITY – NO TAX DEFICIENCY – NO OPPORTUNITY WAS PROVIDED BEFORE IMPOSING PENALTY – PENALTY REDUCED FROM RS. 14,97,459/- TO RS. 10,000/-.

Facts

The Assessing authority of Ward-109 vide order dated 31.03.2018 had imposed penalty of Rs.14,97,459/- u/s 33 of DVAT Act for the period Annual 2013. Objection was filed and challenged the levy of penalty.

Held

Objection Hearing Authority perused the grounds of objection stated in DVAT 38, copy of judgment and other relevant documents made available by the objector; impugned order of default assessment of penalty issued by the AA as well, and heard the arguments made by the objector.

Penalty of Rs.14,97,459/- imposed by AA W-109 was devoid of merit as far AA himself had observed that there was no tax deficiency. At the same time it was also a fact that the objector had filed false, misleading and deceptive return and hence penalty of Rs.10000/- was levied on objector instead of Rs.14,97,459/-.

Reference Number : 80242 Date : 06-09-2018

Decision of the Commissioner in respect of an objection Before the Objection Hearing Authority

Objection Number	Date of filing of Objection
331306	17-04-2018

To,

Name of person/dealer making the objection:
GUPTA TRADERS

Registration Number/ TIN / Unregistered Dealer Identification No.: 07932003059

Address: 108 BLDG -NO. 4 VARDHMAN SHOPPING CENTRE DERAWAL NAGAR 110009

Objection Number	Period to which objection relates	Amount in dispute	Pay by date	Payable amount
331306	Annual-(2013-2014)	1497459.00	28-09-2018	110000.00

Name of authorised representative of person making the objection : H.L. MADAN, CA

ORDER

M/s. Gupta Traders having TIN No. 07932003059 is a registered dealer of Ward-109 has filed an objection dated 17.04.2018 under Section 74(1) of the DVAT Act, 2004 against the notice of default assessment of penalty of Rs.1497459/- u/s 33 of DVAT Act read with section 86(10) for the period Annual 2013 framed by the VATO of Ward- 109 on dated 31.03.2018.

Brief facts of the case is that the Assessing authority of-Ward-109 vide order dated 31.03.2018 has imposed penalty of Rs:14,97,459/- u/s 33 of DVAT Act for the period Annual 2013 on the ground that —

> "Present Sh. H.L. Madaan CA along with POA filed statement of turnover, working of labour, service & other like charges under Rule 3 of DVAT Rules. Balance sheet, profit & loss a/c, tax audit report, DVAT — 16 for all four - qtrs. Copy of work order With BSES Rajdhani Power Ltd. with DMRC, details of Input tax not claimed in the returns along with tax invoices for Rs.1,99,907/- DVAT 31 and copy of one bill which was not included in the gross turnover at the time of filing of return for, 4th qtr. However, the same- is included in statement of turnover with reconciliation. The input tax has been verified from the 2B of the respective selling dealer. Hence benefit is allowed. Total purchase for execution of work contracts are

Rs.1,200,8940/- as per profit & loss A/c. However the sale value of these goods have been worked out as per rule of 3 of DVAT Act Rules which comes to Rs.1,52,76,207/- after deducting the value of labour services & other like charges Rs.7,70,44,754/- from GTRO Rs.9,23,21,048. The value of WCT comes to Rs.16,97,366/- Hence the net taxable turnover is Rs.1,35,78,928/- which will be taxable @ 12.5 percent.

The dealer also explained that while filing the quarterly return the accountant of the dealer has claimed the entire turnover as exempted sale under the impression that the firm is executing Mainly AMC contract and the same are not taxable. The TDS deducted during the year is Rs 26,51,987/- This TDS is more than the tax due i.e. Rs.14,97,459/- and therefore there is no tax deficiency as such interest is not leviable. Penalty u/s 86(10) of DVAT 2004 is imposed on tax deficiency."

The Ward VATO was directed to submit the report regarding objection filed by the dealer which was duly received from Link Officer. He submitted that the main plea of the dealer is that Section, 86(10)(a)&(b) has not been involved. On reading of orders u/s 32 & 33 it has been observed. that in 1st para AA has mentioned about not furnishing of return as per requirement of DVAT Act and therefore imposed the penalty.

Sh. H.L. Madan, FCA of the firm appeared on behalf of the objector dealer and reiterated the facts mentioned in objection application (DVAT 38) along with grounds of objection. He submitted that Ld. AA erred both in law as well as on facts of the case in issuing notice of default assessment of penalty u/s 33. He further submitted that AA erred in imposing penalty u/s 86(10) based on tax deficiency in spite of fact he himself observed in the assessment order that there is no tax deficiency and as such no interest is levied in the notice of default assessment of tax and interest dated 31.03.2018. He further stated that TDS deducted by contractees and claimed in the returns as refund by the dealer is Rs. 26,51,987/- as recorded in the assessment order u/s 32 also, whereas tax assessed is Rs.14,97,459/-. There is no tax deficiency and no penalty u/s 86(10) can be levied based on NIL tax deficiency. Accordingly, order passed is bad on facts of the case as well as in law. He further submitted that AA has not given any reason in the impugned order as to why penalty u/s 86(10) has been levied and order being without reason deserved to be set aside on that ground alone. He further submitted that the AA has not stated in the penalty order whether 86(10)(a) or 86(10) (b) is invoked by him to levy the penalty in absence of the same penalty order deserves to be set aside in

view of the Hon'ble Supreme Court judgment in the matter of CIT Vs SSA 'Emerald Meadows ITA No.380 of 2015'. He further submitted that the AA has not issued any notice to the dealer before levying the penalty and therefore order deserves to be set aside in view of judgment of Hon'ble Delhi High Court in the case of Bansal Dye Chem.

I have perused the grounds of objection stated in DVAT 38, grounds of objection, copy of judgment and other relevant documents made available by the dealer; impugned order of default assessment of penalty issued by the AA as well, as heard the arguments made by the objector dealer.

In view of the facts and circumstances of the case I am of the view that Penalty of Rs.14,97,459/- imposed by AA W-109 is devoid of merit as far AA himself has observed that there is no tax deficiency. At the same time it is also a fact that the dealer has filed false, misleading and deceptive return and hence penalty of Rs. 10,000/- is levied on dealer instead of Rs.14,97,459/-

Accordingly, the objection is disposed off.

[2018] 56 DSTC 521 (Delhi)

Supreme Court of India
Record of Proceedings
[Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Hemant Gupta]

SLP No. 29100/2018

The Commissioner, Value Added Tax ... Petitioner(s)

Vs.

Punj Llyod Ltd. ... Respondent(s)

SPECIAL LEAVE PETITION – RESPONDENT ARGUED THAT THE PETITION DESERVED TO BE DISPOSED OF IN THE SAME TERM AS SHAILA ENTERPRISES.

PETITIONER ARGUED BEFORE COURT THAT THERE WERE OTHER POINTS WHICH HAD NOT CONSIDERED BY THE HIGH COURT – THE PETITIONER WAS ASKED TO TAKE RECOURSE TO THE REMEDY OF REVIEW BEFORE HIGH COURT.

SPECIAL LEAVE PETITION DISMISSED.

Present for the Petitioner(s)	:	Ms. Manjula Gupta, Adv. Mr. O.P. Shukla, Adv. Mr. B.V. Balram Das, AOR
Present for Respondent(s)	:	Mr. Kavin Gulati, Sr. Adv. Mr. Vivek Jain, AOR Mr. Nipun Katyal, Adv. Mr. Suchitra Kubhat, Adv.

We have heard the learned counsel for the parties and perused the relevant material.

Application for exemption from filing certified copy of the impugned order is allowed.

Learned senior counsel for the respondent has invited our attention to the order dated 04.01.2017 passed by this Court in Special Leave Petition (C) No.27037 of 2016 in Commissioner of Value Added Tax, New Delhi vs. Shaila Enterprises. The said special leave petition arose from the final judgment of the High Court of Delhi dated 05.08.2016 in Writ Petition (Civil) No.5478 of 2016; and it has been extensively quoted and relied upon in the impugned judgment. As a result, even this special leave petition deserves to be disposed of in the same terms as in SLP (C) No. 27037 of 2016.

Learned counsel for the petitioner submits that besides the exposition in the case of Shaila Enterprises (supra), there are other points which ought to have been considered by the High Court. Furthermore, the factual position in the present case is different from the case decided by the Delhi High Court in Shaila Enterprises (supra).

If that is the grievance of the petitioner, it is open to the petitioner to take recourse to the remedy of review before the High Court, if so advised. That be considered on its own merits and in accordance with law.

We place on record that the learned counsel for the respondent has disputed the aforementioned submission made by the learned counsel for the petitioner.

The special leave petition is disposed of accordingly.

[2018] 56 DSTC 523 (Delhi)

In the High Court of Delhi at New Delhi
[Justice S. Ravindra Bhat and Justice A.K. Chawla]

W.P.(C) 10620/2016

Punj Llyod Ltd. ... Petitioner

Vs.

The Commissioner of Value Added Tax ... Respondent

Date of Judgement: 12.07.2018

REFUND UNDER DVAT ACT – INADVERTENTLY REFUND WAS NOT CLAIMED BUT CARRIED FORWARD IN DVAT RETURN FOR THE TAX PERIOD OF MARCH, 2012 – PETITIONER DID NOT TAKE BENEFIT IN NEXT TAX PERIOD – REFUND WAS DENIED

WRIT PETITION FILED – COURT DIRECTED TO RESPONDENT TO PROCESS THE REFUND SUBJECT TO FILING DVAT-21 – RESPONDENT DID NOT PROCESS THE REFUND BUT STARTED ASSESSMENT PROCEEDINGS – PETITIONER TOOK STAND BEFORE ASSESSING AUTHORITY – MATTER HAD BECOME TIME BARRED – ASSESSING AUTHORITY PASSED THE ORDER AND ADJUSTED THE DEMAND FROM 2009 TO SEPTEMBER 2011 WHICH ALREADY REMANDED BY O.H.A. AND ASSESSING AUTHORITY DID NOT PASS THE REMAND ORDER.

PETITIONER FILED ANOTHER WRIT CHALLENGING THE ORDER OF ASSESSING AUTHORITY FOR CREATING THE DEMAND – THE PETITIONER ARGUED BEFORE THE COURT THAT DEMAND FOR THE PREVIOUS YEARS WHICH O.H.A. REMANDED, A.O. DID NOT PASS ORDER WITHIN ONE YEAR AND CITED THE JUDGEMENT OF SHAILA ENTERPRISES – THE COURT HELD THAT SUBSEQUENT NOTICES CONCERNING THE PERIOD 2009 TO END MARCH 2011 WERE LEGALLY UNSUSTAINABLE. FURTHER HELD THAT DURING THE PENDENCY OF COURT ORDER VAT AUTHORITY FRAMED ASSESSMENT U/S 32 AND ISSUED PENALTY NOTICES FOR THE SUBSEQUENT PERIOD 2011-2012 WERE SUBJECT MATTER OF OBJECTION.

Facts

The petitioner was aggrieved by the failure of the respondent to process and refund excess amounts payable to it for two periods and had approached the Court.

The petitioner was engaged in the business of works contracts transactions and was registered as a dealer under the DVAT Act. The company filed periodical returns for all tax periods of the assessment year 2011-2012 including return filed for the period March 2012 enclosing TDS Certificates in original. As of March 2012, the company had an excess amount credit of Rs. 4,60,41,149/- it was entitled to. The company

contended that this excess amount was inadvertently reflected as carry forward to the next tax period in the return instead of mentioning it in the column pertaining to refund for the subsequent period, which was clear from the fact that no benefit was reflected in the return for the next period. As the petitioner's representations were to no avail, it approached the court by filing W.P. (C) No. 5244/2016, seeking a direction to the DVAT to refund amounts due to it, given the position in law as to its entitlements under Section 38 and 42 of the Act and having regard to the fact that the respondents could no longer process the return and assess the amounts, in view of the limitation under Section 34.

The petitioner proceeded to file Form 21 for claim for refund, as required having regard to the statement of the DVAT's counsel, in the writ petition.

The company received a notice from the Additional VAT officer for hearing under Section 34 of the Act. In response, the counsel appeared and pointed out that the limitation prescribed for scrutinizing documents had expired and that in the absence of an order under proviso to Section 34 and the time period not being extended, further enquiry could not be carried on. Despite this, the petitioner notices. The AVATO noted the arguments and proposed a refund of the amounts claimed without interest and sought the approval of the superior officer. In support of this contention, the company relied upon the noting in the order sheet by the AVATO. It was submitted that a second notice was received by the petitioner despite the noting. Thus, given the limitation prescribed in Section 34 having regard to provisions of section 69 of the VAT act, further enquiry into the matter was barred. Thereafter, on 01.08.2016, the AVATO issued another notice seeking to examine the documents furnished by the company in order to decide the question as to the quantum of demand quantum of refund. Here it was submitted that the company without prejudice to its rights furnished copies of all returns, all TDS certificates and purchase invoices, which were taken on record and the proceedings were adjourned for further hearing to 12.08.2016. The company's stand before the VAT authorities was that the examination of these areas was barred on account of the decision of this court in the case of Electoral Systems Private Ltd Vs. Commissioner Value-Added tax (WP 11382/ 2015), wherein it was held that once limitation for framing an assessment had expired, refund had to be processed as a matter of course, and further examination was barred. Despite this legal position the respondents proceeded to pass an assessment order on 22.08.2016 rejecting the company's contentions. It was submitted that the order of the Objection Hearing Authority dated 17.09.2012, by which the earlier demands had become final, because the AVATO did not, on remand

proceed to pass any order, there was no question of seeking to assess or "re-open" the assessment in the garb of verifying particulars and details. The OHA, by the order dated 17.09.2012, set aside the assessment orders for the period from 2009 to September 2011.

On 08.09.2016, the Company received the notice proposing to scrutinize the record and the previous assessment despite the fact that the limitation prescribed in this regard by section 34 had expired. Petitioner relied on the decision of a Division Bench of this Court in Shaila Enterprises v Commissioner of VAT (WP 5478/2016, decided on 5.08.2016).

Held

The petitioner wrongly showed the refund claim amount as carry forward, it did not subsequently reflect it in the later returns, did not preclude its basic refund claim, on which it had maintained a consistent stand. The revenue's argument that refund was impermissible because the period for revising returns was utterly frivolous and baseless. If such an argument were to be countenanced, in every case, the petitioner would have to revise its returns wherever it anticipates a refund, or a remand by the OHA. Clearly, it was the duty of the revenue to give consequential effect to the final effect of the OHA's orders, that might set aside assessments. If no order was made within the time limit prescribed, clearly the revenue could not hold on to the monies which did not bear the character of a valid levy; they had to be refunded.

During the pendency of the Court's order, the VAT authorities framed assessments under Section 32 and issued penalty notices for the subsequent period 2011-2012 (i.e. after April, 2011). In those assessments, the excess added was to the tune of 6,96,66,711/-; appropriate VAT leviable and penalty had been proposed. That was the subject matter of appeal/ objections before the OHA. The Court was of the opinion that the petitioner should seek recourse to the remedies provided by law, in respect of those proceedings for the subsequent period.

It was held that the order dated 22.08.2016 and subsequent notices concerning the period 2009 to end March, 2011 were legally unsustainable; they were hereby quashed, as were also consequent demands and proceedings if any for recovery. The proceedings in respect of later periods, which were subject matter of the petitioner's objections before the OHA, shall be concluded in accordance with law. The petitioner's rights and contentions to make all submissions were reserved in this regard. The petition was allowed.

Present for the Petitioner : Mr. Vasdev Lalwani, Mr. Ravi Chandok and Mr. Rohit Gautam, Advs.

Present for Respondent : Mr. Satyakam, ASC

Justice S. Ravindra Bhat

1. The petitioner (hereafter “the company”) is aggrieved by the failure of the respondent (hereafter called “DVAT”) to process and refund excess amounts payable to it for two periods and has approached this court.

2. The petitioner is, inter alia, engaged in the business ofworks contracts transactions and is registered as a dealer under the Delhi Value Added Tax Act (hereafter “the Act”). The company filed periodical returns (hereafter "the returns") for all tax periods of the assessment year 2011-2012 including return filed for the period March 2012 (hereafter "the period") enclosing tax deduction at source (hereafter "TDS") certificates in original. As of March 2012, the company had an excess amount credit of ` 4,60,41,149 it was entitled to. The company contends that this excess amount was inadvertently reflected as carry forward to the next tax period in the return instead of mentioning it in the column pertaining to refund for the subsequent period, which is clear from the fact that no benefit was reflected in the return for the next period. As the petitioner’s representations were to no avail, it approached this court by filing W.P. (C) No. 5244/2016, seeking a direction to the DVAT to refund amounts due to it, given the position in law as to its entitlements under Section 38 and 42 of the Act and having regard to the fact that the respondents could no longer process the return and assess the amounts, in view of the limitation under Section 34.

3. This court disposed of the writ petition, on 30 May, 2016, directing as follows:

> “The case of the Petitioner's is that on 25th April 2012, a return was filed for the tax period March, 2012 claiming the above refund. However, as explained by the Petitioner in para 6 of the Petition, the above amount was "inadvertently reflected as carry forward to next tax period in the Return instead of mentioning in column pertaining to refund." During the course of the hearing, it transpired that the Petitioner never brought this fact to the notice of the concerned Value Added Tax Officer ('VATO').
>
> 3. It is pointed by Mr Gautam Narayan, learned Additional Standing counsel that since the Petitioner has carry forwarded the refund amount in the returns for the following years, in order to claim the

refund the Petitioner will have to file Form-DVAT-21 read with Rule 34 of the Delhi Value Added Tax Rules 2005.

4. Mr Srivastava, learned counsel appearing-for the Petitioner states that the Petitioner will file Form-DVAT-21 within a period of two weeks from today. If the Form DV AT 21 is so filed, the concerned V ATO will examine and pass an appropriate order in regard to the said claim not later than four weeks thereafter after affording the Petitioner an opportunity of being heard. If aggrieved by such order, it would be open to the Petitioner to seek appropriate remedies in accordance with law."

4. The petitioner proceeded to file Form 21 for claim for refund, as required having regard to the statement of the DVAT's standing counsel, in its writ petition.

5. The company received a notice from the Additional VAT officer (hereafter "AVATO") for hearing under Section 34 of the Act. In response, its counsel appeared and pointed out that the limitation prescribed for scrutinizing documents had expired and that in the absence of an order under proviso to Section 34 and the time period not being extended, further enquiry could not be carried on. Despite this, the petitioner notices. The AVATO noted the arguments and proposed a refund of the amounts claimed without interest and sought the approval of the superior officer. In support of this contention, the company relies upon the noting in the order sheet by the AVATO. It is submitted that a second notice was received by the petitioner despite the noting. Thus, given the limitation prescribed in Section 34 having regard to provisions of section 69 of the VAT act, further enquiry into the matter was barred. Thereafter, on 01.08.2016, the AVATO issued another notice seeking to examine the documents furnished by the company in order to decide the question as to the quantum of demand quantum of refund. Here it is submitted that the company without prejudice to its rights furnished copies of all returns, all TDS certificates and purchase invoices, which were taken on record and the proceedings were adjourned for further hearing to 12.08.2016. The company's stand before the VAT authorities was that the examination of these areas was barred on account of the decision of this court in the case of Electoral Systems Private Ltd Vs. Commissioner Value-Added tax (WP 11382/ 2015), wherein it was held that once limitation for framing an assessment had expired, refund had to be processed as a matter of course, and further examination was barred. Despite this legal position the respondents proceeded to pass an assessment order on 22.08.2016 rejecting the company's contentions. It is submitted that the order of the Objection Hearing Authority (hereafter

"OHA") dated 17.09.2012, by which the earlier demands had become final, because the AVATO did not, on remand proceed to pass any order, there was no question of seeking to assess or "re-open" the assessment in the garb of verifying particulars and details. The OHA, by the order dated 17.09.2012, set aside the assessment orders for the period from 2009 to September 2011. It was held that:

> "In the interest of natural justice, the assessment orders and orders for imposition of penalties set aside. The assessing Authority is directed to provide fair opportunity to the dealer for production of all relevant records and giving explanation on critical issues. Thereafter a reasoned and detailed order be passed with clear analysis of all evidence submitted."

6. On 08.09.2016, the company received the notice proposing to scrutinize the record and the previous assessment despite the fact that the limitation prescribed in this regard by section 34 had expired. Learned counsel relied on the decision of a Division Bench of this Court in *Shaila Enterprises v Commissioner of VAT* (WP 5478/2016, decided on 5.08.2016). The petitioner states that section 34 empowers the Commissioner to extend time for completion of assessment by recording reasons. It is submitted that the reasons mentioned that the company had failed to disclose material particulars with respect to deductions claimed on account of labour and services is per se inadmissible. In support of this argument, the company relies upon Section 11, the text of Sections 31, 32 and 34. It is submitted that once the period prescribed by law, to complete the assessment expires, and applying the same in the present case, the court had directed the refund amounts to be paid out within a time stipulated in this regard, further enquiry was foreclosed.

7. The VAT department in its counter affidavit and during the hearing points out that the assessee did not claim any refund, for the relevant period, but instead carried forward the sum not claimed. It is stated that in the present case company filed its return for the tax 2012 for assessment year 2011-12 where it did not seek any refund in the relevant column and had shown the sum of ₹ 4.6 crores as balance carried forward to the next tax period. That amount was not reflected in the next period. The VAT department explains that it was under a misplaced belief that the course suggested by this court was in line with Section 38 (3) (e) and therefore the notice under Section 59 was issued and the time period would be extended by virtue of section 38 (7). It is stated that this mistaken belief led to the confusion. The respondent states such limitation prescribed for default assessment is four years. In the present case, the limitation period expired on 31.03.2016 under Section 34. It was after the period had expired

company approached this court through the earlier petition. The company had not claimed the refund earlier; therefore, the department could not be foreclosed from insisting that it would scrutinize documents and materials to decide. In fact, factually refunds would do.

8. It is submitted that in the circumstances that the company approached this court would not in any manner preclude the primary duty of the department to ensure that excess amounts were not refunded and that the amount claimed recorded with the input credits and other payments for which refund was sought. The Learned Counsel also submitted that since the company carried forward the amount in April 2012 and the immediately succeeding month did not reflect that, the question of its seeking any refund does not arise. It was urged that on the other hand that if the company really wished to seek refund, it should have applied for order in a revised return. It's omission in that regard, and the expiry of the period of limitation for filing the revised return, which is one year, prevents it from approaching the court for seeking relief, which was otherwise not available in law.

9. The Learned counsel relies upon the copy of an order made by this court on 08.08.2017 and submits that earlier, in fact a direction was issued to the company to produce documents available with it regarding claim for labour and service charges to the extent of ₹69666711 for 0the period 2010-11. It is submitted that the court recognized that the order passed on 22.08.2016 was after the petitioner had produced 12 TDS certificates out of which ten could not be verified. The Learned counsel submitted that with regard to the order made on 08.08.2017, the scope of the proceedings under section 34 of the act requires for an enquiry to be conducted into the veracity of the claims with regard to service and labour charges, before the amount claimed as refund can be quantified.

10. It is apparent from the above narration of events that the petitioner had previously approached this court, for a direction that having regard to the circumstances, its refund claims for the period upto March, 2011 ought to be granted. This court, while disposing of the petition, gave a time bound direction. Instead of adhering to it, the respondent/ DVAT department of the Govt. of NCT proceeded to issue the order dated 22.08.2016, denying the claims on the ground that inadequate or unsatisfactory material had been produced by the petitioner. The petitioner’s grievance is two-fold. First of all, since the period of limitation for making an assessment on merits had expired, the default assessment became final. In the present case, the original assessment was set aside by the OHA. Following the interpretation given in Shaila Enterprises (supra) there was no scope to legally scrutinize the refund claim. In Shaila, the Court had ruled as follows:

"15. The Court is unable to accept the above submission. Para 5 of the order dated 25th June 2013 is categorical that the AO shall provide sufficient opportunity to the Assessee for seeking any clarification/confrontation on any adverse material and "a speaking order thereafter shall be passed afresh giving proper reasons for allowing/disallowing the refund as per the law.". It was further added "Imposition of penalty shall be consequential to the default of any tax due". There could be, therefore, no manner of doubt that the orders which were the subject matters of the proceedings before the OHA did not survive after the order of the OHA. The AO was required to pass an order afresh. It is for this reason that the Assessee was directed to appear before the AA on 15th July 2013.

16. The last line of the order of the OHA reads: "The matter may be thereafter be decided in 30 days time". The word "may" was not to give an option to the AO whether or not to pass an order but the option if at all about the time period within which the order was to be passed. It is possible to argue that the AO could have passed the order not within thirty days but soon thereafter in view of the words "may be". However, here the AO appears to have forgotten about the proceedings altogether and not take any action whatsoever. If as contended by the Respondent, the Petitioner failed to appear before the AO on 15th July 2013, the AO was not absolved from passing a fresh order in respect of the refund claimed of the Petitioner. This was his bounden statutory duty.

17. It was pointed out that, in terms of Section 34(2) of the DVAT Act, there is no power with the OHA to remand the matter to the AO. In the event of a remand ordered by the Court or Appellate Tribunal, the fresh decision on remand was required to be taken within one year. It was volunteered by learned counsel for the Petitioner that notwithstanding the above legal position, even if the Petitioner were to assume without admitting that such a power exists with an OHA then in any event the AO was required to pass an order afresh within a maximum period of one year after the date of the order of the OHA. Clearly in the present case no fresh assessment order was passed nor was an order of refund was passed within one year of the date of the order of the OHA.

18. With the notices of default assessment creating the demand by notices dated 5th, 6th and 7th January 2011 for the period 2007-2008 ceasing to exist by virtue of the order dated 25th June 2013

and with no fresh assessment order being passed, there was no legal impediment any longer in granting refund to the Petitioner in respect of the claim made along with its return filed for the month of January 2008. The AO, obviously did not realise the implications of his failure to pass fresh assessment order in terms of the order dated 25th June 2013 of the OHA.

19. This Court has in a series of judgments emphasised the mandatory nature of the time limits under Section 38 of the DVAT Act for processing of the refunds. Reference in this regard may be made to the decision in Swarn Darshan Impex (P) Ltd v Commissioner Value Added Tax (2010) 31 VST 475 (Del), Lotus Impex v. Commissioner DT&T (2016) 89 VST 450 (Del); Dish TV India Ltd v GNCTD (2016) 92 VST 83 (Del), Nucleus Marketing & Communication v. Commissioner of DVAT [decision dated 12th July 2016 in W.P.(C) 7511/2015] and recently in Prime Papers and Packers v Commissioner VAT [decision dated 28th July 2016 in W.P. (C) No. 6013 of 2016]. It has further been clarified by the Court that any action the DT&T proposes to take in the form of reopening the assessment, the period within which the refund is to be issued will have to be taken into account.

20. For instance, in the present case, in respect of the assessment for the period 2007-2008, even if the DT&T wished to revisit them, the limitation under Section 34 of the DVAT Act would apply. There are two periods of limitation under Section 34 of the DVAT Act. One is the period of four years from the end of year comprising one or more time period for which a person furnishes his return and the other is in terms of proviso of Section 34 (1) of the Act where there is an extended period of six years and where the Commissioner has reason to believe that the tax was not paid "by reason of concealment, omission or failure to disclose fully material particulars". In the present case, in respect of the month of January 2008 the time within which it could have been reopened has long been crossed. The DT&T cannot therefore possibly seek to reopen the assessment for 2007-08.

21. The net result is that the refund for the month of January 2008, which the Petitioner has claimed refund along with the return became due to the Petitioner from the expiry of one month thereafter in terms of Section 38 (3) (a) (i) of the DVAT Act. The interest thereon till the date of payment also falls due in terms of Section 42 of the DVAT Act."

In the present case, the assessment for the period 2009 to March, 2011 became final, because the remand order (dated 17.09.2012) was never followed through with a fresh assessment order within the time period. Therefore, even if a fresh four-year period were to have been reckoned, that too ended. The revenue's attempt to either verify the refund claim or to reopen the assessment under Section 34 is therefore, clearly beyond the authority of law. The court does not find any merit in the revenue's argument that the petitioner had wrongly claimed carry forward and ought to have sought refund and that its claim is now barred, because the time period for revising the returns (one year) has since passed. The pattern and structure of the DVAT is such that if an assessment order is not passed, the returns acquire the status of a default assessment; if any unadjusted credit exists, the assessse's right to refund crystallizes. Therefore, in the present case, that the assesssee wrongly showed the refund claim amount as carry forward, or that it did not subsequently reflect it in the later returns, does not preclude its basic refund claim, on which it has maintained a consistent stand. The revenue's argument that refund is impermissible because the period for revising returns is utterly frivolous and baseless. If such an argument were to be countenanced, in every case, the assessee would have to revise its returns wherever it anticipates a refund, or a remand by the OHA. Clearly, it is the duty of the revenue to give consequential effect to the final effect of the OHA's orders, that might set aside assessments. If no order is made within the time limit prescribed, clearly the revenue cannot hold on to the monies which do not bear the character of a valid levy; they have to be refunded.

11. During the pendency of this court's order, the VAT authorities framed assessments under Section 32 and issued penalty notices for the subsequent period 2011-2012 (i.e. after April, 2011). In those assessments, the excess added is to the tune of `6,96,66,711/-; appropriate VAT leviable and penalty has been proposed. That is the subject matter of appeal/ objections before the OHA. In this view of the matter, the court is of the opinion that the petitioner should seek recourse to the remedies provided by law, in respect of those proceedings for the subsequent period.

12. In the light of the above discussion, it is held that the order dated 22.08.2016 and subsequent notices concerning the period 2009 to end March, 2011 are legally unsustainable; they are hereby quashed, as are also consequent demands and proceedings if any for recovery. The proceedings in respect of later periods, which are subject matter of the petitioner's objections before the OHA, shall be concluded in accordance with law. The petitioner's rights and contentions to make all submissions are reserved in this regard. The petition is allowed in these terms without order on costs.

[2018] 56 DSTC 533 (Kerala)

In the High Court of Kerala at Ernakulam
[Justice Dama Seshadri Naidu]

W.P. (C) No. 34874/2018

Sabitha Riyaz ... Petitioner

Vs.

The Union of India & Ors. ... Respondents

Date of Order: 31.10.2018

DETENTION OF THE GOODS – RULE 138 OF THE CGST RULES, 2017 – GOODS WERE DETAINED ON GROUND THAT IN E-WAY BILL DISTANCE BETWEEN KERALA AND DESTINATION AT UTTARAKHAND WAS SHOWN 280 KMS INSTEAD OF 2800 KMS – WHETHER ERROR IN E-WAY BILL WAS MINOR APART FROM BEING TYPOGRAPHICAL AND IT STOOD COVERED AND EXEMPTED UNDER CIRCULAR NO. 64/38/2018-GST, DATED 14-9-2018 – HELD; YES.

Present for the Petitioner	:	Dr. K.P. Pradeep, Smt. Neena Arimboor, Smt. Rani Mumthas, Sri. Sanand Ramakrishnan, Smt. Anjana Kannath, Sri. T.T. Biju (Advocates)
Present for Respondents	:	Sri. N. Nagaresh, Assistant Solicitor General

JUDGMENT

The petitioner, a trader, transported natural rubber. After generating e-way bill, she sent a consignment to Uttarakhand, with all the relevant records. But it was seized by the State Tax Officer, Uttarakhand, the additional 11th respondent. The ground for detention is that in the e-way bill the distance between Kerala and the destination at Uttarakhand was shown as 280 Kms, instead of 2800 Kms. To have this evident error corrected, the petitioner could have taken recourse to Rule 138(9) of the CGST Rules. That correction, however, could be possible only within 24 hours.

2. The petitioner's counsel submits that this is a typographical error. And the petitioner noticed it only when the 11th respondent intercepted the goods and inspected the documents. According to the learned counsel, the 7th respondent, the authority concerned in Kerala, could either permit the petitioner to generate a new e-way bill or certify that the error is clerical. In

reply, the Standing Counsel submits that since the entire system is online, the 7th respondent could not correct the error, at this stage. He also submits that there is no provision in the Rules for such correction, either.

3. That apart, the learned Standing Counsel submits that a certificate, as sought by the petitioner from the 7th respondent, is also not possible because the Authority has no such power conferred on him. At any rate, he too felt that the mistake is genuine, evident, and needs correction, in the interest of justice.

4. This Court intended to serve a notice on the 11th respondent, stationed at Uttarakhand and then rule on the issue.

5. The petitioner's counsel, however, submits that the produce being transported is natural rubber and it has been in detention for the past ten days. As its shelf life is very short, any further delay in the matter will render the whole consignment worthless. Nevertheless, he insists that if this Court observes that the error in e-way bill is minor apart from being typographical, then it stands covered and exempted under the Circular No.64/38/2018-GST, dated 14th September 2018.

6. Indeed, the Central Board of Indirect Taxes and Customs has come across many minor discrepancies in the e-way bills, resulting in summary detention of the goods. Then, it has issued this circular.

I reckon the distance between Kerala and Uttarakhand is a matter of record and thus verifiable. As I have already noted, the eway bill showed the distance as 280 Kms, instead of 2800 Kms—one zero missing. This cannot be anything other than a typographical error, and a minor at that.

Under these circumstances, I hold that the 11th respondent will consider the petitioner's request for release in terms of the circular, expeditiously. With these observations, I dispose of the writ petition.

[2018] 56 DSTC 535 (Delhi)

Before the Appellate Tribunal, Value Added Tax, Delhi
[Diwan Chand: Member (A) and M S Wadhwa: Member (J)]

Appeal No. 788-791/ATVAT/13-14
Assessment Year: 2012-13
Default Assessment of Tax, Interest & Penalty

M/s J N Motors ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 16.04.2018

SECTION 86(19) OF THE DVAT ACT, 2004 – DETENTION OF THE GOODS AND VEHICLES FOR VERIFICATION OF THE BILLS – RELEVANT PAPERS PERTAINING TO THE GOODS AND VEHICLE PRODUCED BEFORE THE ENFORCEMENT OFFICIAL AFTER DETENTION – WHETHER TAX AND PENALTY IMPOSED WERE ILLEGAL - HELD; YES - ILLEGAL.

Facts

The Appellant was a dealer registered under the DVAT Act, 2004, and also under the CST Act, 1956, filling prescribed Quarterly returns and discharged tax obligations in accordance therewith.

Narrating the facts and circumstances in which the tax and penalty came to be imposed the appellant had submitted the following: -

(i) That on 12.10.2012 around 7.30.PM, the appellant received telephonic order from M/s Shahdara Auto Ways, Kashmere Gate, Delhi, for the supply of 1200 door lock Scorpio which were loaded in Auto No. DL-1 l J 5106 & DL-l LN 1482 and raised Bills No. 2034 & 2035 dated 12.10.2012. Since there was space in the Auto and hence after consulting the buyer the appellant raised another bill No. 2036 for 920 locks.

(ii) That the appellant in addition to Door Locks lying in stock, received following supplies from M/s Mohammed Eng. Works, Faridabad@ Rs. 120/- per lock.

Bill No.	Date	Quantity	Value
680	10.10.2012	200	Rs 24,480/-

681	10.10.2012	200	Rs 24,480/-
682	11.10.2012	1500	Rs 1,83,600/-
683	12.10.2012	200	Rs 24,480/-

(iii) The appellant, on 12.10.2012, raised following bills to supply Door Locks to M/s Shahdara Autoways @ Rs. 140/- per lock with VAT@ 12.5%-

Bill No.	Date	Quantity	Value
2034	12.10.2012	600	Rs 94,500/-
2035	12.10.2012	600	Rs 94,500/-
2036	12.10.2012	920	Rs 1,44,900/-

(iv) That the goods, supplied as per bills No. 2034, 2035 and 2036, were checked by officer of the VAT Department while being transported in two vehicles.

(v) That the drivers produced the Bills before the officer, who decided to detain the goods and vehicles, for verification of the Bills, as per detention order dated 12.10.2012.

(vi) That the officer also got signatures of the drivers on a printed and pre-recorded statement. The reason for detention of goods mentioned was "verification of the Bills".

(vii) That on receiving information from the driver that the goods had been detained and the loaded vehicles were in the office of VAT department, the proprietor of the concern Mr. Sanjeev Kumar approached the officer at 10.00 AM on 15th October as 13th and 14th were Saturday and Sunday respectively. Whole of the day the officer did not entertained the proprietor and the proprietor again approached the officer on 16th Oct 2012.

(viii) That the officer, without hearing the appellant, passed order u/s 32 and 33 of DVAT Act, imposed a tax of Rs. 26,500/- and penalty Rs. 84,800/- for each vehicle separately.

(ix) That the goods were released on deposit of tax as well as penalty which was levied on 16th Oct 2012.

Aggrieved with the default assessment of tax and penalty orders passed by the VATO (Enforcement) the appellant filed objections before the OHA who rejected these vide impugned orders dated 21.09.2013.

Held

It was clear from the facts of this case that ratio of M/s. Indo Arya Central Transport case squarely applied to the facts of this case because even if it was admitted that the tempo carried the goods was without bills, the appellant produced the relevant papers before the Enforcement official. It was interesting to note that two vehicles were intercepted and detained at the same and while in respect of one vehicle it was mentioned "for verification of bills" in respect of other it was mentioned "without documents".

The Tribunal was of the view that in the facts and circumstances of this case, tax and penalty were illegally imposed by the Enforcement authority because appellant produced relevant documents pertaining to the goods and the vehicle. Consequently, the appeals were allowed and tax and penalty imposed by the VATO vide order dated 16.10.2012 and upheld by the OHA vide order dated 21.09.2013 were hereby set aside.

Present for the Appellant : Sh. R. Agnihotri, Advocate

Present for Respondent : Sh. N. K. Gulati, Advocate

ORDER

1. This order shall dispose of the above noted appeal filed by the appellant challenging the impugned orders dated 21.09.2013 passed by the Special Commissioner hereinafter called the Objection Hearing Authority in short the OHA who vide impugned orders rejected the objections filed and upheld the default assessments made by the VATO vide orders dated 16.10.2012.

2. Facts of the case briefly stated are that the Appellant is a dealer registered under the Delhi Value Added Tax Act, 2004, and also under the Central Sales Tax Act, 1956, filling prescribed Quarterly returns and discharged tax obligations in accordance therewith.

3. Narrating the facts and circumstances in which the tax and penalty came to be imposed the appellant has submitted the following: -

(i) That on 12.10.2012 around 7.30.PM, the appellant received telephonic order from M/s Shahdara Auto Ways, Kashmere Gate, Delhi, for the supply of 1200 door lock Scorpio which were loaded in Auto No. DL-1 l J 5106 & DL-l LN 1482 and raised Bills No. 2034 & 2035 dated 12.10.2012. Since there was space in the Auto and hence after consulting the buyer the appellant raised another bill No. 2036 for 920 locks.

(ii) That the appellant in addition to Door Locks lying in stock, received following supplies from M/s Mohammed Eng. Works, Faridabad@ Rs. 120/- per lock.

Bill No.	Date	Quantity	Value
680	10.10.2012	200	Rs 24,480/-
681	10.10.2012	200	Rs 24,480/-
682	11.10.2012	1500	Rs 1,83,600/-
683	12.10.2012	200	Rs 24,480/-

(iii) The appellant, on 12.10.2012, raised following bills to supply Door Locks to M/s Shahdara Autoways @ Rs. 140/- per lock with VAT@ 12.5%-

Bill No.	Date	Quantity	Value
2034	12.10.2012	600	Rs 94,500/-
2035	12.10.2012	600	Rs 94,500/-
2036	12.10.2012	920	Rs 1,44,900/-

(iv) That the goods, supplied as per bills No. 2034, 2035 and 2036, were checked by officer of the VAT Department while being transported in two vehicles.

(v) That the drivers produced the Bills before the officer, who decided to detain the goods and vehicles, for verification of the Bills, as per detention order dated 12.10.2012.

(vi) That the officer also got signatures of the drivers on a printed and pre-recorded statement. The reason for detention of goods mentioned is “verification of the Bills”.

(vii) That on receiving information from the driver that the goods have been detained and the loaded vehicles are in the office of VAT department, the proprietor of the concern Mr. Sanjeev Kumar approached the officer at 10.00 AM on 15th October as 13th and 14th were Saturday and Sunday respectively. Whole of the day the officer did not entertain the proprietor and the proprietor again approached the officer on 16th Oct 2012.

(viii) That the Ld. officer, without hearing the appellant, passed order u/s 32 and 33 of DVAT Act, imposing a tax of Rs. 26,500/- and penalty Rs. 84,800/- for each vehicle separately.

(ix) That the goods were released on deposit of tax as well as penalty which was levied on 16th Oct 2012.

4. Aggrieved with the default assessment of tax and penalty orders passed by the VATO (Enforcement) the appellant filed objections before the OHA who rejected these vide impugned orders dated 21.09.2013.

5. Aggrieved with the impugned orders dated 21.09.2013 the appellant has come in appeal and assailed the impugned orders on the following grounds: -

(i) That in the detention order it is merely mentioned "for verification of Bills" and thus detention is not supported by provisions of law on the subject. This also proves that Bills were accompanying the consignment but the tax and penalty was imposed alleging the consignment without bills, which render the proceedings and final orders illegal.

(ii) That no verification for which the detention took place, was made and if there is any that is behind the back of the appellant which was never communicated. Hence the resultant order is illegal in view of Hon'ble Punjab & Haryana High Court decision in the case of Sant Singh reported as 28 STC 567 (P&H**).**

(iii) That two orders were passed in contradiction with each other on the same detention and same tax and penalties were levied on alleged similar offence whereas in one vehicle there is one bill and in other, two bills were accompanying the consignments. Further when the Ld. officer alleged in one detention order "verification of bills", in another he mentions "Goods being transported without bills/ prober documents" Hence the conclusion drawn is illegal.

(iv) That the appellant has not defaulted but it is only on the basis of personal assumption, surmises and conjectures of the officer, alleged conclusion is drawn against the appellant. Hence the levy of tax and imposition of penalty in the facts and circumstances of the case is unwarranted and thus illegal.

(v) That no notice was ever issued so as to disclose the reasons for coming to this conclusion and hence the appellant was deprived of an opportunity to plead its case. Everything was done at the back of the assessee, which is against the principles of natural justice.

(vi) There was no notice fixing any date of hearing of the case. The detention order itself mentions that the goods were detained for verifications of bills. But it is concluded that these are without documents and this was confirmed by the appellate authority without appreciating the facts and record of the case. Hence the impugned orders passed by the lower authorities are prayed to be set aside.

(vii) That the order levying tax and imposing penalty is illegal.

(viii) That the appellant craves leaves to add, to amend or substitute any or all the above grounds/prayers.

6. We have heard Sh. R Agnihotri, Adv., Ld Counsel for the appellant and Sh N K Gulati, Adv., Ld Counsel for the Revenue and gone through the record of the case.

7. Ld Counsel for the appellant reiterating the grounds of appeal and praying for setting aside the impugned orders submitted that: -

(i) The orders passed are non-speaking as nothing is disclosed before levy of penalty. The proceedings were held at the back of the appellant without disclosing his mind.

(ii) The assessment of tax is not warranted u/s 86(19) of DVAT Act.

(iii) As per section 61(4) proviso, the officer could release the Goods on deposit by way of penalty equal of three and a half time the tax. Instead the officer passed order u/s 32 and Sec 33 of DVAT Act and after deposit of the amount released the goods.

(iv) Section 32 is applicable where any person has not furnished return or return filed is incomplete etc. or returns do not comply with requirement of law. No such allegation has been made nor the returns filed, were examined. Penalty u/s 33 requires the office to record reasons in witting before imposing penalty. This has not been done. So, penalty is without jurisdiction.

(v) Section 86(19) is applicable when goods being transported by the transporter are without the documents or without proper and genuine documents or without being property accounted for in the documents. As per detention order, goods were detained for

verification of Bills, no verification has been made before levy of penalty.

(vi) Value of goods arrived at is without any basis. No enquiry has been made or confronted before determining the sale price. There is no provision in the Act authorizing the officer to determine the price of the goods when bills were issued in normal course and purchase bills were also produced.

(vii) The order is in the form of printed performa where names and amount have been incorporated. No reasons have been assigned to impose tax and penalty.

(viii) In the order No. 1/69 "Goods being transported without Bills/ proper documents" have been ticked but no enquiry was made from any of the parties or if any, never confronted to the appellant. Whereas in order No. 1/70, "verification of Bills/GRS has been tricked" which itself concludes the non-application of judicious mind. So, the orders are vague, passed without assigning any reason nor any default was confronted to the appellant before passing the order.

(ix) The sale Bills for the goods being transported were kept by the officer for verification. At the time of imposing penalty, the officer returned the Bills to the counsel and did not retain it on the record file inspite of repeated requests by the counsel of the appellant. Ultimately, these bills have been sent by speed post to the officer for placing it on record but nothing was reflected in the impugned order.

(x) When the vehicles were intercepted there were two tempos. In one tempo the driver was Mr. Manoj with whom Mr. Mithlesh, a man of buyer was sitting which carried two bills i.e. Bill No. 234 & 236 carrying 600 and 920 items respectively. Another tempo was being driven by Mr. Vijay and Mr. Ranjeet, a boy from the seller's shop was accompanying him. Statements of all these four persons were recorded by the Ld. officer, which the appellant has obtained under RTI and placed these on record.

8. Ld Counsel for the Revenue supporting the impugned orders argued that tax and penalty have been correctly levied and submitted for upholding the impugned orders.

9. Before proceeding further it is necessary to notice the relevant provisions of the Act which are extracted below: -

"**61: Power to stop, search and detain goods vehicle**

(1) To enable proper administration of this Act, the Commissioner may, at any check-post or barrier or at any other place, require the owner, driver or person in charge of a goods vehicle to stop the vehicle and keep it stationary so long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the goods carried, which are in possession of such owner, driver or person in charge.

(2) The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer in charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner."

Rule 43: Records to be carried by a person in charge of goods vehicle

(1) The owner, driver or person in charge of the goods vehicle shall carry the Transport Receipt in Form DVAT-32, sale invoice or delivery note in Form DVAT-33, and as the case may be, export declaration in Form DVAT-34, import declaration in Form DVAT-35 or transit slip in Form DVAT 35A.

10. It is clear from the bare perusal of section 61(1) of DVAT Act that for proper administration of this Act, the Commissioner or any other officer authorized by him, may at any check-post or barrier or at any other place require the owner, driver or person in charge of a goods vehicle to stop the vehicle and keep it stationary so long as may be required to search the vehicle and inspect all records relating to the goods which are being carried in the said vehicle and which are in possession of such owner, driver or in charge of the vehicle.

11. While section 61 (2) prescribes a mandatory provision that driver or owner of goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer in charge of a check-post or barrier or any other official who stops the vehicle, Rule 43 (1) provides the papers or documents which owner or driver of the goods vehicle is supposed to carry with him.

12. Appellant has placed on record copies of the statements of the Auto Driver and his Employee accompanying the Auto during the

Assessment proceedings which the appellant says he obtained these from the department under RTI.

13. Sh. Mithlesh Kumar s/o Rajendra Yadav Shastri Park Delhi on 10.02.2012 in his statement has stated that on the said date of 10.02.2012 he started with Two Auto for Shahdara for transporting latches. In the first Auto he was sitting with Driver with Bill No. 2034 and 2036. Since he knew the place where the delivery was to be given he was sitting in the First Auto. At ISBT both Auto were stopped by officials of Tax Department. He showed both the bills to the officials. In the second Auto Ranjit was sitting who also shown the bill. Officials told that they need to verify the bills. When he was going to the first Auto in which he was sitting, the Auto started moving. He ran after the Auto telling the Department official sitting in the Auto that he was having the bills, but the Auto did not stop and the official did not take the bills.

14. Ranjit Kumar s/o Pramod Kumar Katra Tambaku Khari Baoli Delhi-110006 has stated that he was in the second Auto having Bill Number 2035. He showed the bill to the official. Mithlesh also came from the first Auto and had shown the two bills. Official said that the bills needed to be verified. In the meantime, the first Auto started moving. When he came to Auto, in which he was sitting , it also started moving and he ran and gave the bill to the official sitting in the Auto. Mithlesh ran after the Auto he was sitting saying that the bills were with him, but the Auto did not stop.

15. Sh. Manoj Kumar s/o Nobar Sant Nagar Burari Driver of Auto No. DL 1 LN 1482 in his statement has corroborated the statement of two persons sitting in the Auto and carrying the bills. The Auto Driver has further stated that a printed form was got signed from him and no statement was recorded.

16. It is apparent that the assessment of tax and penalty has been made without application of mind and appreciating the facts on record. Two Tempo moving together were intercepted. In one case the Mall Roko Adesh states the reason as “verification of Bills” and on another case it records the reason as “without Bills/documents”. Without stating the details of inquiries made, the orders are passed in pre-printed format, filling the blanks imposing similar amount of tax and penalty. While the presence of the counsel of the appellant and appellant is recorded in the orders passed by the OHA /VATO what was stated by the appellant and what documents were produced by the appellant have not been discussed and stated and orders for tax and penalty have been passed. There is total non-application of mind on the part of VATO and OHA as well who

again has upheld the orders without appreciating the facts and documents produced. There is no evidence or document produced to discredit the statements of the Auto Driver and the statements of the two employees of the appellant accompanying the Tempo when these were intercepted. Instead of taking note of the documents produced the OHA has upheld the orders stating that **"**Moreover, as argued by the Counsel for the objector, even if the VATO had ignored the documents claimed to be carried by the drivers of the vehicles along with the goods, the objector or his Counsel could have contacted the higher officers of the Department for it which he never did." Such an observation is noting but a conjectures and surmises without stating the arrangements the department has made to meet such eventualities and the failure on the part of the appellant to avail of such opportunity. There is no evidence produced by the Revenue to show that the appellant was evading payment of tax on the goods in question.

17. Further on the issue of valuation of goods also no basis is disclosed and there is no reason given as to why the valuation has been done ignoring the invoices produced by the Appellant and the rate mentioned therein.

18. It is interesting to note that while the Maal Roko Adesh in respect of vehicle no. 1482 states that it is without bills but the order states that it is detained for verification of bills

19. Further, it is also noticed that while the VATO did not take any notice of the invoices produced the OHA has thrown these to be of no value on the ground that the goods have bene released much earlier and the same could not be co-related with the goods intercepted. Nothing has bene explained as to what prevented the OHA from examining the bills produced with reference to the record produced, make necessary inquiries and instead of deciding the matter on conjectures and surmises.

20. Section 86 (19) of the DVAT Act, reads as follows: -

Section 86 (19)

"Where goods are being carried by a transporter without the documents or without proper and genuine documents or without being properly accounted for in the documents referred to in sub-section (2) of section 61 of this Act, the transporter shall be liable to a penalty equal to the amount of tax payable on such goods."

21. In the case of M/s. Indo Arya Central Transport Limited, this Tribunal observed as follows: -

"A careful perusal of section 86 (19) reproduced as above shows that a penalty can be assessed under this provision when either

> the documents are not carried by transporter or without proper and genuine documents or when the goods being transported are not properly accounted for in the documents. Section 86 (19) encompasses three situations in its fold necessary for assessment of penalty under this provision viz. (i) the transporter is transporting the goods without documents; or (ii) transporter is having the documents but these documents are not proper and genuine; or (iii) the transporter fails to account for the transported goods in the documents. It is not the case of the respondent that the documents produced subsequently, photocopy of which are on record, did not pertain to the goods found contained in the containers in question."

