DELHI SALES TAX CASES

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HIGHLIGHTS

"A law is valuable not because it is Law, but because there is right in it"

Henry Ward Beecher

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NEWS AND UPDATES

1. Jindal Exports & Imports Pvt. Ltd. vs. Dy. Commissioner IT - WP(C) No. 6900/2022 (Delhi High Court)

   Reassessment order quashed as the mailed order was without name and designation.

2. Mili Gosh vs. UOI & Ors. – CRR 40 of 2019 (Calcutta High Court)

   The Calcutta High Court has held that charges u/s 24 of PML Act, 2002 on fraudulently obtaining money cannot be exonerate from the charges at this stage before a full-fledged trail commences

3. Pr. Commissioner of CGST vs. M/s Green Valliey Indl. Pvt. Ltd. – MC(Central Excise Ap.) No. 1/2023 (Meghalaya High Court)

   Interest allowable – the Meghalaya High Court has held that interest shall be allowable to the Assessee on delayed refunds from Central Excise Department on the deposit made “Under Protest”.

4. Thirumalakonda Plywoods vs Asstt. Commissioner – WP No. 24235 of 2022 (AP High Court)

   The High Court of Andhra Pradesh held that the time limit u/s 12(4) on the claim of ITC is not in violation of the Constitutional provisions under Article 14, 19(1)(9) and 300A, Section 16(2) and 16(4) have no overriding effect. Both are independent. Acceptance of late fee cannot exonerate assess from time limit for claiming UTC U/s 16(4).

5. S.A. Iron and Metal vs The Asstt Commissioner – WP No. 15490 of 2023 (AP High Court)

   Andhra Pradesh High Court condoned the delay of 25 days for late filing of 10% of pre-deposit for filing appeal, when it was not possible, because of Bank freezed by Authorities.

6. N.S. Rathinam And Sons Pvt Ltd vs The Commissioner of GST and Central Excise & Ors. – WMP (MD) 18576 of 2023 (Madras High Court)

   The Madras High Court directed revenue to defreeze the Bank A/c after payment of first instalment of tax portion.

7. Progressive Construction Ltd. vs. The State of Bihar & Ors. – CWP No. 395 of 2007 (Patna High Court)

   The Division Bench deprecated the action of State Officer in strongest terms for rejecting an application for refund stating they can keep it pending until an appeal is filed.

8. Bhawani Traders vs. State of UP & Anr. – Writ Tax No. 854 of 2023 (All High Court)

   A Division Bench observed that the E-way Bills being the documents of title to the goods were accompanying the goods, hence the conclusion of the Revenue that the Petitioner was not the owner of the goods is patently erroneous. Penalty proceedings which were to be initiated U/s 129(!)(a) and not 129(1)(b).

9. Maa Amba Builders – WPA No. 842 of 2024 (Calcutta High Court).

   Having regard to the aforesaid and the case made out by the petitioners and taking into consideration the fact that the goods were intercepted within 24 hours from the expiry of the validity of the e-way bill, including there being no material on record to show that the petitioners were involved in evasion of tax and the peculiar facts of the case, I propose to and do hereby set aside the orders dated 18th May 2023 passed under Section 129 (3) of the said Act as also the order passed by the appellate authority dated 13th September 2023 under Section 107 of the said Act.

   In view of the setting aside of the aforesaid orders, all legal consequences will automatically follow.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Sanjeev Sachdeva, J.]

WPC No. 15845 of 2023

M/s. Mahavir Singh ... Petitioner

Versus

Assistant Commissioner,
Anti-Evasion Cell - I & Ors. ... Respondents

Date of Order: 26.02.2024

SEEKS REFUND OF RS. 35,00,000/- RECOVERED DURING SEARCH PROCEEDINGS BY COERCION FOR REVERSING THE ITC THROUGH FORM DRC-03.

WHETHER THE DEPOSIT OF AMOUNT MADE BEFORE THE CONCLUSION OF SEARCH WAS VOLUNTARY OR WAS DEPOSITED UNDER COERCION AND CONTRARY TO THE CBIC INSTRUCTION NO. 01/2022 DATED 25.05.2022?

HELD – Therefore, the amounts that were deposited on behalf of petitioner lacked voluntariness. Accordingly, the said amount is liable to be returned with interest. In view of the above, Respondents are directed to, within four weeks, refund the amount of Rs.35,00,000/- to the Petitioner alongwith statutory interest @ 6% p.a. from date of deposit till repayment.

Present for Petitioner : Mr. Preetam Singh, Advocate

Present for Respondent : Mr. Rajeev Aggarwal, ASC

ORDER

Sanjeev Sachdeva, J. (Oral)

1. Petitioner seeks refund of an amount of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) which was recovered from the Petitioner sans authority of law during the search proceedings carried out on 07.01.2023, by coercing him to reverse the Input Tax Credit done on 07.01.2023 through FORM GST DRC-03.

2. Petitioner was engaged in business of trading of health supplements.

3. On 06.01.2023, Petitioner was subjected to search based on GST INS-01 issued by the Respondents. The reasons mentioned in the form INS-01 are as under:

"i has suppressed transaction relating to supply of goods and/or services

ii has suppressed transaction relating to stock of goods in hand

iii has claimed input tax credit in excess of his entitlement under the Act

iv has indulged in contravention of the provisions of this act or rules made thereunder to evade tax under this Act"

4. The search operation commenced on dated 07.01.2023 at 03:15 PM and after some initial inspection, a notice under Rule 56(18) of the Delhi GST Rules, 2017 had been issued by the Respondents directing Petitioner to produce the records for the period of 2017-2018 on the same day i.e. 07.01.2023 by 5:00 PM itself.

5. As per the Petitioner, pre-typed statement were printed by the officers of the Respondents from the Petitioner's computer and Petitioner was coerced to sign the same. Thereafter Petitioner was made to deposit an amount of Rs. 35,00,000/- (Rupees Thirty Five Lakhs only) by way of reversal of Input Tax Credit before the search team left the premises of the Petitioner. The said amount was paid vide FORM GST DRC-03.

6. Learned counsel for the petitioner relies upon the decision dated 20.12.2022 in W.P.(C) 9834/2022 titled 'M/s Vallabh Textiles vs. Senior Intelligence Officer' wherein it was held that if the petitioner is coerced to make a deposit in an involuntary manner then the Petitioner is entitled to refund the said amount along with interest.

7. Learned counsel for petitioner submits that the deposit being made during course of search in the presence of the official, could not be termed a voluntarily deposit. He further submits that the petitioner was not given an opportunity to explain about the transactions and the stock position in question.

8. Per contra learned counsel for respondents submits that there was no coercion, and the amount was voluntarily deposited by the petitioner. He further submits that recovery proceedings under Section 73 of the Central Goods and Services Tax Act 2017 have been initiated by issuance of a Show Cause Notice and proceedings are underway.

9. It would be apposite herein to quote the decision in the case of Vallabh Textiles vs. Senior Intelligence Officer (supra). A Co-ordinate bench of this court held as under:

"51. The 2017 Act and the 2017 Rules made therein, do make provisions for enabling a person chargeable with tax to pay tax, along with interest, before being served with a notice for payment of tax, which either has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized for any reason.

52. Thus, if the person chargeable with tax takes recourse to such a route, the proper officer is restrained from serving any notice qua tax or penalty under the provisions of the 2017 Act or the 2017 Rules framed thereunder, unless the amount which is self-ascertained by the person chargeable with tax falls short of the amount payable as per law.

53. This leeway is also available, where the person chargeable with tax is served with a show cause notice and pays the tax, along with interest, under Section 50 of the 2017 Act within thirty [30] days of the issue of the show-cause notice. In such eventuality, a penalty is not leviable, and all proceedings in respect of such notice are deemed to be concluded.

