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

GST UPDATE

(April 2024)

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GIST of GST Notification

Centre's Notification No.	Subject
Notification No. 09/2024-Central Tax [G.S.R. 246(E)	CBIC extends due date of furnishing GSTR-1 for March 2024 to 12th April
Notification No. 08/2024- Central Tax [S.O. 1663(E).]	CBIC Extends Implementation Timeline for Central Tax Notification No. 04/2024-CT
Notifications No.	**Subject**
Notification No 07/2024 – Central Tax [S.O. 1642(E).]	CBIC notifies Nil Interest Rate for Late GSTR-3B Filings for specified taxpayers
Notification No. 01/2024| No. KGST.CR.01/17-18 (Vol-4)	Authorising Revisional Authority under section 108 of KGST Act, 2017

CGST Notification- Page No- 6 to 11

CBIC extends due date of furnishing GSTR-1 for March 2024 to 12th April

TG Team 12 Apr 2024 11,757 Views 1 comment Print Goods and Services Tax

Featured, Notifications- Central Tax, Notifications/Circulars

CBIC Extends Due Date for monthly taxpayers of Furnishing GSTR-1 for March 2024 to 12th April Due to Technical Issues on GST Portal vide Notification No. 09/2024 –Central Tax Dated: 12th April, 2024. Extension is In continuation of GSTN advisory issued on 11.04.24.

The Central Board of Indirect Taxes and Customs (CBIC), under the Ministry of Finance, has announced an extension for the filing of GSTR-1 for the tax period of March 2024. Due to technical glitches experienced on the Goods and Services Tax (GST) portal, the deadline for furnishing the details of outward supplies in FORM GSTR-1 has been pushed back to the 12th of April, 2024. The decision comes as a response to challenges faced by taxpayers attempting to comply with their filing

requirements within the original timeframe. Recognizing the importance of ensuring a smooth and efficient filing process, the CBIC, in consultation with the Council, has exercised its authority under the Central Goods and Services Tax Act, 2017 to extend the deadline. In accordance with Notification No. 09/2024 – Central Tax, dated April 12, 2024, issued by the Ministry of Finance (Department of Revenue), the extension applies to registered persons required to furnish returns under sub-section (1) of Section 39 of the Central Goods and Services Tax Act, 2017, excluding those who are required to furnish returns under the proviso of the said sub-section. This amendment, inserted as a further proviso after the fourth proviso of Notification No. 83/2020 – Central Tax, dated November 10, 2020, emphasizes the importance of ensuring compliance while addressing the technical challenges faced by taxpayers. The notification, effective from April 11, 2024, provides relief to businesses and taxpayers affected by the technical issues on the GST portal, allowing them additional time to complete their filing obligations for the specified tax period. This extension offers respite to businesses grappling with technical hurdles, ensuring that they can fulfil their tax

obligations effectively and in a timely manner. **** Ministry of Finance (Department of Revenue) (Central Board of Indirect Taxes and Customs) Notification New Delhi Notification No. 09/2024 – Central Tax Dated: 12th April, 2024 G.S.R. 246(E).— In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 – Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:– In the said notification, after the fourth proviso, the following proviso shall be inserted, namely:- “Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act, other than the registered persons who are required to furnish return under proviso of the said sub-

section, for the tax period March, 2024, shall be extended till the twelfth day of April, 2024." 2. This notification shall be deemed to have come into force with effect from the 11th day of April, 2024. [F. No. CBIC-20021/1/2024-GST] R. ANANTH, Director Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 41/2023 –Central Tax, dated the 25th August 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 624(E), dated the 25th August 2023.

CGST Notification- Page No- 10 to 11

CBIC Extends Implementation Timeline for Central Tax Notification No. 04/2024-CT Editor6 10 Apr 2024 2,028 Views 0 comment Print Goods and Services Tax | Notifications- Central Tax, Notifications/Circulars

CBIC extends timeline for implementation of Notification No. 04/2024- Central Tax, dated the 5th January, 2024 from 1st April, 2024 to 15th May, 2024 vide Notification No. 08/2024-Central Tax | Dated: 10th April, 2024. This amendment, enacted under the authority of the Central Goods and Services Tax Act, 2017.

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 08/2024-Central Tax | Dated: 10th April, 2024

S.O. 1663(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby

makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) Notification No. 04/2024- Central Tax, dated the 5th January, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 85(E), dated the 5th January, 2024, namely:- In the said notification, in para 4, for the words and letters “1st day of April, 2024”, the words and letters “15th day of May, 2024” shall be substituted. 2. This notification shall come into force from 1st day of April, 2024. [F. No. CBIC-20001/7/2023-GST] Ads by RAGHAVENDRA PAL SINGH, Director Note: – The principal Notification No. 04/2024- Central Tax, dated the 5th January, 2024, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 85(E), dated the 5th January, 2024.

Notification -Page No- 12 to 15

CBIC notifies Nil Interest Rate for Late GSTR-3B Filings for specified taxpayers

Editor6 08 Apr 2024 3,840 Views 0 comment Print Goods and Services Tax | Notifications/Circulars

The Ministry of Finance, under the Department of Revenue, Central Board of Indirect Taxes and Customs, has issued.

Notification No. 07/2024 dated 8th April 2024. This notification, in exercise of powers conferred by the Central Goods and Services Tax Act, 2017, pertains to the imposition of a 'Nil' interest rate for certain registered persons who failed to furnish their returns in FORM GSTR-3B by the due date due to technical glitches on the portal. The notification specifies the class of registered persons and the corresponding months for which the interest rate is deemed 'Nil'. Registered persons identified by their Goods and Services Tax Identification Numbers (GSTINs) are eligible for this provision if they had a technical glitch on the portal preventing timely filing but had sufficient balance in their electronic cash ledger or credit ledger, or had deposited the required amount through

challan. The table provided in the notification lists the GSTINs, the respective months of non-filing, and the period for which the interest rate is considered 'Nil'. It covers a range of months from June 2017 to October 2018, allowing for clarity regarding eligibility. The provision of a 'Nil' interest rate aims to address situations where technical issues hindered compliance despite the availability of funds. By waiving the interest, the government acknowledges the inadvertent challenges faced by taxpayers due to technical glitches beyond their control. Notification No. 07/2024 issued by the Ministry of Finance reflects the government's commitment to facilitating GST compliance while addressing challenges faced by taxpayers. The provision of a 'Nil' interest rate for specified registered persons underscores the government's responsiveness to technical issues impacting timely filing. Taxpayers affected by such glitches can benefit from this provision, ensuring fairness and efficiency in the GST regime. It signifies a proactive approach towards enhancing ease of compliance and minimizing hardships for taxpayers. ****** Ads by MINISTRY OF FINANCE (Department of Revenue) (CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS) Notification No

07/2024 – Central Tax | Dated: 8th April, 2024 S.O. 1642(E).—In exercise of the powers conferred by sub-section (1) of section 50 read with section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (herein after referred to as the Act), the Government, on the recommendations of the Council, hereby notifies the rate of interest per annum to be 'Nil', for the class of registered persons mentioned in column (1) of the Table given below, who were required to furnish the return in FORM GSTR-3B, but failed to furnish the said return for the months mentioned against the corresponding entry in column (2) of the said Table by the due date, for the period mentioned against the corresponding entry in column (3) of the said Table, namely:– TABLE Class of registered persons Months Period for which interest is to be 'Nil' (1) (2) (3) Registered person having the following Goods and Services Tax Identification Numbers who are liable to furnish the return as specified under sub-section (1) of section 39 of the Act but could not file the return for the month as mentioned in the corresponding column (2), by the due date, because of technical glitch on the portal but had sufficient balance in their electronic cash ledger or electronic credit ledger, or had

deposited the required amount through challan, namely: – From the due date of filling return in Form GSTR 3B to the actual date of furnishing such return. 1.19AAACI1681G1ZM June, 2018 2.19AAACW2192G1Z8 October 2018 3.19AABCD7720L1ZF July 2017 and August 2017 4. 19AAECS6573R1ZC July 2017 to February 2018 [F. No. CBIC-20013/7/2021-GST] RAGHAVENDRA PAL SINGH, Director Tags: Goods And Services Tax GST GST Notifications,GSTR,3B

CGST Notification- Page No- 16 to 20

Authorising Revisional Authority under section 108 of KGST Act, 2017

Editor2 06 Apr 2024 213 Views 0 comment Print Goods and Services Tax | Notifications, Notifications/Circulars

Introduction: Understanding the mechanisms of authority within taxation laws is pivotal for businesses and regulatory bodies alike. Section 108 of the Karnataka Goods and Services Tax Act, 2017 (KGST Act) delineates the establishment and functions of Revisional Authorities. Read the recent notification by the Karnataka Department of Commercial Taxes, detailing the designation of Revisional Authorities and its implications on tax proceedings. GOVERNMENT OF KARNATAKA (Department of Commercial Taxes) No. KGST.CR.01/17-18 (Vol-4) Office of the Commissioner of Commercial Taxes (Karnataka), Vanijya Therige Karyalaya, Gandhinagar, Bengaluru, Dated:06.04.2024. NOTIFICATION (01/2024) In pursuance of the provisions of section 5 read with clause (99) of section 2 of the Karnataka Goods and Services Tax Act, 2017 (Karnataka Act 27 of 2017)

(hereinafter referred to as the said Act) and in supersession of the Commissioner of Commercial Taxes Notification (1-B/2020) No. KGST.CR.01/17-18 dated 21.10.2020 published in the Karnataka Gazette, Extraordinary, Part IVA, No. 492 dated 22.10.2020 (hereinafter referred to as the superseded notification), except as respects things done or omitted to be done before such supersession, the officers referred to in column (2) of the Table below are hereby authorised as the Revisional Authorities under section 108 of the said Act in respect of the orders or decisions made by the officers referred to in column (3) of the Table below: Ads by Table Sl No. Revisional Authority Officers whose orders or decisions are to be revised (1) (2) (3) 1 Additional Commissioner of Commercial Taxes (Zone-1), Bengaluru (a) Joint Commissioner of Commercial Taxes (Appeals)-1, Bengaluru. (b) Joint Commissioner of Commercial Taxes (Appeals)-3, Bengaluru. (c) Joint Commissioner of Commercial Taxes (Appeals), Kalaburagi. (d) Joint Commissioner of Commercial Taxes, DGSTO-1, Bengaluru. (e) Joint Commissioner of Commercial Taxes, DGSTO-3, Bengaluru. (f) Joint Commissioner of Commercial Taxes DGSTO, Kalaburagi (g)

Officers sub-ordinate to the officers mentioned in clauses (d), (e) and (f) 2 Additional Commissioner of Commercial Taxes (Zone-2), Bengaluru (a) Joint Commissioner of Commercial Taxes (Appeals)-2, Bengaluru. (b) Joint Commissioner of Commercial Taxes (Appeals)-4, Bengaluru. (c) Joint Commissioner of Commercial Taxes (Appeals), Malnad Division, Shivamogga. (d) Joint Commissioner of Commercial Taxes, DGSTO-2, Bengaluru. (e) Joint Commissioner of Commercial Taxes, DGSTO-4, Bengaluru. (f) Joint Commissioner of Commercial Taxes, DGSTO, Malnad Division, Shivamogga. (g) Officers sub-ordinate to the officers mentioned in clauses (d), (e) and (f). 3 Additional Commissioner of Commercial Taxes (Zone-3), Bengaluru (a) Joint Commissioner of Commercial Taxes (Appeals)-5, Bengaluru. (b) Joint Commissioner of Commercial Taxes (Appeals)-6, Bengaluru. (c) Joint Commissioner of Commercial Taxes (Appeals), Mangaluru. (d) Joint Commissioner of Commercial Taxes, DGSTO-5, Bengaluru. (e) Joint Commissioner of Commercial Taxes, DGSTO-6, Bengaluru. (f) Joint Commissioner of Commercial Taxes, DGSTO, Mangaluru. (g) Officers sub-ordinate to the officers

mentioned in clauses (d), (e) and (f). 4 Additional Commissioner of Commercial Taxes (e- Governance), Bengaluru (a) Joint Commissioner of Commercial Taxes (Appeals), Davanagere. (b) Joint Commissioner of Commercial Taxes (Appeals), Belagavi. (c) Joint Commissioner of Commercial Taxes, DGSTO, Davanagere. (d) Joint Commissioner of Commercial Taxes, DGSTO, Belagavi. (e) Officers sub-ordinate to the officers mentioned in clauses (c) and (d). 5 Additional Commissioner of Commercial Taxes (Revision and Recovery), Bengaluru (a) Joint Commissioner of Commercial Taxes (Appeals), Mysuru. (b) Joint Commissioner of Commercial Taxes (Appeals), Dharwad. (c) Joint Commissioner of Commercial Taxes, DGSTO, Mysuru. (d) Joint Commissioner of Commercial Taxes, DGSTO, Dharwad. (e) Officers sub-ordinate to the officers mentioned in clauses (c) and (d). 2. Further, in cases where proceedings have already been initiated under section 108 of the said Act in pursuance of the superseded Notification, the revision authorities specified under the superseded notification shall continue to be the authorised Revisional authorities for the purposes of this notification in respect of such proceedings. 3. This

notification shall come into effect from the date of publishing in the Official Gazette. (C.SHIKHA) Commissioner of Commercial,Taxes,(Karnataka),Bengaluru.

CIRCULARS Page No- 21 to 41

Treatment of GST dues of taxpayers for whom proceeding been finalised under IBC, 2016

Editor6 24 Apr 2024 423 Views 0 comment Print Goods and Services Tax | Circulars, Notifications/Circulars

Introduction: Circular No. 1 (2022)/2024 issued by the Government of Tamil Nadu, Commercial Taxes Department, provides crucial clarifications regarding the treatment of statutory dues under the Goods and Services Tax (GST) law concerning taxpayers for whom proceedings have been finalized under the Insolvency and Bankruptcy Code (IBC), 2016. This article explores the implications and modalities outlined in the circular for the benefit of taxpayers and tax authorities. Detailed Analysis:

1. Background and Legal Framework: The circular refers to Circular No. 187/19/2022-GST issued by the Ministry of Finance, Government of India, providing a basis for the clarifications. It highlights that no coercive action can be taken against corporate debtors for dues prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues are

categorized as ‘operational debt’ and must be addressed through the appropriate legal channels.

2. Clarifications and Representations: The circular addresses representations received from trade and tax authorities seeking clarity on the implementation of adjudicating authority orders under the IBC concerning demand for recovery against corporate debtors. It emphasizes the treatment of statutory dues under the Tamil Nadu Goods and Services Tax Act, 2017 (TNGST Act), and existing laws after the finalization of proceedings under the IBC.

3. Interpretation of TNGST Act: The circular refers to Section 84 of the TNGST Act, which deals with the continuation and validation of recovery proceedings. It explains that if government dues are reduced as a result of any appeal or proceedings, an intimation of such reduction must be given, and recovery proceedings can be continued for the reduced amount.

4. Application to IBC Proceedings: The circular interprets the term ‘other proceedings’ in Section 84 to include proceedings conducted under the IBC. As the adjudicating authorities

under the IBC also adjudicate government dues pending under the TNGST Act, these proceedings fall under the purview of 'other proceedings.' Ads by

5. Implementation Modalities: Rule 161 of the Tamil Nadu Goods and Services Tax Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation of reduction of demand under Section 84. The circular mandates the issuance of such intimation in cases where proceedings under the IBC result in a reduction of statutory dues payable by corporate debtors. Conclusion: The circular provides essential clarity on the treatment of GST dues for taxpayers whose proceedings have been finalized under the IBC. By aligning with the legal framework and interpreting relevant provisions, it ensures uniformity in implementation across field formations. Tax authorities are instructed to issue intimation of reduction of demand in cases where IBC proceedings result in a reduction of statutory dues, thereby facilitating compliance and procedural adherence. In conclusion, the circular serves as a guiding document for taxpayers, tax authorities, and adjudicating bodies, fostering transparency and consistency in addressing GST dues in the

context of insolvency proceedings. It underscores the importance of legal interpretation and procedural adherence in ensuring effective governance and compliance within the taxation framework. ****** GOVERNMENT OF TAMIL NADU COMMERCIAL TAXES DEPARTMENT OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES EZHILAGAM, CHENNAI- 600 005 PRESENT: Dr. D. JAGANNATHAN, I.A.S , COMMISSIONER OF STATE TAX Circular No. 1 (2022)/2024 — TNGST (PP6/GST/145/2022) Date:24.04.2024 Sub: Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016- reg. Ref: Circular No. 187/19/2022-GST, dated 27.12.2022 issued by Ministry of Finance, Department of Revenue, Government of India, Central Board of Indirect Taxes and Customs, New Delhi. ********** In the reference cited, the CBIC, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No. 187/19/2022-GST, dated 27.12.2022 on the recommendations of the GST Council. Hence, following pari materia circular is issued:- Attention is invited to Circular No.5/2020-TNGST dated 23rd May, 2020, wherein it was

clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. 2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act") as well under the existing laws and the treatment of such statutory dues under TNGST Act and existing laws, after finalization of the proceedings under IBC. 3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner, in exercise of powers conferred under section 168 of the TNGST Act, hereby clarifies as follows. 4.1 Section 84 of TNGST Act reads as follows: "Section 84 – Continuation and validation of certain recovery

proceedings.- Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then- (b) where such Government dues are reduced in such appeal, revision or in other proceedings- (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand; (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending; (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal."