22. It is clear from the facts of the present case that ratio of M/s. Indo Arya Central Transport case squarely applies to the facts of the present case because even if it is admitted that the tempo was without bills , the appellant produced the relevant papers before the Enforcement official. It is interesting to note that two vehicles were intercepted and detailed at the same and while in respect of one vehicle it is mentioned "for verification of bills" in respect of other it is mentioned "without documents"

23. In the case of Hardwari Mall & Sons Vs. Assistant Commercial Tax Officer, Chichira Check-Post and others (2006) 147 STC 27 where waybill were produced two hours later on the stipulated date and goods were sealed and penalty was imposed, Hon'ble Calcutta High Court observed as follows:

> "that the imposition of penalty was not justified as no case of intention to evade tax has been made out by the revenue authorities at any stage in the proceeding. On the other hand the Tribunal had observed that the petitioner had tried its best to comply with the statute. Moreover, the admitted position being that the petitioner indeed had produced the way bill on the stipulated date albeit two hours later than the stipulated time, that would constitute substantial compliance with the directive of the revenue authority. The petitioner ought to be given the benefit of transit time, there being substantial distance between Kolkata and Chichira. Therefore, the order passed by the Tribunal was liable to be set aside to the extent of levy of penalty."

24. It would be appropriate to reproduce the following observation of the Hon'ble Punjab & Haryana High Court in the Xcell Automation case (2007) 5 VST 308:

"That exercise of power at the check-post, to be valid, should have reasonable nexus with the attempt at evasion. Strait-jacket approach is not called for and each instance of exercise of power has to be seen in the light of individual facts. Neither exercise of power can be restricted, wherever required for checking attempt at evasion nor can be extended to areas where there was no attempt at evasion. Where relevant documents are duly produced but a bonafide plea against taxability is raised and there is neither mis-declaration or concealment, exercise of power of imposing penalty at the check-post on the ground of attempt at evasion may not be called for in the case of the petitioner, contention raised by him that the "cast iron" castings carried by it were not "cast iron" liable to tax at the first stage, could not held to be requiring no adjudication or frivolous or malafide.

25. On the basis of aforesaid discussion we are of the considered view that in the facts and circumstances of the present case, tax and penalty were illegally imposed by the Enforcement authority because appellant produced relevant documents pertaining to the goods and the vehicle. Consequently, the appeals are allowed and tax and penalty imposed by the Ld. VATO vide order dated 16.10.2012 and upheld by the Ld. OHA vide order dated 21.09.2013 are hereby set aside.

26. Order announced in the open court.

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

[2018] 56 DSTC 546 (Delhi)

Before the Appellate Tribunal, Value Added Tax, Delhi
[Diwan Chand: Member (A) and M S Wadhwa: Member (J)]

Appeal No. 444-459/ATVAT/14-15
Assessment Period: April 2010 to Feb 2011
Default Assessment of Tax, Interest & Penalty

M/s Carrier Air-conditioning & Refrigeration Ltd. ... Appellant

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 15.06.2018

NOTICE OF DEFAULT ASSESSMENT OF TAX AND INTEREST U/S 32 AND NOTICE OF ASSESSMENT OF PENALTY U/S 33 OF DVAT ACT, 2004 – TIN NUMBER AND BILL

DATE OF SELLING DEALERS WERE INADVERTENTLY MENTIONED WRONGLY –MISMATCH IN ANNEXURE 2A WITH 2B OCCURRED – OBJECTION PETITIONS FILED SUBSEQUENTLY THE SAME WERE TRANSFERRED TO THE SPECIAL OBJECTION HEARING AUTHORITY WHO WAS A WARD OFFICER AND HAD CARRIED OUT THE ASSESSMENT – VIOLATION OF CIRCULAR NUMBER 18/2014-15 BEARING NUMBER F. 7(48) POLICY/NAT/2014/518-527 DATED 24.11.2014 – APPLICABILITY OF SECTION 9(2)(g) OF DVAT ACT, 2004 – SELLING DEALERS WERE NOT SUMMONED – PENALTY ORDER PASSED WITHOUT GIVING OPPORTUNITY – WHETHER CORRECT - HELD; NO – APPEAL ALLOWED DIRECTION GIVEN TO PASS FRESH ORDERS.

Facts

The appellant was a registered dealer of ward-202 (KDU) holding registration both under the DVAT Act and CST Act and was engaged in resale (trading) of Air-conditioners, freezers & Refrigeration etc, their parts and accessories.

Orders of default assessment of tax and interest under section 32 and of assessment of penalty u/s 33 read with section 86(10), all dated 07.06.2014 were passed after reviewing all orders dated 15.05.2014 suo motu, in exercise of the powers conferred by virtue of section 74B(5) of DVAT Act, 2004, on the ground that buyers/ sellers had revised their online 2A/ 2B data and the changed position necessitated passing of modified orders and consequently additional demands of Tax and interest and penalty for each tax period, were created as per details given below:-

Tax Period 2012-13	Tax & Interest	Penalty
April	1,37,600	1,07,151
May	1,33,010	1,05,107
June	1,44,261	1,15,119
July	1,07,491	86,658
August	30,634	24,953
September	50,067	41,196
October	20,352	16,924
November	19,028	15,987
December	26,843	22,796
Jan	17,922	15,387
Feb	2,356	10,000

Aggrieved of the said default assessment orders of tax and interest passed under section 32 and default assessment orders of penalty u/s 33 read with section 86(10) objections under section 74 of DVAT Act, 2004 were filed with OHA.

Objections filed with OHA were transferred to the ward VATOs for disposal of Objections relating to mismatch of Annexure 2A/2B cases for the assessment year 2012-13 vide Circular No. 18 of 2014-15 bearing no. F.7 (48)/Policy /NAT/2014/518-527 dated 24.11.2014.

VATO Ward-202 (designated as OHA) disposed of the objections vide impugned orders all dated 05.01.2015 and modified the demands as under:

Tax Period 2012-13	Tax & Interest	Penalty
April	89,731	64,958
May	1,07,179	78,288
June	0	0
July	70,553	52,496
August	15,849	11,906
September	43,090	32,641
October	21,285	16,250
November	10,822	10,000
December	0	0
Jan	10,697	10,000
Feb	2,356	10,000

Held

The case was squarely covered by the decisions in the case of "On Quest Merchandising India Pvt. Ltd. & Others Vs. Govt. of NCT of Delhi & Ors. & Commissioner of Trade & Taxes, Delhi" and "Shanti Kiran India Pvt. Ltd. Vs. Commissioner of Trade & Taxes, Delhi" and the denial of ITC in the facts and circumstances of the case was illegal and contrary to the provisions of law.

Further, there was force in the submission of the appellant that in view of the circular issued by the Commissioner where it had been specifically

mentioned in clause 9 that if the SOHA happened to be ward officer who carried out the assessment then he shall not decide the objections himself but transfer the objections to the link officer within the zone and in this case the assessments had been framed in violation of the directions contained in the said circular. Revenue had not denied the fact that the VATO who acted as the Special OHA was the Ward VATO who had passed the default assessments. Impugned orders passed were unsustainable on this account also.

> *Perusal of the impugned orders passed by the OHA showed that there was no finding by the OHA in his orders on the issue of there being no opportunity given to the appellant before imposition of penalty. On the question of issue of notice and affording of opportunity to the dealer before imposition of penalty, Hon'ble Delhi Court in its decision in Bansal Dye Chem Pvt. Ltd. vs Commissioner, Value Added Tax observed as follows:*
>
> > *"The very nature of proceedings under section 33 of the DVAT Act read with Rule 36 (2) of the DVAT Rules underscore the need for the VATO to observe the principles of natural justice while making the penalty order. This entails serving on the assessee a separate notice to show cause why penalty should not be Imposed and affording the assessee an opportunity of being heard prior to passing the penalty order. The imposition of penalty is not a mechanical or automatic exercise but requires application of mind by the assessing authority to the facts and circumstances of the case…"*

In Indian Tourism Development Corporation Vs. Sales Tax Officer and Indian Railway Catering and Tourism Corporation Limited Vs. Govt. of NCT of Delhi, the Hon'ble Delhi High Court also held that the appellant should had been given an opportunity of hearing before the penalty order could had been passed.

The Tribunal were of the considered view that the Appellant was bound to succeed on this ground that penalty order passed by the VATO without affording an opportunity of hearing to the appellant on the question of penalty, was unsustainable in law.

The impugned orders passed by the OHA and default assessment of tax, interest and penalty passed by the VATO were set aside and the matter was remanded back to the concerned VATO to reframe assessment afresh in accordance with law after giving opportunity of hearing to the

appellant and after verifying from the selling dealer about the deposition of the tax collected or its adjustment as per provisions of the Act. Appellant was directed to appear before the concerned VATO.

Present for the Appellant : Sh. R. N. Sharma, Advocate

Present for Respondent : Sh. C. M. Sharma, Advocate

ORDER

1. This order shall dispose of the above noted appeals filed by the appellant challenging the impugned orders dated 05.01.2015 passed by VATO Ward 202, hereinafter called the Special Objection Hearing Authority (in short the OHA) who rejected the objections and upheld the default assessment orders passed by VATO ward-202.

2. Facts of the case briefly stated are that the appellant is a registered dealer of ward-202 (KDU) holding registration both under the DVAT Act and Central Sales Tax Act and is engaged in resale (trading) of Air-conditioners, freezers & Refrigeration etc, their parts and accessories.

3. Orders of default assessment of tax and interest under section 32 and of assessment of penalty u/s 33 read with section 86(10), all dated 07.06.2014 were passed after reviewing all orders dated 15.05.2014 suo motu, in exercise of the powers conferred by virtue of section 74B(5) of DVAT Act, 2004, on the ground that buyers/ sellers had revised their online 2A/ 2B data and the changed position necessitated passing of modified orders and consequently additional demands of Tax and interest and penalty for each tax period, were created as per details given below:-

Tax Period 2012-13	Tax & Interest	Penalty
April	1,37,600	1,07,151
May	1,33,010	1,05,107
June	1,44,261	1,15,119
July	1,07,491	86,658
August	30,634	24,953
September	50,067	41,196
October	20,352	16,924
November	19,028	15,987
December	26,843	22,796

Jan	17,922	15,387
Feb	2,356	10,000

4. Aggrieved of the said default assessment orders of tax and interest passed under section 32 and default assessment orders of penalty u/s 33 read with section 86(10) objections under section 74 of DVAT Act, 2004 were filed with OHA.

5. Objections filed with OHA were transferred to the ward VATOs for disposal of Objections relating to mismatch of Annexure 2A/2B cases for the assessment year 2012-13 vide Circular No. 18 of 2014-15 bearing no. F.7 (48)/Policy /NAT/2014/518-527 dated 24.11.2014.

6. Ld VATO Ward-202 (designated as OHA) disposed of the objections vide impugned orders all dated 05.01.2015 and modified the demands as under:

Tax Period 2012-13	**Tax & Interest**	**Penalty**
April	89,731	64,958
May	1,07,179	78,288
June	0	0
July	70,553	52,496
August	15,849	11,906
September	43,090	32,641
October	21,285	16,250
November	10,822	10,000
December	0	0
Jan	10,697	10,000
Feb	2,356	10,000

7. Aggrieved of the impugned orders passed by Ld. VATO-Ward 202(KDU)/OHA the appellant has filed the above noted appeal and assailed the impugned orders on the following grounds:-

1. That the Orders passed under section 32 and 33, for each tax period, are not maintainable since in the present case the Special Objection Hearing Authority happens to be the assessing authority

against whose orders objections have been filed and in terms of the circular transferring the objections to the VATO /OHA in such case the SOHA instead of deciding the objections is required to transfer the same to the link officer within the zone (as per clause 9 of the Circular) and hence all these orders passed deserve to be quashed being null and void ab initio.

2. That the orders passed by the SOHA on Form DVAT 24 in respect of default assessment of tax and interest under section 32, for each tax period for the year 2012-13, and orders on Form DVAT 24A, in respect of default assessment of penalty under section 33 read with section 86(10) for each tax period (AY 2012-13) creating additional demands thereunder of tax, interest and penalty are bad in law and on facts beside being against principles of natural justice and equity.

3. That the Ld. VATO and SOHA erred in law in framing assessments for each month tax period instead of passing a Single assessment of a complete financial year in view of DVAT (Second Amendment) Act, 2005 (10 of 2005) w.e.f 16.11.2005 inserted in section 32.

4. That the Ld. SOHA (Ward-202(KDU) erred in law in passing the impugned orders without affording a fair and reasonable opportunity of being heard, since the orders were passed suo motu that is, on his own, reviewing the orders in exercise of the powers conferred under section 74B(5) of the Act.

5. That the Ld. SOHA (VATO Ward-202) erred in passing the orders without giving due consideration to the Law that "one cannot be judge in his own case" in view of clause 9 of the circular No.18, referred to above, which reads as under:

   "in case, the SOHAs as per enclosed annexure happens to be assessing authority against whose order objection lies, he/ she shall not entertain such objections and transfer the same to the link officer within their zone."

6. That the Ld. SOHA erred further in passing impugned orders passed for each tax periods, in exercise of the powers conferred by virtue of section 74B(5) of DVAT Act without giving any opportunity of being heard and without giving any finding or reasoning for sustaining the impugned demands of tax, interest and penalty and orders as such are non-speaking orders.

7. That the Ld. SOHA erred further in not mentioning on what account there is disparity between the annexure 2A/ 2B. In fact the difference in annexure 2A/ 2B are attributed to inter alia mention of wrong Tin number in some cases, bill pertaining to previous tax period taken in the next tax period, i.e bill of march has been posted in April when goods were received and or the selling dealers did not deposit tax leading to disallowance of ITC etc.

8. That the appellant filed the returns disclosing the entire turnover reflected in the books of accounts and in such circumstances the penalty on the ground of filing of incorrect or incomplete returns is not leviable as held in the case of Joshi Chemicals vs State of TN (2009) 26 VST 451(Mad).

9. That the Ld lower authorities erred further in not appreciating that disallowances of certain claims made in the return does not make the return incorrect or incomplete; false, misleading or deceptive in material particulars and as such penalty under section 86(10) cannot be imposed. In the case of Jatinder Mittal Engineers & Contractors vs CTT (2011) 46 VST 498 (Delhi) where the Appellant, was engaged in works contract activities, maintained centralized books of accounts, particularly, profit and loss account, which the appellant was supposed to do under normal accounting practice, Appellant allocated proportionate expenses to Delhi operations on account of labour and services, which was not accepted by the Objection Hearing Authority and the Tribunal, the Hon'ble High Court held that it could safely be inferred that the approach of the appellant was bonafide, and it could not be said that returns filed by the appellant were false, misleading or deceptive in material particular, and therefore, penalty under section 86(10) could not be levied.

10. That the Ld. Authorities below erred in imposing penalty under section 86(10) when there is no tax deficiency in returns filed. Tax deficiency has been created on account of disallowances made due to mismatch in annexure 2A/2B. In the absence of any tax deficiency in returns filed no penalty under section 86(10) can be levied as has been held in various judicial pronouncements.

11. That the Ld. VATO (Ward 202(KDU) erred in imposing penalty separately for each tax period for the year 2012-13 instead of a single order so long as all such tax periods are comprised in one

year in view of amendment in section 32 w.e.f 16.11.2005 and as such impugned tax period wise orders are bad in law and on facts of the case besides suffering from legal infirmity and opposed to principles of natural justice and equity.

12. That the penalty imposed deserve to be set aside as there is no tax deficiency in the returns filed and in the absence of any such finding no inference can be drawn that the dealer had evaded the tax. There must be material to show that such failure was deliberate or the dealer has not paid tax or has deliberately evaded tax.

13. That the appellant craves leave to reserve his right to amend, delete or add to any of the above grounds at or before the time of hearing of appeal and it is sprayed accordingly.

8. Assailing the creation of demand of tax and interest, the appellant has relied upon the decision of the Tribunal in C L International; (2015) 53 DSTC 45 (Delhi-Tri); Patel Wood works Vs Assistant commissioner (CT) Woralyur Assessment Circle Tiruchirappalli (2016) 93 VST 52 (Mad); State of Gujarat Vs Modi Oil Industries Sales Tax Reference No. 2 of 2001 dated 01.07.2016.; Shanti Kiran India Pvt Ltd; Sri Vinagya Agencies Vs Assistant Commissioner (CT) (2013) 60 VST 283 (Mad);

9. On the issue of imposition of the penalty, Appellant has relied upon the decisions of Seven security Investigation Pvt Ltd Vs CCE Cochin (2007) 8 STJ 444 (Central Beng.; CCE Vs Eastern Security Concern (2005) 3 STJ 714; Security Services Ltd (2005) 180 ELT 233 (Tri Mumbai); CCCE & CT Vs OTS Advertising (P) Ltd (2013) 65 VST 63 (CESTAT -Bom); Special Couriers Vs CCCE&ST (2013) 34 Taxman. com 120/42/GST/379 (Bangalore-CESTAT); Active Construction Co Vs commissioner of Central Excise & Service Tax, Shamshedpur (2013) 42 GST 374/35 taxman.com; UOI Vs Rajasthan Spinning & Weaving Mills .com 609/20 STT 481 (SC) Hindustan Steel Ltd Vs State of Orissa (1970) 25 STC 211 (SC); Yeses International Vs State of Kerala (2009) 23 VST 130 (ker); Indian railway catering and Tourism Corporation Ltd Vs Govt of NCT of Delhi (2009-10) 48 DSTC J-316 (Delhi); ACTO Vs Kumawat Udyog (1995) 97 STC 238

10. We have heard Sh R N Sharma, 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.

11. Ld Counsel for the Appellant submitted that the orders passed under section 32 and 33 are not maintainable as per clause 9 of the circular,

in case the SOHA happens to be the assessing authority against whose orders objection lies, that the SOHA failed to mention on what ground there is disparity between Annexure 2A and 2B, that the difference in Annexure 2A and 2B, in fact are attributed to inter-alia mention of wrong Tin No. in some cases, bill pertaining to the previous tax period taken in the next tax period i.e. bill of march has been posted in April when goods were received and or selling dealer did not deposit tax leading to disallowance of ITC etc.

12. Provisions of section 9 of the DVAT relevant for the disposal of this appeal are extracted below: -

Section 9 Tax credit

(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act 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 and the goods are to be used by him directly or indirectly for the purpose of making -

(a) sales which are liable to tax under section 3 of this Act; or

(b) sales which are not liable to tax under section 7 of this Act.

Explanation. - Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.

(2) No tax credit shall be allowed –

(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.

13. Input Tax Credit that arises under section 9(1) of the Act is subject to the provisions of sub-section (2) and such conditions, restrictions and limitations as may be prescribed. Clause (g) of sub-section 2 of section 9 specifically provides that no tax credit shall be allowed 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.

14. It is relevant to refer to the provisions of Rule 6A (2) of the DVAT Rules which provides as under: -

> 6A Restriction and conditions governing tax credit
>
> (1) ***
>
> (2) Before allowing the claim of input tax credit to a dealer, the assessing authority may satisfy itself that the conditions laid down in clause (g) of sub-section (2) of section 9 of the Act are also satisfied.

15. Whether the selling dealer has lawfully adjusted the tax paid to him or paid in the Govt account and correctly reflected in the returns can only be examined from the record maintained by the selling dealer. There is no mechanism with the purchasing dealer to know whether the selling dealer has submitted correct particulars or he had deposited the tax collected from the purchasing dealer, or lawfully adjusted as Hon'ble High Court observed in the case of Shanti Kiran. In these circumstances and in view of the provisions of Rule 6A (2) which mandated the VATO to be satisfied that the conditions of 9(2)(g) were fulfilled, which could only be found after examining the records of the selling dealer, notices should have been given to the selling dealer to confirm whether he lawfully adjusted or has deposited tax recovered from the appellant and then only Ld. VATO should have framed assessment. Ld VATO having failed in doing so it was incumbent upon the Ld OHA to examine the case on merits and summon the records of the selling dealers. There is total non-application of mind on the part of the OHA in upholding the default assessment without examining the records produced before him.

16. In the similar circumstances, when ITC was denied to the purchaser, Hon'ble Madras High Court in case of JKM Graphics Solutions Pvt. Ltd. Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai (2017) 99 VST 343 (Mad) observed as follows: -

> ''In cases where mismatch occurs, it is a starting point for an enquiry. The first phase of enquiry should be at the Department level, as in most cases, both the dealers are registered in different assessment circles. When the assessing officer has data to show

that the dealer whose returns have been accepted is registered with him, but when compared to the dealer at the other end does not match, the assessing officer is first required to enquire with the assessing officer of the dealer at the other end to make verifications as to whether the mismatch could have occurred due to any one of the factors, which may not be due to the deliberate default of the dealer, satisfy himself that and after such verification, it prima facie appears that the returns to be revised, at that stage, the assessing officer would be entitled to issue a show-cause notice containing full particulars and clearly stating as to what was the scope of enquiry done by him and why he is of the prima facie view that the dealer has failed to file proper returns or suppressed information. It is only then the dealer would be in a position to put forth his defence and demonstrate as to how this prima facie view is without any basis.''

17. In the case of 'On Quest Merchandising India Pvt. Ltd., and others Vs Government of NCT of Delhi & Ors. & Commissioner of Trade & Taxes, Delhi And Ors.' 2017 (10) TMI 1020 the Hon'ble High Court of Delhi upholding the validity of section 9(2)(g) has read down the said provisions and observed as under: -

"53. In light of the above legal position, the Court hereby holds that 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 transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression "dealer or class of dealers" in Section 9 (2) (g) is "read down" in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. 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 the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. 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.

55. Resultantly, the default assessment orders of tax, interest and penalty issued under Sections 32 and 33 of the DVAT Act, and the orders of the OHA and Appellate Tribunal insofar as they create and affirm demands created against the Petitioner purchasing dealers by invoking Section 9 (2) (g) of the DVAT Act for the default of the selling dealer, and which have been challenged in each of the petitions, are hereby set aside."

18. In 'Shanti Kiran India Private Ltd. v/s Commissioner of Trade and Taxes Deptt. reported in 50 LSTC J-429, the Division Bench of Hon. High Court of Delhi who was concerned with the rejection of input tax credit by the Department and liability of the purchasing dealers to establish that the selling dealers had deposited the tax and the applicability of section 9(2) (g) of the DVAT Act, has been pleased to observe, conclude and direct as under.

"13. This Court is of the opinion that in the absence of any mechanism enabling a purchasing dealer to verify if the selling dealer deposited tax, for the period in question, and in the absence of notification in a manner that can be ascertained by men in business that a dealer's registration is cancelled (as has happened in this case) the benefit of input credit, under section 9(1) cannot be denied. Furthermore, this Court notices that the cancellation of both selling dealers' registration occurred after the transactions with the appellant. The VAT authorities observed that the scantly amounts deposited the selling dealers was incommensurate with the transactions recorded, and straightway proceeded to hold that they colluded with the appellant. Such a priori conclusions are based on no material, or without inquiry, and accordingly unworthy of acceptance.

14. In view of the above discussion and findings, this Court answers the substantial question framed in favour of the assessee, and against the revenue. It is held that the appellant is entitled to the credit claimed, which shall be worked and given, after due verification, in accordance with law, within two months from today. The appeals are allowed in the above terms, with no order as to costs."

19. Facts of the present case are squarely covered by the aforesaid decisions and the denial of ITC in the facts and circumstances of the case is illegal and contrary to the provisions of law.

20. Further, there is force in the submission of the appellant that in view of the circular issued by the Commissioner where it has been specifically

mentioned in clause 9 that if the SOHA happens to be ward officer who carried out the assessment then he shall not decide the objections himself but transfer the objections to the link officer within the zone and in the present case the assessments have been framed in violation of the directions contained in the said circular. Revenue has not denied the fact that the VATO who acted as the Special OHA was the Wad VATO who had passed the default assessments. Impugned orders passed are unsustainable on this account also.

21. Perusal of the impugned orders passed by the OHA shows that there is no finding by the OHA in his orders on the issue of there being no opportunity given to the appellant before imposition of penalty. On the question of issue of notice and affording of opportunity to the dealer before imposition of penalty, Hon'ble Delhi Court in its decision in Bansal Dye Chem Pvt. Ltd. vs Commissioner, Value Added Tax observed as follows:

> "The very nature of proceedings under section 33 of the DVAT Act read with Rule 36 (2) of the DVAT Rules underscore the need for the VATO to observe the principles of natural justice while making the penalty order. This entails serving on the assessee a separate notice to show cause why penalty should not be Imposed and affording the assessee an opportunity of being heard prior to passing the penalty order. The imposition of penalty is not a mechanical or automatic exercise but requires application of mind by the assessing authority to the facts and circumstances of the case…"

22. In Indian Tourism Development Corporation Vs. Sales Tax Officer and Indian Railway Catering and Tourism Corporation Limited Vs. Govt. of NCT of Delhi, the Hon'ble Delhi High Court also held that the appellant should have been given an opportunity of hearing before the penalty order could have been passed.

23. In view of the law laid down in the aforesaid decisions, we are of the considered view that the Appellant is bound to succeed on this ground that penalty order passed by the Ld. VATO without affording an opportunity of hearing to the appellant on the question of penalty, is unsustainable in law.

24. On the basis of aforesaid discussion, the impugned orders passed by the Ld. OHA and default assessment of tax, interest and penalty passed by the VATO are set aside and the matter is remanded back to the concerned VATO to reframe assessment afresh in accordance with law

after giving opportunity of hearing to the appellant and after verifying from the selling dealer about the deposition of the tax collected or its adjustment as per provisions of the Act. Appellant is directed to appear before the concerned VATO on 16.07.2018 who will dispose of the matter in the light of observations made in this order as soon as possible.

25. Order pronounced in the open court.

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

Anti Profiteering – The Next Challenge for India Inc.

By CA Gaurav Gupta

1. Introduction

India is a developing country and like any other developing country it faces a challenge of making available resources to its citizen. Being a socialist republic, government has to ensure that the resources of the Country are not limited to a certain set of persons. Inline with the understanding, Government need to ensure that post introduction of Goods and Services Tax ("GST"), the prices of goods and services are not left to the wishes of the businessman and he should not pocket the tax at the cost of consumer. Accordingly, Anti profiteering provisions are introduced in the GST statutes which shall keep a vigil and watch over the reasons for increase in prices post GST. This article examines the provisions and implementation of anti profiteering provisions in GST.

2. What is Anti Profiteering provision?

Section 171 of the Central Goods and Services Tax Act, 2017 ("CGST Act") (provisions apply in same manner to other GST statutes) provides that a supplier of goods or services shall pass onto the recipient benefit of any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit by way of commensurate reduction in prices.

The provisions apply only to all classes of goods and services, which include food and beverages, industrial goods, household goods, all construction services by builders and developers etc.

How is compliance of Anti profiteering ensured by Government?

To effect the above provisions, it has been further provided that Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

The Authority has been empowered to exercise such powers and discharge such functions as may be prescribed in the Rules.

Accordingly, the Rules provides for the following:

- Constitution of National Anti-profiteering Authority ("hereinafter referred to as "Authority")

- Constitution of Authority, Standing Committee and Screening Committees
- Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority
- Power to determine the methodology and procedure
- Duties of the Authority
- Examination of application by the Standing Committee and Screening Committee
- Initiation and conduct of proceedings

The Authority shall consist of following officers:

(a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and

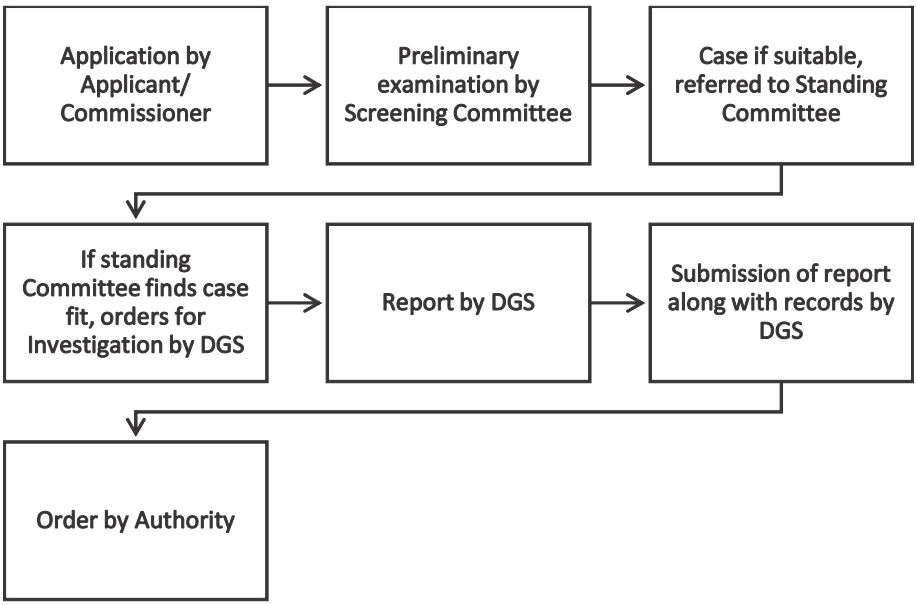
(b) four Technical Members who are or have been Commissioners of State tax or central tax for at least one yearor have held an equivalent post under the existing law, to be nominated by the Council.

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise. Further, the Authority has been entrusted with the following duties:

- to determine whether compliance of Section 171 requirement has been made by the supplier
- to identify the registered person who has not passed on the requisite benefits to the recipient by way of commensurate reduction in prices
- to order:
  - reduction in prices
  - return of the amount equivalent to the benefit under Section 171 to the recipient along with an interest at the rate of 18% from the date of collection till the date of return, or
  - recovery of the amount not returned and depositing the same in the Fund referred to in section 57
  - imposition of penalty as prescribed under the Act;
  - cancellation of registration under the Act

3. Process of Anti evasion proceedings

The following shall be the process of determination of anti profiteering proceedings:



4. Application for Anti evasion proceedings

The above actions can be taken on the basis of any complaint where the complainant feels that the benefit of tax cut has not been passed on to him or on the basis of an application filed by the Commissioner or any other person. All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee. Such Committee shall constituted by the respective State Governments and shall consist of:

– an officer of the State Government, to be nominated by the Commissioner, and

– an officer of the Central Government, to be nominated by the Chief Commissioner.

As of now, such Screening Committees have been constituted and details thereof are available on the government website.

If the Committee is convinced that the case is fit for Anti profiteering proceedings, it shall forward the application with its recommendations to the Standing Committee on Anti-profiteering. The Standing Committee shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action.

5. Investigation by DGS

If the Standing Committee finds the matter suitable for the proceedings, it shall then refer the matter to Director General of Safeguards ("DGS") who shall undertake the enquiry. DGS shallissue a notice to the interested parties and other parties as required for the investigation and to gather the requisite information. DGS himself or under his authority, a subordinate can summon any person necessary either to give evidence or to produce a document or any other thing. DGS shall inform the interested parties of the following information:

(a) the description of the goods or services in respect of which the proceedings have been initiated;

(b) summary of the statement of facts on which the allegations are based; and

(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

For the above purpose, "interested party" includes

a. suppliers of goods or services under the proceedings; and

b. recipients of goods or services under the proceedings;

Cross examination of details provided by one party may be made available to the other parties who are participating in the proceedings. As part of investigation. DGS can also seek opinion of any other agency or statutory authorities.

The above proceedings shall be completed within 3 months or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee. On completion of enquiry, DGS shall present his report along with relevant records to the Standing Committee.

6. Orders of the Authority

The Authority shall issue an order within a period of three months from the date of the receipt of the report from the DGS. The order shall be passed after granting an opportunity of hearing to the interested parties. The Authority shall determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate

reduction in prices. However, in case of difference of opinion on a matter, the decision shall be taken as per the opinion of the majority.

Thus, in case the Authority finds that the registered person has passed the benefit to the buyer, an order providing said decision be communicated. However, where the Authority determines that a registered person fails the test of Anti profiteering, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest;

7. Time allowed for various process in Anti profiteering proceedings

S.No.	Proceeding	Time allowed
1.	Application to Screening Committee	Within a period of two months from the date of the receipt of a written application
2.	Decision by Screening Committee	
3.	Decision by Standing Committee	
4.	Investigation and report by DGS	Within 3 months from the date of reference by Standing Committtee or another three months when extended
5.	Decision by Authority	Within 3 months from the receipt of report

Conclusion:

To ensure compliance with the Anti Profiteering provisions, businesses should ensure and analyse any price increases made by them post July 1, 2017 by examining the increase in costs viz a viz benefits which have accrued on account of reduction in costs on count of increased ITC. Authority is a body which shall ensure that prices remain under check and thatbusinesses do not gain from taxes at the cost of consumers. While the provision shall deter unfair pricing and pocketing of taxes by business houses. However, this may also become a medium for undue harassment, tool for troubling competitors etc if the mechanism is not effected in a fair manner.

E-way Bill – A Panacea or a Nightmare to Check Tax Evasion?

By Sushil Verma

E-Way Bill – Its Import

E-way bill is a mechanism to ensure that goods being transported comply with the GST Law and is an effective tool to track movement of goods and check tax evasion.

The e-way bill provisions aim to remove the ills of the erstwhile way bill system prevailing under VAT in different states, which was a major contributor to the bottlenecks at the check posts. Moreover different states prescribed different e-way bill rules which made compliance difficult. The e-way bill provisions under GST will bring in a uniform e-way bill rule which will be applicable throughout the country. The physical interface will pave way for digital interface which will facilitate faster movement of goods. It is bound to improve the turnaround time of vehicles and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs.

I. **An electronic way bill to be generated only on e-Way Bill Portal on GST for all movement of goods valued more than Rs.50000/- made by a Registered Tax Payer. It could be generated or cancelled through SMS. The process is simple – when e-way Bill is generated, a unique e-way Bill No. is allocated by the web site and the same is then available to the supplier, recipient and the transporter.**

E-way bill is an electronic document generated on the GST portal evidencing movement of goods. It has two Components-Part A comprising of details of GSTIN of recipient, place of delivery (PIN Code), invoice or challan number and date, value of goods, HSN code, transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and reasons for transportation; and Part B comprising of transporter details (Vehicle number).

As per Rule 138 of the CGST Rules, 2017, every registered person who causes movement of goods (which may not necessarily be on account of supply) of consignment value more than Rs. 50000/- is required to furnish above mentioned information in part A of e-way bill. The part B containing transport details helps in generation of e-way bill.

II. It has to be generated for movement of goods for reasons of supply or for reasons other than a supply (for example rejection and return of goods) or even for inward supplies from an unregistered person. The meaning of Supply is as per Section 7 of DVAT Act i.e. supply made for consideration in the course of business or not in the course of business or without consideration. Supply will include sale of goods; branch transfers and barter/exchange of goods. Imagine e-Way Bill to be generated for all these types of movement of goods beyond the prescribed value.

III. Remember, e-Way Bill is required only for motorized conveyance or vehicle. It is not required if the distance between the consignor or consignee AND the transporter is less than 10 Kilometers within the same State.

Goods transported from port, airport, air cargo complex or land customs station to Inland Container Depot (ICD) or Container Freight Station (CFS) for clearance by Customs – e-Way bill may not be required**. It may not be required for the goods as may be specified.**

IV. **Registered Person** – E-way bill must be generated when there is a movement of goods of more than Rs 50,000 in value to or from a Registered Person. A Registered person or the transporter may choose to generate and carry e-way bill even if the value of goods is less than Rs 50,000.

Unregistered Persons – Unregistered persons are also required to genenrate e-Way Bill. However, where a supply is made by an unregistered person to a registered person, the receiver will have to ensure all the compliances are met as if they were the supplier.

Transporter – Transporters carrying goods by road, air, rail, etc. also need to generate e-Way Bill **if the supplier has not generated an e-Way Bill.**

E-way bill is to be generated by the consignor or consignee himself if the transportation is being done in own/hired conveyance or by railways by air or by Vessel. If the goods are handed over to a transporter for transportation by road, E-way bill is to be generated by the Transporter. Where neither the consignor nor consignee generates the e-way bill and the value of goods is more than Rs.50,000/- it shall be the responsibility of the transporter to generate it. Further, it has been provided that where goods are sent by a principal located in one State to a job worker located in any other State, the e-way bill shall be generated by the principal irrespective of the value of the consignment

V. Every registered tax payer under GST Law must fill Part A of the e-Way Bill before movement of goods.

Registered person who is a consignor or consignee (mode of transport whether owned or hired) OR a person who is the recipient of the goods also must fill Part B of the e-Way Bill before movement of goods.

If the registered person is a consignor or the consignee and he hands over the goods to the Transporter, then also he must fill part B of the e-Way Bill before movement of the goods.

All transporters must fill Part B of the e-Way Bill before movement of the goods.

If the supplier is unregistered, then the compliance as above has to be done by the Recipient.

If a transporter is transporting multiple consignments in a single conveyance, they can use the form GST EWB-02 to produce a consolidated e-way bill, by providing the e-way bill numbers of each consignment.

If both the consignor and the consignee have not created an e-way bill, then the transporter can do so by filling out PART A of FORM GST EWB-01 on the basis of the invoice/bill of supply/delivery challan given to them.

VI. e-Way Bill is valid for a day for ONLY one day is the distance to be travelled is less than 100 Kms and for every additional 100 Kms an extra day is allotted subject to period allowed for cancellation of the e-Way Bill.

VII) Documents that a person requires to generate e-Way Bill are invoice copy; and if the goods are transported by Road then the Transporter ID or Vehicle Number; and if the goods are transported by any other means including rail, air or a ship – then also Transporter ID; Transport document references and the date on the document. If supply is made by air, ship or railways, then the information in Part A of FORM GST EWB-01 has to be **filled in by the consignor or the recipient**

VIII) **Documents to be carried by the person-in-charge of conveyance**: invoice or bill of supply or delivery challan, copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance (Commissioner may specify situations in which the person-incharge of conveyance will carry the following documents instead of the e-way bill: (a)

tax invoice or bill of supply or bill of entry; or (b) a delivery challan, where the goods are transported other than by way of supply), Invoice Reference Number can be generated from the common portal by uploading, on the said portal, a tax invoice issued by the registered person in FORM GST INV-1 and the same can be produced for verification by the proper officer in lieu of the tax invoice. The said number shall be valid for a period of 30 days from the date of uploading • The information in FORM GST INS-01 shall be auto populated based on FORM GST INV-1 • Certain class of transporters as specified by Commissioner will be required to obtain a unique RFID and get the said device embedded on to the conveyance and map the e-way bill to the RFID prior to the movement of goods

IX) The person in charge of a conveyance has to carry the invoice or bill of supply or delivery challan, as the case may be; and a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner

Commissioner has powers to authorize officers to stop the conveyance to verify the e-way bill / number for inter-state / intra-state movements. RFID readers shall be installed at places where verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such RFID readers where the e-way bill has been mapped with RFID.

Physical verification of conveyances shall be carried out by the proper officer as authorized by the Commissioner or an officer empowered by him in this behalf . If specific information is received for evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorized by him in this behalf.

If inspection is carried out by officer, the details of inspection and verification shall be furnished online in Part A of FORM GST INS – 03 within 24 hours of inspection .**Final report in Part B of FORM GST INS – 03 shall be recorded within 3 days of inspection.**

Physical verification of conveyance can be done only once during transit unless specific information relating to evasion of tax is made available subsequently

If a vehicle is stopped / detained for a period exceeding 30 minutes, the transporter will upload the information in FORM GST INS-04.

X) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner**, within 24 hours of generation of the e-way bill.**

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B of the CGST Rules, 2017 .

XI) An e-way bill has to be prepared for every consignment where the value of the consignment exceeds Rs.50,000/-. Where multiple consignments of varying values (per consignment) are carried in a single vehicle**, e-way bill needs to be mandatorily generated only for those consignments whose value exceeds Rs.50,000/-.**

XII) There is always a possibility that multiple vehicles are used for carrying the same consignment to its destination or unforeseen exigencies may require the consignments to be carried in a different conveyance than the original one. For such situations, the rules provide that any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of the conveyance in the e-way bill on the common portal in FORM GST EWB-01.

XIII) No e-way bill is required to be generated in the following cases a) Transport of goods as specified in Annexure to Rule 138 of the CGST Rules, 2017 b) goods being transported by a non-motorised conveyance; c) goods being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; d) in respect of movement of goods within such areas as are notified under rule 138(14) (d) of the SGST Rules, 2017 of the concerned State; and e) Consignment value less than Rs. 50,000/-

XIV) **Consequences of non-conformance to E-way bill rules**

Violate Rule 138 of the CGST Rules then face provisions of Section 122 of CGST Act and face penalty of Rs. 10000/- of tax sought to be evaded whichever is greater read with Section 129 of CGST Act. These are very harsh provisions.

The rules authorize the tax commissioner or an officer empowered by him on his behalf to intercept any conveyance to verify the e-way bill or

the number in physical form for all inter-state and intra-state movement of goods. Physical verification of conveyances can be carried out on specific information of evasion of tax, as per the rules. The officer will be required to submit a summary report of every inspection of goods in transit within 24 hours and the final report within three days of inspection.

Ramifications of e-Way Bill system

a) I expect e-way bill system may stifle cargo movement. This could adversely impact truck rentals

b) Invoice generated valid for limited time only, which might pose hurdle in situation of transport breakdown, strikes etc.

c) Issue of multiple cargo >> multiple invoice.

d) Increase compliance cost for small business and e-commerce firm when products returned by customer, new invoice needs to be generated.

e) Adds burden to GSTN which already is facing multiple problem with invoice matching.

f) Different timeline of implementation of inter-state and intra-state e-way bills increase compliance requirement.

The e-way bill needs to be generated before the good is moved, and it has a limited validity period based on the distance covered. For up to 100 kms, an e-way bill is valid for 1 day. For 200 kms, it is valid for 2 days and so on. If the good fails to be shipped on the date of generation, the e-way bill can be cancelled within 24 hours.

If a mode of transport is changed, a fresh e-way bill needs to be generated.

If some goods are sent back by the receiver, another e-way bill needs to be generated.

All these are likely to only delay the smooth movement of goods from one state to another. And it can create problems galore for everyone ranging from physical dealers to e-commerce firms.

For example, suppose a high end television or audio set that costs over Rs 50,000 is shipped by a truck from the factory to the dealer, and

then sent on further by the dealer to the customer's house, it will need two separate e-way bills.

If the customer in the meantime, cancels the order before it reaches him, another e-way bill will have to be generated. All these e-way bills will then also have to be matched with the invoices. Image the problems e-retailers are going to face!!!!!!

In general, it adds a layer of complexity to the whole process of shipping goods from one state to another. It adds also to the burden of the GST Network (GSTN), which is already facing multiple problems in matching invoice.

e-Way Bill and Transporters

Transporters may face rough weather to fully understand, implement and effectively sync their business as carriers of goods by road. If the transporter changes the mode of motorized conveyance during transit then he goes through the e-Way bill process again; multiple consignments and valuation thereof (although CBEC has clarified that e-Way bill be required only for those consignments whose value exceed Rs 50000/-); what happens if the transporter does not transport the goods (then the law says unless e-Way bills are cancelled within the statutory period, this will be deemed to be a supply as per Section 7; strange but that is the law).

Personally I think this system will be anti-dote for the GST System in the country and all the euphoria created by the government machinery has withered away…. Logistic sector will be hit hard and delays in transporter system will be galore.

More to follow …… in future articles as this system unfolds.

Work Contract and Right to Use Under GST

By Advocate Amit Sharma

Abstract

The concept of deemed sale involving transactions such as work contract and transfer of right to use was brought by the 46th Constitutional Amendment in Article 366 of the Constitution of India. Subsequently different states amended/incorporated the transactions of deemed sales into their respective state sales tax laws. However, these deemed sales are composite transactions involving both sale of goods as well as service part and this issue has remain before Indian courts that whether the transaction in question is liable to service tax as service or eligible to sales tax as 'deemed sales'. Now, the implementation of Goods and Service Tax in the country significantly changed the existing scenario and to the larger extent it would put an end to such litigation. This paper is an attempt to discuss the existing status along with comparison with the status in GST laws vis-à-vis deemed sale.

Introduction

The decision in the Gannon Dunkerley's case[1] & Builders Association of India[2] the issue of taxability of goods involved in the execution of work contract was considered and examined by the Law Commission of India in its 61st Report which recommended the amendment in Article 366 and Article 286 of the Constitution of India. Therefore, the 46th Amendment of the Constitution provided taxability on the transaction of works contracts as well as transfer of right to use. Subsequently, various State Legislatures amended their sales tax legislation to make provisions for imposition of sales tax in relation to work s contracts and leasing transactions involving transfer of right to use goods.

With the enactment of Delhi Value Added Tax Act, 2004, the Act itself incorporated provisions for taxability on deemed sales. The definition of terms such as 'goods', 'sale' and 'sale price' incorporated provision for taxability on deemed sales.

A works contract is a mixture of service and transfer of goods. It has been defined u/s 2(1)(zo) of the DVAT Act. Works contracts consist of three

1 (1958) 9 STC 353 (SC).

2 (1989) 73 STC 370 (SC).

kinds of taxable activities as per the current law. It involves supply of goods as well as supply of services. If a new product is created during the works contract, then such manufacture becomes a taxable event. The supply of goods is taxable in the form of VAT and the service is taxable under service tax. If a new product appears in the process of completing a works contract, Central Excise duty is levied.

The sales tax is leviable on the transfer of goods only. For this purpose, the charges for labour and services are required to be deducted from the value of the works contract which would cover, labour charges, amount paid to a sub-contractor, charges for obtaining on hire or otherwise machinery and tools, charges for planning, designing, cost of consumables, profit earned by the contractor to the extent to supply of labour and service.[3] DVAT Rules also provides standard deduction where the amount of labour and service charges are not ascertainable.

Transfer of right to use goods as contemplated under Section 2(1)(zc)(vi) is different from sale under the Sales of Goods Act, as there is no transfer of property in goods i.e. transfer of ownership. The right to use accrues only on account of the transfer of right. In other words, right to use arises only on the transfer of such a right and unless there is a right and there is a transfer of right, the right to use does not arise. Therefore, it is the transfer, which is *sine qua non* for the right to use any goods.[4]

However, taxability on these deemed sales have been in question and in conflict with service tax for a long time. It is beyond doubt that service tax is a Central subject and sales tax is state subject. Since the transaction of work contracts and transfer of right to use are composite transaction and involve both service as well as goods, both the authorities claim their respective rights to impose tax on it and to bring into their respective jurisdiction. Entry 54 empowers the states to levy tax on goods and Entry 97 gives power to the centre to levy tax on services. The independent source of revenue for centre and state is sanctioned by the constitution to sustain the federal governance. The judiciary has also thrown light on this intention of legislature which is evident from the judgment of Supreme Court in the case[5] wherein, it was held that levy of VAT and service tax are mutually exclusive.

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3 Rule 3(2), Delhi Value Added Tax Rules, 2005.

4 20th Century Finance Corp. Ltd. vs. State of Maharashtra (2000) 119 STC 182 (SC).

5 Imagic Creative (P) Ltd. v. Commissioner of Commercial Taxes and others 2008 (9) STR337(SC).

Deemed Sales under Goods and Service Tax

Work Contracts under GST

Work Contract has been defined in Section 2(119). The definition as adopted in GST is more influenced from VAT laws than Service tax. Accordingly, the definition does not provide for any generic definition but only includes 12 types of contract as works contract.

Thus, as per the present definition, there is no requirement of any transfer of property, nor any other contract can be classified as works contract. Earlier, different aspects of one a single activity are taxed by different laws. This causes a lot of confusion regarding treatment and taxability which is why there are so many legal disputes in related to works contracts. GST aims to put an end to the uncertainty for the legislature.

GST Schedule II clearly mentions that the following are supply of service–

- 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, (Clause 5b, 6a)
- works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

This means works contract will be treated as service and tax would be charged accordingly (not as goods or part goods/part services).

Input Tax Credit is NOT available

GST Law mentions that input tax credit is not available for- [Section 17 (5) (c) & (d)]

- works contracts **services** when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service
- **goods or services** received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business.

Abatement is not Mentioned

No abatement has been prescribed for works contract service so far. Currently VAT is payable on the works contract. Service tax is paid @15% on either 40% (on new work) or 70% (on repair, maintenance work).

In case no abatement/ composition is provided, it may lead to significant increase in tax burden, especially if such works contract is taxed at Standard GST rate (which is 18%) and even if subjected to lower tax rate (12%).

Composition Scheme is not Available [Section 10(2)(a)]

Composition scheme is not available to works contractors as it is treated as service under GST. Composition scheme is only available to suppliers of goods. This will be a big blow to the small sub-contractors who cannot opt for composition scheme. They will be forced to register for normal taxation scheme increasing their compliances and costs.

Place of supply in case of works contract

1. *Place of Supply of goods:* Section 5(4) of Integrated GST Law provides that where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Accordingly, the location of supplier and recipient is not relevant in present case.

2. *Place of Supply of services*: Section 6(4)(a) of Integrated GST Law provides that the place of supply of services, in relation to an immovable property, shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Point of Taxation of works Contract

Section 12(2) provides for time of supply in case of goods to be originated out of a works contract as earlier of the following:

- the date on which the goods are made available to the recipient
- the date on which the supplier issues the invoice with respect to the supply; or
- the date on which the supplier receives the payment with respect to the supply; or
- the date on which the recipient shows the receipt of the goods in his books of account

Section 13(3) of GST Law provides that the time of supply shall be as under for the purpose of determining most of the works contracts (qualifying as continuous supply of services):

- where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service;

- where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the payment, or issues an invoice, whichever is earlier;

- where the payment is linked to the completion of an event, the time of completion of that event

Right to Use goods under GST

The transaction of transfer of right to use is now categorized as service under the Goods and Service Act. Clause 5(c) provides that temporary transfer or permitting the use or enjoyment of any intellectual property right now shall be considered as supply of service and under Clause 5(f), transfer of right to use any goods for any purpose for cash, deferred payment or other valuable considered is now considered as supply of service.

Conclusion

Goods and Service Tax Act has been enacted with the motto of transforming India into “one nation, one market and one tax”. The change that GST has brought will surely put an end to long time disputes before Indian courts and now there would be an end to the cases where court had to decide that whether a transaction is to be taxed as service or as transfer of right to use goods or as both (Composite Transaction). It has brought clarity for deemed sales transaction. However, it is noted that Article 366 of the Constitution incorporating deemed sales, has not been amended.

PRINCIPLES OF NATURAL JUSTICE

By H.L.Taneja, M.A., LL.B. Advocate

INTRODUCTION : The Hon'ble Punjab & Haryana High Court in the case of Sushil Flour, Dal & Oil Mills v. The Chief Commissioner, Union Territory, Chandigarh, and Others[1] observed, *"the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature."* Also, the Hon'ble Supreme Court in the case of Rajesh Kumar v. Deputy Commissioner of Income Tax[2] held :-

> *"When by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in this behalf, compliance with principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution."* Hence, this article on the principles of natural justice.