54. This regime is set out in Section 73 of the 2017 Act.

55. Broadly, this regime also applies, where a notice has been issued under sub-section (1) of Section 73, and the proper officer serves a statement containing details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1) of Section 73.

56. The important aspect to be kept in mind, is that the regime given in Section 73 of the Act operates in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax.

57. In cases which involve one or more of the aforementioned ingredients i.e., fraud, wilful misstatement or suppression of facts to evade tax, parimateria provisions are contained in Section 74 of the 2017 Act, with small variations.

58. In these cases as well, latitude has been given to the person chargeable with tax, to pay monies towards tax, along with interest, based on self-ascertainment, before issuance of notice under subsection (1) of Section 74 of the 2017 Act, with a caveat that

fifteen per cent of such self-ascertained tax is required to be paid by way of penalty.

59. The penalty amount increases if amounts towards tax and interest are paid by the person chargeable with tax within thirty [30] days of the notice being issued by the proper officer under sub-section (1) of Section 74 of the 2017 Act. The person concerned is required to pay a penalty at the rate of twenty-five per cent within the aforesaid timeframe i.e., 30 days, upon which all proceedings in respect of such notice are deemed to be concluded.

60. These provisions have to be read alongside Rule 142, found in Chapter XVIII of the 2017 CGST Rules.

61. The said chapter bears the heading “Demands and Recovery”.

62. Sub-rule (1) of Rule 142 of the 2017 Rules makes a provision for service of notice for raising a demand for recovery of tax; a provision which we are not concerned with in this matter, as it is not the case of the official respondents/revenue that a notice was served.

63. Besides this, the two sub-rules which are, perhaps, relevant are sub-rule (1A) and (2) of Rule 142, as they relate to the steps required to be taken before service of notice on the person chargeable with tax, interest and penalty under sub-section (1) of Section 73, or under subsection (1) of Section 74 of the 2017 Act.

64. Under sub-rule (1A) of Rule 142 of the 2017 Rules, where a proper officer, before service of notice under Section 73(1) or Section 74(1) of the 2017 Rules seeks to communicate details of tax, interest or penalty, he is required to do so in the prescribed form i.e., via Part A of Form GST DRC-01A.

65. Where, however, before service of notice or statement, the person chargeable with tax, based on self-ascertainment, seeks to make payment of tax and interest, in consonance with the leeway given under sub-section (5) of Section 73 [which relates to cases not involving fraud, wilful misstatement or suppression of facts to evade tax] or as the case may be, the payment of tax, interest and penalty under sub-section (5) of Section 74 [which relates to cases involving fraud, wilful misstatement or suppression of facts to evade tax], he is required to inform the proper officer of such payment made in the prescribed form i.e., GST DRC-03.

66. The proper officer thereafter, is required to issue an acknowledgement, accepting the payment made by the person, also in the prescribed form i.e., GST DRC-04.

67. This is also required to be done [i.e., the acknowledgement of acceptance of payment] where tax, interest and penalty are ascertained by the proper officer, under Rule 142(1A).

***** ***** *****

76. The malaise of officials seeking to recover tax dues (in contrast to voluntary payments being made by assesses towards tax dues) during search, inspection or investigation was sought to be addressed by the GST-Investigation, CBIC via Instruction No. 01/2022-2023 dated 25.05.2022. For the sake of convenience, the said instruction is extracted hereafter:

> “Date : 25 May, 2022
>
> Instruction No. 01/2022-2023 [GST - Investigation]
>
> Subject : Deposit of tax during the course of search, inspection or investigation-reg.
>
> 1. During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making ‘recovery’ during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon’ble High Courts in this regard.
>
> 2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensuring correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the

taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73 (5) and Section 74(5) of the CGST Act, 2017. This helps he taxpayers in discharging their admitted liability, self ascertained or as ascertained by the tax officer, without having to bear the burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on nonpayment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

5. Pr. Chief Commissioners/Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting

> the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers.
>
> (Vijay Mohan Jain)
> Commissioner (GST-Inv.), CBIC"

77. It appears that this Instruction was issued by the GST Investigation Wing, CBIC, in the backdrop of an order dated 16.02.2021, passed by the Gujarat High Court in the matter of Bhumi Associate v. Union of India, SCA No. 3196 of 2021, order dated 16-2- 2021 (Guj), whereby the following wholesome directions were issued-

> "The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:
>
> (1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.
>
> (2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.
>
> (3) Facility of filing [a] complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.
>
> (4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer."

***** ***** *****

> 80. Clearly, the aforementioned direction, issued by the Gujarat High Court as far back as on 16.02.2021, is binding on the official respondents/revenue, which was not followed in the instant case.
>
> 81. The violation of the safeguards put in place by the Act, Rules and by the Court, to ensure that unnecessary harassment is not caused to the assessee, required adherence by the official respondents/revenue, as otherwise, the collection of such amounts towards tax, interest and penalty would give it a colour of coercion, which is not backed by the authority of law.
>
> ***** ***** *****
>
> 83. Failure to follow the prescribed procedure will, as in this case, have us conclude that the deposit of tax, interest and penalty was not voluntary."

10. In in the instant case, the deposit made by the Petitioner before the search ended and the officers left, shows that the deposit was not voluntary and contrary to the CBIC Instruction No. 01/2022-2023 dated 25.05.2022.

11. We are unable to the accept the contention of learned counsel for the respondent that the deposit was voluntary for the reason that there is no material placed on record by respondent to show as to why petitioner would voluntarily deposit the said amount when there was no claim made against the petitioner as on the date of deposit.

12. Therefore, the amounts that were deposited on behalf of petitioner lacked voluntariness. Accordingly, said amount are liable to be returned with interest.

13. In view of the above, Respondents are directed to, within four weeks, refund the amount of Rs.35,00,000/- to the Petitioner alongwith statutory interest @ 6% p.a. from date of deposit till repayment.

14. It is clarified that the refund would be without prejudice to the proceedings initiated by the respondents under Section 73 of the Act and the defense of the petitioner thereto.

15. Petition is disposed of in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Sanjeev Sachdeva & Ravinder Dudeja, JJ.]

WPC No. 2752 of 2024

M/s White Mountain Trading Pvt. Ltd. ... Petitioner

Versus

Additional Commissioner, CGST Appeals-II, Delhi ... Respondent

Date of Order: 23.02.2024

WHETHER LIMITATION OF FILING AN APPEAL FILED U/S 107(1) OF THE CGST ACT BEING 3 MONTHS WAS ACTUALLY FILED AFTER A DELAY OF MORE THAN A MONTH COULD BE CONDONED U/S 107(4) OF THE ACT IF SUFFICIENT CAUSE IS SHOWN?

HELD – Since in the present case the appeal was filed on 02.09.2023, we hold that the appeal was filed with a delay not exceeding one month and as such the Commissioner Appeals was empowered to consider the application seeking condonation of delay.

Present for Petitioner : Mr. Srijan Sinha and Mr. Naveen Soni, Advs.

Present for Respondent : Mr. Harpreet Singh, Sr. Standing Counsel with Mr. Jatin Kumar Gaur, Advocates

ORDER

Sanjeev Sachdeva, J. (Oral)

1. Petitioner impugns order dated 15.01.2024 passed by the Commissioner of Central Tax Appeals-II whereby the appeal filed by the petitioner impugning the order in original dated 04.05.2023 was dismissed holding that the same is barred by limitation.

2. Issue notice. Notice accepted by learned counsel for respondent. With the consent of parties, the petition is taken up for hearing today.

3. As per the impugned order, the order in original is dated 04.05.2023 and the last date for filing the appeal in terms of Section 107 (1) of the Central Goods and Service Tax Act 2017 (hereinafter referred to as the Act) being 3 months, was 03.08.2023. The impugned order records that the appeal was actually filed on 25.09.2023 after a delay of more than one month. As per the Commissioner Appeals only a delay upto one month,

in filing an appeal, could be condoned under Section 107 (4) of the Act if sufficient cause in shown.

