DIRECTORATE OF TRAINING,
EXCISE AND TAXATION DEPARTMENT,
PUNJAB, PATIALA

GST UPDATE

(DEC 2024)

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GIST of GST Notification

Centre's Tax Notification No.	Subject
Notification No. 30/2024-Central Tax	Extension of GSTR-3B Filing Deadline for Murshidabad, West Bengal
Notification No. 31/2024–Central Tax; [S.O. 5392(E)]	CBIC Notification No. 31/2024: GST Adjudicating Authorities Appointed
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Notification Central Tax Page No 6 to 12

Extension of GSTR-3B Filing Deadline for Murshidabad, West Bengal

Ministry of Finance, through Notification No. 30/2024 – Central Tax dated 10th December 2024, has announced an extension for filing GSTR-3B returns for October 2024. This extension applies exclusively to registered persons whose principal place of business is in the district of Murshidabad, West Bengal. Under the provisions of sub-section (6) of Section 39 of the Central Goods and Services Tax Act, 2017, and based on the recommendations of the GST Council, the due date for submitting the return in FORM GSTR-3B has been moved to 11th December 2024. The notification clarifies that it has retrospective effect, being deemed effective from 20th November 2024.

Ministry of Finance

(Department of Revenue)

(Central Board of Indirect Taxes and Customs)

New Delhi

Notification No. 30/2024-Central Tax Dated: 10th December, 2024

G.S.R. 760(E).—In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of October, 2024 till the eleventh day of December, 2024, for the registered persons whose principal place of business is in the district of Murshidabad in the state of West Bengal and are required to furnish return under sub-section

(1) of section 39 read with clause (i) of sub- rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017. 2. This notification shall be deemed to have come into force with effect from the 20th day of November, 2024.

[F. No. CBIC-20001/10/2024-GST]

RAUSHAN KUMAR, Under Secy.

Notification Central Tax Page No 6 to 12

CBIC Notification No. 31/2024: GST Adjudicating Authorities Appointed

Central Board of Indirect Taxes and Customs (CBIC), through Notification No. 31/2024–Central Tax dated December 13, 2024, has appointed adjudicating authorities for handling GST-related cases. These appointments are made under Section 5 of the Central Goods and Services Tax Act, 2017, and Section 3 of the Integrated Goods and Services Tax Act, 2017. The notification outlines specific officers designated for issuing orders or decisions on show cause notices issued by the Directorate General of Goods and Services Tax Intelligence (DGGI). The table in the notification provides details such as the name and address of the noticees,

show cause notice references, and the corresponding adjudicating authorities. These cases pertain to violations under Sections 73, 74, 122, 125, and 127 of the CGST Act. Adjudicating officers include Additional or Joint Commissioners of CGST and Central Excise, located in various commissione rates. The notification applies to notable entities across multiple states, including Gujarat, Haryana, Uttarakhand, and Punjab. It establishes the jurisdiction and responsibility for handling GST-related adjudications, ensuring a structured and transparent process for addressing disputes and compliance issues.

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 31/2024–Central Tax| Dated: 13th December,2024

S.O. 5392(E).—In exercise of the powers conferred by section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Indirect Taxes and Customs, hereby appoint officers mentioned in column (4) of the Table below for passing an order or decision in respect of notices mentioned in column (3) of the said Table issued to the noticees mentioned in column (2) of the said Table by the officers of Directorate General of Goods and

Services Tax Intelligence under sections 73, 74, 122, 125 and 127 of Central Goods and Services Tax Act, 2017 (12 of 2017), namely.

[F. No. CBIC-20010/27/2024-GST]

RAUSHAN KUMAR, Under Secy.

Notification Circular Page No 13 to 23

Amendment to GST Circular on Adjudication of DGGI Cases

Ministry of Finance has issued an amendment to Circular No. 31/05/2018-GST, updating the adjudication process for show cause notices issued by the Directorate General of GST Intelligence (DGGI). Under the amendment, Additional and Joint Commissioners of Central Tax in specified Commissionerates are empowered with All India jurisdiction to adjudicate such notices. This applies when show cause notices involve multiple noticees across different Central Tax Commissionerates, either with the same or different PANs. The circular provides a new procedure for allocating adjudication responsibility based on the highest tax demand in the show cause notice, with designated

Commissionerates assigned to specific zones. It also clarifies that for cases where multiple show cause notices are issued on the same issue, the adjudication will follow the same criteria, considering the highest tax demand. Moreover, a corrigendum can be issued for DGGI notices issued before November 2024, aligning them with the new adjudication process. The amendment aims to streamline the adjudication process and improve consistency across different jurisdictions.

Circular No. 239/33/2024-GST | Dated: 4th December, 2024

F.No. CBIC-20016/2/2022-GST

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes & Customs

GST Policy Wing

To,

The Principal Chief Commissioners/ Chief Commissioners (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'–reg.

Vide Notification No. 02/2022-Central Tax dated 11th March, 2022,

para 3A was inserted in Notification No. 02/2017-Central Tax dated 19th June, 2017, to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence (herein after referred as DGGI). Further, vide Notification No. 27/2024-Central Tax dated 25th November, 2024, Table V has been substituted in the Notification No. 02/2017-Central

Tax dated 19th June, 2017, to empower more number of Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of DGGI. Notification No 27/2024-Central Tax dated 25th November, 2024 has come into effect from 1st December, 2024.

2. Consequently, para 7.1 of the Circular No. 31/05/2018-GST dated 9th February, 2018 (as amended by Circular No. 169/01/2022-GST dated 12th March, 2022) is substituted as below:

"7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where,

(i) a show cause notice is issued to multiple noticees, either having the same or different PANs; or

(ii) multiple show cause notices are issued on the same issue to multiple noticees having the same PAN,

and the principal place of business of such noticees fall under the jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction through amendment in the Notification No. 02/2027 dated 19th June, 2017 vide Notification No. 02/2022-Central Tax dated 11th March, 2022, as further amended vide Notification No. 27/2024-Central Tax dated 25th November, 2024. Such show cause notices may be adjudicated, irrespective of the amount involved in

the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide the above mentioned notifications. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one or more Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone/Commissionerate mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by one of the Additional Commissioners/ Joint Commissioners of Central

Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone/Commissionerate. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

7.1.1 It is further clarified that in cases where a show cause notice has been issued to multiple noticees, either having same or different PANs, and the said show cause notice is required to be adjudicated by a common adjudicating authority as per the highest amount of demand of tax in accordance with the criteria mentioned in para 7.1 above, then if any show cause notice(s) is issued subsequently

on the same issue to some other noticee(s) having PAN(s) different from the PANs of the noticees included in the earlier show cause notice, the said later show cause notices is to be adjudicated,

(i) by the jurisdictional adjudicating authority of the noticee, if there is only one noticee (GSTIN) involved in the said later show cause notice; or

(ii) by the common adjudicating authority in accordance with the criteria mentioned in para 7.1 above as applicable independently based on the highest amount of tax demand in the said later show cause notice, if there are multiple noticees (GSTINs) involved in the said later show cause notice having principal place of business under the jurisdiction of multiple Central Tax Commissionerates."

