Clarification on payment of GST on RCM basis on renting of commercial property by Unregistered Person to a Registered Person for Taxpayers registered under Composition Levy

RCM on renting of commercial property by Unregistered Person to a Registered Person (registered under Composition Levy)

Renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person was brought under reverse charge basis vide Notification No. 09/2024-CTR dated effective from (by inserting an entry at Sr. No. 5AB of the notification No. 13/2017-CTR dated). Therefore, payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person.

55th GST Council in its meeting held on recommended that taxpayers registered under composition levy may be excluded from the entry at Sr. No. 5AB of the notification No. 13/2017-CT(Rate) dated . The same has been notified vide notification No. 07/2025 CT(Rate) dated .

The Council further recommended that payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to a registered person for taxpayers registered under composition levy may be regularized on '*as is where is*' basis for the intervening period (i.e., date of effect of notification No. 09/2024-CTR dated to date of issuance of amending notification No. 07/2025-CT(Rate) dated).

Vide Circular dated , as recommended by the 55th GST Council, payment of GST on Reverse Charge (RCM) basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person under composition levy is hereby regularized for the period from to on '*as is where is*' basis.

The Deputy Commissioner and Anr. Vs. Minimol Sabu – Kerala High Court

(2025) 39 HC

IN THE HIGH COURT OF KERALA

The Deputy Commissioner and Anr.
v.
Minimol Sabu

WA No. 238 of 2025
Decided on 06-Feb-25

Dr. Justice A.K. Jayasankaran Nambiar and Mr. Justice Easwaran S.

Add. Info:

For Appellant(s): Smt. Resmitha Ramachandran

For Respondent(s): Adv Akhil Suresh

Brief about the decision:

Judgment/Order:

Judgment

Easwaran S., J.

This intra-court appeal is preferred by the State aggrieved by the judgment dated of the learned Single Judge in WP(C)

2. The brief facts for the disposal of the appeal are as follows: The 1st respondent herein (assessee), approached the writ court by filing the writ petition challenging show cause notice issued under Section 74 of the Central Goods and Services Tax Act, 2017/State Goods and Services Tax Act, 2017. The assessee is engaged in the business of sale of gold, silver and diamond ornaments. On , the appellant conducted a search in the premises of the writ petitioner and collected certain data from the software “Gold Mine”, which was used by the assessee for billing purposes. Later, a notice was issued requiring the assessee to show cause as to why an amount of Rs.4,88,56,298/- shall not be assessed as short paid on detection of suppression of outward supply for the periods 2017-18 to 2023-24 and a further amount of ,85,843/- shall not be imposed as flood cess. Pointing out various discrepancies in the notice to show cause, the assessee preferred reply. Placing reliance on the judgment dated in WP(C) , the petitioner approached the writ court mainly seeking the following relief:

> “i. Issue a writ in the nature of certiorari, or any other appropriate writ, order or direction, quashing Exhibit P1 show cause notice;”

3. The learned Single Judge who considered the writ petition ordered that the authorities under the SGST Act, 2017 will consider the preliminary issue raised by the petitioner against the invocation of Section 74 thereof, especially with regard to the contention of the petitioner/assessee that a part of the alleged suppressed turnover belongs to a separate entity belonging to her husband with a separate registration. Aggrieved by the above finding, the State is before us in this appeal

contending primarily that the scheme of the CGST Act/SGST Act does not envisage separate orders being passed in the nature which has been directed by the learned Single Judge.

4. Heard Ramachandran, the learned Government Pleader and Suresh, the learned counsel appearing for the respondent/writ petitioner.

5. The question to be considered by us is whether the direction of the learned Single Judge can be sustained in the light of the statutory scheme envisaged under CGST Act/SGST 2017. Section 74(1) of the CGST Act/SGST Act authorises the proper officer to issue a notice to show cause. Sub-Section (2) of Section 74 envisages that such notice shall be issued six months prior to the time limit specified under sub-Section (10) of Section 74. The power of adjudication conferred on the proper officer is under sub-Section (9) of Section 74, which reads as under:

> "74. **Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.**
>
> **xxx xxx xxx**
>
> (9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."

It is also the mandate of the statute that the proper officer shall issue the order under sub-Section (9) of Section 74 within a period of five years from the due date of submission of the annual return.

6. When the statutory provisions under Section 74 of the CGST Act/SGST Act is read altogether, we find that there is no provision enabling either the assessee to claim adjudication in stages nor has any power being conferred upon the proper officer to adjudicate the lis in stages.

7. When a request is made by the assessee either before the authorities or before the court to have their lis adjudicated in part, then, before granting such request, the authority or the court should ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other drastic consequences. We must also notice here that it is rather in the interest of the assessee that a complete adjudication of the issue is done by the proper officer under Section 74 of the CGST Act/SGST Act because of the accumulation of the interest factor on the tax that may be ultimately found due from him.

8. In a given case, where the detection of the suppression is found at a later stage and the statute permits issuance of a notice within six months from the time prescribed for completion of adjudication under sub-Section (9) of Section 74, then, entertaining the request of the assessee for part adjudication will be detriment to the interest of the Revenue as well as to the assessee. Accepting the said request would also lead to a situation where the mandatory period required for completion of the proceedings under Section 74 cannot be adhered to, resulting in an irreversible damage to the Revenue.

9. We must also say that, the power of the High Court under Article 226 of the Constitution of India cannot be invoked by the assessee, who is faced with a notice under Section 74 seeking a part adjudication of the lis, which is pending before the proper officer. Of course, in a given situation, when it is alleged that there is a total lack of jurisdiction in issuance of the show cause notice, the High Court may exercise its discretion in entertaining the writ petition. But, as a general rule, the writ petition against the issuance of a show cause notice under Section 74 of the CGST Act/SGST Act

cannot be entertained.

10. In **v. Delhi Administration & Ors [(1983) 4 SCC 293]**, the Supreme Court has clearly delineated the jurisdiction of the High Court in entertaining the writ petition against preliminary issues. Though the Supreme Court was considering the power of the labour courts and the industrial tribunals under the Industrial Disputes Act, 1947 on deciding the preliminary issues raised before it, we find that the principle laid down by the Supreme Court can very well be applied to taxation laws as well. We thus hold that the jurisdiction of the High Court under Article 226 of the Constitution of India cannot be allowed to be exploited by those who can afford to wait to the detriment to those who cannot afford to wait by dragging the latter to the court for adjudication on peripheral issues, avoiding decision on the issues more vital to them. Article 226 of the Constitution of India is not meant to be used to break the resistance of the Revenue in this fashion. In exercise of such jurisdiction, the High Court is required to refrain from issuing directions to the authorities under the taxation statute to decide issues in stages or on a preliminary basis.

11. We have been informed that going by the time limit prescribed under sub-Section (10) of Section 74 of the CGST Act/SGST Act, the adjudication has to be completed by . However, in view of the interim order passed in the writ petition staying further proceedings under Section 74, which was in operation for a period of seven days, the Revenue will get the benefit of the stay and the period of adjudication will expire only on . We are also informed that the assessee has already been put on notice to appear before the adjudicating authority/proper officer on . We, therefore, direct the 1st respondent/assessee to appear before the adjudicating officer on and issue a further direction to the proper officer under Section 74 of the CGST Act/SGST Act to complete the hearing on itself and pass a composite final order on or before .

In the result, subject to the exception as directed above, we allow the appeal and modify the judgment of the learned Single Judge, accordingly.

NAMBIAR,
JUDGE

EASWARAN S.,
JUDGE

Original judgment copy is available here.

Messrs Aculife Health Care Pvt. Ltd. and Anr. Vs. Union of India and Ors. – Gujarat High Court

(2025) 22 HC

IN THE HIGH COURT OF GUJARAT

Messrs Aculife Health Care Pvt. Ltd. and Anr.
v.
Union of India and Ors.

R/Special Civil Application No. 17800 of 2023
Decided on 06-Feb-25 and 09-Jan-25

Mr. Justice Bhargav D. Karia and Mr. Justice D.N. Ray

Add. Info:

For Appellant(s): Amal Paresh Dave, Mr. Paresh M Dave

For Respondent(s): Param V Shah

Brief about the decision:

Judgment/Order:

ORAL JUDGMENT

(PER : HONOURABLE)

1. Heard learned Advocate Mr. Parth Rachchh with learned Advocate Mr. Paresh M. Dave for the petitioners, and learned Advocate Mr. Param Shah for the respondents.

2. Rule returnable forthwith. Learned advocate waives service of notice of rule on behalf of the respondent No.3. With the consent of learned advocates for the respective parties, the matter is taken up for final hearing, as the issue involved is very short.

3. The petition is filed under Article 226 of the Constitution of India with the following prayers :

> *"(A) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction directing Respondent No.3 i.e. the Deputy Commissioner of CGST, to sanction and pay the Petitioner's refund claim for ,90,288/- with interest @9% per annum;*
>
> *(B) That Your Lordships may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction quashing and setting aside OIA dated (Annexure-"F"), with consequential relief of payment of refund of ,90,288/- with interest @9% per nnum for the period commencing from the date of refund application till the actual payment of the refund of Rs. 15,90,288/- to the Petitioner;*
>
> *(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct the 3rd Respondent herein to forthwith pay the Petitioner a refund of ,90,288/- on such terms and conditions that may be deemed fit by this Hon'ble Court:*
>
> *(D) An ex-parte ad interim relief in terms of Para 17(C) above may kindly be granted:*

(E) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted.

4. The brief facts of the case are as follows:-

4.1 The Petitioner (Messrs Aculife Healthcare Pvt. Ltd.) is a Private Limited Company engaged in the business of manufacture of chemicals and pharmaceuticals, which were goods in the nature of "excisable goods" when levy of central excise duty was in force till June 30, 2017 for manufacture of excisable goods. After the enactment of Goods and Services Tax, the Petitioner-Company is an assessee and a registered person with the GST Department from .

4.2 During July, 2017 to July, 2022, the Petitioner -Company has deposited a total sum of ,14,300/- as tax on notice pay recovery, in lieu of various employees who left the employment. This amount of tax has been deposited by the Petitioner from its own pockets and the GST on the amount of notice pay recovery was deposited by the Petitioner as and when such recovery was made. The amount deposited as GST, or any part thereof, has not been recovered by the Petitioner-Company from any of the employees leaving the employment.

4.3 The Union Government issued a Circular dated , and clarified that such amount and such recovery was not chargeable to GST. At para 7.5 of this circular, the Government clarified that forfeiture of salary or payment of the bond amount in the event of an employee leaving employment before the minimum agreed period was not taxable. Hence, the amount of ,14,300/- deposited by the Petitioner-Company as GST were therefore, not "tax".

4.4 Since the Government clarified that the transactions/activities in question were not at all taxable and the Petitioner-Company had borne the entire burden of ,14,300/- deposited as tax on recoveries made from outgoing employees, the Petitioners, on filed a refund claim for ,91,114/- deposited as GST for the period of July 2017 to August 2018 and, on , filed another refund claim of ,23,186/- deposited as GST during the period of September 2018 to July 2022.

4.5 On these refund claims, notices proposing to reject the claims were issued by the Respondent No.3 i.e., the Jurisdictional Deputy Commissioner, where two orders were passed by the Respondent No.3 pertaining to the above referred two refund claims, after show cause notices and conducting adjudication. The respondent No.3, accordingly, rejected the first claim of ,91,114/- entirely as time-barred, but allowed the second claim to the extent of ,24,012/- and rejected the remaining claim of Rs.1,99,174/- as time-barred.

5. The Petitioner -Company therefore filed two appeals before the Appellate Authority i.e., the Respondent No.2 contending that the amount recovered as tax had to be returned to the assessee. On , the Appellate Authority has rejected both the appeals and upheld the decision of the Deputy Commissioner in rejecting refund claims for sums of ,91,114/- and Rs.1,99,174/-. The Appellate Authority held that the claims were barred by limitation of two years provided under Section 54 of the CGST Act, and therefore, the rejection of the claims on the ground of limitation in lodging the refund claims was proper.

6. Thus, according to the petitioners, the State has collected a total sum of ,14,300/- as tax and returned a sum of ,24,012/- therefrom because there was no levy of tax on the Petitioner's transactions in question; but a sum of Rs. 15,90,288/- collected as tax is retained and the refund thereof is refused only on the ground of the same being time-barred.

7. Mr. Paresh Dave, learned advocate appearing with Rachchh for the petitioners submits that, it is now a settled position that the Petitioners were not liable to pay any tax in the present case. The

collection and retention of the monies under the guise of tax is in violation of the mandate of Article 265 of the Constitution of India. Therefore, such actions of the Respondents and also the order of the Appellate Authority are liable to be quashed, set aside and consequent refunds must be directed to be paid to the petitioners. Mr. Dave, learned advocate further submitted that the Petitioner-Company kept on paying the Tax in question in lieu of services under the mistaken belief that the petitioner was liable to pay the tax. The respondents-authorities have accepted the Tax for all these years also under the mistaken belief that they were authorized to collect the tax. It was only when the Government finally clarified the position through its Circular , that it became apparent to both the citizen and the State that the "Tax" paid thus far, was not sanctioned under Article 265 of the Constitution of India. Further, as a matter of fact, it is inconceivable how any refund application could be filed before . Therefore, the limitation in respect of such refund applications could only be calculated from and the respondents-authorities have erred in rejecting the refund applications filed by the petitioners soon after the aforesaid Circular dated .