4. Commissioner Appeals held that since the appeal was filed with a delay of more than one month, Commissioner Appeals was not vested with the power to Condon the delay.

5. It is pointed out that the petitioner had filed the appeal through an online process on 02.09.2023. The date noticed in the impugned order, i.e. 25.09.2023 is the date when the petitioner physically filed the appeal after the filing done on 02.09.2023 through the online process.

6. It is not in dispute that the appeal is to be filed through an online process and thereafter the physical copy is to be supplied to the department.

7. The date of filing is always taken as the date of initial filing through the online mode if other steps as required in the law are also taken by the appellant.

8. Since in the present case the appeal was filed on 02.09.2023, we hold that the appeal was filed with a delay not exceeding one month and as such the Commissioner Appeals was empowered to consider the application seeking condonation of delay.

9. As the Commissioner Appeals has erroneously not considered the application seeking condonation of delay solely on the ground that appeal same was beyond the period prescribed under Section 107 (4) of the Act and thus beyond the powers vested in the Commissioner Appeals, we set aside the said order and remit the matter to the Commissioner Appeals to consider the application seeking condonation of delay in accordance with law.

10. The petition is accordingly disposed of with the aforesaid directions.

11. The Commissioner Appeals shall expeditiously dispose of the proceedings.

12. It is clarified that this Court has neither considered nor commented on the merits or the contention of either party or the merits of the application seeking condonation of delay.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Sanjeev Sachdeva & Ravinder Dudeja, J.J.]

WPC No. 2796 of 2024

Sandeep Jain Proprietor of
M/S Nandi Polychem ... Petitioner

Versus

Union of India Revenue Secretary
Ministry of Finance & Ors. ... Respondents

Date of Order: 05.03.2024

WHETHER A DEMAND OF RS. 10,03,08,628/- PASSED U/S 73 OF THE CGST ACT AFTER A SHOW CAUSE NOTICE DATED 23.09.2023 REPLIED IN DETAIL VIDE REPLIES DATED 23.10.2023 AND DRC-06 DATED 11.12.2023 WAS JUSTIFIED?

HELD – In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly, the impugned order dated 30.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

Present for Petitioner	:	Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. V.K. Jain, Mr. Ramashish and Ms. Tanya Saraswat, Advocates
Present for Respondent	:	Ms. Vinish Phoghat, Standing Counsel for UOI/R-1 Mr. Rajeev Aggarwal, ASC for R-3.

ORDER

1. Petitioner impugns order dated 30.12.2023, whereby the show cause notice dated 23.09.2023, proposing a demand against the petitioner has been confirmed and a demand of Rs. 10,03,08,628.00/- including penalty has been raised against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017.

2. Learned counsel for the petitioner submits that a detailed reply dated 20.10.2023 to the show cause notice was filed on 23.10.2023. He further submitted that subsequent to the said reply Petitioner filed a DRC-06 on 11.12.2023, whereby the petitioner had given party-wise details and return filing status. Further, on 21.12.2023 petitioner filed another reply reiterating

the submissions made by him on 23.10.2023 and 11.12.2023. However, the impugned order dated 29.12.2023 does not take into consideration the replies submitted by the petitioner and is a cryptic order which merely records that reply was found not satisfactory and devoid of merits.

3. A perusal of the show cause notice shows that the Department has given specific details of alleged under declaration of output tax, excess claim Input Tax Credit ["ITC"], under declaration of ineligible ITC and ITC claim from cancelled dealers, return defaulters and tax non-payers. To the said show cause notice, detailed replies dated 23.10.2023, 11.12.2023 and 21.12.2023 were furnished by the petitioner giving full disclosures under each of the heads.

4. The impugned order, however, after recording the narration, records that the reply uploaded by the tax payer is not satisfactory. It merely states that "However, during the personal hearing, the taxpayer reiterated the contents of the reply filed in form DRC-06. On scrutiny of the same, it has been observed that the same is incomplete, not duly supported by adequate documents and unable to clarify the issue. Since, the reply filed is not clear and satisfactory, the demand of tax and interest conveyed via DRC-01 is confirmed, with the direction to deposit the amount mentioned in DRC-07 within one month from the date of receipt of this demand notice, failing which recovery proceedings w/s 79 of CGST Act will be initiated and the actions as per law will be initiated without further reference." The Proper Officer has opined that the reply is unsatisfactory.

5. The observation in the impugned order dated 30.12.2023 is not sustainable for the reasons that the reply filed by the petitioner is a detailed reply.

6. Proper officer had to at least consider the reply on merits and then form an opinion whether the explanation was sufficient or not. He merely held that no proper reply/explanation has been received which ex-facie shows that proper officer has not even looked at the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that reply is incomplete and further details were required, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details.

8. In view of the above, the order cannot be sustained and the matter is liable to be remitted to the Proper Officer for re-adjudication. Accordingly,

the impugned order dated 30.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication.

9. As noticed hereinabove, the impugned order records that petitioner has not furnished the requisite details. Proper Officer is directed to intimate to the petitioner details/documents, as maybe required to be furnished by the petitioner within a period of one week from today. On such intimation being given, petitioner shall furnish the requisite explanation and documents within one week thereof. Thereafter, the Proper Officer shall re-adjudicate the show cause notice within a period of two weeks after giving an opportunity of personal hearing.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties, are reserved.

11. The challenge to Notification No.9 of 2023 is left open.

12. Petition is disposed of in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru & Amit Mahajan, J.J.]

WPC No. 15685 of 2022

Ramky Infrastructure Limited ... Petitioner

Versus

Commissioner of Trade & Taxes ... Respondent

Date of Order: 20.07.2023

WHETHER LIMITATION OF SECTION 38 OF DVAT ACT OF TWO MONTHS FOR ISSUE OF REFUND IS SACROSANCT?

HELD – Yes.

Affirmed by Hon’ble Supreme Court of India vide order dated 20.10.2023 in Special Leave to Appeal (C) No(s). 22814/2023.

Present for Petitioner : Mr. Rajesh Jain & Mr. Virag Tiwari, Advs.

Present for Respondent : Mr. Satyakam, ASC

ORDER

Vibhu Bakhru, J

Introduction

1. The petitioner has filed the present writ petition, inter alia, praying that the respondent be directed to refund the amount of ₹54,58,897/-, along with interest with effect from 01.06.2015. The said sum of ₹54,58,897/- as claimed by the petitioner, relates to the fourth quarter of the Financial Year 2013-14 and was included in the petitioner's claim for refund of ₹2,64,77,458/-, in its revised return of Value Added Tax for the fourth quarter of the Financial Year 2013-14, furnished on 31.03.2015. The petitioner claims that in terms of Section 42 of the Delhi Value added Tax Act, 2004 (hereafter 'the DVAT Act'), it is entitled to interest on the said amount of ₹54,58,897/- with effect from 01.06.2015, that is, two months after filing the revised return.

Factual Context

2. The petitioner is a limited company engaged in the business of development of the infrastructural sector and was awarded civil construction works for various projects in Delhi, namely, Mangolpuri DMSW Project, Narela Power Project, DSIIDC Residential Flats Project, Bawana Power Projects, and Najafgarh Drain Project, to name a few.

3. For the purposes of complying with his obligations under the DVAT Act as well as the Central Sales Tax Act, 1956 (hereafter 'the CST Act'), the petitioner applied for and was registered with the Department of Trade and Taxes, Delhi (hereafter 'the Department') on 05.03.2007. The petitioner was assigned TIN 07510324123.