3. Further para 7.3 of the **Circular No. 31/05/2018-GST dated 9th February, 2018** (as amended by Circular No. 169/01/2022-GST dated 12th March, 2022) is substituted as below:

"7.3 In respect of show cause notices issued by the officers of DGGI prior to Notification No. 27/2024-Central Tax dated 25th November, 2024 coming into effect, involving cases mentioned in para 7.1 read with para 7.1.1 above and where no adjudication order has been issued upto 30th November, 2024, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 read with para 7.1.1 above, by issuing

corrigendum to such show cause notices."

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

5. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)

Notification Judgements Page No 24 to 93

Last opportunity of hearing provided in case of mismatch between GSTR 3B And GSTR 9C

Case Law Details

Case Name : R. Ramesh Vs Deputy State Tax Officer-I (Madras High Court)

Appeal Number : W.P. No. 37205 of 2024

Date of Judgement/Order : 12/12/2024

Related Assessment Year : 2017-18

Courts : All High Courts Madras High Court

R. Ramesh Vs Deputy State Tax Officer-I (Madras High Court)

Conclusion: While there was a mismatch between the GST Returns 3B and the GSTR 9C, High Court had granted a last opportunity to explain the discrepancies to assessee on 25% pre-deposit of the

disputed tax as assessee was unable to access the common portal and to participate in the adjudication proceedings.

Assessee was a contractor for various Tamil Nadu Government departments and registered under the GST Act, filed returns and paid taxes for the relevant period. However, during scrutiny, the following were found: mismatches between GSTR-3B and GSTR-9C; suppression of outward supply and unpaid tax on rental receipts were identified. Subsequently, an intimation was issued to assessee in Form GST ASMT 10 followed by a Show Cause Notice in GST DRC-01. Further, personal hearing was offered on 06.06.2024. However, assessee had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal. The impugned order was challenged on the premise that neither the show cause notices nor the impugned order of assessment had been served by

tendering to assessee or by registered post, instead it was uploaded in the common portal. Assessee was unable to access the common portal and thus was unable to participate in the adjudication proceedings. It was held that impugned order was set aside and assessee should deposit 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment should be treated as show cause notice and assessee should submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material.

The present writ petition is filed challenging the impugned order passed by the first respondent dat-ed 28.06.2024 relating to the assessment year 2017-18. 2. The petitioner is engaged in execution of contract works for Tamil Nadu Government Public Works

Department (PWD), Tamil Nadu State Transport Corporation (TNSTC), District Rural Development Agency (DRDA), Chennai Metro Rail (CMRAL) and State Highways Department and is a registered dealer under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, the following discrepancies were noticed:

i) Mismatch between GSTR-3B and GSTR-9C

(iii) Suppression of outward supply iii) Tax payable on the rent receipts have not been discharged.

2.1. Subsequently, an intimation was issued to the petitioner in Form GST ASMT 10 on 03.04.2024, followed by a Show Cause Notice in GST DRC-01 dated 06.05.2024. Further, personal hearing was offered on 06.06.2024. However, the petitioner had neither filed its

reply nor availed the opportuni-ty for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise that neither the show cause notices nor the im-pugned order of assessment have been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was una-ble to access the common portal and thus was unable to participate in the adjudication proceedings.

4. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies. The learned counsel for the pe-titioner would then place reliance upon the

recent judgment of this Court in the case of M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is further submitted that there is bank attachment and the same may be lifted/withdrawn, to which, the learned Government Advocate appearing for respondents 1 and 2 does not have any serious objection.

5. In view thereof, the impugned order dated 28.06.2024 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of

four (4) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e. four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand re-stored. It was submitted that pursuant to the impugned order of assessment, recovery

proceedings were initiated and bank accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted/withdrawn forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of four weeks from the date of receipt of a copy of this or-der.

6. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequent-ly, connected miscellaneous petitions are closed.

Notification Judgements Page No -24 to 93

No writ petition was allowable if assessee could avail GST Department's effective adjudication of matter

Case Law Details

Case Name : Britannia Industries Limited Vs Union of India & Ors. (Calcutta High Court)

Appeal Number : W.P.A 24534 of 2024

Date of Judgement/Order : 23/12/2024

Related Assessment Year : -

Courts : All High Courts Calcutta High Court

Britannia Industries Limited Vs Union of India & Ors. (Calcutta High Court)

Conclusion: Since statutory framework under the CGST Act provided adequate mechanisms for addressing assessee's concerns, including responding to the SCN, participating in adjudication proceedings and availing appellate remedies if dissatisfied with the outcome, therefore, such matter could be effectively adjudicated upon by securing on the adjudicatory process and could not be scuttled by rushing to the writ court.

Held: Assessee-company was engaged in the manufacture and supply of bakery & dairy products, which were distributed to customers and dealers through its multiple units located across India. DGST officer conducted a search at assessee's premises, resulting in issuance of a show cause (SCN) u/s 74(1) of the CGST

Act, 2017, r/w Sec 20 of the IGST Act, 2017. SCN alleged assessee of wrongful availing of benefit of an exemption on the supply of “Kulcha” by misclassifying it as “bread”. Additionally, SCN denied the reduction of assessee’s outward tax liability based on credit notes issued for deficient services and destroyed goods. This denial was grounded on the claim that the corresponding ITC was not reversed by the suppliers or recipients of such goods, as required u/s 34 of the CGST Act. Further, the SCN alleges non-reversal of ineligible ITC by assessee. Thus, the SCN sought recovery of INR 1,05,11,99,662 in GST, along with interest u/s 50 and an equivalent penalty u/s 74(1) of the CGST Act, which came to be challenged before the High Court, contending that the SCN was without jurisdiction and had been issued in gross violation of the principles of natural justice. It was held that writ courts did not interfere in cases where statutory remedies were available unless there was a

clear violation of fundamental rights, lack of jurisdiction, or procedural perversity leading to manifest injustice. Assessee had not demonstrated any such exceptional circumstances warranting this Court's intervention. Instead, the statutory framework under the CGST Act provided adequate mechanisms for addressing assessee's concerns, including responding to the SCN, participating in adjudication proceedings and availing appellate remedies if dissatisfied with the outcome. The Court emphasized that this decision should not be construed as expressing any opinion on the merits of the assessee's claims. The adjudicating authority was directed to independently and impartially decide the matter based on the evidence and submissions presented before it.