4.2 As per Section 84 of TNGST Act, if the government dues against any person under TNGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of

government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues. 4.3 The word 'other proceedings' is not defined in TNGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the TNGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of TNGST Act. 5. Rule 161 of Tamil Nadu Goods and Services Tax Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84 of TNGST Act. Accordingly, in cases where a

confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under TNGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending. Sd/- D. Jagannathan Commissioner of State Tax To 1. All the Joint Commissioners (Territorial) and (LTU) 2. All the Head of Assessment Circles in the State Copy to 1. All the Additional Commissioners, including Service Tax cell in the Office of the CCT, Chennai-5. 2. All the Joint Commissioners (Intelligence) in the State 3. Director/Additional Commissioner, Commercial Taxes Staff Training Institute, Chennai -35. 4. Appellate Joint Commissioner (GST) Chennai. 5 All the Deputy Commissioners (Territorial and Intelligence) in the State 6. All the Appellate Deputy Commissioner (GST) in the State. 7. The Joint Commissioner (CS), Chennai 35, to upload the same in

the,Internet,website.8.Stock,file/Spare.

CIRCULARS Page No- 30 to 41

Non-issuance of notices in case of voluntary compliance under Sections 73 and 74 of KSGST Act, 2017

Editor6 06 Apr 2024 2,769 Views 0 comment Print Goods and Services Tax | Circulars, Notifications/Circulars

Introduction: Circular No. 6/2024 issued by the Office of the Commissioner, State Goods and Services Tax Department, sheds light on the procedures for voluntary tax compliance under Sections 73 and 74 of the KSGST Act, 2017. The circular clarifies that taxpayers have the option to voluntarily comply with their tax obligations before formal notices are issued. They can pay additional tax dues along with applicable interest under Section 50 of the KSGST Act, 2017, and avail a reduced penalty of fifteen percent under Section 74(5). It elaborates on the relevant provisions of Sections 73 and 74, outlining the steps for taxpayers to inform the proper officer about their voluntary payments and ascertainment of tax liabilities. Detailed breakups of payments and necessary information are highlighted, emphasizing the importance of accurate submissions to avoid discrepancies. Furthermore,

the circular explains the implications of voluntary payments on notice issuance. If the tax paid falls short of the actual amount payable, the proper officer will issue notices only for the shortfall amount. Examples illustrate various scenarios to clarify the process. ***** Office of the Commissioner, State Goods and Services Tax Department Tax Towers, Karamana P.O., Thiruvananthapuram Email: cstpolicy.sgst@kerala.gov.in Phone:0471-2785276 File No. SGST/2802/2024-PLC12 Date: 06-04-2024 Circular No. 6/ 2024 Subject: Non-issuance of notices in case of voluntary compliance under Sections 73 and 74 of the KSGST Act, 2017 – Reg. In exercise of the powers conferred under Section 168 of the KSGST Act, 2017, the following instructions are issued to bring uniformity in the matter of issuing notices while proceeding under Section 73 and Section 74 of the KSGST Act, 2017. 1. Taxpayers have the option to voluntarily comply with their tax obligations before any formal notice is issued. If a taxpayer, upon his own ascertainment or based on the proper officer's ascertainment, discovers that they have any additional tax liability, they can choose to pay such tax dues along with the applicable interest under section 50 of the KSGST Act, 2017. Additionally, they are liable to pay a

reduced penalty amounting to fifteen percent of the unpaid tax when the payment is made under Section 74(5) of the KSGST Act, 2017. 2. The relevant provisions of Section 73 and 74, ibid are as below: i. “Section 73(5): The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. ii. Section 73(6): The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. iii. Section 73(7): Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable. iv. Section 74(5): The person chargeable with tax may, before service of notice under sub-section (1), pay

the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. v. Section 74(6): The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. vi. Section 74(7): Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable." 3. Detailed Breakup of Payments: i. In case of own ascertainment, it is crucial for the person chargeable with tax to provide a detailed breakup of the amounts paid, including the tax, interest, and penalty. In the case of taxes that are not paid or short paid, the persons chargeable with tax may inform the manner of computation of such tax dues under the respective heads of IGST, CGST, KSGST and Compensation Cess and the tax period it is attributable to, as per their ascertainment. ii. In

case of wrong availment or wrong utilization of Input Tax Credit, the persons chargeable with tax may inform the details of such Input Tax Credit wrongly availed or utilized under the respective heads of IGST, CGST, KSGST and Compensation Cess, and the tax periods in which such wrong availment or utilization occurred, as per their ascertainment. iii. Similarly, in case of an erroneous refund, the persons chargeable with tax may inform the details of such erroneous refund received including the tax period to which such refund pertains. 4. The above submissions can be made by the person chargeable with tax in the FORM GST DRC-03 itself through the common portal. 5. While the person chargeable with tax can provide the necessary information through the FORM GST DRC-03, if such details are not available in the FORM GST DRC-03, the proper officer can request the same from the persons chargeable with tax through a letter. This will enable the proper officer to accurately calculate and verify the correctness of the tax amount, interest and penalty payments towards such taxes that are not paid or short paid or Input Tax Credit wrongly availed or utilized or of erroneous refunds. Failure to provide this detailed breakup will result in the proper officer not being

able to ascertain the nature and quantum of payment and may lead to discrepancies and issuance of Show Cause Notice. 6. Issue of Notice in cases of voluntary payment: The proper officer on receipt of the written communication/ information in FORM GST DRC-03 of payment as specified in Para 3 (supra), shall not issue any notice for the tax amount already paid with interest; or with interest and penalty as applicable in view of the provisions contained in sub-section (6) of Section 73, and sub-section (6) of Section 74 of the KSGST Act, 2017, respectively. 7. Issue of Notice in cases of shortfall in voluntary payment : In cases where it appears to the proper officer that the amount of tax paid with interest as per Section 73(5) of the KSGST Act,2017 or the amount of tax paid with interest and applicable penalty as per Section 74(5) of the KSGST Act, 2017 by the person chargeable with tax falls short of the amount actually payable, the proper officer shall issue notice only for the amount which falls short of the actual amount payable. For example, assume that a Person A has a tax liability of Rs 300 and is required to pay a penalty of Rs 45 and an interest of Rs 30 under Section 74(5): Case 1: if A pays Rs 100 towards his tax liability along with penalty of Rs 15 and

interest of Rs 10 (which covers the complete interest liability of this Rs 100), then SCN shall be issued only for the remaining Rs 200 along with applicable penalty (on Rs 200) and interest. Case 2: if A pays Rs 100 towards his tax liability but does not pay any amount towards penalty and/or interest, then SCN shall be issued for the entire tax amount of Rs 300 along with applicable penalty (on Rs 300) and interest. 7. Further, in all cases falling under Section 73 of the KGST Act, 2017, the provisions of sub-section (11) shall be adhered to wherever applicable. ABRAHAM RENN S IRS Commissioner To All Concerned

CIRCULARS Page No- 37 to 41

Kerala GST: Numbering of Appellate and Revisional Orders – Guidelines

Editor6 06 Apr 2024 162 Views 0 comment Print Goods and Services Tax | Circulars, Notifications/Circulars

The issuance of orders under sections 107 and 108 of the SGST/CGST/IGST Act is a crucial aspect of tax administration. Recently, guidelines have been issued regarding the numbering of these orders to ensure better compliance and tracking through litigation cycles. Detailed Analysis: 1. Mandate of Rule 113(1): Rule 113(1) of the Kerala GST Rules mandates the serving of a summary of the order in Form GST APL-04 along with the order issued under sub-section (11) of Section 107 by the Appellate Authority. These orders, prepared manually and uploaded in the portal, are subject to challenges before Appellate Tribunals or courts by both taxpayers and the Department. 2. Requirements for Revisional Authority: Similarly, the Revisional Authority is required to issue a summary of the order in Form GST APL-04 along with the order issued under

sub-section (1) of Section 108. Like Appellate orders, these orders may also be challenged before Appellate Tribunals or courts. 3. Need for Numbering: To ensure compliance and track orders through litigation cycles, it is essential to duly record the orders issued by Revisional/Appellate authorities. Currently, these orders lack a unique identification number, hindering their traceability. 4. Uniform Numbering Instructions: To address this issue, instructions have been issued to create distinct and unique order numbers for both Appellate and Revisional orders. The format includes essential details such as the office of the authority, year, and unique number to facilitate easy identification. Ads by 5. Implementation of New System: The new numbering system for Appellate Orders will be implemented immediately, ensuring all future orders adhere to the prescribed format. Conclusion: The guidelines for numbering Appellate and Revisional Orders under sections 107 and 108 of the SGST/CGST/IGST Act mark a significant step towards enhancing transparency and efficiency in tax administration. By ensuring orders are uniquely identified, the authorities can better track them through legal processes, ultimately promoting compliance and accountability. ******

Office of the Commissioner of State Tax State Goods and Services Tax Department Tax Towers, Karamana, Thiruvananthapuram. E-mail: cstpolicy.sgst@kerala.gov.in Ph: 0471-2785276 File No. SGST/2699/2024-PLC-9 Circular No. 05/2024-GST | Dated: 6th April 2024 Sub: Issuance of Orders u/s 107 and 108 of SGST/CGST/IGST Act – Numbering of Appellate and Revisional Orders – guidelines issued- reg: 1. Rule 113(1) of the Kerala GST Rules mandate serving of a summary of order in Form GST APL-04 along with the Order issued under sub section (11) of Section 107 of the State GST Act by the Appellate Authority. The Order under Sub Section (11) of Section 107 mentioned above is prepared manually by the Appellate Authority and uploaded in the portal. These orders may get challenged before Appellate Tribunals / courts by both taxpayers as well as the Department. 2. Similarly, the Revisional Authority is also required to issue a summary of the order in Form GST APL-04 as per sub-rule (2) of Rule 109B along with the order issued under sub- section (1) of Section 108. The order issued under section 108 is prepared manually and uploaded in the portal. These orders may also be challenged before Appellate Tribunals / courts by taxpayers as well as the

Department. 3. Under these circumstances, it is essential that the orders issued by Revisional/Appellate authorities are duly recorded to ensure the compliance of orders and to track them through the litigation cycles that may last many years. For this purpose, it is necessary that the above-mentioned orders issued by Revisional/ Appellate Authorities are numbered in such a manner that they have a unique, easily identifiable number. Currently, these orders are uploaded by the authorities without providing any serial number for identification purposes. Further, as these orders are prepared manually, no online reference number will get generated on uploading the document from the GSTN backend portal. 4. As these orders are the basis for subsequent legal process, it is vital to identify the details such as the name of district, the designation of the issuing authority, unique serial number of orders etc. from the number itself. Therefore, to bring in uniformity in creating the serial number for the orders issued by the Appellate Authority U/s 107 as well as for the orders issued by the Revisional authority under Section 108 of the Act, the following instructions are issued: a. Every Appellate Orders u/s 107 and Revisional Order U/s 108 annexed with Form GST

APL-04 issued from the back end portal shall carry distinct and unique Order number. b. The Format of the Appellate Order Number shall be as follows:- OIA/ Short form of office of the appellate authority/ Year/Unique Number. The Format of number with examples is shown in Annexure-I. c. The format for numbering the order issued by the Revisional Authority shall be RVNO/Year/Unique Number/Designation of Revisional Authority in short form .The Format of number with examples is shown in Annexure-II. d. A register for issuing Appellate Order Number must be maintained in every appellate office in the Format shown in Annexure -III. e. Separate registers shall be kept for the orders issued by the Revisional Authorities in the format shown in Annexure-IV 5. The new numbering system of Appellate Orders shall come into force from the date of issuance of this circular. ABRAHAM RENN S IRS COMMISSIONER (I/c) To All Concerned

ADVANCE RULINGS- Page No- 42 to 56

GST on Corpus Fund & Electricity Charges collected from members by RWA

Editor6 09 Apr 2024 657 Views 0 comment Print Goods and Services Tax

Judiciary Case

Law Details

Case Name : In re Prinsep Association of Apartment Owners (GST AAAR West Bengal)

Appeal Number : Order No. 01/WBAAAR/APPEAL/2024

Date of Judgement/Order : 02/04/2024

Related Assessment Year :

Courts : AAAR AAR West Bangal Advance Rulings Download Judgment/Order In re Prinsep Association of Apartment Owners (GST AAAR West Bengal) M/s Prinsep Association of Apartment Owners filed an appeal against the West Bengal Advance Ruling Authority's decision on GST applicability regarding corpus funds and electricity charges. This article

delves into the intricacies of the case and its ramifications for RWAs in India. The appeal raises pertinent questions: 1. Corpus Fund Taxability: Are contributions towards corpus funds subject to GST? As per the 'ICAI Guidance Note on Terms Used in Financial Statements' [GN(A) 5 issued 1983], published by The Institute of Chartered Accountants of India, a 'Sinking Fund' is a fund created for the repayment of a liability or for the replacement of an asset. Again, in common business parlance, a 'Corpus Fund' refers to a pool of money set aside for a specific purpose or organization. It represents the principal amount or the initial investment capital, which is typically kept intact, with only the returns or earnings being utilized for designated activities. In the case of a RWA, such sinking/corpus fund is created in order to meet future contingencies e.g., to meet the expenses for structural repairing, reconstruction work etc. RWA creates a sinking/corpus fund which serves as a backup fund for supply of specific services. A member contributes to such funds with an agreed condition that the RWA will provide some specific services in future, as and when required out of the said funds. So, it is pertinent to refer that the contributions towards the

sinking/corpus fund are made by the members of the RWA with a presumption that such funds will be used for bearing the burden of expenses of future supply of services like common area maintenance and other future contingencies as may arise. This contribution is thus an acceptance of the offer of guarding future burden of expenses as made by the RWA, i.e. the appellant in this case to its members. This money is never refunded back to the members but is always in the possession of the RWA for bearing such expenses. 11. Hence, such contribution is not of the nature of a deposit in the truest sense of the term but an advance payment made by the members of the RWA for receiving a supply of common area maintenance services to be provided to them by the RWA in future. As a result, the same would be taxable and the appellant will be liable to pay tax at the time of receipt of such amount in accordance with the provisions of subsection (2) to section 13 of the GST Act. 2. Electricity Charges: Is GST leviable on electricity charges recovered from members? Ads by it is observed that the appellant has collected the electricity charges consumed for common area from its members on pro-rata basis. Further, the tax invoice issued in this case for

—Common Area Maintenance" shows a consolidated amount under SAC 999598 where a fixed rate is levied per square feet of the area of the flat. Tax @ 18% has also been charged on the entire amount. This Common Area Maintenance Charge not only includes common area electricity charges but also charges for other services like security, scavenging, water supply, maintenance of garden etc. Any amount collected on account of consumption of electricity has not been shown separately in the said invoice. Thus, services relating to electricity charges are bundled with supply of goods and services for the common use of its members and hence form a part of composite supply where the principal supply is the supply of common area maintenance services. Therefore, the rate of the principal supply i.e., GST rate on maintenance of the premise would be applicable. Thus, the WBAAR ruling stands, confirming the GST applicability on corpus funds and electricity charges. Read AAR Order: No GST Exemption if Monthly Society Maintenance Charges exceeds INR 7500 FULL TEXT OF THE ORDER OF APPELLATE AUTHORITY FOR ADVANCE RULING, WEST BENGAL 1. This Appeal has been filed by M/s Prinsep Association of Apartment Owners having GSTIN:

19AAKAP4502F1ZL at 1, New Bata Road, Calcutta Riverside, P.S. Maheshtala, Kolkata – 700140 against the Ruling passed by the West Bengal Advance Ruling Authority vide Order No. 22/WBAAR/2023-24 dated 29.11.2023 (hereinafter referred to as the "WBAAR'). 2. The matter was originally fixed for hearing on 18.01.2024 which was adjourned upon prayer from the appellant and has been finally heard on 20.03.2024. 3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act‖) as to whether tax would be charged i) Over and above Rs. 7500/- or on the total amount collected from members in light of entry in sl. no. 77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 read with Notification No. 02/2018 dated 25.01.2018. ii) On amounts collected from the members for setting up a corpus fund for future contingencies/ major CAPEX. iii) On collection of common area electricity charges paid by the members and the same is recovered on the actual electricity charges. 4. The WBAAR while giving the ruling observed that the threshold of Rs. 7500/- is applicable for the benefit of

exemption under entry in Serial No. 77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 specifically iterates that the Government intends to provide the exemption only in cases where contribution received from a member per month is below the specified limit of Rs.7500/-. In other words, where the contribution exceeds the limit, taxability of such services by RWA shall not get covered by entry number 77 of the aforesaid notification and tax will be leviable on the entire amount collected from the members. Regarding the second issue, the WBAAR observed that a sinking fund is created in order to meet future contingencies e.g., to meet the expenses for structural repairing, reconstruction work etc. RWA creates a sinking fund which serves as a backup fund for supply of specific services. A member contributes to the sinking fund with an agreed condition that the RWA will provide some specific services in future, as and when required out of the said fund. Thus, the amount collected by the appellant from its members for setting up a sinking fund is an advance payment towards future supply of services and such payment comes under the definition of —consideration" under clause (31) of section 2 of the GST Act. The appellant is, therefore, liable to

pay tax on such supply in terms of sub-section (2) of section 13 of the GST Act. Regarding the third issue, the WBAAR observed that the appellant has collected the electricity charges consumed for common area from its members on pro-rata basis. The tax invoice issued in this case for —Common Area Maintenance" shows a consolidated amount under SAC 999598 where a fixed rate is levied per square feet of the area of the flat. Tax @ 18% is also charged on the entire amount. Any amount collected on account of consumption of electricity has not been shown separately in the said invoice. Thus, services relating to electricity charges are bundled with supply of goods and services sourcing from a third person for the common use of its members and hence forms a part of composite supply where the principal supply is the supply of common area maintenance services. Thus, in light of clarifications given in Circular No. 206/18/2023-GST dated 31.10.2023, the appellant in this case will be liable to pay tax on collection of common area electricity charges. 4. The Appellant having accepted the ruling given by the WBAAR in above mentioned Advance Ruling 22/WBAAR/2023-24 dated 29.11.2023 regarding the first issue, i.e. applicability of GST on

the entire amount where the total amount collected from members is over and above Rs. 7500/-, had filed the instant appeal against the other two issues on the grounds that: i) The contributions towards the corpus fund are made by the members not in relation to any rendition of services, rather the funds are maintained for future contingencies. At the time of collection of the fund, the association is not aware of as to where such funds will be utilized since the same has been collected to cater the future needs/contingencies. Relying upon the proviso to clause (31) of section 2 of the GST Act relating to the definition of _consideration', the appellant has argued that in the instant case the corpus / sinking fund is the amount collected towards the future supply of Service if any which is not ascertainable at the time of collection of the fund. Thus, the fund so collected will be applied as a consideration towards supply of services only at the time of actual supply of services. In view thereof, the amounts collected towards Corpus/Sinking Fund shall not be considered as advance for the purpose of levying GST rather the amount collected shall be leviable to GST when the same is applied as consideration at the time of actual supply of service. ii) A clarity is sought for

as to whether GST is payable for future transactions if the appellant recovers the electricity charges on actual basis. 5. The appellant had relied upon the ruling of Gujarat AAR in the matter of M/s. The Capital Commercial Co-op. (Service) Society Limited [2021 (47) G.S.T.L 488 (AAR — GST — Guj)] where the Authority held that amount collected towards Common Maintenance Fund is liable to GST but the same is liable to GST at the time of actual supply of service. The appellant reiterated the same view in his written submission dated 20.03.2024, made in this regard at the time of hearing. 6. On behalf of the Respondent, the Assistant Commissioner, CGST & CX, Maheshtala Division has made a written submission vide Memo No. GEXCOM/LGL/Misc./331/2023-CGST-DIV-MSTL-Commrte-Kol(S)/3229 dated 17.01.2024, where he had stated that: i) The amounts collected towards Corpus/Sinking Fund prima facie appears not to be forming a part of consideration towards supply of services at the time of collection and hence appears not liable to GST at the time of collection. However, the amounts so utilized for provision of service are liable to tax at the time of actual supply of service and the time of supply has to be determined in terms of Section 13 of' the GST Act. ii)

The electricity bill received in relation to the consumption of electricity for the common utilities is in the name of the appellant. The appellant involved in providing the service of upkeep and maintenance of common utilities of the apartments and for this the electricity consumed by them becomes an input. Though the electricity bill charges is distributed among its members, it is not the consideration for the supply of electricity due to the members but the value is a part of the consideration for the supply of a bundle of services to its members and hence is liable to tax at appropriate rate. 7. All the parties were duly heard and their submissions were carefully considered. 8. In the instant case, the first issue of applicability of GST on contributions towards the corpus fund made by the members of the Residents' Welfare Association (hereinafter referred to as the RWA) relies on the moot question – whether this money is in the form of a deposit or an advance payment. The meaning of the word 'deposit' has been discussed in judgement passed by Hon'ble Delhi High Court on 11 May, 2007 in the case of Lg Electronics Ltd. vs Usha (India) Ltd. and Anr. [AIR (2007) Delhi 231] as: "In Law Lexicon by P.R. Aiyar edited by Justice Y.V. Chandrachud, the word

'deposit' is defined: "Thing stored or entrusted for safekeeping", an act by which a person receives the thing of another person, with the obligation to keep it and to return it in kind; a naked bailment of goods, to be kept for the depositor without reward and to be returned when he shall require it; the delivery of a thing for custody, to be redelivered on demand without compensation. The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfillment of certain conditions." [emphasis added]. Thus the most essential criterion of a deposit is that it is temporarily kept in custody of another person which is refunded/returned to the depositor after a certain period of time. But, here in this case, such money is not refunded to the contributors. 9. In this context, the sub-clause (a) to clause (31) of section 2 of the GST Act regarding the definition of 'consideration' may be referred to: (31) "consideration" in relation to the supply of goods or services or both includes- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any

subsidy given by the Central Government or a State Government; [emphasis added] 10. Now, as per the 'ICAI Guidance Note on Terms Used in Financial Statements' [GN(A) 5 issued 1983], published by The Institute of Chartered Accountants of India, a 'Sinking Fund' is a fund created for the repayment of a liability or for the replacement of an asset. Again, in common business parlance, a 'Corpus Fund' refers to a pool of money set aside for a specific purpose or organization. It represents the principal amount or the initial investment capital, which is typically kept intact, with only the returns or earnings being utilized for designated activities. In the case of a RWA, such sinking/corpus fund is created in order to meet future contingencies e.g., to meet the expenses for structural repairing, reconstruction work etc. RWA creates a sinking/corpus fund which serves as a backup fund for supply of specific services. A member contributes to such funds with an agreed condition that the RWA will provide some specific services in future, as and when required out of the said funds. So, it is pertinent to refer that the contributions towards the sinking/corpus fund are made by the members of the RWA with a presumption that such funds will be used for bearing

the burden of expenses of future supply of services like common area maintenance and other future contingencies as may arise. This contribution is thus an acceptance of the offer of guarding future burden of expenses as made by the RWA, i.e. the appellant in this case to its members. This money is never refunded back to the members but is always in the possession of the RWA for bearing such expenses. 11. Hence, such contribution is not of the nature of a deposit in the truest sense of the term but an advance payment made by the members of the RWA for receiving a supply of common area maintenance services to be provided to them by the RWA in future. As a result, the same would be taxable and the appellant will be liable to pay tax at the time of receipt of such amount in accordance with the provisions of subsection (2) to section 13 of the GST Act. 12. Regarding the second issue of applicability of tax on electricity charges received by the RWA, attention is drawn towards the Circular No. 206/18/2023-GST dated 31.10.2023 issued by the TRU, Department of Revenue, Ministry of Finance, Government of India, where it has been clarified that: i) whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of

premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable. ii) where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply. 13. In this case, it is observed that the appellant has collected the electricity charges consumed for common area from its members on pro-rata basis. Further, the tax invoice issued in this case for —Common Area Maintenance" shows a consolidated amount under SAC

999598 where a fixed rate is levied per square feet of the area of the flat. Tax @ 18% has also been charged on the entire amount. This Common Area Maintenance Charge not only includes common area electricity charges but also charges for other services like security, scavenging, water supply, maintenance of garden etc. Any amount collected on account of consumption of electricity has not been shown separately in the said invoice. 14. Thus, services relating to electricity charges are bundled with supply of goods and services for the common use of its members and hence form a part of composite supply where the principal supply is the supply of common area maintenance services. Therefore, the rate of the principal supply i.e., GST rate on maintenance of the premise would be applicable. 15. The WBAAR Ruling No. 22/WBAAR/2023-24 dated 29.11.2023 is thus confirmed and the Appeal stands rejected. Send a copy of this order to the Appellant,and,the,Respondent,for,information

JUDGEMENTS PAGE No- 57 to 167

Chhattisgarh HC Upholds Principles of Natural Justice: Quashes GST Order

CA Sandeep Kanoi 29 Apr 2024 6,813 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Mahindra & Mahindra Limited Vs Union of India (Chhattisgarh High Court)

Appeal Number : WA No. 172 of 2024

Date of Judgement/Order : 10/04/2024

Related Assessment Year :

Courts : All High Courts Chhattisgarh High Court

Download Judgment/Order

Mahindra & Mahindra Limited Vs Union of India (Chhattisgarh High Court)

The recent ruling by the Chhattisgarh High Court, Bilaspur, in the case of Mahindra & Mahindra Limited vs. Union of India sheds light on the intricacies of procedural fairness under the

CGST Act. The petitioner, a motor vehicle manufacturer, challenged an adverse order under Section 73, alleging a violation of principles of natural justice. The case stemmed from a show cause notice issued to Mahindra & Mahindra Limited under Section 73(1) of the Central Goods and Services Tax (CGST) Act, 2017. The notice raised questions regarding the payment of tax and input tax credit. Despite seeking an extension to file a reply and appear for a personal hearing, an order was passed without granting adequate opportunity to the petitioner. The crux of the appeal rested on the interpretation of Section 75(4) and (5) of the CGST Act, which mandate an opportunity for hearing and provide guidelines for adjournments. The appellant contended that the order lacked adherence to these provisions, thereby violating principles of natural justice. The judgment articulated the following key points: (i) Section 75(4) underscores the necessity of a personal hearing prior to the issuance of any adverse order; (ii) In accordance with Section 75(5), the provision of three opportunities for a hearing must be tailored to the specific facts and circumstances of each case; (iii) It was emphasized that scheduling a hearing before the receipt

of a reply to the show cause notice renders it illusory and devoid of substance, thus necessitating the scheduling of hearings post-reply submission; (iv) The court reiterated that oral arguments cannot serve as a substitute for a written reply, citing a series of English judgments as authoritative precedents; (v) Contrary to the notion that alternate remedies serve as an absolute bar, the judgment clarified that when the fundamental principles of natural justice are violated, the availability of an alternate remedy does not preclude judicial intervention. The High Court's scrutiny of the statutory provisions revealed a significant oversight in the proceedings. The court emphasized the importance of a meaningful opportunity to be heard, as enshrined in common law principles and reiterated by judicial precedents. It highlighted the necessity for comprehensive hearings, ensuring parties have adequate time to prepare and present their defense. Drawing parallels with relevant judgments, including the Supreme Court's ruling in Kalpraj Dharamshi, the High Court underscored that failure to adhere to principles of natural justice warrants judicial intervention. It rejected the notion that personal hearings scheduled before the submission of replies

suffice as proper hearings, emphasizing the need for a holistic approach to procedural fairness. Ads by In setting aside the earlier order, the High Court directed the appellant to be afforded a genuine opportunity for a personal hearing, in accordance with the provisions of the CGST Act. This decision underscores the judiciary's commitment to upholding due process and ensuring fairness in administrative actions. Conclusion: The ruling by the Chhattisgarh High Court in the case of Mahindra & Mahindra Limited vs. Union of India reaffirms the significance of procedural fairness in tax proceedings. By setting aside an order lacking adequate opportunity for hearing, the court underscores the importance of upholding principles of natural justice. This judgment serves as a reminder of the judiciary's role in safeguarding the rights of litigants and maintaining the integrity of administrative processes under the CGST Act. FULL TEXT OF THE JUDGMENT/ORDER OF CHHATTISGARH HIGH COURT 1. The present appeal is against the Order dated 21.03.2024 passed in Writ Petition (Tax) No. 42 of 2024 (Mahindra and Mahindra Limited v. Union of India & Others), by the learned Single Judge, whereby, the appellant has been non-suited on the ground of

alternate remedy. 2. According to the appellant, who is regular assessee, he was served with a notice under Section 73 (1) of the Central Goods and Services Tax Act, 2017 for a contemplated tax, not paid or short paid on 29.09.2023 (Annexure-P/8). According to the appellant, the last date for reply was fixed on 30.10.2023 and the appellant sought for extension of such time by Annexure-P/10 on 11.10.2023, i.e. reply within the prescribed timeline. 3. The submission of the appellant is that before the filing of the reply since date of personal hearing was fixed, under those circumstances, the extension of time was sought for. However, eventually, the order dated 29.12.2023 was passed. It is contended on behalf of the appellant that in a manner of this nature, before imposition of liability, sub-section 9 of Section 73 contemplates that the officer shall after considering the representation shall issue the order and Section 75 (4) mandates that opportunity of hearing shall be granted if the sufficient cause is shown and where any adverse decision is contemplated against the assessee. It is submitted that adverse order has been passed without giving any opportunity of hearing to the appellant, therefore, the rules of

natural justice were defeated. The counsel placed his reliance on the decision of the Supreme Court in the matter of Kalpraj Dharamshi and another v. Kotak Investment Advisors Limited reported in 2021 10 SCC 401 and submits that in the cases of the like nature when the principles of natural justice has been given a go bye, the party can be free to invoke the jurisdiction under Article 226 of the Constitution of India, therefore, the order of learned Single Bench is bad in law. It is further submitted that Section 75 (5) further provides the manner of hearing which is to be granted during the proceeding and three hearings are statutory under sub-section 5 of Section 75 of CGST Act. He placed his reliance in the judgment passed by the High Court of Judicature at Bombay in the matter of Fino Paytech Limited v. Union of India, in Writ Petition No. 8965 of 2023 and the judgment of High Court of Allahabad, in the matter of MS KEC International Limited v. Union of India and three others, reported in 2024 (2) TMI 359. He submits therefore, the only prayer before this Court that the order dated 29.12.2023, be set aside and the appellant assessee be heard by opportunity of hearing before passing any adverse order. 4. Per contra, learned Advocate General would submit

that demand of recovery notice under Section 73 (1) of C.G.S.T. Act, was served on 06.06.2023 by Annexure-P/6 to which a reply was filed on 03.07.2023. He would submit that the reading of Section 75 (4) of C.G.S.T Act, do not contemplate the opportunity of hearing to be given at every stage and the order would reflect that on date when the personal hearing was given on 11.10.2023 and 25.10.2023, no representative of the appellant had appeared. He would submit that in such case there is no violation of Section 75 (4) of the C.G.S.T. Act and otherwise the order of the learned Single Bench only delegated the parties to file an appeal and in order to avoid the filing of appeal to make statutory deposit which is mandatory, this route has been adopted by the appellant. 5. We have heard the learned counsel for the parties. 6. Before we venture into the issue as to how the order was culminated, it would be apt to refer the relevant Section of Central Goods and Service Tax Act. 7. Section 73 sub-section 1, which pertains to demand and recovery is reproduced hereunder. THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 Sec 73-Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or

any wilful-misstatement or suppression of facts. 73.(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder. 8. Reading of this Section would show that the revenue would be within its power to issue the notice, that when tax has not been paid or short paid or erroneously refunded or some input tax credit has been wrongly availed or utilized other than a reason of fraud or willful misstatement, the notice would be under Section 73 sub-section (10) of CGST Act, as the limitation has been imposed of three years, while in cases of fraud it is covered under Section 74 wherein the limitation is five years. 9.

Sub-Section 9 of Section 73 of the CGST Act, contemplates that the officer after considering the representation, if any made by person chargeable with tax shall determine the amount of tax in the manner contemplated under Sub-Section 9 of CGST Act. Since the notice was issued to the appellant under Section 73 of the CGST Act, therefore, according to sub-section 9 of CGST Act, the representation of appellant was required to be considered. 10. In the instant case, the show cause was served to the appellant on 29.09.2023 by Annexure-P/8 wherein, under the head of detail of personal hearing and due date to file reply was stated that reply to be filed by 30.10.2023 and date of personal hearing was given on 12.10.2023. A letter was filed by appellant on 11.10.2023 wherein, it was prayed by the appellant that since the date of reply was on 30.10.2023 and the personal hearing before such date is on 20.10.2023, further time was sought for final submission within the prescribed timeline and the adjournment was sought for. Further extension was sought for on 25.10.2023 by the appellant vide Annexure-P/11 and eventually the reply was filed on 15.11.2023 and in such reply it was reiterated that the appellant since has applied for adjournment for personal hearing and suitable

date was sought for hearing before the issue is decided. According to the appellant that such personal hearing was not given and on 29.12.2023, the orders were passed which was under challenge under Article 226 of the Constitution, before the learned Single Bench. 11. Section 75 sub-section 4 and 5 of the CGST Act, which covers the general provision relating to determination of tax contemplates that opportunity of hearing shall be granted where the request is received in writing and sub-section 5 contemplates that the adjournment can be given with a capping of three dates. For sake of brevity sub-sections (4) and (5), which are relevant for adjudication are reproduced hereunder; THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 Sec 75-General provisions relating to determination of tax. 75.(1) xxx (2) xxx (3) xxx (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more

than three times to a person during the proceedings. (6) xxx 12. The submission of the State/Revenue is that as per Section 75 sub-Section 4 of the CGST Act, the date of hearing was already given on 11.10.2023 and 25.10.2023, therefore, the mandate of Section 75 (4) stands complied. We are not in agreement to that submission as the opportunity of hearing when is contemplated under the statute, it has to be comprehensive and it cannot be short-circuited. The show cause notice reflects that the date of reply was given on 30.10.2023 and before the personal hearing date is given, it would be about a superfluous and would defeat the actual intent of the legislation of giving an opportunity of hearing. It is not expected that before the reply is filed, an assessee can be heard and thereafter the reply is filed. It is against the normal procedure and is against the normal practice of the parties that personal hearing is preponed and the reply is subsequently filed. This is not the intent of provisions of sub-Sections (4) and (5) of Section 75. 13. The Supreme Court has in number of occasion has held that the opportunity of hearing means granting real and meaningful opportunity and adequate time must given to prepare and present the

defence. Supreme Court in Umanath Pandey v. State of UP [2009] 12 SCC 40-43 has observed as under: “notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him.” The Supreme Court in Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519 : 2015 SCC OnLine SC 489 at page 537 has held as under: “35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.” In article titled as Right To Hearing And Contracts of Service, (1972) 2 SCC J-9 it was

observed that: “The protection that the principle of audi alteram partem is designed to afford to an individual is in the nature of a right to a fair hearing. The principal characteristics of this right to a hearing are three, namely, (i) the right to be informed of the case one is to meet at the hearing, (ii) the right to have notice of the time and place of hearing, and (iii) a reasonable amount of time between the date of notice and the actual date of hearing so as to enable one to prepare his defence.” Lord Hodson observed in Ridge v. Baldwin, (1963) 2 All ER 66, 71: (1964) AC 40, 64: that “No one, I think, disputes that three features of natural justice stand out, (i) the right to be heard by an unbiased tribunal, (ii) the right to have notice of charges of misconduct, and (iii) the right to be heard in answer to these charges. 14. Oral hearing has its own eminence in the adjudication process and is recognized as an important aspect of adjudication not only in India but across several jurisdictions. The Supreme Court in Automotive Tyre Manufacturers Assn. v. Designated Authority, (2011) 2 SCC 258 : 2011 SCC OnLine SC 130 at page 296 83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced

evidence, a personal hearing before taking affinal decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli [AIR 1959 SC 308] , if one person hears and other decides, then personal hearing becomes an empty formality. The Supreme Court in United States Jack R. GOLDBERG, Commissioner of Social Services of the City of New York vs. John KELLY et al. (23.03.1970 – USSC) MANU/USSC/0168/1970 held that "The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.16 It is not enough that a welfare recipient may present his position to the decision maker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they The Supreme Court in United States Jack R. GOLDBERG, Commissioner of Social Services of the City of New York vs.