8. , learned advocate appearing for the respondent No.3 has submitted the petitioners filed their first refund claim for the period of July, 2017 to August-2018 seeking a refund of the amount ,91,114/- on and thereafter, filed a second refund claim for the period of September-2018 to July-2022 seeking refund of ,23,186/- on . It was submitted that a show cause notice dated read with corrigendum dated and respectively were issued by the Respondent No.3 and after hearing the petitioners, two refund orders dated and were passed, inter alia, rejecting partial refund of the petitioners amounting to total ,90,288/- (First claim ,91,114/- plus Rs.1,99,174/-out of 2nd claim Rs. 31,23,186/-) as being time barred.

8.1 Mr. Shah, learned advocate after referring to Section 54 of the CGST Act further submitted that the petitioners ought to have submitted the claim of refund within two years from the date of payment of the Tax, whereas both the claims filed by the petitioners have been filed beyond the period of two years and therefore, both the refund claims are time barred in the light of Section 54 of the Act, and under Notification dated , the CBIC excluded the period commencing from to for the purpose of calculation of limitation. Even taking into account the effect of the aforesaid Notification, the partial rejection out of the total claim of ,23,186/- is rightly done by the authorities below.

9. <u>DISCUSSION & FINDINGS</u>:-

The relevant provision of Circular dated is quoted hereinbelow :-

> *"7.5 An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.*

9.1 From the aforesaid Circular, it is clear that the Government of India has clarified that the forfeiture of salary or payment of bond amount in the event of an employee leaving the employment

before the minimum agreed period, was not taxable, inasmuch as, there was no supply of service by the employer in this situation and therefore, the recovery of notice pay by the employer was not taxable under the CGST Act. Since the aforesaid Circular came out on , it has to be said that the petitioners could not have had the opportunity of filing of the refund claims in respect of the GST deposited by the Petitioner-Company, till such date. Therefore, the period of two years, for filing a claim, within the meaning of Section 54 of the CGST Act has to be computed from the date of the Circular i.e. from . In that view of the matter, the refund claims dated and , for whatever period of tax deposited, cannot be said to be time barred. In other words, the calculation of period of two years will not be from September, 2018 as wrongly held by the authorities below, but from , i.e the date from which the petitioners were informed by the Government through the aforesaid Circular, that the petitioners need not pay tax on the transaction in question, which was clarified not to be a "Service" under the CGST Act.

9.2 This Court in the judgment of **Joshi Technologies Internation vs. Union of India** reported in **2016 (339) (Guj.)** held as under:-

> *"11.1 At this juncture, it may be apposite to refer to the decision of the Supreme Court in U.P. Pollution Control Board v. Kanoria Industrial Ltd. (supra), wherein it has been held thus:*
>
> > *"9. In . Ltd. v. Administrator, Bangalore City Corpn., 1997 (91) ELT. 27 (S.C.), it is held that a tax or money realised without authority of law is bad under Article 265 of the Constitution and that the money or tax so collected is refundable. In that case octroi was levied and collected in respect of goods on their mere physical entry into the city limits, which were not used or consumed or sold within the municipal limits. This Court, dealing with the refund in para 12 of the judgment, held thus:*
> >
> > > *"We see no ground as to why amount should not be refunded. Realisation of tax or money without the authority of law is bad under Article 265 of the Constitution. Octroi cannot be levied or collected in respect of goods which are not used or consumed or sold within the municipal limits. So these amounts become collection without the authority of law. The respondent is a statutory authority in the present case. It has no right to retain the amount, so far and so much. These are refundable within the period of limitation. There is no question of limitation. There is no dispute as to the amount. There is no scope of any possible dispute on the plea of undue enrichment of the petitioners. We are, therefore, of the opinion that the Division Bench was in error in the view it took. Where there is no question of undue enrichment, in respect of money collected or retained, refund, to which a citizen is entitled, must be made in a situation like this."*
> >
> > *"15. The learned counsel for the petitioners strongly relied on a Constitution Bench judgment of this Court in Mafatlal Industries Ltd. v. Union of India, 1997 (89) ELT. 247 (S.C.). That was a case where refund was claimed on the ground that tax/duty had been collected by misinterpreting or misapplying the provisions of the Central Excises and Salt Act, 1944 read with Central Excise Tariff Act, 1985 or Customs Act, 1962 and the Rules and Regulations or the notifications issued under such enactments. In such cases claims for refund had to be preferred under, and in accordance with, the provisions of the respective enactments before the authorities specified and within the period of limitation prescribed therein. Hence it was held that petition under Article 226 of the Constitution could not be entertained having regard to the legislative intention evidenced by the provisions of the said Act and the writ petition, if any, would be considered and disposed of in the light of and in accordance with the provisions of Section 11B of the Central Excises and Salt Act, 1944 stating that power under Article*

226 has to be exercised to effectuate the rule of law and not to abrogate it. In the present cases there is no corresponding section to Section 11B of the Central Excises and Salt Act, 1944 for making claim for refund of money and, therefore, the respondents could maintain the writ petitions under Article 226 of the Constitution. Further in para 108(ii) of the judgment it is held that where, however, a refund is claimed on the ground that the provisions of the Act under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of suit or by wave of writ petition.

'6. In support of the submission that a writ petition seeking mandamus for mere refund of money was not maintainable, the decision in Suganmal v. State of M.P., AIR 1965 SC 1740, was cited. In AIR para 6 of the said judgment, it is stated that- "we are of the opinion that though the 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".

Again in AIR para 9, the Court held:

"We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess as unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the cases on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under protest; the writ petitions were filed within a reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case."

11.2 Reference may also be made to the decision of the Delhi High Court in Hind Agro Industries Limited v. Commissioner of Customs, 2008 (221) . 336 (Del.), wherein it has been held thus :

"10. There can be no doubt that the above provision applies to a claim for refund of 'any duty' within the meaning of that Act. A word 'duty' has been defined under Section 2(15)

of the Act means, 'a duty of customs leviable under this Act. The entire Section 27 of the Act can, therefore, obviously apply if and only if, the refund that is being sought is of customs duty otherwise leviable under the Act."

"13. It is clear that in Mafatlal Industries the Hon'ble Supreme Court had only talked of refund of duty payable within the meaning of either the Central Excises and Salt Act, 1944 ('Excise Act') or the Customs Act, 1962, as the case may be. In other words when the Hon'ble Supreme Court said that all claims for refund ought to be filed only in accordance with the Customs Act or Excise Act, it obviously did not include payment made under some enactment, which for some reason, had erroneously been made to the Customs authorities. Nowhere did Mafatlal Industries talk of a situation where the refund of a cess paid under the Cess Act, 1985 albeit erroneously, was required to be made under the Excise Act or the Customs Act and under no other enactment. Consequently, the observation in para 4 of the judgment of the Hon'ble Supreme Court in Anam Electrical Manufacturing Co. has also to be understood in the same manner. Para 4 of the said judgment it has been explained that the rules pertaining to refund would not apply where refund is sought of a 'duty levied and recovered under an unconstitutional provision. It was explained that the period of limitation in such cases would be in terms of the law laid down in Mafatlal Industries. It is obvious that when the Hon'ble Supreme Court talked of 'duty levied and recovered under an unconstitutional provision' the reference was not to a duty of customs or excise. Therefore, to rely upon either Mafatlal Industries or Anam Electrical Manufacturing Co. to deny the claim of the Appellants in this case is entirely misconceived."

"16. There can be no manner of doubt that the customs authorities in the instant case were bound to refund the cess erroneously paid by the Appellants for the period from 15th January, 2001 till 19th February, 2002 under a mistake of law. They had paid the cess when in fact no such cess was payable. There is no question of processing a claim of refund of such amount in terms of the Customs Act at all because the payment made mistakenly was not under that Act. In the circumstances, the period of limitation under Section 27 of the Act would not apply, as explained in Salonah Tea Company Limited. The applications for refund having been made well within the period of three years' after discovery of mistake by the Appellants, are not barred by limitation. Question (a) in para 7 above is accordingly answered in favour of the Appellants. Consequently, the need to answer question (b) does not arise."

11.3 In the light of the principles enunciated in the above decisions, having regard to the fact that in the facts of the present case, the refund is claimed on the ground that the amount was paid under a mistake of law and such claim being outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition. Under the circumstances, the petitioner is justified in filing the present petition before this court against the order passed by the adjudicating authority rejecting its claim for refund of the amount paid under a mistake."

9.3 This Court in the case of **M/S Gujarat State Police Housing Corporation Ltd. Versus Union of India & Anr** [Special Civil Application of 2022 and allied matters], further opined as under:-

"Considering the above dictum of law, the amount of GST paid by the petitioner is admittedly paid as a self-assessment, which the petitioner was not required to pay as per the Notification Accordingly, in the facts of the case, the amount paid by the petitioner from electronic cash ledger is required to be refunded by the respondent authority and could not have been rejected on the ground of limitation under Section 54(1) of the CGST Act."

10. To sum up, just as citizens have to diligently pay tax which are legally due to the State, equally, as a corollary of the aforesaid statement, the State is not entitled to unjustly enrich itself with amounts collected from citizens which are not sanctioned as "Tax" within the meaning of Article 265 of the Constitution of India.

11. In the result, the petition succeeds and the impugned order dated being OIA is hereby quashed and set aside. Consequently, the respondent No.3 is directed to sanction and pay the petitioners a sum of ,90,288/- with interest @ 9% per annum from the date of filing the refund application till the date of actual payment. The aforesaid exercise is to be completed within a period of Twelve (12) weeks from the date of receipt of a copy of this order.

(BHARGAV D. KARIA, J)

(,J)

Date : 06/02/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

Learned advocate Mr. Param V. Shah for the respondent No.3 does not press this speaking to minutes.

Speaking to minutes accordingly stands disposed of.

(BHARGAV D. KARIA, J)

(,J)

Original judgment copy is available here.

GST is applicable on the services such as housekeeping, civil maintenance, furniture maintenance and horticulture provided by facility management agency to Municipal Corporation

These services are not supplied in relation to performing any functions entrusted to a Municipality

under Article 243W of The Constitution of India. Such services are not covered under the scope of entry at Sr. No. 3A of the notification No. 12/2017-CTR dated 28.06.2017. Hence, GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at Sr. No. 3A of the notification No. 12/2017-CTR dated 28.06.2017.

Whether Delhi Development Authority (DDA) is a local authority as per section 2(69) of the CGST Act, 2017?

An authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority. It is hereby clarified that DDA cannot be treated as local authority under GST law.

New Income Tax Rates 2025 – Union Budget 2025

New Income Tax Rates 2025 – Union Budget 2025

There will be no income tax payable upto income of Rs. 12 lakh (i.e. average income of Rs. 1 lakh per month under the new regime. This limit will be Rs. lakh for salaried tax payers, due to standard deduction of Rs. 75,000.

In the Union Budget presented on , in the new tax regime, it was proposed to revise tax rate structure as follows:

Income	Income Tax Rates
0-4 lakh rupees	Nil
4-8 lakh rupees	5 per cent
8-12 lakh rupees	10 per cent
12-16 lakh rupees	15 per cent
16-20 lakh rupees	20 per cent
20- 24 lakh rupees	25 per cent
Above 24 lakh rupees	30 per cent

Benefit in from new Tax Rates in the Budget:

To tax payers upto Rs. 12 lakh of normal income (other than special rate income such as capital gains) tax rebate is being provided in addition to the benefit due to slab rate reduction in such a manner that there is no tax payable by them. The total tax benefit of slab rate changes and rebate at different income levels can be illustrated with examples. A tax payer in the new regime with an income of Rs. 12 lakh will get a benefit of Rs. 80,000 in tax (which is 100% of tax payable as per existing rates). A person having income of Rs. 18 lakh will get a benefit of Rs. 70,000 in tax (30% of tax payable as per existing rates). A person with an income of Rs. 25 lakh gets a benefit of Rs. 1,10,000 (25% of his tax payable as per existing rates).

Direct Tax Code (DTC) Bill, replacing Income Tax Act, 1961

Direct Tax Code (DTC) Bill

The Direct Taxes Code (DTC) was a proposed legislation in India aimed at replacing the existing Income Tax Act of 1961. The objective of the DTC is to simplify and streamline the direct taxation system, making it more efficient, transparent, and taxpayer-friendly.