4. On 27.05.2014, the petitioner filed its return under the requisite form (Form DVAT 56) for the fourth quarter of the Financial Year 2013-14 claiming a refund of ₹2,59,88,302/-. Thereafter, the petitioner filed a revised return in Form DVAT 56 on 31.03.2015, enhancing its claim of refund to ₹2,64,77,458/-. The petitioner claims that on the date of filing of its return, there were no amounts due for any period either under the DVAT Act or the CST Act.

5. On 07.06.2014, and 15.05.2014 notices (in all twenty-four in number) for default assessments of tax and interest were issued under Sections 32 and 33 of the DVAT Act, for various tax periods falling during the Financial

Year 2012-13. On 15.06.2015, notices for default assessments were framed for tax periods falling within the Financial Year 2013-14 by the Department. These default assessments were made alleging mismatch in the Input Tax Credit (ITC), due to mismatch between purchases made by the petitioner and sales shown by the registered selling dealer. The Department raised a demand of additional tax amounting to ₹54,58,897/- on account of the aforesaid count. In addition, the Department also imposed a penalty of ₹32,600/- on the petitioner.

6. The petitioner claims that on 10.10.2015, the petitioner filed its objections in respect of the default assessments for the tax periods falling within the Financial Years 2012-2013 and 2013-2014, under Section 74 of the DVAT Act before the Objection Hearing Authority (hereafter 'the OHA'). The petitioner claims that it simultaneously also pursued the Department for release of the refund as claimed by it in its revised return in, respect of the fourth quarter of the Financial Year 2013-14. There is a controversy as to whether the petitioner had filed the objections, on 10.10.2015 as claimed, or later. Although, it is contended on behalf of the Revenue that the objections were filed later;

it is conceded that there is no material to substantiate the said contention. Mr Satyakam, learned counsel who appeared for the Revenue, states that the relevant records are not traceable and it is not possible to ascertain the date on which the objections were filed. He also clarified that the date of filing of the objections (30.09.2019) as reflected in the tabular statement set out in paragraph no. 5 of the Revenues application (CM No. 7916/2023) is not the date of filing of the objections but the date of communications issued. We therefore, accept that the Petitioner had filed objections under Section 74 before the OHA on 10.10.2015, as claimed.

7. Since the petitioner's claim for refund was not processed, the petitioner filed a writ petition before this Court (being *W.P.(C) No. 7324/2017 captioned Ramky Infrastructure Limited v. Commissioner of Trade and Taxes*). The said petition was taken up for hearing on 08.09.2017. On the said date, the statement was made on behalf of the respondent that the petitioner's refund would be processed and the refund order would be issued within a period of four weeks from the said date. The said statement was noted and this Court, by an order dated 08.09.2017, directed that the refund along with interest be paid directly to the account of the petitioner within two weeks, thereafter.

8. The petitioner's claim was not processed within the period as stipulated in the aforementioned order dated 08.09.2017. Resultantly,

the petitioner was constrained to file a Contempt Case (being Cont. Cas. 736/2017) under Section 11 read with Section 2(b) of Contempt of Courts Act, 1971. In the aforementioned contempt petition filed on 28.10.2017, the petitioner, inter alia, prayed that directions be issued for the refund of ₹2,64,77,458/- along with interest. While the said proceedings were pending, on 30.10.2017, the petitioner's claim for refund was partly processed and the Department granted a refund of ₹2,40,32,088/-, which included interest amounting to ₹30,46,127/-. The refund amount was computed after adjusting an amount of ₹54,91,497/- (₹54,58,897/- on account of additional tax under the default assessment notices and ₹32,600/- on account of penalty). The contempt petition was, thereafter, dismissed by this Court by an order dated 16.07.2018.

9. The petitioner prevailed in its objections before the OHA impugning the additional demands raised pursuant to the default assessment of tax and interest for the various periods falling within the Financial Years 2012-13 and 2013-14. By orders dated 12.07.2022, the OHA set aside the said demands. Copies of the orders dated 12.07.2022 placed on record also indicate that the OHA had reviewed the earlier assessments under Section 74B(5) of the DVAT Act.

10. Thereafter, the petitioner issued a letter dated 12.09.2022 claiming release of the amount of ₹54,58,897/- along with interest that had been withheld on account of the assessments under Sections 32 and 33 of the DVAT Act, as noted above.

11. The petitioner's claim for refund was not processed. Aggrieved by the same, the petitioner has preferred the present writ petition.

12. It is relevant to note that in the meantime, the additional demands aggregating to ₹10,43,918/- have been raised relating to the Financial Year 2013-14 (demand of ₹6,50,434/- on account of tax and interest; and ₹3,93,484/- on account of penalty). These demands were reflected as raised on 04.09.2018. The petitioner claims that on 02.11.2018, it filed objections against the said demands and that the said objections are pending consideration.

13. This petition was listed before this Court on 15.11.2022. This Court had briefly noted the petitioner's grievances and issued notice. Mr Satyakam, learned counsel had appeared on behalf of the Department on advance notice and had accepted the notice. He had sought time to take instructions and also contended that in terms of Rule 57 read with Rule 34 of the Delhi Value Added Tax Rules, 2005 (hereafter 'the DVAT Rules'),

the petitioner was required to apply for the refund in Form DVAT 21. This was contested by the learned counsel for the petitioner. However, without considering the rival contentions, this Court granted liberty to the petitioner to file Form DVAT 21, claiming refund without prejudice to its rights and contentions.

14. In terms of the liberty granted by this Court, the petitioner made an application in Form DVAT 21 seeking refund of the amount of ₹54,58,897/- along with interest, for the fourth quarter of the Financial Year 2013-14.

15. The petitioner's claim for refund was considered and the Joint Commissioner of the Department of Trade and Taxes, passed an order on 01.02.2023 in Form DVAT 22 granting a refund of the amount of ₹44,14,979/- after adjustment of an amount of 10,43,918/-. The petitioner's claim for interest was partly allowed to the extent of ₹7,983/- being the interest on the amount of ₹44,14,979/- computed from 15.01.2023 (that is, two months from the date of filing of Form DVAT 21), till the date of the order.

16. Whilst the petitioner claims that it is entitled to an interest on the refund of tax with effect from 01.06.2015, that is, on expiry of two months from the date of filing of the revised return; the respondent claims that the petitioner is entitled to an interest only with effect from two months, after filing an application for the refund in Form DVAT 21. According to the respondent, no interests were payable on the amounts as adjusted, on account of the outstanding demands, notwithstanding that the same were set aside subsequently.

17. The only controversy, that is, required to be addressed by this Court is whether the petitioner's claim for interest on the refund is required to be reckoned with reference to the date of filing its revised return.

Submissions

18. Mr Rajesh Jain, learned counsel appearing for the petitioner referred to the decision of the Co-ordinate Bench of this Court in *ITD-ITD Ltd CEM JV v. Commissioner of Trade and Taxes: 2019 SCC Online Del 9568* and on the strength of the said decision submitted that the demands raised subsequent to the claim for refund cannot adversely affect the petitioner's claim for refund. He also relied on the decision in the case of *IJM Corporation Berhad & Ors. v. Commissioner of Trade and Taxes: (2017) SCC Online Del 11864*. He further submitted that the controversy involved in the present case was covered by the decision of the Co-ordinate Bench

of this Court in *Corsan Corviam Construction S.A-Sadbhav Engineering Ltd. JV v. Commissioner of Trade and Taxes: 2021 SCC OnLine Del 3788*.