The Petitioner is engaged in the manufacture and supply of various food items, including bakery products such as biscuits, bread,

cakes, and rusks, along with dairy products. These products are distributed to customers and dealers through the Petitioner's multiple units located across India.

2. On December 16, 2021, the officers of the Directorate General of GST Intelligence (DGGI), Delhi Zonal Unit herein respondent no. 3, conducted a search at the Petitioner's premises in Delhi. During the proceedings, several summonses were issued, statements were recorded and various documents and information were sought from the Petitioner. The Petitioner duly complied with all the requirements during these proceedings.

3. Subsequently, Respondent No. 3 issued a Show Cause Notice (hereinafter referred to as 'SCN') dated August 3, 2024, under Section 74(1) of the CGST Act, 2017, read with Section 20 of the Integrated Goods and Services Tax (IGST) Act, 2017. The SCN sought

recovery of ₹1,05,11,99,662 in GST, along with interest under Section 50 and an equivalent penalty under Section 74(1) of the CGST Act, 2017.

4. The SCN contains several allegations against the Petitioner. First, it accuses the Petitioner of wrongfully availing the benefit of an exemption on the supply of “Kulcha” by misclassifying it as “bread” under S. No. 97 of Notification No. 02/2017 – Central Tax (Rate) dated June 28, 2017.

5. Additionally, the SCN denies the reduction of the Petitioner’s outward tax liability based on credit notes issued for deficient services and destroyed goods. This denial is grounded on the claim that the corresponding Input Tax Credit (ITC) was not reversed by the suppliers or recipients of such goods, as required under Section 34 of the CGST Act.

6. Further, the SCN alleges non-reversal of ineligible ITC by the Petitioner. Specifically, it points to inputs used in the manufacture of destroyed goods and inputs used for manufacturing sample free goods, both of which fall under the ambit of Section 17(5)(h) of the CGST Act.

7. The Petitioner has filed the present writ petition before this Hon'ble High Court, challenging the SCN. The Petitioner contends that the SCN is without jurisdiction and has been issued in gross violation of the principles of natural justice.

8. The Learned Counsel appearing on behalf of the petitioner submits that the SCN invoking the extended period of limitation under Section 74 of the Act is wholly without jurisdiction. The extended period of limitation of five years under Section 74 is

applicable only in cases where fraud, collusion, wilful misstatement, suppression of facts or contravention of provisions with the intent to evade payment of tax is established. Each of these elements necessitates intent to evade duty, as laid down by the Hon'ble Supreme Court in Gopal Zarda Udhyog v. Commissioner of Central Excise reported in 2005 (188) ELT 251 (SC). Furthermore, proving fraud or wilful misstatement requires a positive act done with mala fide intent by the assessee, as clarified under Explanation 2 to Section 74 and reiterated by the Supreme Court in Uniworth Textiles Ltd. v. CCE reported in 2013 (288) ELT 161 (SC).

10. Moreover, the SCN is devoid of allegations demonstrating mala fide intent on the petitioner's part. For instance, the classification issue concerning Kulcha fails to demonstrate a deliberate intention to evade tax. The extended period of limitation invoked under Section 74 is thus without jurisdiction.

11. Further, the petitioner had disclosed exemption claims on Kulcha to the department through a letter dated December 21, 2021, shortly after the Respondent no.3's visit on December 16, 2021. Despite this, the SCN was issued on August 03, 2024, after the normal limitation period had expired for FY 2017-18 to FY 2019-20. Such delay has been condemned by the Hon'ble Supreme Court in Commissioner of C. Ex., Mangalore v. Pals Microsystems Ltd. reported in 2011 (270) ELT 305 (SC).

12. Moreover, the absence of pre-SCN intimation in Form GST DRC-01A renders the proceedings procedurally defective. Rule 142(1A) of the CGST Rules mandates issuance of DRC-01A before initiating proceedings under Section 74. The omission of this step vitiates the validity of the SCN, as held in M/s New Morning Star Travels v. The Deputy Commissioner (S.T.) & Ors. reported in 2023 (79) G.S.T.L. 430 (A.P.).

13. The extended limitation period in the SCN pertains solely to the classification of Kulcha and does not extend to issues related to credit notes. The demand raised regarding credit notes hinges on the alleged noncompliance with a circular dated June 26, 2024, which imposes additional requirements beyond the statutory provisions of Section 34. This interpretation is incorrect as Section 34 does not mandate proof of ITC reversal by the recipient. The Hon'ble Supreme Court in Suchitra Components v. CCE reported in 2007 (208) ELT 321 (SC) held that oppressive circulars imposing additional restrictions cannot be applied retrospectively.

14. Additionally, the department's insistence on the petitioner verifying ITC reversals is untenable, especially when mechanisms under Section 43 and Rule 73 to Rule 75 of the CGST Rules were non-operational. The Hon'ble Supreme Court in Superintendent of Taxes, Dhubri & Ors. v. M/s Onkarmal Nathmal Trust reported in 1976 (1)

SCC 766 emphasized that the State cannot benefit from its own lapses.

15. It has been further submitted that the petitioner uses goods exclusively for organoleptic testing by employees to evaluate quality, taste and durability. These goods are not distributed as free samples to customers. Therefore, the restriction on ITC under Section 17(5)(h) of the CGST Act is inapplicable. The SCN erroneously categorizes such goods as free samples, disregarding the distinction between inputs used for internal testing and those distributed for promotional purposes.