Hon'ble Finance Minister Nirmala Sitharaman presented the Union Budget 2025 in the Parliament on . In the budget speech, she talked about the tax reforms as:

> *"Over the past 10 years, our Government has implemented several reforms for convenience of tax payers, such as (1) faceless assessment, (2) tax payers charter, (3) faster returns, (4) almost 99 per cent returns being on self-assessment, and (5) Vivad se Vishwas scheme. Continuing these efforts, I reaffirm the commitment of the tax department to "trust first, scrutinize later".* ***I also propose to introduce the new income-tax bill next week. I will detail the indirect tax reforms and changes in direct taxes in Part B."***

Total Sections and Schedules in the DTC

The DTC contains 325 Sections and 23 Schedules.

Statement of Objects and Reasons of the Direct Tax Bill

The Income-tax Act, 1961, has been subjected to numerous amendments since its passage fifty years ago. It has been considerably revised, not less than thirty-four times, by amendment Acts besides the amendments carried out through the annual Finance Acts. These amendments were necessitated by policy changes due to the changing economic environment, increasing sophistication of commerce, increase in international transactions as a result of globalisation, development of information technology, attempts to minimise tax avoidance and in order to clarify the statute in relation to judicial decisions. As a result of all these amendments, the basic structure of the Income-tax Act has been over burdened and its language has become complex. Tax administrators, accountants and tax

payers have raised concerns about the complex structure of the Income-tax Act. In particular, the numerous amendments have rendered the Act difficult to decipher by the average tax payer. The Wealth-tax Act, 1957 has also witnessed amendments.

The Government, therefore, decided to revise, consolidate and simplify the language and structure of the direct tax laws. A draft Direct Taxes Code along with a Discussion Paper was released in August, 2009 for public comments.

Direct Tax Code (DTC) Bills (in PDF)

Click here to Access Direct Tax Code (DTC) Bill 2010

Click here to Access Direct Tax Code (DTC) Bill, 2013

Joint Commissioner and Anr. Vs. Lakshmi Mobile Accessories – Kerala High Court

(2025) 34 HC

IN THE HIGH COURT OF KERALA

Joint Commissioner and Anr.
v.

Lakshmi Mobile Accessories

of 2025
Decided on 05-Feb-25

Dr. Justice A.K. Jayasankaran Nambiar and Mr. Justice Easwaran S.

Add. Info:

For Appellant(s): Sri. Muhammed Rafiq

For Respondent(s): Sri. K.S. Hariharan Nair, Smt. Divya Ravindran

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Brief about the decision:

Judgment/Order:

Judgment

D r . A.K. Jayasankaran Nambiar, J.

The State, represented by the Joint Commissioner (Intelligence and Enforcement) and the Joint Commissioner, Tax Payer Services of the State GST Department are the appellants herein aggrieved by the judgment dated of the learned Single Judge in W.P. (C). of 2025.

2. The brief facts necessary for disposal of this writ appeal are as follows:

The respondent herein had challenged show cause notice that sought to invoke Section 74 of the Central Goods and Services Tax Act [hereinafter referred to as the "CGST Act"] to demand differential tax, interest and penalty from it on an allegation of suppression of turnover during the financial years 2017-18 to 2023-24. The main ground of challenge against show cause notice in the writ petition was that inasmuch as the appellants herein had issued a single consolidated notice for six different financial years, the respondent was prejudiced in that the time limit for submitting its reply to the show cause notice in respect of each of the assessment years in question would be circumscribed by the time limit prescribed in Section 74(10) of the CGST/SGST Act for the earliest of the six financial years namely 2017-18. In particular, it was the case of the respondent/assessee that on account of the hasty action on the part of the appellants, the respondent/assessee was effectively denied an opportunity to cross-examine certain witnesses whose statements had been relied upon in the show cause notice issued to the respondent.

3. The learned Single Judge, who considered the matter, did not deem it necessary to entertain a challenge against the show cause notice on the ground of denial of opportunity to cross examine witnesses. In particular, it was noticed that although it was the contention of the respondent that an opportunity for cross examination was not being granted, there was nothing on record to assume that any procedure contrary to law would be adopted by the appellants herein. It was also observed that if an opportunity for cross examination, as required by law, was not granted, the same was a matter to be considered by the hierarchy of authorities under the CGST Act in adjudication proceedings before them. The learned Judge, however, found force in the contention of the respondent/assessee that issuing a composite order covering all the financial years from 2017-18 to 2023 24 would prejudice the respondent/assessee in relation to its contentions for those assessment yeas where the time limit prescribed under Section 74(10) of the CGST Act would not expire by , which was the last date for passing orders in respect of assessment year 2017-18. The learned Judge therefore granted liberty to the appellants herein to pass appropriate orders for 2017-18 pursuant to show cause notice within the period of limitation prescribed under Section 74(10) of the CGST Act, reserving the right to the authority to pass separate orders of determination for each of the other assessment years mentioned in the show cause notice after granting reasonable opportunity of hearing to the respondent/assessee in accordance with law.

4. In the appeal before us, the contention of the Department is essentially that the learned Judge ought not to have permitted the passing of separate orders for the financial years 2018-19 onwards since there is no provision envisaged under the CGST Act for issuing separate notices and orders for each financial year. It was further contended that in response to show cause notice dated , the respondent/assessee had filed replies only on along with statement of certain persons dated , which statements were never recorded at the time of investigation. According to the appellants therefore, the request for cross examination of witnesses would only protract the proceedings and the learned Single Judge ought not to have permitted the passing of separate orders in relation to a single show cause notice.

5. We have heard Sri. Mohammed Rafiq, the learned Special Government Pleader for the appellants and Smt. Divya Ravindran, the learned counsel for the respondent/assessee.

6. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, we find ourselves in agreement with the view taken by the learned Single Judge more so in the backdrop of the Scheme that informs proceedings under Section 74 of the CGST Act. The provisions of Section 74 (1), (2), (9) and (10) of the CGST Act that are relevant in the instant case read as follows:

> **"74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.**
>
> (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.
>
> (2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
>
> xxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxx
>
> (9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
>
> (10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund."

It will be seen from the above extracted statutory provisions that quite contrary to what has been urged on behalf of the appellants, there is no mandate under Section 74 for the issuance of a consolidated show cause notice covering various assessment years. The provisions of Section 74(1) only require the proper officer to arrive at a subjective satisfaction regarding any of the specified factors which have led to an evasion of tax and on arriving at the said satisfaction, the proper officer is required to issue a show cause notice to the assessee concerned specifying the amount of tax/interest/penalty that is due from the assessee. Sub section (2) of Section 74 imposes a limit on the power of the proper officer with regard to the time within which he should issue the show cause notice under sub section (1) of Section 74. That time limit is at least six months prior to the time specified in sub section (10) for the issuance of an order of adjudication. Sub section (9) of Section 74 speaks about the determination of the amount of tax, interest and penalty by the proper officer and the issuance of an order quantifying such amounts. Sub section (10) specifies the period within which the order under sub section (9) should be passed as five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

7. It is clear from the said statutory provisions that the power of the proper officer under Section 74(1) is to determine whether any of the factors leading to tax evasion exist in relation to an assessee during any financial/assessment year and initiate proceedings under the said Section

within the time frame contemplated under Section 74(1) of the CGST Act. The said exercise is to be conducted in relation to each of the years in which such pre-conditions exist for the invocation of the power under Section 74(1). While there may be cases where the data available with the proper officer is such that it suggests the existence of pre-conditions for more than one financial/assessment years, the proper officer should ideally issue separate show cause notices to cover the different financial/assessment years since the period available to the Department for adjudication of the show cause notices varies depending upon the due date for furnishing of annual return for that year. In our view, consolidated show cause notices covering multiple f inancial/assessment years can be issued only in circumstances where the statutory provision provides for a common period for initiation and completion of the adjudication. For instance, under Section 28 of the Customs Act, a show cause notice invoking the extended period of limitation of five years has to cover a prior period of five years ending with the date of issuance of the show cause notice. Similar was the provision under Section 11A of the erstwhile Central Excise Act. Under both of the above provisions, the show cause notices issued, irrespective of whether it covered a single financial/assessment year or multiple years, had to be adjudicated within a fixed period of one year from the date of the show cause notice. The scheme of adjudication is different under the CGST Act. Under Section 74 of the CGST Act, the end termini for adjudication varies for each financial/assessment year, since it is not pegged to the date of the show cause notice but to a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to. Issuing a consolidated show cause notice covering various financial/assessment years would cause prejudice to an assessee who would not get the full period envisaged for adjudication under the Statute, if that period is circumscribed by the limitation period prescribed in relation to an earlier financial/assessment year. In other words, where, in a situation such as the present, the proximate expiry of the limitation period under Section 74(10) is only in relation to one of the six financial/assessment years, the contentions of the assessee and the opportunity available to an assessee for adducing evidence in relation to the other years cannot be rendered illusory by forcing upon the assessee the period of limitation prescribed under Section 74(1) for passing the final order in relation to the earliest financial/assessment year [2017-18]. The statutory period available for an assessee to put forth its contentions against the show cause notice in an effective manner cannot be curtailed by an unnecessary act on the part of the Department in issuing a consolidated show cause notice that includes therein a f inancial/assessment year in relation to which the period for passing a f inal order expires earlier.

8. There is yet another aspect of the matter. If a consolidated notice for various financial/assessment years is issued, the total amount of tax, penalty etc. determined as payable by the assessee may increase exponentially depending upon the number of financial/assessment years included in the consolidated notice. The determination of tax, penalty etc. would be in respect of all the financial/assessment years put together. That would go against the provisions of sub sections (9) and (10) of Section 74 which specifically refer to the "financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates" while stipulating the last date for passing the adjudication order. A consolidated notice would also result in a consolidated adjudication order covering several financial/assessment years and in the event of it being adverse to the assessee, the fee/pre deposit required to be paid by an assessee for preferring a statutory appeal would also be higher. This could not have been the Scheme of the statutory provisions which are expected to adhere to principles of fairness in taxation. In this context, it is useful to remind ourselves of the following observations of Justice H.R. Khanna in **CIT v. Simon Carves Ltd. – [(1976) 4 SCC 435]** as regards the nature of the quasi-judicial function exercised by assessing officers:

> "10. […] The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is

legitimately due from an assessee should remain unrecovered they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. We are wholly unable to subscribe to the law that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed not to have exercised it in a proper and judicious manner."

We therefore see no reason to interfere with the impugned judgment of the learned Single Judge, and for the reasons stated therein as supplemented by the reasons in this judgment, we dismiss the Writ Appeal.

DR. NAMBIAR
JUDGE

EASWARAN S.
JUDGE

Original judgment copy is available here.

Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C – Circular No. 246/03/2025-GST dated 30.01.2025

Circular No. 246/03/2025-GST

F. No. CBIC-20001/14/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

*****

North Block New Delhi,
Dated the 30th January, 2025

To,
All the Principal Chief Commissioners/ Chief Commissioners
All the Principal Directors General/ Directors General
Madam/Sir,

Subject: Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C- reg.

Representations have been received seeking clarification regarding levy of late fee payable for delay in furnishing of reconciliation statement in FORM GSTR-9C. It has been requested to clarify whether late fee under section 47 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") will be leviable where reconciliation statement in FORM GSTR-9C is not furnished by the registered person alongwith the annual return in FORM GSTR-9 but is filed subsequently beyond the due date of furnishing of annual return.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act, hereby clarifies the issues as below.

3. Prior to , sub-section (2) of section 44 of CGST Act provided that a registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 of the CGST Act s**hall furnish the annual return under sub-section (1) of the said section along with a copy of the audited annual accounts and a reconciliation statement.** From onwards, with the omission of the requirement of getting accounts audited in accordance with the provisions of sub-section (5) of section 35 of the CGST Act, sub-section (1) of section 44 of CGST Act provides for **furnishing of annual return which may include a self-certified reconciliation statement**, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed. Further, before , sub-rule (3) of rule 80 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") provided that accounts shall be audited as per sub-section (5) of section 35 of the CGST Act in case the aggregate turnover of a registered person exceeded two crore rupees in a financial year and such taxpayer shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C. From onwards, sub-rule (3) of rule 80 of CGST Rules provides that taxpayer with aggregate turnover during a financial year exceeding five crore rupees, shall furnish a self certified reconciliation statement as specified under section 44 of the CGST Act in FORM GSTR-9C along with the annual return in FORM GSTR-9 on or before the thirty-first day of December following the end of such financial year.

3.1 Therefore, on a combined reading of section 44 of CGST Act with rule 80 of the CGST Rules, it can be concluded that both pre and post amendment, the provisions mandated that registered persons required to furnish an annual return in FORM GSTR-9 for a financial year shall also furnish along with it, a duly certified or self-certified reconciliation statement in FORM GSTR-9C, which reconciles the value of supplies declared in FORM GSTR-9 furnished for the said financial year with the audited annual financial statement. It is also mentioned that a reconciliation statement in FORM GSTR-9C is required to be filed only if the aggregate turnover of the said registered person during a financial year exceeds the specified threshold limit.