19. Mr Satyakam, learned counsel appearing for the respondent countered the aforesaid submissions. He submitted that the claim for the refund could be processed only once the petitioner had made an application in Form DVAT 21. He submitted that the default assessment orders would supersede the petitioner's returns and the same could no longer be considered as assessments for the purposes of processing the refund or the interest, thereon. He submitted that the petitioner's claim for the refund would arise pursuant to the orders setting aside the said default assessments and therefore, in terms of Rule 34(4) of the DVAT Rules, the petitioner would require to claim the refund in Form DVAT 21 along with a certified copy of a judgment of a Court or an order setting aside the default assessments. He also referred to the decision in the case of *IJM Corporation Berhad & Ors. v. Commissioner of Trade and Taxes (supra)*. He submitted that setting aside of the default assessments pursuant to the orders passed by the OHA under Section 74 of the DVAT Act does not revive the returns. He contended that in such cases, the petitioner's claim for refund would arise directly as a result of the orders passed by the OHA under Section 74 of the DVAT Act and not on account of the return furnished by the assessee. He also submitted that similarly, if the petitioner became entitled to the refund on prevailing in the appeals either before the Appellate Tribunal under Section 76 of the DVAT Act or before this Court under Section 81 of the DVAT Act; the petitioner's entitlement to the refund would get instituted pursuant to the said orders. In terms of Rule 57 of the DVAT Rules, the refund so payable, is required to be processed in accordance with Rule 34 of the DVAT Rules.

Reasoning And Conclusion

20. At the outset, it would be relevant to refer to Section 38 of the DVAT Act, which contains provisions regarding refunds. The relevant extract of the said Section is set out below:

"38 Refunds

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

(a) refunded to the person, –

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act, the amount shall be carried forward to the next tax period as a tax credit in that period

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act, within fifteen days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).

(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to –

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under section 59; or

(c) furnish returns under section 26 and section 27; or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956, shall be excluded.

xxx xxx xxx”

21. In terms of Sub-section (1) of Section 38 of the DVAT Act, the Commissioner is obliged to refund the amount of tax, penalty or interest if paid by a person in excess of the amount due from him. In terms of Sub-section (2) of Section 38 of the DVAT Act, the Commissioner is required to apply the excess amount due to be refunded towards the recovery of any other amount due under the DVAT Act or the CST Act. Sub-section (3) of Section 38 of the DVAT Act requires that the amount remaining after adjustments under Sub-section (2) of Section 38 of the DVAT Act be either refunded to the person in terms of Clause (a) of Sub-section (3) or, at the option of the taxpayer, be carried forward as tax credit, to the next tax period in terms of Clause (b) of Sub-section (3) of Section 38 of the DVAT Act.

22. It is also relevant to refer to Rule 34 of the DVAT Rules, which provides for refund of excess payment. Rule 34 of the DVAT Rules is set out below:

> **"34. Refund of excess payment**
>
> (1) A claim for refund of tax, penalty or interest paid in excess of the amount due under the Act (except claimed in the return) shall be made in Form DVAT-21, stating fully and in detail the grounds upon which the claim is being made.
>
> (2) Only such claim shall be made in Form DVAT-21 that has not already been claimed in any previous return. A claim for refund made in Form DVAT-21 shall not be again included in the return for any tax period.
>
> (3) The Commissioner may, for reasons to be recorded in writing, issue notice to any person claiming refund to furnish security under sub-section (5) of section 38, in Form DVAT -21A, of an amount not exceeding the amount of refund claimed, specifying therein the reasons for prescribing the security.
>
> (4) Where the refund is arising out of a judgment of a Court or an order of an authority under the Act, the person claiming the refund shall attach with Form DVAT-21 a certified copy of such judgment or order.
>
> (5) When the Commissioner is satisfied that a refund is admissible, he shall determine the amount of the refund due and record an order in Form DVAT-22 sanctioning the refund and recording the

calculation used in determining the amount of refund ordered (including adjustment of any other amount due as provided in sub-section (2) of section 38).

(5A) The order for withholding of refund/furnishing security under section 39 shall be issued in Form DVAT-22A.

(6) Where a refund order is issued under sub-rule (5), the Commissioner shall, simultaneously, record and include in the order any amount of interest payable under sub-section (1) of section 42 for any period for which interest is payable.

(7) The Commissioner shall forthwith serve on the person in the manner prescribed in rule 62, a cheque for the amount of tax, interest, penalty or other amount to be refunded along with the refund order in Form DVAT-22:

PROVIDED that the Commissioner may transfer the amount of refund through Electronic Clearance System (ECS) in the bank account of the dealer.

(8) No refund shall be allowed to a person who has not filed return and has not paid any amount due under the Act or an order under section 39 is passed withholding the said refund."

23. In terms of Rule 34(1) of the DVAT Rules, a claim for refund of tax, penalty or interest paid in excess of the amount due under the DVAT Act is required to be made in Form DVAT 21 setting out the grounds for claiming such a refund. Sub-rule (2) of Rule 34 of the DVAT Rules, expressly provides that a claim in Form DVAT 21 is required to be made only if it is not made in a previous return. Thus, once a person has furnished a return claiming a refund, he is not required to file a fresh Form 21, for making any fresh claim.

24. Rule 34(2) of the DVAT Rules must be read in conjunction with Section 38(3)(a) of the DVAT Act. It is clear from the plain language of Section 38(3)(a) of the DVAT Act that the refund claimed by a person in respect of any tax period is required to be processed within a period of one month or two months as the case may be, from the date of furnishing the return or making the claim of the return. In the event the taxpayer furnishes a return reflecting a refund of tax paid, for any period, he is not required to make further claim for such refund by filing Form DVAT 21. This is clear from the plain language of Rule 34(2) of the DVAT Rules.

25. There are two facets to the controversy in this case. The first relates to the requirement of adjusting the pending dues from the amount of refund due to a tax payer. The question being, whether in cases of such an adjustment, a tax payer is required to make a fresh claim notwithstanding, that he had furnished a return claiming such a refund. The second relates to the date when the amount of refund is payable for the purposes of Section 42 of the DVAT Act.

26. The language of Section 38(2) of the DVAT Act indicates the scheme of application of an amount refundable to a person towards the outstanding dues. It requires the Commissioner to apply the excess amount due to a taxpayer towards recovery of any other amount due under the DVAT Act or under the CST Act. Clearly, if there is a crystalized demand, which is due and payable by any taxpayer, the Commissioner is required to first apply the amount refundable for satisfaction of that liability. If any amount remains after the discharge of such dues, the same is required to be refunded within the stipulated period. In other words, the refund would be made only to the extent of the amount that remains payable after discharge of any other amount due from the taxpayer.

27. It is apparent that the use of the words "*any other amount due*" in Section 38(2) of the DVAT Act refers to the amount due and outstanding at the material time, which is other than that covered under the assessment or quantification resulting in the claim for the refund either made separately or as reflected in the return furnished by the taxpayer.

28. As noted above, if the taxpayer does not elect to carry forward the refund to the next period in terms of Clause (b) of Section 38(3) of the DVAT Act; the refund is required to be processed within the period as specified under Clause (a) of Section 38(3) of the DVAT Act. The application of the amount of refund payable towards any other amount due is clearly of such outstanding amounts that satisfies the two conditions. First, that the amount is due and payable when the refund is required to be processed, that is, within the period of one month or two months, as specified under Section 38(3)(a) of the DVAT Act. And second, that the dues are other than that covered under the quantification, determination or assessment resulting in the claim of the refund.

29. The other cases where the refund is not required to be disbursed is where the Commissioner has issued a notice under Section 58 of the DVAT Act or has sought additional information under Section 59 of the DVAT Act. In such cases, the refund is required to be carried forward to the next period as tax credit, in terms of Sub-Section (4) of Section 38 of the

DVAT Act. In terms of Section 38(5) of the DVAT Act, the Commissioner may demand security from a person pursuant to the powers conferred under Section 25 of the DVAT Act, within the period of fifteen days from the date on which the return was furnished or a claim for refund is made. In terms of Sub-Section (6) of Section 38 of the DVAT Act, the Commissioner is required to grant the refund within 15 days from the date the dealer furnishes such security to the satisfaction.