2. The All India Federation of Tax Practitioners in its Journal for the month of September, 2013 on page 18, inter-alia, introduced these principles in the following words :-

> "It must fairly be conceded without any zone of controversy that the principles of Jura Naturalia and its scope for applicability in justice delivery system is as ancient as the system of dispensation of justice itself. It must be stated that the great Philosopher Aristotle before the era of Christ, spoke of such principle saying it as universal law. Justinian in 5th 6th centuries AD called it Jura Naturalia i.e., natural law. Different jurists have narrated this principle in their own ways. Some called it as unwritten law (jus non scriptum) or the law of reason. Over the period it has if not been found to be capable of being denied but some jurists have described this principle as a great humanisation principle intended to invest law with fairness to secure justice and to prevent miscarriage of justice. With the passing of time, similar principles have been evolved and crystallized which are ultimately received as well recognized as principles of justice."

3. HOW THESE PRINCIPLES ARE EXPLAINED BY THE HON'BLE COURTS IN VARIOUS JUDGMENTS :-

(i) Delhi High Court judgment (Full Bench) in the case of J.T. (India) Exports and Another v. Union of India and Another[3]

> "The principles of natural justice are not codified cannons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideas and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form."

(ii) Hon'ble Supreme Court in the case of A.K. Kraipak v. Union of India[4] held as under :-

> "20.The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it includes just two rules namely : (1) no one shall be a judge in his own cause (Nemo debet ease judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrary or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice……."

(iii) Supreme Court judgment in the case of Mohinder Singh Gill v. Chief Election Commissioner[5]

> "Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the boon of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam- and of Kautilya's Arthashastra the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these depths for the present except to indicate that the roots of natural justice and its foliage are noble and not

new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even. like the Anglo-American System."

(iv) Supreme Court judgment in the case of Dharampal Satyapal Ltd.v. Deputy Commissioner of Central Excise, Gauhati and Others[6] held, inter-alia,

"—Held, there may be situations where it is felt that a fair hearing would make no difference—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker; then no legal duty to supply a hearing arises—In such situations, fair procedures appear to serve no purpose since the right result can be secured without according such treatment to the individual—Further, it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken—Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void—The validity of the order has to be decided on the touchstone of prejudice—The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

--Further held, the decision-making authority cannot itself dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference i.e. that no prejudice will be caused to the person against whom the action is contemplated – It is not permissible for the authority to jump over compliance with the principles of natural justice—whether the opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority—It is only for Court to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken."

(v) Supreme Court judgment in the case of S. L. Kapoor v. Jagmohan & Others[7]

"The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based,

if it is furnished in a causal way or for some other purpose. The person proceeded against must know that he has been required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met."

(vi) Supreme Court judgment in the case of Board of Control for Cricket v. Cricket Association of Bihar, speaking through Dr. T.S. Thakur, CJI[8]

"Principles of natural justice, it is well settled, are not codified rules of procedure. Courts have repeatedly declined to lay down in a straitjacket, their scope and extent. The extent, the manner and the application of these principles depends so much on the nature of jurisdiction exercised by the court or the Tribunal, the nature of enquiry undertaken and the effect of any such enquiry on the rights and obligations of those before it. The extent of the application of the principles also depends upon the fact-situation of a given case……."

(vii) Supreme Court judgment in the case of Bishwanath Bhattacharya v. Union of India and Others[9], the head-notes read as under :

"A. Administrative Law – Natural Justice – Duty to Give Reasons/ Recording of Reasons/ Speaking Order – Communication/ Subsequent communication/ Supply of reasons – Recording of reasons and communication of the same – Held, there is no universal principle that whenever there is a requirement of reasons to be recorded before initiating action, the reasons must necessarily be communicated - This would specially be the case if there are safeguards such as provision for appeal against order of authority which did not communicate the reasons, or, if on facts reasons were subsequently communicated."

(viii) Supreme Court judgment in the case of J. Ashoka v. University of Agricultural Sciences and Others[10], the head-notes read as under :

"C. Administrative Law – Natural Justice – Duty to Give Reasons/ Recording of Reasons/ Speaking Order – General Principles – Held, reasons are link between materials on which conclusions are based and actual conclusions disclosing application of mind to subject-matter of decision – Thus, they reveal rational nexus between facts considered and conclusions reached evidencing just and reasonable decisions."

(ix) Orissa High Court in the case of National Trading Co. v. Asstt. Comm.of Sales Tax[11]

"…….. It is said that justice should not only be done but should manifestly be seen to be done. Justice can never be seen to be done if a person acts as a judge in his own cause or is himself interested in its outcome. This principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings. In the case at hand, there is no dispute that the reporting officer himself took up the impugned assessment proceedings and completed the same. This he could not have done."

(x) Supreme Court judgment in the case of Sahara India Real Estate Corporation Limited and Others v. Securities and Exchange Board of India and Another[12]

"What needs to be kept in mind while applying the rules of natural justice is that the same are founded on principles of fairness. Two cardinal principles of fairness are incorporated in the rules of natural justice. Firstly, the person against whom action is contemplated, is liable to be informed of the basis on which the proposed action is to be taken (i.e. the affected party is required to be put to notice). And secondly, before taking any adverse action, the affected party is liable to be afforded an opportunity to present his defence (i.e.an opportunity to be heard, under the tenet audi alteram partem)."

4. RULES OF NATURAL JUSTICE, WHEN AVAILABLE

Supreme Court judgment in the case of Sahara India Real Estate Corporation Limited and Others v. Securities and Exchange Board of India and Another[13]

"259.The rules of natural justice being founded on principles of fairness can be available only to a party which has itself been fair, and therefore, deserve to be treated fairly.

262. …. Whether fair or not, must the party concerned always enjoy the advantage of procedural prescriptions under the rules of natural justice."

5. A FEW DECIDED CASES

(i) It is, inter-alia, mentioned by the Hon'ble Supreme Court in its judgment in A.K. Kraipak v. Union of India, referred to above, that in the past it was thought that the principles of natural justice include just two rules, one of which was that no one shall be a judge in his own cause *(Nemo debet ease judex propria causa).* In accordance with this principle the Hon'ble Supreme Court in the case of Indian and Eastern Newspaper Society v. Commissioner of Income-Tax[14] held as under :

> "The opinion of an internal audit party of the Income Tax department on a point of law cannot be regarded as "information" within the meaning of S.147 (b) of the Income Tax Act, 1961, for the purpose of reopening an assessment. But although an audit party does not possess the power to pronounce on the law it nevertheless may draw the attention of the ITO to it. Law is one thing and the communication another."

This judgment being pari-materia to the Sales Tax Statutes was frequently followed in the proceedings under the Sales Tax Law. However, when an appeal filed by H. G. International[15] came up for hearing before the Hon'ble Delhi High Court it was not followed on the ground that it was under the Income-Tax Act. While arguing the appeal as also in the review petition filed it was submitted before the Hon'ble High Court that law is well settled vide Hon'ble Supreme Court judgment reported AIR 2008 SC 1120 (para 22) that when the two Acts are pari-materia, judgments under the one Act can be relied upon in the proceedings under the other Act. However, the review application was also disposed of by a non-speaking order. The present position is that a Special Leave Petition under Article 136 of the Constitution has been filed before the Hon'ble Supreme Court and the same has been admitted. The case is likely to be heard in the near future.

(ii) Supreme Court judgment in the case of Larsen & Toubro Ltd. v. State of Jharkhand and Others[16], the head-notes read as under :

> "Reassessment – "Information" – Scope of Expression – Audit Objection – Is Information – Reassessment based on Audit Objection – Invalid in absence of satisfaction of Authority regarding requirement of Reassessment"

(iii) Supreme Court judgment in the case of Collector of Central Excise, Patna v. I.T.C.Limited[17], the head-notes read as under :

> "Demand after finalization of assessment – Personal hearing necessary before saddling assessee with additional demand – Provisional assessment – Demand – Natural justice – Provisional assessment finalized after adjudication, amount quantified and demand issued – But soon followed by another demand in terms of same adjudication order – Show cause notice and personal hearing necessary before saddling assessee with additional demand."

(iv) Allahabad High Court judgment in the case of Alloy Steel Forgings (P) Ltd.v.Asstt. Collector, C. Ex., Ghaziabad[18], the head-notes read as under:

"Recovery of Government dues during the Pendency of stay application – Central Excise Department rushing up to make recovery during the pendency of such stay application – Held, Department not to make the recovery till the disposal of the stay application by the Collector (Appeals), Ghaziabad"

(v) Madhya Pradesh High Court (Indore Branch) judgment in the case of Shantilal Ashok Kumar v. State of M.P. and Others[19], reads as under :

"An order passed by the State Government on an application under section 39(6) of the Madhya Pradesh General Sales Tax Act, 1958, dismissing the application without hearing the applicant is not sustainable."

(vi) Kerala High Court judgment in the case of M.S. Jewellery v. Assistant Commissioner (Assessment) and Another[20]

"……. Held, Assessment order passed on same day after receipt of objections to pre-assessment notice – Detailed objections requiring appraisal and grant of oral hearing to dealer – Assessment a violation of natural justice – Dismissal of writ petition by a single judge not proper – Assessment quashed – Constitution of India, Art. 226."

(vii) Punjab & Haryana High Court judgment in the case of Mukand Singh and Sons v. Presiding Officer, Sales Tax Tribunal, Haryana and Others[21] , the head-notes read as under :

"Natural justice – Assessment – Material on which finding adverse to dealer based – Dealer must be furnished such material – Refusal to summon person who furnished information despite request by dealer – Violation of natural justice."

(viii) Punjab & Haryana High Court judgment in the case of Brij Bassi Hitech Udyog Ltd.v.State of Punjab and Others[22] , the head-notes read as under :

"Natural justice – Appeal – Sales Tax Tribunal – Order dismissing appeal without assigning reasons – Violation of principles of natural justice – Liable to be set-aside."

(ix) Andhra Pradesh High Court judgment in the case of Sivashankar Granites Pvt.Ltd. v. Asstt. Commr.of C.Ex., Warangal[23]

"Natural justice – Principles of natural justice apply to administrative action or decision also when it results in civil consequences – when

no remedy by way of an appeal is available to the citizen, it is all the more necessary that the administrative authorities should act in consonance with the principles of fair play and not arbitrarily when civil consequences flow from their action. It is now well settled that principles of natural justice and audi alteram partem are part of Article 14 of Constitution of India and that principles of natural justice apply to administrative orders affecting the rights of citizens. [AIR 1992 SC 61; AIR 1991 SC 1216; (1993) 4 SCC 10; (1993) 1 SCC 78; 1994 (71) ELT 324 (S.C) relied on]

(x) Orissa High Court in its two judgments (a) Tata Sponge Iron Ltd. v. CST, Orissa and Others[24] applying its earlier judgment in National Trading Co. v. Asstt. Commissioner of Sales Tax referred to in para 3(ix) and (b) ABB India Ltd. v. State of Orissa and Others[25] following the Supreme Court judgment cited in para 3(ii) above quashed the assessments made by the Value Added Tax Officer (Audit), on the basis of principles laid down in the two judgments followed.

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1. (1982) 50 STC 222-228
2. (2007) 2 SCC 181 (para 26)
3. (2003) 132 STC 22
4. (1969) 2 SCC 262
5. AIR 1978 SC 851
6. (2015) 8 SCC 519
7. AIR 1981 SC 136
8. (2016) 8 SCC 535
9. (2014) 4 SCC 392
10. (2017) 2 SCC 609-610
11. (2001) 122 STC 212
12. (2013) 1 SCC 1-137 (para 258)
13. (2013) 1 SCC 1-137 (para 259 & 262)
14. (1979) 119 ITR 996
15. (2017) 55 DSTC J-168
16. (2017) 103 VST 1
17. (1994) 71 ELT 324 (S.C)
18. (1995) 80 ELT 784
19. (1995) 97 STC 453
20. (1995) 97 STC 455
21. (1997) 107 STC 300
22. (1997) 107 STC 359
23. (1998) 98 ELT 32
24. (2012) 49 VST 33
25. (2015) 77 VST 124

REMAND POWER OF APPELLATE TRIBUNAL

by H.L.Taneja, M.A., LL.B. Advocate

INTRODUCTION : (i) The Hon'ble Madras High Court in its judgment in the case of Rayal Seema Constructions and Another v. Dy.Commercial Tax Officer and Others[1], observed :

> ***"****The Constitution does not guarantee that the persons employed to administer the law will not make mistakes when exercising the powers conferred on them. If they make mistakes in the exercise of their powers, the persons affected must ordinarily use the remedies of appeal, reference or revision, as the case may be."*

(ii) The Appellate Tribunal is an authority created under the Act but the Hon'ble Supreme Court has observed in its judgment in the case of *CIT, Bombay v. Walchand & Co. Pvt. Ltd.*[2],:

> "Though the Tribunal is not a court, it is invested with judicial power to be exercised in a manner similar to the exercise of power of an appellate court acting under the Code of Civil Procedure."

2. **PRELIMINARY INFORMATION** : An article on the subject of 'APPLLATE TRIBUNAL', was written in the year 2000-01 by the author and published in the Delhi Sales Tax Cases, Vol. 40 on page A-19. The necessity to write an article on this important subject again has arisen because of the following two reasons :

(i) The Delhi VAT Act, 2004 was amended w.e.f. 01-10-2011 and the 3rd proviso to sub-section (1) of section 74 was added as under :

> "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."

(ii) The scope of powers of the Hon'ble Tribunal to remand a case after hearing, was not discussed in the said article.

3. In regard to point at s.no. 2(i) above, the author had to file three appeals before the Hon'ble Tribunal because in all these cases, the Objection Hearing Authorities, in their orders mentioned the presence of

the counsel but, while passing the order did not hear him nor did he assign any reason to deposit the amount in advance. One such order passed by the OHA, in particular, read as under :

> "However, without going into the merits of the case and without prejudice to the final outcome of the case, I deem it necessary to prescribe a pre-condition subject to deposit of 30% of the disputed amount of tax/interest with penalty within ten days. The case shall be heard on merits subject to the deposit of the said amount."

It is felt that some of the Objection Hearing Authorities consider the 3rd proviso to sub-section (1) of section 74 of the DVAT Act, 2004 as mandatory and do not either at all hear the counsel representing the case or they do not give any reason to support their order.

4. The reason for writing this article is that by passing orders of the type as mentioned above, that is, without hearing the counsel and without assigning any reason before asking the dealer to pay advance tax, the dealer is compelled to resort to litigation and file an appeal before the Appellate Tribunal. Further, when the Hon'ble Tribunal sets-aside such an order and directs the Objection Hearing Authority by way of remand to assign reasons in support of this order, the dealer may again consider it necessary to file an appeal against the revised order. In this connection, the observations of the Hon'ble Rajasthan High Court in its classic judgment in the case of Chiranji Lal Tak v. Union of India[3] are quite relevant. The Hon'ble Court observed :

> *"Litigation is not a luxury and/or amusement or entertainment. It is not pleasure or pleasant to come to the courts. Only when the Union or a State or its officers make it unavoidable, the litigants come up before the court for redressal of their grievances or for enforcement of their legal or fundamental rights."*

5. It may be mentioned that the 3rd proviso, as reproduced above, is directory and not mandatory. What is mandatory or directory is explained by the Hon'ble Supreme Court in its judgment[4] which reads as under :

> "the primary key to the problem whether a statutory provision is mandatory or directory is the intention of the law maker as expressed in the law itself. The reason behind the provision may be the further aid to the ascertainment of their intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of "must' instead of "shall" that will itself be

sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory."

6. Further, attention is invited to a judgment of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. v. STO, Rourkela & Ors.[5] wherein, following an earlier judgment in the case of Raj Kishore Jha v. State of Bihar[6], it is held :

"Reason is the heart-beat of every conclusion : it introduces clarity in an order and without the same it becomes lifeless.

It is further held, that

"Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate application of mind to the matter before the court, Tribunal or authority. The affected party has to know why the decision has gone against him.

One of the salutary requirements of natural justice is spelling out reasons for the order made."

7. In the light of the ratio of the judgment reproduced above which contains guidelines as to what is mandatory or directory, the provision of section 76(4) of the DVAT Act, 2004 which empowers the Appellate Tribunal to determine pre-deposit before entertaining an appeal, is mandatory and the most satisfying position is that the Hon'ble Tribunal while exercising powers u/s. 76(4), invariably first hears the counsel for the appellant and then assigns reasons for whatever amount is fixed as a pre deposit.

8. **Scope of Remand Powers of the Hon'ble Tribunal** : There are enough guidelines on this subject and the ratio of some of these judgments is as under :

a. Supreme Court judgment in *State of Kerala v. Vijaya Stores*[7], observed:

"that undoubtedly the Tribunal has been given the power to enhance the assessment while disposing of an appeal against an order of assessment after giving the party a reasonable

opportunity of being heard. The Revenue's contention that even in the absence of an appeal or cross-objection the Tribunal has power to enhance the assessment was rejected and it was observed that to put such a construction would amount to ignoring the scheme of the appellate powers. It was held that the power to enhance the assessment must be appropriately read as relatable to an appeal or cross-objection filed by the Revenue."

b. Madhya Pradesh High Court judgment[8] , held as under :

"A remand could not be directed to fill up the lacuna. It is not meant to provide fresh opportunity."

c. Punjab & Haryana High Court judgment[9] , observed :

"Appeal – Sales Tax Tribunal – Jurisdiction – Confined to claim before it – Imposition of penalty appealed against by dealer – Partial relief and remand by first appellate authority – Further appeal by dealer – Tribunal confirming penalty – Not permissible in absence of appeal by department – Matter remanded to Tribunal for decision afresh on merits."

d. Delhi High Court judgment[10]

"Held, that the order of remand could be said to be perverse in so far as inclusion of the name of M.S.Impex was concerned with only two parties. This means the Hon'ble Tribunal is confined in its judgment to the grounds of appeal and an appeal/ cross-objection, if any filed by the Revenue. In this case there was no appeal or cross-objections filed by the Revenue asking for a fresh opportunity.

e. Allahabad High Court judgment[11], the last line of head-notes reads as under:

"Remand cannot be permitted to give second innings to the department.

9. **A FEW DECIDED CASES** :

(i) Madras High Court judgment[12]

"In the hierarchy of authorities set up under the Sales Tax Act, the Tribunal is superior to the Appellate Assistant Commissioner, who is bound by the orders of the Tribunal which will be as effective as the orders of the High Court as far as their binding character on him is concerned. Merely because a tax case has been filed by the department, it does not act as a kind of stay of operation of the order of the Tribunal. So long as the order of the Tribunal is not set aside, the Appellate Assistant Commissioner is bound to give effect to it, and his failure to do so on the ground that the department has filed an appeal will be really a contempt of the Tribunal's order."

(ii) Madras High Court judgment in the *Kalam Somasundaran Chettiar and Sons v. The State of Madras*[13], held :

"it is elementary that if a party appeals, he is the party who comes before the Appellate Tribunal to redress a grievance alleged by him. If the other side has any grievance, he has a right to file a cross-appeal or cross-objections. But if no such thing is done, the other party in law is deemed to be satisfied with the decision."

(iii) Delhi High Court judgment in *Manchanda International v. CIT*[14], the Head-notes reads as under :

"Tribunal confined to subject matter of appeal – Appeal with regard to two particular creditors – Order of remand to consider creditor about whom there was no appeal – Not valid."

(iv) Punjab & Haryana High Court in the case of *VMT Spinning Co. Ltd. v. CIT and Others*[15], the head-notes read as under :

"Appeal to Appellate Tribunal – Power to admit additional ground – Assessee Raising additional grounds before Tribunal – Question arising from facts already on record of assessment proceedings – Tribunal can adjudicate – Matter remanded."

(v) Gujrat High Court judgment in the case of *Ashish Traders v. State of Gujrat*[16], the head-notes read as under:

"Value Added Tax – Appeal to Appellate Tribunal – Appeal against dismissal for failure to comply with direction for pre-deposit – Tribunal not entitled to go into merits – Direction satisfied during pendency of appeal before Tribunal – Tribunal should have remanded matter for decision by first appellate authority on merits – Order of Tribunal set aside and matter remanded to first appellate authority."

(vi) Supreme Court judgment in the case of *National Thermal Power Co. Ltd. v. CIT*[17], held :

"Tribunal has jurisdiction to examine a question of law which arises from facts as found by authorities below and having a bearing on tax liability of assessee even though said question not raised before the lower authorities nor in appeal memorandum before Tribunal but sought to be added later as an additional ground by a separate letter."

(vii) Orissa High Court judgment in *Orissa Weavers Co-operative Spinning Mills Ltd. v. CIT*[18], held :

"The Tribunal is a creature of the statute. It is to exercise that much of power which is provided under the statute and can exercise powers ancillary to the power vested. It has no wide power to grant relief where an appeal or a cross-objection is not preferred, since the same is not ancillary to the main power."

(viii) W.Bengal Taxation Tribunal judgment in the case of *Rangpur Tea Association Ltd. v. CTO, Jorasanko Charge and Others*[19], read as under :

"Tribunal can entertain substantial question of law even if not taken up before lower forum."

(ix) Karnataka High Court judgment in the case of *Satishchandra Hedge Family Trust v. State of Karnataka and Another*[20], the head-notes read as under :

"Appeal – Appeal by dealer – Time-limit for filing of Cross-objections by Department – Extended to "Any time before appeal is finally heard" – Not arbitrary – Valid."

(x) Supreme Court judgment in the case of *Hero Vinoth v. Seshammal*[21], held :

> "The general rule is that High Court will not interfere with the concurrent finding of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

CONCLUSION :

(i) It is trite law that quasi-judicial authorities have to pass a reasoned order. The Hon'ble Supreme Court in its judgment[22], held :

> "It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of order it makes."

What the settled law is, as explained above that while setting aside an order passed by lower authority it is not necessary that the authority should be given another opportunity to fill up the lacuna and give reasons for the pre-deposit fixed. The authorities mentioned under the scope of remand powers of the Hon'ble Tribunal fully support this view.

(ii) Punjab & Haryana High Court judgment in *Leader Engineering Works v. CIT, Amritsar II*[23], held :

> "Taxation laws are technical."

(iii) Supreme Court judgment in the case of *Bharat Sanchar Nigam Ltd. v. UOI*[24], held :

> "The contents of legal concepts do not remain static. Courts must move with the times."

The above two judgments imply that whosoever is appointed to

administer a tax law, he should be up-to-date with the latest development in law, both procedural and substantive. This will be in the interest both of the Revenue and the tax-payers.

1. (1959) 10 STC 345
2. (1967) 65 ITR 381 = AIR 1967 SC 1435
3. (2001) 252 ITR 333-335
4. (1976) 37 STC 267-284
5. (2008) 16 VST 181
6. (2003) 11 SCC 519
7. (1978) 42 STC 418 (S.C) = (1979) 116 ITR 15
8. (1986) 61 STC 287-293
9. (1994) 95 STC 428
10. (2005) 272 ITR 577
11. (1998) UPTC 265
12. (1971) 28 STC 483
13. (1955) 6 STC 304-311
14. (2005) 272 ITR 577
15. (2016) 389 ITR 326
16. (2015) 84 VST 187
17. 1998 (99) ELT 200 (S.C)
18. (1991) 187 ITR 646
19. (1991) 81 STC 376
20. (1999) 115 STC 294
21. (2006) 5 SCC 545-556
22. AIR 1976 SC 1785-1789
23. (1980) 124 ITR 44
24. (2006) 145 STC 91-95 (para 44)

Refund Process Under GST

Suresh Aggarwal, Advocate

In Union Budget, F.M. Arun Jaitley said Indian's export will expand 15% during current fiscal. This, in turn will impact the government's ability to meet 2018-19 target as well. First, economic growth has dipped in current financial year. Initial phase of GST can not be said good enough for exporters. In absence of refund amount working capital is adversely affected. Government is assuring to exporters about disposal of refund applications expeditiously.

The present article highlights various sections relating to export, refund, interest on delayed payments and various circulars and notifications issued by Government and the gist of compliances for Refund Application under GST as on 31/03/2018, and why I am giving so much stress on to the current date i.e. 31/03/2018 is because the Government can change the compliance process any time which is evident from the facts that the Government has already made changes in compliances chart in the last six months for about 10 times and also routinely changing the process for claiming Refunds under GST Act.

Export of Goods under section 2(5) of IGST Act, 2017

The "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Export of Services under section 2(6) of IGST Act, 2017

The "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; 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;

Zero Rated Supply u/s 16 of IGST Act, 2017

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 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 of the CGST Act is substantive provision for claiming refund

54. (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.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(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) 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.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of

input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(*8*) Notwithstanding anything contained in sub-section (*5*), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(*a*) 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;

(*b*) refund of unutilised input tax credit under sub-section (*3*);

(*c*) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(*d*) refund of tax in pursuance of section 77;

(*e*) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(*f*) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(*9*) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (*8*).

(*10*) Where any refund is due under sub-section (*3*) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(*a*) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(*b*) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation.—For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

(*11*) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(*12*) Where a refund is withheld under sub-section (*11*), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(*13*) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (*2*) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(*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 sub-section (*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 despatch 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;

(*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, 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;

(*e*) in the case of refund of unutilised input tax credit under sub-section (*3*), the end of the financial year 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.

Procedure for Claiming Refund under Rule 89-96A of CGST Rules, 2017

Applicant shall file an application in **Form GST RFD-01**, electronically, through the Common Portal and give details of invoices in Statement 6 in Annexure 1.

An acknowledgement for the receipt of the application for refund shall be issued in **Form GST RFD-02**. The time period specified in Section 54(7) i.e. 60 days shall be calculated from the date of acknowledgement.

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 the dealer to file a fresh refund application after rectification of such deficiencies.

Form GST RFD-04 is the provisional refund order.

Payment advice shall be issued in **Form GST RFD-05** electronically; and will be credited to the bank accounts of the applicant, mentioned in his registration particulars and as specified in the application for refund.

Where, upon examination of application, the proper officer is satisfied that a refund under Sec 54(5) is due and payable to the applicant, the officer shall make an order in **Form GST RFD-06** which is a refund sanction/ rejection order.

Form GST RFD-07 is the order for complete adjustment of sanctioned refund/ Order for withholding the refund.

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **Form GST RFD-08** to the applicant, requiring him to furnish a reply within 15 days of the receipt of such notice.

After considering the reply in **Form GST RFD-09**, the officer shall either accept or reject the claim after affording a reasonable opportunity of being heard.

Form GST RFD-10 is the application for refund by any specialized agency of UN or any Multilateral Financial Institution and Organisation, Consulate or Embassy of foreign countries, etc.

Circulars, Notifications and Comments

As per the provisions of GST Law, Refunds to be granted to the dealer electronically on the basis of application in RFD-01 in all the above cases except Exports of Goods with payment of IGST for which Exports details are required to be filled in Table 6A of GSTR-1 and the same would be deemed to be an application for Refund.

But due to the non-availability of the refund module (RFD-01) on the common portal, the refund could not be claimed by the dealer and GSTR-1 provided initially only for July-2017 and later on Window closed on 04/10/2017 even for GSTR-1 and then extended the due date for filing GSTR-1 up to 31/12/2017 for the month of July-2017, August-2017, September-2017 & October-2017. Under the situation, none is in a position to claim Refund from the department.

Vide **Notification No.39/2017**-Central Tax; dated 13-10-2017, Officers are given powers to sanction, process and grants Refunds manually to the dealers.

Vide **Notification No.45/2017**-Central Tax, dated 13-10-2017, an additional Table 6A of GSTR-1 is provided on the portal to facilitate early refunds as the due dates for GSTR-1 has been extended to 31.12.2017 for the m/o July, August, September & October 2017 and this Table 6A will be auto-populated in the GSTR-1 of the respective tax periods as and when final GSTR-1 would be finally filed by the dealer. This additional Table 6A is given on the portal so that the exporters can file the details of zero rated supply and proceed for refund without having to wait to file GSTR-1.

Presently Due dates for filing GSTR-1 is already streamline and hence no need of separate Table 6A and now a days, separate Table 6A concepts is over and now dealer can fill up Table 6A of the current GSTR-1 in the routine manner as per Law accordingly.

The refund of **integrated tax paid** on **goods exported out of India** is governed by rule 96 of the CGST Rules which says that the shipping bill filed by an exporter shall be deemed to be an application for refund. This application shall be deemed to have been filed only when export details are filed in TABLE 6A OF GSTR-1 which is available on the common portal and the applicant has furnished a valid return in **FORM GSTR-3B.** The system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of such export shall be electronically credited to the bank account of the applicant. The Shipping bill details shall be checked by jurisdictional officer through ICEGATE SITE (www.icegate.gov.in) wherein the jurisdictional officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date. The dealers are advised to contact their shipping company to update their all exports manifest in the records of custom authorities so as the requisite details are available on ICEGATE from where the GST jurisdictional officer would verify and sanction the Refund Amount. Also remind the jurisdictional GST proper officer to initiate the Refund proceeding.

Circular No. 17 dated 15/11/2017, RFD-01A can be filed manually by the Exporters in case of following situations

1) Exports of Goods without payment of IGST

2) Exports of services with or without payment of IGST

3) On account of supply of goods or services made to SEZ Zone / SEZ Developers

As per **Circular No. 24** dated 21/12/2017, RFD-01A can be filed manually by the dealers in case of following situations

1) Refund due to Inverted Duty Structure.
2) Deemed Exports
3) Excess Balance in Electronic Cash Ledger.

The application for **refund of IGST Paid on Exports of services and supply of Goods or services or both to SEZ Zone or SEZ Developer** shall be made by filing the printout of FORM GST RFD- 01A manually with the jurisdictional GST officer.

An additional duty cast on the dealers where dealers made Zero rated supply on the basis of LUT/Bond and claiming Refunds of ITC accumulated on purchases then for claiming **Refund of unutilized ITC in all cases whether supply of goods or services or whether supply to SEZ Zone or SEZ Developers, in which supplies made without payment of IGST,** FORM GST RFD-01A needs to be filed on the common portal. The amount of credit claimed as refund would be debited in the electronic credit ledger and proof of debit needs to be generated on the common portal which means the corresponding electronic credit ledger of CT / ST / UT / IT/ Cess would get debited and an ARN number would get generated. Printout of the ARN along with FORM GST RFD- 01A needs to be submitted before the jurisdictional GST.

The documents needs to be filed before the Jurisdictional Officers for claiming Refunds

1) RFD-01A dully filled up & signed by the dealer
2) Declaration filing part of RFD-01 duly filled up and signed
3) Print out of the ARN generated for debited the amount of ITC accumulated in Electronic Credit Ledger or otherwise Debit of Cash Balance in Electronic Cash Ledger, if applicable

Besides the above, the Jurisdictional Officer may requires the dealer to furnish the additional relevant documents such as

1) Exports Invoice
2) Shipping Documents
3) Packing List
4) Bank Realization Certificate (BRC) in case of Service; Please see circular no.37
5) Bank Statement
6) CA certificate of Exports Sales
7) CA certificate in case Refunds claim exceeds Rs. 2,00,000/-

8) LUT/ Bond
9) Relevant Return part Table 6A of GSTR-1
10) Form GSTR 3B
11) Copies of Purchase Bills with details of ITC Claimed
12) EGM Manifest print out
13) Calculation of Refund Claim
14) Affidavit / Undertaking in respect of jurisdiction
15) Indemnity Bond in respect of Refund Claimed
16) Power of Attorney for the person initiating the proceeding

Recently the department has issued a **Notification No. 39/2017** dated 01/12/2017 Delhi State Tax, by which LG of Delhi has specified that the officers appointed under CGST Act, shall act as proper officers for the purpose of sanction of refunds in respect of registered person located in the territorial jurisdiction of the said officers who applies for the sanction of refund to the said officers. Meaning thereby SGST Officer who will process the Refund Application would grant the refund for SGST portion only and for CGST Refund, he will sanction the refund and would intimate the concerned CGST officer who would in turn grant the refund of CGST portion to the concerned dealer.

Also the Commissioner (Delhi) has issued an **Order No. 001/2018** dated 08/02/2018 and stated as under

1) Refunds up to Rs. 10 Lakhs of tax including SGST, CGST, IGST, Cess would be issued directly by the GSTO / AC

2) Refunds between Rs. 10 Lakhs to Rs. 50 Lakhs shall be issued after obtaining the prior approval of Zonal Incharge, ie., Joint Commissioner / Additional Commissioner / Special Commissioner.

3) Refunds more than Rs. 50 Lakhs shall be issued after obtaining prior approval of the Refund Approval Committee constituted by the department.

In another **Circular No. 05/2018** dated 23rd February, 2018 regarding Refund of IGST on Export– Invoice mis-match Cases – Alternative Mechanism with Officer Interface which highlighted the common errors that hindered the sanction and disbursal of refund of IGST paid against exports. The pre-requisites and precautions that need to be taken for successful processing of refund claims are as follows:

2(i) Exporters have to file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate field.

(ii) Exporters have to file GSTR 1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code.

(iii) The aggregate IGST paid amount claimed in GSTR 1 or Table 6A should not be greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month.

(v) Exporters may be advised to use Table 9 of GSTR 1 of the following month to amend the records of previous month.

(vii) The major errors that are committed by the exporters are

(a) incorrect Shipping bill numbers in GSTR 1

(b) GSTIN declared in the shipping bill does not match with the GSTIN used to file the corresponding GST Returns

(c) the most common error hampering refund is due to mismatch of invoice number, taxable value and IGST paid in the Shipping Bill vis-à-vis the same details mentioned in GSTR 1 / Table 6A.

Another reason attributable to carriers is the non-filing or incorrect filing of electronic Export General Manifest (EGM).

(viii) Exporters are advised to track the refund status and errors pertaining to their shipping bills on the ICEGATE website.

3. Recognizing that invoice mis-match has been the major reason why the refunds have been held, it has been decided to provide an alternative mechanism to give exporters an opportunity to rectify such errors committed in the initial stages. This envisages an officer interface on the Customs EDI System through which a Customs officer can verify the information furnished in GSTN and Customs EDI system and sanction refund in those cases where invoice details provided in GSTR 1/ Table 6A are correct though the said details provided in the shipping bill were at variance. It is pertinent to note that refund claims would be processed in only those cases where the error code is mentioned as SB005. Further, it may also be noted that all refunds shall continue to be credited electronically through the PFMS system, and no manual payment / cheque should be issued. The procedure for processing of IGST refund claims in these cases can be viewed in detail in the circular.

In **Circular No. 37/11/2018** dated 15th March, 2018 , The Commissioner has given Clarifications on exports related refund issues to ensure uniformity in the implementation of the provisions of the law across field formations.

The issues are mentioned as under (for details, you may read complete circular no. 37/11/2018) :

2. Non-availment of drawback

3. Amendment through Table 9 of GSTR-1

4. Exports without LUT

5. Exports after specified period

6. Deficiency memo

7. Self-declaration for non-prosecution

8. Refund of transitional credit

9. Discrepancy between values of GST invoice and shipping bill/ bill of export

10. Refund of taxes paid under existing laws

11. Filing frequency of Refunds

12. **BRC / FIRC for export of goods:** It is clarified that the realization of convertible foreign exchange is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, 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 is required to be submitted along with the claim for refund. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

13. Supplies to Merchant Exporter

14. Requirement of invoices for processing of claims for refund

15. These instructions shall apply to exports made on or after 1st July, 2017. It is also advised that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

In the circular No 06/2018 dated 16th March , 2018 says that the main category of errors holding up the refunds in Inland Container Depots (ICD)

is related to either non- filing of exports General Manifest at the gateway port or Information mis-match between local and gateway EGMs.

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, once both the EGM and valid return in Form GSTR-3 or Form GSTR-3B, as the case may be has been filed. Filing of EGM, apart from filing of shipping bill and GSTR- 3B is a mandatory requirement for processing refund claim.

In the latest circular No 08/2018- Customs dated 23th March,2018 regarding Refund of IGST on Export , keeping in view the difficulties likely to be faced by the exporters in case SB005 error are allowed to be corrected through officer interface for SBs filed upto to 31.12.17, it has been decided to extend this facility to those shipping bills till 28.02.2018.

Interest on delayed refund

Department is not giving interest to the dealers without assigning any reasons or passing without speaking order for not allowing interest. As per Section 56 of CGST Act, 2017 –

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 subsection (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).

Case Law on Interest

Honorable High Court of Delhi allowed writ petition of refund and also allowed the interest in the case of Swarn Darshan Impex (P) Ltd *31 VST 475 (Del).* Prime Papers & Packers *54 DSTC Page J-1*, in the case of Aesthetic Packaging *54 DSTC Page J-14,* in the case of Shaila Enterprises *54DSTC Page J-15,* in the case of Rajdhani Furnitures and Interiors *W.P.(C) 5447/2017* and also in some other cases allowed the refund and interest.

Conclusion

After going through the relevant provisions of GST Act, in the following circumstances, the dealer can claim the refund –

1. Exports of goods with payment of IGST (Rule 96 applicable)
2. Exports of goods without payment of IGST. (accumulated ITC) (Rule 89 applicable)
3. Exports of services with or without payment of IGST (both situations) (Rule 89 applicable)
4. On account of supply of goods or services made to SEZ Unit / SEZ Developer.
5. In case of deemed Exports,
6. On account of assessment/provisional assessment/ appeal/any other order
7. ITC accumulated due to inverted tax structure in the case of goods (01.07.2017)

   (In the case of Service w.e.f. 18.04.2018) Rule 89(5) amended.
8. Tax paid on advances and subsequently refunded due to non -supply or partial supply.
9. Tax deposited under wrong head.

After reading the various circulars issued by the Government on refunds, it seems the clear intention of the Government to give the refunds to exporters at earliest**.** A lot of things depend upon bureaucrats. We all know that mismatch mechanism is not functioning at this stage in absence of filing of GSTR-2 and GSTR-3. After the beginning of mismatch mechanism, new era of litigation will start on availing of input tax credit in case the selling dealers do not pay GST on their outward supplies.

ARTICLES 226 and 227 OF THE CONSTITUTION

H.L.Taneja, M.A., LL.B. Advocate

INTRODUCTION : As a matter of fact, the Bar is the mother of the Bench. The popular version about the relationship of the Bar and the Bench is regarded as both being the "wheels of the chariot of justice." Unless both function in harmony, the cause of justice cannot be advanced. The Bar and the Bench both cannot afford to talk in terms of "I and you." Both will have to talk in terms of "We". Then and only then we can say that we can think of providing justice for the teeming millions of the nation. It should be our constant endeavor to see that our relationship is strengthened day in and day out.[1]

2. **Article 226 (1) Power of High Courts to issue certain writs reads as under** :

> "Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other Purpose]"

In this article, I shall deal with only writs of certiorari as this is of common use in tax matters.

3. **Necessity for providing provisions of writ petition in the Constitution**:

(i) The Hon'ble Supreme Court in its judgment in Babubhai Jamnadas Patel v. State of Gujrat and Ors.[2], explaining the nature and scope of Article 226, held that inaction of public authorities in discharging their duties and obligations in the interest of citizens, it is the duty of courts to maintain constant vigil in regard thereto. It has been further held that the courts, and in particular High Courts and Supreme Court are sentinels of justice. They have been vested with extraordinary powers of judicial review and supervision to ensure that rights of citizens are duly protected. Courts have to maintain a constant vigil against inaction of authorities in

discharging their duties and obligations in the interest of citizens, for whom they exist.

(ii) In its judgment in the case of L. Chandra Kumar v. UOI & Ors.[3], the Hon'ble Supreme Court held as under :

"Judicial review over legislative action vested in the High Courts under article 226 and in the Supreme Court under article 32 of the Constitution of India is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of the High Courts and the Supreme Court to test the constitutional validity of legislation can never be ousted or excluded. Similarly, the power vested in the High Courts under article 227 to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution……."

4. **When is Writ Petition normally entertained by the High Court** :

(i) Hon'ble Delhi High Court judgment in the case of Gee Vee Enterprises v. Addl. Comm. of I.Tax, Delhi I[4]

"Ordinarily, a party aggrieved by the order of the statutory authority under the Income-Tax Act (which principle also applies to the orders under other Acts) must avail himself of the hierarchy of statutory remedies under that Act such as an appeal or a revision or a reference to the court through the Income-Tax Appellate Tribunal. This vertical judicial review given to him by the statute is a matter of right of the assessee. If he wishes to abandon this right and seek a collateral review of an impugned order in the court under article 226 or 227 of the Constitution he must make out a strong case why the court should entertain his writ petition and make an exception to the general rule.

Some of the reasons where courts have departed from the normal rule are :

(1) That the impugned order was passed without jurisdiction;

(2) That it violated the rules of natural justice;

(3) That it disclosed an error of law apparent on the face of the record;

(4) That it was based on extraneous or mala fide considerations;

(5) That the statutory remedy was not adequate or was onerous;

(6) That resort to the statutory remedy would cause irreparable injury to the petitioner;

(7) That the impugned order infringes a fundamental right of the party; and

(8) That the provision of law under which the order was passed is itself unconstitutional."

(ii) Supreme Court judgment in Whirlpool's case[5], in para 15 of the judgment, it has been held that under article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of the fundamental rights or where, there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In para 20 of the judgment of Whirlpool, it has further been held that law as to the jurisdiction of the High Court in entertaining a writ petition under article 226 of the Constitution, inspite of the alternative statutory remedy, is not affected, specially in a case where the authority against whom the writ is filed is shown to have no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

(iii) Supreme Court judgment in the case of City and Industrial Development Corporation v. DOSU Aardeshir Bhiwandiwala and Ors.[6]

"30. The court while exercising its jurisdiction under Article 226 is duty-bound to consider whether :

(a) *adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*

(b) *the petition reveals all material facts;*

(c) *the petitioner has any alternate or effective remedy for the resolution of the dispute;*

(d) *person invoking the jurisdiction is guilty of unexplained delay and latches;*

(e) *ex facie barred by any laws of limitation;*

(f) *grant of relief is against public policy or barred by any valid law and host of other factors."*

(iv) Supreme Court in its judgment in the case of Syed Yakoob v. K.S. Radhakrishnan[7], held as under :

"7. The question about the limits of the jurisdiction of the High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice….."

5. **Power of the High Courts to issue a writ petition under Article 226 is discretionary**

(i) Punjab & Haryana High Court judgment in Huawei Telecommunications India Co. Pvt. Ltd. v. State of Haryana and Anr.[8], after referring to a catena of judgments, including the Hon'ble Supreme Court judgment wherein the Hon'ble Supreme Court reiterated the principle in the following words :

"held that though article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles

of natural justice or procedure required for decision has not been adopted."

(ii) Supreme Court in Shiv Dass v. UOI & Ors.[9], held, inter-alia

"If there is negligence or omission on the part of the petitioner in filing the petition, high court may refuse to entertain the writ petition."

(iii) Madhya Pradesh High Court in the case of Dr. Lata Chouhan v. ITO & Ors.[10], held

"Writ court cannot consider facts – Return submitted by assessee – Survey showing undisclosed income – Notice of reassessment was valid."

(iv) Bombay High Court judgment in the case of Sagar Sharma and Anr. v. Additional Commissioner of Income-Tax and Ors.[11], held

"Recovery of Tax – Attachment and sale of property – Writ will not normally issue till joining of all parties."

(v) Delhi High Court judgment in the case of Asian Polymers v. Commissioner of Trade & Taxes and Anr.[12], the head-notes read as under:

"Value Added Tax – Refund – Writ under Constitution – Claims to Refund made in monthly Returns kept Pending – Dealer filing Writ Petition – During pendency of Writ Petition Assessing Officer passing Default Assessment Orders raising Demand in respect of Periods for which Refund sought and Seeking to Adjust Refund against Demand – Orders Technically within time as passed on last day before expiry of limitation but with intention to defeat claim to refund – Abuse to powers – To be deprecated – Orders quashed and direction for Refund with Interest and Costs"

(vi) Orissa High Court judgmnent in the case of Orissa Rural Housing Development Corporation Ltd. v. Asstt. Commissioner of Income-Tax[13], held, inter-allia, as under :

"Though High Courts have power to pass any appropriate order in the exercise of the powers conferred under article 226 of the Constitution, such a petition solely praying for the issue of a

writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax."

(vii) Supreme Court judgment in the case of GKN Driveshafts (India) Ltd. v. Income-Tax Officer and Ors.[14], held as under :

"When a notice under section 148 of the Income-Tax Act, 1961, is issued, the proper course of action for the noticee is to file the return and, if he so desires, to seek reasons for issuing the notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order."

(viii) Supreme Court in the case of Special Director v. Mohd. Ghulam Ghouse[15], reads as under :

"This court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices, stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petition should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition……..."

6. Article 227

(i) Article 227 (1) reads as under :

"227. Power of superintendence over all courts by the High Court – (1)Every High court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction."

(ii) Supreme Court judgment in the case of Jai Singh and Others v. Municipal Corporation of Delhi and Anr.etc[16], the head-notes read as under:

"A. Constitution of India – Art. 227 – Nature and Scope of power – Supervisory nature of jurisdiction – Jurisdiction when to be exercised – Held, the same cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within limits of its jurisdiction – Correctional jurisdictional can be exercised where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice – High Court cannot lightly or liberally act as an appellate court and reappreciate the evidence

Allowing the appeal, the Supreme Court

Held :

The High Court, under Article 227 of the Constitution of India, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and / or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It can not be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. The correctional jurisdiction can be exercised in cases where orders have been passed in a grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

(iii) Supreme Court judgment in the case of M.M.T.C. Limited v. Commissioner of Commercial Tax and Ors.[17], Hon'ble Supreme Court, held as under :

"The broad general difference between the jurisdiction of the High Court under article 226 and 227 of the Constitution of India are as follows : Firstly, the writ of certiorari is an exercise of its

original jurisdiction by the High Court under article 226; exercise of supervisory jurisdiction is not an original jurisdiction and in the sense it is akin to appellate, revisional or corrective jurisdiction under article 227. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by inferior court of Tribunal to the High Court, if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction under article 227, the High Court may not only quash or set aside the impugned proceedings, judgment or order, but it may also make such directions as the facts and circumstances of the case may warrant; may be, by way of guiding the inferior court or Tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or Tribunal should have made. Lastly, the jurisdiction under article 226 of the Constitution of India is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo moto as well."

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1. 2010 (1) SCC (J) 6
2. (2009) 9 SCC 610
3. (1997) 105 STC 618
4. (1975) 99 ITR 375
5. (1998) 7 JT.SC 243
6. (2009) 1 SCC 168-175 (para 30)
7. AIR 1964 SC 477 (para 7)
8. (2018) 49 GSTR 235
9. (2007) 9 SCC 274
10. (2010) 329 ITR 400
11. (2011) 336 ITR 611
12. (2017) 103 VST 338
13. (2012) 343 ITR 316-317
14. (2003) 259 ITR 19
15. (2004) 1 Supreme 431 in (2005) 141 STC 103-111
16. (2010) 9 SCC 385
17. (2008) 18 VST 421 (SC)

CHARITABLE TRUSTS AND THEIR ACTIVITIES AND GST IN INDIA

By Sushil Verma, Advocate.

Briefly:

1. All services other than those specifically exempted provided to charitable trusts will be subject to GST.

2. Any goods supplied by such charitable trusts for consideration shall be liable to GST. For instance, sale of goods shall be chargeable to GST.

3. Notification No.12/2017-Central Tax (Rate) dated 28th June 2017 exempts services provided by entity registered under Section 12AA of the Income-tax Act, 1961 by way of charitable activities from whole of GST vide entry No. 1 of the notification, which specifies that "services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities" are exempt from whole of the GST.

4. Activities must conform to the term "charitable activities' which has been defined in the notification as under "charitable activities" means activities relating to: (i) public health by way of: (A) care or counseling of (I) terminally ill persons or persons with severe physical or mental disability; (II) persons afflicted with HIV or AIDS; (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or (B) public awareness of preventive health, family planning or prevention of HIV infection; (ii) advancement of religion, spirituality or yoga; (iii) advancement of educational programs or skill development relating to: (A) abandoned, orphaned or homeless children; (B) physically or mentally abused and traumatized persons; (C) prisoners; or (D) persons over the age of 65 years residing in a rural area; (iv) preservation of environment including watershed, forests and wildlife.

5. While the income from only those activities listed above is exempt from GST, income from the activities other than those mentioned above is taxable.. The indicative list of such services could be renting of premises by such entities, grant of sponsorship and advertising rights during conduct of events/functions etc. (. Entry No.13 of notification no.12/2017- Central Tax (Rate) dated 28th June, 2017

6. If immovable properties owned by charitable trusts like marriage hall, convention hall, rest house for pilgrims, shops situated within the

premises of a religious place are rented out, income from letting out of such property is wholly exempt from GST. But if such properties are not situated in the precincts of a religious place meaning thereby not within walls or boundary walls of the religious place, income from such letting out will lose this exemption and income from it will be liable to GST.

7. Income from a religious ceremony organised by a charitable trust is exempt as per the above notification. So the income from Navratri functions, other religious functions, and religious poojas conducted on special occasions like religious festivals by persons so authorised for this purpose by the charitable or religious trust are exempt from GST.

8. If income loses its religious nature, is definitely chargeable to GST. For example, if with regard to Ganeshutsav or other religious functions, charitable trusts rent out their space to agencies for advertisement hoardings, income from such advertisement is chargeable to GST, as this will be considered as income from the advertisement services. Further, if donation for religious ceremony is received with specific instructions to advertise the name of a donor, such donation income will be subject to GST. But if donation for religious ceremony is received without such instructions, it may not be subject to GST.

9. Similarly, entry No.80 of notification no.12/2017-Central Tax (Rate), provides the following exemption to an entity registered under Section 12AA. Services by way of training or coaching in recreational activities relating to: (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act. Thus, services provided by way of training or coaching in recreational activities relating to arts or culture or sports by a charitable entity will be exempt from GST

   GST on management of educational institutions by charitable trusts If trusts are running schools, colleges or any other educational institutions specifically for abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a rural area, such activities will be considered as charitable activities and income from such supplies will be wholly exempt from GST.

10. Import of Services Also as per the entry no. 10 of Notification no.9/2017-Integrated Tax (Rate) dated 28.06.2017, if charitable

trusts registered under Section 12AA of Income-tax Act receives any services from provider of services located in non-taxable territory, for charitable purposes, such services received are not chargeable to GST under the reverse charge mechanism.

11. If the trust is running school for the purpose which is not covered above (i.e. not coming within the scope of charitable activities as defined in the notification), income from such activity will not be exempt under notification no. 9/2017-Integrated Tax (Rate) or 12/2017-Central Tax (Rate), but will be exempt under entry 66 of notification no.12/2017-Central Tax (Rate)

12. GST and YOGA Camps. Charitable trusts organise yoga camps or other fitness camps and they generally are not free for participants, as trusts charge some amount from the participants in the name of accommodation or participation. If trusts are arranging residential or non-residential yoga camps by receiving donation or other charges from the participants, these will not be considered charitable activities (as it is different from advancement of religion , spirituality or yoga). Since donation is received for participation, it will be considered commercial activity and it will definitely be covered under the GST. Similarly, if charitable trusts organise fitness camps in reiki, aerobics, etc., and receive donation from participants, such income that comes under health and fitness services and will also be taxable.