3.2 Sub-section (2) of section 47 of the CGST Act provides for a levy of a late fee for failure to furnish the return under section 44 of the CGST Act by its due date, which is to be computed at the specified rate, for each day for which such failure continues, subject to a maximum amount. As per the discussions above, in cases where reconciliation statement in FORM GSTR-9C is not required to be furnished, annual return under section 44 of CGST Act consists only of FORM GSTR-9 and in cases where a reconciliation statement in FORM GSTR-9C is required to be furnished, the annual return under section 44 of CGST Act consists of the return in FORM GSTR-9 along with a reconciliation statement in FORM GSTR-9C. Therefore, in cases where the reconciliation statement

in FORM GSTR-9C is required to be furnished along with the annual return in FORM GSTR-9, the furnishing of annual return under section 44 of the CGST Act, may not be said to be complete, unless both return in FORM GSTR-9 and reconciliation statement in FORM GSTR-9C are furnished. If only return in FORM GSTR-9 is furnished and reconciliation statement in FORM GSTR-9C is required but not furnished, annual return under section 44 of CGST Act cannot be said to have been furnished.

3.3 In view of the above, it is clarified that late fee under sub-section (2) of section 47 of the CGST Act, is leviable for the delay in furnishing of complete annual return under section 44 of the CGST Act, i.e. both FORM GSTR-9 and FORM GSTR-9C (where FORM GSTR 9C is also required to be furnished) and the late fee shall be payable for the period from the due date of furnishing of the said annual return upto the date of furnishing of the complete annual return i.e. FORM GSTR-9 and FORM GSTR-9C. It is also to be noted that late fee is not separately leviable for delayed furnishing of FORM GSTR-9 and delayed furnishing of FORM GSTR-9C, but has to be calculated for the period from the due date of furnishing of annual return under section 44 of the CGST Act till the date of furnishing of complete annual return i.e.:

i. in cases where FORM GSTR-9C is not required to be furnished, the date of furnishing of FORM GSTR-9;

ii. in cases where FORM GSTR-9C is required to be furnished along with FORM GSTR-9,

a. the date of furnishing of FORM GSTR-9, if FORM GSTR-9C is furnished alongwith FORM GSTR-9; or

b. the date of furnishing of FORM GSTR-9C, if FORM GSTR-9C is furnished subsequent to furnishing of FORM GSTR-9.

4. It is further mentioned that vide notification No. 08/2025-Central Tax dated , the late fee in respect of delayed filing of complete annual return for any financial year upto FY 2022-23 has been waived, which is in excess of the late fee payable under sub-section (2) of section 47 of CGST Act upto the date of furnishing of return in FORM GSTR-9 for the said financial year, if the reconciliation statement in FORM GSTR 9C is furnished on or before 31st March 2025. Accordingly, in cases where reconciliation statement in FORM GSTR-9C was required to be furnished along with the return in FORM GSTR-9, but was not furnished so for any financial years upto FY 2022-23, and has been furnished subsequently on or before 31st March, 2025, then no additional late fee shall be payable for delayed furnishing of FORM GSTR-9C which is in excess of the late fee payable under section 47 upto the date of furnishing FORM GSTR-9 for the said financial year. Further, no refund shall be admissible in respect of any amount of late fee already paid in respect of delayed furnishing of FORM GSTR-9C for the said financial years.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours faithfully,
Gaurav Singh
Commissioner (GST)

JMD Alloys Ltd. Vs. Union of India and Ors. - Patna High Court

(2025) 18 HC

IN THE HIGH COURT OF PATNA

JMD Alloys Ltd.
v.
Union of India and Ors.

Civil Writ Jurisdiction Case of 2023
Decided on 30-Jan-25

Mr. Justice Rajeev Ranjan Prasad and Mr. Justice Ramesh Chand Malviya

Add. Info:

For Appellant(s): Mr. Viveka Nand, Advocate.

For Respondent(s): Mr. K.N. Singh, Mr. Anshuman Singh, Advocates.

Brief about the decision:

Judgment/Order:

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 30-01-2025

This writ application has been preferred seeking the following reliefs:-

> "(a) For the issuance of appropriate writ and quashing/ setting aside of the Order- in Appeal No 51/ Pat/ GST/ Appeal/ 2023-24, dated , passed by the Addl Commissioner (Appeal) of CGST & C. Ex, Patna, rejecting petitioner's Appeal, seeking seamless transfer of CENVAT Credit in relation to Excisable Goods in transit on the appointed date, i.e. , by way of prescribed Form TRAN-1, as excisable inputs, pertaining to 11 (eleven) well identified Excise Invoices, whereby Petitioner had duly paid CENVAT Duty, amounting to Rs.8,62, and the said excisable goods pertaining to the said 11 (eleven) invoices were duly received in the petitioner's factory premises in the Month of July, 2017, accordingly accounted/ capitalized in the petitioner's Books of Account, instantly in the same month of July 2017. (b) For the grant of any other consequential relief/s for which petitioner is found entitled in the eye of law."

Brief Facts of the Case

2. The petitioner is a public limited company incorporated under the provisions of the Companies Act, 1956. It is engaged in manufacturing business of MS-Bars and maintains its account on the basis of mercantile/accrual system. It is a 'person' within the meaning of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act 2017'). The petitioner claims that it is filing periodical central excise returns under its respective PAN based Central Excise Registration ID. In the present GST regime, the petitioner has been allotted GSTIN ID.

3. In the month of June, 2017, the petitioner placed order to the registered suppliers for supplying a few cenvatable/excisable goods of capital nature which were required to be used in the factory of the petitioner for the manufacturing of final centivable excisable produce. Eleven different suppliers sent consignment of the requisite cenvatable/excisable goods without indicating their respective nature of use to the petitioner's factory premises under cover of eleven different tax invoices, altogether charging CENVAT duty, amounting to Rs. 8,62,566/- on the various dates in the month of June 2017. Those goods were received in the factory premises of the petitioner on various dates in the month of July 2017. The petitioner admits that the transaction value thereof under eleven different tax invoices has been duly recorded in the books of account in the month of July 2017.

4. The petitioner filed prescribed online return, namely TRAN-1 on in his GSTIN ID and claimed all the admissible components of CENVAT credit. The jurisdictional Range Superintendent (respondent no. 4) vide his Letter dated as contained in an Annexure '3' to the writ application informed the petitioner that during TRAN-1 verification against his claim of Rs. 2,19,18,000/-, it has been found that there was ineligible credit of Rs. 8,62,566/- against his claim in Table No. 6(a) of TRAN-1 against capital goods in transit. Respondent no. 4 requested the petitioner to reverse the said ineligible credit urgently under intimation to the office.

5. The petitioner submitted his response which did not satisfy respondent no. 4. By another communication dated (Annexure '4'), respondent no. 4 pointed out to the petitioner sub-section (2) of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Act, 2017. He was of the opinion that by virtue of the explanation under Section 140(2) of the CGST Act, 2017, the unavailed CENVAT credit means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law. Respondent no. 4 expressed his opinion that under Section 140(2) of the CGST Act, 2017, transitional credit on the amount of Rs. 8,62,566/- is not available to the petitioner.

<u>The Order-in Original</u>

6. A show-cause notice in prescribed form DRC-1 proposing recovery of credit amounting to Rs. 8,62,566/- was issued to the petitioner vide Annexure '5' and '5/A' (wrongly typed as Annexure '5/A' and '5/B' in the writ petition). Respondent no. 4 finally passed the order in original dated (Annexure '6'). A perusal of Annexure '6' would show that respondent no. 4 has considered the defence reply of the petitioner and has also given a personal hearing. In his ultimate analysis, the respondent no. 4 took a view that Section 140(5) of the CGST Act allows a registered person, credit of eligible duties and tax in respect of 'inputs' or 'input services' which were received on or after the appointed day but not on which the tax was paid earlier. Further, when it comes to the question of taking credit of the duty paid on the capital goods in transit received on or after , no facility is provided to enable the assessee to claim credit of the excise duty paid on such capital goods. Respondent no. 4, therefore, confirmed the demand and ordered for recovery of Rs. 8,62,566/- as detailed in TRAN-1 under Section 73 of the CGST Act from the petitioner along with interest at applicable rate on the amount as demanded and penalty at the rate of 10% of the tax amount under Section 73(9).

Appellate Order

7. Aggrieved by the order in original (Annexure '6'), the petitioner preferred First Appeal before the Commissioner (Appeals), CGST. The appellate authority (respondent no. 3) once again considered the grounds on which the appeal was preferred after giving a personal hearing to the learned Advocate on behalf of the appellant. In his opinion, the appellant was not able to substantiate his plea. The appellate authority held that the plea of the appellant that CENVAT Credit Rules, 2017 does not contain any definition of capital goods but the definition of input has been amended to include capital goods, is not tenable. The appeal has been dismissed vide order in appeal, a copy of which is enclosed as an Annexure '7' to the writ application.

8. The petitioner has another remedy of appeal before Appellate Tribunal but it is stated that the Appellate Tribunal is not functional, much less this case does not involve any question of fact or mixed question of facts and law, therefore, the present writ application has been preferred. In course of hearing, learned counsel for the petitioner has submitted that this Court may hear the writ application on its own merit.

Submission on behalf of the Petitioner

9. Learned counsel for the petitioner has assailed the order-in-original (Annexure '6') and the Appellate Order (Annexure '7'). Once again, his submission is that the definition of the terms 'input' under Rule 2(g) of the CENVAT Credit Rules 2017 would take within its' fold the capital goods. It is submitted that both the authorities below have taken an erroneous view and have passed the impugned order under wrong notion of law.

Submission on behalf of Union of India

10. The writ application has been contested by learned . It is submitted that in the instant case, the core issue is as to whether or not the duty paid on excisable goods received in the factory premise after 30th of June, 2017 were eligible for seamless transmission for credit from the then existing law to GST law regime by way of "input" as defined in Rule 2(g) of the said CENVAT Credit Rule, 2017. It is his submission that in view of specific deletion of the definition of capital goods and introduction of absolutely new definition of input in the CENVAT Credit Rule, 2017 by superseding/rescinding the earlier CENVAT Credit Rule, 2004 which contained definition of capital goods, the petitioner would not be entitled to claim seamless transfer of the CENVAT credit in connection with the capital goods.

11. Learned ASG has relied upon the definition of the term 'input' as referred in Section 2 (59) of the CGST Act, 2017 and Section 140 (5)of the CGST Act, 2017 to submit that input does not include capital goods and facility of availing transitional credit would not be available to the petitioner in view of Section 140(5). Transitional credit would only be available to 'inputs' and not on the 'capital goods'. According to him, there is a clear demarcation between inputs and capital goods.

12. It is submitted that an identical question fell for consideration before the Hon'ble Gujarat High Court in the case of **RSPL Limited vs Union of India** reported in **2018 (19) GSTL 430 (GUJ).** The Hon'ble Division Bench of Gujarat High Court has clearly opined that sub-section (5) of Section 140 of the CGST Act, 2017 allows a registered person, credit of eligible duties and tax in respect of inputs or input services which were received on or after the appointed day but on which the tax was paid earlier. In absence of any matching provisions pertaining to capital goods, in a situation where the duty had been paid on purchase of goods prior to the appointed date, but the goods were received on or after the appointed date, there would be no possibility of availing availing credit on such taxes under the GST regime.

13. It is also informed that M/s RSPL Limited had preferred Special Leave Petition (Civil) Diary No. 8350 of 2019 in the Hon'ble Supreme Court of India. The said Special Leave Petition had been dismissed vide order dated . It is, therefore, submitted that the writ application is devoid of merit and the same is liable to be dismissed.

Consideration

14. This Court has heard learned counsel for the petitioner and learned ASG for the Union of India at length. The facts are not in dispute. The petitioner admits that the goods received in the premises of the factory of the company are the capital goods. His contention is that the definition of "inputs" under Rule 2(g) of the CENVAT Credit Rule, 2017 would also include any or all excisable goods of any nature either of inputs nature or capital goods nature. In order to examine his contention, this Court would briefly take note of the statutory provisions which were in existence prior to coming into force of the GST statues (before) and those which were brought with effect from under the GST regime in relation to credit of excise duty paid on inputs on capital goods. Prior to , a manufacturer was entitled to claim CENVAT credit of duty paid by him on inputs as well as on the capital goods utilized in the manufacturing process, subject, however, to the conditions which were placed in the CENVAT Credit Rules, 2004. There is no difficulty in understanding that the facility providing the manufacturers to claim credit of the duties paid on inputs as well as capital goods continued even after but with certain modifications. CGST Act contained transitional provision according to which unutilized CENVAT credit was eligible to be brought over to the GST regime. The statute made provisions to enable the assessee to avail the credit of duty paid on inputs which were in transit as on . But under the CENVAT Credit Rules, 2017 which were framed by the Central Government by virtue of powers conferred upon it under Section 37 of the Central Excise Act, 1944, no facility has been provided to enable the assessee to claim credit of the excise duty paid on such capital goods.