John KELLY et al. (23.03.1970 – USSC) : MANU/USSC/0168/1970 held that do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context due process does not require a particular order of proof or mode of offering evidence. Cf. HEW Handbook, pt. IV, § 6400(a)." This US Judgment R. GOLDBERG (Supra) was further referred by Lord Bingham of House of Lords in case of Smith v Parole Board [2005] UKHL 1. 15. It is one of the established principles of Common Law that officials taking action of a judicial nature must give an adequate opportunity of being heard to a person against whom the action is proposed to be taken. The principle seeks to ensure fairness of

procedure in the dealings between public authorities and the citizens and promotes fair play in such dealings. When the statute provides for procedure for hearing the Constitutional Courts are duty bound to uphold such procedure and must ensure that meaningful opportunity of hearing must be provided. 16. In the given case without filing the reply, we are unable to understand how personal hearing can be justified. When the assessee is burdened with a tax liability, then the intent and the object of the statute are strictly to be complied with. Prima Facie, we, therefore, find that the sub-Section 4 of Section 75 of the CGST Act was completely shelved before the order dated 29.12.2023 was passed. The Supreme Court in Kalpraj Dharamshi and another (supra) has held that when the principles of natural justice has not been followed, the litigant would be entitled to invoke the jurisdiction of High Court under Article 226 of the Constitution of India. For the sake of brevity, Para 75 is relevant here and quoted below: "75. It has been clearly held, that when the proceedings invoked before a statutory authority are dehors the jurisdiction or when they are in breach of principles of natural justice, the party would be entitled to invoke the jurisdiction of the High Court under

Article 226 of the Constitution." 17. Therefore, in our considered view, we are not in agreement with the orders passed by the learned Single Bench and set aside the same. 18. Now coming back to the hearing, the judgments which has been relied on by counsel for the appellant i.e. Fino Paytech Limited (supra) and MS KEC International Limited (supra), also fall in the same line wherein, the High Courts have repeatedly held that when the statute contains a mandate of hearing which is synonym to natural justice, it cannot be given a go bye or can be made porous, therefore, the order dated 29.12.2023 wherein, it has been recorded that the personal hearing was given on 11.10.2023 and 25.10.2023 would amount to defeat the rules of natural justice and the object of the legislation. The order if is allowed to be maintained, it would amount to allow a script with flaws. Accordingly, the appellant would be entitled for personal hearing according to mandate of sub-Sections (4) and (5) of Section 75 of the CGST Act. 19. The parties may appear before the Respondent No. 4 i.e. Joint Commissioner of State Tax on 08.05.2024. 20. Accordingly, the appeal is allowed.

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Interest Applicable for Delayed GST Return Filing, Despite Tax Payment from Credit Ledger

CA Santosh Vasantrao Dhumal 28 Apr 2024 1,080 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : Sincon Infrastructure Pvt. Ltd. Vs Union of India (Patna High Court)

Appeal Number : Civil Writ Jurisdiction Case No. 11621 of 2023

Date of Judgement/Order : 19/04/2024

Related Assessment Year :

Courts : All High Courts Patna High Court

Download Judgment/Order

Sincon Infrastructure Pvt. Ltd. Vs Union of India (Patna High Court)

In case of Sincon Infrastructure Private Limited Versus Union of India (Civil Writ Jurisdiction Case No. 11621 of 2023) Patna High court observed that, Benefit of ITC, will accrue to the tax payer,

when he files the return and claim the ITC on self-assessment basis and not at the time, he makes payment to supplier. If there is a delay in furnishing of returns, then obviously there is a delay in the input tax credit coming into the Electronic Credit Ledger. So on delay occasions the taxpayer has to pay the interest, by himself; which is a statutory compulsion independent of any order or demand made under the Act. Department Audit was conducted and on the basis of finding and reply submitted by the taxpayer, The Proper Officer after considering the reply invoked Section 74 read with Section 65 (7) of the Act and issued a notice with respect to the seven of the nine objections raised on audit. Show cause notice was issued for the Interest on late payment of Tax. The petitioner is aggrieved with the peremptory demand made and the recovery proceeded with, when the objections against the said demand on interest also ought to have been considered by the Proper Officer. Court Finding and Conclusion:- In the goods and services tax regime, the levy of interest would depend upon whether the debit has been made from the Electronic Credit Ledger or the Electronic Cash Ledger. Rule 88B of the CGST Rules, 2017 specifies the manner of calculating

interest on delayed payment of tax, wherein sub-rule (1) is a verbatim reproduction of the proviso to Section 50.Sub-rule (2) of Rule 88B specifies the levy of interest in accordance with sub-section (1) to Section 50. in M/s. India Yamaha Motor Pvt. Ltd. v. the Commissioner of CGST & Central Excise; W.P. No. 19044 of 2019 and W.M.P. No. 18404 of 2019–no interest need be levied on the balance lying to its credit in the Electronic Cash Ledger and Electronic Credit Ledger. Section 50(1) and its proviso cannot be interpreted in isolation. Section 39 has the nominal heading of 'Furnishing of returns' and the returns are to be furnished for every calendar month or part thereof electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars; in such form and manner as prescribed. Sub-sections (2) to (5) of Section 39 refers to the different assessees and the different manner of tax remittances which is not relevant for our purpose; nor is sub-section (6), which speaks of extension of timing for furnishing of returns by the Commissioner. Sub-section (7) requires every registered person, who is required to furnish a return under sub-section (1) to pay to the government the tax due as per

such return not later than the last date on which he is required to furnish such return. Hence, the payment of tax has to be made along with the furnishing of the return on the last date or any date prior to that. Ads by Section 41 deals with availing of input tax credit and as per sub-section (1) subject to such conditions and restrictions prescribed, every registered person is entitled to avail the credit of eligible input tax, as self-assessed in his return and such amount shall be credited to his Electronic Credit Ledger. The mere fact that the supplier of the assessee remitted tax to the government; which the assessee has paid on purchase, would not by that alone create a credit in the Electronic Credit Ledger. The credit of input tax is occasioned in the Electronic Credit Ledger only when the return is filed and the eligible input tax is claimed in the returns so filed; which is the self-assessment made by the assessee. Insofar as the Electronic Cash Ledger is concerned we have seen that the payment of tax, interest penalty or any other dues is occasioned only when the return is furnished; by reason of which a debit is facilitated from the credit in the Electronic Cash Ledger which is then transferred to the coffers of the State. This is dehors the time at which the assessee

made an electronic cash transfer, enhancing the credit in the Electronic Cash Ledger. If there is a delay in furnishing of returns then obviously there is a delay in the input tax credit coming into the Electronic Credit Ledger and a resultant payment being made to the Government as tax, interest, penalty or other amounts due under the Act. Section 50(1) specifically mulcts liability of interest on any delayed furnishing of return, since it is the furnishing of the return which results in payment of tax, interest, penalty or other amounts due under the Act as self-assessed in the return. Neither the deposit made in the cash ledger nor the remittances made on the tax paid on purchases, results in payment of the amounts due under the Act to the Government. Insofar as the payment of tax by the supplier on the purchases made by an assessee, even the credit of the input tax occurs in the Electronic Credit Ledger only when the return is furnished on self-assessment raising a claim for input tax. On furnishing of delayed returns, interest liability would be automatic, whether the payment be made from the Electronic Credit Ledger or Electronic Cash Ledger as per the provisions of Section 50(1). It also mandates that on delay occasioned the assessee has to pay the interest,

by himself; which is a statutory compulsion independent of any order or demand made under the Act. With respect to a debit made from an Electronic Credit Ledger if there is delay in furnishing of returns, which also presupposes a delay in payment of amounts due under the Act to the coffers of the Government, there is an interest liability cast on the assessee. There could be instances where there is credit in the Electronic Credit Ledger, of the input tax entitled to the assessee for the previous years; which has not been refunded or set off as against the earlier returns; for one reason or the other. so court dismissed the petition. FULL TEXT OF THE JUDGMENT/ORDER OF PATNA HIGH COURT The petitioner an assessee under the Central Goods and Services Tax Act, 2017 (for brevity, the Act) is aggrieved with the peremptory recovery sought as against two objections raised on audit, relating to interest payable for the assessment years 2017-18 and 2018-19, while the other seven objections raised on audit are the subject of a notice issued under Section 74 of the Act. 2. Sri Gautam Kejriwal, the learned counsel for the petitioner argued that the audit report dated 26.08.2022 (Annexure-P/3) raised nine objections, all of which were replied to by Annexure-P/4

dated 12.09.2022. The Proper Officer after considering the reply invoked Section 74 read with Section 65 (7) of the Act and issued a notice with respect to the seven of the nine objections raised on audit. As far as two objections relatable to the interest payable for the two assessment years, straight away a demand notice was issued under Section 74(5) read with Rule 142 of the Act by Annexure-P/7, dated 30.12.2022. Later a notice under Section 74(1) was issued as Annexure-P/9 dated 18.07.2023, regarding the seven objections other than the two for which a demand was raised. The petitioner is aggrieved with the peremptory demand made and the recovery proceeded with, when the objections against the said demand on interest also ought to have been considered by the Proper Officer. It is pointed out that the Proper Officer even as per the demand notice has acted on the dictates of the Monitoring Committee. 3. The question of interest though automatic under the Act depends upon the factual situation of when the tax became due and when the payment of tax was made and under what mode. In the goods and services tax regime, the levy of interest would depend upon whether the debit has been made from the Electronic Credit Ledger or the Electronic

Cash Ledger. It is the submission of the learned counsel for the petitioner that even as per the audit report as seen at Annexure- P/3, for the financial year 2018-19, the GST liabilities were offset from the Electronic Credit Ledger. The audit report notices that Section 51 of the Act requires payment of interest, if delay is occasioned and hence, the liability mulcted on the petitioner. However, it is pointed out that the proviso to Section 50(1) clearly imposes an interest liability only when the tax payment is made by a debit to the Electronic Cash Ledger. As far as the Electronic Credit Ledger is concerned it is the input tax credited to the assessee's account, which is the tax made on his purchases remitted to the government by the assessee's suppliers. This amount is already in the coffers of the government and the set off towards output tax is only a book adjustment, which would absolve the assessee from the interest liability. The learned counsel for the petitioner relied on a decision of the learned Single Judge produced as Annexure-P/11 of the High Court of Judicature at Madras in M.s. Refex Industries Ltd. vs. The Assistant Commissioner of CGST & Central Excise in W.P. Nos. 23360 and 23361 of 2019 decided on 06.01.2020. The specific proviso under Section 50(1) has been

relied on to find that this was introduced to correct an anomaly in Section 50(1) and required a levy of interest only on that part of the tax which is paid in cash. 4. The learned Additional Solicitor General, Dr. K.N Singh, however, pointed out that proviso to Section 50(1) only enables levy of interest when the debit is made from a cash ledger and it does not prohibit interest levy when the debit is made from a credit ledger. Whether it be from the credit ledger or the cash ledger there can be payment of tax only when the return is filed and if there is delay; Section 50(1) clearly mulcts liability of interest on the assessee, who committed such delay. 5. Insofar as the contention regarding the Proper Officer having acted on the dictates of the Monitoring Committee, Section 2(16) is pointed out to indicate the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963, is the Board with respect to the CGST Act. Section 168(1) is pointed out, wherein power has been conferred on the Board to issue instructions or directions. It is based on such power conferred; which the administrative officers of the department are obliged to follow, that the Proper Officer proceeded for recovery. It is pointed out that Rule 88B of the CGST Rules, 2017

specifies the manner of calculating interest on delayed payment of tax, wherein sub-rule (1) is a verbatim reproduction of the proviso to Section 50. Sub-rule (2) of Rule 88B specifies the levy of interest in accordance with sub-section (1) to Section 50. The learned ASG specifically points out that the very same Single Judge of the High Court of Madras, who delivered Annexure-P/11 decision, has held otherwise in M/s. India Yamaha Motor Pvt. Ltd. v. the Commissioner of CGST & Central Excise; W.P. No. 19044 of 2019 and W.M.P. No. 18404 of 2019 dated 29.08.2022. Therein, after noticing the earlier cited judgment and the proviso to Section 50 (1) the argument of the assessee therein, that no interest need be levied on the balance lying to its credit in the Electronic Cash Ledger and Electronic Credit Ledger was negatived. Reliance is also placed on a Division Bench judgment of the High Court of Jharkhand at Ranchi in M/s RSB Transmissions (India) Limited vs. The UOI & Ors. in W.P (T) No. 23 of 2022. The recovery has to be sustained is the contention raised by the learned ASG. 6. We will first look at the decisions before considering the law applicable to the facts arising in the instant case. Annexure-P/11 decision relates to an assessee

under the CGST Act wherein, belated returns were filed and the Proper Officer issued a demand computing the interest to be remitted on the taxes accompanying the returns. The assessee objected to the same on the ground that they have sufficient input tax credit (for brevity, ITC) and thus interest cannot be demanded. The Court framed the issue as to whether interest would be at all payable on the component of ITC, that was admittedly available with the department throughout; which had been adjusted towards the tax demands for the period August 2017 to March 2018. The learned Single Judge after considering the facts reframed the question as to whether the credit due to an assessee, if paid by way of adjustment can still be termed belated or delayed. It was held that the term 'delayed' connotes a situation of deprival, which contemplates the State being deprived of the amounts representing tax component, till the time the return is filed, accompanied with remittance of tax. The availability of ITC according to the learned Single Judge ran counter to the concept of deprival since, the credit in the Electronic Credit Ledger of the assessee is the tax paid by the assessee to its supplier and remitted by that supplier to the coffers of the

State. The reasoning seems to be that the tax paid by the supplier of the assessee was always available with the State for its use and hence, the mere book adjustment by way of remittance at the time of filing of a return, even if belated, would not enable the State to mulct the liability of interest on such adjustments made from the credit ledger. The proviso introduced under Section 50(1) was specifically noticed finding it to have clarified an anomaly and provided for a liability to interest only on payments made from the cash ledger. 7. The very same learned Single Judge, in M/s. India Yamaha Motor Pvt. Ltd (supra) took a contrary stand after noticing the earlier decision and the proviso to Section 50 (1). The facts therein, indicate that there was a return filed for the month of July 2017, which was not properly submitted and the process was aborted. The output tax liability had been remitted in full into the cash ledger even prior to the filing of the return. The petitioner had been constantly trying to correct the error which resulted in the monthly returns being delayed thus prompting the Proper Officer to levy interest on the delayed payments. By an interim order the Commissioner was directed to hear the petitioner and pass orders. The

Commissioner's order was extracted in the decision which indicates that the assessee's claim was that there was eligible ITC in the Electronic Credit Ledger and sufficient cash balance in the Electronic Cash Ledger. The deposit of cash to the Electronic Cash Ledger since was before the due date of filing of returns for the period from July 2017 to October 2017, there could be no liability to interest was the contention. 8. The Commissioner found that unless the assessee files the returns and a debit entry towards tax liability is made from the electronic credit and cash ledgers, in respect of the tax liability for the relevant tax period, it cannot be considered as a payment of tax, duly made under the Act. The learned Single Judge noticed Section 50(1) and its proviso and held that it would be risky from the point of revenue to merely presume that the availability of electronic credit should be assumed to be utilization; insulating the assessee from the levy of interest. It was held that unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to assume that available credit will be set off against tax liability. The first case dealt with was a debit from the Electronic Credit Ledger and the second case from the