16. The SCN combines demands for six financial years (FY 2017-18 to FY 2022-23), violating the CGST Act, which mandates year-wise determination. Reliance has been placed on the decision in Titan

Company Ltd. v. The Joint Commissioner of GST & Central Excise reported in 2024 (1) TMI 619 (Mad) by the petitioner in the present case, where such bunching was held impermissible.

17. Submissions of the Learned Counsel for the respondents no. 1,2 and 4 is that the invocation of the extended limitation period under Section 74 of the CGST Act, 2017 is legally valid. The SCN pertains to the financial years 201718 to 2022-23. Section 74(10) of the CGST Act, 2017 allows the proper officer to issue an SCN within five years from the date of furnishing the annual return for the relevant financial year where tax was not paid, short-paid or input tax credit (ITC) was wrongly availed or utilized. Moreover, the Central Government, through notifications issued under Section 168A of the Act, has periodically extended the time limits for furnishing annual returns for the financial years 2017-18 to 2019-

18. The issues of limitation, exemption and classification are mixed questions of law and fact that fall under the jurisdiction of the adjudicating authority. In this regard, reliance has been placed by the respondent authorities on several Judgements. In Aloke Bhowmick v. Additional Commissioner, CGST & CX Kolkata South Commissionerate in (MAT No. 298 of 2022), it was held by the Hon'ble Calcutta High Court that determining whether an SCN is time-barred or involves suppression is a factual issue requiring adjudication by the issuing authority. Similarly, in J.S Pigments Pvt. Ltd v. Commissioner of CGST and Central Tax, Howrah reported in (2022) 381 ELT 45 (Cal.), the Court reiterated that extended limitation under Section 11A of the Act involves mixed questions of law and fact. Further, in D.C.L. Polyester Ltd v. Collector of Central Excise and Customs, Nagpur reported in (2005) 181 ELT 190 (SC), it

was held that determining whether a product falls within a tariff entry is also a mixed question of law and fact.

19. The petitioner's reliance on various judicial precedents to challenge the invocation of the extended limitation period is misplaced and factually distinguishable. In Gopal Zarda Udyog (supra) the case dealt with a scenario where there was no intent to evade tax. This is different from the present case, where the petitioner suppressed facts with mala fide intent. Similarly, in Uniworth Textile (supra), the ambiguity was addressed to the Development Commissioner, unlike the present case, where the petitioner knowingly misclassified products. Furthermore, in Pushpam Pharmaceuticals Company (supra), the case involved known facts between parties, unlike the present case, where intentional suppression was unearthed during investigation.

20. It is further submitted that contrary to the petitioner's claim, the mention of "Discussion and Finding" in the SCN does not reflect prejudgment but rather outlines the investigation's outcome. The SCN merely proposes charges and provides the petitioner with an opportunity to contest them before an adjudicating authority, distinct from the issuing authority.

21. Section 74(1) of the CGST Act permits the issuance of an SCN in cases of tax evasion due to fraud, wilful misstatement or suppression of facts. The petitioner failed to disclose critical facts even after investigations commenced, reinforcing the invocation of the extended limitation period. The classification of 'Kulcha' as 'Bread' under HSN Code 19059090 and subsequent claims for exemption under Notification No. 2/2017-Central Tariff (Rate)

constitute wilful misstatement. Chapter 19 of the HSN and related entries clearly exclude such products from exemption. The ‘Common Parlance Test’ as held in Signature International Foods India Pvt. Ltd reported in (2019) 20 GSTL 640 (AAR-GST) confirms that products like ‘Kulcha’ do not fall under the definition of ‘Bread’ for exemption purposes.

22. The Hon’ble Supreme Court in Commissioner of Customs v. Dilip Kumar and Co. reported in (2018) 361 ELT 577 (SC) held that the burden of proof for claiming tax exemption lies on the assessee. Ambiguity in exemption notifications must be resolved in favour of revenue. Further, the issuance of Form GST DRC-01A is discretionary and does not prejudice the petitioner, especially when they dispute the entire demand.

23. The respondents submit that the SCN has been issued lawfully and all allegations, including wilful misclassification and suppression of facts, have been substantiated through a thorough investigation. The extended period of limitation is applicable and the proceedings must continue as per the CGST Act, 2017.

24. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court finds that the writ petition is not maintainable. This Court shall refrain from adjudicating or delving into the merits of the case as the issues raised in the present writ petition pertain to complex questions of fact and law that are squarely within the jurisdiction of the adjudicating authority under the Central Goods and Services Tax (CGST) Act, 2017. The petitioner's grievances primarily relate to the invocation of the extended period of limitation, allegations of misclassification of goods and denial of

Input Tax Credit (ITC). Each of these issues necessitates a detailed factual inquiry, which is outside the purview of this Court in its writ jurisdiction.

25. In Aloke Bhowmick (supra) it was held: “2. The issue as to whether the show cause notice is barred by time and whether there is no allegation of suppression or mis- statement is a factual issue and is not purely a legal question. Secondly, whether the type of service rendered by the appellant was an exempted service is also a factual matter, which needs to be adjudicated by the appropriate authority, who has issued the show cause notice.”

26. In Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC 1, the Hon’ble Supreme Court explained that writ petitions may be entertained against show cause notices where the petitioners seek enforcement of any

fundamental rights, where there is a violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or where the vires of the Act is itself challenged. None of these circumstances are made out in the present petition. Simply alleging that the impugned SNC are without jurisdiction because, according to the petitioners' perception, the exemption covers them, or the nil tax rate notification is insufficient. The usual adjudicatory process, where such a matter can be effectively adjudicated upon, cannot be scuttled by rushing to the writ court and securing stays on the adjudicatory process.

Notification Judgements Page No 24 to 93

Petitioner Not Liable for Appellate Authority's Inadequacies: Kerala HC

Case Law Details

Case Name : Kottukapillil Geogy George Vs State Tax Officer (Kerala High Court)

Appeal Number : WP(C) No. 41942 of 2024

Date of Judgement/Order : 18/12/2024

Related Assessment Year :

Courts : All High Courts Kerala High Court

Kottukapillil Geogy George Vs State Tax Officer (Kerala High Court)

In the case Kottukapillil Geogy George Vs State Tax Officer, the Kerala High Court addressed whether a taxpayer could be held accountable for procedural lapses by the appellate authority. The petitioner faced issues after filing an appeal against a GST assessment order for the year 2018-2019. Initially, the petitioner failed to appeal within the stipulated timeframe. However, a later notification from the Central Board of Indirect Taxes and Customs (CBIC) allowed taxpayers to file appeals by January 31, 2024, subject to specific conditions. The petitioner filed the appeal on January 25, 2024, but overlooked a requirement to debit a portion of the disputed tax from their electronic cash ledger.