15. This Court has gone through the various provisions of the CGST Act, 2017 and the CENVAT Credit Rules, 2017. A brief history of the legislation on the subject would take this Court to the erstwhile Central Excise Rules, 1944 (hereinafter referred to as the 'Rules of 1944'). Rule 57(q) was inserted in the Rules of 1944 vide notification dated and sub-rule (1) of Rule 57(q) for the first time introduced the benefit of duty paid by a manufacturer on the capital goods used by him in his factory for payment of duty on excise leviable on its final product subject to the conditions imposed. The term "capital goods" was defined, however, a proviso to sub-rule (2) of Rule 57(q) made it clear that notwithstanding anything contained in sub-rule (1), no credit of the specified duty paid on capital goods shall be allowed if such duty has been paid on such capital goods before the first day of March, 1994. In this way, the facility of utilizing the specified duty paid on capital goods used by a manufacturer in the factory in discharge of it's duty liability was introduced but the benefit was restricted only to the duties which were paid on such capital goods after .

16. The word "capital goods" found its definition also in Rule 2(A) of the CENVAT Credit Rules, 2004. Sub-rule (1) of Rule '3' provided that the manufacturer or purchaser of final products are a provider of output service shall be allowed to claim credit of the CENVAT credit of the various duties specified in Clauses (i) to (xi) contained therein paid on any input or capital goods received in the factory of manufacturer of final product or by the provider of output services or on after the tenth day of September, 2004. It also provided that any input service received by the manufacturer of the final product or by the provider of the output service on or after the said date could be eligible for taking credit. This Court further finds that Section 2(19) of the CGST Act defines "capital goods" to mean the goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. The word 'input' is defined in Section 2(59) to mean any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of a business. The word 'input tax' has also been defined under Section 2(62) to mean the Central Tax, State Tax, Integrated Tax or Union

Territory Tax charged on any supplier of goods or services or both made to a registered person and would include several taxes specified in Clauses (a) to (e) contained therein. Again the word 'input tax credit' is defined under Section 2(63) to mean the credit of input tax. The definitions mentioned above are being produced hereunder for a ready reference:-

> "2(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;
>
> 2(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
>
> 2(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes
>
>> (a) the integrated goods and services tax charged on import of goods,
>>
>> (b) the tax payable under the provisions of subsections (3) and (4) of section 9,
>>
>> (c) the tax payable under the provisions of subsection (3) and (4) of section 5 of the Integrated Goods and Services Tax Act,
>>
>> (d) the tax payable under the provisions of subsection (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act, or
>>
>> (e) the tax payable under the provisions of subsection (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,
>
> but does not include the tax paid under the composition levy;
>
> 2(63) "input tax credit" means the credit of input tax.

17. The CGST Act also contains transitional provisions under Section 140. It is relevant to the transitional arrangements for input tax credit. Section 140 of the CGST Act is being reproduced hereunder for a ready reference:-

> **"Section 140: Transitional arrangements for input tax credit –**
>
> (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [1][of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [2][within such time and] in such manner as may be prescribed:
>
> Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-
>
>> (i) where the said amount of credit is not admissible as input tax credit under this Act; or
>>
>> (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
>>
>> (iii) where the said amount of credit relates to goods manufactured and cleared under

such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [3] [within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.–For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semifinished or finished [4] [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:––

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, (32 of 1994) but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-Section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [5] [existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [6] [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:––

(i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [7][credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [8][within such time and in such manner] as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such [9][credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.

Explanation1. – For the purposes of [10] [sub-sections (1), (3), (4)] and (6), the expression "eligible duties" means –

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

[11] [***]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Explanation the purposes of [12] [sub-sections (1) and (5)], the expression "eligible duties and taxes" means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

[13] [***]

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(viii) the service tax leviable under section 66-B of the Finance Act, 1994 (32 of 1994),

in respect of inputs and input services received on or after the appointed day.

[14] [Explanation removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).]

This clause provides for transitional arrangements for carrying forward of input tax credit available under the existing law. (*Notes on Clauses)*

18. From the above discussions, it is evident that the GST regime also continued with the same facility, though in a different format. No distinction between duty paid on capital goods or inputs has been made under the GST Act. Sub-section (1) of Section 16 allowed every registered person, subject to conditions and restrictions as may be prescribed to take credit of input tax charged on any supply of goods or services or both to him. The word 'input tax' has been defined to mean various taxes charged on any supply of goods or services or both to a registered person. A reading of sub-section (3) of Section 16 makes it crystal clear that it provides for claim of depreciation of tax component of the cost of capital goods or plant and machinery under the Income Tax Act, 1961 and if such claim has been made by a registered person, the input tax credit on such tax component would not be allowed. Sub-section (1) and (2) of Section 17 pertain to restriction of the tax credit when the goods or services are utilized partially for business purpose and partially for other purposes or partially for effecting taxable supplies and partially for non-taxable supplies, these provisions do not make any distinction between capital goods and inputs.

19. The distinction in the matter of giving benefit of CENVAT credit on capital goods during the transitional period may be found in Section 140 of the CGST Act. While this provision enables an assessee to carry forward and take credit of unutilized CENVAT credit paid on inputs as well as on capital goods, in the manner as may be prescribed and subject to the conditions contained in the provisions, sub-section (5) of Section 140 makes a distinction between the capital goods and inputs. This provides that a registered person would be entitled to take credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed date but the duty on tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed date.

20. An identical question had fallen for consideration before the Hon'ble Division Bench of the Gujarat High Court in the case of **RSPL Limited** (*supra*). A reading of the judgment shows that very

elucidately the law on the subject has been discussed by the Hon'ble Division Bench of Gujarat High Court. Paragraph '17', '18', '19' and '20' of the judgment in case of **RSPL Limited** (*supra*) are being reproduced hereunder:-

> "17. Very clearly thus sub-section (5) of Section 140 allows a registered person, credit of eligible duties and tax in respect of inputs or input services which were received on or after the appointed day but on which the tax was paid earlier. In absence of any matching provisions pertaining to capital goods, in a situation where the duty had been paid on purchase of goods prior to the appointed day but the goods were received on or after the appointed day, there would be no possibility of availing credit on such tax under the GST regime.
>
> 18. It can thus be seen that to this limited extent, the CGST Act has made a distinction between the capital goods and inputs. The question is, is this demarcation unlawful? As noted, the fulcrum of the petitioner's argument was that this makes an artificial distinction between capital goods and inputs which has no rational relation to the purpose sought to be achieved. The subsidiary contention of the petitioner was that there is no reason why such distinction should have been made. On the other hand, the respondents had argued that granting of credit on the duty paid is in the nature of concession. For valid reason, law can always be framed not granting such concession in certain cases.
>
> 19. The legislature, as we have noted, made a clear and conscious demarcation between capital goods and inputs when it comes to availing credit of the duties paid on the goods which are in transit. When the entire tax structure was being replaced by the GST provisions, there would arise a need for making transitional arrangements. Chapter XX of the CGST Act, as noted, contains transition provisions. Section 140 contained in the said chapter makes detailed provisions for transitional arrangements for input tax credit. Subject to contentions and in the manner as may be prescribed, the unused tax credit would be migrated to the GST regime. This section also would enable a registered person to claim credit of the duty paid prior to the appointed day on the inputs even though the inputs may be received after the appointed day. This section consciously does not provide any such facility in relation to the capital goods in transit. This demarcation itself would not be artificial, arbitrary or in any manner, discriminatory. The capital goods and inputs used in manufacturing process have always been treated differently and distinct treatment have been given under the earlier statutes. If the legislature therefore was of the opinion that in relation to capital goods in transit, duty paid before the appointed date cannot be claimed as a credit in the GST regime, we do not find that the distinction is in any manner artificial or arbitrary.
>
> 20. Article 14 as is well-known, prohibits class legislation but not reasonable classification. To bring in the element of discrimination in terms of Article 14 of the Constitution, the onus would be on the petitioner to establish that the persons or things treated differently form a homogeneous class. In the present case, the source of the petitioner's grievance or dissatisfaction is that the inputs and capital goods are treated differently. When we find that the inputs and capital goods form different and distinct classes, the question of subclassification or artificial demarcation would not arise. One of the grounds cited in the affidavit in reply filed by the respondents for treating the capital goods in transit differently is that the capital goods are typically slow moving items. This term is not explained in detail in such affidavit. However, to us it appears that the suggestion of the respondents is that unlike inputs, the capital goods which can be in the nature of plant and machinery including highly sophisticated specially designed and manufactured machines, may take much longer time for delivery and installation after the orders are placed by the manufacturers and the legislature was not inclined to keep the issues of migration of tax credits and pending claims open for indefinite period of time."

21. This Court finds that the CENVAT Credit Rules, 2017 has superseded CENVAT Credit Rules, 2004 and conjoint reading of the provisions of GST Act and CENVAT Rules, 2017 leaves no room for taking any different view from that of the Hon'ble Gujarat High Court in the case of RSPL Limited (supra).

22. We do not find any error in the impugned orders dated (Annexure '6') and (Annexure '7').

23. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

References:

1. Inserted by Act 31 of 2018, S. 28 (. 1-7-2017).

2. Inserted by Act 12 of 2020, S. 128(a) (. 18-5-2020).

3. Inserted by Act 12 of 2020, S. 128(b) (. 18-5-2020).

4. Substituted by Act 12 of 2020, S. 128(c), for "goods held in stock on the appointed day subject to" (. 18-5-2020).

5. Substituted by Act 12 of 2020, S. 128(d), for "existing law" (. 18-5-2020).

6. Substituted by Act 12 of 2020, S. 128(e), for "goods held in stock on the appointed day subject to" (. 18-5-2020).

7. Substituted by Act 12 of 2020, S. 128(f), for "credit under this Act even if" (. 18-5-2020).

8. Substituted by Act 12 of 2020, S. 128(g), for "in such manner" (. 18-5-2020).

9. Substituted by Act 12 of 2020, S. 128(h), for "credit can be reclaimed subject to" (. 18-5-2020).

10. Substituted by Act 31 of 2018, S. 28 for " sub-sections (3), (4)" (. 1-7-2017).

11. Cl. (iv) omitted by Act 31 of 2018, S. 28 (. 1-7-2017).

12. Substituted by Act 31 of 2018, , for "sub-section (5)" (. 1-7-2017)

13. Cl. (iv) omitted by Act 31 of 2018, , for Cl. (iv) (. 1-7-2017). Prior to its omission, Cl. (iv) read as under:- "(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);".

14. Inserted by Act 31 of 2018, S. 28 (. 1-7-2017)

Original judgment copy is available here.

BLA Infrastructure Pvt. Ltd. Vs. The State of Jharkhand and Ors. – Jharkhand High Court

(2025) 08 HC

IN THE HIGH COURT OF JHARKHAND

BLA Infrastructure Pvt. Ltd.
v.
The State of Jharkhand and Ors.

W.P.(T) No. 6527 of 2024
Decided on 30-Jan-25

Chief Justice M.S. Ramachandra Rao and Mr. Justice Deepak Roshan

Add. Info:

For Appellant(s): Mr. Nitin Kumar Pasari, Advocate

For Respondent(s): Mr. Mohan Kr. Dubey, A.C. to A.G

Brief about the decision:

Judgment/Order:

Per Deepak Roshan, J.

Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for the following reliefs:

> *a. For issuance of an appropriate writ, order or direction, directing upon the Respondents to show cause as to why the refund application of the Petitioner has not been processed which pertains to refund of the pre-deposited amount with the government exchequer in order to maintain the appeal under Section 107 of the Act.*
>
> *b. Consequent upon showing cause, if any, and on being satisfied that the Respondents were obligated to grant refund of the pre-deposit amount and the refund application of the Petitioner could not have been automatically rejected on the ground of being time barred, the Respondents be directed to refund the amount of pre-deposit forthwith along with statutory interest.*

c. For issuance of an appropriate writ, order or direction, holding and declaring that once the appeal preferred by the assessee is allowed, withholding of the pre-deposit amount without any reasonable cause would be hit by Article 265 of the Constitution of India, which mandates that no tax shall be levied or collected except by authority of law.

d. For issuance of an appropriate writ, order or direction, quashing and setting aside the deficiency memos issued in Form GST RFD-03 dated (Annexure-5) being wholly illegal and arbitrary and consequently direction be issued to grant refund of Rs. 1,13,454/- illegally retained by the Respondents, along with applicable interest and costs;

e. For issuance of any other appropriate writ(s)/ order(s)/ direction(s) as Your Lordships may deem just and proper in the facts and circumstances of the case for imparting substantial justice to the Petitioner.