13. Services by and to Education Institutions (including institutions run by Charitable trusts). Entry 66 provides for exemption w.r.t supply by and to educational institutions and only the following services received by eligible educational institution are exempt: (1) Transportation of students, faculty and staff of the eligible educational institution. (2) Catering service including any mid-day meals scheme sponsored by the Government. (3) Security or cleaning or house-keeping services in such educational institution. (4) Services relating to admission to such institution or conduct of examination. If such school or other educational institution gives property owned by such institution on rent to others, no exemption will be available for such services. Therefore, all services received by educational institutions managed by charitable trusts (for other than charitable activities, as defined) except those services mentioned above are taxable.

14. GST on running of public libraries by charitable trusts . No GST will be applicable if charitable trusts are running public libraries and lend books, other publications or knowledge enhancing content/material

from their libraries. This activity is specifically excluded by way of entry No. 50 of Notification No. 12/2017- Central Tax Rate (and is applicable for everyone, including charitable trusts); which means services by private libraries are not exempt. Thus, if donors of public library remain open to all and if it caters to educational, informational and recreational needs of its users and finance for such libraries can be provided from donation, subscription, from special fund created for this purpose or from combination of all such sources, it will be called public library and no GST will be applicable on such services.

15. GST on hospital managed by charitable trusts. If charitable trusts run a hospital and appoint specialist doctors, nurses and provide medical services to patients at a concessional rate, such services are not liable to GST. If hospitals hire visiting doctors/ specialists and these deduct some money from consultation/visit fees payable to doctors and the agreement between hospital and consultant doctors is such that some money is charged for providing services to doctors, there may be GST on such amount deducted from fees paid to doctors. (Entry no. 74 of Notification No. 12/2017-Central Tax Rate – read for further understanding of this issue)

Taxability of Printing Services dissected

By Parmod Kumar Bansal, Advocate
Assisted by Akhil Bansal, CA & Mudit Goyal

The issue whether a particular composite contract is a contract for "sale" or "service" or a "works contract" has long plagued the industry, with Courts in the past attempting to answer the same by applying the test of dominant intention and the incidental nature of the labour / service involved.

Judicial precedents in the context of earlier law on supplies with both elements of goods or services

The decisions have primarily laid down that if 'goods' and 'services' portions were inseparable, then dominant intention test was to be considered. For example, in cases, where the material supplied was nominal, the entire amount was covered under service tax by the supplier. However the VAT authorities used to challenge levy of VAT on the goods. The said test was never validated by law and was only laid down judicially. Infact, in later decisions, the Apex Court has consistently refrained from applying this test to works contracts.

The ruling of the Apex Court in the case of Kone Elevators [2005 [181 ELT 156]] is one such case, where following its newer decisions in BSNL case and L&T case the Apex court has reiterated that "test of dominant intention", "test of degree of intention" is not applicable in the context of composite contracts which have all attributes of works contracts and is covered under clause 29A(b) of Article 366 of the Constitution. The Constitution Bench of Supreme Court while holding that the contract for "manufacture, supply and installation" of lifts was a "works contract" and not a mere "sale" reiterated the following key judicial principles:

- Works contract to encompass within its ambit all such composite contracts entailing supply of goods and supply of services with proportion of element of goods and services involved being irrelevant;
- While works contract is an indivisible contract, by deeming fiction the same ought to be vivisected into supply of goods and provision of services;
- Once a composite contract qualifies to be "work contract", question of applicability of "test of dominant intention" so as to treat such

contract to be “contract of sale” or “contract of services” in entirety does not arise.

In view of the conflicting decisions, coupled with the fact that the dealer had to deal with both VAT and service tax authorities, who were under different governments (State vs Centre), the issue had always been subject matter of litigation. While the jurisdiction problem got resolved in GST, wherein both kind of taxes got subsumed, there was another challenge which arose - classification of a transaction as goods or service or works contract was imperative to determine the Place of supply, Time of supply, Rate classification, valuation rules, etc

Composite supply vs Mixed supply in context of GST

Under GST,concept of Composite supply and Mixed supply have been laid down, for the purpose of determination as whether the transaction is that of goods or services or both. As per Section 8 of the CGST Act, The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- a composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- a mixed supply comprising of two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

If we read definition of Composite supply carefully as per Section 2 clause 30 of CGST Act 'Composite supply' means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

The supply will be considered as Composite supply if the following elements are present:-

- It should include two or more supplies;
- There should be at least two taxable supplies;
- The supplies may be of goods or services or both;
- Supplies should be naturally bundled;

- They should be supplies in conjunction with each other in ordinary course of business;
- One of which should be principal supply.

As per section 2 clause 90 of CGST Act, 'principal supply' means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

There are 2 primary principles to understand that for a supply to constitute as Composite Supply, it shall be naturally bundled, and in such a case, whatsoever is the predominant element, shall be considered as the supply for determination of tax rate and other provisions of GST. The reasons as why the particular transaction be considered as goods or service in a composite supply, are as below;

- Rate differential - determination of rate is important and it differs based on whether supply is goods or service
- Place of supply - in case of goods the place of supply shall be covered under 10(1)(c) i.e not requiring movement of goods and hence POS shall be place of delivery of goods. In case of services the place of supply shall be the location of service provider unless receiver is a registered person. Hence in general business practice the effect shall be nil.
- Incorrect reporting - This is an area that may affect people wrongly classifying their supply. The reporting in GSTR-1 under point 12 would be an erroneous due to incorrect HSN. Invoices issued shall also be incorrect for two reasons as they might draft invoice with contents applicable to service and also the incorrect HSN shall be shown.

GST is not a law where simple deposition of tax would resolve the issue, intricate details of classification are also relevant as even smallest of discrepancy can lead to cancellation of credits or additional burden of interest, penalties or long drawn refund procedures and litigations.

Advance ruling by West Bengal AAR (06/WBAAR/2018-19 dated 30/05/2018) on the issue

In the light of this, advance ruling has been made by West Bengal Advance Ruling Authority in the matter of Photo Products Company Pvt Ltd.

Facts of the case

The Applicant was undertaking supply of printing content to it's customers on photographic paper. An Advance Ruling was sought regarding the nature and classification of the activity – whether it is supply of goods or service and whether the activity carried out by the Applicant is taxable under HSN 4911 or SAC 9989

Held & Principles brought forward in the Ruling (Relevant extracts)

- The content of the printed matter is specific to the customer, and, neither is the matter preprinted, nor has the Applicant any ownership to the content at any point of time, and, therefore, cannot transfer title of the above printed matters. Hence, transfer of ownership is an essential condition for supply of Goods.

- The photo prints supplied by them to their customers are not marketable commodities in the open market and as goods they have no value to persons other than the specific customer who provides the input content

- From the description given in HSN 4911, it is clear that such classification concerns preprinted materials or prints which are supplied as such.

- Accordingly, the activity carried out by the Applicant "printing of photographs from media" is classifiable under SAC 9989

The rationale given by Advance ruling Authority has been underlined above. The most interesting element given by AAR is that the photo prints are not marketable.

Our Analysis

- The ruling has placed reliance on the point that photo prints supplied by the applicant to their customers are not marketable commodities in the open market and as goods they have no value to persons other than the specific customer who provides the input content. Further, the ruling has placed reliance on the tariff entry. No consideration have been given to TRU Circular No. 11/11/2017-GST F. No. 354/263/2017-TRU, the principles of which have been listed below. If the interpretation of the ruling is taken in true sense, even below transactions shall be considered as "services"

- Printing of name and address on the office files of a Chartered Accountant, wherein the main cost is that of that office file [for example - if file would have been purchased as it is, it would have costed INR 50, but with printing, the price increases to INR 54]
- T-Shirts are printed with the photograph provided by the customer, wherein the TShirt otherwise would have costed INR 500, but with the printing, the price increases to INR 550. Also, whether the consideration will change, if the supplier is providing T-Shirt both with or without the design printing.
- Letters and envelopes are being printed on the paper. In this case, if goods have been purchased independently, it would have costed INR 50. With printing, the total price increases to INR 100. With both printing cost and envelopes constituting same price for goods and that of service, whether this will still be classified as service

In all the above cases, the goods are not marketable once printing is undertaken. But the essential character of the transaction or the predominant element is goods in some of these cases. If the above AAR is being considered, all such contracts will be considered as that of services. There are other examples - such as - Ledger book printing, Banner printing, special pens, tapes, etc

Also, can someone argue that certain part of services of Photo studios is infact Mixed services? Refer an example below;

- Photo studios provide the service of clicking pictures or taking them from customer or even extracting them from their repository for printing and printing the same on printing paper/Mug/T-shirts/ Pillow and many other such products. These studios do not sell these mugs or shirts or even maintain an inventory of these items. they source them on as-needed-basis for printing.

- TRU Circular No. 11/11/2017-GST F. No. 354/263/2017-TRU was completely ignored by the Ruling, which lays certain principles as how the classification is to be undertaken.

  Printing of Books, Pamphlets, Brochures, Annual Reports, etc.

  Where only content is supplied by the publisher or person owns the usage rights to the intangible inputs and physical Inputs including

papers used for printing belong to printer (i.e., Supplier), Supply of Printing (of content supplied by recipient) is the principal supply and would constitute Supply of service. It falls under SAC Code 9989.

Printing of Envelopes, Letter Cards, Printed Boxes, Tissues, Napkins, Wall Paper, etc. (Falling Under Chapters 48 & 49) Where design, logo, etc., supplied by recipient of goods and other physical inputs including paper belong to printer (i.e., Supplier), predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and, therefore, such supplies would constitute supply of goods falling under respective headings of Chapter 48 or Chapter 49 of the Customs Tariff.

It appears from the TRU circular that the above classification is not in the context of marketability of the goods or service, but the dominant nature of the transaction and that too from the perspective of the customer. Intellectual property (for example - Copyright) of a work is another important consideration to be factored. So, what is provided by printer is printing services and paper supply is just incidental as the real value is in the content of the book. Drawing parallel to this, when a Chartered Accountant gets his office files printed, the intention is to get files with printing name on the file being an ancillary service. While TRU circular laid down certain considerations, it has still not been able to provide the framework for determination and instead laid down a straight jacket formula for various items. The same are being discussed in subsequent paragraphs

Firstly, whether the dominant intention has to be seen from the perspective of the customer or that of the supplier. It will bring a lot of confusion if each time the dominant intention has to be seen from the perspective of the service receiver only, for instance-

- A publisher publishes Bare act for Taxmann Publications and on the other hand also prints Commentary on “Income Tax Act”, now following the principle derived above printing of commentary shall be a service whereas printing of Income Tax act shall be supply of goods. From a practical perspective it shall be a humongous exercise for the supplier to identify it and an impossible task for the taxmann and the law practitioners to identify and report.

Secondly, it has been laid down in principles, indirectly though, that the value of printed material or the supply of service included therein is irrelevant, for instance:

- Jayna India Pvt Ltd avail the service of getting printed wallpapers applied at their office premises, whereby printed logos are used as item to be printed. Now the value of wall paper without printing is INR 100 where as just the printing of logo results in cost of INR 300. Affixation on wall costs another INR 100. The final bill is issued for INR 1000. Further logo printed on the wall paper is to be not considered from the perspective from TRU ruling and should be classified as goods irrespective of the fact that the intention of both the parties i.e. customer and supplier was that of supply of specific printed material alongwith affixation. Can we actually ignore the fact that major portion of the Supply is the service of designed wallpaper.

Concluding remarks

When availing the printing service, following principles may be considered;

- In case material is supplied by the customer it can be clearly inferred that it is a supply of service. Accordingly, the transaction is that of Supply of Service and not Mixed contracts

- Pre-printed off the shelf material shall be classified as goods, where no specific printing is done.

- Printing on any kind of material shall be seen from the perspective of predominant supply test, which in turn shall factor the following;

  a. Intention of the parties, while entering into the contract (from perspective of both customer and supplier), which may factor value involved in the contract for services vis-a-vis portion of goods

  b. Not only on ownership of content supplied but value thereof shall be considered for purpose of determination In view of the above, while the above principles are not conclusive, these may give a perspective of framework to the dealers for ascertaining whether the pre-dominant intention is that of goods or services in a printing contract. The government should clarify such issues which may snowball into a big controversy considering different perspective / views of TRU and AAR.

The Fugitive Economic Offenders Bill, 2018: An Analysis

By Amit Sharma, Advocate

Abstract

In recent years Indian Government and investigation agencies have come across cases where economic offenders such as Vijay Mallya, Lalit Modi flown out of the jurisdiction of Indian courts to evade the legal proceedings against them for being defaulter in repaying loans to banks and financial institutions. These incidents have again started the discussion on the flaws of existing laws and also the need of strict legal framework. The most recent Punjab National Bank fraud has been a trigger for the above issues and in order to deal with the problem recently Cabinet has approved the Fugitive Economic Offenders Ordinance, 2018. This article would is an attempt to make analysis of the provisions of above said ordinance/bill, its impact and shortcomings.

Background

Recent years have shown that several economic offenders have escaped from the jurisdiction of Indian Courts and investigating agencies making mockery of laws either before starting of any legal proceedings or during pendency of such proceedings. This clearly has been an obstacle in investigation and wastes significant time of Indian courts. Most of these economic offenders are people who are defaulter in making repayment of loans and thereby causing adverse impact on banking sector in India and consequently affecting Indian economy at large.

The existing legal framework provides both civil as well as criminal provisions dealing with the problem of defaulters in repayment of loans. Reserve Bank of India through a Master Circular has defined willful default and also provides a well defined mechanism to identify defaulters. It also provides penal provisions in the form of prohibition on promoters in raising funds from banks and financial institutions for 5 years.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act in short) ensures enforcement of secured interest by securing possession of secured assets by the lender and taking over the management of the defaulter's business. The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act in short) laid down the establishment of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals

(DRATs) and enforce secured as well as unsecured debts. It also provides that the debt can be recovered by issuing recovery certificate through various modes of recovery including attachment of property, arrest etc. Insolvency and Bankruptcy Code, 2016 (IBC in short) provides that on a default by a debtor both corporate and individual, the debtor or the creditor can initiate the insolvency resolution process, which involves restructuring of the debts through formulation of a repayment plan. If the plan fails, the liquidation / bankruptcy process is started involving selling of the assets of the debtor to repay the creditors.

In case of criminal side, the general provision pertaining to "proclaimed offenders" under Section 82 of the Code of Criminal Procedure, 1973 may be used. Under Section 82 of the Code, a criminal court can publish a proclamation if it has reason to believe that a person against whom a warrant has been issued is absconding. Persons accused of serious offences listed in Section 82 (4), can be declared a proclaimed offender after such inquiry as the Court deems fit. Under Section 83, property of the person against whom proclamations is issued within the district may be attached. If the property is outside the district, the concerned district magistrate must endorse the attachment. The Prevention of Money Laundering Act, 2002 (PMLA Act in short) provides for confiscation of property derived from or involved in money laundering of proceeds of crime of a scheduled offence. The Enforcement Directorate is entitled to provisionally attach the property of the defaulter pending trial subject to confirmation by the adjudicating authority and appeal.

Need of New Law

In an explanatory note, Ministry of Economic Affairs stated that present laws against economic offenders are "not entirely adequate to deal with the severity of the problem." Citing cases of debt default and money laundering, the note pointed out that while some existing laws, such as the Prevention of Money Laundering Act, allow for the confiscation of wrongdoers' properties, the procedures they prescribe are "time-consuming." In money-laundering cases, it said, "the purpose for such confiscation is as punishment for the offence committed and not strictly as a deterrent for any absconding accused to return to India."

Even the Supreme Court has also, so far, consistently supported harsh laws to tackle economic offences. One illustrative case is *Dropti Devi vs Union of India*[1], from 2012. There, the petitioners challenged the provisions for preventive detention under COFEPOSA. They pointed out that the

1 (2012) 7 SCC 499

overarching foreign-exchange law, the Foreign Exchange Regulation Act of 1973, had been replaced by the more lenient Foreign Exchange Management Act of 1999, which mandated no imprisonment for foreign-exchange violations. Based on this, they argued that COFEPOSA's provisions for detention should be read down. The Supreme Court disagreed, observing,

> "The menace of smuggling and foreign exchange violations has to be curbed. Notwithstanding the many disadvantages of preventive detention, particularly in a country like ours where the right to personal liberty has been placed on a very high pedestal, the Constitution has adopted preventive detention to prevent the greater evil of elements imperiling the security, the safety of State and the welfare of the Nation."

In response to these critics and position, the government has taken measures to strengthen its legal framework against economic offenders. Among these measures is the Banking Regulation (Amendment) Ordinance which aims to expedite banks' recovery of unpaid loans.

The government has also approved the draft of the Fugitive Economic Offenders Bill, 2018 which seeks to ensure that defaulters absconding from the country return to face formal legal proceedings in Indian court or authorities as the case may be.

Provisions of the Bill

In view of recent frauds, government has introduced the Bill as an attempt to tighten noose around fugitives. A fugitive has been defined in the bill as a person against whom an arrest warrant has been issued for committing an offence as proved in the Schedule annexed to the Bill and also who has escaped from the territorial jurisdiction of India to avoid legal proceedings against him. The Director and Deputy Director, appointed under the Prevention of Money Laundering Act, 2002, have been empowered to make an application before Special Court to declare a person as fugitive economic offender. The Special Court is one which has been constituted under the Prevention of Money Laundering Act, 2002. The said application will also provide details such as reasons to believe, list of properties procured from the proceeds of crime, list of benami properties, list of persons interested in such properties, information about whereabouts etc. It is important to note that properties include foreign properties for which confiscation is sought. On the said application, the Special Court will issue notice to the person to appear at specified place

within 6 weeks. In case of failure the said person shall deemed to be a fugitive economic offender. However, on compliance of said notice, Special Court will terminate proceedings under the Bill.

The director or Deputy Director may attach properties mentioned in the application with the permission of the Special Court. The attachment may be provisional without the permission, if an application is made within 30 days. The attachment shall be for 180 days and may be further extended by the Special Court. On conclusion of proceedings, if the person is not found fugitive economic offender, the properties shall be released. However, in case of guilty the properties shall be confiscated. Upon confiscation, all rights and titles of the property will vest in the central government and free from any charges on the property. The central government will appoint an administrator to manage and dispose of these properties as per law. The Bill also gives power to Director or Deputy Director to enter into any premises to search, inspect and seize documents. They will have the powers as vested in Civil Court.

Conclusion

The Bill, if become law, will certainly bring the offenders to justice and would have a deterrent effect. The Bill provides stringent provisions and punishment. However, the Bill has raised certain controversial issues also. The most controversial matter that once a person has been declared a fugitive economic offender, any court in India can disentitle any individual from filing or defending a civil claim regarding that property. That means that even before the case has been adjudicated by the court, with a judge deciding guilty or not guilty, once the person has been declared a financial offender the government becomes full custodian of any attached property. Another issue is that whether the law can be applied retrospectively, to the alleged crimes of people like Nirav Modi and Vijay Mallya. The draft Bill does not exactly spell this out, saying only that “the Act applies to any individual who is, or becomes, a fugitive economic offender on or after the date of coming into force of this Act”. Since the definition of a fugitive economic offender covers anyone against whom a warrant for arrest for certain offences has been issued, it seems likely that it should be applicable to people like Nirav Modi and Mallya.

However, the law cannot force either Nirav Modi or Vijay Mallya to return – that is more dependent on extradition processes- but it is so harsh that it either convinces alleged offenders to return to India or, by taking away their property.

Another disputable issue is that the Bill allows for the seizure of all of the declared offender’s property in India, regardless of whether the value

of that exceeds the amount that they will have to pay their liabilities. The Supreme Court has in the past supported harsh laws based on allegations alone. But even with this background, the section in the Bill related to disentitlement are faulty and unlikely to survive judicial review, since “the discretion given to courts to bar an offender to proceed or defend any civil case overreaches the basic principles of natural justice”.

Having discussed the above issues, it is beyond doubt that the Bill would be a blow to the economic offenders and would help the financial institutions to recover their money and put an offender fleeing the country to the prosecution.

Assessment Mechanism under GST

By Sanjay Sharma, Advocate

Meaning of Assessment

Briefly speaking, assessment is an official determination of tax, interest and penalty. In GST, this official determination is made by the proper officer. It does not include only the imposition of tax, interest and penalty but also the whole procedure laid down in the act for imposing liability upon the tax payer and collection of tax and penalty by various prescribed modes under the law. Hence, in comprehensive sense, it comprehends the whole procedure for ascertaining and imposing liability upon the tax payers and the machinery for the enforcement thereof. [C.A. Abraham. V. ITO (1961) 41 ITR 425 (SC)]. It will not be over simplification of reality if we say that assessment is essentially a judicial function. The functions which the taxing authority discharge in making assessment are a judicial function. [(1954) 26 ITR 1 (SC)]. These functions must be faithfully and conscientiously discharged in respect of each assessee and not on any general instructions of the departmental officers or according to set pattern or any pre determined formula.

The process of mechanism, machinery and manner of assessment under GST Act is contained under various sections starting from 59 to 64 of Goods and Service Tax Act, 2017. These sections reveal explicitly that how and by whom the assessment process is to be initiated, how the assessment of a regular dealer is to be framed is also highlighted. It also comprehends the whole procedure for framing assessment of **regular** assessee or assessee who does not file the returns or who remains unregistered inspite of the fact he is liable to pay tax under the law. Further, law relating to the scrutiny of the returns is also placed. Finally, it also contains that how in exceptional circumstances, the summary assessment can be made. The author has made an attempt to highlight these provisions with some degree of explanation as under:

1) Self Assessment by the Taxable Person himself.

Under section 59 of GST Act, 2017, every registered taxable person shall himself assess the taxes payable under the GST Act and furnish a return of each tax period under section 39. This section enunciates that it is the prime responsibility of every registered taxable person to assess the tax payable after making self assessment and thereafter he will make the

payment of tax along with the return due as per the law. This provision is not new one even if we go through the income tax laws etc. we will find this provision though with certain exceptions. Hence, the self assessment method is given top priority in the process of assessment for the reason that registered taxable person is the best person to assess his tax liability and thereafter voluntarily he has to file and reflect correct particulars in the returns for the each tax period specified under section 39 of the Act. It is the assessment not made by any officer but by the registered taxable person himself.

2) Provisional Assessment by the Proper Officer.

Section 60 of the GST Act, 2017 provides for the provisional assessment and this provisional assessment can be made by the Proper Officer at the request of the taxable person in specified situations. The tax system and liability to pay tax in general may not be certain in certain cases. The taxable person may find hard in some cases to determinate his tax liability strictly according to the provisions of the GST Act. So, in order to dispel any doubt regarding the nature of transactions, its taxable liability etc. the taxable person is vested with a right to ask the proper officer to pass an order allowing payment of tax on provisional basis which will be subject to further final assessment. Since, this provision will be frequently invoked under GST therefore it is explained in the explicit manner. The author has to make an attempt to make the small summary of the relevant provisions embodied in section 60.

a) Request by the taxable person to the Proper Officer

A situation may arise where the taxable person may not be able to determine the value of goods and/or services or determine the rate of tax applicable then he may request the proper officer in writing after giving reasons for payment of tax on provisional basis. After receiving this application the proper officer may pass an order allowing the payment of tax on provisional basis at such rate or such value as specified by him. Thus in order to ask for provisional assessment which is made by the proper officer the first step is request in writing by the taxable person after adducing the reasons for the same.

b) Execution of Bond

The proper officer will allow the payment of tax on provisional basis to the taxable person if he executes the bond in such a form as may be prescribed in this behalf and with such surety or security as the proper

officer may deem fit binding the taxable person for the payment of difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed. Basically, this provision relating to execution of bond is an offer by the taxable person to allow him to make the payment of tax on provisional basis but if there will be any difference in the amount finally assessed that can be secured through the guarantee given by the taxable person in the shape of execution of bond.

c) Final Assessment is to be framed within 6 months

Where the proper officer has allowed the taxable person to pay the tax provisionally then the proper officer shall within a period not exceeding six months from the date of communication of order allowing provisional assessment pass a final assessment order and he must take into account such information as may be required for finalizing the assessment.

d) Extension of Period

The Joint or Additional Commissioner can further extend the period of 6 months if sufficient cause is shown by the Proper Officer and reasons are recorded in writing. Then the Commissioner is further entitled to extend the period as he may deem fit. This provision is against the taxable person and gives in abundance jurisdiction to Commissioner to extend the period to any length. Hence, in the interest of law and justice, the length of period may be fixed and Commissioner is expected to take any action within that specified period. Otherwise, there will be no end to litigation and multiple appeals will generate.

e) Payment of Interest by the Taxable Person

Sub clause (4) of Section 60 provides that the taxable person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made there under, at the rate specified under sub section (1) of section 50 from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order of final assessment.

(f) Payment of Interest by the Department

Where the taxable person is entitled to refund on the basis of the order passed in final assessment then the department will pay interest on such

refund as provided in section 56. The combined effect of (e) and (f) is that the taxable person will pay the interest if there is short payment of tax as per the final assessment and on the contrary if excess payment is made by the taxable person then taxable person is entitled to interest according to the provisions of the law.

3) Scrutiny of Returns (Assessment on the basis of returns)

Under section 61 of the Act, the proper officer may scrutinize the returns and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies through notice if any in such manner as may be prescribed and seek his explanation thereto. In simple words, under this section the proper officer gets a jurisdiction to scrutinize the returns and particulars furnished in the returns and if he finds some discrepancies, he will issue a notice to the registered person/taxable person to furnish the explanation for filing incomplete, inaccurate returns etc. for the purpose of evading the CGST and SGST or IGST as the case may be. If the explanation tendered by the taxable person is acceptable then the registered person shall be informed and as a result no further action against him will be taken or initiated. However, if it is found that no satisfactory explanation to this default is furnished within the period of 30 days of being informed by the Proper Officer or such further period as may be permitted by him etc. and assessee fails to take the correct measures in his return for the month in which the discrepancy is formed, the action may be initiated under sections 65,66,67,73 or 74 of the Act. As a whole, it may be stated that the officer will proceed to determine the tax and other dues under section 73 or 74 of the Act.

The Scrutiny of the returns has been permissible under both the forms of taxation i.e. Direct such as Income Tax laws and Indirect such as VAT etc. This provision is also incorporated under the GST Act. The main aim and objective of this provision is that if any officer finds any discrepancy in any return sustainable in the eyes of law then the registered person may be asked to correct it within the period specified 30 days or more as the case may be and make the short payment of tax in quick manner. The objective of taxation can easily be met if short payment of taxes are collected immediately without inviting the interference of Higher Courts thereafter.

4) Assessment of non-filers of the Returns

In normal course of business we find that certain businessmen who are required to file returns under the law but do not file the returns and pay the

tax due under the GST Act then section 62 provides remedy under the Act. The proper officer may proceed to assess the tax liability to the best of his judgment taking in account all the relevant material which is available or which he has gathered. On the basis of such material, proper officer can frame the assessment and issue assessment order. The codified provisions under section 62 of CGST Act, 2017 are reproduced as under:

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

5) Assessment of Unregistered Persons

The Proper Officer may also frame the assessment u/s 63 of CGST Act, 2017 of a taxable person who has failed to take his registration inspite of the fact he is liable to do so. Under such circumstances, the proper officer may proceed to assess the tax liability of such person to the best of his judgment for the relevant tax periods and after framing the assessment he will issue assessment order within the period of 5 years from the due date for filing of annual return for the year to which tax not paid relates. Hence, the best judgment assessment can be made within the period of 5 years not only to frame the assessment rather assessment order shall also be supplied.

It is mandatory for the proper officer to provide a personal opportunity of being heard before passing assessment order. The opportunity must be real and effective only then the assessment framed under this law shall be valid and sustainable. The Supreme Court in fec-Co. (P.) Ltd. v. S.N. Bilgram AIR 1960 SC 415 has already given finding on this issue as under:

"It has two elements. The first must be reasonable. Both these matters are justifiable and it is for the court to decide whether an opportunity has been given and whether that opportunity is reasonable. There can be no invariable standard for "reasonableness"" in such matters except that the court's conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the ground on which the action is proposed is either non-existent or even if they exist they do not justify the proposed action. The decision of this portion will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against on whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and other connected matters which help the mind in coming to a fair conclusion of the question."

In another case of A. Ibrahim Kunjus of Hon'ble Kerela High Court, Krishna Iyer J. has very rightly opined the criteria of following a reasonable and effective opportunity of being heard. In his words, he stated:

"Opportunity should be real and , effective and not illusionary and must be followed by a fair consideration of the explanation offended and the materials available, culminating in an order which discloses reasons for the decision sufficient to show that the mind of the authority has been applied, relevantly rationally and without reliance on fact not furnished to the affected party.

Natural Justice, I must warn, cannot be prevented in to any-thing unnatural or unjust and cannot therefore be treated as a set of dogmatic prescriptions applicable without reference to the circumstances of the case. The question merely is, in all conscience have you been fair in dealing with that man? If you have been arbitrary, absentminded, unreasonable or unspeaking, you cannot deny that there has been no administrative fair play."

6) Summary Assessment in special cases

Summary Assessment is permissible under exceptional circumstances where the revenue of the Government is adversely affected. Section 64 of the Act provides that the proper officer may, on evidence showing a tax liability of a person coming to his notice he can proceed to assess

the tax liability of such person to protect the interest of the revenue and assessment order will be issued, if he has sufficient grounds to believe that the delay in doing so will adversely affect the interest of revenue. It is worthwhile, to note that the summary assessment can only be made by proper officer under section 64 if the proper officer seeks the previous permission of Additional or Joint Commissioner for proceeding to assess the tax liability of such person and that too for the purpose of protecting the interest of the revenue after adducing the sufficient grounds.

In some cases, where taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay taxes and amount due under this section.

Further, at the instance of the taxable person or of his own motion if the additional or joint commissioner considers that such order is erroneous he may withdraw such order and follow the procedure laid down under section 61 pertaining to demand. The period of limitation prescribed for setting order is 30 days from the date of the receipt of the order. The Commissioner or Joint Commissioner is competent to declare such order erroneous if the application is made by the person within the period of 30 days. Even on his motion also proceedings may be initiated within the same period.

Conclusion

To sum up, it can be safely said that the Government has removed the complexities of taxation at different stages. The assessment provisions embedded in Goods and Service Tax Act, 2017 are quite elaborative and lucid. These provisions clearly provide us an overview that how the whole assessment mechanism will work under the Goods and Service Tax Act.

Section 40A of DVAT Act, 2004: New Weapon in the Armoury of Revenue Authorities

Nitin Gulati, Advocate

For the safeguard of the Revenue Section 40A was inserted vide DVAT Act (Second Amendment) Act, 2005 No.F.14(29)/LA/2005/333, dated 16.11.2005.

In 2017 Indirect taxation regime took a major transformation into Goods and Services Tax. However still lots of dealers registered under DVAT have their DVAT Refunds Pending .some of the dealers are lucky in the sense their Selling dealers deposited tax at very first stage and Department is easily granting their DVAT refunds arisen to Excess of Input Tax over Out put Tax. However there is unlucky bunch of dealers who have made genuine purchases but still their purchases are doubted due to non deposit of tax by their first stage dealers, However their misery has been settled to a great extent by Hon'ble Delhi High Court in in the matter of On Quest Mechandising India P. Ltd. Vs. Govt of NCT of Delhi where

Department is precluded from invoking section 9(2)(g) of DVAT to deny ITC (input tax credit) to a purchasing dealer who has bonafidely entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting TIN number

Department filed Special leave Petition in the Apex court against the said decision, which has also been dismissed. However In the said Decision Hon'ble Jurisdictional High court also held in the said case **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 the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. 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.**

Now that clue gave Think tank of Department a new weapon instead of 9(2)(g). The Assessing authorities started passing orders u/s 40 A of the Dvat Act 2004.What that's sections says

40A

Agreement to defeat the intention and application of this Act to be void

(1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then, the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not, such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.

(2) For the purposes of this section -

(a) "arrangement" includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;

(b) "tax advantage" includes, -

(i) any reduction in the liability of any dealer to pay tax,

(ii) any increase in the entitlement of any dealer to claim input tax credit orrefund,

(iii) any reduction in the sale price or purchase price receivable or payableby any dealer.]

Many of us Accepted Orders of Assessing authorities as they have power to do that .However there is twist to the new tale of department and that is

Assessing authorities derive their powers from Commissioner by virtue of Section 68 of Dvat Act and from time to time department has been issuing Departmental orders for delegation of powers u/s 68 and last Departmental order with regard to delegation of powers u/s 68 was on 12.10.11 vide F.2(7)/DVAT/LSC/DOT&T/Pt.file/2006-07/1192-

1198 where powers were delegated in the following manner:-

Description of Powers

All powers u/s 40 A of DVAT Act,2004 to declare any arrangement, which has been entered between twoor more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, null andvoid and to provide for the increase or decrease in the amount of tax payable by any person or dealer who isaffected by the arrangement whether or not such dealer or person is a party to the arrangement.

Designation of the officers to whom powers delgated

All officers appointed under sub-section (2) of section 66 of the Delhi Value Added Tax Act, 2004 not below the rank of Assistant Value Added Tax Officer.

However these powers were in tact till 12.11.2013 where Department again issued an Order of delegation of PowersNo.F.6(7)/ DVAT/L&J/2013-14/74 u/s 68 at that is:-

In supersession of all previous orders on the subject, I, PrashantGoyal, Commissioner of Value Added Tax, Department of Trade & Taxes, Government of NCT of Delhi, in exercise of the powers conferred by section 68 of the Delhi Value Added Tax (DVAT) Act, 2004 (Delhi Act 3 of 2005) read with rule 48 of the Delhi Value Added Tax Rules, 2005 do hereby delegate my powers specified in column Nos. 3 under Section mentioned in column no. 2 to the Officers specified in column 4 of the table appended below and direct that these officers shall exercise the powers and perform the duties concomitant with such powers, within their respective jurisdictions. The order shall come into force with immediate effect.

Which implied that all the previous orders on that were superseded by this order However by omission Delegation of Powers u/s 40 A was not there.

Which meant that Assessing officer by that act of omission were deprived of the powers to invoke Section 40 A of DVAT Act 2004.

As per Judgement of Delhi High Court in the case of **On Quest Merchandising India Pvt. Ltd.** (W.P. (c) No. 6093/2017) the Court observed that "*It is indeed strange that the note prepared for the Cabinet at the time of insertion of Section 9 (2) (g) in the DVAT Act did not mention Section*

40A which had already been inserted by the DVAT Second Amendment Act, 2005 with effect from 16th November 2005. The note also did not take note of the practical difficulty that would be faced by the purchasing dealer in anticipating, even before entering into the transaction with the registered selling dealer holding a valid registration, that such selling dealer after collecting the tax from him was either not going to deposit it with the Government or lawfully adjust it against his output tax liability. This is a major omission of important factors which had a bearing on the ITC being claimed by a dealer.

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."

Conclusion

To conclude Power to pass order u/s 40 A of DVAT Act, 2004 only vests with commissioner. If assessing officer invokes Section 40 A then he is not having jurisdiction to do so which renders the order illegal. Further the Department is passing the orders and mentioning about the applicability of the Section 40A without passing any speaking orders. Burden of proof is on Department to establish the connivance between purchaser and seller dealers.

Central Tax Seeks to further Amend Notification No. 8/2017 - Central Tax so as to Prescribe Effective Rate of Tax under Composition Scheme for Manufacturers and Other Suppliers.

Notification No. 1/2018 - Central Tax

New Delhi, the 1st January, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 10 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.8/2017- Central Tax, dated the 27th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 647 (E), dated the 27th June, 2017, namely:-

In the said notification, in the opening paragraph, -

(a) in clause (i), for the words “one per cent.”, the words “half per cent.” shall be substituted;

(b) in clause (iii), for the words “half per cent. of the turnover”, the words “half per cent. of the turnover of taxable supplies of goods” shall be substituted.

[F. No. 354/320/2017- TRU]
(Ruchi Bisht)
Under Secretary to Government of India

Extension for the last date for filing FORM GSTR-3B for December, 2017 till 22.01.2018

Notification No. 02/2018 – Central Tax

New Delhi, the 20th January, 2018

G.S.R. …..(E).— In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 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 in the Ministry of Finance (Department of Revenue), No. 35/2017-Central Tax, dated the 15th September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1164(E), dated the 15th September, 2017, namely:-

In the said notification, in the Table, against serial number 5, in column (3), for the figures, letters and word "20th January, 2018", the figures, letters and word "22nd January, 2018" shall be substituted.

[F. No.349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to Government of India

First Amendment 2018, to CGST Rules

Notification No. 3/2018 – Central Tax

New Delhi, the 23rd January, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2018.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 3, in sub-rule (3A), for the words "ninety days", the words "one hundred and eighty days" shall be substituted;

(ii) with effect from 1st January, 2018, in rule 7, in the Table,

(a) in Sl. No. 1, in column number (3), for the words "one per cent.", the words "half per cent. of the turnover in the State or Union territory" shall be substituted;

(b) in Sl. No. 2, in column number (3), for the words "two and a half per cent.", the words "two and a half per cent. of the turnover in the State or Union territory" shall be substituted;

(c) in Sl. No. 3, in column number (3), for the words “half per cent.”, the words “half per cent. of the turnover of taxable supplies of goods in the State or Union territory” shall be substituted;

(iii) in rule 20, the proviso shall be omitted;

(iv) in rule 24, in sub-rule (4), for the figures, letters and word “31st December, 2017”, the figures, letters and word “31st March, 2018” shall be substituted;

(v) after rule 31, the following rule shall be inserted, namely:-

“31A. Value of supply in case of lottery, betting, gambling and horse racing.-(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) (a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

(b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

Explanation:– For the purposes of this sub-rule, the expressions-

(a) “lottery run by State Governments” means a lottery not allowed to be sold in any State other than the organizing State;

(b) “lottery authorised by State Governments” means a lottery which is authorised to be sold in State(s) other than the organising State also; and

(c) “Organising State” has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be

100% of the face value of the bet or the amount paid into the totalisator.";

(vi) in rule 43, after sub-rule (2), for the Explanation, the following Explanation shall be substituted, namely:-

"*Explanation*:-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-

(a) the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017;

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.";

(vii) in rule 54, after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A)(a) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details:-

(i) name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor;

(ii) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or

numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(iii) date of its issue;

(iv) Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor;

(v) name, address and Goods and Services Tax Identification Number of the Input Service Distributor;

(vi) taxable value, rate and amount of the credit to be transferred; and

(vii) signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.";

(viii) after rule 55, the following rule shall be inserted, namely:-

"55A. Tax Invoice or bill of supply to accompany transport of goods.- The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.";

(ix) with effect from 23rd October, 2017, in rule 89, for sub-rule (4A) and sub-rule (4B), the following sub-rules shall be substituted, namely:-

"(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification

No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E) dated the 13th October, 2017, or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted."

(x) with effect from 23rd October, 2017, in rule 96,

(a) in sub-rule (1), for the words "an exporter", the words "an exporter of goods" shall be substituted;

(b) in sub-rule (2), for the words "relevant export invoices", the words "relevant export invoices in respect of export of goods" shall be substituted;

(c) in sub-rule (3), for the words "the system designated by the Customs shall process the claim for refund", the words "the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods " shall be substituted;

(d) for sub-rule (9), the following sub-rules shall be substituted, namely:-

"(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89".

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received

supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs Tax dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.";

(xi) with effect from 1st February, 2018, for rule 138, the following rule shall be substituted, namely:-

"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 at the common portal and a unique number will be generated on the said portal:

Provided that where goods are sent by a principal located in one State to a job worker located in any other State, the e-way bill shall be generated by the principal irrespective of the value of the consignment:

Provided further that where handicraft goods are transported from one State to another by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1. – For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No.32/2017-Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1158 (E) dated the 15th September, 2017 as amended from time to time.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in **FORM GST EWB-01** electronically on the common portal after furnishing information in **Part B** of **FORM GST EWB-01**:

Provided that where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall furnish, on the common portal, the-

(a) information in Part B of FORM GST EWB-01; and

(b) the serial number and date of the Railway Receipt or the Air Consignment Note or Bill of Lading, as the case may be.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in **Part A** of **FORM GST EWB-01**:

Provided that the registered person or, the transporter, as the case may be may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case maybe, the transporter may not furnish the details of conveyance in Part B of **FORM GST EWB-01**.

Explanation 1.– For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consigner or the recipient, who has provided information in **Part-A** of the **FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in **FORM GST EWB-01**:

Provided that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in **Part-A** of **FORM GST EWB-01**, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in **Part-B** of **FORM GST EWB-01** for further movement of consignment:

Provided that once the details of the conveyance have been updated by the transporter in **Part B** of **FORM GST EWB-01**, the consignor or recipient, as the case maybe, who has furnished the information in **Part-A**

of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate **FORM GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case maybe, and may also generate a consolidated e-way bill in **FORM GST EWB-02** on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator.

(8) The information furnished in **Part A** of **FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in **FORM GSTR-1**:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in **FORM GST EWB-01**, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within 24 hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further the unique number generated under sub-rule (1) shall be valid for 72 hours for updation of **Part B** of **FORM GST EWB-01**.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km.	One day
2.	For every 100 km. or part thereof thereafter	One additional day:

Provided that the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in **Part B** of **FORM GST EWB-01**.

Explanation.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as twenty-four hours.

(11) The details of e-way bill generated under sub-rule (1) shall be made available to the-

(a) supplier, if registered, where the information in Part A of **FORM GST EWB-01** has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in **Part A** of **FORM GST EWB-01** has been furnished by the supplier or the transporter,

on the common portal, and the supplier or the recipient, as the case maybe, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

(b) where the goods are being transported by a non-motorised conveyance;

(c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the Goods and Services Tax Rules of the concerned State;

(e) where the goods, other than de-oiled cake, being transported are specified in the Schedule appended to notification No. 2/2017-Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel; and

(g) where the goods being transported are treated as no supply under Schedule III of the Act.

Explanation. - The facility of generation and cancellation of e-way bill may also be made available through SMS.

ANNEXURE

[(See rule 138 (14)]

S. No.	Description of Goods
(1)	(2)
1.	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)";

(xii) with effect from 1st February, 2018, in rule 138A, in sub-rule (5), for the words "Notwithstanding anything contained", the words "Notwithstanding anything contained in" shall be substituted;

(xiii) with effect from 1st February, 2018, in rule 138B, in sub-rule (3), in the proviso, for the words "carried out by any", the words "carried out by any other" shall be substituted;

(xiv) in FORM GST RFD-01A,

(a) after Statement 1A, the following Statements shall be inserted, namely:-

"Statement- 2 [rule 89(2)(c)]

Refund Type: Exports of services with payment of tax

(Amount in Rs.)

Sr. No.	Invoice details			Integrated tax		Cess	BRC/ FIRC		Integrated tax and cess involved in debit note, if any	Integrated tax and cess involved in credit note, if any	Net Integrated tax and cess (6+7+ 10 - 11)
	No.	Date	Value	Taxable value	Amt.		No.	Date			
1	2	3	4	5	6	7	8	9	10	11	12

Statement- 3 [rule 89(2)(b) and 89(2)(c)]

Refund Type: Export without payment of tax (accumulated ITC)

(Amount in Rs.)

Sr. No.	**Invoice details**			**Goods/ Services (G/S)**	**Shipping Bill/ Bill of Export**			**EGM Details**		**BRC/ FIRC**	
	No.	**Date**	**Value**		**Port code**	**No.**	**Date**	**Ref No.**	**Date**	**No.**	**Date**
1	2	3	4	5	6	7	8	9	10	11	12

(b) after Statement 3A, the following Statement shall be inserted, namely:-

"Statement-4 [rule 89(2)(d) and 89(2)(e)]

Refund Type: On account of supplies made to SEZ unit or SEZ Developer (on payment of tax)

(Amount in Rs.)

GSTIN of recipient	Invoice details			Shipping bill/ Bill of export/ Endorsed invoice by SEZ		Integrated Tax		Cess	Integrated tax and cess involved in debit note, if any	Integrated tax and cess involved in credit note, if any	Net Integrated tax and cess (8+9+ 10–11)
	No.	Date	Value	No.	Date	Taxable Value	Amt.				
1	2	3	4	5	6	8	9	7	10	11	12

(xv) with effect from 1st February, 2018, for FORM GST EWB-01 and FORM GST EWB-02, the following forms shall be substituted, namely:-

"FORM GST EWB-01
(See rule 138)

E-Way Bill

E-Way Bill No. :

E-Way Bill date :

Generator :

Valid from :

Valid until :

PART-A		
A.1	GSTIN of Supplier	
A.2	GSTIN of Recipient	
A.3	Place of Delivery	
A.4	Document Number	
A.5	Document Date	
A.6	Value of Goods	
A.7	HSN Code	
A.8	Reason for Transportation	
PART-B		
B.1	Vehicle Number for Road	
B.2	Transport Document Number	

Notes:

1. HSN Code in column A.6 shall be indicated at minimum two digit level for taxpayers having annual turnover upto five crore rupees in the preceding financial year and at four digit level for taxpayers having annual turnover above five crore rupees in the preceding financial year.
2. Document Number may be of Tax Invoice, Bill of Supply, Delivery Challan or Bill of Entry.
3. Transport Document number indicates Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number.
4. Place of Delivery shall indicate the PIN Code of place of delivery.
5. Reason for Transportation shall be chosen from one of the following:-

Code	Description
1	Supply
2	Export or Import
3	Job Work
4	SKD or CKD
5	Recipient not known
6	Line Sales
7	Sales Return
8	Exhibition or fairs
9	For own use
0	Others

FORM GST EWB-02

(See rule 138)

Consolidated E-Way Bill

Consolidated E-Way Bill No. :

Consolidated E-Way Bill Date :

Generator :

Vehicle Number :

Number of E-Way Bills	
E-Way Bill Number	

(xvi) with effect from 1st February, 2018, in FORM GST EWB-03, for the letters "UT", at both places where they occur, the words "Union territory" shall be substituted;

(xvii) with effect from 1st February, 2018, in FORM GST INV-01, for the letters "UT", the words "Union territory" shall be substituted.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Reduction of late fee in case of delayed filing of FORM GSTR-1

Notification No. 4/2018 – Central Tax

New Delhi, the 23rd January, 2018

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) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the details of outward supplies for any month/quarter in FORM GSTR-1 by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that where there are no outward supplies in any month/quarter, the amount of late fee payable by such registered person for failure to furnish the said details by the due date under section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Reduction of late fee in case of delayed filing of FORM GSTR-5

Notification No. 5/2018 – Central Tax

New Delhi, the 23rd January, 2018

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) (hereafter in

this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-5 by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that where the total amount of central tax payable in the said return is nil, the amount of late fee payable by such registered person for failure to furnish the said return by the due date under section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Reduction of late fee in case of delayed filing of FORM GSTR-5A

Notification No. 6/2018 – Central Tax

New Delhi, the 23rd January, 2018

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) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-5A by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that where the total amount of integrated tax payable in the said return is nil, the amount of late fee payable by such registered person for failure to furnish the said return by the due date under section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Reduction of late fee in case of delayed filing of FORM GSTR-6

Notification No. 7/2018 – Central Tax

New Delhi, the 23rd January, 2018

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) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-6 by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Extension of date for filing the return in FORM GSTR-6

Notification No. 8/2018 – Central Tax

New Delhi, the 23rd January, 2018

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) (hereinafter referred to as the said Act) and in supersession of notification No. 62/2017-Central Tax, dated the 15th November, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1418(E), dated the 15th November, 2017, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2017 to February, 2018, till the 31st day of March, 2018.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Amendment of notification No. 4/2017-Central Tax dated 19.06.2017 for notifying e-way bill website

Notification No. 9/2018 – Central Tax

New Delhi, the 23rd January, 2018

G.S.R....(E).- In exercise of the powers conferred by section 146 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 4/2017 - Central Tax dated 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 606 (E), dated the 19th June, 2017, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies www.gst.gov.in as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and www.ewaybillgst.gov.in as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill.

Explanation.-

(1) For the purposes of this notification, “www.gst.gov.in” means the website managed by the Goods and Services Tax Network, a company incorporated under the provisions of section 8 of the Companies Act, 2013 (18 of 2013); and

(2) For the purposes of this notification, “www.ewaybillgst.gov.in” means the website managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

2. This notification shall be deemed to have come into force with effect from the 16th day of January, 2018.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Amending notification No. 39/2017-Central Tax dated 13.10.2017 for cross-empowerment of State tax officers for processing and grant of refund

Notification No. 10/2018 – Central Tax

New Delhi, the 23rd January, 2018

G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the "CGST Act"), on the recommendations of the Council, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 39/2017 - Central Tax dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1253 (E) dated the 13th October, 2017, namely:-

In the said notification, for the words and figures "except rule 96", the words, figures, brackets and letter 'except sub rules (1) to (8) and sub rule (10) of rule 96" shall be substituted.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Govt. notifies certain amendments to GST rate schedule for services

Notification No. 1/2018-Central Tax (Rate)

New Delhi, the 25thJanuary, 2018

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, subsection (1) of section 11,sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017-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. 690(E), dated the 28thJune, 2017, namely:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, in column (3), -

(A) in item (iv),-

(I) for sub-item (c), the following sub-item shall be substituted, namely:-

‘(c) a civil structure or any other original works pertaining to the “In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);’;

(II) after sub-item (d), the following sub-items shall be inserted, namely:-

‘(da) a civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the “houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);’;

(III) after sub-item (f), the following sub-items shall be inserted, namely: -

“(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.”;

(B) in item (v),

(I) in sub-item (a), for the word "excluding", the word "including" shall be substituted;

(II) after sub-item (d), the following sub-item shall be inserted, namely: -

"(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017;";

(C) for item (ix) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(xi) Services by way of housekeeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under subsection (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to *Explanation* no. (iv)].
(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii),(ix), (x) and (xi) above.	9	-";

(b) against serial number 9, in the entry in column (3), in item (v), for the words “natural gas”, the words and brackets “natural gas, petroleum crude, motor spirit (commonly known as petrol), high speed diesel or aviation turbine fuel” shall be substituted;

(c) against serial number 10, for item (ii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
“(ii) Time charter of vessels for transport of goods.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken [Please refer to Explanation no. (iv)].
(iii) Rental services of transport vehicles with or without operators, other than (i) and (ii) above.	9	-”;

(d) for serial number 16 and the entries relating thereto, the following shall be substituted, namely: -

(1)	(2)	(3)	(4)	(5)
“16	Heading 9972	(i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land.	Nil	-
		(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); sub-item (b), sub-item (c), subitem (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi). Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	Nil	-
		(iii) Real estate services other than (i) and (ii) above.	9	-”;

(e) against serial number 17, for item (vii) in column (3), and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(vii) Time charter of vessels for transport of goods.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken [Please refer to *Explanation* no. (iv)].
(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods.	-";

(f) in serial number 23, against item (i) in column (3), in condition 1 in column (5), after the words "supplying the service", the words and brackets ", other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)" shall be inserted;

(g) against serial number 23, for item (ii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to *Explanation* no. (iv)].
(iii) Support services other than (i) and (ii) above.	9	-";

(h) against serial number 24,-

(A) in the Explanation to item (i) in column (3), in clause (i), after sub-clause (g), the following sub-clause shall be inserted, namely:-

"(h) services by way of fumigation in a warehouse of agricultural produce.";

(B) for item (ii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(ii) Service of exploration, mining or drilling of petroleum crude or natural gas or both.	6	–
(iii) Support services to mining, electricity, gas and water distribution other than (ii) above.	9	-";

(i) for serial number 25 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"25	Heading 9987	(i) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to *Explanation* no. (iv)].
		(ii) Maintenance, repair and installation (except construction) services, other than (i) above.	9	-";

(j) against serial number 26, in column (3),-

(A) in item (i), after sub-item (e), the following sub-item shall be inserted, namely: -

"(ea) manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975) respectively;";

(B) for item (iii) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(iii) Tailoring services.	2.5	–
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ii), (iia) and (iii) above.	9	-";

(k) for serial number 32 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"32	Heading 9994	(i) Services by way of treatment of effluents by a Common Effluent Treatment Plant.	6	–
		(ii) Sewage and waste collection, treatment and disposal and other environmental protection services other than (i) above.	9	-";

(l) against serial number 34, in column (3),-

(A) for item (iii) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(iii) Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet.	9	–
(iiia) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, casinos, race club, any sporting event such as Indian Premier League and the like.	14	-";

(B) in item (vi), after the brackets and figures "(iii)", the brackets and figures "(iiia)," shall be inserted;

(ii) for paragraph 2, the following shall be substituted, namely: -

"2. In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. –For the purposes of this paragraph, "total amount" means the sum total of,-

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.".