Electronic Cash Ledger. We need not dwell too much on the apparent conflict in view, since the decisions do not have the sheen of a binding precedent. 9. M/s RSB Transmissions (India) Limited (supra) again raised a question as to whether, the amount deposited as tax through valid challans by a registered person into the government exchequer, prior to the filing of GSTR-3B returns, could be treated as discharge of the tax liability and whether there could be interest levied, deeming such delayed filing of returns to be a circumstance which attracts Section 50 of the GST Act. Therein, the period was between July 2017 to 2019 and the amount of tax had already been deposited in the Electronic Cash Ledger, even prior to the filing of the return. We have to immediately notice that the facts indicate a circumstance clearly covered under the proviso to Section 50(1). The learned Division Bench found that the Electronic Cash Ledger is an account of tax ledger (sic) maintained with the department reflecting online deposits; made from accounts maintained by the assessee with banks, from which payments can be made as tax. The mere deposit of an amount in an Electronic Cash Ledger does not make it a tax deposit or payment to a government

account. After extracting the various provisions especially Section 49 it was found that Explanation to sub-section (11) deems the date of deposit in the Electronic Cash Ledger to be a mere deposit which does not amount to payment of the tax liability. Only when the Electronic Cash Ledger is debited towards payment of tax, interest or penalty or any other dues under the Act, the money gets transferred to the State for utilization. It was also found that the scheme of the Act is that no person can make payment of tax prior to filing of the returns though the deposit may be made or lying, in the Electronic Cash Ledger. The tax liability, it was categorically held, gets discharged only upon filing of the GSTR-3B return, the last date of which is the 20th of the succeeding month on which the tax is due. A return could be filed even prior to the last date and such tax liability can be discharged on its filing but a mere deposit in the cash ledger on any date prior to filing of GSTR-3B return does not amount to payment of tax due, into the State exchequer. 10. We bow in approval, to the proposition as laid down by the Division Bench of the High Court of Jharkhand at Ranchi, even though this too does not have the sheen of a precedent. We are of the opinion that this applies squarely to

the Electronic Credit Ledger also; which we would demonstrate from the various provisions under the Act. As far as the two conflicting decisions of the learned Single Judge we agree with the later decision in M/s. India Yamaha Motor Pvt. Ltd (supra) and would demonstrate as to how, the proposition as laid down in the first decision would be contrary to the scheme and provisions of the GST Act. 11. Section 50(1) and its proviso cannot be interpreted in isolation. Section 39 has the nominal heading of 'Furnishing of returns' and the returns are to be furnished for every calendar month or part thereof electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars; in such form and manner as prescribed. Sub-sections (2) to (5) of Section 39 refers to the different assessees and the different manner of tax remittances which is not relevant for our purpose; nor is sub-section (6), which speaks of extension of timing for furnishing of returns by the Commissioner. Sub-section (7) requires every registered person, who is required to furnish a return under sub-section (1) to pay to the government the tax due as per such return not later than the last date on which he is required

to furnish such return. Hence, the payment of tax has to be made along with the furnishing of the return on the last date or any date prior to that. 12. Section 41 deals with availing of input tax credit and as per sub-section (1) subject to such conditions and restrictions prescribed, every registered person is entitled to avail the credit of eligible input tax, as self-assessed in his return and such amount shall be credited to his Electronic Credit Ledger. Hence, the credit to the Electronic Credit Ledger occurs only on the self-assessment, which, as contemplated in the statute occurs, only on furnishing a return. The mere fact that the supplier of the assessee remitted tax to the government; which the assessee has paid on purchase, would not by that alone create a credit in the Electronic Credit Ledger. The credit of input tax is occasioned in the Electronic Credit Ledger only when the return is filed and the eligible input tax is claimed in the returns so filed; which is the self-assessment made by the assessee. 13. Now, we look at what an Electronic Cash Ledger and Electronic Credit Ledger are; which are defined under sub-sections (43) and (46) of Section 2 as the ledger referred to respectively in sub-section (1) and (2) of Section 49. Section 49 has the nominal heading

of ‘Payment of tax penalty and other amounts’. Sub-section (1) defines an Electronic Cash Ledger as a ledger available to the assessee, to credit by way of internet banking or by way of credit or debit cards or NEFT or RTGS or by such other mode, subject to conditions and restrictions as may be prescribed. As held by the Division Bench of the High Court of Jharkhand the Electronic Cash Ledger is an account maintained by the assessee with the department and the credits made to itself is not necessarily payment of tax. The Electronic Cash Ledger is akin to a current account maintained by a legal entity with a Bank; where no interest is accrued with only the restriction that the debits made, have to be as against payment of tax, interest, penalty or any other dues under the GST Act. Section 49(1) read with the provisions of Section 39 as spoken of by us hereinabove, would indicate that the payment of tax occurs only on the furnishing of returns, which payment is by way of a debit made from the cash ledger. 14. Now, we look at the Electronic Credit Ledger as spoken of in sub-section (2) of Section 49, which specifically indicates that input tax credit is one credited to the assessee’s Electronic Credit Ledger on a self-assessment made in the return of a registered person.

This again indicates that only when a return is filed, the input tax credit accrues to the benefit of the assessee and not when the tax paid by an assessee as a purchaser, to its supplier, is remitted by the supplier to the State. The remittance by the supplier definitely goes to the coffers of the government but it transforms itself into a credit in favour of the purchaser, as an input tax credit, only when the purchaser furnishes a return in accordance with Section 39 and makes a self-assessment in the return by claiming the input tax credit. 15. It is with these provisions in mind that we have to look at Section 50. Section 50 has the nominal heading of 'Interest on delayed payment of tax'. Sub-section (1) prescribes that every person liable to pay tax under the Act and the Rules, but fails to pay it to the Government within the period prescribed, for the period of delay, would be liable to pay by himself interest at such rate not exceeding 18 percent as notified by the Government on the recommendations of the Council. Hence, when a delay occurs in payment of tax there is a liability on the assessee from the registered person to pay on its own and satisfy the interest liability for the period of delay. Insofar as the Electronic Cash Ledger is concerned we have seen that the payment of tax,

interest penalty or any other dues is occasioned only when the return is furnished; by reason of which a debit is facilitated from the credit in the Electronic Cash Ledger which is then transferred to the coffers of the State. This is dehors the time at which the assessee made an electronic cash transfer, enhancing the credit in the Electronic Cash Ledger. 16. As far as the input tax credit is concerned the credit itself occurs only when the return is furnished, claiming the input tax credit. The set off as against the output tax is also occasioned only when such set off is claimed in the return as against the output tax from the Electronic Credit Ledger. Hence, whether it be the Electronic Credit Ledger or Electronic Cash Ledger interest is payable on the delay occasioned in payment of tax; which payment is occasioned only on the furnishing of the return and the simultaneous debit made from either of these ledgers; Cash Ledger or Credit Ledger. The payment of tax and furnishing of return have to occur simultaneously and none can separate one from the other. 17. M.s. Refex Industries Ltd. (supra) found the debit from the Credit Ledger attracting no levy of interest, erroneously relying on the concept of deprival to be the basis of finding delay; which observation we make

with all the respect at our command. The reasoning was that the aspect of deprival would be absent insofar as the amounts in the Electronic Credit Ledger being always available with the Government. Our finding is more in consonance with the judgment of the very same learned Single judge in M/s. India Yamaha Motor Pvt. Ltd (supra) wherein the Commissioner's order, upheld in the decision, more or less follows our interpretation. The learned Single Judge correctly held that "unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to assume that available credits will be set off against tax liability" (sic-para-16) 18. As we observed we also perfectly agree with the Division Bench of the High Court of Jharkhand and would only add that the reasoning for sustaining a levy of interest, to be related to a debit under the Electronic Cash Ledger, by filing of returns, equally applies to the debit under an Electronic Credit Ledger; more so since the credit in the Electronic Credit Ledger also is occasioned only when the returns filed for the tax period, claims the input tax paid. 19. Now, we come to the effect of the introduction of the proviso to Section 50(1). The proviso mandates that the interest on tax

payable in respect of supplies made, during a tax period and declared in the return for that period, which returns is furnished after the due date under Section 39, shall be payable on that portion of tax, which is paid by debiting the Electronic Cash Ledger; except when proceedings under Section 73 or 74 in respect of the said period is commenced. 20. The primary fallacy in the argument of the petitioner is the interpretation placed on the proviso fully absolving a debit from the Electronic Credit Ledger from the liability of interest. At the risk of repetition, the input tax credit and the resultant payment of tax from the Electronic Credit Ledger occurs only when a return is furnished. If there is a delay in furnishing of returns then obviously there is a delay in the input tax credit coming into the Electronic Credit Ledger and a resultant payment being made to the Government as tax, interest, penalty or other amounts due under the Act. The anomaly sought to be rectified is not of prohibiting a levy of interest in the context of a delayed return filed, when the payment of amounts due under the Act is made from the Electronic Credit Ledger. The anomaly sought to be rectified is insofar as the assessee claiming the deposit in the cash ledger to be, in payment of

tax, interest, penalty or other amounts due under the Act. As we noticed, the deposit made into the cash ledger by an assessee does not necessarily deem it to be a payment of the dues under the Act from the date of deposit. The deposit is akin to a current account maintained, from which debits have to be made for the purpose of payment of tax, interest, penalty or other amounts due under the Act. Such debits would be made and a resultant payment to the coffers of the State, only when a return is furnished. The proviso to Section 50(1) intended dispelling of any notion that the amounts merely deposited in the Electronic Cash Ledger would be satisfaction of the dues under the Act as on the date of deposit. It was not intended to prohibit the levy for a debit made from the Electronic Cash Ledger; which also occurs and translates into a payment of dues under the Act only when the returns are furnished. 21. On the interpretation placed by us on the various provisions under the Act, which also is the proper understanding of the very scheme of the enactment, we are persuaded to reject the claim of the petitioner that the proviso of Section 50(1) mandates a levy of interest only when there is a delayed furnishing of return and debit made and payment effected

from the Electronic Cash Ledger. As we found Section 50(1) specifically mulcts liability of interest on any delayed furnishing of return, since it is the furnishing of the return which results in payment of tax, interest, penalty or other amounts due under the Act as self-assessed in the return. Neither the deposit made in the cash ledger nor the remittances made on the tax paid on purchases, results in payment of the amounts due under the Act to the Government. Insofar as the payment of tax by the supplier on the purchases made by an assessee, even the credit of the input tax occurs in the Electronic Credit Ledger only when the return is furnished on self-assessment raising a claim for input tax. 22. With this interpretation we have to find that, on furnishing of delayed returns, interest liability would be automatic, whether the payment be made from the Electronic Credit Ledger or Electronic Cash Ledger as per the provisions of Section 50(1). It also mandates that on delay occasioned the assessee has to pay the interest, by himself; which is a statutory compulsion independent of any order or demand made under the Act. The proviso only dispels notion of any anomaly and further fortifies the scheme of the Act and enables mulcting of liability on a delayed payment

made from the Electronic Cash Ledger; despite the cash ledger having such amounts deposited by way of online transactions even prior to the due date of filing of return. 23. We, on the said interpretation, look at the facts of the case. The audit report as was pointed out by the learned counsel for the petitioner at paragraph no. 1 speaks of non-payment of the amount of interest amounting to Rs. 82,57,170/- on delayed payment through DRC-3 in the financial years 2018-19. The taxpayer was found to have offset the GST liabilities only on 12.05.2020 when the last date of furnishing monthly returns was on the succeeding month. The offsetting of GST liabilities occurs only on furnishing of return and the credit to the input tax ledger also occurs only on such furnishing of returns. We specify that the input tax credit is claimed only for the assessment year 2018-19, which rider we make only for the purpose of the further clarification we would provide immediately after the narration of facts. Paragraph no. 2 of the audit report speaks of non-payment of interest amounting to Rs. 33,03,954/- on delayed cash payment through DRC-3 in the financial year 2017-18. Therein, the payment was made from the Electronic Cash Ledger offsetting the liabilities only on

30.01.2020; which is presumed to be the date of furnishing of return also. Insofar as the financial year 201718, there can be no dispute raised even on the arguments put forth by the petitioner that interest liability visits the assessee-petitioner; since the debit is from the Electronic Cash Ledger. 24. Now, we look at the peremptory order of recovery passed by the Proper Officer at Annexure-P/10 under Section 79. The amounts levied are that noticed in paragraph no. 1 and 2 as extracted hereinabove for the assessment year 2017-18 and 2018-19. The order specifically speaks of a personal hearing afforded at the Monitoring Committee Meeting (MCM) and the Committee having rejected the submissions made and required the assessee to make the deposit of the interest amounts into the government account under the proper head of CGST/SGST interest. 25. We are clear in our minds that there can be no such dictate given by the Monitoring Committee and there is no provision for such a hierarchical decision to be made binding on the Proper Officer. Section 2(16) specifies the Board under the Act to be that constituted under the Central Board of Revenues Act and Section 168 confers such Board, power to issue instructions or directions. It is the submission of the

learned ASG that the Monitoring Committee is one constituted by the Board and the Proper Officers are obliged to follow the directions issued. The power conferred on the Board definitely empowers the Board to issue directions and instructions which the departmental officers are to scrupulously comply with; but not the Tribunals constituted under the Act and definitely not the Courts of law. However, the Board by the statutory power conferred to issue instructions and directions cannot constitute a body which could issue binding orders to the departmental officers on the principle of 'delegatus non potest delegari'. 26. We have seen the counter affidavit filed by the respondents which has produced Annexure-R(A) being the directions of the Monitoring Committee Meeting which is Annexure-P/3 produced by the petitioner. The objections made under audit and the decisions of the Monitoring Committee does not oblige the Proper Officer to follow it verbatim and the Proper Officer is the person who has to consider the matter and arrive at a decision insofar as the final assessment is concerned as also process and effect recovery. 27. Be that as it may, insofar as the levy with respect to assessment year 2017-18, the petitioner can have no dispute

since obviously the debit was made from the Electronic Cash Ledger. Hence, a remand made to the Proper Officer of the demand under Annexure-P/10, for the year 2017-18 would be a useless formality. 28. We have also found that even with respect to a debit made from an Electronic Credit Ledger if there is delay in furnishing of returns, which also presupposes a delay in payment of amounts due under the Act to the coffers of the Government, there is an interest liability cast on the assessee. There could be instances where there is credit in the Electronic Credit Ledger, of the input tax entitled to the assessee for the previous years; which has not been refunded or set off as against the earlier returns; for one reason or the other. One of which, could be no sales having been carried out in the earlier month thus creating no output tax liability on the assessee. In this context, we cannot but notice the judgment of M.s. Refex Industries Ltd. (supra) wherein the learned Single Judge noticed the contention of the assessee and framed a question as to whether interest would be at all payable on the component of ITC which was admittedly available with the department throughout the period of delay. The availability of input tax in the Electronic Credit Ledger would be

inconsequential since the tax payment is only on furnishing of returns. The credit available in the Electronic Credit Ledger would be set off against output tax only on the furnishing of returns for the tax period, when debit is made from the Credit Ledger. On the above reasoning we are of the opinion that even for the year 2018-19 a remand would be an useless formality. 29. We dismiss the writ petition and leave the parties to,suffer,their,respective,costs.

JUDGEMENTS PAGE No- 103 to 167

Services Linked to Transportation Fall Under Goods Transport Agency Purview

Editor1 28 Apr 2024 477 Views 0 comment Print Goods and Services Tax | Judiciary Case Law Details

Case Name : In re DRS Dilip Roadlines Limited (GST AAR Telangana)

Appeal Number : Order No. TSAAR Order No.07/2024

Date of Judgement/Order : 26/04/2024

Related Assessment Year :

Courts : AAR Telangana Advance Rulings

Download Judgment/Order

In re DRS Dilip Roadlines Limited (GST AAR Telangana)

The Authority for Advance Ruling, Telangana, recently issued an order under Section 98(4) of the Central Goods and Services Tax Act, 2017, and under Section 98(4) of the Telangana Goods and Services Tax Act, 2017, in response to an application filed by M/s. DRS Dilip Roadlines Limited. The

application sought clarification on whether the company's activities qualify as those of a Goods Transport Agency (GTA) under the GST framework. M/s. DRS Dilip Roadlines Limited operates as a Goods Transport Agency, primarily engaged in the transportation of goods by road. Alongside transportation services, the company offers ancillary services such as packing, loading, unloading, and unpacking. These services are often bundled together, especially during the shifting of household goods. The key query raised by the company pertained to the classification of its bundled services under the definition of a Goods Transport Agency as per GST regulations. To address this, the authority examined various provisions of the CGST Act and relevant notifications. The authority highlighted the concept of composite supply, which refers to a supply consisting of two or more taxable supplies of goods or services naturally bundled and supplied together. It emphasized the criteria for identifying a composite supply and referenced legal precedents to elucidate the same. Furthermore, the authority analyzed Notification No. 12/2017-CT(R), which defines Goods Transport Agency, and discussed the interpretation of the term "in relation to" in the context of

transportation services. It concluded that services such as packing, loading, unloading, and unpacking would fall under the purview of a Goods Transport Agency if they are directly linked to the transportation of the same goods. Based on its analysis, the authority ruled that the activities of DRS Dilip Roadlines Limited would be classified as falling under the Goods Transport Agency if the services provided are in relation to the transport, packing, unpacking, loading, and unloading of the same goods. However, if the services are in relation to different goods, they would not be classified as such. Ads by FULL TEXT OF THE ORDER OF AUTHORITY FOR ADVANCE RULING, TELANGANA [ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.] ****** 1. M/s. DRS Dilip Roadlines Limited, Flat No.306, 3rd Floor, Kabra Complex, M.G.Road, Secunderabad, Hyderabad, Telangana-500 003(36AADCD1865C1ZY) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules. 2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions.

Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act. 3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017. 4. BRIEF FACTS OF THE CASE: 4.1 M/s. DRS Dilip Roadlines Limited., are a Goods Transport Agency (GTA). Their main activity under GTA is transport of goods by road. They stated that they have opted for "Forward Charge Mechanism (FCM)" vide their declaration dt. 15-03-2023 filed before Ramgopalpet-I, GST Range, Secunderabad Division. As GTA

they have claimed that they undertake the following activities: 1. Packing 2. Loading 3. Transportation 4. Un loading 5. Un packing. They have submitted that transportation of goods is their main activity and packing, loading, unloading & unpacking are ancillary to their main activity and that their clients prefer their services as they provide all the above services. They further submitted that their clients prefer the bundled service during shifting of household goods which includes packing, loading, unloading & unpacking apart from transportation service. The applicant submits that certain of their clients are expressing doubt if their activity of the above mentioned bundled service falls under GTA. Hence, this application. The applicant relied on the following: 1. Notification No. 12/2017-CT(R), Dt. 28-06-2017 – Point No.2(ze) i.e. Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. 2. FAQ – Transport & Logistics – released by CBIC – Point No. 6 3. CBEC Circular No. 104/07/2008-ST, dt. 06-08-2008 4. Section 2 (30) of the CGST Act, 2017 5. Advance Ruling in the case of IAC Electricals Pvt Ltd (GST AAR, West Bengal) 5. QUESTIONS RAISED: 1. Whether their

activity falls under Goods Transport Agency? 6. PERSONAL HEARING: A personal hearing notice was issued to the applicant to appear for personal hearing on 0804-2024. Sri N. V. Sudhakar, DGM-Accounts has appeared and argued the case. The Authorised Representatives reiterated the contentions already submitted along with the application. Further, the Authorised Representative/Applicant M/s. DRS Dilip Roadlines Limited, Hyderabad reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act. The Applicant Opines that their activity comes under GTA. 7. DISCUSSION & FINDINGS: The applicant is a Goods Transport Agency and according to his statement at Sl. No. 15 of the application they have opted for Forward Charge Mechanism (FCM) by submitting the required form to their jurisdictional officer. The question raised by them is whether the supply of services including transportation, packing, loading, unloading & unpacking forms a single bundled supply, and whether the principal supply in this transaction is transportation. The

composite supply is defined in the CGST Act in Section 2(30) as follows: “Composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply. As seen from the above definitions a composite supply is essentially a naturally bundled supply where two or more different supplies invariably exist along with each other. The Hon’ble High Court of Kerala in the case of Abott Health Care Pvt. Ltd., (2020) 74 GSTR 37 (Kerala) held that a composite supply must take into account supplies as affected at a given point in time on “as is where is” basis. Therefore a naturally bundled supply should possess the following attributes (as mentioned in Education Guide on Taxation of Services published by CBE & C on 20.06.2012 at Para 9.2.4): a. There is a single price or the customer pays the same amount, no matter how much of the

package they actually receive or use. b. The elements are normally advertised as a package. c. The different elements are not available separately. d. The different elements are integral to one overall supply – if one or more is removed, the nature of supply would be affected. Further the illustration in the definition in the CGST Act mentioned above clarifies the context of composite supply. As seen from the illustration the supply of service i.e., insurance and goods go alongside each other. The Hon'ble Supreme court of India in a catena of case law has ruled that illustrations in a statute are part of the statute and help to elucidate the principle of the Section (Dr. Mahesh Chandra Sharma Vs Smt. Raj Kumari Sharma – AIR 1996 SC 869). Therefore a composite supply should be similar to a supply mentioned in the illustration to the definition in Section 2(30), where two or more taxable goods or services are supplied along with each other to constitute a composite supply. The Entry No. 9(iii) of Notification No. 11/2017-CT(R), Dt. 28-06-2017 enumerates GTA as follows: (iii) (a) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use) supplied by a GTA... 4. Explanation.- for the purpose of this

notification,- “goods transport agency” means ,any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. The Hon’ble Supreme Court of India in the case of Doypack Systems Pvt. Ltd. vs. Union of India (UOI) and Ors. (12.02.1988 – SC) AIR 1988 SC 782 clarified the meaning of the expression “in relation to” as follows: “In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 521 where it is stated that the term ‘relate” is also defined as meaning to ring into association or connection with. It has been clearly mentioned that “relating to” has been held to be equivalent to or synonymous with as to “concerning with” and “pertaining to”. Similarly the Hon’ble Supreme Court of India in the case of Madhav Rao Jivaji Rao Scindia Vs Union of India AIR 1971 SC 530 observed that the expression “relating to” means to bring into relation or establish a relation. It was further clarified that there should be a direct and immediate link with a covenant and that there cannot be any independent existence outside such covenant. The entry in the notification enumerates ‘Services in relation’ to transport of goods by road. Thus all services rendered in relation to transportation of

goods including packing, loading, unloading & unpacking fall under this entry provided that such services have a direct and immediate link with the covanent/agreement for transport of goods i.e., the contract shall be for transport, packing , loading, unloading and unpacking of the same goods. Therefore, if the transactions made by the applicant are in substance contracts for transport, packing, loading, unloading of the same goods entrusted by their customers, then such services fall under Entry 9(iii) of notification 11/2017-CT (R) dt.28-06-2017 i.e., goods transport Agency 8. In view of the foregoing, we rule as follows: In view of the above discussion, the questions raised by the applicant are clarified as below: Questions Ruling 1. Whether their activity falls under Goods Transport Agency? (a) Yes. If the agreement for transport, packing, unpacking, loading & unloading for the same goods. (b) No. If service of transport and other services are in relation to different goods. [under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]

JUDGEMENTS PAGE No- 113 to 167

Penalty cannot be levied for late credit of Payment by Bank to GSTN Account CA Sandeep Kanoi 26 Apr 2024 6,453 Views

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Case Law Details

Case Name : Bhole Baba Milk Food Industries Limited Vs Union Of India And 2 Others (Allahabad High Court) Appeal Number :

Writ Tax No. 1431 of 2023 Date of Judgement/Order : 16/04/2024 Related Assessment Year : Courts : All High Courts Allahabad High Court Download Judgment/Order Bhole Baba Milk Food Industries Limited Vs Union Of India And 2 Others (Allahabad High Court) In a recent case involving Bhole Baba Milk Food Industries Limited vs. Union of India, the Allahabad High Court addressed the issue of levying penalties for delayed credit of payments to GSTN accounts. The petitioner sought relief from penalties and interest charged for alleged non-filing of returns due to delayed bank transactions. The

petitioner initiated a payment of Rs. 2,08,30,721/- for April 2023 on 19.05.2023, within the prescribed time. However, discrepancies arose regarding the actual credit time to the GSTN account. The bank claimed the payment was credited later, while the GSTN stated otherwise. The court emphasized that the petitioner initiated the payment within the stipulated timeframe, absolving them of failure in timely tax payment. The imposition of penalties under Sections 47 and 50 of the U.P. GST Act, 2017 hinges on the taxpayer's failure to file returns or pay due taxes on time. Considering the delay attributable to the bank, the court deemed the penalty unwarranted. It urged the GSTN and the bank to establish a mechanism for real-time credit and debit entries to prevent future disputes. The court disposed of the petition, directing the adjustment of penalty and interest against future tax liabilities without additional interest. This case sets a precedent for fair treatment in instances of delayed bank transactions impacting GSTN credits, highlighting the need for efficient payment processing mechanisms. FULL TEXT OF THE JUDGMENT/ORDER OF ALLAHABAD HIGH COURT Ads by 1. Shri Arjit Gupta, holding brief of Ms. Pooja Talwar, learned counsel for the petitioner, Shir

Naveen Chandra Gupta, learned counsel for the GSTN, Shri Ankur Agrawal, learned counsel for the revenue and Shri Ankit Saran, learned counsel for the Bank. 2. The present writ petition has been filed for the following relief:- "(i) To issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner to file its GSTR 3B Return for the month April, 2023 treating to be within time. (ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to refund the amount of interest of Rs.107710.51 and penalty of Rs.100 for the non-filing of Return on 20.05.2023 illegally debited from the Electronic Cash Ledger of the petitioner (Annexure No.1 of the writ petition)." 3. At first, it may be noted, even according to the petitioner's own representation made to the GST Council (Annexure No.7 to the writ petition), the petitioner appears to have made the deposit of Rs.107710.51 and penalty of Rs. 100 for alleged non-filing of monthly return for the month of April, 2023. 4. On facts, it is admitted between the petitioner and its banker namely the State Bank of India that the petitioner had generated corporate e-payment Challan No.23050900386618 on 19.05.2023 for Rs.2,08,30,721/-. According to that, it was

generated on 19.05.2023 at 18:09:35 IST. It was approved by the Authorizer/ bank on 25.05.2023 at 13:01:00 IST. The bank further states that the said amount was credited to the Tax Pooling Account of GST No.36959656818 against reference No.CKW9686117. 5. On the other hand the GSTN in its affidavit has stated that the said amount was not remitted by the Bank on 25.05.2023 at 13:00 P.M., but it was credited later. 6. Whatever be the true facts, this much is clear that the petitioner had initiated the payment of tax for the month of April, 2023 within time, in the manner prescribed. The amount was debited from its account, within prescribed time. To that extent, “failure” may never be attributed to the petitioner- in timely payment of the tax amount. The levy of late fee (Section 47) and interest (Section 50) under U.P. GST Act, 2017 may arise only in the event of “failure” on the part of an assessee to file a return and/ or payment of due tax within time. 7. Insofar as the delay may be attributed exclusively to the respondent-bank after such payment was made by the petitioner within time, on that statement itself the levy of penalty remains unwarranted. What errors may have been committed by the bank/ or GSTN may not involve the petitioner. 8. Thus, leaving

it open to the GSTN and the Bank to device a better mechanism to ensure prompt credit and debit entries to arise in real time as may not create any doubts or disputes in future, the present writ petition stands disposed of as below. 9. The amount of penalty Rs.1,07,710.51/- and interest Rs.100/- deposited by the petitioner under protest may be adjusted against the tax liability for the month of April, 2024 onwards without incurring any liability as to interest on that amount.

JUDGEMENTS PAGE No- 118 to 167

HC remands Matter back as GST Order Uploaded Only on Portal

CA Sandeep Kanoi 26 Apr 2024 276 Views 0 comment Print Goods and Services Tax |

Judiciary Case Law Details

Case Name : Tvl. Mayur Granites Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : W. P.No.10483 of 2024

Date of Judgement/Order : 22/04/2024

Related Assessment Year : Courts : All High Courts Madras High Court Download Judgment/Order Tvl.

Mayur Granites Vs Assistant Commissioner (ST) (Madras High Court) The case of Tvl. Mayur Granites Vs Assistant Commissioner (ST) brought before the Madras High Court revolves around a challenge to an assessment order concerning GST. The crux of the matter lies in the contention that the petitioner was not afforded a reasonable opportunity

to contest the tax demand on its merits. Central to this challenge is the mode of communication regarding the assessment order, which was solely uploaded on the GST portal without any other form of communication to the petitioner. The petitioner argues that the lack of direct communication regarding the assessment order deprived them of the opportunity to contest the tax demand effectively. They contend that had they been informed through conventional means, they would have been able to provide satisfactory explanations for the discrepancies between their GSTR 3B and auto-populated GSTR 2A returns. Furthermore, the petitioner expresses willingness to remit 10% of the disputed tax demand as a condition for remand. The Government Advocate, representing the first respondent, acknowledges the issuance of a show cause notice preceding the impugned order. However, the crux of the matter remains the petitioner's lack of participation due to the absence of direct communication. Upon perusal of the impugned order, the court observes that the tax proposal was confirmed due to the petitioner's non-filing of objections or participation in the personal hearing. However, considering the petitioner's

assertion of being able to explain the discrepancies given an opportunity, the court deems it just and appropriate to remand the matter to the first respondent. The Madras High Court sets aside the impugned order and remands the matter to the first respondent with certain conditions. The petitioner is directed to remit 10% of the disputed tax demand within fifteen days, along with the opportunity to submit a reply to the show cause notices within the same period. The first respondent is instructed to provide a reasonable opportunity, including a personal hearing, and issue fresh orders within two months of receiving the petitioner's reply. This disposition leads to the closure of the case, with no costs incurred by either party. Ads by FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT In this writ petition, an assessment order is challenged on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits. 2. The petitioner asserts that he was unaware of proceedings culminating in the order impugned herein because such order was uploaded on the "View Additional Notices and Orders" tab on the GST portal and not communicated to the petitioner through any other mode. 3. By pointing out that the tax

demand pertains to discrepancy between the petitioner's GSTR 3B returns and the auto-populated GSTR 2A returns, learned counsel submits that the petitioner would be in a position to explain the discrepancy satisfactorily if provided an opportunity. On instructions, learned counsel for the petitioner submits that, as a condition for remand, the petitioner is willing to remit 10% of the disputed tax demand. 4. MRS. K. Vasanthamala, learned Government Advocate, accepts notice for the first respondent. With reference to the impugned order, she points out that such order was preceded by a show cause notice and that, therefore, the petitioner had sufficient opportunity to contest the tax demand. 5. On perusal of the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not file objections or participate in the personal hearing. The petitioner has asserted that he would be in a position to explain the discrepancy between the GSTR 3B and 2A returns if provided an opportunity. In these circumstances, it is just and appropriate that an opportunity be provided to the petitioner by putting the petitioner on terms. 6. For reasons set out above, the order impugned herein is set aside and the matter is

remanded to the first respondent for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of fifteen days from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notices within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the first respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue fresh orders within a period of two months from the date of receipt of the petitioner's reply. Since the impugned assessment order is being set aside, the bank attachments pursuant thereto is raised. 7. W.P.No.10483 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.11485 and 11486 of 2024 are closed.

JUDGEMENTS PAGE No- 123 to 167

Relevant Date for GST Refund Claim is Tax Payment date under Correct Head: Delhi HC

CA Sandeep Kanoi 26 Apr 2024 159 Views 0 comment Print Goods and Services Tax | Judiciary

Case Law Details

Case Name : DMI Alternatives Private Limited Vs Additional Commissioner CGST Appeals 1 Delhi & Ors. (Delhi High Court) Appeal Number : W.P.(C) 5412/2024 & CM APPL. 22350/2024

Date of Judgement/Order : 16/04/2024 Related Assessment Year :

Courts : All High Courts Delhi High Court Download Judgment/Order DMI Alternatives Private Limited Vs Additional Commissioner CGST Appeals 1 Delhi & Ors. (Delhi High Court)

The Delhi High Court recently addressed the issue of refund claims for taxes paid under the wrong head and subsequently corrected. In the case of DMI Alternatives Private Limited Vs Additional Commissioner CGST Appeals 1 Delhi & Ors., the court

clarified the relevant date for claiming refunds, providing significant insights for taxpayers. This article explores the facts, arguments, and the court's ruling in detail. DMI Alternatives mistakenly paid taxes under the wrong head while filing the monthly statement of outward supply in November 2017. The error led to double deposits of tax, once under IGST and then under CGST and SGST. Upon realizing the mistake, DMI Alternatives corrected the error and filed a refund application on 11.05.2020. However, the application was denied due to perceived delay. The crux of the issue lies in determining the relevant date for claiming refunds. The Circular No. 162/18/2021-GST clarified that the relevant date is when tax is paid under the correct head. Furthermore, if payment under the correct head was made before the circular's issuance, an additional two-year period from the circular's date is allowed for filing refund applications. The court noted that both refund applications filed by DMI Alternatives fell within the scope of the circular. Despite this, the Appellate Authority dismissed the appeal based on the perceived delay, overlooking the circular's provisions. The Delhi High Court's ruling in the case of DMI Alternatives sheds light on the interpretation of the

relevant date for claiming tax refunds. By clarifying that the relevant date is when tax is paid under the correct head, the court provides clarity to taxpayers and tax authorities alike. The ruling underscores the importance of adhering to circulars issued by tax authorities and ensuring fair treatment in refund claims. This decision serves as a valuable precedent for similar cases and reinforces the principles of fairness and transparency in tax administration. FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT Ads by 1. Petitioner impugns order in appeal dated 15.09.2023, whereby the appeal filed by the petitioner impugning order-in-original dated 28.11.2022 was dismissed solely on the ground of limitation. 2. Learned counsel for petitioner submits that the Appellate Authority has erred in not considering the circular dated 25.09.2021, whereby the period of limitation was enhanced. 3. Issue notice. Notice is accepted by learned counsel appearing for respondents. With the consent of parties, the petition is taken up for final disposal. 4. Petitioner while filing the monthly statement of outward supply in Form GSTR-1 for the month of November 2017, declared the total taxable value for intra-State supply of services erroneously

under the head of inter-State supply under the Integrated Goods and Service Tax (IGST) instead of intra-State supply under the Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST). 5. Petitioner subsequently realized this mistake and corrected the error and deposited the correct CGST and SGST amount thereby leading to a double deposit of tax, once under the head of IGST and second cumulatively under the head of CGST and SGST. 6. Petitioner thereafter filed an application seeking refund on 11.05.2020, however, by order-in-original dated 28.11.2022, the said application was rejected. 7. Petitioner filed an appeal before the Appellate Authority, however, the Appellate Authority held that the said application seeking refund was belated and as such dismissed the appeal solely on the ground of delay in filing an application seeking refund. 8. In terms of Section 54 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the „Act"), any person claiming refund has to make an application before expiry of two years from the relevant date in such form and manner as may be prescribed. 9. The Appellate Authority in the order in appeal has taken the date of payment of tax under the wrong head, as the relevant

date. 10. Reference may be had to circular dated 25.09.2021, issued by the Central Board of Indirect Taxes and Customs, which has issued the clarification in respect of application seeking refund of tax. Reference has been made to Section 77 of the Act wherein tax wrongly collected and paid to the Central Government and the State Government is sought to be claimed. The circular seeks to put to rest the confusion that had arisen with regard to the interpretation of “Relevant Date” i.e. as to whether the Relevant Date would be the date when the tax was paid under the incorrect head or the date when the tax was paid under the correct head. 11. The circular clarifies that the “Relevant Date” would be the date when tax is paid under the correct head. After clarifying the said position, the circular stipulates that in cases where tax payer had made payment under the correct head before the issuance of the subject Notification No.35 of 2021 dated 24.09.2021, the refund application could be filed before expiry of two years from the date of the issuance of the said Notification i.e. from 24.09.2021. 12. In the instant case, petitioner had paid tax under the wrong head on 20.12.2017 and paid tax under the correct head on 19.08.2019. 13. In terms of

the clarification issued by circular dated 25.09.2021, petitioner could have filed an application before expiry of two years from the date of payment of tax under the correct head i.e. before expiry of two years from 19.08.2019. However, the circular further clarifies that in cases where payment was made under the correct head prior to issuance of the circular, a further period of two years would be available from the date of circular, which implies that any application seeking refund filed on or before 23.09.2023 in respect of taxes paid under the correct head prior to 24.09.2021 would be considered within time. 14. In the subject case, petitioner filed the first application seeking refund on 11.05.2020, which was rejected on 29.06.2020 and the appeal against the said order was also dismissed on 30.06.2021 i.e. prior to the issuance of the clarification by the circular dated 25.09.2021. 15. After the issuance of the circular, petitioner filed a second application on 14.07.2022, which has been rejected by the order-in-original impugned before the Appellate Authority whose order is impugned before us. 16. Clearly, both the refund applications filed by the petitioner (one on 11.05.2020 and other on 14.07.2022) are covered by the circular dated 25.09.2021 and were within limitation.