3. The brief facts of the case are that the petitioner is a registered dealer under the Goods & Services Tax Act and is carrying out business of loading, unloading of Coal and transportation of coal loaded into tipper. In the month of January 2021, alleging mismatch in GSTR-1 and GSTR-3B for the month of September 2019, Show Cause Notice under Section 74 of the JGST Act, 2017 was issued and ex-parte order was passed vide order dated , imposing liability of Rs. 16,90,442/-, which *inter alia* included tax, interest and penalty.

4. Aggrieved thereof, the petitioner preferred an appeal within time making a statutory pre-deposit of the 10% of the disputed tax amount under Section 107(6)(b) of the Act, in order to maintain the appeal.

5. After hearing the petitioner and scrutinizing the documents, the appeal was allowed on and Form GST APL-04 dated was issued.

6. The petitioner made an application for refund of the pre-deposit amount on , which by virtue of a Deficiency Memo dated was held to be beyond the period prescribed under section 54(1) of the Goods & Services Tax Act and hence, aggrieved thereof, the petitioner is before this Court.

7. Counter Affidavit has been filed by the respondents, defending the actions of the Department *inter alia* purportedly in terms of Section 54 and also referring to Circular No. 125/44/2019-GST dated issued by the Government of India, Ministry of Finance, GST Policy Wing, treating the application to be time barred and further submitting that the Jurisdictional Officer has no authority/discretion to condone the delay.

8. In the aforesaid background, we have to decide as to whether the application for refund made beyond a period of 2 years should be entertained or not or if it is time barred.

9. For better appreciation, Section 54 of the Act is hereto quoted for ease:

Section 54. Refund of tax.-

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

***Provided** that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in [1][such form and] 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 (46 of 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 [1][two years] 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:*

[9][****]

***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, [8][****], 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 2[export] of goods or services or both or on inputs or input services used in making such 1[exports];

(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.

[3][(8A) The Government may disburse the refund of the State tax in such manner as may be prescribed.]

(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 [4][***] 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.
[10]*[(15) Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.]*

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;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) [in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

10. Since reference has been made of a Circular of 2019, Rule 89 also is required to be dealt with:

89. ***Application for refund of tax, interest, penalty, fees or any other amount.-***

(1) Any person, except the persons covered under notification issued under section 55 claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in ***FORM GST RFD-01*** *through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of Section 49 may be made through the return furnished for the relevant tax period in ***FORM GSTR-3*** *or* ***FORM GSTR-4*** *or* ***FORM GSTR-7****, as the case may be:*

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided *also that in respect of supplies regarded as deemed exports, the application may be filed by the recipient of deemed export supplies:*

Provided *also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.*

*(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **FORM GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:-*

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

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

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided *that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;*

(m) a Certificate in Annexure 2 of ***FORM GST RFD-01*** *issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:*

Provided *that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;*

Explanation. *– For the purposes of this rule-*

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, –

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received

during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E)"Adjusted Total Turnover" means the turnover in a State or Union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed. (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

***Explanation:** – For the purposes of this sub-rule, the expressions "Net ITC" and "Adjusted Total turnover" shall have the same meaning as assigned to them in sub-rule (4).*

11. Though, reference has been made to Rule 89, however, Rule 89 is a procedural rule governing Section 54 and as such, there is no separate influence of Rule 89 and it is only in order give effect to Section 54, Rule 89 has been formulated. Hence, there is no requirement to deal with Rule 89 separately.

In Section 54, 'relevant date' has been defined giving situations and in Rule 89, 'relevant period' has been defined to mean "the period for which the claim has been filed".

12. In order to buttress the submission, Mr. Nitin Kumar Pasari, learned counsel for the petitioner, assisted by Mr. Shubham Choudhary, has relied upon the judgment of Hon'ble Madras High Court reported in **2023 SCC Online Mad. 7810** (*Lenovo India Pvt. Ltd. Vs. Joint Commissioner of GST*), wherein the Madras High Court had dealt with the word *'may'* as is appearing in Section 54 of the Act and the Court has recorded its finding as under:

15.7 Thus, a reading of the section 54(1) of the CGST Act would make it clear that the assessee can make the application within two years. The terms used in said section "may make application before two years from the relevant date in such form and manner as may be prescribed", which means that the assessee may make application within two years and it is not mandatory that the application has to be made within two years and in appropriate cases, refund application can be made even beyond two years. The time-limit fixed under section 54(1) is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the period of two years, the legitimate claim of refund by the assessee cannot be denied in appropriate cases.

13. Mr. Mohan Dubey, counsel appearing for the respondents, has highly emphasised on the statements made in the Counter Affidavit, more particularly Paragraph-15 & 17.

14. During the pendency of the writ petition, this Court had given a direction orally to the authorities concerned to issue refund, failing which, adverse consequence would follow as against the State, however, as would appear from the Counter Affidavit, in Paragraph-22, following

statement has been made:

> *"...As per direction dated of this Hon'ble Court, the proper authority has visited the portal and tried to issue the refund, but same was became unsuccessful as a Deficiency Memo has been issued and no further process can be performed in the portal for initiating the refund."*

15. In the aforesaid background, we will deal with the issue of limitation under Section 54, if it is mandatory or directory.

16. Article 265 of the Constitution of India provides for –

> *"265. **Taxes not to be imposed save by authority of law** No tax shall be levied or collected except by authority of law."*

17. There is no dispute to the effect that once refund is by way of statutory exercise, the same cannot be retained neither by the State, nor by the Centre, that too by taking aid of a provision which on the face of it is directory, inasmuch as, the language couched in Section 54 is "*may make an application before the expiry of 2 years from the relevant date*".

The word "relevant date" has been defined in Explanation 2 of Section 54, which thus reads as follows:

(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;

[(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;]

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of-

(i) receipt of payment in convertible foreign exchange [6][or in Indian rupees wherever permitted by the Reserve Bank of India] , where the supply of services

had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) [7][in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;]

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

What is relevant in the aforesaid Explanation is Explanation 2(d) and it is this explanation which probably is haunting the minds of the Officer of the State.

18. The word ‘may’ has been interpreted by the Hon’ble Apex Court in numerous cases and the Hon’ble Apex Court has opined that the word ‘may’ as would appear in different statutes, is normally directory in nature and not mandatory.

19. Recently, the Hon’ble Apex Court in the matter of ***Muskan Enterprises & Anr. vs. State of Punjab & Anr.*** reported in ***2024 SCC Online SC 4107*** has interpreted the word ‘may’ and while dealing with the statute the Negotiable Instrument Act, 1881, has been *inter alia* pleased to hold as under:

24. Law is well-settled that user of the verbs ‘may’ and ‘shall’ in a statute is not a sure index for determining whether such statute is mandatory or directory in character. The legislative intent has to be gathered looking into other provisions of the enactment, which can throw light to guide one towards a proper determination. Although the legislature is often found to use ‘may’, ‘shall’ or ‘must’ interchangeably, ordinarily ‘may’, having an element of discretion, is directory whereas ‘shall’ and ‘must’ are used in the sense of a mandatory provision. Also, while the general impression is that ‘may’ and ‘shall’ are intended to have their natural meaning, it is the duty of the court to gather the real intention of the legislature by carefully analysing the entire statute, the section and the phrase/expression under consideration. A provision appearing to be directory in form could be mandatory in substance. The substance, rather than the form, being relevant, ultimately it is a matter of construction of the statute in question that is decisive.

25. It is also a well-accepted rule that interpretation must depend on the text and the context – the text representing the texture and the context giving it colour – and, that interpretation would be best, which makes the textual interpretation match the contextual. While wearing the glasses of the statute-maker, the enactment has to be looked at as a whole and it needs to be discovered what each section, each clause, each phrase and each word means and whether it is designed to fit into the scheme of the entire enactment. While no part of a statute and no word of a statute can be construed in isolation, statutes have to be construed so that every

word has a place and everything is in its place. We draw inspiration for the above understanding of the manner of interpreting a statute from the decision of this Court in Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.

20. The Hon'ble Apex Court in the matter of *Rakesh* ***Ranjan Shrivastava Vs. State of Jharkhand & Anr.*** reported in ***(2024) 4 SCC 419*** has pleased to deal with the word 'may' and has been *inter alia* pleased to hold as under:

> *11. There is no doubt that the word "may" ordinarily does not mean "must". Ordinarily, "may" will not be construed as "shall". But this is not an inflexible rule. The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may". It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word "may" has been used is also relevant.*
>
> *18. In the case of Section 143-A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143-A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word "may" is interpreted as "shall", it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20% of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub-section (1) of Section 143- A provides for penalising an accused even before his guilt is established.*
>
> *19. Considering the drastic consequences of exercising the power under Section 143-A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143-A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143-A is discretionary.*
>
> *20. Even sub-section (1) of Section 148 uses the word "may". In Surinder Singh Deswal v. Virender Gandhi [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Civ) 765 : (2019) 3 SCC (Cri) 461] , this Court, after considering the provisions of Section 148, held that the word "may" used therein will have to be generally construed as "rule" or "shall". It was further observed that when the appellate court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in Surinder Singh Deswal [Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341 : (2019) 3 SCC (Civ) 765 : (2019) 3 SCC (Cri) 461] , this Court in Jamboo Bhandari v. M.P. SIDC Ltd. [Jamboo Bhandari v. M.P. SIDC Ltd., (2023) 10 SCC 446 : (2024) 1 SCC (Cri) 90 : (2024) 1 SCC (Civ) 547] , in para 6, held thus : (SCC p. 449)*
>
>> *"6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded."*

(emphasis supplied)

21. In terms of the interpretation extended by the Hon'ble Apex Court, as also, taking into consideration that the refund of statutory pre-deposit is a right vested on an assessee after an appeal is allowed in its favour, we have no reason to say that the pre-deposit made by an assessee cannot be forfeited taking aid of section 54 of the Act and the same cannot be the intent of the Act of 2017.

22. It is not even a case that there is any unjust enrichment on the part of the assessee, inasmuch as, the pre-deposit has been made from the own pocket by an assessee and by restricting the refund in reading the word 'may' as 'shall' would be unreasonable and would otherwise be arbitrary and in conflict with the Limitation Act, 1963.

23. Otherwise also, Article 137 of the Limitation Act, 1963, provides for 3 years limitation period for filing a Money Suit and if section 54 and the word 'may' is given effect to as 'mandatory', then in that event an assessee is otherwise also barred from filing a Money Suit, which cannot be the intent of the Act.

24. When the Constitution of India restricts levy of any tax without authority of law, the retention of the same on the ground of statutory restriction, which is in conflict with the Limitation Act, appears to be being misread by the authorities of the GST Department.

25. Under the circumstances, we have every reason to follow in what has been held by the Hon'ble Apex Court (Supra), as also, the orders passed by the Madras High Court in the matter of *Lenovo India Pvt. Ltd*. (Supra).

26. Having regard to the above discussions, it is held that the action of the respondents in rejecting the refund application considering it as time barred has no legs to stand in law and accordingly, the rejection order by way of Deficiency Memo dated , is hereby, quashed and set-aside.

Consequently, the concerned respondent is directed to process the refund application of the petitioner, which exercise shall be completed within a period of Six weeks from today. The petitioner shall also be entitled to interest in terms of Section 54, which also shall be paid to the petitioner within the aforesaid stipulated time.

27. Accordingly, the instant writ application stands allowed. Pending , if any stands closed.

(M.S. Ramachandra Rao, C.J.)

(Deepak Roshan, J.)

Original judgment copy is available here.

Clarifications regarding applicability of GST on certain services – Circular No. 245/02/2025-GST dated 28.01.2025

Circular No. 245/02/2025-GST

F. No. CBIC-190354/2/2025-TO(TRU-II)-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

North Block, New Delhi
Dated the 28th of January, 2025

To,
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services – reg.

Based on the recommendations of the GST Council in its 55th meeting held on 21st December 2024, at Jaisalmer, and in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, clarifications on various issues are being issued through this Circular, as under:

2. Applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.1 Representations have been received seeking clarification on the applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dated directing such Regulated Entities (REs) to levy penal charges in place of penal interest.

2.2 Regulated Entities (REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide RBI instructions dated , to discontinue the use of penal interest for non-compliance with loan terms. As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms. The intent of levying penal charges is essentially to inculcate a sense of credit discipline. These instructions are effective from , and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

2.3 It is being viewed by certain field formations that penal charges so levied are in the nature of payment/consideration for tolerating an act or situation. Similar issues were examined in Circular

No. 178/10/2022-GST dated , wherein it has already been clarified that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. They are rather amounts recovered to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. It has been further clarified that the essence of a contract is its '*performance*' and not its '*breach*', meaning thereby that parties enter into a contract for execution and not for its breach.

2.4 Penal charges levied by REs, in compliance with RBI directions dated , are essentially in the nature of charges for breach of terms of contract and hence, fall within the ambit of the above clarification.

2.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that no GST is payable on the penal charges levied by Regulated Entities, in compliance with RBI directions dated , for non-compliance with material terms and conditions of loan contract by the borrower.

3. Whether GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated is available to payment aggregators in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services?