[F. No.354/13/2018-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. notifies certain amendments to GST rate schedule for services

Notification No. 1/2018-Union Territory Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 7, subsection (1) of section 8 and clause (iv) and clause (v) of section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) read with sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.11/2017-Union Territory Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 702(E), dated the 28th June, 2017, namely:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, in column (3), -

(A) in item (iv),-

(I) for sub-item (c), the following sub-item shall be substituted, namely:-

'(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using

land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);';

(II) after sub-item (d), the following sub-items shall be inserted, namely: -

'(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union Territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);';

(III) after sub-item (f), the following sub-items shall be inserted, namely: -

"(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.";

(B) in item (v),

(I) in sub-item (a), for the word "excluding", the word "including" shall be substituted;

(II) after sub-item (d), the following sub-item shall be inserted, namely: -

"(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;";

(C) for item (ix) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(xi) Services by way of housekeeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under subsection (1) of section 22 of the Central Goods and Services Tax Act	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to Explanation no. (iv)].
(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above.	9	-";

(b) against serial number 9, in the entry in column (3), in item (v), for the words "natural gas", the words and brackets "natural gas, petroleum crude, motor spirit (commonly known as petrol), high speed diesel or aviation turbine fuel" shall be substituted;

(c) against serial number 10, for item (ii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(ii) Time charter of vessels for transport of goods.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken [Please refer to Explanation no. (iv)].
(iii) Rental services of transport vehicles with or without operators, other than (i) and (ii) above.	9	-";

(d) for serial number 16 and the entries relating thereto, the following shall be substituted, namely: -

(1)	(2)	(3)	(4)	(5)
"16	Heading 9972	(i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land.	Nil	-
		(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); sub-item (b), sub-item (c), subitem (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi). Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	Nil	-
		(iii) Real estate services other than (i) and (ii) above.	9	-";

(e) against serial number 17, for item (vii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(vii) Time charter of vessels for transport of goods.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken [Please refer to Explanation no. (iv)].
(viii) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv), (v), (vi) and (vii) above.	Same rate of Union territory tax as applicable on supply of like goods involving transfer of title in goods.	-";

(f) in serial number 23, against item (i) in column (3), in condition 1 in column (5), after the words "supplying the service", the words and brackets ", other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)" shall be inserted;

(g) against serial number 23, for item (ii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(ii) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to *Explanation* no. (iv)].
(iii) Support services other than (i) and (ii) above.	9	-";

(h) against serial number 24,-

(A) in the Explanation to item (i) in column (3), in clause (i), after sub-clause (g), the following sub-clause shall be inserted, namely:-

"(h) services by way of fumigation in a warehouse of agricultural produce.";

(B) for item (ii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(ii) Service of exploration, mining or drilling of petroleum crude or natural gas or both.	6	–
(iii) Support services to mining, electricity, gas and water distribution other than (ii) above.	9	-";

(i) for serial number 25 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"25	Heading 9987	(i) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to *Explanation* no. (iv)].
		(ii) Maintenance, repair and installation (except construction) services, other than (i) above.	9	-";

(j) against serial number 26, in column (3),-

A. in item (i), after sub-item (e), the following sub-item shall be inserted, namely: -

"(ea) manufacture of leather goods or footwear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975) respectively;";

B. for item (iii) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(iii) Tailoring services.	2.5	–
(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ii), (iia) and (iii) above.	9	-";

(k) for serial number 32 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"32	Heading 9994	(i) Services by way of treatment of effluents by a Common Effluent Treatment Plant.	6	–
		(ii) Sewage and waste collection, treatment and disposal and other environmental protection services other than (i) above.	9	-";

(I) against serial number 34, in column (3),

(A) for item (iii) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

(3)	(4)	(5)
"(iii) Services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet.	9	–
(iiia) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, casinos, race club, any sporting event such as Indian Premier League and the like.	14	-";

(B) in item (vi), after the brackets and figures "(iii)", the brackets and figures "(iiia)," shall be inserted;

(ii) for paragraph 2, the following shall be substituted, namely: -

"2. In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. – –For the purposes of this paragraph, "total amount" means the sum total of,-

(a) (a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease/ sublease.".

[F. No.354/13/2018-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. notifies list of services exempt from GST

Notification No. 2/2018- Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.12/2017-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. 691(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(a) against serial number 3, in the entry in column (3), after the words "a Governmental Authority" the words " or a Government Entity" shall be inserted;

(b) after serial number 3 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil";

(c) against serial number 16, in the entry in column (3), for the words "one year", the words "three years" shall be substituted;

(d) after serial number 19 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"19A	Heading 9965	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30th day of September, 2018.
19B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30th day of September, 2018.";

(e) against serial number 22, in the entry in column (3), after item (b), the following item shall be inserted, namely: -

"(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.";

(f) after serial number 29 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"29A	Heading 9971 or Heading 9991	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.	Nil	Nil";

(g) against serial number 36, in the entry in column (3), in item (c), for the words "fifty thousand", the words "two lakhs" shall be substituted;

(h) after serial number 36 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"36A	Heading 9971 or Heading 9991	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36.	Nil	Nil";

(i) after serial number 39 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"39A	Heading 9971	Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR). *Explanation.*- For the purposes of this entry, the intermediary of financial services in IFSC is a person,- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.	Nil	Nil";

(j) against serial number 45, in the entry in column (3),-

(i) in item (a), after sub-item (ii), the following sub-item shall be inserted, namely:-

"(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;";

(ii) in item (b), after sub-item (iii), the following sub-item shall be inserted, namely:-

"(iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;";

(iii) in item (c), after sub-item (ii), the following sub-item shall be inserted, namely:-

"(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.";

(k) after serial number 53 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"53A	Heading 9985	Services by way of fumigation in a warehouse of agricultural produce.	Nil	Nil";

(l) against serial number 54, in the entry in column (3), after item (g), the following item shall be inserted, namely:-

"(h) services by way of fumigation in a warehouse of agricultural produce.";

(m) against serial number 60, in the entry in column (3), the words "the Ministry of External Affairs," shall be omitted;

(n) after serial number 65 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"65A	Heading 9991	Services by way of providing information under the Right to Information Act, 2005 (22 of 2005).	Nil	Nil";

(o) against serial number 66, in the entry in column (3),-

(i) after item (a), the following item shall be inserted, namely:-

"(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;";

ii) in item (b),-

(A) in sub-item (iv), the words "upto higher secondary" shall be omitted;

(B) after sub-item (iv), the following sub-item shall be inserted, namely:-

"(v) supply of online educational journals or periodicals:";

(C) in the proviso, for the word, brackets and letter "entry (b)", the words, brackets and letters "sub-items (i), (ii) and (iii) of item (b)" shall be substituted;

(D) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course.";

(p) against serial number 77, in the entry in column (3), in item (c), for the words "five thousand", the words "seven thousand five hundred" shall be substituted;

(q) against serial number 81, for the entry in column (3), the following entry shall be substituted, namely: -

"Services by way of right to admission to-

(a) circus, dance, or theatrical performance including drama or ballet;

(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;

(c) recognised sporting event;

(d) planetarium, where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs 500 per person.".

[F. No.354/13/2018 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. Exempts certain services in the list of services provided in notification no.12/2017- Union Territory Tax (Rate)

Notification No. 2/2018- Union Territory Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 8 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.12/2017- Union Territory Tax (Rate), dated the 28th June,

2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 703(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(a) against serial number 3, in the entry in column (3), after the words "a Governmental Authority" the words " or a Government Entity" shall be inserted;

(b) after serial number 3 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil";

(c) against serial number 16, in the entry in column (3), for the words "one year", the words "three years" shall be substituted;

(d) after serial number 19 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"19A	Heading 9965	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30th day of September 2018.
19B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.	Nil	Nothing contained in this serial number shall apply after the 30th day of September 2018.";

(e) against serial number 22, in the entry in column (3), after item (b), the following item shall be inserted, namely: -

"(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-

school education and education upto higher secondary school or equivalent.";

(f) after serial number 29 and the entries relating thereto, the following serial number and entries shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)
"29A	Heading 9971 or Heading 9991	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.	Nil	Nil";

(g) against serial number 36, in the entry in column (3), in item (c), for the words "fifty thousand", the words "two lakhs" shall be substituted;

(h) after serial number 36 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"36A	Heading 9971 or Heading 9991	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36.	Nil	Nil";

(i) after serial number 39 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"39A	Heading 9971	Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR). *Explanation*.- For the purposes of this entry, the intermediary of financial services in IFSC is a person,- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.	Nil	Nil";

(j) against serial number 45, in the entry in column (3),-

(i) in item (a), after sub-item (ii), the following sub-item shall be inserted, namely:-

"(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;";

(ii) in item (b), after sub-item (iii), the following sub-item shall be inserted, namely:-

"(iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;";

(iii) in item (c), after sub-item (ii), the following sub-item shall be inserted, namely:-

"(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.";

"(iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;";

(iii) in item (c), after sub-item (ii), the following sub-item shall be inserted, namely:-

"(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.";

(k) after serial number 53, and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"53A	Heading 9985	Services by way of fumigation in a warehouse of agricultural produce.	Nil	Nil";

(l) against serial number 54, in the entry in column (3), after item (g), the following item shall be inserted, namely:-

"(h) services by way of fumigation in a warehouse of agricultural produce.";

(m) against serial number 60, in the entry in column (3), the words "the Ministry of External Affairs," shall be omitted;

(n) after serial number 65 and the entries relating thereto, the following serial number and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
"65A	Heading 9991	Services by way of providing information under the Right to Information Act, 2005 (22 of 2005).	Nil	Nil";

(o) against serial number 66, in the entry in column (3),-

(i) after item (a), the following item shall be inserted, namely:-

"(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee."

ii) in item (b),-

(A) in sub-item (iv), the words "upto higher secondary" shall be omitted;

(B) after sub-item (iv), the following sub-item shall be inserted, namely:-

"(v) supply of online educational journals or periodicals:";

(C) in the proviso, for the word, brackets and letter "entry (b)", the words, brackets and letter "sub-items (i), (ii) and (iii) of item (b)" shall be substituted;

(D) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course.";

(p) against serial number 77, in the entry in column (3), in item (c), for the words "five thousand", the words "seven thousand five hundred" shall be substituted;

(q) against serial number 81, for the entry in column (3), the following entry shall be substituted namely: -

"Services by way of right to admission to-

(a) circus, dance, or theatrical performance including drama or ballet;

(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;

(c) recognised sporting event;

(d) planetarium, where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs 500 per person.".

[F. No.354/13/2018 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Renting of immovable property service provided by govt. to registered person is covered under RCM

Notification No. 3/2018- Union Territory Tax (Rate)

New Delhi, the 25th January, 2018

GSR.....(E).- In exercise of the powers conferred by sub-section (3) of section 7 of the Union Territory Goods and Services Tax Act, 2017 (14 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.13/2017- Union Territory 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. 704(E), dated the 28thJune, 2017, namely:-

In the said notification,-

(i) in the Table, after serial number 5 and the entries relating thereto, the following serial number and the entries relating thereto shall be inserted, namely: -

(1)	(2)	(3)	(4)
"5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017 read with clause (vi) of section 21 of Union Territory Goods and Services Act, 2017";

(ii) in the Explanation, after clause (e), the following clause shall be inserted, namely: -

'(f) "insurance agent" shall have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938).'.

[F. No. 354/13/2018- TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. provides special procedure for construction services against transfer of development rights

Notification No. 4/2018-Central Tax (Rate)

New Delhi, the 25th January, 2018

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 notifies the following classes of registered persons, namely :-

(a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and

(b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the

form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

[F. No.354/13/2018 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

No GST on supply of services by way of grant of license to mine petroleum crude or natural gas

Notification No. 5/2018- Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, from so much of the central tax as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf.

[F. No.354/13/2018 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. modifies the schedules provided in notification No.1/2017-Central Tax (Rate)

Notification No. 6/2018-Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 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 amendments in the notification of the Government of

India in the Ministry of Finance (Department of Revenue), No.1/2017Central Tax (Rate), dated the 28th June, 2017, 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, namely:-

In the said notification, -

(A) in Schedule I - 2.5%,

(i) after S. No. 76 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"76A	13	Tamarind kernel powder";

(ii) after S. No. 78 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"78A	1404 or 3305	Mehendi paste in cones";

(iii) after S. No. 103A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

"103B	2302	Rice bran (other than de-oiled rice bran)";

(iv) in S. No. 165, in column (3), the words, "to household domestic consumers or", shall be omitted;

(v) after S. No. 165 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"165A	2711 12 00 2711 13 00, 2711 19 00	Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) for supply to household domestic consumers";

(vi) in S. No. 198A, for the entry in column (3), the entry "Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork", shall be substituted;

(vii) in S. No. 219A, for the entry in column (3), the entry "Corduroy fabrics, velvet fabrics", shall be substituted;

(viii) in S. No. 224A, for the entry in column (2), the entry "6309 or 6310", shall be substituted;

(ix) after S. No. 243 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“243A	88 or Any other chapter	Scientific and technical instruments, apparatus, equipment, accessories, parts, components, spares, tools, mock ups and modules, raw material and consumables required for launch vehicles and satellites and payloads”;

(B) in Schedule II-6%, -

(i) after S. No. 32A and the entries relating thereto, the following serial number and the entries shall be substituted, namely:-

“32AA	1704	Sugar boiled confectionery”;

(ii) after S. No. 46A and the entries relating thereto, the following serial number and the entries shall be substituted, namely:-

“46B	2201	Drinking water packed in 20 litres bottles”;

(iii) in S. No. 56, for the entry in column (2), the entry “28 or 38”, shall be substituted;

(iv) after S. No. 57A and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“57B	2809	Fertilizer grade phosphoric acid”;

(v) in S. No. 59, for the entry in column (2), the entry “29 or 3808 93”, shall be substituted;

(vi) after S. No. 78 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“78A	3808	The following Bio-pesticides, namely - 1 Bacillus thuringiensis var. israelensis 2 Bacillus thuringiensis var. kurstaki 3 Bacillus thuringiensis var. galleriae 4 Bacillus sphaericus 5 Trichoderma viride 6 Trichoderma harzianum 7 Pseudomonas fluoresens 8 Beauveriabassiana 9 NPV of Helicoverpaarmigera 10 NPV of Spodopteralitura 11 Neem based pesticides 12 Cymbopogan”;

(vii) after S. No. 80 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"80A	3826	Bio-diesel";

(viii) for S. No. 99A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"99A	4418	Bamboo wood building joinery
99B	4419	Tableware and Kitchenware of wood";

(ix) S. No. 103 and the entries relating thereto shall be omitted;

(x) S. No. 104 and the entries relating thereto shall be omitted;

(xi) in S. No. 133, in column (3), after the words, "Absorbent cotton wool", the words and brackets, "[except cigarette filter rods]", shall be added;

(xii) in S. No. 147, for the entry in column (3), the entry "Woven pile fabrics and chenille fabrics except Corduroy fabrics, velvet fabric, other than fabrics of heading 5802 or 5806", shall be substituted;

(xiii) after S. No. 195A, and entries relating thereto the following serial number and the entries shall be inserted, namely: -

"195B	8424	Sprinklers; drip irrigation system including laterals; mechanical sprayers";

(C) in Schedule III - 9%, -

(i) in S. No. 3, in column (3), after the words "derived from vegetable products" the words and brackets, "[other than tamarind kernel powder]" shall be added;

(ii) in S. No. 12, in column (3), for the words "groundnut sweets and gajak", the words "groundnut sweets, gajak and sugar boiled confectionery", shall be substituted;

(iii) in S. No. 24, in column (3), after the words, "matter nor flavoured", the words and brackets, "[other than Drinking water packed in 20 litres bottles]" shall be added;

(iv) in S. No. 39, in column (3), after the words, "other Rate Schedules for goods", the words, "including Fertilizer grade Phosphoric acid" shall be added;

(v) in S. No. 59, for the entry in column (3), the entry "Preparations for use on the hair [except Mehendi pate in Cones]" shall be substituted;

(vi) in S. No. 87, in column (3), after the words, "and similar products", the words, figure and brackets, "[other than bio-pesticides mentioned against S. No. 78A of schedule -II]" shall be added;

(vii) S. No. 99, and the entries relating thereto, shall be omitted;

(viii) in S. No. 137F, in column (3), after the words, "shingles and shakes", the words and brackets, "[other than bamboo wood building joinery]" shall be added;

(ix) after S. No. 163 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"163A	56012200	Cigarette Filter rods";

(x) for S. No. 236A and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"236A	7323 9410	Ghamella
236B	7324	Sanitary ware and parts thereof, of iron and steel";

(xi) in S. No. 325, for the entry in column (3), the entry "Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than sprinklers; drip irrigation systems including laterals; mechanical sprayer; nozzles for drip irrigation equipment or nozzles for sprinklers]" shall be substituted;

(xii) after S. No. 399 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"399A	8702	Buses for use in public transport which exclusively run on Bio-fuels";

(D) in Schedule-IV-14%, -

(i) in S. No. 164, for the entry in column (3), the entry "Motor vehicles for the transport of ten or more persons, including the driver [other than buses for use in public transport, which exclusively run on Bio-fuels]" shall be substituted;

(ii) after S. No. 228, and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"229	Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club";

(E) in Schedule-V-1.5%, -

(i) S. No. 2, and the entries relating thereto, shall be omitted;

(ii) in S. No. 3, for the entry in column (3), the entry "Semi-precious stones, whether or not worked or graded but not strung, mounted or set; semi-precious stones, temporarily strung for convenience of transport [other than Unworked or simply sawn or roughly shaped]" shall be substituted;

(iii) in S. No. 4, for the entry in column (3), the entry "Synthetic or reconstructed semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed semi-precious stones, temporarily strung for convenience of transport]" shall be substituted;

(iv) against S. No. 13, in column (3), the words and symbols, "[other than bangles of lac/shellac]" shall be omitted;

(v) against S. No. 17, in column (3), for the entry, the entry "Imitation jewellery [other than bangles of lac/shellac]" shall be substituted.

(F) in Schedule-VI - 0.125%, -

(i) in S. No. 1, for the entry in column (3), the entry, "All goods" shall be substituted;

(ii) in S. No. 2, for the entry in column (3), the entry, "Semi-precious stones, unworked or simply sawn or roughly shaped" shall be substituted;

(iii) after S. No. 2, and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"2A	7103	Precious stones (other than diamonds), ungraded precious stones (other than diamonds)";

(iv) in S. No. 3, for the entry in column (3), the entry, "Synthetic or reconstructed semi-precious stones, unworked or simply sawn or roughly shaped" shall be substituted;

(v) after S. No. 3, and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"4	7104	Synthetic or reconstructed precious stones";

[F.No.354/1/2018-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. amends the Notification No.2/2017- CGST (Rate)

Notification No.7/2018-Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-sections (1) of section 11 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.2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674 (E), dated the 28th June, 2017, namely:-

In the said notification, -

(1) in the Schedule,

(i) in S. No. 102, for the entry in column (3), the entry "Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake [other than rice-bran]", shall be substituted;

(ii) for S. No. 102A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:

"102A	2302	De-oiled rice bran
102B	2306	Cotton seed oil cake";

(iii) against S. No. 136A, in column (2), for the entry, the entry "7117" shall be substituted';

(iv) in S. No. 137, in column (3), after the words "used in agriculture, horticulture or forestry" the words, "other than ghamella", shall be added;

(v) in S. No. 148, for the entry in column (3), for the entry against item number (v), the entry "Vibhuti", shall be substituted;

(vi) after S. No. 150 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"151	Any chapter	"Parts for manufacture of hearing aids";

[F.No.354/1/2018-TRU]

(Ruchi Bisht)

Under Secretary to the Government of India

Govt. exempts the central tax on intra-state supply of goods specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Notification No. 8/2018 -Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the central tax on intra-state supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), as are given in corresponding entry in column (2), from so much tax as specified in Schedule IV of Notification No. 1/2017 -Central Tax (Rate), as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4), of the said Table, on the value that represent margin of the supplier, on supply of such goods.

Table

S. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1.	8703	Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more. *Explanation.* - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%
2.	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm *Explanation.* - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%
3.	8703	Old and used motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. *Explanation.* - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above.	9%
4.	87	All Old and used Vehicles other than those mentioned from S. No. 1 to S.No.3	6%

Explanation –For the purposes of this notification, -

(i) in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act,1961(43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and

(ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

2. This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.

[F.No.354/1/2018-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Govt. amends the Notification No.45/2017-Central (Rate)

Notification No 9/2018-Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R.….(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as “the said Act”) read with sub-section (3) of section 11 of the said Act, the Central Government, on being satisfied that it is necessary in the public interest so to do , on the recommendations of the Council, makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 45/2017- Central Tax (Rate), dated the 14th November, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.1391(E), dated the 14th November, 2017, namely:-

In the said notification, -

(1) in the Table, -

(a) against serial number 1, -

(i) in column (2), for the entry, the following entry shall be substituted, namely: -

"Public funded research institution or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital";

(ii) in column (4), for the words "Department of Scientific and Research", the words "Department of Scientific and Industrial Research", shall be substituted;

(b) against serial numbers 2 and 4, in column (4), for the words "Department of Scientific and Research", the words "Department of Scientific and Industrial Research", shall be substituted.

(2) after the Table, the existing Explanation shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely: -

"Explanation 2. - For the the purposes of this notification, exemption would be in line with the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 51/96- Customs, dated the 23rd July, 1996, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 303(E), dated the 23rd July, 1996 and is applicable with effect from the 15th November, 2017.". [F. No. 354/1/2018-TRU]

[F.No.354/1/2018-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Postpone the Coming into Force of the E-way Bill Rules

Notification No. 11/2018 – Central Tax

New Delhi, the 2nd February, 2018

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 hereby rescinds, except as respects things done or omitted to be done before such rescission, the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 74/2017 – 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 1601 (E), dated the 29th December, 2017.

[F. No.349/58/2017-GST(Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Amend Notification No.1/2017-Compensation Cess (Rate).

Notification No. 1/2018-Compensation Cess (Rate)

New Delhi, the 25th January, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), 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. 1/2017-Compensation Cess (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 720 (E), dated the 28th June, 2017, namely,-

In the said notification, in the Schedule, -

(i) after S. No. 42 and the entries relating thereto, the following serial numbers and the entries shall be inserted

(1)	(2)	(3)	(4)
42A.	87	All old and used motor vehicles *Explanation:* Nothing contained in this entry shall apply if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT credit as defined in CENVAT Credit Rules, 2004, or the input tax credit of Value Added Tax or any other taxes paid on such vehicles.	NIL

(ii) in S. No. 43, for the entry in column (2), the entry "8702 or 8703", shall be substituted;

(Ruchi Bisht)
Under Secretary to the Government of India

Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.

Circular No. 27/01/2018-GST

04th January 2018

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 levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc. – Reg.

Representations were received from trade and industry for clarification on certain issues regarding levy of GST on supply of services.

2. In this context, it is stated that the following clarifications, inter-alia, were published as FAQ at http://www.cbec.gov.in/resources//htdocs-cbec/gst/om-clarification.pdf.

S.No.	Questions/ Clarifications sought	Clarifications
1.	1. Will GST be charged on actual tariff or declared tariff for accommodation services? 2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed. 3. Where will the declared tariff be published? 4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then? 5. If tariff changes between booking and actual usage, which rate will be used? 6. GST at what rate would be levied if an upgrade is provided to the customer at a lower rate?	1. Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value). 2. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7000 per unit per day but the amount charged from the customer on account of extra bed is Rs. 8000, GST shall be charged at 18% on Rs. 8000. 3. Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST. 4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply. 5. Declared tariff at the time of supply would apply. 6. If declared tariff of the accommodation provided by way of upgrade is Rs 10000, but amount charged is Rs 7000, then GST would be levied @ 28% on Rs 7000/-.
2.	Vide notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 entry 34, GST on the service of admission into casino under Heading 9996 (Recreational, cultural and sporting services) has been levied @ 28%. Since the Value of supply rule has not specified the method of determining taxable amount in casino, Casino Operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.	Relevant part of entry 34 of the said CGST notification reads as under: *"Heading 9996 (Recreational, cultural and sporting services) - …* *(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, gocarting, casinos, race-course, ballet, any sporting event such as Indian Premier League and the like. - 14%*

		(iv) … *(v) Gambling. - 14%"* As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/ gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/ drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.
3.	The provision in rate schedule notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 does not clearly state the tax base to levy GST on horse racing. This may be clarified.	GST would be leviable on the entire bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be. Illustration: If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.
4.	1. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels, inns, etc.], of notification 11/2017-CT (Rate) dated 28th June 2017, price/ declared tariff includes the tax component or not? 2. Whether rent on rooms provided to in-patients is exempted? If liable to tax, please mention the entry of CGST Notification 11/2017- CT(Rate) 3. What will be the rate of tax for bakery items supplied where eating place is attached - manufacturer for the purpose of composition levy?	1. Price/declared tariff does not include taxes. 2. Room rent in hospitals is exempt. 3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10 (1) (b) of CGST Act and hence GST rate of composition levy for the same would be 5%.
	Whether homestays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration?	Notification No. 17/2017-Central Tax (Rate), has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category states) per annum and thus not required to take

		registration under section 22(1) of CGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017.
6.	To clarify whether supply in the situations listed below shall be treated as a supply of goods or supply of service: - 1. The books are printed/ published/ sold on procuring copyright from the author or his legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond] 2. The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book] 3. The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)] The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]	The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.
7.	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

3. The above clarifications are reiterated for the purpose of levy of GST on supply of services.

4. Difficulty if any, in the implementation ofthe circular should be brought to the notice of the Board. Hindi version would follow.

Yours Faithfully,

Rachna
Technical Officer (TRU)

Clarifications regarding GST on College Hostel Mess Fees

Circular No. 28/02/2018-GST

08th January 2018

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 GST on College Hostel Mess Fees – reg.

Queries have been received seeking clarification regarding the taxability and rate of GST on services by a college hostel mess. The clarification is as given below:

2. The educational institutions have mess facility for providing food to their students and staff. Such facility is either run by the institution/ students themselves or is outsourced to a third person. Supply of food or drink provided by a mess or canteen is taxable at 5% without Input Tax Credit [Serial No. 7(i) of notification No. 11/2017-CT (Rate) as amended vide notification No. 46/2017-CT (Rate) dated 14.11.2017 refers]. It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor.

3. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours Faithfully,

Rachna
Technical Officer (TRU)

GST dated 25.01.2018 seeks to clarify applicability of GST on Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol

Circular No. 29/3/2018-GST

Dated, 25 January, 2018

To,

Principal Chief Commissioners/Principal Directors General,
Chief Commissioners/Directors General,
Principal Commissioners/Commissioners,
All under CBEC.

Madam/Sir,

Subject: Clarification regarding applicability of GST on Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol – Regarding.

References have been received related to the applicability of GST on the Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol.

2. In this context, manufacturers of Propylene or Di-butyl para Cresol and Poly Iso Butylene have stated that the principal raw materials for manufacture of such goods are Liquefied Petroleum Gas and Poly butylene feed stock respectively, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines while a portion of the raw material is retained by these manufacturers, the remaining quantity is returned to the oil refineries. In this regard an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of Propylene or Di-butyl para Cresol and Poly Iso Butylene.

3. The GST Council in its 25th meeting held on 18.1.2018 discussed this issue and recommended for issuance of a clarification stating that in such transactions, GST will be payable by the refinery on the value of net quantity of polybutylene feedstock and liquefied petroleum gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl Para Cresol.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of Polybutylene feedstock and Liquefied Petroleum Gas retained by the manufacturer for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol . Though, the refinery would be liable to pay GST on such returned quantity of Polybutylene feedstock and Liquefied Petroleum Gas, when the same is supplied by it to any other person.

5. This clarification is issued in the context of the Goods and Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

Yours faithfully,

(Mahipal Singh)
Technical Officer (TRU)

GST dated 25.01.2018 clarification regarding supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86

Circular No. 30/4/2018-GST

Dated, 25 January, 2018

To,

Principal Chief Commissioners/Principal Directors General,
Chief Commissioners/Directors General,
Principal Commissioners/Commissioners,
All under CBEC.

Madam/Sir,

Subject: Clarification on supplies made to the Indian Railways classifiable under any chapter, other than Chapter 86 – regarding.

Representations have been received that certain suppliers are making supplies to the railways of items classifiable under any chapter other than chapter 86, charging the GST rate of 5%.

2. The matter has been examined. Vide notification No. 1/2017 –Central Tax (Rate) dated 28th June, 2017, read with notification No. 5/2017-Central Tax (Rate) dated 28th June, 2017, goods classifiable under Chapter 86 are subjected to 5% GST rate with no refund of unutilised input tax credit (ITC). Goods classifiable in any other chapter attract the applicable GST,

as specified under notification No. 1/2017 –Central Tax (Rate) dated 28th June, 2017 or notification No.2/2017-Central Tax (Rate) dated 28th June, 2017.

3. The GST Council during its 25th meeting held on 18th January, 2018, discussed this issue and recorded that a clarification regarding applicable GST rates on various supplies made to the Indian Railways may be issued.

4. Accordingly, it is hereby clarified that

- only the goods classified under Chapter 86, supplied to the railways attract 5% GST rate with no refund of unutilised input tax credit and
- other goods [falling in any other chapter], would attract the general applicable GST rates to such goods, under the aforesaid notifications, even if supplied to the railways.

Yours faithfully,

(Mahipal Singh)
Technical Officer (TRU)

Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017

Circular No. 31/05/2018 - GST

New Delhi, 9th February 2018

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/Commissioners of Central Tax /
Commissioners of Central Tax (Audit)/ Principal Director
General of Goods and Services Tax Investigation/
Director General of Systems

Madam/Sir,

Subject: Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017–reg.

The Board, vide Circular No. 1/1/2017-GST dated 26th June, 2017, assigned proper officers for provisions relating to registration and

composition levy under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the rules made thereunder. Further, vide Circular No. 3/3/2017 - GST dated 5th July, 2017, the proper officers for provisions other than registration and composition under the CGST Act were assigned. In the latter Circular, the Deputy or Assistant Commissioner of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 74 while the Superintendent of Central Tax was assigned as the proper officer under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 73 of the CGST Act.

2. It has now been decided by the Board that Superintendents of Central Tax shall also be empowered to issue show cause notices and orders under section 74 of the CGST Act. Accordingly, the following entry is hereby being added to the item at Sl. No. 4 of the Table on page number 3 of Circular No. 3/3/2017-GST dated 5th July, 2017, namely:-

Sl. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
4.	Superintendent of Central Tax	viii(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

3. Further, in light of sub-section (2) of section 5 of the CGST Act, whereby an officer of central tax may exercise the powers and discharge the duties conferred or imposed under the CGST Act on any other officer of central tax who is subordinate to him, the following entry is hereby removed from the Table on page number 2 of Circular No. 3/3/2017-GST dated 5th July, 2017:-

Sl. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
4.	Deputy or Assistant Commissioner of Central Tax	vi. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74

4. In other words, all officers up to the rank of Additional/Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under subsections (1), (2), (3), (5), (6), (7), (9) and (10) of sections 73 and 74 of the CGST Act. Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") as well, as per section 3 read with section 20 of the said Act.

5. Whereas, for optimal distribution of work relating to the issuance of show cause notices and orders under sections 73 and 74 of the CGST Act and also under the IGST Act, monetary limits for different levels of officers of central tax need to be prescribed. Therefore, in pursuance of clause (91) of section 2 of the CGST Act read with section 20 of the IGST Act, the Board hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders under sections 73 and 74 of the CGST Act and section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

Sl. No.	**Officer of Central Tax**	**Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act**	**Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act**	**Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act made applicable to integrated tax vide section 20 of the IGST Act**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rupees 1 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crores	Above Rupees 20 lakhs and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

6. The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place

of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

7. Notwithstanding anything contained in para 6 above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than Rs. 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

8. In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

9. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

10. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)

Clarifications regarding GST in respect of certain services as decided in 25th GST Council meeting

Circular No. 32/06/2018-GST

New Delhi, 12th February 2018

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 GST in respect of certain services

I am directed to issue clarification with regard to the following issues approved by the GST Council in its 25th meeting held on 18th January 2018:-

Sl. No.	Issue	Clarification
1.	Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).	Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT(Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) *refers*]
2.	Is GST leviable on the fee/amount charged in the following situations/cases: – (1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account. (2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required. (3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or Rs 25000/- whichever is less, is required to be paid.	Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal on account of the following: - (1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasijudicial machinery is sought to be set up at District, State and Central levels. (2) The President of the District/ State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively. (3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/ witnesses, reception of evidence, discovery/ production of documents, examination of witnesses, etc. (4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC. (5) The Commissions have been deemed to be a civil court under CrPC. (6) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court. In view of the aforesaid, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.
3.	Whether the services of elephant or camel ride, rickshaw ride and boat ride should be classified under heading 9964 (as passenger	Elephant/ camel joy rides cannot be classified as transportation services. These services will attract GST @ 18% with threshold exemption being available

	transport service) in which case, the rate of tax on such services will be 18% or under the heading 9996 (recreational, cultural and sporting services) treating them as joy rides, leviable to GST@ 28%?	to small service providers. [Sl. No 34(iii) of notification No. 11/2017-CT(Rate) dated 28.06.2017 as amended by notification No. 1/2018-CT(Rate) dated 25.01.2018 *refers*]
4.	What is the GST rate applicable on rental services of self-propelled access equipment (Boom Scissors/ Telehandlers)? The equipment is imported at GST rate of 28% and leased further in India where operator is supplied by the leasing company, diesel for working of machine is supplied by customer and transportation cost including loading and unloading is also paid by the customer.	Leasing or rental services, with or without operator, for any purpose are taxed at the same rate of GST as applicable on supply of like goods involving transfer of title in goods. Thus, the GST rate for the rental services in the given case shall be 28%, provided the said goods attract GST of 28%. IGST paid at the time of import of these goods would be available for discharging IGST on rental services. Thus, only the value added gets taxed. [Sl. No 17(vii) of notification No. 11/2017-CT(Rate) dated 28.6.17 as amended *refers*].
5.	Is GST leviable in following cases: (1) Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST? (2) Retention money: Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals? (3) Food supplied to the patients: Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.	Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended refers]. (1) Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt. (2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017-CT (Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt. (3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

6.	Appropriate clarification may be issued regarding taxability of Cost Petroleum.	As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

2. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

Yours Faithfully,

Harsh Singh
Technical Officer (TRU)

Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases-reg.

Circular No. 33/07/2018-GST

New Delhi, dated the 23rd Feb., 2018

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/
Commissioner of Central Tax (All),
The Principal Director Generals/ Director Generals (All).

Madam/Sir,

Subjecty: Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases-reg.

In exercise of the powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "Act"), for the purposes of uniformity in implementation of the Act, the Central Board of Excise and Customs hereby directs the following.

2. Non-utilization of Disputed Credit carried forward

2.1 Where in relation to a certain CENVAT credit pertaining to which a show cause notice was issued under rule 14 of the CENVAT Credit Rules, 2004, which has been adjudicated and where in the last adjudication order or the last order-in-appeal, as it existed on 1st July, 2017, it was held that such CENVAT credit is not admissible, then such CENVAT credit (herein and after referred to as "disputed credit"), credited to the electronic credit ledger in terms of sub-section (1), (2), (3), (4), (5) (6) or (8) of section 140 of the Act, shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, till the order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in existence.

2.2 During the period, when the last order-in-original or the last order-in-appeal, as the case may be, holding that disputed credit as inadmissible is in operation, if the said disputed credit is utilised, it shall be recovered from the tax payer, with interest and penalty as per the provisions of the Act.

3. Non-transition of Blocked Credit

3.1 In terms of clause (i) of sub-section (1) of section 140 of the Act, a registered person shall not take in his electronic credit ledger, amount of CENVAT credit as is carried forward in the return relating to the period ending with the day immediately preceding the appointed day which is not eligible under the Act in terms of sub-section (5) of section 17 (hereinafter referred to as "blocked credit"), such as, telecommunication towers and pipelines laid outside the factory premises.

3.2 If the said blocked credit is carried forward and credited to the electronic credit ledger in contravention of section 140 of the Act, it shall not be utilized by a registered taxable person to discharge his tax liability under this Act or under the IGST Act, 2017, and shall be recovered from the tax payer with interest and penalty as per the provisions of the Act.

4. In all cases where the disputed credit as defined in terms of para 2.1 or blocked credit under para 3.1 is higher than Rs. ten lakhs, the taxpayers shall submit an undertaking to the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit, as the case may be. In other cases of transitional credit of an amount lesser than Rs. ten lakhs, the directions as above shall apply but the need to submit the undertaking shall not apply.

5. Trade may be suitably informed and difficulty if any in implementation of the circular may be brought to the notice of the Board.

(ROHAN)
Under Secretary to the Govt. of India

Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.06.2018

Notification No. 10/2018 – Central Tax (Rate)

New Delhi, the 23rd March, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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.8/2017 – Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 680 (E), dated the 28th June, 2017, and amended vide notification No.38/2017- Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 1262 (E), dated the 13th October, 2017, namely:-

In the said notification, for the figures, letters and words “31st day of March, 2018”, the figures, letters and words “30th day of June, 2018” shall be substituted.

[F. No.349/58/2017-GST (Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to exempt payment of tax under section 5(4) of the IGST Act, 2017 till 30.06.2018

Notification No. 11/2018 – Integrated Tax (Rate)

New Delhi, the 23rd March, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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. 32/2017- Integrated Tax (Rate), dated the 13th October, 2017, published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1263 (E), dated the 13th October, 2017, namely:-

In the said notification, in paragraph 2, for the figures, letters and words "31st day of March, 2018", the figures, letters and words "30th day of June, 2018" shall be substituted.

[F. No.349/58/2017-GST (Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Second Amendment (2018) to CGST Rules

Notification No.12/2018 – Central Tax

New Delhi, the 7th March, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2018.

(2) Save as otherwise provided in these rules, they shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) with effect from the date of publication of this notification in the Official Gazette, in rule 117, in sub-rule (4), in clause (b), for sub-clause (iii), the following shall be substituted, namely:-

"(iii) The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;";

(ii) for rule 138, the following rule shall be substituted, namely:-

"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:

Provided that the transporter, on an authorization received from the registered person, may furnish information 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:

Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1.– For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India,

Ministry of Finance, notification No. 32/2017-Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1158 (E) dated the 15th September, 2017 as amended from time to time.

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in **FORM GST EWB-01** electronically on the common portal after furnishing information in **Part B** of **FORM GST EWB-01.**

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in **Part B** of **FORM GST EWB-01**:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in **Part A** of **FORM GST EWB-01**:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter,

he or the transporter may, at their option, generate the e-way bill in **FORM GST EWB-01** on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in **Part B** of **FORM GST EWB-01**.

Explanation 1.– For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall not be valid for movement of goods by road unless the information in **Part-B** of **FORM GST EWB-01** has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the eway bill.

(5A) The consignor or the recipient, who has furnished the information in **Part A** of **FORM GST EWB-01**, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in **Part B** of **FORM GST EWB-01** for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in **Part B** of **FORM GST EWB-01**, the consignor or

recipient, as the case may be, who has furnished the information in **Part A** of **FORM GST EWB-01** shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in **FORM GST EWB-01** and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in **FORM GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in **Part A** of **FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in **Part A** of **FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in **FORM GST EWB-01**, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of **Part B** of **FORM GST EWB-01**.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km.	One day in cases other than Over Dimensional Cargo
2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in **Part B** of **FORM GST EWB-01**, if required.

Explanation 1.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression "Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

(b) where the goods are being transported by a non-motorised conveyance;

(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017-Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;

(h) where the goods are being transported—

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(i) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;

(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) where empty cargo containers are being transported; and

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition

that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

Explanation. - The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

ANNEXURE
[(See rule 138 (14)]

S. No.	Description of Goods
(1)	(2)
1.	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)";

(iii) for rule 138A, the following rule shall be substituted, namely:-

"138A. Documents and devices to be carried by a person-in-charge of a conveyance.-(1) The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) 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 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.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued

by him in **FORM GST INV-1** and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in **Part A of FORM GST EWB-01** shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1**.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.";

(iv) for rule 138B, the following rule shall be substituted, namely:-

"138B. Verification of documents and conveyances.- (1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the eway bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.";

(v) for rule 138C, the following rule shall be substituted, namely:-

"138C. Inspection and verification of goods.- (1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in **Part A** of **FORM GST EWB-03** within twenty four hours of inspection and the final report in **Part B** of **FORM GST EWB-03** shall be recorded within three days of such inspection.

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.";

(vi) for rule 138D, the following rule shall be substituted, namely:-

"138D. Facility for uploading information regarding detention of vehicle.-Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in **FORM GST EWB-04** on the common portal.";

(vii) for **FORM GST EWB-01, FORM GST EWB-02, FORM GST EWB-03**, **FORM GST EWB-04** and **FORM GST INV-1**, the following forms shall be substituted, namely:-

"FORM GST EWB-01
(See rule 138)
E-Way Bill

E-Way Bill No. :

E-Way Bill date :

Generator :

Valid from :

Valid until :

PART-A		
A.1	GSTIN of Supplier	
A.2	Place of Dispatch	
A.3	GSTIN of Recipient	
A.4	Place of Delivery	

A.5	Document Number	
A.6	Document Date	
A.7	Value of Goods	
A.8	HSN Code	
A.9	Reason for Transportation	
PART-B		
B.1	Vehicle Number for Road	
B.2	Transport Document Number/Defence Vehicle No./ Temporary Vehicle Registration No./Nepal or Bhutan Vehicle Registration No.	

Notes:

1. HSN Code in column A.8 shall be indicated at minimum two digit level for taxpayers having annual turnover upto five crore rupees in the preceding financial year and at four digit level for taxpayers having annual turnover above five crore rupees in the preceding financial year.
2. Document Number may be of Tax Invoice, Bill of Supply, Delivery Challan or Bill of Entry.
3. Transport Document number indicates Goods Receipt Number or Railway Receipt Number or Forwarding Note number or Parcel way bill number issued by railways or Airway Bill Number or Bill of Lading Number.
4. Place of Delivery shall indicate the PIN Code of place of delivery.
5. Place of dispatch shall indicate the PIN Code of place of dispatch.
6. Where the supplier or the recipient is not registered, then the letters “URP” are to be filled-in in column A.1 or, as the case may be, A.3.
7. Reason for Transportation shall be chosen from one of the following:-

Code	Description
1	Supply
2	Export or Import
3	Job Work
4	SKD or CKD
5	Recipient not known

6	Line Sales
7	Sales Return
8	Exhibition or fairs
9	For own use
10	Others

FORM GST EWB-02

(See rule 138)

Consolidated E-Way Bill

Consolidated E-Way Bill No. :

Consolidated E-Way Bill Date :

Generator :

Vehicle Number :

Number of E-Way Bills		
E-Way Bill Number		

FORM GST EWB-03

(See rule138C)

Verification Report

Part A	
Name of the Officer	
Place of inspection	
Time of inspection	
Vehicle Number	
E-Way Bill Number	
Tax Invoice or Bill of Supply or Delivery	
Challan or Bill of Entry date	
Tax Invoice or Bill of Supply or Delivery	

Challan or Bill of Entry Number	
Name of person in-charge of vehicle	
Description of goods	
Declared quantity of goods	
Declared value of goods	
Brief description of the discrepancy	
Whether goods were detained?	
If not, date and time of release of vehicle	
Part B	
Actual quantity of goods	
Actual value of the Goods	
Tax payable	
Integrated tax	
Central tax	
State or Union territory tax	
Cess	
Penalty payable	
Integrated tax	
Central tax	
State or Union territory tax	
Cess	
Details of Notice	
Date	
Number	
Summary of findings	

FORM GST EWB-04

(See rule138D)

Report of detention

E-Way Bill Number	
Approximate Location of detention	
Period of detention	
Name of Officer in-charge	(if known)
Date	
Time	

FORM GST INV – 1

(See rule 138A)

Generation of Invoice Reference Number

IRN:		Date:	
Details of Supplier			
GSTIN			
Legal Name			
Trade name, if any			
Address			
Serial No. of Invoice			
Date of Invoice			
	Details of Recipient (Billed to)		Details of Consignee (Shipped to)
GSTIN or UIN, if available			
Name			
Address			
State (name and code)			
Type of supply –			
	B to B supply		
	B to C supply		
	Attracts Reverse Charge		
	Attracts TCS	GSTIN of operator	
	Attracts TDS	GSTIN of TDS Authority	
	Export		
	Supplies made to SEZ		
	Deemed export		

Sl. No	Descri-ption of Goods	HSN	Qty.	Unit	Price (per unit)	Total value	Disc-ount, if any	Tax-able value	Central tax		State or Union territory tax		Integrated tax		Cess	
									Amt	Rate	Amt	Rate	Amt	Rate	Amt	Rate
	Freight															
	Insurance															

	Packing and Forwarding											
	Charges etc.											
Total												
Total Invoice Value (In figure)												
Total Invoice Value (In Words)												

Signature
Name of the Signatory
Designation or Status";

(viii) with effect from the date of publication of this notification in the Official Gazette, in FORM GST RFD-01, for the DECLARATION [second proviso to section 54(3)], the following shall be substituted, namely:-

"DECLARATION [second proviso to section 54(3)]

I hereby declare that the goods exported are not subject to any export duty. I also declare that I have not availed any drawback of central excise duty/service tax/central tax on goods or services or both and that I have not claimed refund of the integrated tax paid on supplies in respect of which refund is claimed.

Signature

Name –

Designation / Status";

(ix) with effect from the date of publication of this notification in the Official Gazette, in FORM GST RFD-01A, for the DECLARATION [second proviso to section 54(3)], the following shall be substituted, namely:-

"DECLARATION [second proviso to section 54(3)]

I hereby declare that the goods exported are not subject to any export duty. I also declare that I have not availed any drawback of central excise duty/service tax/central tax on goods or services or both and that I have not claimed refund of the integrated tax paid on supplies in respect of which refund is claimed.

Signature

Name –

Designation / Status".

[F. No. 349/58/2017-GST]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Rescinding notification No. 062018 - CT dated 23.01.2018

Notification No. 13/2018 – Central Tax

New Delhi, the 7th March, 2018

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 rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 6/2018 - Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 55(E), dated the 23rd January, 2018, except as respects things done or omitted to be done before such rescission.

[F. No. 349/58/2017-GST]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Amending the CGST Rules, 2017(Third Amendment Rules, 2018)

Notification No. 14/2018 – Central Tax

New Delhi, the 23rd March, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. (1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2018.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017,-

(i) in rule 45, in sub-rule (1), after the words, “where such goods are sent directly to a job worker”, occurring at the end, the following shall be inserted, namely:-

“, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.";

(ii) in rule 124 –

(a) in sub-rule (4), in the first proviso, after the words "Provided that", the letter "a" shall be inserted;

(b) in sub-rule (5), in the first proviso, after the words "Provided that", the letter "a" shall be inserted;

(iii) for rule 125, the following rule shall be substituted, namely:-

"125. Secretary to the Authority.- An officer not below the rank of Additional Commissioner (working in the Directorate General of Safeguards) shall be the Secretary to the Authority.";

(iv) in rule 127, in clause (iv), after the words "to furnish a performance report to the Council by the tenth", the word "day" shall be inserted;

(v) in rule 129, in sub-rule (6), for the words "as allowed by the Standing Committee", the words "as may be allowed by the Authority" shall be substituted;

(vi) in rule 133, after sub-rule (3), the following sub-rule may be inserted, namely:-

"(4) If the report of the Director General of Safeguards referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Safeguards to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.";

(vii) for rule 134, the following rule shall be substituted, namely:-

"134. Decision to be taken by the majority.- (1) A minimum of three members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.";

(viii) after rule 137, in the Explanation, in clause (c), after sub-clause b, the following subclause shall be inserted, namely: -

"c. any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.";

(ix), after rule 138D, the following Explanation shall be inserted, with effect from the 1st of April, 2018, namely:-

"*Explanation*. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place.".

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Notifies the date from which E-Way Bill Rules shall come into force

Notification No. 15/2018 – Central Tax

New Delhi, the 23rd March 2018

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 hereby appoints the 1st day of April, 2018, as the date from which the provisions of sub-rules (ii) [other than clause (7)], (iii), (iv), (v), (vi) and (vii) of rule 2 of notification No. 12/2018 – Central Tax, dated the 7th March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 204 (E), dated the 7th March, 2018, shall come into force.

[F. No.349/58/2017-GST(Pt)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to prescribe the due dates for filing FORM GSTR-3B for the months of April to June, 2018

Notification No. 16 /2018 – Central Tax

New Delhi, the 23rd March, 2018

G.S.R……(E). - In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the Act) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby specifies that the return in FORM GSTR-3B for the month as specified in column (2) of the Table below shall be furnished electronically through the common portal, on or before the last date as specified in the corresponding entry in column (3) of the said Table, namely:-

Sl. No	Month	Last date for filing of return in FORM GSTR-3B
(1)	(2)	(3)
1.	April, 2018	20th May, 2018
2.	May, 2018	20th June, 2018
3.	June, 2018	20th July, 2018

2. Payment of taxes for discharge of tax liability as per FORM GSTR-3B: Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as mentioned in column (3) of the said Table, on which he is required to furnish the said return.

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to prescribe the due date for quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of upto Rs.1.5 crore

Notification No. 17/2018 – Central Tax

New Delhi, the 28th March, 2018

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) (hereafter

in this notification referred to as the Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said persons shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 effected during the quarter April to June, 2018 till the 31st day of July, 2018.