The appellate authority initially accepted the appeal without noting the defect. Nearly 398 days later, it flagged the issue, leading the petitioner to rectify the mistake promptly. Despite compliance, the authority dismissed the appeal as time-barred. The petitioner challenged this decision, arguing that the defect could have been addressed sooner if the appellate authority had identified it at the time of filing.

The court found merit in the petitioner's argument, emphasizing that procedural lapses on the part of the appellate authority should not prejudice the taxpayer. It observed that the notification's purpose was to provide relief to taxpayers, and rejecting the appeal on hyper-technical grounds undermined this intent. The court noted that had the defect been communicated earlier, the petitioner would have rectified it within the allowable timeframe.

Setting aside the appellate authority's order, the Kerala High Court directed the appeal to be restored and decided on its merits. It also ordered expedited resolution within three months, underscoring the need for fairness and efficiency in handling taxpayer grievances. This judgment highlights the importance of balanced adjudication that considers both compliance requirements and administrative accountability.

For the assessment year 2018-2019 on noticing certain discrepancies in the input tax credit claimed by the petitioner, a show cause notice was issued on 08.11.2021 resulting in an order on 24.09.2022. Challenging the aforesaid order, petitioner failed to file an appeal within the time provided under Section 107 of the CGST Act, 2017. In the meantime, a notification was issued by the Central Board of Indirect Taxes and Customs on 02.11.2023 giving benefit to those who ought to have preferred appeals on or before 31.03.2023,

but had failed to do so, by extending the time to file the appeal till 31.01.2024 on compliance of certain conditions. Taking benefit of the said provision, an appeal was preferred by the petitioner on 25.01.2024. However, by Ext.P9 order dated 30.10.2024 the appeal was dismissed as time barred. Petitioner challenges the aforesaid order.

2. I have heard Sri. Padmanabhan K.V., the learned counsel for the petitioner as well as Smt. Thushara James, the learned Government Pleader.

3. Petitioner filed the appeal after taking benefit of Ext.P4 notification. However, a defect was noted after 398 days, stating that the sum equivalent to 12.5% of the remaining amount of tax in dispute arising from the order impugned was not paid, as

stipulated in the notification. When the appeal was filed, the Appellate Authority had not noticed any defect. Subsequently, when the defect was brought to the knowledge of the petitioner, he immediately complied with the requirement by debiting the electronic cash ledger on 28.08.2024. The Appellate Authority however, rejected the appeal.

4. On a perusal of Ext.P4 notification, it is noticed that, the appeal could not have been filed without compliance with conditions stipulated in Clause 3 of the notification which reads as follows :-

3. No appeal shall be filed under this notification, unless the appellant has paid- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said

order, subject to a maximum of twenty-five crore rupees, in relating to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

5. Petitioner had complied with Clause 3(a) fully and 3(b) partly, when the appeal was filed on 25.01.2024. The mistake committed by the petitioner was the omission to debit the electronic cash ledger of 20% of 12.5% of the disputed tax. As noted earlier, immediately on being intimated of the said mistake petitioner rectified it by debiting the cash ledger. If the Appellate Authority had noticed the aforesaid defect when the appeal was filed, petitioner could have got an opportunity to clear the defect immediately, within the time available to file the appeal. Since petitioner had subsequently, complied with the requirements of clause 3 immediately on intimating the defect, I am of the view that

the appeal can be deemed to have been filed within time and the requirement in clause 3 of the notification can be treated as complied with. Rejecting the appeal on hyper-technicalities goes against the purpose of Ext.P4.

6. Though the learned Government Pleader vehemently objected that the benefit under Ext.P4 will arise only on strict compliance of the requirements under clause 3 thereof, I am of the view that failure of the Appellate Authority to intimate the defect in the appeal filed, between 25.01.2024 and 31.01.2024 itself is a flaw on their part and therefore petitioner cannot be saddled with the liability arising out of such inadequacies of the appellate authority. Had the Appellate Authority verified the appeal within time and intimated the defect, petitioner could have certainly got an opportunity to rectify the same. In such circumstances, I find Ext.P9 is liable to be set aside and the appeal ought to be treated as

having been filed within time. Accordingly, Ext.P9 order of the Appellate Authority dated 30.10.2024 is hereby set aside and the appeal filed by the petitioner as Ext.P5 shall be restored to its file. There shall also be a direction to the appellate authority to consider and dispose of the appeal on merits as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. The writ petition is allowed.

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Kerala HC Remands Case on ITC Denial Under Section 16(2)(c)

Case Law Details

Case Name : Arafa Plywood And Veneers Vs State Tax Officer (Kerala High Court)

Appeal Number : WP(C) No. 38367 of 2024

Date of Judgement/Order : 01/12/2024

Related Assessment Year :

Courts : All High Courts Kerala High Court

Arafa Plywood And Veneers Vs State Tax Officer (Kerala High Court)

In a recent ruling Hon'ble Kerala HC disposed off the writ petition by remanded back the matter to competent authority in the light of the circulars passsed by GST counsel mentioned at para 101 of the judgment M. Trade Links Vs. Union of India.

The petitioner has been denied input tax credit in terms of the provisions contained in Section 16(2)(c) of CGST/SGST Acts. Petitiner relied upon the circular Circular No. 183/15/2022-GST dated 27.12.2022 and Circular No. 193/05/2023- GST dated 17.07.2023 wherein 53rd GST Council Meeting has recommended to extend the time limit for availing ITC pertaining to FY 2017-18 to FY 2020-21 to November 30, 2021 retrospectively w.e.f. July 1, 2017.

It is the case of the petitioner that if the petitioner is given the benefit of the Circulars referred to in paragraph No.101 of the judgment of this Court in M. Trade Links v. Union of India [2024 KLT OnLine 1624], the petitioner will be entitled to input tax credit, which has now been denied to it.

It was argued on behalf of the department that orders in dispute were passed on 24-04-2024 and the petitioner did not file this writ petition within the period available for filing an appeal. It is submitted that a belated challenge has now been raised to orders, and such challenge should not be entertained.