30. It is clear from the above that the scheme of Section 38 of the DVAT Act requires adherence to strict timelines.

31. By virtue of Section 37 of the DVAT Act if the amount of refund payable or part thereof, is applied for the payment of any other amount due under the DVAT Act, the liability in respect of the said due would stand discharged to the extent that the amount refundable has been so applied. The word 'apply' as used in Section 38(2) of the DVAT Act denotes the payment and discharge of the said liability to the extent that the amount refundable, or part thereof, is so applied. Application of the amount refundable against any other amounts due is in the nature of recovery of the said amount and in a manner of speaking, amounts to set off of the amount due payable to a person against a crystalized debt, recoverable from him.

32. If the taxpayer is aggrieved by the determination or assessment of the amount recoverable from him, it is open for him to avail such remedies as available to call into question such assessment or quantification. But he cannot resist recovery of the amount that is due and payable by him by adjustment, in terms of Section 38(2) of the DVAT Act, from the amounts refundable to him. This is, obviously, subject to the Commissioner making such recovery strictly in compliance with the provisions of Section 38(2) of the DVAT Act.

33. Processing of the refund in terms of Sections 38(2) and 38(3)(a) of the DVAT Act, will exhaust and discharge the taxpayer's claim for the refund in full, which is either made by furnishing a return or otherwise.

34. As stated earlier, if the assessee seeks to dispute the liability against which the amount refundable has been applied; he may avail of such remedies as available but the same shall obviously be on the footing that the amount of liability, to the extent of the amount of refund applied, has been discharged by payment. The taxpayer's claim for consequential refund of the amount recovered in terms of Section 38(2) of the DVAT Act, would necessarily be a separate claim and cannot be considered as

subsumed in the earlier claim for the refund by the taxpayer, either by furnishing a return or otherwise. As stated earlier, that claim for the refund (under a return furnished by the taxpayer or made separately by filing Form DVAT 21) will stand discharged and satisfied on being processed in terms of Sections 38(2) and 38(3)(a) of the DVAT Act.

35. Having stated the above, it is also necessary to state that if the application of the amount refundable or any part thereof, is not towards an amount that was outstanding and payable at the material time but towards a demand, which is suspended in terms of Section 35(2) of the DVAT Act, or is, otherwise not recoverable under the machinery provisions for recovery of tax; the taxpayer's claim for the refund would remain unsatisfied. It would be erroneous to assume that the taxpayer's remedy would be to re-apply for the refund after successfully challenging such an appropriation.

36. In terms of the aforesaid scheme, a claim for refund made by furnishing a return (which is self assessment under Section of 31 of the DVAT Act) would stand satisfied and exhausted only if the same is processed strictly in accordance with Section 38 of the DVAT Act. If the refund is not processed within the stipulated time or if the amount refundable is sought to be appropriated against other amounts that were not due and payable at the material time, the taxpayer would be within its right to pursue its claim for refund, either before the Commissioner or by escalating its grievance to the Appellate Authorities and the Courts.

37. The Revenue's contention that in such cases, the taxpayer's claim for the refund arises out of the appellate orders and therefore does not relate back to the date when it was made, either under a return or otherwise, is erroneous, and we reject the same.

38. The taxpayer's remedies and claim in respect of any amount correctly applied in terms of Section 38(2) of the DVAT Act – that is against other amounts due outside the rubric of the return furnished or its claim for the refund – would follow a different trajectory. As stated above, in such cases the taxpayer's remedies would proceed on the basis that the amounts due and payable have been paid by the taxpayer. If the taxpayer succeeds in his remedies in setting aside the liability (either partly or in whole) against which the amounts refundable (or part thereof) have been correctly applied in terms of Section 38(2) of the DVAT Act; he would be entitled to the consequential relief of a refund in respect of that amount due, to the extent that the same was satisfied by appropriating an amount refundable to him. In such cases, it follows that the taxpayer's refund would arise from such orders setting aside the cause for the outstanding demand

and not from the return furnished by him, which was correctly processed in terms of Section 38 of the DVAT Act. In such cases the assessee would have to apply for a refund in Form DVAT 21. The same would not be covered under the return furnished for the claim made, which was correctly processed under Section 38 of the DVAT Act.

39. The petitioner's remedy against the amounts withheld or appropriated towards dues that arise from the same subject as the petitioner's claim for a refund would follow a different course. The same would, essentially, be in the nature of the Commissioner's decision to decline the payment of the refund on account of a subsequent assessment, and not an appropriation towards "other amount due" as contemplated under Section 38(2) of the DVAT Act. If the petitioner prevails in his remedies against such a decision of the Commissioner to decline the payment of the refund on the basis of his assessment, or to not process the same, the petitioner's entitlement to the refund would obviously relate back to the period as specified under Section 38(3) of the DVAT Act. This has been explained by the Co-ordinate Bench of this Court in *Corsan Corviam Construction SA-Sadbhav Engineering Ltd. JV v. Commissioner of Trade and Taxes (supra)* as in a manner of speaking, removing the cause that had eclipsed the taxpayer's claim for refund. In such cases, there is no requirement for a taxpayer to make a separate claim for refund by filing Form DVAT 21. The refund claim as reflected in the return would require to be discharged notwithstanding, that the taxpayer has not filed Form DVAT 21.

40. Mr Satyakam's contended that once an assessment has been framed by the concerned authorities under Sections 32 and 33 of the DVAT Act, the return filed by the taxpayer stands superseded. He contends that, if the taxpayer succeeds in challenging the assessment so framed and prevails in establishing that he is entitled to the refund as claimed in the return, the refund would be payable two months from the date of filing the claim for refund in Form DVAT 21, along with the copies of the order passed by the Appellate Authority. According to him such refund is payable pursuant to the order setting aside or modifying the assessments under Section 32 or Section 33 of the DVAT Act, and not pursuant to the return filed.

41. We are unable to accept the aforesaid contention. The same runs contrary to the scheme of the DVAT Act. If the refund claimed by the taxpayer in his return is not paid on account of the assessment and re-assessment framed under Sections 32 or 33 of the DVAT Act for the same tax period and the petitioner is successful in upsetting the same either pursuant to the objections filed under Section 74 of the DVAT Act, or in an

appeal filed before the Appellate Authority under Section 76 of the DVAT Act, the self-assessment (return furnished) would stand confirmed and the assessee's claim would be required to be processed. This is so because, if the petitioner prevails in its objections under Section 74 of the DVAT Act, or appeals under Section 76 of the DVAT Act, that would amount to vindicating its stand that the assessments framed are erroneous and the refund claimed under the return should have rightly been paid within the time as stipulated under Section 38(3)(a) of the DVAT Act. Even in cases where the assessments are reviewed under Section 74B of the DVAT Act and as a consequence, the refund as reflected in the return is required to be made, the refund would be traceable to the return furnished by the taxpayer.

42. There is merit in Mr Satyakam's contention that if a refund arises out of a judgment of a Court or an order of an authority under the DVAT Act, the person claiming the refund is required to attach a certified copy of such a judgment or an order along with Form DVAT 21 in terms of Rule 34(4) of the DVAT Rules. However, Rule 34(4) of the DVAT Rules is applicable in respect of refund claims that arise out of orders passed by the authorities or a judgment passed by a Court do not arise from the return furnished, by a taxpayer. Such cases also include those cases, where a part or whole of the refund claimed in a return filed by the taxpayer has been correctly appropriated towards an existing liability in terms of Section 38(2) of the DVAT Act and the taxpayer succeeds in its challenge relating to the said liability. In addition, the reference to orders of an authority and a judgment or a Court under Rule 34(4) would also include cases, where the amount of tax, penalty and interest are refundable to the taxpayers, but not in terms of the return furnished by the taxpayer. The doctrine of Harmonious Construction requires that provisions of a statute not be read in isolation but in conformity with the scheme of the statute so as to avoid any conflict with the other provisions. This interpretation of Sub-rule (2) and Sub-rule (4) of Rule 34 of the DVAT Rules is consistent with the said doctrine.