Consequently, the Appellate Authority has committed an error in not noticing the said circular and rejecting the appeal holding that the application was beyond time. Accordingly, said order is not sustainable and is set aside. The appeal is restored to its original number on the record of the Appellate Authority. The Appellate Authority is directed to consider and dispose of the appeal on merits in accordance with law. 17. Petition,is,allowed,in,the,above,terms.

JUDGEMENTS PAGE No- 130 to 167

Heavy penalty cannot be imposed for lapsed e-way bill during transit

Editor6 25 Apr 2024 8,625 Views 0 comment Print Goods and Services Tax |

Judiciary Case Law Details Case Name : Faruk Rathore Prop. Of M/s Hindustan Trading Company Vs Dy. Commissioner, Central Goods And Service Tax (Rajasthan High Court)

Appeal Number : D.B. Civil Writ Petition No. 13473/2022 Date of Judgement/Order : 15/04/2024 Related Assessment Year : Courts : All High Courts Rajasthan High Court Download Judgment/Order Faruk Rathore Prop. Of M/s Hindustan Trading Company Vs Dy. Commissioner, Central Goods And Service Tax (Rajasthan High Court) In a recent case before the Rajasthan High Court, Faruk Rathore, Proprietor of M/s Hindustan Trading Company, challenged the imposition of a heavy penalty for a minor offense related to a lapsed e-way bill during transit. The case sheds light on the disproportionate penalties imposed under the Central Goods & Services Tax Act,

2017 (CGST Act, 2017). The petitioner, engaged in the trade of iron items, purchased goods worth Rs. 9,43,993/- from R.K. Steels, Jaipur, on 25.02.2021. An e-way bill was generated for the transportation of these goods, valid until 27.02.2021. However, due to unforeseen circumstances such as a punctured tire and unavailability of labor, the goods arrived late at the destination, resulting in the expiration of the e-way bill. Upon inspection, it was discovered that the e-way bill had expired 44 minutes prior. Consequently, the goods were detained, and a penalty was imposed under Section 129(3) of the CGST Act, 2017. Despite the petitioner's compliance with GST rules and payment of taxes, a heavy penalty was enforced. The petitioner contested the penalty, arguing that the delay was beyond their control and did not constitute tax evasion. They cited precedents from other High Courts where similar cases were resolved in favor of the taxpayer. After careful consideration, the Rajasthan High Court ruled in favor of the petitioner, emphasizing that the penalty imposed was unjustified for a minor offense. The court noted that while the e-way bill had expired, there was no intent to evade taxes. It deemed the penalty excessive and ordered its reduction to Rs.

10,000/-, in accordance with Section 122 of the CGST Act, 2017. In conclusion, the court quashed the impugned notices and orders, directing the authorities to return the taxes and penalty already paid by the petitioner, adjusting the penalty amount as per the ruling. Ads by FULL TEXT OF THE JUDGMENT/ORDER OF RAJASTHAN HIGH COURT 1. This writ petition has been preferred under Article 226 of the Constitution of India claiming the following reliefs: “It is, therefore humbly prayed that Your Lordships may graciously be pleased to accept and allow this writ petition and by an appropriate writ, order or direction:- i) To quash and set aside the notice issued u/s 129(3) of CGST Act, 2017 (Ann.-3) as such is out of jurisdiction, ultra virus, arbitrary, unfair and unreasoned. ii) To quash and set aside the order passed u/s 129(3) of CGST Act, 2017 (Ann.-4) as such is out of jurisdiction, ultra virus, arbitrary, unfair and unreasoned. iii) To quash and set aside the order of the Appellate Authority i.e. the Addl. Commissioner (Appeals) GST, dated 24.05.2022 (Ann.-7). iv) Any other suitable order or direction, which the Hon’ble Court may deem just and proper in the facts and circumstances of the case, may kindly be passed in favor of the Petitioner.” 2. Brief facts of the case, as placed before this

Court by learned counsel for the petitioner, are that the petitioner is a dealer of Iron items and conducting his business from Deshnok, District Bikaner and the petitioner-Firm is registered under the Central Goods & Services Tax Act, 2017 (hereinafter referred to as 'CGST Act, 2017') having registration No.08BFWPR2595M1Z8. During the course of its business, the petitioner purchased goods amounting to Rs. 9,43,993/- i.e. Iron Channel, Beam and angles from R.K. Steels, Jaipur on 25.02.2021 and an e-way bill No.781176882246 (valid upto 27.02.2021) was generated accordingly at 05:03 a.m. on 25.02.2021, whereafter, the said goods were loaded in a truck, along with the goods of one other Mahaveer Iron Store by the transporter and the vehicle started its journey late evening on the date of purchase. 2.1. However on the way from Jaipur to Bikaner, the truck's tyre got punctured resulting in the vehicle reaching Bikaner late at night on 26.02.2021 thereby resulting in delay in unloading of the truck at Mahaveer Iron Store due to unavailability of labour, and thus, unloading could be done only at 6 p.m. on 27.02.2021. Thereafter, the petitioner was informed that the truck would reach late evening around 9 p.m. on 27.02.2021, however due to unavailability of labour to

unload the goods, it was decided that the truck should reach on 28.02.2021, thus the driver stayed in Bikaner during the night. 2.2. On the night of 27.02.2021, inspection of the vehicle (bearing registration No.RJ 14 GE 1832) was conducted by the Inspector, Central Goods & Services Tax (CGST) Department at about 12:44 a.m. on 28.02.2021, during the course of which, the documents and goods were checked, however it was found that the e-way bill had expired on 12 a.m. on 27.02.2021, and accordingly, the proceedings were initiated and the goods were detained under Section 68 (3) of the CGST Act, 2017. 2.3. Thereafter, a notice in the Form of MOV-07 under Section 129(3) of the CGST Act, 2017 dated 01.03.2021 was issued by the Deputy Commissioner, CGST, Division-F, Bikaner to both the petitioner as well as the driver, whereafter the petitioner deposited tax and penalty for release of the goods, and accordingly, the respondent released the goods vide order dated 01.03.2021; thereafter the petitioner preferred an appeal (No.GST/BK/16/IV/2021) before the learned GST Appellate Authority against the said order, and vide order dated 24.05.2022 the appeal was dismissed. Aggrieved of the notice & order dated 01.03.2021 and the appellate order dated

24.05.2022, the present petition has been preferred claiming the afore-quoted reliefs. 3. Learned counsel for the petitioner submits that the petitioner has duly complied with the provisions of GST specifically Rule 138 A of the CGST Rules, 2017; further, the requisite documents such as e-way bill were accompanied with the goods and though it had expired on 27.02.2021, however the maximum distance had been covered i.e. 331 kms out of 361 kms. 3.1. Learned counsel further submits that the driver informed the petitioner regarding the delay, however as the required labour was not available during night of 27.02.2021, it was decided to unload the truck the next morning. 3.2. Learned counsel also submits that the delay occurred was beyond the control of both the petitioner as well as the driver, thus on a mere delay of 44 minutes, the tax and penalty in question was imposed upon the petitioner; in furtherance, the e-way bill is to protect the revenue of the Government, and since the GST was already levied upon the goods, no loss of revenue had been incurred by the Government. 3.3. Learned counsel further submits that in the given circumstances and as per the conduct of the petitioner, the penalty in question could not have been imposed under

Section 129 (3) of CGST Act, 2017, and thus, the impugned orders are arbitrary and not justified in law. 3.4. In support of such submissions, learned counsel placed reliance on the judgment rendered by a Division Bench of the Hon'ble Gujarat High Court in the case of Shree Govind Alloys Pvt. Ltd. Vs. State of Gujarat (R/Special Civil Application No. 23835 of 2022 decided on 01.12.2022). 4. On the other hand, learned counsel for the respondents while opposing the submissions made on behalf of the respondents submits that the distance from Raisar to Bikaner is around 20 km and can be covered within 30 minutes by truck, however it took more than 12 hours for the truck to cover the said distance; in furtherance, as per the e-way bill portal, the transporting vehicle had crossed the Toll Plaza, Lakhasar at 7:14 p.m. on 26.02.2021 and the distance between the said Toll plaza and Bikaner can be covered within 60-80 minutes, thus the contention of the petitioner in this regard is in no terms justifiable. 4.1. Learned counsel further submits that the petitioner was required to either apply for extension of the validity of the e-way bill or the driver should have parked the truck in the premises of the firm if space was available but neither of the two courses had been resorted to

by the petitioner. 4.2. Learned counsel also submits that as per Rule 138 A of the CGST Act, 2017, the person incharge of a conveyance was required to carry with him all requisite documents including invoice or bill of supply or delivery challan and a copy of e-way bill in physical form or e-way bill number in electronic form, and though the driver of the vehicle was carrying with him an e-way bill, however the same was an expired one, thus the contention of the petitioner that all provisions of the CGST Act, 2017 had been duly complied with is not tenable. 4.3. Learned counsel also submits that the e-way bill is a mechanism to ensure goods being transported comply with the GST Law and is an effective tool to track movement of goods and check tax evasion. 5. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgment cited at the Bar. 6. This Court observes that the petitioner-Firm purchased iron items from RK Steels, Jaipur for the aforesaid amount on 25.02.2021 and an e-way bill was accordingly generated with the expiry date of 27.02.2021, whereafter the goods were loaded on a truck for transporting the same alongwith the goods of one other Mahaveer Iron Store; during the journey, the tyre of the truck

got punctured causing delay in reaching Bikaner, resulting in non availability of the required skilled labour for unloading of the truck at night in Deshnok, thus a decision was taken to stay in Bikaner and do the unloading work in the morning of 28.02.2021. 6.1. However, at 12:44 a.m. on 28.02.2021, an inspection was conducted by the Inspector, GST Department, wherein it was found that the e-way bill had expired 44 minutes ago, and accordingly, the proceedings in question were initiated and the impugned notice as well as the impugned order under Section 129 (3) of the CGST Act, 2017 was issued on 01.03.2021, whereafter an appeal was preferred by the petitioner which came to be dismissed vide the impugned order dated 24.05.2022 by the appellate authority. 7. This Court is conscious of the order passed by the Hon'ble Apex Court in the case of Assistant Commissioner (ST) and Ors. vs. Stayam Shivam Papers Private Ltd. & Ors. SLP (c) whereof is reproduced as hereunder: "6 . Having said so, the High Court has set aside the levy of tax and penalty of Rs. 69,000/- (Rupees Sixty-nine Thousand) while imposing costs of Rs. 10,000/- (Rupees Ten Thousand), payable by the Petitioner No. 2 to the writ Petitioner within four weeks. 7. The

analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ Petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the Petitioner No. 2 and the corresponding harassment faced by the writ Petitioner we find it rather necessary to enhance the amount of costs. 8. . . . . As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ Petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ Petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic. 12. This petition stands dismissed, subject to the requirements foregoing." 8. This Court is further conscious of the order passed by a Division Bench of the Hon'ble High Court of Gujarat in the case of Shree Govind Alloys Pvt. Ltd. (supra),

the relevant portion whereof is reproduced as hereunder: “6. We have heard learned advocates on both the sides and also have considered the material on the record. We notice section 129, which provides as under: “Detention, seizure and release of goods and conveyances in transit 129(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released.- (a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty; (b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an

amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty; (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods. (2) xxx xxx xxx (3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1) (4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. (5) On payment of amount referred in sub-section(1), all proceedings in respect of the notice specified in sub-section(3) shall be deemed to be concluded. (6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within

fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3); Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section 93) or one lakh rupees, whichever is less: Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to deprecate in value with passage of time, the said period of fifteen days may be reduced by the proper officer." 7. It is not in dispute that in the instant case, e-Way Bill had expired 41 hours before and the release of goods of conveyance and transit through the authority concerned. 8. We could notice that the detention is also on the ground that the goods are of expiration of the e-Way bill number, which had expired during the transit and the same cannot be the ground for detaining and seizure of M.S. Billet along with the vehicle truck. 9. This Court in Govind Tobacco Manufacturing Co. vs. State of U.P., [2022] 140 com383 (Allahabad) has held that as there is expiry of e-Way bill on

transit, the seizure of said vehicle and the goods is not permissible under the law. In the case before the High Court of Madhya Pradesh at Jabalpur in M/s. Daya Shaker Singh vs. State of Madhya Pradesh passed in Writ Petition No. 12324 of 2022 on 10.08.2022, where also the Court had intervened considering the fact that the respondent could not establish any element of evasion of tax with fraudulent intent or negligence on the part of the petitioner. Delay was of almost 4 1/2 hours before the e-Way bill could expire. It appeared to be bona fide and without establishing any fraudulent intention. Here also what is found is that there is no fraudulent intention for this to happen. 10. Resultantly, present petition stands allowed. The impugned order dated 04.11.2022 demanding the sum of Rs. 7,53,364/- is quashed and set aside. The order of detention dated 19.10.2022 as well as the notice issued under section 129(3) of the Act dated 19.10.2022 are also quashed and set aside." 9. At this juncture, this Court considers it appropriate to reproduce the relevant portion of the judgment rendered by a Division Bench of the Hon'ble Madhya Pradesh High Court in the case of M/s. Daya Shaker Singh vs. State of Madhya Pradesh (Writ Petition No. 12324 of 2022, on 10.08.2022),

as hereunder: “21. In view of aforesaid stand of parties, it is clear that the E-way Bill of the petitioner was valid upto 19/05/2022 and truck was intercepted on 20/05/2022 at Dindori at 4.35 A.M. The specific contention of learned counsel for the petitioner that there was no element of tax evasion, fraudulent intent and negligence on his part was not rebutted by learned counsel for the respondents. It is apt to reproduce the relevant para of judgment of Telangana High Court in (2021) 5 GSTJ Online 174 (TG) Satyam Shivam Papers Pvt. Ltd. vs. Asst. Commissioner, ST & others (W.P.No.9688 of 2020), which reads as under :- “42. How the 2nd respondent could have drawn an inference that petitioner is evading tax merely because the E-way Bill has expired is also nowhere explained in the counter-affidavit. In our considered opinion, there was no material before the 2nd respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the E-way Bill because even the 2nd respondent does not say that there was any evidence of attempt to sell the goods to somebody else on 6.1.2020. On account of non-extension of the validity of the E-way Bill by petitioner or the auto trolly driver, no presumption can be draw

that there was an intention to evade tax." (Emphasis supplied) 23. This judgment of Telangana High Court was put to test before the Apex Court and Apex Court in (2022) 7 GSTJ Online 16 (SC), Satyam Shivam Papers Pvt. Ltd. vs. Asst. Commissioner, ST & others, opined as under:- "8. Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the parat of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic." (Emphasis supplied) 24. Similarly Calcutta High Court in (2022) 7 GSTJ Online 78 (Cal), Ashok Kumar Sureka vs. Asst.