3. The special procedure or extension of the time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the Act, for the months of April to June, 2018 shall be, subsequently, notified in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to prescribe the due dates for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs. 1.5 crores

Notification No.18 /2018 – Central Tax

New Delhi, the 28th March, 2018

G.S.R……(E). - In exercise of the powers conferred by the second proviso to subsection (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the Act), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 under sub-section (1) of section 37 of the Act for the months as specified in column (2) of the Table, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, till the time period as specified in the corresponding entry in column (3) of the said Table, namely:

Sl. No	Month	Last date for filing of return in FORM GSTR-1
(1)	(2)	(3)
1.	April, 2018	31st May, 2018
2.	May, 2018	10th June, 2018
3.	June, 2018	10th July, 2018

2. The extension of the time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the Act, for the months of April to June, 2018 shall be, subsequently, notified in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Extension of date for filing the return in FORM GSTR-6

Notification No. 19/2018 – Central Tax

New Delhi, the 28th March, 2018

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) (hereinafter referred to as the said Act) and in supersession of notification No. 08/2018-Central Tax, dated the 23rd January, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 57 (E), dated the 23rd January, 2018, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2017 to April, 2018, till the 31st day of May, 2018.

[F. No.349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Extension of due date for filing of application for refund under section 55 by notified agencies

Notification No. 20/2018 – Central Tax

New Delhi, the 28th March, 2018

G.S.R....(E).- Whereas, as per section 55 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government may, on the recommendations of the

Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf (hereafter in this notification referred to as the specified persons), who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them;

Whereas, the Central Government has laid down the conditions and restrictions for claiming of refund of taxes under section 55 of the said Act vide the Central Goods and Services Tax Rules, 2017, 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 last amended vide notification No. 14/2018-Central Tax, dated the 23rd March, 2018, published vide number G.S.R 266 (E), dated the 23rd March, 2018;

Whereas, as per sub-section (2) of section 54 of the said Act, the specified persons, as notified under section 55 of the said Act, are entitled to a refund of tax paid by them on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received;

Whereas, the facility for filing the claim of refunds under section 55 of the said Act has been made available on the common portal recently;

Now, therefore, in exercise of the powers conferred by section 148 of the said Act, the Central Government, on the recommendations of the Council, hereby notifies the specified persons as the class of persons who shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified, before the expiry of eighteen months from the last date of the quarter in which such supply was received.

[F. No.349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Notification seeks to make amendments (Fourth Amendment) to the CGST Rules, 2017

Notification No. 21/2018 – Central Tax

New Delhi, the 18th April, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Fourth Amendment) Rules, 2018.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 89, for sub-rule (5), the following shall be substituted, namely:-

"(5). In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).";

(ii) for rule 97, the following rule shall be substituted, namely:-

"97. Consumer Welfare Fund.-(1) All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in sub-section (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section

57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund:

Provided that an amount equivalent to fifty per cent. of the amount of integrated tax determined under sub-section (5) of section 54 of the Central Goods and Services Tax Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund.

(2) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

(3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(4) The Government shall, by an order, constitute a Standing Committee (hereinafter referred to as the 'Committee') with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.

(5) (a) The Committee shall meet as and when necessary, generally four times in a year;

(b) the Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;

(c) the meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;

(d) the meeting of the Committee shall be called, after giving at least ten days' notice in writing to every member;

(e) the notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

(f) no proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

(6) The Committee shall have powers -

(a) to require any applicant to get registered with any authority as the Central Government may specify;

(b) to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

(c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;

(d) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;

(e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;

(f) to recover any sum due from any applicant in accordance with the provisions of the Act;

(g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

(h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;

(i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

(j) to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;

(k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;

(l) to make guidelines for the management, and administration of the Fund.

(7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

(8) The Committee shall make recommendations:-

(a) for making available grants to any applicant;

(b) for investment of the money available in the Fund;

(c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;

(d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee);

(e) for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty five crore rupees per annum.

Explanation.- For the purposes of this rule,

(a) 'Act' means the Central Goods and Services Tax Act, 2017 (12 of 2017), or the Central Excise Act, 1944 (1 of 1944) as the case may be;

(b) 'applicant' means,

(i) the Central Government or State Government;

(ii) regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;

(iii) any agency or organization engaged in consumer welfare activities for a minimum period of three years, registered under the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force;

(iv) village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;

(v) an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) and which has consumers studies as part of its curriculum for a minimum period of three years; and

(vi) a complainant as defined under clause (b) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency.

(c) 'application' means an application in the form as specified by the Standing Committee from time to time;

(d) 'Central Consumer Protection Council' means the Central Consumer Protection Council, established under sub-section (1) of section 4 of the Consumer Protection Act, 1986 (68 of 1986), for promotion and protection of rights of consumers;

(e) 'Committee' means the Committee constituted under sub-rule (4);

(f) 'consumer' has the same meaning as assigned to it in clause (d) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), and includes consumer of goods on which central tax has been paid;

(g) ‘duty’ means the duty paid under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962);

(h) ‘Fund’ means the Consumer Welfare Fund established by the Central Government under sub-section (1) of section 12C of the Central Excise Act, 1944 (1 of 1944) and section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017);

(i) 'proper officer' means the officer having the power under the Act to make an order that the whole or any part of the central tax is refundable;

(iii) in FORM GST ITC-03, after entry 5 (e), for the instruction against “**”, the following shall be substituted, namely:-

"** The value of capital goods shall be the invoice value reduced by 1/60th per month or part thereof from the date of invoice";

(iv) after FORM GSTR-8, the following FORM shall be inserted, namely:-

"FORM **GSTR-10**

(See rule 81)

Final Return

1.	GSTIN	
2.	Legal name	
3.	Trade Name, if any	
4.	Address for future correspondence	
5.	Effective date of cancellation of registration (Date of closure of business or the date from which registration is to be cancelled)	
6.	Reference number of cancellation order	
7.	Date of cancellation order	

8. Details of inputs held in stock, inputs contained in semi-finished or finished goods held in stock, and capital goods/plant and machinery on which input tax credit is required to be reversed and paid back to Government

Sr. No.	GSTIN	Invoice/Bill of Entry		Description of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods /plant and machinery	Unit Quantity Code (UQC)	Qty	Value (As adjusted by debit / credit note)	Input tax credit/ Tax payable (whichever is higher) (Rs.)			
		No.	Date					Central tax	State/ Union territory tax	Integrated tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12
8 (a) Inputs held in stock (where invoice is available)											
8 (b) Inputs contained in semi-finished or finished goods held in stock (where invoice is available)											
8 (c) Capital goods/plant and machinery held in stock											
8 (d) Inputs held in stock or inputs as contained in semi-finished /finished goods held in stock (where invoice is not available)											

9. Amount of tax payable and paid (based on Table 8)

Sr. No.	Description	ITC reversible/Tax payable	Tax paid along with application for cancellation of registration (GST REG-16)	Balance tax payable (3-4)	Amount paid through debit to electronic cash ledger	Amount paid through debit to electronic credit ledger			
						Central Tax	State/ Union territory Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9	10
1.	Central Tax								
2.	State/ Union territory Tax								
3.	Integrated Tax								
4.	Cess								

10. Interest, late fee payable and paid

Description	Amount payable	Amount Paid
1	2	3
(I) Interest on account of		
(a) Integrated Tax		
(b) Central Tax		
(c) State/Union territory Tax		
(d) Cess		
(II) Late fee		
(a) Central Tax		
(b) State/Union territory tax		

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 authorized signatory _____

Name _____

Designation/Status _____

Date - dd/mm/yyyy

Instructions:

1. This form is not required to be filed by taxpayers or persons who are registered as :-

(i) Input Service Distributors;

(ii) Persons paying tax under section 10;

(iii) Non-resident taxable person;

(iv) Persons required to deduct tax at source under section 51; and

(v) Persons required to collect tax at source under section 52.

2. Details of stock of inputs, inputs contained in semi-finished or finished goods and stock of capital goods/plant and machinery on which input tax credit has been availed.

3. Following points need to be taken care of while providing details of stock at Sl. No.8:

(i) where the tax invoices related to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock are not available, the registered person shall estimate the amount under sub-rule (3) of rule 44 based on prevailing market price of the goods;

(ii) in case of capital goods/ plant and machinery, the value should be the invoice value reduced by 1/60th per month or part thereof from the date of invoice/purchase taking useful life as five years.

4. The details furnished in accordance with sub-rule (3) of rule 44 in the Table at Sl. No. 8 (against entry 8 (d)) shall be duly certified by a practicing chartered accountant or cost accountant. Copy of the certificate shall be uploaded while filing the details.";

(v) for **FORM GST DRC-07**, the following shall be substituted, namely:-

"FORM **GST DRC-07**

[See rule 142(5)]

Summary of the order

1. Details of order –

(a) Order No. (b) Order date (c) Tax period -

2. Issues involved –<< drop down>> classification, valuation, rate of tax, suppression of turnover, excess ITC claimed, excess refund released, place of supply, others (specify)

3. Description of goods / services -

Sr. No.	HSN	Description

4. Details demand

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Place of supply	Act	Tax/ Cess	Interest	Penalty	Others
1	2	of 3	4	5	6	7	8	9

Signature

Name

Designation".

[F. No.349/58/2017-GST (Pt.)]

(Mohit Tewari)

Under Secretary to the Government of India

Seeks to waive the late fee for FORM GSTR-3B

Notification No. 22 /2018 – Central Tax

New Delhi, the 14th May, 2018

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 waives the late fee payable under section 47 of the said Act for failure to furnish the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018, for the class of registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on the common portal on or before the 27th day of December, 2017:

Provided that such registered persons have filed the declaration in FORM GST TRAN-1 on or before the 10th day of May, 2018 and the return in FORM GSTR-3B for each of such months, on or before the 31st day of May, 2018.

[F. No. 349/58/2017- GST (Pt.)]

(Dr. Sreeparvathy S.L.)

Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR-3B for the month of April, 2018

Notification No. 23/2018 – Central Tax

New Delhi, the 18th May, 2018

G.S.R. …..(E).— In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 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 in the Ministry of Finance (Department of Revenue), No. 16/2018-Central Tax, dated the 23rd March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 268(E), dated the 23rd March, 2018, namely:- In the said notification, in the Table, against serial number 1, in column (3), for the figures, letters and word "20th May, 2018", the figures, letters and word "22nd May, 2018" shall be substituted.

[F. No.349/58/2017-GST(Pt.II)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to notify NACIN as the Authority for conducting the examination for GST Practitioners under rule 83 (3) of the CGST Rules, 2017

Notification No. 24 /2018 – Central Tax

New Delhi, the 28th May, 2018

G.S.R. … (E).- In exercise of the powers conferred by section 48 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (3) of rule 83 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby notifies the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, as the authority to conduct the examination as per the said sub-rule.

[F. No.349/58/2017-GST(Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR-6 for the months from July, 2017 till June, 2018

Notification No. 25/2018 – Central Tax

New Delhi, the 31st May, 2018

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) (hereinafter referred to as the said Act) and in supersession of notification No. 19/2018-Central Tax, dated the 28th March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 308 (E), dated the 28th March, 2018, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2017 to June, 2018, till the 31st day of July, 2018.

[F. No.349/58/2017-GST(Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports – Reg.

Circular No. 40/14/2018-GST

New Delhi, April 6, 2018

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports – Reg.

Various communications have been received from the field formations and exporters that the LUTs being submitted online in **FORM GST RFD-11** on the common portal are not visible to the jurisdictional officers of Central Board of Indirect Taxes and Customs and of a few States. Therefore, a

need was felt for a clarification regarding the acceptance of LUTs being submitted online in **FORM GST RFD-11**.

2. Accordingly, in partial modification of Circular No. 8/8/2017-GST dated 4th October, 2017, sub-paras (c), (d) and (e) of para 2 of the said Circular are hereby replaced by the following:

"c) **Form for LUT:** The registered person (exporters) shall fill and submit **FORM GST RFD-11** on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

d) **Documents for LUT:** No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

e) **Acceptance of LUT/bond:** An LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio."

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)

Clarifying the procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit

Circular No. 42/16/2018-GST

New Delhi, Dated the 13th April, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Directors General/ Directors General (All)

Sub: Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-reg.

Madam/ Sir,

Kind attention is invited to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) relating to the recovery of arrears of central excise duty /service tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

2. The issues have been examined and 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 specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

3. Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law (Central Excise Act, 1944 and Chapter V of the Finance Act, 1994)

i) Recovery of arrears of wrongly availed CENVAT Credit:

In case where any proceeding of appeal, review or reference relating to a claim for CENVAT credit had been initiated, whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(6)(b) of the CGST Act refers].

ii) Recovery of CENVAT Credit carried forward wrongly:

CENVAT credit of central excise duty/service tax availed under the existing law may be carried forward in terms of transitional provisions as per section 140 of the CGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of section 140 of the CGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under section 79 of the CGST Act.

iii) Recovery of arrears of central excise duty and service tax:

a. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed

day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(8)(a)of the CGST Act refers].

b. If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under the CGST Act [Section 142(7)(a)of the CGST Act refers].

iv) Recovery of arrears due to revision of return under the existing law: Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [Section 142(9)(a)of the CGST Act refers].

4. In view of the above legal provisions, recovery of central excise duty/ service tax and CENVAT credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit,is required to be made as an arrear of tax under the CGST Act.The following procedure is hereby prescribed for the recovery of arrears:

4.1 Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:

(a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic

credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

4.2 Recovery of interest, penalty and late fee payable:

(a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

(b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

4.3 Payment of central excise duty & service tax on account of returns filed for the past period:

The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto www.aces.gov.in and make payment relating to the same through EASIEST portal (cbec-easiest.gov.in), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on www.aces.gov.in but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

4.4 Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the CGST Act, 2017:

Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

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.

(Upender Gupta)
Commissioner (GST)

Clarifying the issues arising in refund to UIN

Circular No. 43/17/2018-GST

New Delhi, Dated the 13th April, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Queries regarding processing of refund applications for UIN agencies

The Board vide Circular No. 36/10/2017 dated 13th March, 2018 clarified and specified the detailed procedure for UIN refunds. After issuance of the Circular, a number of queries and representations have been received regarding the processing of refund to agencies which have been allotted UINs. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred under section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") hereby clarifies the following issues:

2. Providing statement of invoices while submitting the refund application:

2.1. The procedure for filing a refund application has been outlined under rule 95 of the Central Goods and Services Tax Rules,2017 (hereinafter referred to as 'the CGST Rules') which provides for filing of refund on a quarterly basis in FORM RFD-10 along with a statement of inward invoices in FORM GSTR-11. It has come

to the notice of the Board that the print version of FORM GSTR-11 generated by the system does not have invoice-wise details. Therefore, it is clarified that till the system generated FORM GSTR-11 does not have invoice-level details, UIN agencies are requested to manually furnish a statement containing the details of all the invoices on which refund has been claimed, along with refund application.

2.2. Further, the officers are advised not to request for original or hard copy of the invoices unless necessary.

3. No mention of UINs on Invoices:

3.1. It has been represented that many suppliers did not record the UINs on the invoices of supplies of goods or services to UIN agencies. It is hereby clarified that the recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017. If suppliers / vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

3.2. Further, in cases where, UIN has not been recorded on the invoices pertaining to refund claim for the quarters of July – September 2017, October – December 2017 and January – March 2018, a one-time waiver is being given by the Government, subject to the condition that copies of such invoices will be submitted to the jurisdictional officers and will be attested by the authorized representative of the UIN agency. Field officers are advised that the terms of Notification No. 16/2017-Central Tax (Rate) dated 28th June 2017 and corresponding notifications under the Integrated Goods and Services Tax Act, 2017, Union Territory Goods and Services Tax Act, 2017 and respective State Goods and Services Tax Acts should be satisfied while processing such refund claims.

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 the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)

Issue related to taxability of 'tenancy rights' under GST

Circular No.44/18/2018-CGST

New Delhi, the 2nd May, 2018

To,

The Principal Chief Commissioner/Chief Commissioners /
Principal Commissioner/Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Issue related to taxability of 'tenancy rights' under GST-regarding Doubts have been raised as to,-

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

2. The issue has been examined. The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

3. As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes the activities specified in Schedule II. The activity of transfer

of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services

4. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt[Sl. No. 12 of notification No. 12/2017-Central Tax (Rate)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

Harsh Singh
Technical Officer (TRU)

Seeks to Amend Notification No. 04/2017- Central Tax (Rate) Dated 28.06.2017 so as to Notify Levy of Priority Sector Lending Certificate (PSLC)

Notification No. 11/2018-Central Tax (Rate)

New Delhi, the May 28th 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (3) of section 9 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.4/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 676 (E), dated the 28th June, 2017, namely:-

In the said notification, after S. No. 6 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

S. No.	Tariff item, sub-heading, heading or Chapter	Description of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

[F. No. 354/124/2018- TRU]
(Pramod Kumar)
Deputy Secretary to Government of India

Seeks to Exempt Payment of Tax under section 9(4) of the CGST Act, 2017 till 30.09.2018

Notification No. 12/2018 – Central Tax (Rate)

New Delhi, the 29th June, 2018

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, 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. 8/2017 – Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.

680 (E), dated the 28th June, 2017, and last amended vide notification No. 10/2018-Central Tax (Rate), dated the 23rd March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 269 (E), dated the 23rd March, 2018, namely:-

In the said notification, for the figures, letters and words "30th day of June, 2018", the figures, letters and words "30th day of September, 2018" shall be substituted.

[F. No.349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L)
Under Secretary to the Government of India

Seeks to Make Amendments (Fifth Amendment, 2018) to the CGST Rules, 2017

Notification No. 26/2018 – Central Tax

New Delhi, the 13th June, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Fifth Amendment) Rules, 2018.

(2) Save as otherwise provided, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 37, in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.";

(ii) in rule 83, in sub-rule (3), in the second proviso, for the words "one year", the words "eighteen months" shall be substituted;

(iii) with effect from 01st July, 2017, in rule 89, for sub-rule (5), the following shall be substituted, namely:-

"(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

(iv) with effect from 01st July, 2017, in rule 95, in sub-rule (3), for clause (a), the following shall be substituted, namely:-

"(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice;";

(v) in rule 97, in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that an amount equivalent to fifty per cent. of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund.";

(vi) in rule 133, for sub-rule (3), the following shall be substituted, namely:-

"(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause in the Fund constituted under

section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, "concerned State" means the State in respect of which the Authority passes an order.";

(vii) in rule 138, in sub-rule (14), after clause (n), the following clause shall be inserted, namely:-

"(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.";

(viii) in FORM GSTR-4, in the Instructions, for Sl. No. 10, the following shall be substituted, namely:-

"10. For the tax periods July, 2017 to September, 2017, October, 2017 to December, 2017, January, 2018 to March, 2018 and April, 2018 to June, 2018, serial 4A of Table 4 shall not be furnished.";

(ix) with effect from 01st July, 2017, in FORM GST PCT-01, in PART B,

(a) against Sl. No. 4, after entry (10), the following shall be inserted, namely:-

"(11) Sales Tax practitioner under existing law for a period of not less than five years

(12) tax return preparer under existing law for a period of not less than five years";

(b) after the "Consent", the following shall be inserted, namely:-

"Declaration

I hereby declare that:

(i) I am a citizen of India;

(ii) I am a person of sound mind;

(iii) I have not been adjudicated as an insolvent; and

(iv) I have not been convicted by a competent court.";

(x) in FORM GST RFD-01, in Annexure-1,

(a) for Statement 1A, the following Statement shall be substituted, namely:-

"Statement 1A
[see rule 89(2)(h)]
Refund Type: ITC accumulated due to inverted tax structure
[clause (ii) of first proviso to section 54(3)]

S. No.	Details of invoices of inward supplies received				Tax paid on inward supplies			Details of invoices of outward supplies issued			Tax paid on outward supplies		
	GSTIN of the supplier	No.	Date	Taxable Value	Inte-grated Tax	Central Tax	State Tax / Union territory Tax	No.	Date	Taxable Value	Inte-grated Tax	Central Tax	State Tax / Union territory Tax
1	2	3	4	5	6	7	8	9	10	11	12	13	14

(b) for Statement 5B, the following Statement shall be substituted, namely:-

"**Statement 5B**
[see rule 89(2)(g)]
Refund Type: On account of deemed exports

(Amount in Rs)

Sl. No.	Details of invoices of outward supplies in case refund is claimed by supplier/ Details of invoices of inward supplies in case refund is claimed by recipient				Tax paid			
	GSTIN of the supplier	No.	Date	Taxable Value	Integrated Tax	Central Tax	State Tax /Union Territory Tax	Cess
1	2	3	4	5	6	7	8	9

(xi) in FORM GST RFD-01A, in Annexure-1,

(a) for Statement 1A, the following Statement shall be substituted, namely:-

"Statement 1A
[see rule 89(2)(h)]

Refund Type: ITC accumulated due to inverted tax structure [clause (ii) of first proviso to section 54(3)]

S. No.	Details of invoices of inward supplies received				Tax paid on inward supplies			Details of invoices of outward supplies issued			Tax paid on outward supplies		
	GSTIN of the supplier	No.	Date	Taxable Value	Inte-grated Tax	Central Tax	State Tax / Union territory Tax	No.	Date	Taxable Value	Inte-grated Tax	Central Tax	State Tax / Union territory Tax
1	2	3	4	5	6	7	8	9	10	11	12	13	14

(b) for Statement 5B, the following Statement shall be substituted, namely:-

"Statement 5B

[see rule 89(2)(g)]

Refund Type: On account of deemed exports

(Amount in Rs)

Sl. No.	Details of invoices of outward supplies in case refund is claimed by supplier/ Details of invoices of inward supplies in case refund is claimed by recipient				Tax paid			
	GSTIN of the supplier	No.	Date	Taxable Value	Integrated Tax	Central Tax	State Tax /Union Territory Tax	Cess
1	2	3	4	5	6	7	8	9
								."

[F. No. 349/58/2017 – GST (Pt.)]

(Dr. Sreeparvathy S.L.)

Under Secretary to the Government of India

Seeks to Specify Goods Which May Be Disposed Off by the Proper Officer After its Seizure

Notification No.27/2018 – Central Tax

New Delhi, the 13th June, 2018

G.S.R.….(E).- In exercise of the powers conferred by sub-section (8) of section 67 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government hereby notifies the goods or the class of goods (hereinafter referred to as the said goods) mentioned in the Schedule below, which shall, as soon as may be after its seizure under sub-section (2) of section 67 of the said Act, be disposed of by the proper officer, having regard to the perishable

or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.

Schedule

(1) Salt and hygroscopic substances

(2) Raw (wet and salted) hides and skins

(3) Newspapers and periodicals

(4) Menthol, Camphor, Saffron

(5) Re-fills for ball-point pens

(6) Lighter fuel, including lighters with gas, not having arrangement for refilling

(7) Cells, batteries and rechargeable batteries

(8) Petroleum Products

(9) Dangerous drugs and psychotropic substances

(10) Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

(11) Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

(12) Fireworks

(13) Red Sander

(14) Sandalwood

(15) All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

(16) All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.

(17) Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

[F. No. 349/58/2017 – GST (Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Notification issued for Amending the CGST Rules, 2017

Notification No. 28/2018 – Central Tax

New Delhi, the 19th June, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2018.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 58, after sub-rule (1), the following sub-rule shall be inserted, namely:-

"(1A) For the purposes of Chapter XVI of these rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:

Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.";

(ii) in rule 138C, after sub-rule (1), the following proviso shall be inserted, namely:-

"Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

Explanation.- The period of twenty four hours or, as the case may be, three days shall be counted from the midnight

of the date on which the vehicle was intercepted.";

(iii) in rule 142, in sub-rule (5), after the words and figures "of section 76", the words and figures "or section 129 or section 130" shall be inserted;

(iv) after FORM GST ENR-01, the following FORM shall be inserted, namely:-

"FORM GST ENR-02

[See Rule 58(1A)]

Application for obtaining unique common enrolment number

[Only for transporters registered in more than one State or Union Territory having the same PAN]

1.	(a) Legal name	
	(b) PAN	

2. Details of registrations having the same PAN

Sl. No	GSTIN	Trade Name	State/UT

3. Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature

Place: Name of Authorised Signatory

…..……

Date: Designation/Status……

For office use

Enrolment no. - Date - ."

[F. No.349/58/2017-GST (Pt.)]

(Dr. Sreeparvathy S.L)

Under Secretary to the Government of India

Clarification on Refund Related Issues

Circular No. 45/19/2018-GST

New Delhi, Dated the 30th May, 2018

To,

The Principal Chief Commissioners/
Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All) The Principal Directors General/
Directors General (All)

Madam / Sir,

Subject: Clarifications on refund related issues – reg.

The Board vide Circular No. 17/17/2017 – GST dated 15th November 2017, No. 24/24/2017 – GST dated 21st December 2017 and No. 37/11/2018 – GST dated 15th March, 2018 has laid down the procedure for manual filing and processing of different types of refund claims under GST and clarified the exports related refund issues.

2. Representations have been received seeking clarification on certain refund related issues. In order to clarify these issues and with a view to ensure uniformity in the implementation of the provisions of the 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 (CGST Act for short) hereby clarifies the issues raised as below:

3. Claim for refund filed by an Input Service Distributor, a person paying tax under section 10 or a non-resident taxable person:

3.1 Doubts have been raised in case of claims for refund filed by an Input Service Distributor (ISD for short), a person paying tax under section 10 of the CGST Act (composition taxpayer for short) or a non-resident taxable person in light of para 2.0 of Circular No. 24/24/2017-GST dated 21.12.2017 which mandates that the refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period and that it is also to be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.

3.2 In this regard, attention is invited to sub-section (1) of section 37 of the CGST Act read with rule 59 of the Central Goods and Services

Tax Rules, 2017 (CGST Rules for short) which mandates that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish the details of outward supplies of goods or services or both effected during a tax period in FORM GSTR-1. Further, as per sub-section (2) of section 39 of the CGST Act read with rule 62 of the CGST Rules, a composition taxpayer is required to furnish the return in FORM GSTR-4; as per sub-section (4) of section 39 of the CGST Act read with rule 65 of the CGST Rules, an ISD is required to furnish the return in FORM GSTR-6 and as per sub-section (5) of section 39 of the CGST Act read with rule 63 of the CGST Rules, a non-resident taxable person is required to furnish the return in FORM GSTR-5.

3.3 Thus, it is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in FORM GSTR-1 and the return in FORM GSTR-3B is not mandatory. Instead, the return in FORM GSTR-4 filed by a composition taxpayer, the details in FORM GSTR-6 filed by an ISD and the return in FORM GSTR-5 filed by a non-resident taxable person shall be sufficient for claiming the said refund.

4. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:

4.1 It has been represented that while filing the return in FORM GSTR-3B for a given tax period, certain registered persons committed errors in declaring the export of services on payment of integrated tax or zero rated supplies made to a Special Economic Zone developer or a Special Economic Zone unit on payment of integrated tax. They have shown such supplies in the Table under column 3.1(a) instead of showing them in column 3.1(b) of FORM GSTR-3B whilst they have shown the correct details in Table 6A or 6B of FORM GSTR-1 for the relevant tax period and duly discharged their tax liabilities. Such registered persons are unable to file the refund application in FORM GST RFD-01A for refund of integrated tax paid on the export of services or on supplies made to a SEZ developer or a SEZ unit on the GST common portal because of an in-built validation check in the system which restricts the refund amount claimed (integrated tax/cess) to the

amount of integrated tax/cess mentioned under column 3.1(b) of FORM GSTR-3B (zero rated supplies) filed for the corresponding tax period.

4.2 In this regard, it is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

5. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:

5.1 Doubts have been raised whether an exporter is eligible to claim refund of unutilized input tax credit of compensation cess paid on inputs, where the final product is not leviable to compensation cess. For instance, cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products.

5.2 In this regard, section 16(2) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) states that, subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero rated supplies. Further, as per section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, (hereafter referred to as the Cess Act), all goods and services specified in the Schedule to the Cess Act are leviable to cess under the Cess Act; and vide section 11 (2) of the Cess Act, section 16 of the IGST Act is mutatis mutandis made applicable to inter-State supplies of all such goods and services. Thus, it implies that all supplies of such goods and services are zero rated under the Cess Act. Moreover, as section 17(5) of the CGST Act does not restrict the availment of input tax credit of compensation cess on coal, it is clarified that a registered person making zero rated supply of aluminum products under bond or LUT may claim refund of unutilized credit including that of compensation cess paid on coal.

5.3 Such registered persons may also make zero-rated supply of aluminum products on payment of integrated tax but they cannot

utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

6. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

6.1 As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per section 2 (47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

6.2 However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

6.3 Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

7. What is the scope of the restriction imposed by rule 96(10) of the CGST Rules, regarding non-availment of the benefit of notification Nos. 48/2017-Central Tax dated the 18.10.2017, 40/2017-Central Tax (Rate) dated 23.10.2017, 41/2017-Integrated Tax (Rate) dated 23.10.2017, 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017?

7.1 Sub-rule (10) of rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting

goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

7.2 However, the said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax.

7.3 Thus, the restriction under sub-rule (10) of rule 96 of the CGST Rules is only applicable to those exporters who are directly receiving goods from those suppliers who are availing the benefit under notification No. 48/2017-Central Tax dated the 18th October, 2017, notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017, or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017.

7.4 Further, there might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

8. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

9. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)

Applicable GST Rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and Other Similar Scrips–Regarding

Circular No. 46/20/2018-GST

North Block, New Delhi
Dated the 6th June, 2018

To,

The Principal Chief Commissioner/ Principal Directors General/
Chief Commissioner/ Directors General/Principal Commissioner/
Commissioner of Central Excise and Central Tax (All) /
Director General of Systems

Madam / Sir,

Subject: Applicable GST rate on Priority Sector Lending Certificates (PSLCs), Renewable Energy Certificates (RECs) and other similar scrips -regarding

Representations have been received seeking clarification regarding the classification and applicable GST rate on the Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs).

2. Earlier, in response to a FAQ, it was clarified (vide advertisement dated 27.07.2017), that MEIS and other scrips like SEIS and IEIS are goods classified under heading 4907 and attract 12% GST, which is the general GST rate for goods falling under heading 4907. Subsequently, the duty credit scrips classifiable under 4907 were exempted from GST, while stock, share or bond certificates and similar documents of title [other than Duty Credit Scrips], classifiable under heading 4907, attract 12% GST.

3. Later on, Circular No. 34/8/2018- GST dated 01.03.2018 (S.No.3) was issued clarifying that PSLCs are taxable as goods at a standard rate of 18 % under the residual entry S. No. 453 of Schedule III of notification No. 01/2017-Central Tax (Rate).

4. As a result, there is lack of clarity on the applicable rate of GST on various scrips/ certificates like RECs, PSLCs etc.

5. The matter has been re-examined. GST rate of 18 % under the residual entry at S.No. 453 of Schedule III of notification No. 01/2017-Central Tax (Rate) applies only to those goods which are not covered under

any other entries of Schedule I, II, IV, V, or VI of the notification. In other words, if any goods are covered under any of the entries of Schedule I, II, IV, V, or VI, the GST rate applicable on them will be decided accordingly, without resorting to the residual entry 453 of Schedule III.

6. As such, various certificates like RECs, PSLCs etc are classified under heading 4907 and will accordingly attract GST @ 12 %, though duty paying scrips classifiable under the same heading will attract Nil GST{under S.No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017}.

7. Accordingly, in modification of S.No. 3 of Circular No. 34/8/2018-GST dated 01.03.2018, it is hereby clarified that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST. The duty credit scrips, however, attract Nil GST under S.No. 122A of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017.

8. If any difficulty is faced, the same should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,
(Dr. Ajay K. Chikara)
Technical Officer, Tax Research Unit

Clarifications of Certain Issues Under GST

Circular No. 47/21/2018-GST

New Delhi, Dated the 08th June, 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)/ The Principal Directors General/ Directors General (All)

Madam / Sir,

Subject: Clarifications of certain issues under GST– regarding

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1.	Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?	1.1 Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. 1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/ dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short). 1.3 However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

2.	How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?	2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. 2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.
3.	In case of auction of tea, coffee, rubber etc., whether the books of accounts are required to be maintained at every place of business by the principal and the auctioneer, and whether they are eligible to avail input tax credit?	3.1 The requirement of maintaining the books of accounts at the principal place of business and additional place(s) of business is clarified as below: (a) For the purpose of auction of tea, coffee, rubber, etc, the principal and the auctioneer may declare the warehouses, where such goods are stored, as their additional place of business. The buyer is also required to disclose such warehouse as his additional place of business if he wants to store the goods purchased through auction in such warehouses. For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions. (b) The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, are required to maintain the books of accounts relating to each and every place of business in that place itself in terms of the first proviso to sub-section (1) of section 35 of the CGST Act. However, in case difficulties are faced in maintaining the books of accounts, it is clarified that they may maintain the books of accounts relating to the additional place(s) of business at their principal place of business instead of such additional place(s).

		(c) The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall intimate their jurisdictional officer in writing about the maintenance of books of accounts relating to the additional place(s) of business at their principal place of business. 3.2 It is further clarified that the principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail input tax credit subject to the fulfilment of other provisions of the CGST Act read with the rules made thereunder.
4.	In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?	As per proviso to rule 138(2A) of the Central Goods and Services Tax Rules, 2017 (CGST Rules for short), the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery.
5.	Whether e-way bill is required in the following cases- (i) Where goods transit through another State while moving from one area in a State to another area in the same State. (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.	(i) It may be noted that e-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated. (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the CGST Rules.

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Upender Gupta)
Commissioner (GST)

Circulars Clarifying Miscellaneous Issues related to SEZ and Refund of Unutilized ITC for Job Workers

Circular No. 48/22/2018-GST

New Delhi, Dated the 14th June, 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All)/
The Principal Directors General/ Directors General (All)

Madam / Sir,

Subject: Clarifications of certain issues under GST– regarding

Representations have been received seeking clarification on certain issues under the GST laws. The same have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1.	Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?	1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply. 1.2 It is an established principle of interpretation of statutes that in case of an

		apparent conflict between two provisions, the specific provision shall prevail over the general provision. 1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. 1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
2.	Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?	2.1 As per section 16(1) of the IGST Act, "zero rated supplies" means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the: (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone; (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone. 2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero

		rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone. 2.3 Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.
3.	Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?	3.1 Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies of such goods. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics). 3.2 Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.

2. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

3. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Upender Gupta)
Commissioner (GST)

Seeks to Modify Circular No. 41/15/2018-GST

Circular No. 49/23/2018-GST

New Delhi, Dated the 21st June, 2018

To,

The Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners /Commissioners of Central Tax (All) /
The Principal Directors General / Directors General (All)

Madam / Sir,

Subject: Modifications to the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular No. 41/15/2018-GST dated 13.04.2018 –reg.

Circular No. 41/15/2018-GST dated 13.04.2018 was issued to clarify the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.

2. In order to clarify certain issues regarding the specified procedure in this regard and in order to ensure uniform implementation of the provisions of the CGST Act across all the field formations, the Board, in exercise of the powers conferred under section 168 (1) of the Central Goods and Services Tax Act, hereby issues the following modifications to the said Circular:-

(i) In para 2 (e) of the said Circular, the expression “three working days” may be replaced by the expression “three days”;

(ii) The statement after paragraph 3 in FORM GST MOV-05 should read as: “In view of the above, the goods and conveyance(s) are hereby released on (DD/MM/YYYY) at ____ AM/PM.”

3.0 Further, it is stated that as per rule 138C (2) of the Central Goods and Services Tax Rules, 2017, where the physical verification of goods being transported on any conveyance has been done during transit at one place within a State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently. Since the requisite FORMS are not available on the common portal currently, any action initiated by the State tax officers is not being intimated to the central tax officers and

vice-versa, doubts have been raised as to the procedure to be followed in such situations.

3.1 In this regard, it is clarified that the hard copies of the notices/ orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

3.2 Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

Illustration: Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/ confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

4. It is requested that suitable trade notices may be issued to publicise the contents of this Circular.

5. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Board at an early date. Hindi version will follow.

(Upender Gupta)
Commissioner (GST)

Seek to Make Amendments (Seventh Amendment, 2018)
to the CGST Rules, 2017

Notification No. 29/2018 – Central Tax

New Delhi, the 6th July, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Seventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 12th day of June, 2018.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 125, for the words “Directorate General of Safeguards”, the words “Directorate General of Anti-profiteering” shall be substituted;

(ii) in rule 129, for the words “Director General of Safeguards”, wherever they occur, the words “Director General of Anti-profiteering” shall be substituted;

(iii) in rule 130, in sub-rule (2), for the words “Director General of Safeguards”, at both places where they occur, the words “Director General of Anti-profiteering” shall be substituted;

(iv) in rule 131, for the words “Director General of Safeguards”, the words “Director General of Anti-profiteering” shall be substituted;

(v) in rule 132, in sub-rule (1), for the words “Director General of Safeguards”, the words “Director General of Anti-profiteering” shall be substituted;

(vi) in rule 133, for the words “Director General of Safeguards”, wherever they occur, the words “Director General of Anti-profiteering” shall be substituted.

[F. No.349/58/2017-GST (Pt.)]

(Mohit Tewari)
Under Secretary to the Government of India

Notification Issued to Extend the Due Date for Filing of FORM GSTR-6

Notification No. 30/2018 – Central Tax

New Delhi, the 30th July, 2018

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) (hereinafter referred to as the said Act) and in supersession of notification No. 25/2018-Central Tax, dated the 31st May, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 517 (E), dated the 31st May, 2018, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017, for the months of July, 2017 to August, 2018 till the 30th day of September, 2018.

[F. No.349/58/2017-GST(Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Lay Down the Special Procedure for Completing Migration of Taxpayers Who Received Provisional IDs But Could Not Complete the Migration Process

Notification No. 31/2018 – Central Tax

New Delhi, the 6th August, 2018

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 specifies the persons who did not file the complete FORM GST REG-26 of the Central Goods and Services Tax Rules, 2017 but received only a Provisional Identification Number (PID) (hereinafter referred to as “such taxpayers”) till the 31st December, 2017 may now apply for Goods and Services Tax Identification Number (GSTIN).

2. The special procedure to be followed for registration of such taxpayers is as detailed below:-

(i) The details as per the Table below should be furnished by such taxpayers to the jurisdictional nodal officer of the Central Government or State Government on or before the 31st August, 2018.

Table

1	Provisional ID	
2	Registration Number under the earlier law (Taxpayer Identification Number (TIN)/Central Excise/Service Tax Registration number)	
3	Date on which token was shared for the first time	
4	Whether activated part A of the aforesaid FORM GST REG-26	Yes/No
5	Contact details of the taxpayer	
5a	Email id	
5b	Mobile	
6	Reason for not migrating in the system	
7	Jurisdiction of Officer who is sending the request	

(ii) On receipt of an e-mail from the Goods and Services Tax Network (GSTN), such taxpayers should apply for registration by logging onto https://www.gst.gov.in/) in the “Services” tab and filling up the application in FORM GST REG-01 of the Central Goods and Services Tax Rules, 2017.

(iii) After due approval of the application by the proper officer, such taxpayers will receive an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.

(iv) Upon receipt, such taxpayers are required to furnish the following details to GSTN by email, on or before the 30th September, 2018, to migration@gstn.org.in:–

(a) New GSTIN;

(b) Access Token for new GSTIN;

(c) ARN of new application;

(d) Old GSTIN (PID).

(v) Upon receipt of the above information from such taxpayers, GSTN shall complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers.

(vi) Such taxpayers are required to log onto the common portal www.gstn.gov.in using the old GSTIN as "First Time Login" for generation of the Registration Certificate.

3. Such taxpayers shall be deemed to have been registered with effect from the 1st July, 2017.

[F. No.349/58/2017-GST(Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Prescribe the Due Dates for Furnishing of Form GSTR-1 for Those Taxpayers with Aggregate Turnover of More Than Rs. 1.5 Crores For The Months From July, 2018 To March, 2019

Notification No. 32 /2018 – Central Tax

New Delhi, the 10th August, 2018

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) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from July, 2018 to March, 2019 till the eleventh day of the month succeeding such month.

2. The time limit for furnishing the details or return, as the case may be, under subsection (2) of section 38 and sub-section (1) of section 39 of the

said Act, for the months of July, 2018 to March, 2019 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]

(Dr. Sreeparvathy S.L)
Under Secretary to the Government of India

Seeks to Prescribe the Due Dates for Quarterly Furnishing of Form GSTR-1 For Those Taxpayers With Aggregate Turnover of Upto Rs.1.5 Crores for the Period from July, 2018 to March, 2019

Notification No. 33/2018 – Central Tax

New Delhi, the 10th August, 2018

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) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said persons may furnish the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
(1)	(2)	(3)
1	July - September, 2018	31st October, 2018
2.	October - December, 2018	31st January, 2019
3	January - March, 2019	30th April, 2019

3. The time limit for furnishing the details or return, as the case may be, under subsection (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2018 to March, 2019 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]

(Dr. Sreeparvathy S.L)
Under Secretary to the Government of India

Seeks to Prescribe the Due Dates for Filing Form GSTR-3B for the Months from July, 2018 to March, 2019

Notification No. 34/2018 – Central Tax

New Delhi, the 10th August, 2018

G.S.R…(E).- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in FORM GSTR-3B of the said rules for each of the months from July, 2018 to March, 2019 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month.

2. Payment of taxes for discharge of tax liability as per FORM GSTR-3B.– Every registered person furnishing the return in FORM GSTR-3B of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

[F. No. 349/58/2017-GST (Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Extend the Due Date for Filing of Form GSTR-3B for the Month of July, 2018

Notification No. 35/2018 – Central Tax

New Delhi, the 21st August, 2018

G.S.R…(E).- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 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 in the Ministry of Finance (Department of Revenue), No. 34/2018-Central Tax, dated the 10th August, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R.761 (E), dated the 10th August, 2018, namely:-

In the first paragraph of the said notification, the following proviso shall be inserted, namely:–

"Provided that the return in FORM GSTR-3B for the month of July, 2018 shall be furnished electronically through the common portal, on or before the 24th August, 2018.".

[F. No. 349/58/2017-GST (Pt.)]

(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks oo Extend the Due Dates for Filing Form GSTR-3B for the Months of July, 2018 and August, 2018

Notification No. 36/2018 – Central Tax

New Delhi, the 24th August, 2018

G.S.R…(E).- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Central 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. 34/2018- Central

Tax, dated the 10th August, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R.761 (E), dated the 10th August, 2018, and amended vide notification No. 35/2018-Central Tax, dated the 21st August, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R.792 (E), dated the 21st August, 2018, namely:-

In the first paragraph of the said notification, after the proviso, the following proviso shall be inserted, namely:–

"Provided further that the return in FORM GSTR-3B for the months of July, 2018 and August, 2018, for–

(i) registered persons in the State of Kerala;

(ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and

(iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 5th October, 2018 and 10th October, 2018 respectively.".

[F. No. 349/58/2017-GST (Pt.)]

(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Prescribe the Due Dates for Furnishing of Form GSTR-1 for those Taxpayers with Aggregate Turnover of More Than Rs. 1.5 Crores for The Months of July, 2018 and August, 2018

Notification No. 37/2018 – Central Tax

New Delhi, the 24th August, 2018

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 hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 32/2018-

Central Tax, dated the 10th August, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R.759(E), dated the 10th August, 2018, namely:–

In the first paragraph of the said notification, the following proviso shall be inserted, namely:–

"Provided that the return in FORM GSTR-1 for the months of July, 2018 and August, 2018, for–

(i) registered persons in the State of Kerala;

(ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and

(iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 5th October, 2018 and 10th October, 2018 respectively.".

[F. No. 349/58/2017-GST (Pt.)]

(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Prescribe the Due Dates for Quarterly Furnishing of Form GSTR-1 for those Taxpayers with Aggregate Turnover of Upto Rs.1.5 Crores for the Quarter July, 2018 To September, 2018

Notification No. 38/2018 – Central Tax

New Delhi, the 24th August, 2018

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 hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 33/2018- Central Tax, dated the 10th August, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R.760(E), dated the 10th August, 2018, namely:–

In the first paragraph of the said notification, the following proviso shall be inserted, namely:–

"Provided that the return in FORM GSTR-1 for the quarter from July, 2018 to September, 2018 for–

(i) registered persons in the State of Kerala;

(ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and

(iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 15th November, 2018.".

[F. No. 349/58/2017-GST (Pt.)]

(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Withdraw Circular No. 28/02/2018-GST Dated 08.01.2018 As Amended Vide Corrigendum Dated 18.01.2018 and Order No 02/2018–Ct Dated 31.03.2018 – Reg.

Circular No. 50/24/2018-GST

Room No. 146G, North Block,
New Delhi, 31th July 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Withdrawal of Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018–Central Tax dated 31.03.2018 – reg.

The Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 was issued to clarify GST rate applicable on catering services, i.e., supply of food or drink in a mess or canteen in an educational institute. Also, Order No 02/2018-Central Tax dated 31.03.2018,

was issued to clarify GST rate on supply of food and/or drinks by the Indian Railways or Indian Railways Catering and Tourism Corporation Ltd. or their licensees, in trains or at platforms (static units).

2. Consequent to the decisions of 28th GST Council Meeting held on 21.07.2018, the contents of the Circular No. 28/02/2018-GST dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 have been incorporated in Sl. No. 7 (i) of the Notification No. 13/2018-Central Tax(Rate), dated 26.07.2018 amending the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017.

3. Also, the contents of the Order No 02/2018-Central Tax dated 31.03.2018 have been incorporated in Sl. No. 7(ia) of the Notification No. 13/2018-Central Tax(Rate), dated 26.07.2018 amending the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017.

4. Hence, Circular No. 28/02/2018-GST, dated 08.01.2018 as amended vide Corrigendum dated 18.01.2018 and Order No 02/2018-Central Tax dated 31.03.2018 is withdrawn w.e.f 27.07.2018. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours Faithfully,

Harish Y N
OSD (TRU)

Applicability of GST on Ambulance Services provided to Government by Private Service Providers under the National Health Mission (NHM)

Circular No. 51/25/2018-GST

Room No. 146G, North Block,
New Delhi, 31th July 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Applicability of GST on ambulance services provided to Government by private service providers under the National Health Mission (NHM) - Reg.

I am directed to invite your attention to the Circular No. 210/2/2018-Service Tax, dated 30th May, 2018. The said Circular has been issued in the context of service tax exemption contained in notification No. 25/2012-Service Tax dated 20.06.2012 at Sl. No.2 and 25(a). The Circular states, inter alia, that the service of transportation in ambulance provided by State Governments and private service providers (PSPs) to patients are exempt under notification No. 25/2012- Service Tax dated 20.06.2012 and that ambulance service provided by PSPs to State Governments under National Health Mission is a service provided to Government by way of public health and hence exempted under notification No. 25/2012Service Tax dated 20.06.2012.

2. The service tax exemption at Sl. No.2 of notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide Sl. No. 74 of notification No. 12/2017- CT (R) dated 28.06.2017. The service tax exemption at serial No. 25(a) of notification No. 25/2012 dated 20.06.20 12 has also been substantially, although not in the same form, continued under GST vide Sl. No.3 and 3A of the notification No. 12/201 7- CT (R) dated 28.06.20 17. The said exemption entries under Service Tax and GST notification read as under.

Service Tax	GST
Sl. No.2: (i) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.	**Sl.No. 74:** Services by way of - (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
Sl. No. 25(a): Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation	**Sl. No. 3:** Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

	Sl. No. 3A: Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

3. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of 'Public health' is entrusted to Municipalities under Article 243W of the Constitution read with Twelfth schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243 W of the Constitution.

4. In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May, 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 vide Sl. No. 74.

5. As regards the service provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, it is clarified that the same would be exempt under

a. Sl. No. 3 of notification No. 12/201 7- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods, and

b. Sl. No. 3A of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

Susanta Mishra
(Technical Officer)

Circular No. 52/26/2018-GST dated 09.08.2018 I.R.O. Clarification Regarding Applicability of GST Rates on Various Goods and Services

Circular No.52/26/2018-GST

North Block, New Delhi
Dated, 9th August, 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Clarification regarding applicability of GST on various goods and services–reg.

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Fortified Toned Milk

(ii) Refined beet and cane sugar

(iii) Tamarind Kernel Powder (Modified & Un Modified form)

(iv) Drinking water

(v) Plasma products

(vi) Wipes using spun lace non-woven fabric

(vii) Real Zari Kasab (Thread)

(viii) Marine Engine

(ix) Quilt and comforter

(x) Bus body building as supply of motor vehicle or job work

(xi) Disc Brake Pad

2. The matter has been examined. The issue-wise clarifications are discussed below:

3.1 Applicability of GST on Fortified Toned Milk: Representations have been received seeking clarification regarding applicability of GST on Fortified Toned Milk.

3.2 Milk is classified under heading 0401 and as per S.No. 25 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk falling under tariff head 0401 attracts NIL rate of GST. Further, as per HSN Explanatory Notes, milk enriched with vitamins and minerals is classifiable under HSN code 0401. Thus, it is clarified that toned milk fortified (with vitamins 'A' and 'D') attracts NIL rate of GST under HSN Code 0401.

4.1 Applicable GST rate on refined beet and cane sugar: Doubts have been raised regarding GST rate applicable on refined beet and cane sugar. Vide S. No. 91 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, 5% GST rate has been prescribed on all kinds of beet and cane sugar falling under heading 1701.

4.2 Doubts seem to have arisen in view of S. No. 32 A of the Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, which prescribes 12% GST rate on "All goods, falling under tariff items 1701 91 and 1701 99 including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract 5% or Nil GST)".

4.3 It is clarified that by virtue of specific exclusion in S. No. 32 A, any sugar that falls under 5% category [at the said S. No. 91 of schedule I of notification No.1/2017-Central Tax (Rate) dated 28.06.2017] gets excluded from the S. No. 32 A of Schedule II. As all kinds of beet and cane sugar falling under heading 1701 are covered by the said entry at S. No. 91 of Schedule I, these would get excluded from S. No. 32 A of Schedule II, and thus would attract GST @ 5%.

4.4 Accordingly, it is clarified that beet and cane sugar, including refined beet and cane sugar, will fall under heading 1701 and attract 5% GST rate.

5.1 Applicable GST rate on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder : Representation have been received seeking clarification regarding GST rate applicable on treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.

5.2 There are two grades of Tamarind Kernel Powder (TKP):- Plain (unmodified) form (hot, water soluble) and Chemically treated (modified) form (cold, water soluble).

5.3 As per S. No. 76 A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, 5% GST rate was prescribed on Tamarind Kernel powder falling under chapter 13. However, certain doubts have been expressed regarding GST rate on Tamarind kernel powder, as the said notification does not specifically mention the word “modified”.

5.4 As both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under chapter 13, it is hereby clarified that both attract 5% GST in terms of the said notification.

6.1 Applicability of GST on supply of safe drinking water for public purpose: Representations have been received seeking clarification regarding applicability of GST on supply of safe drinking water for public purpose.

6.2 Attention is drawn to the entry at S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, by virtue of which water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] falling under HS code 2201 attracts NIL rate of GST.

6.3 Accordingly, supply of water, other than those excluded from S. No. 99 of notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, would attract GST at “NIL” rate. Therefore, it is clarified that supply of drinking water for public purposes, if it is not supplied in a sealed container, is exempt from GST.

7.1 GST rate on Human Blood Plasma: References have been received about the varying practices being followed in different parts of the country regarding the GST rates on “human blood plasma”.

7.2 Plasma is the clear, straw coloured liquid portion of blood that remains after red blood cells, white blood cells, platelets and other cellular components have been removed. As per the explanatory notes to the

Harmonized System of Nomenclature (HSN), plasma would fall under the description antisera and other blood fractions, whether or not modified or obtained by means of biotechnological processes and would fall under HS code 3002.