Finally Kerela HC dispoded the writ petition by giving on opportunity to the petitioner to prove its claim in terms of circular above mentioned in the light of the direction passed by Kerela HC in M.Trade Links (supra).

The petitioner has been denied input tax credit in terms of the provisions contained in Section 16(2)(c) of the Central Goods and Services Tax/State Goods and Services Tax Acts, 2017 (CGST/SGST Acts). It is the case of the petitioner that if the petitioner is given the benefit of the Circulars referred to in paragraph No.101 of the judgment of this Court in M.Trade Links v. Union of India [2024 KLT OnLine 1624] , the petitioner will be entitled to input tax credit, which has now been denied to it by Exts.P2 and P3 orders.

2. The learned Government Pleader submits that Exts.P2 and P3 orders were passed on 24-04-2024 and the petitioner did not even file this writ petition within the period available for filing an appeal. It is submitted that a belated challenge has now been raised to Exts.P2 and P3, and such challenge should not be entertained.

3. Having heard the learned counsel for the petitioner, the learned Standing Counsel appearing for respondent No.5 and the learned Government Pleader and having regard to the directions issued by this Court in Trade Links (supra), I am of the view that one opportunity can be granted to the petitioner to prove its claim in terms of the Circulars referred to in paragraph No.101 of the judgment of this Court in M. Trade Links (Supra) before the competent authority. Accordingly, this writ petition will stand allowed by setting aside Exts.P2 and P3 orders to the extent it denies input tax credit on account of the provisions contained in Section 16(2)(c) of the CGST/SGST Acts and directing that the claim of the petitioner shall be considered in terms of the Cir-culars referred to in paragraph No.101 of the judgment of this Court in M. Trade Links (Supra) after affording an opportunity of hearing to an authorised representative of the petitioner. I make it clear that I have not

expressed any opinion on the merits of the petitioner's claim and it will be open to the competent authority to pass fresh orders in accordance with the law.

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GST Order Cannot Be Passed on Driver When Petitioner Is Both Consignor and Consignee

Case Law Details

Case Name : Vishva Electrotech Ltd. Vs State of U.P. And 2 Others (Allahabad High Court)

Appeal Number : Writ Tax No. 2177 of 2024

Date of Judgement/Order : 20/12/2024

Related Assessment Year :

Courts : All High Courts Allahabad High Court

Vishva Electrotech Ltd. Vs State of U.P. And 2 Others (Allahabad High Court)

Allahabad High Court addressed a dispute in Vishva Electrotech Ltd. vs. State of U.P. and Others concerning the detention of goods during transit under the GST framework. The petitioner, a registered GST entity, transported goods from its Orissa branch to Kanpur, Uttar Pradesh. The shipment, accompanied by valid e-invoices and an e-way bill, was intercepted due to an error in the e-way bill where the delivery location was incorrectly mentioned as Ghaziabad instead of Kanpur. Despite the petitioner's submission of supporting documents and an appeal, authorities passed orders treating the truck driver as the owner of the goods, contravening GST provisions and relevant circulars.

The Court highlighted the binding nature of the GST Circular dated December 31, 2018, which specifies that consignors or consignees should be treated as owners if valid invoices accompany the goods. It ruled that the petitioner, being both consignor and consignee in this stock transfer, was the rightful owner under GST law. The authorities were directed to recognize the petitioner as the owner and comply with the circular. Relying on precedents like M/s Riya Traders vs. State of U.P., the Court quashed the impugned orders, reinforcing adherence to established GST regulations.

1. Heard learned counsel for the petitioners, and Sri Ravi Shanker Pandey, learned Standing Counsel for the State-respondents.

2. By means of this writ petition, the petitioner has made the following prayer:- “A. Issue a writ, order or direction in the nature of

certiorari quashing the impugned order dated 26.11.2024 (Annexure No.1) passed by respondent no.2

B. Issue a writ, order or direction in the nature of mandamus commanding the respondent no.3 to pass the order treating the petitioner to be the owner of the goods

C. Issue a writ, order or direction in the nature of certiorari quashing the impugned order passed under Section 129 (3) of the Act dated 06.11.2024 (Annexure No.3)

3. Learned counsel for the petitioner has submitted that the petitioner is a company duly registered under the GST Act, which deals in various goods related to Air Pump, Gas Compressor, Fans and Ventilators. The petitioner is having multi-registration as it is actively involved in different states and in the State of UP., the company is registered at Ghaziabad.

4. He submits that the stock transfer was made from its Orissa branch to Kanpur, Uttar Pradesh by the petitioner (the consignor of the goods). The goods were in transit through Truck No. DL1LAJ3127 which was supported by E-Invoices and a valid E-way Bill. The goods in transit were intercepted on 28.10.2024 by the respondent no.3 and GST MOV-01 was issued in the name of the driver at Kanpur and the order of physical verification of the goods were issued on 29.10.2024 in Form GST MOV-02. Admittedly, I.D. of the driver was created and on physical verification, no difference or variance was found in quantity of the goods as per the invoice, but by mistake, in the e-way bill, place of destination as Ghaziabad was mentioned. 5. He further submits that in the e-way bill, e-tax invoice, the goods were sent to Kanpur office, but by inadvertent mistake, the delivery place was mentioned as Ghaziabad and on this ground alone, the goods were detained. 6. He next submits that

when the petitioner came to know about it, the petitioner moved an application in terms of Government Circular dated 31.12.2018 whereof Column No.1 and Rows No.

6, specifically states that “if the invoice of any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner”, but instead of treating the petitioner as a owner of the goods, the order has been passed in the name of driver. He further submits against the said order, an application was filed, but the same has been rejected against which an appeal was preferred, which was also met the same fate.

7. In support of his submission, learned counsel for the petitioner has relied upon the judgement of this Court passed in the case of

M/s Riya Traders Vs. State of U.P. and another (Writ Tax No. 28 of 2023), decided on 17.01.2023.

8. He further submits that the circular is binding upon the authorities and the authorities are bound to follow the same.

9. In support of his submission, he placed reliance upon the judgment of Hon'ble Apex Court passed in the case of Union of India Vs. Arviva Industries (I) Ltd., [2008] 12 STT 28 (SC), decided on 10.01.2007. 10. He further submits that a specific pleadings with regard to Circular dated 31.12.2018 has been made in para no.19 of the present writ petition, but the same has not been denied in paragraph no.