Commissioner, State Tax, Durgapur Range, opined as under :-

"2. In this writ petition, petitioner has challenged the impugned order of the appellate Commissioner dated March 18, 2021 confirming the original order dated September 11, 2019 passed by the adjudicating authority under Section 129 of the West Bengal Goods and Services Tax Act, 2017 for detention of the goods in question on the grounds that the E-way Bill relating to the consignment in question had expired one day before i.e. in the midnight of September 8, 2019, and that the goods was detained in the morning of September 9, 2019 on the grounds that the E-way Bill has expired which is even less than one day and extension could not be made and petitioner submits that delay of few hours even less than a day of expiry of the validity of the tenure of the E-way Bill was not deliberate and willful and was due to break down of the vehicle in question and there was no intention of any evasion of tax on the part of the petitioner. 3. The petitioner in support of his contention has relied on an unreported decision of the Supreme Court dated January 12, 2022 passed in Special Leave Appeal (C) No(s). 21132/2021 (Assistant Commissioner (ST) & Ors. v. Satyam Shivam Papers Pvt. Limited & Anr.). 4. Learned advocate

appearing for the respondent could not make out a case against the petitioner that the aforesaid violation was willful and deliberate or with a specific material that the intention of the petitioner was for evading tax. 5. Considering the submission of the parties and the facts and circumstances of the case, this writ petition being WPA No.11085 of 2021 is disposed of by setting aside the impugned order of the appellate authority dated March 18, 2021 as well as the order of the adjudicating authority dated September 11, 2019 and as a consequence, the petitioner will be entitled to get the refund of the penalty and tax paid on protest subject to compliance of all legal formalities." (Emphasis supplied) 25. We find substantial force in the arguments of learned counsel for the petitioner that present case has similarity with that of the above cases decided by Telangana and Calcutta High Court. The respondents could not establish that there exist any element of evasion of tax, fraudulent intent or negligence on the part of the petitioner. In this backdrop, the impugned notice/order could not have been passed. 26. The principles of natural justice were statutorily recognized and ingrained in Section 126(1)(3) of the Act. The Law Makers have taken care of

doctrine of proportionality while bringing sub-section (1) of Section 126 in the Statute Book. The punishment should be commensurate to the breach is the legislative mandate as per subsection (1) of Section 126. 27. In the instant case, the delay of almost 4:30 hours before which E-way Bill stood expired appears to be bonafide and without establishing fraudulent intent and negligence on the part of petitioner, the impugned notice/order could not have been passed." 28. This Court further observes that the only fault lying with the petitioner was that the e-way bill with regard to the goods that were being transported had expired 44 minutes before the inspection took place due to the delay caused resulting from the tyre puncture for no fault of either of the petitioner or the driver of the truck, thus it cannot be said that there existed an intention to evade tax or any fraudulent intention on part of the petitioner; the only issue lied with expiry of the e-way bill and not renewing the same. It is not in dispute that all taxes under the regime of CGST/ SGST were paid for. 10.1. This Court is conscious of Section 122 of the CGST Act, 2017, the relevant portion whereof is reproduced as hereunder: "Section 122. Penalty for certain offences. (1) Where a taxable person who– ..... (xiv)

transports any taxable goods without the cover of documents as may be specified in this behalf; ..... shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher." 11. This Court further observes that the impugned notice was issued and the impugned order dated 01.03.2021 was passed under Section 129 (3) of the CGST Act, 2017, the same being completely unjustified in the eye of law as the issue was not one of there not being an e-way bill, but one of the existing e-way bill having expired during transit, thus imposition of such a heavy penalty for a minor offence is unacceptable and the penalty imposed should have been as per Section 122 of the CGST Act, 2017 of Rs.10,000/-, as there is no apparent case of tax evasion. 12. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case as well as the afore-quoted precedent laws, this Court is of the opinion that the

impugned notice and the impugned orders dated 01.03.2021 and 24.05.2021 deserve to be quashed and set aside and the same are hereby quashed and set aside. This Court is also conscious of the fact that the petitioner has already paid tax so also the penalty for release of detained goods, thus the same be returned to the petitioner, while adjusting/deducting the penalty of Rs.10,000/- under Section 122 of CGST Act, 2017, within a period of three months from the date of receipt of a certified copy of this judgment. 13. The instant writ petition accordingly stands partly allowed in the above terms. All pending,applications,stand.

JUDGEMENTS PAGE No- 151 to 167

Petitioner as a registered person Must Continuously Monitor GST Portal: Madras HC

CA Sandeep Kanoi 25 Apr 2024 8,142 Views 0 comment Print Goods and Services Tax |

Featured, Judiciary Case Law Details Case Name : K. A. & Co.Vs State Tax Officer (Madras High Court)

Appeal Number : W.P.No.10128 of 2024

Date of Judgement/Order : 17/04/2024 Related Assessment Year :

Courts : All High Courts Madras High Court Download Judgment/Order K. A. & Co. Vs State Tax Officer (Madras High Court)

The Madras High Court recently rendered a significant judgment in the case of K. A. & Co. vs State Tax Officer. The court scrutinized an order dated 29.12.2023, citing violations of natural justice and inadequate consideration. The petitioner challenged the order primarily on the grounds of non-receipt of the show cause notice (SCN), which was solely uploaded on the GST portal. Upon inspection of the petitioner's registered place of business in March 2023, proceedings commenced, leading to the issuance of an intimation and subsequently a show cause notice on 28.09.2023. However, crucially, the petitioner did not respond to

the notice as it was solely uploaded on the GST portal's "View Additional Notices and Orders" tab. The petitioner argued that this mode of communication was insufficient and failed to fulfill the principles of natural justice. HC observed that The justification of the petitioner for not responding to the show cause notice is not convincing in as much as the petitioner is under an obligation to monitor the GST portal on an ongoing basis as a registered person. Furthermore, the petitioner contended that the tax liability was inaccurately imposed based on the balance sheet for the financial year 2018-2019 instead of 2017-2018. The discrepancy resulted in an inflated taxable turnover, highlighting a clear error and lack of proper assessment by the tax authorities. Despite the availability of financial statements during the inspection, the respondent overlooked crucial evidence, indicating a failure to apply due diligence. Although the government advocate asserted the petitioner's awareness of the proceedings, citing partial acknowledgment and payment of dues, the petitioner's argument emphasized the necessity of direct communication and adherence to procedural fairness. Conclusion Ads by The Madras High Court, acknowledging the petitioner's grievances, set aside the impugned order. However, it imposed a condition requiring the petitioner to remit a specified sum towards the disputed tax demand as agreed, within a stipulated timeframe. Additionally, the court granted the petitioner an opportunity to respond to the show cause notice and directed the tax authorities to reevaluate the matter within a specified period, ensuring procedural fairness and compliance

with principles of natural justice. In conclusion, the judgment in K. A. & Co. vs State Tax Officer underscores the importance of transparent communication and diligent assessment procedures in tax matters, reaffirming the judiciary's commitment to upholding fairness and due process. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT An order dated 29.12.2023 is assailed both on the ground of breach of principles of natural justice and on the ground of non application of mind. Pursuant to an inspection at the registered place of business of the petitioner in March 2023, proceedings were initiated by issuing an intimation followed by a show cause notice dated 28.09.2023. The petitioner did not reply to the show cause notice because the notice was uploaded on the "View Additional Notices and Orders" tab on the GST portal and not communicated to the petitioner through any other mode. 2. Learned counsel for the petitioner referred to the impugned order and pointed out that tax liability was imposed with regard to non payment to creditors within 180 days by using the balance sheet for financial year 2018-2019 as the basis instead of the balance sheet for financial year 2017-2018. In this regard, she submits that the financial statements were made available to the respondent during the course of inspection. As a consequence of the patent error, she submits that the taxable turnover was taken as Rs.8,95,91,806/- instead of Rs.2,65,31,910/-. Even with regard to the other heads of the tax proposal, she submits that the impugned order indicates complete non application of mind. 3. Mr. V. Prashanth Kiran, learned Government Advocate, accepts notice

for the respondent. He points out that the petitioner admitted liability and discharged dues in respect of two of the six issues specified in the intimation dated 14.09.2023. Consequently, he submits that the petitioner was aware of proceedings, but opted not to reply to the show cause notice or participate in proceedings pursuant thereto. 4. The petitioner has placed on record the balance sheets for the financial years ended 31.03.2018 and 31.03.2019. The amount payable by the petitioner to sundry creditors as on 31.03.2018 was a sum of Rs.2,65,31,910/-. For the financial year ended 31.03.2019, the amount payable to sundry creditors was Rs.8,95,91,806/-. It is unclear as to whether these balance sheets were placed before the respondent. Nonetheless, while undertaking adjudication for assessment period 2017-2018, it was incumbent on the respondent to call for and examine the financial statement for the year ended 31.03.2018 and not use the financial statement for year ended 31.03.2019 as the basis. To that extent, 5. Therefore, it is also necessary to put the petitioner on terms. 6. On instructions, learned counsel for the petitioner submits that the petitioner agrees to remit a sum of Rs.10,00,000/- as a condition for remand. 7. For reasons set out above, the impugned order dated 29.12.2023 is set aside on condition that the petitioner remits a sum of Rs.10,00,000/- (Rupees Ten lakhs only) towards the disputed tax demand as agreed to within a period of three weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that the

sum of Rs.10,00,000/-was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply. 8. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous,petitions,are,closed.

JUDGEMENTS PAGE No- 156 to 167

GST Registration can't be Retrospectively Cancelled Without Cause: Delhi HC

CA Santosh Vasantrao Dhumal 25 Apr 2024 291 Views 0 comment Print Goods and Services Tax |

Judiciary Case Law Details Case Name : Kalpana Cables Products Pvt. Ltd. Vs Commissioner, Department of Trades And Taxes & Anr (Delhi High Court)

Appeal Number : W.P.(C) 5499/2024 Date of Judgement/Order : 22/04/2024 Related Assessment Year :

Courts : All High Courts Delhi High Court Download Judgment/Order Kalpana Cables Products Pvt. Ltd. Vs Commissioner, Department of Trades And Taxes & Anr (Delhi High Court) Introduction:

The recent judgment by the Delhi High Court in the case of Kalpana Cables Products Pvt. Ltd. vs Commissioner, Department of Trades and Taxes & Anr sheds light on the

cancellation of taxpayer registration. The court emphasized that registration cannot be cancelled retrospectively without valid reasons, highlighting the importance of objective criteria in such decisions. Fact of the case:- Petitioner is a private limited company and was engaged in the business of manufacturing of PVC copper wire and also possessed GST Registration under the Central Goods and Services Tax Act, 2017. Petitioner applied for cancellation of GST registration on 21.05.2019 on the ground of closure of business. Notice issued to the petitioner seeking additional information and documents relating to application for cancellation of registration. And application is rejected. Further, Show Cause Notice was issued to the Petitioner seeking cancellation of GST registration without specifying any cogent reasons. However, the said Notice did not bear the date and time whereby the Petitioner was required to appear for personal hearing. So GST Registration of the petitioner was cancelled retrospectively with effect from 01.12.2017. Court Finding and conclusion.- Show Cause Notice and the order are also bereft of any details. Accordingly, the same cannot be sustained. Neither the Show Cause Notice, nor the order spell out the reasons for

retrospective cancellation. In terms of Section 29(2) of the Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed, and the taxpayer was compliant. Ads by One of the consequences for cancelling a taxpayer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warrant. The court ordered to cancel the registration from prospective date ie date of application for cancellation. FULL TEXT OF THE

JUDGMENT/ORDER OF DELHI HIGH COURT 1. Petitioner impugns order dated 01.01.2021 whereby the GST Registration of the petitioner was cancelled retrospectively with effect from 01.12.2017. Petitioner also impugns Show Cause Notice dated 01.09.2020. 2. Issue notice. Notice accepted by Learned counsel appearing for Respondent. With the consent of parties, petition is taken up for final disposal today. 3. Petitioner is a private limited company and was engaged in the business of manufacturing of PVC copper wire and also possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act). 4. Petitioner applied for cancellation of GST registration on 21.05.2019 on the ground of closure of business. 5. Pursuant to the said application, Notice dated 17.03.2020 was issued to the petitioner seeking additional information and documents relating to application for cancellation of registration. The said application was rejected vide order dated 05.06.2020, and merely stated "Whereas the undersigned is of the opinion that your provisional registration is liable to be cancelled for following reasons" and thereafter the entire order is blank and does not give any particulars or details. 6. Thereafter, Show Cause

Notice dated 01.09.2020 was issued to the Petitioner seeking cancellation of GST registration. Though the notice does not specify any cogent reasons, it merely states “Any Taxpayer other than composition taxpayer has not filed returns for a continuous period six months”. Said Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the said Notice did not bear the date and time whereby the Petitioner was required to appear for personal hearing. 7. Said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration. 8. Further the impugned order dated 01.01.2021passed on the Show Cause Notice dated 01.09.2020. Though it does not give any reasons for cancellation, it, however states that the registration is liable to be cancelled for the following reasons “on-filing of gst3b up to November 2020. The order further states that effective date of cancellation of registration is 01.12.2017 i.e. a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively. 9. It may

be noted that on one hand, it states that the registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand. 10. Learned counsel for the Petitioner submits that on account of ill health of one of the directors Shri Chatar Singh, Petitioner is no longer continuing business and the business activities of the Petitioner have been closed down since 21.05.2019. 11. He further submits that since Petitioner had shut down the business and filed an application for cancellation on 21.05.2019, there would have been an automatic suspension of GST registration and as such, Petitioner could not carry on the business and could not file the required returns. 12. We notice that Show Cause Notice and the impugned order are also bereft of any details. Accordingly, the same cannot be sustained. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. 13. In terms of Section 29(2) of the Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with

retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed, and the taxpayer was compliant. 14. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warrant. 15. It may be further noted that both the Petitioner and the department want cancellation of the GST registration of the Petitioner,

though for different reasons. 16. In view of the above that Petitioner does not seek to carry on business or continue the registration and an application for cancellation of registration appears to be filed, the impugned order dated 01.01.2021 modified to the limited extent that registration shall now be treated cancelled with effect from 30.04.2019 i.e., the date from which petitioner sought cancellation of GST registration. 17. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017. 18. It is clarified that Respondents are not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law including retrospective cancellation of the GST registration after giving a proper Show Cause Notice and an opportunity of hearing. 19. Petition is accordingly disposed of in the above terms.

JUDGEMENTS PAGE No- 164 to 167

Madras HC: Respond to GST Liability on Seigniorage Fee Intimation

CA Sandeep Kanoi 25 Apr 2024 276 Views 0 comment Print Goods and Services Tax |

Judiciary Case Law Details Case Name : Tvl. AVS Tech Building Solutions Vs Deputy State Tax Officer (Madras High Court)

Appeal Number : W.P .Nos.10158 & 10162 of 2024

Date of Judgement/Order : 17/04/2024 Related Assessment Year :

Courts : All High Courts Madras High Court Download Judgment/Order Tvl. AVS Tech Building Solutions Vs Deputy State Tax Officer (Madras High Court) The Madras High Court recently addressed the issue of GST liability concerning seigniorage fees paid by a petitioner to the government. The petitioner challenged the intimation regarding GST liability under applicable laws concerning seigniorage fees. Citing a Division Bench Judgment, the court directed the petitioner to submit objections or representations within four weeks. The

court emphasized the importance of affording a reasonable opportunity for a hearing before adjudication. Notably, the court ordered the adjudication to be suspended until a Nine Judge Constitution Bench resolves the nature of royalty. Until then, no GST recovery on royalty was allowed. The judgment clarified avenues for redressal and left all contentions open for future proceedings. In light of the Madras High Court's directive, petitioners must respond to GST liability on seigniorage fee intimation within four weeks. FULL TEXT OF THE JUDGMENT/ORDER OF MADRAS HIGH COURT In these writ petitions, the petitioner has assailed the intimation communicating the GST liability under applicable GST laws in respect of seigniorage fee paid by the petitioner to the Government. 2. Learned counsel placed for consideration the Division Bench Judgment in a batch of cases where the lead case is A. Venkatachalam v. Assistant Commissioner (ST), Palladam, in W.P.No.30974 of 2022. 3. Mr. C. Harsha Raj, learned Additional Government Pleader, accepts notice for the respondent. Ads by 4. The Division Bench of this Court issued the following directions at paragraph 9 of the judgment: "9. In these circumstances, we deem it fit and appropriate to issue

the following directions: (i) In the cases, where the challenge is made to the show cause notices, the writ petitioners shall submit their objections / representations within a period of four weeks from the date of receipt of a copy of this order. (ii) Upon receipt of the objections / representations from the writ petitioners, the authority concerned shall proceed with the adjudication, on merits and in accordance with law, after affording reasonable opportunity of being heard to the petitioners. However, the orders of adjudication shall be kept in abeyance until the Nine Judge Constitution Bench decides the issue as to the nature of royalty. (iii) It is made clear that there shall be no recovery of GST on royalty until the Nine Judge Constitution Bench takes a decision. (iv) Needless to state that on the matters being decided, the writ petitioners if still aggrieved, shall redress their grievance(s), if any, before the appropriate forum, including by filing appeal(s). (v) Insofar as the challenge to the notification as well as the circular, it is open to the writ petitioners to act upon, after the outcome of the case pending before the Nine Judge Constitution Bench. (vi) It is also made clear that all the contentions are left open for the writ petitioners to raise in appropriate proceedings,

after the outcome of the decision of the Nine Judge Constitution Bench." 5. In view of the said judgment, these petitions are liable to be disposed of on the same terms. Consequently, in these cases, the petitioner is permitted to submit his reply to the intimation within a maximum period of four weeks from the date of receipt of a copy of this order. 6. W.P.Nos.10158 & 10162 of 2024 are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.