7.3 Normal human plasma is specifically mentioned at S. No. 186 of List I under S. No. 180 of Schedule I of the notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, and attracts 5%GST. Other items falling under HS Code 3002 (including plasma products) would attract 12% GST under S. No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

7.4 Thus, a harmonious reading of the two entries would mean that normal human plasma would attract 5% GST rate under List I (S. No. 186), whereas plasma products would attract 12% GST rate, if otherwise not specifically covered under the said List.

8.1 Appropriate classification of baby wipes, facial tissues and other similar products: Varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes namely 3307, 3401 and 5603 by the industry.

8.2 Commercially, wipes are categorized into various types such as baby wipes, facial wipes, disinfectant wipes, make-up remover wipes etc. These products are generally made by using non-woven fabrics of viscose and polyviscous blend and are sprinkled with demineralized water and various chemicals and fragrances, which impart the essential character to the product. The base raw materials are moisturising and cleansing agents, preservatives, aqua base, cooling agents, perfumes etc. The textile material is present as a carrying medium of these cleaning/wiping components.

8.3 According to the General Rules for Interpretation [GRI- 3(b)] of the First Schedule to the Customs Tariff Act (CTA), 1975, “Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.” Since primary function of the article should be taken into consideration while deciding the classification, it is clear that

the essential character of the wipes in the instant case is imparted by the components which are to be mixed with the textile material.

8.4 As per the explanatory notes to the HSN, the HS code 5603 clearly excludes nonwoven, impregnated, coated or covered with substances or preparations such as perfumes or cosmetics, soaps or detergents, polishes, creams or similar preparations. The HSN is reproduced as follows : "The heading also excludes:

> Nonwoven, impregnated, coated or covered with substances or preparations [i.e. perfumes or cosmetics (Chapter 33), soaps or detergents (heading 3401), polishes, creams, or similar preparations (heading 3405), fabric, softeners (heading 3809)] where the textile material is present merely as a carrying medium. Further, HS code 3307 covers wadding, felt and non-woven, impregnated, coated or covered with perfumes or cosmetics. The HS code 3401, would cover paper, wadding, felt and non-woven impregnated, coated or covered with soap or detergent whether or not perfumed".

8.5 Further, as per the explanatory notes to the HSN, the heading 3307 includes wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics. Similarly, as per explanatory notes to the HSN, the heading 3401 includes wipes made of paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale.

8.6 Thus, the wipes of various kinds (as stated above) are classifiable under heading 3307 or 3401 depending upon their constituents as discussed above. Therefore, if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate. Similarly, if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.

9.1 Classification and applicable GST rate on real zari Kasab (thread): Certain doubts have been raised regarding the classification and applicable GST rate on Kasab thread (a metallised yarn) as yarn falling under heading 5605 attracts 12% GST, as per entry 137 of the Schedule-II-12% of the notification No.01/2017-Central Tax (rate) dated 28.06.2017, while specified embroidery product falling under 5809 and 5810 attracts GST @ 5%, as per entry no. 220 of the Schedule-I-5% of the above-mentioned notification.

9.2 The heading 5809 and 5810 cover embroidery and zari articles. These heading do not cover yarn of any kinds. Hence, while these headings apply to embroidery articles, embroidery in piece, in strips, or in motifs, they do not apply to yarn, including Kasab yarn.

9.3 Further all types of metallised yarns or threads are classifiable under tariff heading 5605. Kasab (yarn) falls under this heading. Under heading 5605, real zari manufactured with silver wire gimped (vitai) on core yarn namely pure silk and cotton and finally gilted with gold would attract 5% GST under tariff item 5605 00 10, as specified at entry no. 218A of Schedule-I-5% of the GST rate schedule. Other goods falling under this heading attract 12% GST. Accordingly, kasab (yarn) would attract 12% GST along with other metallised yarn, whether or not gimped, being textile yarn, combined with metal in the form of thread, strip or powder or covered with metal including imitation zari thread (S. No. 137 of the Schedule-II-12%). Therefore, it is 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.

10.1 Applicability of GST on marine engine: Reference has been received seeking clarification regarding GST rates on Marine Engine. The fishing vessels are classifiable under heading 8902, and attract GST @ 5%, as per S. No. 247 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017. Further, parts of goods of heading 8902, falling under any chapter also attracts GST rate of 5%, vide S. No. 252 of Schedule I of the said notification. The Marine engine for fishing vessel falling under Tariff item 8408 1093 of the Customs Tariff Act, 1975 would attract a GST rate of 5% by virtue of S. No. 252 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017.

10.2 Therefore, it is clarified that the supplies of marine engine for fishing vessel (being a part of the fishing vessel), falling under tariff item 8408 10 93 attracts 5% GST.

11.1 Applicable GST rate on cotton quilts under tariff heading 9404-Scope of the term "Cotton Quilt".

11.2 Cotton quilts falling under tariff heading 9404 attract a GST rate of 5% if the sale value of such cotton quilts does not exceed Rs. 1000 per piece [as per S. No. 257 A of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017]. However, such cotton quilts, with sale

value exceeding Rs.1000 per piece attract a GST rate of 12% (as per S. No. 224A of Schedule II of the said notification). Doubts have been raised as to what constitutes cotton quilt, i.e. whether a quilt filled with cotton with cover of cotton, or filled with cotton but cover made of some other material, or filled with material other than cotton.

11.3 The matter has been examined. The essential character of the cotton quilt is imparted by the filling material. Therefore, a quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. The GST rate would accordingly apply.

12.1 Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2 Buses [motor vehicles for the transport of ten or more persons, including the driver] fall under headings 8702 and attract 28% GST. Further, chassis fitted with engines [8705] and whole bodies (including cabs) for buses [8707] also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations:

a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

12.3 In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.

13.1 Applicable GST rate on Disc Brake Pad: Representations have been received seeking clarification on disc brake pad for automobiles. It

is stated that divergent practices of classifying these products, in Chapter 68 or heading 8708 are being followed. Chapter 68 attracts a GST rate of 18%, while heading 8708 attracts a GST rate of 28%.

13.2 Parts and accessories of motor vehicles of headings 8701 to 8705 are classified under heading 8708 and attract 28% GST. Further, friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other mineral substances or of cellulose, whether or not combined with textiles or other materials are classifiable under heading 6813 and attract 18% GST.

13.3 In the above context, it is mentioned that as per HSN Explanatory Notes, heading 8708 covers "Brakes (shoe, segment, disc, etc.) and parts thereof (plates, drums, cylinders, mounted linings, oil reservoirs for hydraulic brakes, etc.); servo-brakes and parts thereof, while Chapter 68 covers articles of Stone, Plaster, Cement, Asbestos, Mica or similar materials. Further, HSN Explanatory Notes to the heading 6813 specifically excludes:

i) Friction materials not containing mineral materials or cellulose fibre (e.g., those of cork);

ii) Mounted brake linings (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes) which are classified as parts of the machines or vehicles for which they are designed (e.g. heading 8708).

13.4 Thus, it is clear, in view of the HSN Explanatory Notes that the said goods, namely "Disc Brake pad" for automobiles, are appropriately classifiable under heading 8708 of the Customs Tariff Act, 1975 and would attract 28% GST.

14. Difficulty, if any, may be brought to the notice of the Board immediately. Hindi version shall follow.

Yours faithfully

Dr. Ajay K. Chikara
Technical Officer (TRU)

Circular No. 53/27/2018-GST dated 09.08.2018 I.R.O. Clarification Regarding Applicability of GST on Petroleum Gases Retained for the Manufacture of Petrochemical and Chemical Products

Circular No.53/27/2018-GST

North Block, New Delhi
Dated, 9th August, 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products – regarding.

References have been received regarding the applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products during the course of continuous supply, such as Methyl Ethyl Ketone (MEK) feedstock, petroleum gases etc.

2. In this context, it may be recalled that clarifications on similar issues for specific products have already been issued vide circular Nos. 12/12/2017-GST dated 26th October, 2017 and 29/3/2018-GST dated 25th January, 2018. These circulars apply mutatis mutandis to other cases involving same manner of supply as mentioned in these circulars. However, references have again been received from some of the manufacturers of other petrochemical and chemical products for issue of clarification on applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

3. The GST Council in its 28th meeting held on 21.7.2018 discussed this issue and recommended for issuance of a general clarification for petroleum sector that in such transactions, GST will be payable by the

refinery on the value of net quantity of petroleum gases retained for the manufacture of petrochemical and chemical products.

4. Accordingly, it is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.

5. This clarification is issued in the context of the Goods and Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

Yours faithfully,

Dr. Ajay K. Chikara
Technical Officer (TRU)

Circular No. 54/28/2018-GST dated 09.08.2018 I.R.O. Classification of Fertilizers Supplied for Use in the Manufacture of other Fertilizers at 5% GST rate.

Circular No. 54/28/2018-GST

North Block, New Delhi
Dated, 9th August, 2018

To,

Principal Chief Commissioners/Principal Directors General,
Chief Commissioners/Directors General,
Principal Commissioners/Commissioners,
All under CBIC.

Madam / Sir,

Subject: Classification of fertilizers supplied for use in the manufacture of other fertilizers at 5% GST rate- reg.

References have been received regarding a clarification as to whether simple fertilizers, such as MOP (Murate of Potash) classified under Chapter

31,and supplied for use in manufacturing of a complex fertilizer, are entitled to the concessional GST rate of 5%, as applicable in general to fertilizers (i.e. fertilizers which are cleared to be used as fertilizers).

2.1 The matter has been examined. Chapter 31 of the Customs Tariff Act, 1975 covers Fertilizers. The fertilizers are mostly used for increasing soil and land fertility, either directly, or by use in manufacturing of complex fertilizers. However, certain fertilizers and similar goods falling under this Chapter may be used for individual purposes like use of molten urea for manufacture of melamine and urea used in manufacturing of urea-formaldehyde resins or organic synthesis.

2.2 In the pre-GST regime, the concessional duty rate was prescribed for fertilizers falling under Chapter 31 of the Tariff (notification No. 12/2012-Central Excise). This concessional rate was applied to goods falling under Chapter 31 which are clearly to be used directly as fertilizers or in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product.

3. In the GST regime, tax structure on fertilizers has been prescribed on the lines of pre-GST tax incidence. The wording of the GST notification is similar to the central excise notification except certain changes to meet the requirements of GST. These changes were necessitated as GST is applicable on the supply of goods while central excise duty was applicable on manufacture of goods. Accordingly, fertilizers falling under heading 3102, 3103, 3104 and 3105, other than those which are clearly not to be used as fertilizers, attract 5% GST [S. No. 182A to 182D of the First schedule to the notification No.1/2017-Central Tax (Rate) dated 28.06.2017]. However, the fertilizers items falling under the above mentioned headings, which are clearly not to be used as fertilizer attract 18% GST [S. No. 42 to 45 of the III schedule to the notification No. 1/2017 Central Tax (Rate)]. The intention has been to provide concessional rate of GST to the fertilizers which are used directly as fertilizers or which are used in the manufacturing of complex fertilizers which are further used as soil or crop fertilizers. The phrase “other than clearly to be used as fertilizers” would not cover such fertilizers that are used for making complex fertilizers for use as soil or crop fertilizers.

4. Thus, it is clarified that the fertilizers supplied for direct use as fertilizers, or supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers), will attract 5% IGST.

Yours faithfully,

Dr. Ajay K. Chikara
Technical Officer (TRU)

Taxability of Services Provided by Industrial Training Institutes (ITI)

CIRCULAR No. 55/ 29/ 2018- GST

New Delhi, the 10th August, 2018

To,

The Principal Chief Commissioners / Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All).

Madam / Sir,

Subject : Taxability of services provided by Industrial Training Institutes (ITI) - reg.

Representations have been received requesting to clarify t he following:

(a) Whether GST is payable on vocational training provided by private ITIs in designated trades and in other than designated trades.

(b) Whether GST is payable on the service, provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination.

2. With regard to t he first issue, [Para l (a) above], it is clarified that Private ITIs qualify as an educational institution as defined under para 2(y) of notification No. 12/2017-CT(Rate) if the education provided by these ITIs is approved as vocational education al course. The approved vocational educational course has been defined in para 2(h) of notification ibid to mean a course run by an ITI or an Industrial Training Cent re affiliated to NCVT (National Council for Vocational Training) or SCVT (State Council for Vocational Training) offering courses in designated trade notified under the Apprenticeship Act, 1961; or a Modular employable skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development. Therefore, services provide d by a private ITI in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST under Sr. No. 66 of notification No. 12/2017-CT(Rate). As corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

3. With regard to the second issue, [Para 1(b) above], it is clarified that in case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt from GST [Entry (aa) under Sr. No. 66 of notification No. 12/2017-CT(Rate) refers]. Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt [Entry (b(iv)) under Sr. No. 66 of notification No. 12/2017-CT(Rate) refers). It is further clarified that in case of ot her than designated trades in private ITIs, GST shall be payable on the service of conduct of examination against consideration in t he form of entrance fee and also on the services relating to admission to or conduct of examination by such institutions, as these services are not covered by t he exemption ibid.

4. As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under SI. No.6 of 12/2017-CT(R) dated 28.06.2017 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.

5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours sincerly

(Pramod Kumar)
(OSD TRU II)

Clarification on Removal of Restriction on Refund of Accumulated Input Tax Credit on Fabrics

Circular No.56/30/2018-GST

Nor th Block, New Delhi
24th August, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam / Sir,

Subject: Clarification regarding removal of restriction of refund of accumulated ITC on fabrics - reg.

Certain doubts have been raised regarding the applicability and intent of notification No. 20/2018-Central Tax (Rate) dated 26th July, 20 18 (which seeks to amend notification No. 5/2017 -Central Tax (Rate) dated 28.06.2017) relating to the provision for lapsing of input tax credit accumulated on account of inverted duty structure on fabrics for the period upto the 31st July, 2018.

2. The said notification No. 5/2017-Central Tax (Rate) was issued in exercise of powers vested under section 54 of the Central Goods and Services Tax Act, 2017(CGST Act, 2017). It notifies the items on which refund of accumulated input tax credit on account of inverted duty structure is not allowed. Some of the items notified under this notification are fabrics. A total 10 categories of fabrics covered in the notification are as follows:

S. No.	Tariff item, heading, subheading or Chapter	Description of Goods
(1)	(2)	(3)
1.	5007	Woven fabrics of silk or of silk waste
2.	5111 to 5113	Woven fabrics of wool or of animal hair
3.	5208 to 5212	Woven fabrics of cotton
4.	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
5.	5407, 5408	Woven fabrics of manmade textile materials
6.	5512 to 5516	Woven fabrics of manmade staple fibres
6A#	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
6B	5801	Corduroy fabrics
6C#	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive
7.	60	Knitted or crocheted fabrics [All goods]

*Inserted in the month of Sep 17, #Inserted in the month of Nov 17.

3. In the 28th GST Council meeting, it was decided to remove the restriction of not allowing refund of ITC accumulated on account of inverted duty structure on fabrics with prospective effect on the input supplies received after the date of issue of notification. It was also decided to simultaneously lapse the accumulated ITC, lying unutilised, for the past period , after the payment of GST for the month of July, 2018. Accordingly, to give effect to this decision, the notification No. 20/20 I8- Central Tax (Rate) has been issued amending notification No. 5/2017-Central Tax (Rate). To keep the accounting simple, it was decided to make these changes effective from the 1st day of August, 2018.

4. Vide the said notification No. 20/20 18-Central Tax (Rate), the following proviso has been inserted in notification No. 5/2017-Central Tax (Rate).

"Provided that,»

(i) nothing contained in this notification shall apply 10 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. 68, 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 upto the 31st day of July 2018, shall lapse.",

5. The doubts raised, with reference to changes made vide notification No. 20/2018 - Central Tax (Rate) are as follows:

(1) Whether this notification seeks to lapse all the input tax credit lying unutilised after payment of tax upto the month of Jul y. 2018?

(2) Whether unutilised ITC in respect of services and capital goods shall also be disallowed?

(3) Implication to fabrics like cotton and silk where the re was no inverted duty structure?

(4) Whether accumulated ITC in respect of exports shall also be made to lapse?

6. The matter has been examined. Section 54 of the CGST Act , 2017 provides for refund of accumulated credit on inputs on account of inverted

duty structure, i.e., GST rate on inputs being higher than the GST rates on finis hed goods. However, proviso (ii) to section 54 (3) provides that in respect of notified goods, the refund of such accumulated input tax credit shall not be allowed. Notification No. 5/2017-Central Tax (Rate) has been issued in terms of this provision and it *inter alia* prescribes that refund of accumulated ITC on account of inverted duty structure shall not be allowed in respect of fabrics as mentioned in para 2.

Therefore, the restriction of refund of accumulated ITC under notification No. 5/2017-Central Tax (rate) dated 28.06.2017 is applicab le only in respect of refund of accumulated ITC on inputs. This notification does not put any restriction in relation to the ITC on input services and capital goods.

7. The proviso has to be read with the principal part of the notification, A comprehensive reading of amended notification makes it clear that the proviso seeks to lapse only such input tax credit which is the subject matter of principal notification , i.e. accumulated credit on account of inverted duty structure in respect of stated fabrics. The net effect of clause (ii) in the said proviso is that it provides for lapsing of input tax credit that would have been refundable in terms of section 54 of the Act, for the period prior to the 31st July, 2018 , but for the restriction imposed vide said notification No. 5/20l7-Central Tax (Rate) and that too to the extent of accumulated ITC lying unutilised after making payment of GST upto the month of July, 2018. In other words, in terms of amended notification, the input tax credit on account of inverted duty structure lying in balance after payment of GST for the month of July (on purchases made on or before the 31 st July, 2018) shall lapse.

8. As the notification No. 5/2017-Central Tax (Rate) does not put any restriction in respect of ITC on input services and capital goods, therefore the proviso now inserted in the said notification No. 5/2017-Central Tax (Rate) vide notification No. 20/2018 does not affect the ITC availed on input services and capital goods.

9. As regards, the legislative power of providing for lapsing of input tax credit, the same flows inherently from the power to deny refund of accumulated ITC on account of inverted structure.

10. Doubts have also been raised as regards the manner of calculating the ITC amount accumulated on account of inverted duty structure on the inputs of said fabrics that would lapse on account of above stated change. It is clarified that for determination of such amount, the formula as prescribed

in rule 89 (5) of the CGST rules shall mutatis mutandis apply as it applies for determination of refundable amount for inverted duty structure. Such amount shall be determined for the months from July, 2017 to July 2018 [or for the relevant period for such fabrics on which refund was blocked subsequently by inserting entries in notification No. 5/20I7-Central Tax (Rate)]. The accumulated input tax credit determined by each supplier using the prescribed formula lying unutilised in balance after making the payment of GST for the month of July, 2018 shall lapse.

Illustrations:

(1) A manufacture who produces only manmade fibre fabrics, had a turnover of Rs 5 crore for the period from July, 20/7 to July 2018[or for the relevant period for fabrics on which refund was blocked subsequently by inserting entries in notification No. 5/20/7-Central Tax (Rate)]. Tax payable thereon is Rs 25 lakh (@ 5%). Assuming the net ITC availed on inputs, during this period, was Rs 30 lakh. Applying the formula prescribed in rule 89 (5), the accumulated ITC on account of inverted duty structure comes to Rs 5 lakh. In other words, this manufacturer has accumulated Rs 5 lakh on inputs on account of inverted duty structure during the said period. If ITC balance lying unutilized with him is more than this amount, say Rs 10 lakh, the ITC equal to Rs 5 lakh will only lapse. However. if for any reason. the ITC balance lying unutilized is less than Rs 5 lakh, say Rs 3 lakh, the ITC equal to Rs 3 lakh will lapse.

(2) A manufacture who produces, say, grey manmade fibre fabrics and cotton fabrics, had a turnover of Rs 5 crore and 2 crore respectively for manmade fabrics and cotton fabrics for the months from July, 2017 to July 20l8[or for the relevant period for fabrics on which refund was blocked subsequently by inserting entries in notification No. 5/20J7-Central Tax (Rate)]. Tax payable thereon is Rs 25 lakh on MMF fabrics and Rs 10 lakh on cotton fabrics. MMF fabric has inverted duty structure while cotton fabric does not have inverted duty structure. Assuming the net ITC availed on inputs, during this period, was Rs 35 lakh, ie,

= {(Turnover of inverted rated supply of goods ÷ Adjusted Total Turnover) x Net ITC} – tax payable on such inverted rated supply of goods

The accumulated ITC on account of inverted duty structure shall be equal to nil (5/7 *35-25). Thus no amount shall lapse. However, assuming

that in this case the ITC availed on input is Rs 42 lakh, the accumulated fTC on accounted on inverted duty structure is Rs 5 1akh (5/7*42-25)

The manner of calculation as provided in rule 89(5) would mutatis mutandis apply.

10.1 As illustrated, the application of formula prescribed in rule 89(5) ensures that ITC relating to capital goods and input services does not lapse.

11. However, a manufacturer may have closing stock of finished goods and inputs as on 31.7.2018. A doubt has been raised as to whether input tax relating thereto shall also lapse and concern has been expressed that this would amount to double taxation. It is clarified that the proposed amendment seeks to lapse only such credit that has been accumulated on inputs on account of inverted duty structure. Therefore, in case a manufacturer, whose accumulated ITC is liable to lapse in terms of said notification, has certain stock lying in balance as on 31.7.2018, the input tax credit involved in inputs contained in such stock (including inputs lying as such) may be excluded for determination of Net ITC for the purposes of applying the said formula. For this purpose, the ITC relating to inputs contained in stock may be determined in the manner as provided in S. No. 7 of Form GST ITC-01.

12. As regards the applicability of said proviso to cotton, silk and other natural fibre fabrics, which do not suffer inverted duty structure, this is clarified that the said condition of lapsing of ITC would apply only if input tax credit on inputs has been accumulated on account of inverted duty structure. The aforesaid formula takes care of this aspect.

13. As regards accumulated ITC in relation to exports, the refund of such ITC on exports is separately determined under rule 89 (4). Application of formula, as prescribed in rule 89(5), ensures that accumulated ITC on exports does not lapse as this formula excludes zero rated supplies. Further notification No. 5/2017-Central Tax(Rate) does not impose any restriction of refunds on zero rated supplies as was also clarified vide CGST circular no. 18/2017-Central Tax dated 16th November, 2017. Hence the proviso has no applicability to the input tax credit relating to zero rated supplies. Accordingly, accumulated ITC on zero rated supplies shall not lapse. This is ensured by application of formula.

14. The procedure to be followed for lapsing of accumulated input tax credit: A taxable person, whose input tax credit is liable to be lapsed in

terms of said notification, shall calculate the amount of such accumulated ITC, in the manner as clarified above. This amount shall, upon self-assessment, be furnished by such person in his GSTR 3B return for the month of August, 2018. The amount shall be furnished in column 4B (2) of the return [ITC amount to be reversed for any reason (others)]. Verification of accumulated ITC amount so lapsed may be done at the time of filing of first refund (on account of inverted duty structure on fabrics) by such person. Therefore, a detailed calculation sheet in respect of accumulated ITC lapsed shall be prepared by the taxable person and furnished at the time of filing of first refund claim on account of inverted duty structure.

15. Difficulty, if any, in the implementation of this circular should be brought to the notice of the Board.

Yours faithfully,

Rahil Gupta
Technical Officer (TRU)

Seeks to make amendments (Eighth Amendment, 2018) to the CGST Rules, 2017

Notification No. 39/2018 – Central Tax

New Delhi, the 4th September, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Eighth Amendment) Rules, 2018.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, (hereinafter referred to as the said rules), in rule 22, in sub-rule (4), the following proviso shall be inserted, namely:-

"Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.".

3. In the said rules, in rule 36, in sub-rule (2), the following proviso shall be inserted, namely:-

"Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.".

4. In the said rules, in rule 55, in sub-rule (5), after the words "completely knocked down condition", the words "or in batches or lots" shall be inserted.

5. In the said rules, in rule 89, in sub-rule (4), for clause (E), the following clause shall be substituted, namely:-

'(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.'.

6. In the said rules, with effect from the 23rd October, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted, namely:-

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017 published

in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1299 (E), dated the 13th October, 2017.".

7. In the said rules, in rule 138A, in sub-rule (1), after the proviso the following proviso shall be inserted, namely:-

"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.".

8. In the said rules, for FORM GST REG-20, the following FORM shall be substituted, namely:-

"FORM GST REG-20
[See rule 22(4)]

Reference No. - Date -

To

Name
Address
GSTIN/UIN

Show Cause Notice No. Date-

Order for dropping the proceedings for cancellation of registration

This has reference to your reply filed vide ARN ---------- dated ----- in response to the show cause notice referred to above. Upon consideration of your reply and/or submissions made during hearing, the proceedings initiated for cancellation of registration stands vacated for the following reasons:

<<text>>

or

The above referred show cause notice was issued for contravention of the provisions of clause (b) or clause (c) of sub-section (2) of section 29 of the Central Goods Services Tax Act, 2017. As you have filed all the

pending returns which were due on the date of issue of the aforesaid notice, and have made full payment of tax along with applicable interest and late fee, the proceedings initiated for cancellation of registration are hereby dropped.

Signature
< Name of the Officer>

Designation
Jurisdiction

Place:

Date:

9. In the said rules, for FORM GST ITC-04, the following FORM shall be substituted, namely:-

"FORM GST ITC-04
[See rule 45(3)]

Details of goods/capital goods sent to job worker and received back

1. GSTIN -

2. (a) Legal name -

   (b) Trade name, if any –

3. Period: Quarter - Year -

4. Details of inputs/capital goods sent for job work (includes inputs/ capital goods directly sent to place of business /premises of job worker)

GSTIN / State in case of unregistered job worker	Challan No.	Challan date	Description of goods	UQC	Quantity	Taxable value	Type of goods (Inputs/capital goods)	Rate of tax (%)			
								Central tax	State/ UT tax	Integrated tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12

5. Details of inputs/capital goods received back from job worker or sent out from business place of job work

(A) Details of inputs/ capital goods received back from job worker to whom such goods were sent for job work; and losses and wastes:

GSTIN / State of job worker if unregis-tered	Challan No. issued by job worker under which goods have been received back	Date of challan issued by job worker under which goods have been received back	Description of goods	UQC	Quantity	Original challan No. under which goods have been sent for job work	Original challan date under which goods have been sent for job work	Nature of job work done by job worker	Losses & wastes	
									UQC	Quantity
1	2*	3*	4	5	6	7	8	9	10	11

(B) Details of inputs / capital goods received back from job worker other than the job worker to whom such goods were originally sent for job work; and losses and wastes:

GSTIN / State of job worker if unregis-tered	Challan No. issued by job worker under which goods have been received back	Date of challan issued by job worker under which goods have been received back	Description of goods	UQC	Quantity	Original challan No. under which goods have been sent for job work	Original challan date under which goods have been sent for job work	Nature of job work done by job worker	Losses & wastes	
									UQC	Quantity
1	2*	3*	4	5	6	7	8	9	10	11

(C) Details of inputs/ Capital goods sent to job worker and subsequently supplied from premises of job worker; and losses and wastes:

GSTIN / State of job worker if unregis-tered	Invoice No. in case supplied from premises of job worker issued by the Principal	Invoice date in case supplied from premises of job worker issued by the Principal	Description of goods	UQC	Quantity	Original challan no. under which goods have been sent for job work	Original challan date under which goods have been sent for job work	Nature of job work done by job worker	Losses & wastes	
									UQC	Quantity
1	2	3	4	5	6	7	8	9	10	11

Instructions:

1. Multiple entry of items for single challan may be filled.

2. Columns (2) & (3) in Table (A) and Table (B) are mandatory in cases where fresh challan are required to be issued by the job worker. Otherwise, columns (2) & (3) in Table (A) and Table (B) are optional.

3. Columns (7) & (8) in Table (A), Table (B) and Table (C) may not be filled where one-to-one correspondence between goods sent for job work and goods received back after job work is not possible.

6. 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

Place Name of Authorised Signatory .....

Date Designation /Status..... ".

10. In the said rules, after FORM GSTR-8, the following FORMS shall be inserted, namely:-

"FORM GSTR-9
(See rule 80)
Annual Return

Pt. I	Basic Details					
1	Financial Year					
2	GSTIN					
3A	Legal Name					
3B	Trade Name (if any)					
Pt. II	**Details of Outward and inward supplies declared during the financial year**					
			(Amount in ₹ in all tables)			
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
4	**Details of advances, inward and outward supplies on which tax is payable as declared in returns filed during the financial year**					
A	Supplies made to un-registered persons (B2C)					
B	Supplies made to registered persons (B2B)					
C	Zero rated supply (Export) on payment of tax (except supplies to SEZs)					
D	Supply to SEZs on payment of tax					
E	Deemed Exports					

F	Advances on which tax has been paid but invoice has not been issued (not covered under (A) to (E) above)					
G	Inward supplies on which tax is to be paid on reverse charge basis					
H	Sub-total (A to G above)					
I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-)					
J	Debit Notes issued in respect of transactions specified in (B) to (E) above (+)					
K	Supplies / tax declared through Amendments (+)					
L	Supplies / tax reduced through Amendments (-)					
M	Sub-total (I to L above)					
N	Supplies and advances on which tax is to be paid (H + M) above					
5	**Details of Outward supplies on which tax is not payable as declared in returns filed during the financial year**					
A	Zero rated supply (Export) without payment of tax					
B	Supply to SEZs without payment of tax					
C	Supplies on which tax is to be paid by the recipient on reverse charge basis					
D	Exempted					
E	Nil Rated					
F	Non-GST supply					
G	Sub-total (A to F above)					
H	Credit Notes issued in respect of transactions specified in A to F above (-)					
I	Debit Notes issued in respect of transactions specified in A to F above (+)					
J	Supplies declared through Amendments (+)					
K	Supplies reduced through Amendments (-)					
L	Sub-Total (H to K above)					
M	Turnover on which tax is not to be paid (G + L above)					
N	Total Turnover (including advances) (4N + 5M - 4G above)					

Pt. III	Details of ITC as declared in returns filed during the financial year					
	Description	Type	Central Tax	State Tax /	Integrated Tax	Cess

				UT Tax		
	1	2	3	4	5	6
6	**Details of ITC availed as declared in returns filed during the financial year**					
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)		<Auto>	<Auto>	<Auto>	<Auto>
B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs				
		Capital Goods				
		Input Services				
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs				
		Capital Goods				
		Input Services				
D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed	Inputs				
		Capital Goods				
		Input Services				
E	Import of goods (including supplies from SEZs)	Inputs				
		Capital Goods				
F	Import of services (excluding inward supplies from SEZs)					
G	Input Tax credit received from ISD					
H	Amount of ITC reclaimed (other than B above) under the provisions of the Act					
I	Sub-total (B to H above)					
J	Difference (I - A above)					
K	Transition Credit through TRAN-I (including revisions if any)					
L	Transition Credit through TRAN-II					
M	Any other ITC availed but not specified above					
N	Sub-total (K to M above)					
O	Total ITC availed (I + N above)					
7	**Details of ITC Reversed and Ineligible ITC as declared in returns filed during the financial year**					
A	As per Rule 37					
B	As per Rule 39					
C	As per Rule 42					
D	As per Rule 43					
E	As per section 17(5)					
F	Reversal of TRAN-I credit					
G	Reversal of TRAN-II credit					
H	Other reversals (pl. specify)					
I	Total ITC Reversed (A to H above)					
J	Net ITC Available for Utilization (6O - 7I)					
8	**Other ITC related information**					
A	ITC as per GSTR-2A (Table 3 & 5 thereof)		<Auto>	<Auto>	<Auto>	<Auto>
B	ITC as per sum total of 6(B) and 6(H) above		<Auto>			

C	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but availed during April to September, 2018					
D	Difference [A-(B+C)]					
E	ITC available but not availed (out of D)					
F	ITC available but ineligible (out of D)					
G	IGST paid on import of goods (including supplies from SEZ)					
H	IGST credit availed on import of goods (as per 6(E) above)		<Auto>			
I	Difference (G-H)					
J	ITC available but not availed on import of goods (Equal to I)					
K	Total ITC to be lapsed in current financial year (E + F + J)		<Auto>	<Auto>	<Auto>	<Auto>

Pt. IV	Details of tax paid as declared in returns filed during the financial year						
9	Description	Tax Payable	Paid through cash	Paid through ITC			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
	Integrated Tax						
	Central Tax						
	State/UT Tax						
	Cess						
	Interest						
	Late fee						
	Penalty						
	Other						

Pt. V	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier					
	Description	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
10	Supplies / tax declared through Amendments (+) (net of debit notes)					
11	Supplies / tax reduced through Amendments (-) (net of credit notes)					
12	Reversal of ITC availed during previous financial year					
13	ITC availed for the previous financial year					

14	Differential tax paid on account of declaration in 10 & 11 above		
	Description	Payable	Paid
	1	2	3

	Integrated Tax		
	Central Tax		
	State/UT Tax		
	Cess		
	Interest		

Pt. VI	Other Information
15	Particulars of Demands and Refunds

	Details	Central Tax	State Tax / UT Tax	Integrated Tax	Cess	Interest	Penalty	Late Fee / Others
	1	2	3	4	5			
A	Total Refund claimed							
B	Total Refund sanctioned							
C	Total Refund Rejected							
D	Total Refund Pending							
E	Total demand of taxes							
F	Total taxes paid in respect of E above							
G	Total demands pending out of E above							

16	Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis

	Details	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
A	Supplies received from Composition taxpayers					
B	Deemed supply under Section 143					
C	Goods sent on approval basis but not returned					

17	HSN Wise Summary of outward supplies

HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

18	HSN Wise Summary of Inward supplies							
HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

19	Late fee payable and paid		
	Description	Payable	Paid
	1	2	3
A	Central Tax		
B	State Tax		

Verification:

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from and in case of any reduction in output tax liability the benefit thereof has been/will be passed on to the recipient of supply.

Signature

Place Name of Authorised Signatory

Date Designation / Status

Instructions: –

1. Terms used:

   a. GSTIN: Goods and Services Tax Identification Number

   b. UQC: Unit Quantity Code

   c. HSN: Harmonized System of Nomenclature Code

2. The details for the period between July 2017 to March 2018 are to be provided in this return.

3. Part II consists of the details of all outward supplies & advances received during the financial year for which the annual return is filed. The details filled in Part II is a consolidation of all the supplies declared by the taxpayer in the returns filed during the financial year. The instructions to fill Part II are as follows:

Table No.	Instructions
4A	Aggregate value of supplies made to consumers and unregistered persons on which tax has been paid shall be declared here. These will include details of supplies made through E-Commerce operators and are to be declared as net of credit notes or debit notes issued in this regard. Table 5, Table 7 along with respective amendments in Table 9 and Table 10 of FORM GSTR-1 may be used for filling up these details.

4B	Aggregate value of supplies made to registered persons (including supplies made to UINs) on which tax has been paid shall be declared here. These will include supplies made through E-Commerce operators but shall not include supplies on which tax is to be paid by the recipient on reverse charge basis. Details of debit and credit notes are to be mentioned separately. Table 4A and Table 4C of FORM GSTR-1 may be used for filling up these details.
4C	Aggregate value of exports (except supplies to SEZs) on which tax has been paid shall be declared here. Table 6A of FORM GSTR-1 may be used for filling up these details.
4D	Aggregate value of supplies to SEZs on which tax has been paid shall be declared here. Table 6B of GSTR-1 may be used for filling up these details.
4E	Aggregate value of supplies in the nature of deemed exports on which tax has been paid shall be declared here. Table 6C of FORM GSTR-1 may be used for filling up these details.
4F	Details of all unadjusted advances i.e. advance has been received and tax has been paid but invoice has not been issued in the current year shall be declared here. Table 11A of FORM GSTR-1 may be used for filling up these details.
4G	Aggregate value of all inward supplies (including advances and net of credit and debit notes) on which tax is to be paid by the recipient (i.e.by the person filing the annual return) on reverse charge basis. This shall include supplies received from registered persons, unregistered persons on which tax is levied on reverse charge basis. This shall also include aggregate value of all import of services. Table 3.1(d) of FORM GSTR-3B may be used for filling up these details.
4I	Aggregate value of credit notes issued in respect of B to B supplies (4B), exports (4C), supplies to SEZs (4D) and deemed exports (4E) shall be declared here. Table 9B of FORM GSTR-1 may be used for filling up these details.
4J	Aggregate value of debit notes issued in respect of B to B supplies (4B), exports (4C), supplies to SEZs (4D) and deemed exports (4E) shall be declared here. Table 9B of FORM GSTR-1 may be used for filling up these details.
4K & 4L	Details of amendments made to B to B supplies (4B), exports (4C), supplies to SEZs (4D) and deemed exports (4E), credit notes (4I), debit notes (4J) and refund vouchers shall be declared here. Table 9A and Table 9C of FORM GSTR-1 may be used for filling up these details.
5A	Aggregate value of exports (except supplies to SEZs) on which tax has not been paid shall be declared here. Table 6A of FORM GSTR-1 may be used for filling up these details.
5B	Aggregate value of supplies to SEZs on which tax has not been paid shall be declared here. Table 6B of GSTR-1 may be used for filling up these details.
5C	Aggregate value of supplies made to registered persons on which tax is payable by the recipient on reverse charge basis. Details of debit and credit notes are to be mentioned separately. Table 4B of FORM GSTR-1 may be used for filling up these details.

5D,5E and 5F	Aggregate value of exempted, Nil Rated and Non-GST supplies shall be declared here. Table 8 of FORM GSTR-1 may be used for filling up these details. The value of "no supply" shall also be declared here.
5H	Aggregate value of credit notes issued in respect of supplies declared in 5A,5B,5C, 5D, 5E and 5F shall be declared here. Table 9B of FORM GSTR-1 may be used for filling up these details.
5I	Aggregate value of debit notes issued in respect of supplies declared in 5A,5B,5C, 5D, 5E and 5F shall be declared here. Table 9B of FORM GSTR-1 may be used for filling up these details.
5J & 5K	Details of amendments made to exports (except supplies to SEZs) and supplies to SEZs on which tax has not been paid shall be declared here. Table 9A and Table 9C of FORM GSTR-1 may be used for filling up these details.
5N	Total turnover including the sum of all the supplies (with additional supplies and amendments) on which tax is payable and tax is not payable shall be declared here. This shall also include amount of advances on which tax is paid but invoices have not been issued in the current year. However, this shall not include the aggregate value of inward supplies on which tax is paid by the recipient (i.e. by the person filing the annual return) on reverse charge basis.

4. Part III consists of the details of all input tax credit availed and reversed in the financial year for which the annual return is filed. The instructions to fill Part III are as follows:

Table No.	Instructions
6A	Total input tax credit availed in Table 4A of FORM GSTR-3B for the taxpayer would be auto-populated here.
6B	Aggregate value of input tax credit availed on all inward supplies except those on which tax is payable on reverse charge basis but includes supply of services received from SEZs shall be declared here. It may be noted that the total ITC availed is to be classified as ITC on inputs, capital goods and input services. Table 4(A)(5) of FORM GSTR-3B may be used for filling up these details. This shall not include ITC which was availed, reversed and then reclaimed in the ITC ledger. This is to be declared separately under 6(H) below.
6C	Aggregate value of input tax credit availed on all inward supplies received from unregistered persons (other than import of services) on which tax is payable on reverse charge basis shall be declared here. It may be noted that the total ITC availed is to be classified as ITC on inputs, capital goods and input services. Table 4(A)(3) of FORM GSTR-3B may be used for filling up these details.
6D	Aggregate value of input tax credit availed on all inward supplies received from registered persons on which tax is payable on reverse charge basis shall be declared here. It may be noted that the total ITC availed is to be classified as ITC on inputs, capital goods and input services. Table 4(A)(3) of FORM GSTR-3B may be used for filling up these details.

6E	Details of input tax credit availed on import of goods including supply of goods received from SEZs shall be declared here. It may be noted that the total ITC availed is to be classified as ITC on inputs and capital goods. Table 4(A)(1) of FORM GSTR-3B may be used for filling up these details.
6F	Details of input tax credit availed on import of services (excluding inward supplies from SEZs) shall be declared here. Table 4(A)(2) of FORM GSTR-3B may be used for filling up these details.
6G	Aggregate value of input tax credit received from input service distributor shall be declared here. Table 4(A)(4) of FORM GSTR-3B may be used for filling up these details.
6H	Aggregate value of input tax credit availed, reversed and reclaimed under the provisions of the Act shall be declared here.
6J	The difference between the total amount of input tax credit availed through FORM GSTR-3B and input tax credit declared in row B to H shall be declared here. Ideally, this amount should be zero.
6K	Details of transition credit received in the electronic credit ledger on filing of FORM GST TRAN-I including revision of TRAN-I (whether upwards or downwards), if any shall be declared here.
6L	Details of transition credit received in the electronic credit ledger after filing of FORM GST TRAN-II shall be declared here.
6M	Details of ITC availed but not covered in any of heads specified under 6B to 6L above shall be declared here. Details of ITC availed through FORM ITC-01 and FORM ITC-02 in the financial year shall be declared here.
7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H	Details of input tax credit reversed due to ineligibility or reversals required under rule 37, 39,42 and 43 of the CGST Rules, 2017 shall be declared here. This column should also contain details of any input tax credit reversed under section 17(5) of the CGST Act, 2017 and details of ineligible transition credit claimed under FORM GST TRAN-I or FORM GST TRAN-II and then subsequently reversed. Table 4(B) of FORM GSTR-3B may be used for filling up these details. Any ITC reversed through FORM ITC -03 shall be declared in 7H.
8A	The total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 and reflected in FORM GSTR-2A (table 3 & 5 only) shall be auto-populated in this table. This would be the aggregate of all the input tax credit that has been declared by the corresponding suppliers in their FORM GSTR-I.
8B	The input tax credit as declared in Table 6B and 6H shall be auto-populated here.
8C	Aggregate value of input tax credit availed on all inward supplies (except those on which tax is payable on reverse charge basis but includes supply of services received from SEZs) received during July 2017 to March 2018 but credit on which was availed between April to September 2018 shall be declared here. Table 4(A)(5) of FORM GSTR-3B may be used for filling up these details.

8E & 8F	Aggregate value of the input tax credit which was available in FORM GSTR-2A (table 3 & 5 only) but not availed in any of the FORM GSTR-3B returns shall be declared here. The credit shall be classified as credit which was available and not availed or the credit was not availed as the same was ineligible. The sum total of both the rows should be equal to difference in 8D.
8G	Aggregate value of IGST paid at the time of imports (including imports from SEZs) during the financial year shall be declared here.
8H	The input tax credit as declared in Table 6E shall be auto-populated here.
8K	The total input tax credit which shall lapse for the current financial year shall be computed in this row.

5. Part IV is the actual tax paid during the financial year. Payment of tax under Table 6.1 of FORM GSTR-3B may be used for filling up these details.

6. Part V consists of particulars of transactions for the previous financial year but declared in the returns of April to September of current FY or date of filing of Annual Return for previous financial year (for example in the annual return for the FY 2017-18, the transactions declared in April to September 2018 for the FY 2017-18 shall be declared), whichever is earlier. The instructions to fill Part V are as follows:

Table No.	**Instructions**
10 & 11	Details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of FORM GSTR-1 of April to September of the current financial year or date of filing of Annual Return for the previous financial year, whichever is earlier shall be declared here.
12	Aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April to September of the current financial year or date of filing of Annual Return for previous financial year , whichever is earlier shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details.
13	Details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April to September of the current financial year or date of filing of Annual Return for the previous financial year whichever is earlier shall be declared here. Table 4(A) of FORM GSTR-3B may be used for filling up these details.

7. Part VI consists of details of other information. The instructions to fill Part VI are as follows:

FORM GSTR-9A
(See rule 80)
Annual Return (For Composition Taxpayer)

Pt. I	Basic Details	
1	Financial Year	
2	GSTIN	
3A	Legal Name	<Auto>
3B	Trade Name (if any)	<Auto>
4	Period of composition scheme during the year (From ---- To ----)	
5	Aggregate Turnover of Previous Financial Year	

(Amount in ₹ in all tables)

Pt. II	Details of outward and inward supplies declared in returns filed during the financial year						
	Description	Turnover	Rate of Tax	Central Tax	State / UT Tax	Integrated tax	Cess
	1	2	3	4	5	6	7
6	Details of Outward supplies on which tax is payable as declared in returns filed during the financial year						
A	Taxable						
B	Exempted, Nil-rated						
C	Total						

7	Details of inward supplies on which tax is payable on reverse charge basis (net of debit/credit notes) declared in returns filed during the financial year					
	Description	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
A	Inward supplies liable to reverse charge received from registered persons					
B	Inward supplies liable to reverse charge received from unregistered persons					
C	Import of services					
D	Net Tax Payable on (A), (B) and (C) above					
8	Details of other inward supplies as declared in returns filed during the financial year					
A	Inward supplies from registered persons (other than 7A above)					
B	Import of Goods					

Pt. III	Details of tax paid as declared in returns filed during the financial year			
9	Description	Total tax payable	Paid	
	1	2	3	
	Integrated Tax			
	Central Tax			
	State/UT Tax			

	Cess				
	Interest				
	Late fee				
	Penalty				

Pt. IV	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier					
	Description	Turnover	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
10	Supplies / tax (outward) declared through Amendments (+) (net of debit notes)					
11	Inward supplies liable to reverse charge declared through Amendments (+) (net of debit notes)					
12	Supplies / tax (outward) reduced through Amendments (-) (net of credit notes)					
13	Inward supplies liable to reverse charge reduced through Amendments (-) (net of credit notes)					

14	Differential tax paid on account of declaration made in 10, 11, 12 & 13 above		
	Description	Payable	Paid
	1	2	3
	Integrated Tax		
	Central Tax		
	State/UT Tax		
	Cess		
	Interest		

Pt. V	Other Information							
15	Particulars of Demands and Refunds							
	Description	Central Tax	State Tax / UT Tax	Integrated Tax	Cess	Interest	Penalty	Late Fee / Others
	1	2	3	4	5	6	7	8
A	Total Refund claimed							
B	Total Refund sanctioned							
C	Total Refund Rejected							
D	Total Refund Pending							
E	Total demand of taxes							

F	Total taxes paid in respect of E above							
G	Total demands pending out of E above							

16	Details of credit reversed or availed				
	Description	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5
A	Credit reversed on opting in the composition scheme (-)				
B	Credit availed on opting out of the composition scheme (+)				

17	Late fee payable and paid		
	Description	Payable	Paid
	1	2	3
A	Central Tax		
B	State Tax		

Verification:

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from and in case of any reduction in output tax liability the benefit thereof has been/will be passed on to the recipient of supply.

Place

Date

Signature
Name of Authorised Signatory

Designation / Status

Instructions: –

1. The details for the period between July 2017 to March 2018 shall be provided in this return.

2. Part I consists of basic details of taxpayer. The instructions to fill Part I are as follows :

Table No.	Instructions
5	Aggregate turnover for the previous financial year is the turnover of the financial year previous to the year for which the return is being filed. For example for the annual return for FY 2017-18, the aggregate turnover of FY 2016-17 shall be entered into this table. It is the sum total of turnover of all taxpayers registered on the same PAN.

3. Part II consists of the details of all outward and inward supplies in the financial year for which the annual return is filed. The instructions to fill Part II are as follows:

Table No.	Instructions
6A	Aggregate value of all outward supplies net of debit notes / credit notes, net of advances and net of goods returned for the entire financial year shall be declared here. Table 6 and Table 7 of FORM GSTR-4 may be used for filling up these details.
6B	Aggregate value of exempted, Nil Rated and Non-GST supplies shall be declared here.
7A	Aggregate value of all inward supplies received from registered persons on which tax is payable on reverse charge basis shall be declared here. Table 4B, Table 5 and Table 8A of FORM GSTR-4 may be used for filling up these details.
7B	Aggregate value of all inward supplies received from unregistered persons (other than import of services) on which tax is payable on reverse charge basis shall be declared here. Table 4C, Table 5 and Table 8A of FORM GSTR-4 may be used for filling up these details.
7C	Aggregate value of all services imported during the financial year shall be declared here. Table 4D and Table 5 of FORM GSTR-4 may be used for filling up these details.
8A	Aggregate value of all inward supplies received from registered persons on which tax is payable by the supplier shall be declared here. Table 4A and Table 5 of FORM GSTR-4 may be used for filling up these details.
8B	Aggregate value of all goods imported during the financial year shall be declared here.

4. Part IV consists of the details of amendments made for the supplies of the previous financial year in the returns of April to September of the current FY or date of filing of Annual Return for previous financial year (for example in the annual return for the FY 2017-18, the transactions declared in April to September 2018 for the FY 2017-18 shall be declared),whichever is earlier. The instructions to fill Part V are as follows:

Table No.	Instructions
10,11,12, 13 and 14	Details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 5 (relating to inward supplies) or Table 7 (relating to outward supplies) of FORM GSTR- 4 of April to September of the current financial year or upto the date of filing of Annual Return for the previous financial year, whichever is earlier shall be declared here.

5. Part V consists of details of other information. The instruction to fill Part V are as follows:

Table No.	Instructions
15A, 15B, 15C and 15D	Aggregate value of refunds claimed, sanctioned, rejected and pending for processing shall be declared here. Refund claimed will be the aggregate value of all the refund claims filed in the financial year and will include refunds which have been sanctioned, rejected or are pending for processing. Refund sanctioned means the aggregate value of all refund sanction orders. Refund pending will be the aggregate amount in all refund application for which acknowledgement has been received and will exclude provisional refunds received. These will not include details of non-GST refund claims.
15E, 15F and 15G	Aggregate value of demands of taxes for which an order confirming the demand has been issued by the adjudicating authority has been issued shall be declared here. Aggregate value of taxes paid out of the total value of confirmed demand in 15E above shall be declared here. Aggregate value of demands pending recovery out of 15E above shall be declared here.
16A	Aggregate value of all credit reversed when a person opts to pay tax under the composition scheme shall be declared here. The details furnished in FORM ITC-03 may be used for filling up these details.
16B	Aggregate value of all the credit availed when a registered person opts out of the composition scheme shall be declared here. The details furnished in FORM ITC-01 may be used for filling up these details.
17	Late fee will be payable if annual return is filed after the due date.”;

11. In the said rules, in FORM GST EWB-01, in the Notes, in serial number 7, in the Table, against Code 4 in the first column, for the letters and word “SKD or CKD” in the second column, the letters and words “SKD or CKD or supply in batches or lots” shall be substituted.

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L)
Under Secretary to the Government of India

Seeks to extend the time limit for making the declaration in FORM GST ITC-04

Notification No. 40/2018 – Central Tax

New Delhi, the 4th September, 2018

G.S.R… (E).- In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, and in supercession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 53/2017-Central Tax, dated the 28th October,

2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1346 (E), dated the 28th October, 2017, except as respects things done or omitted to be done before such supersession, the Commissioner, hereby extends the time limit for making the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to June, 2018 till the 30th day of September, 2018.