3.1 Representations have been received seeking clarity on the applicability of GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated to Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services.

3.2 The matter has been examined. Payment Aggregators (PAs) are entities that facilitate e commerce sites and merchants to accept various payment instruments from their customers without the need for the e-commerce sites and merchants to create a separate payment integration system of their own. In the process, PAs receive payments from customers, pool and transfer them on to the merchants within a specified time period.

3.3 The exemption under Sl. No. 34 of notification No. 12/2017-CT(Rate) dated is available to acquiring banks. For the purpose of the said exemption entry, the term 'acquiring bank' has been explained as under:

> *"acquiring bank" means any banking company, financial institution including non banking financial company or any other person, who makes the payment to any person who accepts such card.*

3.4 Clause 8 of the RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways dated , pertaining to 'Settlement and Escrow Account Management' makes it clear that the PAs receive payments from customers in an escrow account, and are obligated to do the final settlement with the merchant within time periods specified by RBI. Therefore, the RBI regulated PAs, involved in the settlement process of making payments to the merchant, are covered by the second part of the definition of acquiring bank, i.e. "*any other person, who makes the payment to any person who accepts such card*" and hence, fall within the definition of acquiring bank, for the purpose of the exemption under Sl. No. 34 of notification No. 12/2017-CTR dated , as they make the payment to the merchants who accept credit cards, debit cards, charge cards or other payment card services.

3.5 Further, the RBI's Guidelines dated clearly distinguish between Payment Aggregators and Payment Gateways (PGs), keeping in view their role vis-à-vis handling funds. PAs are defined as entities who receive payments from customers, pool and transfer them on to the merchants within a

specified time period. On the other hand, PGs are defined as entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.

3.6 Thus, as recommended by the 55th GST Council, it is hereby clarified that GST exemption under Sl. No. 34 of notification No. 12/2017-CTR dated is available to RBI regulated Payment Aggregators (PAs) in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services, as PAs fall within the definition of '*acquiring bank*' given in the Explanation to the said exemption entry. It is also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway (PG) services.

4. Regularizing payment of GST on research and development services provided by Government Entities against consideration in the form of grants received from Government Entities.

4.1 The GST Council, in its 54th meeting held on recommended exempting research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants. The same has been exempted . vide notification No. 08/2024-CT(Rate) dated .

4.2 There were certain interpretational issues with respect to the taxability, or otherwise, of supply of research and development services by Government Entities against grants received from the Government Entities like DRDO, CSIR, SERB etc. These issues now stand resolved, for the period starting from , with the issuance of notification No. 08/2024-CT(Rate) dated which specifically exempted research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants.

4.3 Accordingly, for the past period, the Council, in its 55th meeting, has recommended to regularize payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities for the period to on '*as is where is*' basis.

4.4 Thus, as recommended by the 55th GST Council, the payment of GST on the supply of research and development services by Government Entities against grants received from the Government Entities is regularized for the period to , on '*as is where is*' basis.

5. Regularizing payment of GST on skilling services provided by Training Partners approved by the National Skill Development Corporation.

5.1 On the recommendations of the 54th meeting of the GST Council held in New Delhi on , the entry at Sl. No. 69 of the Notification No. 12/2017-CTR dated was amended vide Notification No. 08/2024 dated , to synchronize it with the new regulatory framework for skill development under NCVET.

5.2 As a result of the aforesaid amendment, the earlier exemption available to the skilling services provided by Training Partners approved by National Skill Development Corporation was withdrawn. The amended exemption was restricted to the skilling services provided by Training Bodies accredited with an Awarding Body that is recognized by the NCVET. Later, it was informed by the Ministry of Skill Development and Entrepreneurship, Government of India, that since NSDC is the implementing agency for skilling schemes of the Government of India, as well as other skill

development programs, hence, the withdrawal of the tax exemption to Training Partners approved by NSDC would adversely impact the skilling ecosystem significantly.

5.3 Accordingly, the GST Council, in its 55th meeting, has recommended that the earlier exemption to skilling services provided by Training Partners approved by the National Skill Development Corporation may be restored. The said exemption has been reinstated by amending Notification No. 12/2017-CT(Rate) dated vide Notification No. 06/2025-CT(Rate) dated with effect from .

5.4 Further, for the past period, the GST Council has recommended to regularize payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to , for the period to on '*as is where is*' basis.

5.5 Thus, as recommended by the GST Council, the payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to , is regularized for the period to , on 'as is where is' basis.

6. Applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters.

6.1 Representation has been received seeking clarification on the applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters, New Delhi.

6.2 MCD is receiving the services such as housekeeping, civil maintenance, furniture maintenance and horticulture, from facility management agency, for the upkeep of their office. MCD has sought clarification as to whether such services received by them are exempt from GST in terms of *Sr. of the notification No. 12/2017-CTR dated .*

6.3 The said entry at *Sr. No. 3A of notification No. 12/2017-CTR dated* provides exemption to composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Government or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of The Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of The Constitution of India.

6.4 However, in the instant case, MCD is receiving the services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of their office. These services are not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of The Constitution of India. Such services are not covered under the scope of entry at *Sr. No. 3A of the notification No. 12/2017-CTR dated .*

6.5 Thus, as recommended by the 55th GST Council, it is hereby clarified that GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at Sr. No. 3A of the *notification No. 12/2017-CTR* dated .

7. Whether Delhi Development Authority (DDA) is a local authority as per section 2(69) of the CGST Act, 2017?

7.1 Representation has been received from DDA seeking clarification whether DDA is a 'local authority' as per section 2(69) of CGST Act, 2017.

7.2 As per entry at Sr. No. 5 of notification No. 13/2017-CTR dated , services supplied by local

authority to a business entity are taxable on Reverse Charge (RCM) basis.

7.3 Local authority under section 2(69) of the CGST Act, 2017 has been defined as a "*Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund"*

7.4 It means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority.

7.5 It is seen that DDA does not meet the requirement of local authority as per section 2(69) of the CGST Act, 2017. Thus, as recommended by the 55th GST Council, it is hereby clarified that DDA cannot be treated as local authority under GST law.

8. Regularizing payment of GST on Reverse Charge (RCM) basis on renting of commercial property by unregistered person to a registered person for taxpayers registered under composition levy.

8.1 Based on the recommendations of the 54th GST council held on , renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person was brought under reverse charge basis.

8.2 The said recommendation was notified vide notification dated effective from by *inserting an entry at Sr. No. 5AB of the notification No. 13/2017-CTR dated* thereby prescribing payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person.

8.3 Various representations from different sectors were received requesting to bring the service of renting of commercial property by unregistered person to registered person under Forward Charge basis.

8.4 55th GST Council in its meeting held on recommended that taxpayers registered under composition levy may be excluded from the entry at Sr. No. 5AB of the notification No. 13/2017-CT(Rate) dated . The same has been notified vide notification No. 07/2025 CT(Rate) dated . The Council further recommended that payment of GST on reverse charge basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to a registered person for taxpayers registered under composition levy may be regularized on '*as is where is*' basis for the intervening period (i.e., date of effect of notification No. 09/2024-CTR dated to date of issuance of amending notification No. 07/2025-CT(Rate) dated).

8.5 Thus, as recommended by the 55th GST Council, payment of GST on Reverse Charge (RCM) basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person under composition levy is hereby regularized for the period from to on '*as is where is*' basis.

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility.

9.1 The GST Council, in its 54th meeting recommended to exempt supply of services by way of providing metering equipment on rent, testing for meters/ transformers/ capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are

incidental or ancillary to the supply of **transmission and distribution** of electricity provided by electricity **transmission and distribution** utilities to their consumers. Thereafter, entry at Sr. No. 25A was inserted in the notification No. 12/2017- CTR dated vide notification No. 08/2024-CTR dated , with effect from .

9.2 In its 55th meeting, the GST Council recommended that the entry at Sr. No. 25 and 25A may be aligned and the same has been brought into effect vide notification No. 6/2025-CTR dated . Accordingly, these incidental or ancillary services to the supply of **transmission or distribution** of electricity supplied by **transmission or distribution utilities** are now covered under the said exemption entry. Further, it was also recommended that the intervening period i.e., (effective date of entry at Sr. No. 25A in notification No. 12/2017-CTR dated) up to (till the date of amending notification No. 06/2025 CTR dated) may be regularised on 'as is where is' basis.

9.3 Thus, as recommended by the 55th GST Council, the payment of GST on certain incidental or ancillary services to the supply of transmission or distribution of electricity, as mentioned in Para 9.1 above, supplied by an electricity transmission or distribution utility is regularized for the period to , on '*as is where is*' basis.

10. Regularizing the payment of GST on services provided by M/s Goethe Institute/Max Mueller Bhawans.

10.1 Goethe Institute/Max Mueller Bhawan have six institutes across India which provide linguistic and cultural training to young Indians preparing for their stay in Germany.

10.2 They are registered under GST at Delhi, Mumbai, Chennai, Bengaluru, Kolkata, and Pune. Prior to 1st April, 2023, the Institutes did not collect GST from their students nor did they pay GST to Government as they were under the bonafide belief that their activities are exempt from GST.

10.3 55th GST Council has recommended to regularize the payment of GST on services provided by Goethe Institutes/Max Mueller Bhawans for the period from to on '*as is where is*' basis.

10.4 Thus, as recommended by the 55th GST Council, payment of GST on services supplied by Goethe Institute/Max Mueller Bhawans is hereby regularized for the period from to on '*as is where is*' basis.

11. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours sincerely,
(Sachin Jain)
Joint Secretary, TRU-II

Regularizing payment of GST on co-insurance premium apportioned by the lead

insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer – Circular No. 244/01/2025-GST dated 28.01.2025

Circular No. 244/01/2025-GST

F. No. CBIC-190354/2/2025-TO(TRU-II)-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

North Block, New Delhi
Dated the 28th of January, 2025

To,
The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer – reg.

Based on the recommendations of the GST Council in its 53rd meeting held on 22nd June, 2024, at New Delhi, and in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, the following clarification is being issued through this Circular:

2. On the recommendations of the 53rd meeting of the GST Council held in New Delhi on 22nd June, 2024, the following activities or transactions were included in Schedule III of the CGST Act, 2017 as activities or transactions which shall be treated neither as a supply of goods nor as a supply of services:

a) Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the Central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

b) Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer,

subject to the condition that the Central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

The above provisions were enacted vide Finance (No. 2) Act, 2024 and have been brought into force on vide Notification No. 17/2024-Central Tax dated .

3. In its 53rd meeting, the GST Council further recommended that the payment of GST on the activities or transactions, as specified in paragraph 2 above, may be regularized for the past period, i.e. from to the effective date of amendments in the CGST Act, , on 'as is where is' basis.

4. Thus, as recommended by the 53rd GST Council, the payment of GST on the activities or transactions specified in paragraph 2 above is regularized for the period to , on 'as is where is' basis.

5. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours sincerely,
(Sachin Jain)
Joint Secretary, TRU-II

[Annai Angammal Arakkattalai Vs. The Joint Commissioner of GST (Appeals) and Anr. – Madras High Court]

(2025) 37 HC

IN THE HIGH COURT OF MADRAS

Annai Angammal Arakkattalai
v.
The Joint Commissioner of GST (Appeals)and Anr.

W.P.(Md)No. 28502 of 2022 and . 22506 & 22507 of 2022
Decided on 28-Jan-25

Mr. Justice K. Kumaresh Babu

Add. Info:

For Appellant(s): Mr. Joseph Prabhakar

For Respondent(s): Mr. R. Gowri Shankar

Judgment/Order:

ORDER

This writ petition has been filed challenging the order in original dated and order in Appeal dated passed by second respondent and confirmed by the first respondent respectively that demanded the petitioner to pay GST liability along with interest and full penalty for GST liability.

2. Heard Prabhakar, learned counsel appearing for the petitioner, and Shankar, learned Standing counsel appearing for the respondents .

3. Prabhakar, learned counsel for the petitioner submits that the petitioner is the charitable trust having registered office at Karur. Under the said trust petitioner runs a marriage hall under the name and style of M/ Mahal at Kovai Road. He submits that the petitioner registered as service provider under CGST Act . .

4. He contends that the CGST department preventive unit visited marriage hall on and asked to handover entire accounts and records. Hence, the manager of the petitioner submitted the same. Further, on summon the petitioner submitted ITR, Balance Sheet and Profit and Loss account upto along with bank statement of the Trust and Trustees. Moreover, the petitioner specifically stated that some amounts are reimbursable to the persons concerned.