43. The second aspect relates to the date from which interest is required to be computed.

44. Section 42 of the DVAT Act contains provisions regarding the payment of interest. The said Section is set out below:

"42. Interest

(1) A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual

rate notified by the Government from time to time, computed on a daily basis from the later of –

(a) the date that the refund was due to be paid to the person; or

(b) the date that the overpaid amount was paid by the person, until the date on which the refund is given.

PROVIDED that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):

PROVIDED FURTHER that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

Explanation: If the delay in granting the refund is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

(2) When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.

(3) Where the amount of tax including any penalty due is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.

(4) Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.

(5) The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen.”

45. In terms of Section 42(1) of the DVAT Act, a person is entitled to interest from the date that the refund was due to be paid or the date when the amount was over paid by the person, whichever is later. In the present case, undisputedly, the date on which the refund was due was later. According to the Revenue, the return furnished by a taxpayer, would stand superseded by the subsequent assessments under Sections 32 or 33 of the DVAT Act and, if no refund is due in terms of such assessments, the refund would be payable only after the taxpayer has succeeded in its challenge for setting aside or modifying the assessments framed under Sections 32 and 33 of the DVAT Act. It is contended that if the taxpayer secures the orders for setting aside or modifying the said assessments, the refund would be payable as a consequence of such orders. Thus, in such cases, the taxpayer would have to once again make a claim by filing Form DVAT 21 and the refund would be payable, thereafter. According to the Revenue, interest would be required to be calculated from two months after filing of Form DVAT 21.

46. This aforesaid contention is unmerited. Once the taxpayer has succeeded in upsetting the assessments framed under Sections 32 or 33 of the DVAT Act, which results in vindicating its claim for refund either in part or as a whole, as claimed by furnishing a return, interest under Section 42(1)(a) of the DVAT Act would be payable from such date as the refund was due to be paid to the taxpayer. The expression, "*the date that refund was due to be paid*" must be construed as the date when such a refund ought to have been paid to the taxpayer. If the taxpayer succeeds in vindicating its stand that its claim for the refund was correct and that the subsequent assessments framed by the concerned authorities for the same tax period were erroneous or unjustified; it would follow that the taxpayer should have been refunded the amount claimed and that interest would be payable from the said date. In cases where the taxpayer partially succeeds and its claim for refund has been upheld, not to the extent of the entire amount but part thereof, the taxpayer would be entitled to interest only for the part of the said amount, which has been sustained, pursuant to the subsequent proceedings. However, it would be erroneous to proceed on the basis that the amount of refund, which has been sustained by the authorities or the Court in the subsequent proceedings, was not payable at the material time when the taxpayer had made a claim.

47. The Revenue's interpretation of Section 42(1)(a) of the DVAT Act would clearly lead to arbitrary and unjustified results. The taxpayer whose return is erroneously rejected and an unjustified assessment has been made, which is subsequently set aside would be placed in a disadvantageous position viz-a viz the taxpayer, whose return is correctly

processed. It would accord premium to unjustified action of the concerned authorities in framing erroneous assessments and a corresponding penalty on the taxpayer. Clearly, this is not the legislative intent of Section 42(1) of the DVAT Act. It is also relevant to refer to the second proviso to Section 42(1) of the DVAT Act, which also clarifies that if the amount of refund is enhanced or reduced as the case may be, the interest shall be enhanced or reduced accordingly. The second proviso makes it amply clear that an assessee is entitled to interest from the date when the amount ought to have been paid to him. If the amount of refund is reduced or denied and the taxpayer succeeds in the subsequent proceedings either in part or whole; in terms of the second proviso, the interest is required to be varied accordingly.

48. In the present case, the petitioner had filed its revised return for the fourth quarter of the Financial Year 2013-14 on 31.03.2015. However, prior to that (on 15.05.2014 and 07.06.2014) default assessments under Section 32 and 33 of the DVAT Act were framed for various tax periods falling within the Financial Year 2012-13. The said default assessments were framed on 15.05.2014 and 07.06.2014. The petitioner had not filed any objections to the said assessments at the material time. In terms of Section 35 of the DVAT Act, the demands that were assessed in respect of the tax periods in the Financial Year 2012-13 were payable and outstanding. However, the refund due to the petitioner was not applied towards the dues pertaining to the amounts due against demands raised in respect of the tax periods in the Financial Year 2012-13, at the material time. Thus, the same were required to be disbursed. Insofar as the demands for assessments for the Financial Year 2013-14 are concerned, the assessments under Sections 32 and 33 of the DVAT Act were framed subsequent to the last date of processing the petitioner's claim for refund and the refund could not have been withheld at the material time.

49. The petitioner had objected to the said assessments framed under Sections 32 and 33 of the DVAT Act by filing objections under Section 74 of the DVAT Act, on 10.10.2015. In terms of Section 35(2) of the DVAT Act the recovery of the said demands, thereafter, were required to be suspended. The petitioner had prevailed in its objections in respect of the said demands and the same were, subsequently, reviewed and set aside by an order dated 12.07.2022.

50. As stated above, there is no dispute that the petitioner's refund was required to be paid within a period of two months from the date of filing the revised return. The respondent had clearly failed to act in accordance with Section 38 of the DVAT Act as it had not processed the petitioner's claim within the stipulated period of two months.

51. The withholding of the amount due to the petitioner was in breach of Section 38 of the DVAT Act. Thus, interest would be payable to the petitioner on the said amount from 01.06.2015, as claimed.

52. Whilst the Department has processed the petitioner's claim for the refund of ₹44,14,979/-. The Department has withheld a sum of ₹10,43,918/- [₹6,50,434/- as tax and interest and ₹3,93,484/- on account of penalty] for the tax period covered under the Financial Year 2013-14. The demand for the same was raised on 04.09.2018. However, the said amount is not recoverable as the petitioner had filed its objections against the said demands on 02.11.2018. As stated above, it is impermissible to withhold refund towards demands which are not recoverable.

53. In view of the above, we consider it apposite to direct the concerned authority to refund the remaining withheld amount of amount ₹10,43,918/- along with interest with effect from 01.06.2015 and recompute the interest for the amount of ₹44,14,979/- as refunded in terms of the order dated 01.02.2023 and refund the interest due after adjusting the amount of ₹7,983/- already disbursed.

54. The petition is allowed in the aforesaid terms.

IN THE HIGH COURT OF RAJASTHAN AT JODHPUR

[Vijay Bishnoi & Praveer Bhatnagar, JJ.]

D.B. Civil Writ Petition No. 4236 of 2023

M/s. R.K. Jewelers
Through Sole Prop. Ramesh Kumar Soni ... Petitioner

Versus

UOI & Ors. ... Respondents

Date of Order: 26.04.2023

WHETHER REGISTRATION CERTIFICATE CAN BE CANCELLED FOR NON-FILING OF RETURNS?

THE IMPUGNED OFFENDING WORDS, "OR THE VALUE WHICH IS 1.5 TIMES THE VALUE OF LIKE GOODS DOMESTICALLY SUPPLIED BY THE SAME OR, SIMILARLY PLACED SUPPLIER" APPEARING IN RULE 89(4C) OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 AS AMENDED VIDE PARA 8 OF THE NOTIFICATION NO.16/2020-CENTRAL TAX(F.NO.CBEC- 20/06/04/2020-GST) DATED 23.03.2020 IS DECLARED ULTRA VIRES THE PROVISIONS OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND THE INTEGRATED GOODS AND SERVICES TAX

ACT, 2017 AS ALSO VIOLATIVE OF ARTICLES 14 AND 19 OF THE CONSTITUTION OF INDIA AND RESULTANTLY, THE SAME ARE HEREBY QUASHED;

THE IMPUGNED ORDER AT ANNEXURE-C DATED 30.6.2020 PASSED BY THE 3RD RESPONDENT IS HEREBY QUASHED;

HELD – The Court is of the opinion that the Petitioner is at liberty to file an application for restoration of registration in view of the Circular dated 31.03.2023 and also lodge its claim for availment of Input Tax Credit.