[F. No. 349/58/2017- GST (Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to waive the late fee paid for specified classes of taxpayers for FORM GSTR-3B, FORM GSTR-4 and FORM GSTR-6

Notification No. 41/2018 – Central Tax

New Delhi, the 4th September, 2018

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 waives the late fee paid under section 47 of the said Act, by the following classes of taxpayers:-

(i) the registered persons whose return in FORM GSTR-3B of the Central Goods and Services Tax Rules, 2017 for the month of October, 2017, was submitted but not filed on the common portal, after generation of the application reference number;

(ii) the registered persons who have filed the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017 for the period October to December, 2017 by the due date but late fee was erroneously levied on the common portal;

(iii) the Input Service Distributors who have paid the late fee for filing or submission of the return in FORM GSTR-6 of the Central Goods and Services Tax Rules, 2017 for any tax period between the 1st day of January, 2018 and the 23rd day of January, 2018.

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L)
Under Secretary to the Government of India

Seeks to extend the time limit for making the declaration in FORM GST ITC-01 for specified classes of taxpayers

Notification No.42/2018 – Central Tax

New Delhi, the 4th September 2018

G.S.R. …..(E).- In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and clause (b) of sub-rule (1) of rule 40 of the Central Goods and Services Tax Rules, 2017, the Commissioner, hereby extends the time limit for making the declaration in FORM GST ITC-01 of the said rules, by registered persons who have filed the application in FORM GST-CMP-04 of the said rules between the 2nd day of March, 2018 and the 31st day of March, 2018, for a period of thirty days from the date of publication of this notification in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover up to Rs 1.5 crore

Notification No. 43/2018 – Central Tax

New Delhi, the 10th September, 2018

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) (hereafter in this notification referred to as the said Act), and in supercession of –

(i) Notification No. 57/2017 – Central Tax dated 15th November, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1413 (E), dated the 15th November, 2017;

(ii) Notification No. 17/2018 – Central Tax dated 28th March, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 269 (E), dated the 28th March, 2018; and

(iii) Notification No. 33/2018 – Central Tax dated 10th August, 2018 published in the Gazette of India, Extraordinary, Part II, Section

3, Sub-section (i), vide number G.S.R 760 (E), dated the 10th August, 2018,except as respects things done or omitted to be done before such supercession, the Central Government, on the recommendations of the Council, hereby notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as mentioned below for furnishing the details of outward supply of goods or services or both.

2. The said persons may furnish the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, effected during the quarter as specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
(1)	(2)	(3)
1	July - September, 2017	31st October, 2018
2	October - December, 2017	31st October, 2018
3	January - March, 2018	31st October, 2018
4	April – June, 2018	31st October, 2018
5	July - September, 2018	31st October, 2018
6	October - December, 2018	31st January, 2019
7	January - March, 2019	30th April, 2019

Provided that the details of outward supply of goods or services or both in FORM GSTR-1 for the quarter from July, 2018 to September, 2018 by– (i) registered persons in the State of Kerala; (ii) registered persons whose principal place of business is in Kodagu district in the State of Karnataka; and (iii) registered persons whose principal place of business is in Mahe in the Union territory of Puducherry shall be furnished electronically through the common portal, on or before the 15th day of November, 2018:

Provided further that the details of outward supply of goods or services or both in FORM GSTR-1 to be filed for the quarters from July, 2017 to September, 2018 by the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 – Central Tax dated 6th August, 2018 published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 742 (E), dated the 6th August, 2018, shall be furnished electronically through the common portal, on or before the 31st day of December, 2018;

3. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2017 to March, 2019 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores

Notification No. 44/2018 – Central Tax

New Delhi, the 10th September, 2018

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) (hereafter in this notification referred to as the said Act), and in supercession of –

(i) Notification No. 18/2017 – Central Tax dated 8th August, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 994 (E), dated the 8th August, 2017;

(ii) Notification No. 58/2017 – Central Tax dated 15th November, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1414 (E), dated the 15th November, 2017;

(iii) Notification No. 18/2018 – Central Tax dated 28th March, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 296 (E), dated the 28th March, 2018; and

(iv) Notification No. 32/2018 – Central Tax dated 10th August, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 759 (E), dated the 10th August, 2018, except as respects things done or omitted to be done before

such supercession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for the months from July, 2017 to September, 2018 till the 31st day of October, 2018 and for the months from October, 2018 to March, 2019 till the eleventh day of the succeeding month:

Provided that the time limit for furnishing the details of outward supplies in FORM GSTR-1 for the months from July, 2017 to November, 2018 for the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 – Central Tax dated 6th August, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 742 (E), dated the 6th August, 2018, shall be extended till the 31st day of December, 2018.

2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the said Act, for the months of July, 2017 to March, 2019 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 21/2017 and 56/2017 - CT]

Notification No. 45/2018 – Central Tax

New Delhi, the 10th September, 2018

G.S.R.....(E),– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following amendments–

(i) in notification number 21/2017 – Central Tax dated the 08th August, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 997(E), dated the 08th August, 2017; and

(ii) in notification number 56/2017 – Central Tax dated the 15th November, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1412(E), dated the 15th November, 2017, namely:–

In the said notifications, in the first paragraph, the following proviso shall be inserted, namely:–

"Provided that the return in FORM GSTR-3B of the said rules to be filed for the period from July, 2017 to November, 2018 by the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 – Central Tax dated the 06th August, 2018 published in the Gazette of India vide number G.S.R.742(E), dated the 06th August, 2018, shall be furnished electronically through the common portal on or before the 31st day of December, 2018.".

[F.No.349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 35/2017 and 16/2018 - CT]

Notification No. 46/2018 – Central Tax

New Delhi, the 10th September, 2018

G.S.R.....(E),– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments–

(i) in notification number 35/2017 – Central Tax dated the 15th September, 2017 published in the Gazette of India, Extraordinary,

Part II, Section 3, Sub-section (i), vide number G.S.R.1164(E), dated the 15th September, 2017; and

(ii) in notification number 16/2018 – Central Tax dated the 23rd March, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.268(E), dated the 23rd March, 2018, namely:–

In the said notifications, in the first paragraph, the following proviso shall be inserted, namely:–

"Provided that the return in FORM GSTR-3B of the said rules to be filed for the period from July, 2017 to November, 2018 by the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 – Central Tax dated the 06th August, 2018 published in the Gazette of India vide number G.S.R.742(E), dated the 06th August, 2018, shall be furnished electronically through the common portal on or before the 31st day of December, 2018.".

[F.No.349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 3B for newly migrated (obtaining GSTIN vide notification No. 31/2018-Central Tax, dated 06.08.2018) taxpayers [Amends notf. No. 34/2018 - CT]

Notification No. 47/2018 – Central Tax

New Delhi, the 10th September, 2018

G.S.R.....(E),– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments in notification number 34/2018 – Central Tax dated the 10th August, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.761(E), dated the 10th August, 2018, namely:–

In the said notification in the first paragraph, after the second proviso, the following proviso shall be inserted, namely:–

"Provided also that the return in FORM GSTR-3B of the said rules to be filed for the period from July, 2017 to November, 2018 by the taxpayers who have obtained Goods and Services Tax Identification Number (GSTIN) in terms of notification No. 31/2018 – Central Tax dated the 06th August, 2018 published in the Gazette of India vide number G.S.R.742(E), dated the 06th August, 2018, shall be furnished electronically through the common portal on or before the 31st day of December, 2018.".

[F.No.349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to make amendments (Ninth Amendment, 2018)
to the CGST Rules, 2017

Notification No. 48 /2018 – Central Tax

New Delhi, the 10th September, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Ninth Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017,

(i) in rule 117,

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

"(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council,

extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.";

(b) in sub-rule (4), in clause (b), in sub-clause (iii), the following proviso shall be inserted, namely:-

"Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 30th April, 2019.";

(ii) in rule 142, in sub-rule (5), after the words and figures "of section 76", the words and figures "or section 125" shall be inserted.

[F. No. 349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Notification amending the CGST Rules, 2017 (Tenth Amendment Rules, 2018)

Notification No. 49/2018 – Central Tax

New Delhi, the 13th September, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the FORMS to the Central Goods and Services Tax Rules, 2017, after FORM GSTR-9A, the following shall be inserted, namely:-

"FORM GSTR-9C
See rule 80(3)
PART – A - Reconciliation Statement

Pt. I	Basic Details			
1	Financial Year			
2	GSTIN			
3A	Legal Name	< Auto>		
3B	Trade Name (if any)	<Auto>		
4	Are you liable to audit under any Act?		<<Please specify>>	
			(Amount in ₹ in all tables)	
Pt. II	**Reconciliation of turnover declared in audited Annual Financial Statement with turnover declared in Annual Return (GSTR9)**			
5	**Reconciliation of Gross Turnover**			
A	Turnover (including exports) as per audited financial statements for the State / UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited Annual Financial Statement)			
B	Unbilled revenue at the beginning of Financial Year		(+)	
C	Unadjusted advances at the end of the Financial Year		(+)	
D	Deemed Supply under Schedule I		(+)	
E	Credit Notes issued after the end of the financial year but reflected in the annual return		(+)	
F	Trade Discounts accounted for in the audited Annual Financial Statement but are not permissible under GST		(+)	
G	Turnover from April 2017 to June 2017		(-)	
H	Unbilled revenue at the end of Financial Year		(-)	
I	Unadjusted Advances at the beginning of the Financial Year		(-)	
J	Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST		(-)	
K	Adjustments on account of supply of goods by SEZ units to DTA Units		(-)	
L	Turnover for the period under composition scheme		(-)	
M	Adjustments in turnover under section 15 and rules thereunder		(+/-)	
N	Adjustments in turnover due to foreign exchange fluctuations		(+/-)	
O	Adjustments in turnover due to reasons not listed above		(+/-)	
P	Annual turnover after adjustments as above			<Auto>
Q	Turnover as declared in Annual Return (GSTR9)			
R	Un-Reconciled turnover (Q - P)			**AT1**
6	**Reasons for Un - Reconciled difference in Annual Gross Turnover**			
A	Reason 1	<<Text>>		
B	Reason 2	<<Text>>		
C	Reason 3	<<Text>>		

7	**Reconciliation of Taxable Turnover**					
A	Annual turnover after adjustments (from 5P above)					**<Auto >**
B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply turnover					
C	Zero rated supplies without payment of tax					
D	Supplies on which tax is to be paid by the recipient on reverse charge basis					
E	Taxable turnover as per adjustments above (A-B-C-D)					<Auto>
F	Taxable turnover as per liability declared in Annual Return (GSTR9)					
G	Unreconciled taxable turnover (F-E)					**AT 2**
8	**Reasons for Un - Reconciled difference in taxable turnover**					
A	Reason 1	<<Text>>				
B	Reason 2	<<Text>>				
C	Reason 3	<<Text>>				
Pt. III	**Reconciliation of tax paid**					
9	**Reconciliation of rate wise liability and amount payable thereon**					
			Tax payable			
	Description	Taxable Value	Central tax	State tax / UT tax	Integrated Tax	Cess, if applicable
	1	2	3	4	5	6
A	5%					
B	5% (RC)					
C	12%					
D	12% (RC)					
E	18%					
F	18% (RC)					
G	28%					
H	28% (RC)					
I	3%					
J	0.25%					
K	0.10%					
L	Interest					
M	Late Fee					
N	Penalty					
O	Others					
P	Total amount to be paid as per tables above		<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount paid as declared in Annual Return (GSTR 9)					
R	Un-reconciled payment of amount				**PT 1**	
10	**Reasons for un-reconciled payment of amount**					
A	Reason 1	<<Text>>				
B	Reason 2	<<Text>>				
C	Reason 3	<<Text>>				

A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

11	**Additional amount payable but not paid (due to reasons specified under Tables 6,8 and 10 above)**					
		To be paid through Cash				
	Description	Taxable Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Interest					
	Late Fee					
	Penalty					
	Others (please specify)					

Pt.	**Reconciliation of Input Tax Credit (ITC)**
IV	

12	**Reconciliation of Net Input Tax Credit (ITC)**		
A	ITC availed as per audited Annual Financial Statement for the State/ UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)		
B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
D	ITC availed as per audited financial statements or books of account		<Auto>
E	ITC claimed in Annual Return (GSTR9)		
F	Un-reconciled ITC		**ITC 1**

13	**Reasons for un-reconciled difference in ITC**	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

14	**Reconciliation of ITC declared in Annual Return (GSTR9) with ITC availed on expenses as per audited Annual Financial Statement or books of account**

	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
	1	2	3	4
A	Purchases			
B	Freight / Carriage			
C	Power and Fuel			
D	Imported goods (Including received from SEZs)			
E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed			<<Auto>>
S	ITC claimed in Annual Return (GSTR9)			
T	Un-reconciled ITC			**ITC 2**

15	**Reasons for un - reconciled difference in ITC**	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

16	**Tax payable on un-reconciled difference in ITC (due to reasons specified in 13 and 15 above)**	
	Description	Amount Payable
	Central Tax	
	State/UT Tax	
	Integrated Tax	
	Cess	
	Interest	
	Penalty	

Pt. V	Auditor's recommendation on additional Liability due to non-reconciliation					
		To be paid through Cash				
	Description	Value	Central tax	State tax / UT tax	Integrated tax	Cess, if applicable
	1	2	3	4	5	6
	5%					
	12%					
	18%					
	28%					
	3%					
	0.25%					
	0.10%					
	Input Tax Credit					
	Interest					
	Late Fee					
	Penalty					
	Any other amount paid for supplies not included in Annual Return (GSTR 9)					
	Erroneous refund to be paid back					
	Outstanding demands to be settled					
	Other (Pl. specify)					

Verification:

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

**(Signature and stamp/Seal of the Auditor)

Place: ……

Name of the signatory ……

Membership No……

Date: ……

Full address ……

Instructions: –

1. Terms used:

(a) GSTIN: Goods and Services Tax Identification Number

2. The details for the period between July 2017 to March 2018 are to be provided in this statement for the financial year 2017-18. The reconciliation statement is to be filed for every GSTIN separately.

3. The reference to current financial year in this statement is the financial year for which the reconciliation statement is being filed for.

4. Part II consists of reconciliation of the annual turnover declared in the audited Annual Financial Statement with the turnover as declared in the Annual Return furnished in FORM GSTR-9 for this GSTIN. The instructions to fill this part are as follows :-

Table No.	Instructions
5A	The turnover as per the audited Annual Financial Statement shall be declared here. There may be cases where multiple GSTINs (State-wise) registrations exist on the same PAN. This is common for persons / entities with presence over multiple States. Such persons / entities, will have to internally derive their GSTIN wise turnover and declare the same here. This shall include export turnover (if any). It may be noted that reference to audited Annual Financial Statement includes reference to books of accounts in case of persons / entities having presence over multiple States.
5B	Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting in the last financial year and was carried forward to the current financial year shall be declared here. In other words, when GST is payable during the financial year on such revenue (which was recognized earlier), the value of such revenue shall be declared here. (For example, if rupees Ten Crores of unbilled revenue existed for the financial year 2016-17, and during the current financial year, GST was paid on rupees Four Crores of such revenue, then value of rupees Four Crores rupees shall be declared here)
5C	Value of all advances for which GST has been paid but the same has not been recognized as revenue in the audited Annual Financial Statement shall be declared here.
5D	Aggregate value of deemed supplies under Schedule I of the CGST Act, 2017 shall be declared here. Any deemed supply which is already part of the turnover in the audited Annual Financial Statement is not required to be included here.

5E	Aggregate value of credit notes which were issued after 31st of March for any supply accounted in the current financial year but such credit notes were reflected in the annual return (GSTR-9)shall be declared here.
5F	Trade discounts which are accounted for in the audited Annual Financial Statement but on which GST was leviable(being not permissible) shall be declared here.
5G	Turnover included in the audited Annual Financial Statement for April 2017 to June 2017 shall be declared here.
5H	Unbilled revenue which was recorded in the books of accounts on the basis of accrual system of accounting during the current financial year but GST was not payable on such revenue in the same financial year shall be declared here.
5I	Value of all advances for which GST has not been paid but the same has been recognized as revenue in the audited Annual Financial Statement shall be declared here.
5J	Aggregate value of credit notes which have been accounted for in the audited Annual Financial Statement but were not admissible under Section 34 of the CGST Act shall be declared here.
5K	Aggregate value of all goods supplied by SEZs to DTA units for which the DTA units have filed bill of entry shall be declared here.
5L	There may be cases where registered persons might have opted out of the composition scheme during the current financial year. Their turnover as per the audited Annual Financial Statement would include turnover both as composition taxpayer as well as normal taxpayer. Therefore, the turnover for which GST was paid under the composition scheme shall be declared here.
5M	There may be cases where the taxable value and the invoice value differ due to valuation principles under section 15 of the CGST Act, 2017 and rules thereunder. Therefore, any difference between the turnover reported in the Annual Return (GSTR 9) and turnover reported in the audited Annual Financial Statement due to difference in valuation of supplies shall be declared here.
5N	Any difference between the turnover reported in the Annual Return (GSTR9) and turnover reported in the audited Annual Financial Statement due to foreign exchange fluctuations shall be declared here.
5O	Any difference between the turnover reported in the Annual Return (GSTR9) and turnover reported in the audited Annual Financial Statement due to reasons not listed above shall be declared here.
5Q	Annual turnover as declared in the Annual Return (GSTR 9) shall be declared here. This turnover may be derived from Sr. No. 5N, 10 and 11 of Annual Return (GSTR 9).
6	Reasons for non-reconciliation between the annual turnover declared in the audited Annual Financial Statement and turnover as declared in the Annual Return (GSTR 9) shall be specified here.

7	The table provides for reconciliation of taxable turnover from the audited annual turnover after adjustments with the taxable turnover declared in annual return (GSTR-9).
7A	Annual turnover as derived in Table 5P above would be auto-populated here.
7B	Value of exempted, nil rated, non-GST and no-supply turnover shall be declared here. This shall be reported net of credit notes, debit notes and amendments if any.
7C	Value of zero rated supplies (including supplies to SEZs) on which tax is not paid shall be declared here. This shall be reported net of credit notes, debit notes and amendments if any.
7D	Value of reverse charge supplies on which tax is to be paid by the recipient shall be declared here. This shall be reported net of credit notes, debit notes and amendments if any.
7E	The taxable turnover is derived as the difference between the annual turnover after adjustments declared in Table 7A above and the sum of all supplies (exempted, non-GST, reverse charge etc.) declared in Table 7B, 7C and 7D above.
7F	Taxable turnover as declared in Table 4N of the Annual Return (GSTR9) shall be declared here.
8	Reasons for non-reconciliation between adjusted annual taxable turnover as derived from Table 7E above and the taxable turnover declared in Table 7F shall be specified here.

5. Part III consists of reconciliation of the tax payable as per declaration in the reconciliation statement and the actual tax paid as declared in Annual Return (GSTR9). The instructions to fill this part are as follows :-

Table No.	Instructions
9	The table provides for reconciliation of tax paid as per reconciliation statement and amount of tax paid as declared in Annual Return (GSTR 9). Under the head labelled —RCǁ, supplies where tax was paid on reverse charge basis by the recipient (i.e. the person for whom reconciliation statement has been prepared) shall be declared.
9P	The total amount to be paid as per liability declared in Table 9A to 9O is auto populated here.
9Q	The amount payable as declared in Table 9 of the Annual Return (GSTR9) shall be declared here. It should also contain any differential tax paid on Table 10 or 11 of the Annual Return (GSTR9).
10	Reasons for non-reconciliation between payable / liability declared in Table 9P above and the amount payable in Table 9Q shall be specified here.
11	Any amount which is payable due to reasons specified under Table 6, 8 and 10 above shall be declared here.

6. Part IV consists of reconciliation of Input Tax Credit (ITC). The instructions to fill Part IV are as under:-

Table No.	Instructions
12A	ITC availed (after reversals) as per the audited Annual Financial Statement shall be declared here. There may be cases where multiple GSTINs (State-wise) registrations exist on the same PAN. This is common for persons / entities with presence over multiple States. Such persons / entities, will have to internally derive their ITC for each individual GSTIN and declare the same here. It may be noted that reference to audited Annual Financial Statement includes reference to books of accounts in case of persons / entities having presence over multiple States.
12B	Any ITC which was booked in the audited Annual Financial Statement of earlier financial year(s)but availed in the ITC ledger in the financial yearfor which the reconciliation statement is being filed for shall be declared here. This shall include transitional credit which was booked in earlier years but availed duringFinancial Year 2017-18.
12C	Any ITC which has been booked in the audited Annual Financial Statement of the current financial year but the same has not been credited to the ITC ledger for the said financial year shall be declared here.
12D	ITC availed as per audited Annual Financial Statement or books of accounts as derived from values declared in Table 12A, 12B and 12C above will be auto-populated here.
12E	Net ITC available for utilization as declared in Table 7J of Annual Return (GSTR9) shall be declared here.
13	Reasons for non-reconciliation of ITC as per audited Annual Financial Statement or books of account (Table 12D) and the net ITC (Table12E) availed in the Annual Return (GSTR9) shall be specified here.
14	This table is for reconciliation of ITC declared in the Annual Return (GSTR9) against the expenses booked in the audited Annual Financial Statement or books of account. The various sub-heads specified under this table are general expenses in the audited Annual Financial Statement or books of account on which ITC may or may not be available. Further, this is only an indicative list of heads under which expenses are generally booked. Taxpayers may add or delete any of these heads but all heads of expenses on which GST has been paid / was payable are to be declared here.
14R	Total ITC declared in Table 14A to 14Q above shall be auto populated here.
14S	Net ITC availed as declared in the Annual Return (GSTR9) shall be declared here. Table 7J of the Annual Return (GSTR9) may be used for filing this Table.
15	Reasons for non-reconciliation between ITC availed on the various expenses declared in Table 14R and ITC declared in Table 14S shall be specified here.
16	Any amount which is payable due to reasons specified in Table 13 and 15 above shall be declared here.

7. Part V consists of the auditor's recommendation on the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. The auditor shall also recommend if there is any other amount to be paid for supplies not included in the Annual Return. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demands which is recommended to be settled by the auditor shall be declared in this Table.

8. Towards, the end of the reconciliation statement taxpayers shall be given an option to pay their taxes as recommended by the auditor.

PART – B- CERTIFICATION

I. Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by the person who had conducted the audit:

* I/we have examined the—

(a) balance sheet as on ……

(b) the *profit and loss account/income and expenditure account for the period beginning from ……..…to ending on ……., and

(c) the cash flow statement for the period beginning from ……..… to ending on ……, —attached herewith, of M/s …… (Name), ……..…… (Address), ..……(GSTIN).

2. Based on our audit I/we report that the said registered person—

*has maintained the books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder

*has not maintained the following accounts/records/documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder:

1.

2.

3.

3. (a) *I/we report the following observations/ comments / discrepancies / inconsistencies; if any:

…….

…….

3. (b) *I/we further report that, -

(A) *I/we have obtained all the information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit/ information and explanations which, to the best of *my/our knowledge and belief, were necessary for the purpose of the audit were not provided/partially provided to us.

(B) In *my/our opinion, proper books of account *have/have not been kept by the registered person so far as appears from*my/ our examination of the books.

(C) I/we certify that the balance sheet, the *profit and loss/income and expenditure account and the cash flow Statement are *in agreement/not in agreement with the books of account maintained at the Principal place of business at ……and ** ……additional place of business within the State.

4. The documents required to be furnished under section 35 (5) of the CGST Act and Reconciliation Statement required to be furnished under section 44(2) of the CGST Act is annexed herewith in Form No. GSTR-9C.

5. In *my/our opinion and to the best of *my/our information and according to explanations given to *me/us, the particulars given in the said Form No.GSTR-9C are true and correct subject to following observations/ qualifications, if any:

(a) ……

(b) ……

(c) ……

……

**(Signature and stamp/Seal of the Auditor)

Place: ……

Name of the signatory ……

Membership No.……

Date: ……

Full address ……

II. Certification in cases where the reconciliation statement (FORM GSTR-9C) is drawn up by a person other than the person who had conducted the audit of the accounts:

*I/we report that the audit of the books of accounts and the financial statements of M/s. …….....……. (Name and address of the assessee with GSTIN) was conducted by M/s. ……..……. (full name and address of auditor along with status), bearing membership number in pursuance of the provisions of the …….Act, and *I/we annex hereto a copy of their audit report dated ……. along with a copy of each of :-

(a) balance sheet as on ……

(b) the *profit and loss account/income and expenditure account for the period beginning from ……..…to ending on ……..,

(c) the cash flow statement for the period beginning from ……..…to ending on ……, and

(d) documents declared by the said Act to be part of, or annexed to, the *profit and loss account/income and expenditure account and balance sheet.

2. I/we report that the said registered person—

*has maintained the books of accounts, records and documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder

*has not maintained the following accounts/records/documents as required by the IGST/CGST/<<>>GST Act, 2017 and the rules/notifications made/issued thereunder:

1.

2.

3.

3. The documents required to be furnished under section 35 (5) of the CGST Act and Reconciliation Statement required to be furnished under section 44(2) of the CGST Act is annexed herewith in Form No.GSTR-9C.

4. In *my/our opinion and to the best of *my/our information and according to examination of books of account including other relevant documents and explanations given to *me/us, the particulars given in the said Form No.9C are true and correct subject to the following observations/ qualifications, if any:

(a) ……

(b) ……

(c) ……

**(Signature and stamp/Seal of the Auditor)

Place: ……

Name of the signatory ……

Membership No……

Date: ……

Full address ……ll.

[F. No. 349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to bring section 51 of the CGST Act (provisions related to TDS) into force w.e.f 01.10.2018

Notification No. 50/2018 – Central Tax

New Delhi, the 13th September, 2018

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (3) of section 1 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supercession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 33/2017-Central Tax, dated the 15th September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1163 (E), dated the 15th September, 2017, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the 1st day of October, 2018, as the date on which the provisions of section 51 of the said Act shall come into force with respect to persons specified under clauses (a), (b) and (c) of sub-section (1) of section 51 of the said Act and the persons specified below under clause (d) of sub-section (1) of section 51 of the said Act, namely:-

(a) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with fifty-one per cent. or more participation by way of equity or control, to carry out any function;

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) public sector undertakings.

[F. No. 349/58/2017-GST(Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to bring section 52 of the CGST Act (provisions related to TCS) into force w.e.f 01.10.2018

Notification No. 51/2018 – Central Tax

New Delhi, the 13th September, 2018

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (3) of section 1 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1st day of October, 2018, as the date on which the provisions of section 52 of the said Act shall come into force.

[F. No. 349/58/2017-GST(Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to notify the rate of tax collection at source (TCS) to be collected by every electronic commerce operator for intra-State taxable supplies

Notification No. 52/2018 – Central Tax

New Delhi, the 20th September, 2018

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (1) of section 52 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council,

hereby notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of half per cent. of the net value of intra-State taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

[F. No. 349/58/2017-GST(Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to make amendments (Eleventh Amendment, 2018) to the CGST Rules, 2017. This notification restores rule 96(10) to the position that existed before the amendment carried out in the said rule by notification No. 39/2018- Central Tax dated 04.09.2018

Notification No. 53/2018 – Central Tax

New Delhi, the 9th October, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 23rd October, 2017.

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:-

> "(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-

Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.".

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017. This notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10)

Notification No. 54/2018 – Central Tax

New Delhi, the 9th October, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Twelfth Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 89, for sub-rule (4B), the following sub-rule shall be substituted, namely:-

"(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017,

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.".

3. In the said rules, in rule 96, for sub-rule (10), the following sub-rule shall be substituted, namely:-

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017,

published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.".

[F. No. 349/58/2017-GST (Pt.)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the last date for filing of FORM GSTR-3B for the month of September, 2018 till 25.10.2018 for all taxpayers

Notification No. 55/2018 – Central Tax

New Delhi, the 21st October, 2018

G.S.R.....(E),– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments in notification number 34/2018 – Central Tax dated the 10th August, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.761(E), dated the 10th August, 2018, namely:–

In the said notification in the first paragraph, after the third proviso, the following proviso shall be inserted, namely: –

"Provided also that the return in FORM GSTR-3B for the month of September, 2018 shall be furnished electronically through the common portal, on or before the 25th October, 2018.".

[F. No. 349/58/2017-GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to supersede Notification No. 32/2017-Central Tax, dated 15.09.2017

Notification No. 56/2018 – Central Tax

New Delhi, the 23rd October, 2018

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), hereinafter referred to as the "said Act", the Central Government, on the recommendations of the Council and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 32/2017 – Central Tax, dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1158 (E), dated the 15th September, 2017, except

as respects things done or omitted to be done before such supersession, hereby specifies the categories of casual taxable persons (hereinafter referred to as „such persons") who shall be exempted from obtaining registration under the said Act-

(i) such persons making inter-State taxable supplies of handicraft goods as defined in the "Explanation" in notification No. 21/2018 -Central Tax (Rate), dated the 26th July, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.695 (E), dated the 26th July, 2018 and falling under the Chapter, Heading, Sub-heading or Tariff item specified in column (2) of the Table contained in the said notification and the Description specified in the corresponding entry in column (3) of the Table contained in the said notification; or

(ii) such persons making inter-State taxable supplies of the products mentioned in column (2) of the Table below and the Harmonised System of Nomenclature (HSN) code mentioned in the corresponding entry in column (3) of the said Table, when made by the craftsmen predominantly by hand even though some machinery may also be used in the process:-

Table

Sl. No.	Products	HSN Code
(1)	(2)	(3)
1.	Leather articles (including bags, purses, saddlery, harness, garments)	4201, 4202, 4203
2.	Carved wood products (including boxes, inlay work, cases, casks)	4415, 4416
3.	Carved wood products (including table and kitchenware)	4419
4.	Carved wood products	4420
5.	Wood turning and lacquer ware	4421
6.	Bamboo products [decorative and utility items]	46
7.	Grass, leaf and reed and fibre products, mats, pouches, wallets	4601, 4602
8.	Paper mache articles	4823
9.	Textile (handloom products)	50, 58, 62, 63
10.	Textiles hand printing	50, 52, 54
11.	Zari thread	5605
12.	Carpet, rugs and durries	57
13.	Textiles hand embroidery	58
14.	Theatre costumes	61, 62, 63
15.	Coir products (including mats, mattresses)	5705, 9404
16.	Leather footwear	6403, 6405
17.	Carved stone products (including statues, statuettes, figures of animals, writing sets, ashtray, candle stand)	6802

18.	Stones inlay work	68
19.	Pottery and clay products, including terracotta	6901, 6909, 6911, 6912, 6913, 6914
20.	Metal table and kitchen ware (copper, brass ware)	7418
21.	Metal statues, images/statues vases, urns and crosses of the type used for decoration of metals of Chapters 73 and 74	8306
22.	Metal bidriware	8306
23.	Musical instruments	92
24.	Horn and bone products	96
25.	Conch shell crafts	96
26.	Bamboo furniture, cane/Rattan furniture	94
27.	Dolls and toys	9503
28.	Folk paintings, madhubani, patchitra, Rajasthani miniature	97

Provided that such persons are availing the benefit of notification No. 03/2018 – Integrated Tax, dated the 22nd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1052(E), dated the 22nd October, 2018:

Provided further that the aggregate value of such supplies, to be computed on all India basis, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to that section.

2. Such persons mentioned in the preceding paragraph shall obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the Central Goods and Services Tax Rules, 2017.

[F. No. 349/58/2017-GST(Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to exempt post audit authorities under MoD from TDS compliance

Notification No. 57/2018 – Central Tax

New Delhi, the 23rd October, 2018

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (3) of section 1 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 51 of the Central Goods and Services Tax Act, 2017 (hereafter in this notification referred to as the said Act), the Central

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. 50/2018-Central Tax dated the 13th September, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 868 dated the 13th September, 2018, namely:–

In the paragraph of the notification, the following proviso shall be inserted, namely:-

"Provided that with respect to persons specified under clause (a) of sub-section (1) of section 51 of the Act, nothing in this notification shall apply to the authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A and their offices, with effect from the 1st day of October, 2018."

[F. No. 349/58/2017- GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to provide taxpayers whose registration has been cancelled on or before the 30th September, 2018 time to furnish final return in FORM GSTR-10 till 31st December, 2018

Notification No. 58/2018 – Central Tax

New Delhi, the 26th October, 2018

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) (hereafter in this notification referred to as the 'said Act'), read with section 45 of the said Act and rule 81 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), the Central Government, on the recommendations of the Council, hereby notifies the persons whose registration under the said Act has been cancelled by the proper officer on or before the 30th September, 2018, as the class of persons who shall furnish the final return in FORM GSTR-10 of the said rules till the 31st December, 2018.

[F. No. 349/58/2017-GST(Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to extends the time limit for furnishing the declaration in FORM GST ITC-04 for the period from July, 2017 to September, 2018 till 31st December, 2018

Notification No. 59/2018 – Central Tax

New Delhi, the 26th October, 2018

G.S.R… (E). - In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), and in supercession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 40/2018-Central Tax, dated the 4th September, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 832(E), dated the 4th September, 2018, except as respects things done or omitted to be done before such supercession, the Commissioner, hereby extends the time limit for furnishing the declaration in FORM GST ITC-04 of the said rules, in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the period from July, 2017 to September, 2018 till the 31st day of December, 2018.

[F. No. 349/58/2017- GST (Pt.)]
(Gunjan Kumar Verma)
Under Secretary to the Government of India

Seeks to make amendments (Thirteenth Amendment, 2018) to the CGST Rules, 2017

Notification No. 60/2018 – Central Tax

New Delhi, the 30th October, 2018

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 hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Thirteenth Amendment) Rules, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), after rule 83, the following rule shall be inserted, namely:-

"83A. Examination of Goods and Services Tax Practitioners.- (1) Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.

(2) The National Academy of Customs, Indirect Taxes and Narcotics (hereinafter referred to as "NACIN") shall conduct the examination.

(3) **Frequency of examination.-** The examination shall be conducted twice in a year as per the schedule of the examination published by NACIN every year on the official websites of the Board, NACIN, common portal, GST Council Secretariat and in the leading English and regional newspapers.

(4) **Registration for the examination and payment of fee.-** (i) A person who is required to pass the examination shall register online on a website specified by NACIN. (ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment shall be specified by NACIN on the official websites of the Board, NACIN and common portal.

(5) **Examination centers.-** The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.

(6) **Period for passing the examination and number of attempts allowed.-** (i) A person enrolled as a goods and services tax practitioner in terms of sub-rule (2) of rule 83 is required to pass the examination within two years of enrolment: Provided that if a person is enrolled as a goods and services tax practitioner before 1st of July 2018, he shall get one more year to pass the examination: Provided further that for a goods and services tax practitioner to whom the provisions of clause (b) of sub-rule (1) of rule 83 apply, the period to pass the examination will be as specified in the second proviso of sub-rule (3) of said rule.

(ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i).

(iii) A person shall register and pay the requisite fee every time he intends to appear at the examination.

(iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.

(7) **Nature of examination**.-The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions. The pattern and syllabus are specified in Annexure-A.

(8) **Qualifying marks**.- A person shall be required to secure fifty per cent. of the total marks.

(9) **Guidelines for the candidates**.- (i) NACIN shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its disposal.

(ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10). An illustrative list of use of unfair means or practices by a person is as under: -

(a) obtaining support for his candidature by any means;

(b) impersonating;

(c) submitting fabricated documents;

(d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;

(e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;

(f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written);

(g) misbehaving in the examination center in any manner;

(h) tampering with the hardware and/or software deployed; and

(i) attempting to commit or, as the case may be, to abet in the commission of all or any of the acts specified in the foregoing clauses.

(10) **Disqualification of person using unfair means or practice.-** If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any, declare him disqualified for the examination.

(11) **Declaration of result.-** NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.

(12) **Handling representations**.- A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal. (13) Power to relax.- Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.

Explanation :- For the purposes of this sub-rule, the expressions –

(a) “jurisdictional Commissioner” means the Commissioner having jurisdiction over the place declared as address in the application for enrolment as the GST Practitioner in FORM GST PCT-1. It shall refer to the Commissioner of Central Tax if the enrolling authority in FORM GST PCT-1 has been selected as Centre, or the Commissioner of State Tax if the enrolling authority in FORM GST PCT-1 has been selected as State;

(b) NACIN means as notified by notification No. 24/2018-Central Tax, dated 28.05.2018.

Annexure-A
[See sub-rule 7]
Pattern and Syllabus of the Examination

PAPER: GST Law & Procedures:	
Time allowed:	2 hours and 30 minutes
Number of Multiple Choice Questions:	100
Language of Questions:	English and Hindi
Maximum marks:	200
Qualifying marks:	100 No negative marking

Syllabus:	
1	The Central Goods and Services Tax Act, 2017
2	The Integrated Goods and Services Tax Act, 2017
3.	All The State Goods and Services Tax Acts, 2017
4	The Union territory Goods and Services Tax Act, 2017
5	The Goods and Services Tax (Compensation to States) Act, 2017
6	The Central Goods and Services Tax Rules, 2017
7	The Integrated Goods and Services Tax Rules, 2017
8	All The State Goods and Services Tax Rules, 2017
9	Notifications, Circulars and orders issued from time to time under the said Acts and Rules.”.

3. In the said rules, in rule 109A,

(a) in sub-rule (1), in clause (b), for the words and brackets “the Additional Commissioner (Appeals)”, the following words and brackets shall be substituted, namely:-

“any officer not below the rank of Joint Commissioner (Appeals)”;

(b) in sub-rule (2), in clause (b), for the words and brackets “the Additional Commissioner (Appeals)”, the following words and brackets shall be substituted, namely:-

“any officer not below the rank of Joint Commissioner (Appeals)”.

4. In the said rules, after rule 142, the following rule shall be inserted, namely:-

“142A. Procedure for recovery of dues under existing laws. - (1) A

summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in FORM GST DRC-07A electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in FORM GST PMT-01.

(2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in FORM GST DRC-08A and Part II of Electronic Liability Register in FORM GST PMT-01 shall be updated accordingly.".

5. In the said rules, in FORM GST REG-16,-

(a) against serial number 7, for the heading, the following heading shall be substituted, namely:-

"In case of transfer, merger of business and change in constitution leading to change in PAN, particulars of registration of entity in which merged, amalgamated, transferred, etc.";

(b) in the instruction, after the Table, for the paragraphs beginning with the words "In case of death of sole proprietor" and ending with the words "surrender of registration falls", the following paragraphs shall be substituted, namely:-

"In case of death of sole proprietor, application shall be made by the legal heir / successor before the concerned tax authorities. The new entity in which the applicant proposes to amalgamate itself shall register with the tax authority before submission of the application for cancellation. This application shall be made only after the new entity is registered.

Before applying for cancellation, please file your tax return due for the tax period in which the effective date of surrender of registration falls or furnish an application to the effect that no taxable supplies have been made during the intervening period (i.e. from the date of registration to the date of application for cancellation of registration).".

6. In the said rules, in FORM GSTR-4, in the Instructions, for Sl. No. 10, the following shall be substituted, namely:-

"10. Information against the Serial 4A of Table 4 shall not be furnished.".

7. In the said rules, for FORM GST PMT-01 relating to "Part II: Other than return related liabilities", the following form shall be substituted, namely:-

"Form GST PMT –01
[See rule 85(1)]
Electronic Liability Register of Registered Person

(Part–II: Other than return related liabilities)
(To be maintained at the Common Portal)

Reference No.- Date-

GSTIN/Temporary Id – Name (Legal) –

Trade name, if any -

Stay status – Stayed/Un-stayed Period - From --To --- (dd/mm/yyyy)

Act - Central Tax/State Tax/UT Tax/Integrated Tax/CESS /AI

(Amount in Rs.)

Sr. No.	Date (dd/mm/yyyy)	Reference No.	Tax Period, if applicable		Ledger used for discharging liability	Description	Type of Transaction *	Amount debited/credited (Central Tax/State Tax/UT Tax/Integrated Tax/CESS/amount under existing law/Total)					
			From	To				Tax	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Balance (Payable) (Central Tax/State Tax/UT Tax/Integrated Tax/ CESS/ amount under existing law/Total)						
Tax	Interest	Penalty	Fee	Others	Total	Status (Stayed / Un-stayed)
15	16	17	18	19	20	21

*[Debit (DR) (Payable)] / [Credit (CR) (Paid)] / Reduction (RD)/ Refund adjusted (RF)]

Note –

1. All liabilities accruing, other than return related liabilities, will be recorded in this ledger. Complete description of the transaction shall be recorded accordingly.
2. All payments made out of cash or credit ledger against the liabilities would be recorded accordingly.
3. Reduction or enhancement in the amount payable due to decision of appeal, rectification, revision, review etc. will be reflected here.

4. Negative balance can occur for a single Demand ID also if appeal is allowed/ partly allowed. Overall closing balance may still be positive.
5. Refund of pre-deposit can be claimed for a particular demand ID if appeal is allowed even though the overall balance may still be positive subject to the adjustment of the refund against any liability by the proper officer.
6. The closing balance in this part shall not have any effect on filing of return.
7. Reduction in amount of penalty would be automatic if payment is made within the time specified in the Act or the rules.
8. Payment made against the show cause notice or any other payment made voluntarily shall be shown in the register at the time of making payment through credit or cash. Debit and credit entry will be created simultaneously.".

8. In the said rules, in FORM GST APL-04, after serial number 9, and the Table relating thereto, the following shall be inserted, namely:-

"10. Details of IGST Demand

Place of Supply (Name of State/UT)	**Demand**	**Tax**	**Interest**	**Penalty**	**Other**	**Total**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
	Disputed Amount					
	Determined Amount					

9. In the said rules, after FORM GST DRC-07, the following form shall be inserted, namely:-

"FORM GST DRC-07A

[See rule 142A(1)]

Summary of the order creating demand under existing laws

Reference No. Date -

Part A – Basic details		
Sr. No.	**Description**	**Particulars**
(1)	(2)	(3)
1.	GSTIN	

2.	Legal name	<<Auto>>
3.	Trade name, if any	<<Auto>>
4.	Government Authority who passed the order creating the demand	☐ State /UT ☐ Centre
5.	Old Registration No.	
6.	Jurisdiction under earlier law	
7.	Act under which demand has been created	
8.	Period for which demand has been created	From – mm, yy To mm, yy
9.	Order No. (original)	
10.	Order date (original)	
11.	Latest order no.	
12.	Latest order date	
13.	Date of service of the order (optional)	
14.	Name of the officer who has passed the order (Optional)	
15.	Designation of the officer who has passed the order	
16.	Whether demand is stayed	☐ Yes ☐ No
17.	Date of stay order	
18.	Period of stay	From – to -

Part B – Demand details						
19.	Details of demand created (Amount in Rs. in all Tables)					
Act	**Tax**	**Interest**	**Penalty**	**Fee**	**Others**	**Total**
1	2	3	4	5	6	7
Central Acts						
State/ UT Acts						
CST Act						

20.	Amount of demand paid under existing laws					
Act	**Tax**	**Interest**	**Penalty**	**Fee**	**Others**	**Total**
1	2	3	4	5	6	7
Central Acts						
State/ UT Acts						
CST Act						

21. (19-20)	Balance amount of demand proposed to be recovered under GST laws << Auto-populated >>					
Act	**Tax**	**Interest**	**Penalty**	**Fee**	**Others**	**Total**
1	2	3	4	5	6	7
Central Acts						
State/ UT Acts						
CST Act						

Signature

Name

Designation

Jurisdiction

To

_____ (GSTIN/ID)

---------- Name

_____ (Address)

Copy to -

Note –

1. In case of demands relating to short payment of tax declared in return, acknowledgement / reference number of the return may be mentioned.
2. Only recoverable demands shall be posted for recovery under GST laws. Once, a demand has been created through FORM GST DRC-07A, and the status of the demand changes subsequently, the status may be amended through FORM GST DRC-08A.
3. Demand paid up to the date of uploading the summary of the order should only be mentioned in Table 20. Different heads of the liabilities under existing laws should be synchronized with the heads defined under Central or State tax.
4. Latest order number means the last order passed by the relevant authority for the particular demand.
5. Copy of the order vide which demand has been created can be attached. Documents in support of tax payment can also be uploaded, if available.".

10. In the said rules, after FORM GST DRC-08, the following form shall be inserted, namely:-

"FORM GST DRC-08A

[See rule 142A(2)]

Amendment/Modification of summary of the order creating demand under existing laws

<< Auto, editable>>		
Sr. No.	**Description**	**Particulars**
(1)	(2)	(3)
1.	GSTIN	
2.	Legal name	<<Auto>>

3.	Trade name, if any	<<Auto>>
4.	Reference no. vide which demand uploaded in FORM GST DRC-07A	
5.	Date of FORM GST DRC-07A vide which demand uploaded	
6.	Government Authority who passed the order creating the demand	☐ State /UT Centre <<Auto>>
7.	Old Registration No.	<< Auto, editable>>
8.	Jurisdiction under earlier law	<< Auto, editable>>
9.	Act under which demand has been created	<< Auto, editable>>
10.	Tax period for which demand has been created	<< Auto, editable>>
11.	Order No. (original)	<< Auto, editable>>
12.	Order date (original)	<<Auto, editable>>
13.	Latest order no.	<<Auto, editable>>
14.	Latest order date	<<Auto, editable>>
15.	Date of service of the order	<<Auto, editable>>
16.	Name of the officer who has passed the order (optional)	<<Auto, editable>>
17.	Designation of the officer who has passed the order	<<Auto, editable>>
18.	Whether demand is stayed	☐ Yes ☐ No
19.	Date of stay order	
20.	Period of Stay	
21.	Reason for updation	<<Text box>>

Part B – Demand details						
22.	Details of demand posted originally through Table 21 of FORM GST DRC-07A (Amount in Rs. in all tables) <<Auto>>					
Act	**Tax**	**Interest**	**Penalty**	**Fee**	**Others**	**Total**
1	2	3	4	5	6	7
Central Acts						
State/ UT Acts						
CST Act						

23.	Updation of demand						
Act	**Type of updation**	**Tax**	**Interest**	**Penalty**	**Fee**	**Others**	**Total**
1	2	3	4	5	6	7	8
1.	Quashing of demand (Complete closure of demand)						
2.	Amount of reduction, if any						
3.	Total reduction (1+2)						

24.	Balance amount of demand required to be recovered under the Act << Auto-populated >>					
Act	**Tax**	**Interest**	**Penalty**	**Fee**	**Others**	**Total**
1	2	3	4	5	6	7
Central Acts						
State/ UT Acts						
CST Act						

Signature

Name

Designation

Jurisdiction

To

_____ (GSTIN/ID)

---------- Name

_____ (Address)

Copy to -

Note –

1. Reduction includes payment made under existing laws. If the demand of tax is to be increased then a fresh demand may be created under FORM GST DRC-07A.
2. Copy of the order vide which demand has been modified /rectified / revised/ updated can be uploaded. Payment document can also be attached.
3. Amount recovered under the Act including adjustment made of refund claim will be automatically updated in the liability register. This form shall not be filed for such recoveries.”.

[F. No. CBEC/20/06/17/2018-GST]

(Dr. Sreeparvathy S.L.)

Under Secretary to the Government of India

Seeks to exempt supply from PSU to PSU from applicability of provisions relating to TDS

Notification No. 61/2018 – Central Tax

New Delhi, the 5th November, 2018

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (3) of section 1, read with section 51 of the Central Goods and Services Tax Act, 2017 (12 of 2017), hereafter in this notification 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 in the Ministry of Finance, Department of Revenue No. 50/2018-Central Tax, dated the 13th September, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 868(E), dated the 13th September, 2018, namely:–

In the said notification, after the proviso, the following proviso shall be inserted, namely:-

"Provided further that nothing in this notification shall apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from the 1st day of October, 2018." .

[F. No. CBEC/20/06/16/2018-GST]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the last date for filing of FORM GSTR-3B for taxpayers in Srikakulam district of Andhra Pradesh and 11 districts of Tamil Nadu

Notification No. 62/2018 – Central Tax

New Delhi, the 29th November, 2018

G.S.R.....(E).– In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby makes the following further amendments in notification number 34/2018 – Central Tax, dated the 10th August, 2018, published in the Gazette of India, Extraordinary, Part

II, Section 3, Sub-section (i) vide number G.S.R.761(E), dated the 10th August, 2018, namely:–

In the said notification, in the first paragraph, after the fourth proviso, the following provisos shall be inserted, namely: –

"Provided also that the return in FORM GSTR-3B of the said rules for the month of September, 2018 and October, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018:

Provided also that the return in FORM GSTR-3B of the said rules for the month of October, 2018 for registered persons whose principal place of business is in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu shall be furnished electronically through the common portal, on or before the 20th December, 2018.".

[F. No. 20/06/17/2018-GST (Pt. I)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores for taxpayers in Srikakulam district in Andhra Pradesh and 11 districts of Tamil Nadu

Notification No. 63/2018 – Central Tax

New Delhi, the 29th November, 2018

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 amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 44/2018- Central Tax, dated the 10th September, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 855(E), dated the 10th September, 2018, namely:–

In the said notification, in the first paragraph, after the first proviso, the following provisos shall be inserted, namely: –

"Provided further that the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of September, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018:

Provided also that the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of October, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018:

Provided also that the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the month of October, 2018 for registered persons whose principal place of business is in in Cuddalore, Thiruvarur, Puddukottai, Dindigul, Nagapatinam, Theni, Thanjavur, Sivagangai, Tiruchirappalli, Karur and Ramanathapuram in the State of Tamil Nadu shall be furnished electronically through the common portal, on or before the 20th December, 2018.".

[F. No. 20/06/17/2018-GST (Pt. I)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover up to Rs 1.5 crores for the quarter from July, 2018 to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh

Notification No. 64/2018 – Central Tax

New Delhi, the 29th November, 2018

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 amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 43/2018- Central

Tax, dated the 10th September, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 854(E), dated the 10th September, 2018, namely:–

In the said notification, in paragraph 2, after the second proviso, the following proviso shall be inserted, namely: –

"Provided further that the details of outward supply of goods or services or both in FORM GSTR-1 of the Central Goods and Services Tax Rules, 2017 for the quarter from July, 2018 to September, 2018 for registered persons whose principal place of business is in Srikakulam district in the State of Andhra Pradesh shall be furnished electronically through the common portal, on or before the 30th November, 2018.".

[F. No. 20/06/17/2018-GST (Pt. I)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR - 4 for the quarter July to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh

Notification No. 65/2018 – Central Tax

New Delhi, the 29th November, 2018

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) (hereinafter referred to as the said Act), the Commissioner hereby extends the time limit for furnishing the return in FORM GSTR-4 of the Central Goods and Services Tax Rules, 2017 for the quarter July to September, 2018 under sub-section (2) of section 39 of the said Act read with rule 62 of the Central Goods and Services Tax Rules, 2017 by a registered person paying tax under the provisions of section 10 of the said Act whose principal place of business is in Srikakulam district in the State of Andhra Pradesh, till the 30th day of November, 2018.

[F. No. 20/06/17/2018-GST (Pt. I)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to extend the due date for filing of FORM GSTR – 7 for the months of October, 2018 to December, 2018

Notification No. 66/2018 – Central Tax

New Delhi, the 29th November, 2018

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) (hereinafter referred to as the said Act), the Commissioner hereby extends the time limit for furnishing 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 months of October, 2018 to December, 2018 till the 31st day of January, 2019.

[F. No. 20/06/17/2018-GST (Pt. I)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India