10. He further submits that a specific pleadings with regard to Circular dated 31.12.2018 has been made in para no.19 of the present

writ petition, but the same has not been denied in paragraph no. 15 of the counter affidavit.

11. Per contra, learned Standing Counsel supports the impugned order. He further submits that in the e-way bill, place of delivery of goods was shown as Ghaziabad, but the goods were being transported to Kanpur, Uttar Pradesh and therefore, the proceedings have rightly been initiated against the petitioner.

12. After hearing the parties, the Court has perused the detained.

13. Admittedly, the goods were being transported as stock transfer from Orissa branch to Kanpur, Uttar When the goods were intercepted, the requisite documents required under the GST Act, were found to be accompanied therewith. Further, on physical verification, no discrepancy whatsoever was found with regard to quantity of goods in transit, rather mere a discrepancy was found

that in the e-way bill, place of transferee was mentioned as Ghaziabad whereas in tax invoice, it was mentioned as Kanpur.

14. The aforesaid circular clearly refer that in case, goods in transit are accompanied with specified documents then either consignor or consignee should be treated as the owner of the goods.

15. In the case in hand, petitioner is both i.e. the consignor and consignee as the goods in question is a stock transfer from State of Orrisa to Kanpur, Uttar Pradesh and, therefore, the petitioner ought to have been treated as the owner of the goods.

16. Once the petitioner being the owner of the goods, approached the authorities, they were bound by the Circular dated 31.12.2018 to consider him the owner of the goods. The relevant part of the Circular dated 31.12.2018 is being quoted as follows:

17. Further, the specific pleadings have been raised in para no.19 of the present writ petition, which has not been denied in corresponding paragraph no.15 of the counter affidavit filed by the respondents.

18. The Hon'ble Apex Court in the case of Arviva Industries (I) Ltd. has specifically held that the circulars are binding upon the authorities, it is not a case of the respondents that the Circular dated 31.12.2018 has been rescinded or superseded.

19. In view of the judgment of this Court passed in the case of M/s Riya Traders (supra) wherein it has specifically been held that once the consignor and consignee of the goods comes forward, then the proceedings should have been initiated against the owner of the goods in accordance with the law. Therefore, the authorities were

not justified not recognizing the petitioner as the owner of the goods, which is evident from the material available on record.

20. In view of the facts as stated above, the impugned orders cannot sustain in the eyes of law and the same are hereby quashed.

21. The writ petition is accordingly allowed with direction to the respondent concerned to consider the petitioner as the owner of the goods as contemplated in Circular dated 31.12.2018 as well as in view of the judgment passed in the case of M/s. Riya Traders (supra) by this Court, and pass an order within ten days from the date of production of certified copy of this order.

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Petition for waiver of pre-deposit u/s. 35F allowed as demand qualifies test of rare and exceptional case

Case Law Details

Case Name : Just Click Travels Private Limited Vs Union of India & Ors. (Delhi High Court)

Appeal Number : W.P.(C) 8896/2023

Date of Judgement/Order : 09/12/2024

Related Assessment Year :

Courts : All High Courts Delhi High Court

Just Click Travels Private Limited Vs Union Of India & Ors. (Delhi High Court)

Delhi High Court allowed the petition for waiver of mandatory pre-deposit under section 35F of the Central Excise Act, 1944 since demand qualifies the test of rare and exceptional case. Thus, writ allowed.

Facts- The present appeal has been preferred by the petitioner. Notably, one of the liabilities which stood raised against the petitioner was with respect to commission income and while dealing with this the Adjudicating Authority took note of a letter dated 05 March 2019 in which the petitioner had admitted that it had short paid service tax amounting to INR 1,39, 32,179/-. It was on the aforesaid basis that the Adjudicating Authority proceeded to compute the demand payable in respect thereof. Insofar as the contention of amounts standing in the positive in the shape of

CENVAT credit is concerned, the authority had noted that no documentary evidence of existing CENVAT credit had been placed on the record.

Although the principal challenge is to the Order-in-Original dated 10 March 2023, the petitioner has been constrained to approach this Court in light of the provisions made in Section 35F of the Central Excise Act, 1944 and in terms of which a condition of pre-deposit has come to be created in terms of this statute.

Conclusion- However, and undisputedly the legal position insofar as incentives are concerned and those earned by members of the IATA is no longer res integra and stands authoritatively settled in Kafila Hospitality. We have also been shown an order passed by the Supreme Court on 15 May 2023 in Civil Appeal 3702/2023 and where it took on board the statement of the learned Additional Solicitor

General, who had conceded to the fact that no appeal had been preferred by the Revenue against the judgment of the CESTAT in Kafila Hospitality.

Held that when we evaluate whether the condition of pre-deposit is liable to be waived, we necessarily have to approach the issue bearing in mind the decision of the Larger Bench of the CESTAT insofar as incentive payments are concerned. Viewed in that light, we have no hesitation in coming to the conclusion that insofar as this part of the demand is concerned, it would clearly qualify the test of rare and exceptional cases. Thus, we allow and dispose of the writ petition in the following terms. Subject to the petitioner discharging its service tax liability with respect to the demands which stand created and quantified in the Order-in-Original.

1. This writ petition has been preferred seeking the following reliefs:

"(a) quash the impugned order dated 10th March 2023 passed by the Commissioner, CGST, Audit-1, Delhi (North) [respondent no.3 herein].

(b) in the alternative, grant the petitioner waiver of the mandatory pre-deposit under Section 35F of the Central Excise Act, 1944 for filing an appeal challenging the order dated 10th March, 2023 passed by the Commissioner, CGST, Audit-1, Delhi (North) [respondent no.3 herein] and direct CESTAT to hear the petitioner's said appeal on merits without insisting on pre-deposit and to condone the delay, if any, on the ground of limitation.

(c) award costs of the present petition to the petitioner

and against the respondents.

(d) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Although the principal challenge is to the Order-in-Original dated 10 March 2023, the petitioner has been constrained to approach this Court in light of the provisions made in Section 35F of the Central Excise Act, 19441 and in terms of which a condition of pre-deposit has come to be created in terms of this statute.