5. He submits that on perusal of the documents the GST authority of Preventive Unit arrived at a receipt of Rs.3,86,36,410/- for the marriage hall from July, 2017 to January, 2020. He further submits that in the meanwhile, the petitioner paid a sum of Rs. 58,93,702/- as GST liability and a sum of ,056/- as penalty liability under cum-tax basis method applying Rule 35 of CGST Rules. He contends that the second respondent issued show cause notice dated arriving a sum of ,54,554/- as GST liability for the total value of Rs.3,86,36,410/- and rejected the cum-tax basis benefit claimed by the petitioner. Further, demanded balance GST liability of ,60,852/- along with interest and full amount of GST liability as penalty ,54,554/-. He submits that the petitioner gave a reply on , to justify the application of cum-tax basis method and objected the interest and to invoke Section 74(1) CGST Act that the petitioner neither suppressed any payments nor willfully misrepresented. He submits that the total value arrived by the second respondent includes advance, reimbursable amount and GST. He contends that the second respondent assumption is against the basic principles of indirect taxation and the petitioner is not liable to pay service tax as it is agent of government which has to be paid by the person concerned.

6. He further submits that after submission of objection by the petitioner the second respondent passed an order in original dated , demanding balance GST liability of ,60,852/- along with interest and full amount of GST liability as penalty ,54,554/-. Thereby, the second respondent invoking Section 74(1) of CGST Act rejected the petitioner claim of cum tax basis benefit was rejected. He expostulates that the second respondent had not even established the petitioner involved in fraud or willfull misstatement or suppression of facts available to invoke section 74(1) of CGST Act.

7. He submits that against the order in original, the petitioner preferred appeal before the first respondent. The petitioner contend that tax element is included in the total value of taxable supply and petitioner is entitled to arrive GST liability applying cum tax basis under Rule 35 of CGST Rules 2017. Further, contended that no penalty shall be levied since the petitioner already discharged full

tax liability as per Section 73(8) of the Act even before the initiation of proceedings. The first respondent confirmed the order in original vide dated .

8. He further contends that on knowing that the petitioner is a supplier of service attracting GST liability forthwith registered on under GST Act, 2017. He further submits that non registration is neither willful nor wanton. He further contends the the judgments relied upon by the first respondent in order in Appeal are inapplicable to the case of the petitioner since the petitioner was cooperating with the respondents. Further, he submits that the petitioner admitted the total value only in order to buy peace. The petitioner engaged other person to provide service and paid them. Hence, the total value of receipt is not reliable. He expostulates that the second respondent would not have issued notice under Section 73(1) when tax liability and penalty is paid or otherwise the second respondent would have issued notice only for the short fall amount.

9. He further submits that section 122(2) (b) of CGST Act penalty applies for registered entity and not the petitioner which is not registered at the time of visit by the respondents. Further, he submits that for non registered entity penalty of ,000/- can be levied under Section 122(1) of the CGST Act. For the aforesaid contentions the petitioner seeks the interference of this court in the order in original and the order in Appeal.

10. Countering the arguments of the petitioner, Shankar, learned counsel for the respondents submit that the petitioner was rendering taxable activities such as renting of marriage hall and other related taxable supply. Based on specific intelligence, an investigation was caused in the petitioner premises on by the Preventive Unit. Thereby it is found that the petitioner neither registered with the GST Department nor discharged the GST liability. He submits that as per Section 22(1) CGST Act, 2017, Tax payer must have registered themselves with GST Dept . . Further, he submits that based on incriminating documents and depositions of the petitioner and few clients, the GST liability was arrived to a tune of ,54,554/- for the period July, 2017 to January, 2020. Then the petitioner registered with the GST department . i.e. approx. more than 20 days from the date of initiation of department proceedings/ investigation. Thereafter, the petitioner computed GST liability on cum-tax basis and discharged GST liability of ,93,702/- and penalty a sum of Rs.8,84,056/- on .

11. He further submits that Show cause Notice No.7/2021 dated was issued to the petitioner under Section 74(1) of CGST Act, 2017 demanding the entire GST liability of ,54,554/- along with interest, penalties. He further contends that after due process of law, the second respondent who is the original Adjudicating Authority issued Order in Original in Original Adjn dated . Thereby, the second respondent rejected the claim of cum-tax valuation method and confirmed the demand of GST ,54,554/- with interest, appropriated amount of ,93,702/- and penalty of ,54,554/-, appropriating penalty ,056/- under Section 122(2) (b) of CGST Act, 2017.

12. He further contends that the petitioner preferred an appeal before the first respondent under Section 107 of CGST Act, 2017. After due process of law, the Appellate Authority passed Order-in-Appeal No. 69/2022-TRY(GST) dated and upheld the order in Original and rejected the appeal filed by the petitioner. He further contends that Show cause notice was properly issued since because the petitioner not paid the full GST liability along with interest and penalty. He expostulates that as per section 73(8) of CGST Act, no penalty shall be levied since the petitioner has already discharged the full tax liability which is false and misleading. He further submits that the petitioner neither produced any evidence to prove the amount collected was inclusive of taxes nor the formal agreement was entered with their clients to treat under cum-tax value.

13. He contends that the petitioner had received huge amount of rents without obtaining GST registration, not paid GST, not filed statutory GST returns during July, 2017 to January, 2020 and hence cum-tax benefit was not extendable for the petitioner. Particularly, in this case there is a

willful mis declaration and suppression of facts and hence the benefit of cum-tax benefit cannot be extended to the petitioner and he relied upon judgments to support his contentions. He further contends that the petitioner gave donation receipts for the amount they received for their service and not provided receipt for all other service clearly substantiate that the petitioner with willful intention suppressed the fact and evade tax payment. He contends that the electricity supply for renting premises is a composite supply and therefore, the rate of principal supply on renting of immovable property would be applicable. Further, it is submitted that for reason of fraud or any willful misstatement or suppression of facts to evade tax occurred as per Section 122(2)(b) of CGST Act, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher. Hence, the petitioner was imposed with their tax liability amount as penalty. By contending the above said reasons, the respondents submits that the order-in-Original and order-in-Appeal are good in law and not requires any interference of this court. Therefore, he prays to dismiss the writ petition.

14. I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

15. The entire claim against the petitioner had arisen of its own failure to register itself under the GST Act as required under law. Only pursuant thereto, the petitioner had remitted the tax that he is liable to pay. Even though, such action is claimed to be a voluntary payment by the petitioner, it should be seen that the petitioner had attempted to evade payment of tax which is liable to be taxed and only pursuant to the inspection effected by the respondent, the petitioner had submitted himself for payment of tax and hence, the same cannot be said to be a voluntary payment and has been made only to wriggle out of the penal consequences. This conduct of the petitioner to evade tax will also fall under suppression and fraudulent activities envisaged under Section 74 of the GST Act. Hence, the contention that Section 74 cannot have been invoked against the petitioner cannot be countenanced.

16. A perusal of the orders in original, as affirmed by the Appellate Authority would clearly indicate that there is a deliberate attempt to evade payment of tax by not registering himself under the Act and also issuing receipts as donation to the Trust. Only after the inspection they have agreed to pay the tax by registering themselves. This conduct cannot be said to be a voluntary conduct. There has been contraventions of provisions of the GST Act for which the petitioner is liable to make good the non-payment and also suffer penal consequences for the same.

16. Both the Original Authority as well as the Appellate Authority have considered the case of the petitioner in its proper perspective and had applied the Provisions of law on the issue in its right perspective which do not call for any interference by this Court.

17. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

BABU.,J.

Original judgment copy is available here.

Mukesh Kumar Singh Vs. The Commissioner, Jharkhand Goods and Service Tax and Anr. – Jharkhand High Court

(2025) 23 HC

IN THE HIGH COURT OF JHARKHAND

Mukesh Kumar Singh
v.
The Commissioner, Jharkhand Goods and Service Tax and Anr.

W.P. (T) No. 3141 of 2024
Decided on 24-Jan-25

Chief Justice M.S. Ramachandra Rao and Mr. Justice Gautam Kumar Choudhary

Add. Info:

For Appellant(s): Mr. Deepak Kumar Sinha, Advocate

For Respondent(s): Mr. Ashok Kumar Yadav, Sr.

Brief about the decision:

Judgment/Order:

***Per* M.S. Ramachandra Rao, C.J.**

1) In this writ petition, the petitioner is assailing order dt. (Annexure-3) passed by the Joint Commissioner confirming the order dt. passed by the 2nd Respondent.

2) Petitioner is registered under the Jharkhand Goods and Services Tax Act, 2017, as an assessee.

3) For the financial year 2018-19, the 2nd Respondent passed an order dt. (Annexure-1) that the petitioner has availed excess amount of Input Tax Credit in GSTR-3B than the amount of Input Tax Credit available as per GSTR-2A for the tax period and the extent of Input Tax Credit available is ,53,.

The case of the petitioner

4) According to the petitioner, it had filed appropriate returns and availed appropriate Input Tax Credit by filing GSTR-3B on the basis of invoices and records, and that the order dt. was passed by the 2nd Respondent without issuing any notice to the petitioner and without any information demanding ,53, including interest and penalty on the only ground that there was a difference in GSTR-3B and Auto Populated GSTR-2A.

5) Challenging the said order, petitioner had filed an appeal on before the Appellate Authority contending therein that merely because data of purchase is not reflected in GSTR-2A, it is not a valid ground for denial of Input Tax Credit.

6) According to the petitioner, the Appellate Authority also did not give any opportunity of hearing to the petitioner and even without seeking any document from the petitioner, passed the order on rejecting the petitioner's appeal by giving the only reason "no valid/lawful document or submission submitted".

7) Case law is also relied upon by the petitioner in support of his pleading that difference between GSTR-2A and GSTR-3B cannot be the sole basis for denial of the claim for Input Tax Credit while there is an evidence on record to prove that the claim of the Input Tax Credit is *bona fide* and genuine.

<u>The stand of the respondents</u>

8) Counter affidavit is filed by the respondents insisting that there was mismatch between the Input Tax Credit available as per GSTR-2A and the Input Tax Credit as claimed in GSTR-3B by the petitioner.

9) It is contended that the petitioner did not give any reply to notices ASMT-10, DRC-01A or show-cause notice in Form GST DRC-01 and so the order dt. was passed by the 2nd Respondent.

10) It is admitted that the petitioner preferred an appeal to the Court of Joint Commissioner of State Tax (Appeal), Dhanbad Division, Dhanbad, and that the said appeal came to be rejected on (Annexure-3) on the ground that "there was no valid/lawful document or submission submitted".

11) It is contended that the order passed by the Primary Authority was as per the procedure under the Act.

12) It is also stated that there was no submission by the petitioner during the adjudication or appeal proceedings which indicated that the petitioner was in possession of documents required for claiming Input Tax Credit and that the petitioner has actually discharged his statutory obligation including payment of tax to his supplier based on which he has claimed the Input Tax Credit.

<u>Rejoinder filed by petitioner</u>

13) Rejoinder was filed by the petitioner contending that without any notice or prior information, 2nd Respondent had issued *ex parte* order dt. .

14) Petitioner further contended that the petitioner had uploaded supporting documents as mentioned at Serial of GST APL-01 (Annexure-2) along with Statement of Facts and grounds of appeal.

15) It is reiterated that no opportunity of hearing was provided to the petitioner by the Appellate Authority; and even without seeking any further documents, the impugned appellate order was passed on dismissing the appeal on the frivolous ground that no valid/lawful document or submission submitted.

<u>Consideration by the Court</u>

16) We have noted the contentions of the parties.

17) The fact that the petitioner had uploaded documents along with the appeal filed before the Joint Commissioner can be seen from Serial of Form GST APL-01 along with 'brief facts' and also mentioning several 'grounds of appeal'. The said documents include online reply ASMT-11 to the ASMT-10 notice.

Therefore, the stand of the respondents that no reply was given to ASMT-10 notice is factually incorrect. Therefore, the order of the 2nd Respondent is vitiated on account of non-consideration of the same.

18) Under Section 107(8) of the Act, it is duty of the Appellate Authority to give an opportunity to the appellant of being heard. There is no evidence that such opportunity of hearing was provided to the appellant by the Joint Commissioner.

19) Moreover, under Section 107(12) of the Act, the order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

A reading of Annexure-3 order dt. shows that all these requirements are missing.

Also, there is no evidence to show that the Appellate Authority had asked the petitioner to submit any document and that the petitioner did not submit the same.

20) Since the order (Annexure-3) passed by the Appellate Authority is in blatant violation of the above provisions of the Jharkhand Goods and Services Tax Act, 2017, on account of non-compliance with Sections 107(8) and 107(12) thereof , the said order as well as the order of the Primary Authority (Annexure-1) are both set aside; the matter is remitted to the Primary Authority (Respondent 2) to issue notice of hearing to the petitioner, consider the documents, such as, ASMT-11 filed online by the petitioner to ASMT-10 notice and then pass a reasoned order in accordance with law. The petitioner is also permitted to file documents as well as any case law which he chooses to rely on before the Primary Authority. The respondents shall also pay cost of ,000/- to the petitioner within four weeks.

21) With the aforesaid directions, this writ petition stands allowed.

(M.S. Ramachandra Rao, C.J.)

(Gautam Kumar Choudhary, J.)

Original judgment copy is available here.