3. Undisputedly, the statute no longer confers any discretion on the first appellate authority or the CESTAT to waive the condition of pre-deposit. It is in the aforesaid backdrop that the writ petitioner has

approached this Court to submit that the facts of the present case would reveal that this is one of those rare and deserving cases where the Court would be justified in invoking its jurisdiction conferred by Article 226 of the Constitution.

4. From a reading of the Order-in-Original, we find that one of the liabilities which stood raised against the petitioner was with respect to commission income and while dealing with this the Adjudicating Authority took note of a letter dated 05 March 2019 in which the petitioner had admitted that it had short paid service tax amounting to INR 1,39, 32,179/-. It was on the aforesaid basis that the Adjudicating Authority proceeded to compute the demand payable in respect thereof. Insofar as the contention of amounts standing

in the positive in the shape of CENVAT credit is concerned, the authority had noted that no documentary evidence of existing CENVAT credit had been placed on the record.

5. However, the principal demand appears to have come to be created by virtue of certain incentive payments which were received by the petitioner in connection with the use of the Computer Reservation System and which enabled it to access the online computer booking network. Insofar as this aspect is concerned, the Adjudicating Authority had observed as follows:

“25. The Computer Reservation System (CRS) companies, also known as Global Distribution Companies (GDS), provide an online computer system

which enables exchange of comprehensive information between the airline and the air travel agents through the said system regarding availability of seats, reservations, ticketing, communications, distribution and other travel related information, the only requirement being that the own network of airline (computer system) should respond on real time basis with confirmation to the request made by the travel agent accessing the data relating to the airline available in the data processing centre of CRS companies. To enable this, the travel agents, in turn, are provided with a computer by the CRS companies having suitable software and on line connectivity with their own data processing centre which in turn, is connected with the computer systems of airline. The data processing centre of the CRS

companies makes available to the travel agents the database of the respective airline, for ascertaining seat availability, the fare structure etc. and thereafter, enables booking of a seat on a particular flight of the airline.

26. The airline computer network, in turn accesses and retrieves the data relating to booking of a seat by any travel agent from the data base of the CRS server on real time basis for updation for its own travel related data.

27. The payment for this service rendered by the CRS companies was made by the airline, being the beneficiary, directly to the concerned CRS. Evidently, the airline specific CRS software and the data processing centre maintained by the CRS companies, accessed

and used by the airline and the travel agents, were for the sole benefit of airline, facilitating sale of their products and services. It was for this service that the airline paid to the CRS companies which resulted in the booking of air tickets of the airline.

29. The Assessee is an approved agent of International Air Ticketing Association (IATA). It was observed that they had agreements with M/s. Interglobe Technology Quotient Pvt. Ltd. The said companies were providing Central Reservation System (CRS) {a Global Distribution System} to the Assessee to book air ticket of various Airlines with which they had business tie up. By using this CRS, the travel agents are able to access the centralized data base and book a segment (air ticket/hotel room/car rental). The assessee uses this CRS for

booking of air tickets of various airlines. The CRS enables the Air travel agents/tour operators such as the assessee to do their business efficiently. With the increased usage of CRS, business and market share increases. Therefore, as a marketing or sales strategy, CRS/GDS companies give incentive/commission to the assessee in order to increase the use of their CRS facility and thereby augmenting their own revenue. The fact that the CRS is being used by the assessee themselves does not alter the situation as by increased use of CRS in booking the Air tickets etc., the interest of CRS/GDS companies are also promoted. Further, it appears that on adding/booking of tickets of more and more airlines to/from their CRS/GDS companies receive commission from airlines and out of the said commission a part of

the commission is paid to the Air Travel Agents who are using their GDS.

30. The assessee appears to be liable to pay Service Tax on such services provided by them as per the provisions of Section 66B of the Act ibid. 31. The tax liability for the period 2013-14 to 2016-17 is calculated as under based on CRS income declared by the assessee vide Table C of letter dated 05.03.2019 (RUD-III supra):

6. The petitioner while assailing the view taken by the Adjudicating Authority in this respect, however, had relied upon the judgment rendered by a Larger Bench of the CESTAT in Kafila Hospitality & Travels Pvt. Ltd. vs. Commr. Of S.T., Delhi2. In Kafila Hospitality, the central issue which arose for consideration was whether the use of the Central Reservation System created by

companies by approved agents of the International Air Ticketing Association [IATA] could be classified as a business auxiliary service and thus exigible to tax.

7. The argument which was addressed on behalf of the Revenue stands reflected in Para 48 of the decision of the CESTAT and which is extracted hereinbelow: –

48. The contention of the Department is that the target based incentives paid by airlines to IATA agents and the CRS incentives paid by the CRS Companies to IATA agents or the sub-agents are for promoting and marketing the business of the airlines and CRS companies respectively and so are leviable to service tax under the category of BAS."

8. Ultimately and on a consideration of the statutory

scheme which existed, the CESTAT came to hold as follows: –

"60. It is seen that the CRS commission is paid to a travel agent if he is able to attain an agreed level of segments to be booked. A passenger is not aware of the CRS Company being utilized by the travel agent for booking the segment nor can a passenger influence a travel agent to avail the services of a particular CRS Company. What is important to notice is that for an activity to qualify as "promotional", the person before whom the promotional activity is undertaken should be able to use the services. The passenger cannot directly use the CRS software provided by the Company to book an airline ticket. It cannot, therefore, be said that a travel agent is promoting any activity before the passenger."

9. The Larger Bench then proceeded to frame its conclusions as under: “82. A perusal of the aforesaid decision would indicate that though in paragraph 2 of the decision, the Division Bench noted that the lower authorities had categorized the services rendered by the appellant as “tour operator”, but in paragraph 5 of the decision the Division Bench observed that the services provided by the appellant were rightly covered under “BAS”. In fact, the Division Bench also observed that since the appellant was providing “tour operator” services, the commission received by them is for “BAS” under Section 73(1) of the Finance Act. There is no discussion in the decision as to why the commission received would fall under “BAS”. The decision also does not specify the particular sub-clause of Section 65(19)

of the Finance Act that defines “BAS”. It also needs to be noted that on behalf of the appellant it was contented that no marketing or promotion was conducted by the appellant since it is the choice of the appellant to choose a particular CRS Company and that the customer also does not even know under which CRS system the ticket was booked, but there is no discussion on this aspect nor is there any discussion on the submission of the appellant that the amount received from the CRS Companies cannot be treated as deemed commission since it was merely an incentive and did not attract service tax.