Present for Petitioner : Mr. Prahlad Singh

Present for Respondent : Mr. Hemant Dutt & Mr. Kuldeep Vaishnav

ORDER

This writ petition has been filed by the petitioner-firm challenging the order dated 02.02.2022 passed by the respondent No.4, whereby the GST registration of the petitioner-firm has been cancelled on the ground of non-filing of GST return by it. The appeal filed by the petitioner-firm against the said order has also been rejected by the Appellate Authority.

During the pendency of this writ petition, the competent authority under the Goods and Services Tax Act, 2017 had issued a notification dated 31.03.2023 and as per the said notification, on the conditions being fulfilled, the cancellation of registration effected on the ground of non-filing of GST return, could be revoked.

This Court is of the opinion that the case of the petitioner firm covers with the notification dated 31.03.2023 and the petitioner firm can move an application before the competent authority with a prayer for restoration of its GST registration subject to fulfillment of the conditions mentioned in the said notification.

In such circumstances, this writ petition is disposed of with liberty to the petitioner-firm to file application for restoration of its GST registration before the competent authority, which shall consider and decide the application filed by the petitioner-firm in the light of the notification dated 31.03.2023 issued by the competent authority under the Goods and Services Tax Act, 2017 expeditiously.

It is made clear that when the competent authority considers the issue of revocation of cancellation of petitioner firm GST registration under the notification dated 31.03.2023, the petitioner-firm, shall be entitled to lodge

its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[S. R. Krishna Kumar, J.]

WP No. 13185 of 2020 (T-Res)

M/s Tonbo Imaging India Pvt. Ltd. ... Petitioner

Versus

UOI & Ors. ... Respondents

Date of Order: 16.02.2023

WHETHER RULE 89(4)(C) OF THE CGST RULES CAN BE DECLARED ULTRA VIRES AS AMENDED VIDE PARA 8 OF THE NOTIFICATION NO. 16/20202-CT DATED 23.03.2020?

THE WRIT PETITION IS HEREBY ALLOWED;

THE IMPUGNED OFFENDING WORDS, "OR THE VALUE WHICH IS 1.5 TIMES THE VALUE OF LIKE GOODS DOMESTICALLY SUPPLIED BY THE SAME OR, SIMILARLY PLACED SUPPLIER" APPEARING IN RULE 89(4C) OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017 AS AMENDED VIDE PARA 8 OF THE NOTIFICATION NO.16/2020-CENTRAL TAX(F.NO.CBEC- 20/06/04/2020-GST) DATED 23.03.2020 IS DECLARED ULTRA VIRES THE PROVISIONS OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017 AS ALSO VIOLATIVE OF ARTICLES 14 AND 19 OF THE CONSTITUTION OF INDIA AND RESULTANTLY, THE SAME ARE HEREBY QUASHED;

HELD – Page 2 Para Order (a) and (b) type here.

Present for Petitioner : Mr. Sri. V. Raghuraman, Sr. Counsel for Sri. C.R. Raghavendra, Advocate

Present for Respondents : Smt. Vanitha. K.R. Advocate

ORDER

In this petition, petitioner has sought for the following reliefs:-

a. Issue a writ of declaration or any other appropriate writ or direction declaring the provision of Rule 89(4) (C) of the CGST Rules, as amended vide Para 8 of Notification 16/2020-CT dated 23.03.2020, enclosed a **Annexure A** as unconstitutional for the reasons stated in the grounds;

b. Issue a writ of declaration or any other appropriate writ or direction declaring the provisions of Explanation to Rule 93 of the CGST Rule, enclosed as **Annexure B** as unconstitutional for the reasons stated in the grounds;

c. Issue a writ of certiorari or any other appropriate writ to quash impugned order passed by Respondent No. 3 in Form GST-RFD-06 dated 30.06.2020, enclosed as **Annexure C** for the reasons stated in the grounds;

d. Issue a writ of mandamus or any other appropriate writ directing the Respondent No. 3 to accept the six refund applications in Form GST-RFD-01 on 25.05.2020, 27.05.2020 and on 28.05.2020 for the tax periods May 2018, July 2018, August 2018, November 2018, December 2018 and March 2019 (enclosed in **Annexures D1, D2, D3, D4, D5 and D6**) and grant refund of taxes in accordance with law along with interest;

And

e. Grant such other consequential relief a this Hon'ble High Court may think fit including refund of amounts paid, if any and the cost of this writ petition.

2. Apart from other issues, the validity of Rule 89(4C) of the Central Goods and Services Tax Rules, 2017 (for short 'the CGST Rules') as amended vide Para 8 of the Notification No.16/2020-CT dated 23.03.2020 is the subject matter of the present petition. Prior to the aforesaid amendment, Rule 89(4C) of the CGST Rules, read as under:-

> "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both".

After amendment w.e.f 23.03.2020, Rule 89(4C) reads as under:-

> "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both"

Factual Matrix of the case:

3. The petitioner - M/s Tonbo Imaging India Pvt Ltd, is engaged in designing, developing, building and deploying various types of advanced imaging and sensor systems to sense, understand and control complex environments. The petitioner is engaged in developing innovative designs in micro-optics, lower power electronics and real-time vision processing to design imaging systems for real world applications in fields of military applications, critical infrastructures for modern day battlefields, unmanned reconnaissance, transport vehicles driving in the dark etc., wherein the customized products provide effective visualization in different and challenging environments.

3.1 The petitioner exported various aforementioned customized / unique products during the period from May 2018 to March 2019. Since exports made by the petitioner are “zero rated” under Section 16 of the Integrated Goods and Services Act, 2017 (for short, ‘the IGST Act’), the petitioner filed refund applications with the respondents on 25.05.2020, 27.05.2020 and 28.05.2020 and claimed refund of unutilized input tax credit under Section 54(3)(i) of the Central Goods and Services Act, 2017 (for short ‘the CGST Act’) read with Rule 89 of the CGST Rules.

3.2 Meanwhile, Rule 89(4)(C) of the CGST Rules having been amended w.e.f 23.03.2020, Show Cause Notices dated 27.05.2020, 03.06.2020 and 04.06.2020 were issued by the respondents on the ground that the petitioner had not given proof, which was required to be given in terms of the amended Rule 89(4)(C) of the CGST Rules and that therefore, the refund claims could not be considered.

3.3 The petitioner submitted replies dated 04.06.2020, 08.06.2020 and 09.06.2020 to the show cause notices inter-alia stating that the amended Rule 89(4)(C) of the CGST Rules would not be applicable in the instant case, as the period for which refund was being claimed (i.e., May 2018 to March 2019) was much prior to the amendment of Rule 89(4)(C) (i.e., on 23.03.2020) and that therefore, the petitioner would be governed by the old/un-amended Rule 89(4)(C) and not the amended Rule 89(4)(C).

3.4 In pursuance of the same, the respondents proceeded to pass the impugned order dated 30.06.2020 rejecting the refund claim of the petitioner, who is before this Court by way of the present petition not only assailing the impugned order but also the validity of Rule 89(4)(C) of the CGST Rules as well as the Explanation to Rule 93 of the CGST Rules.

4. Heard Sri.V.Raghuraman, learned Senior Counsel along with Sri.J.S.Bhanumurthy for the petitioner and Smt.K.R.Vanitha, learned counsel for the respondents-revenue and perused the material on record.

Petitioner's Contentions:

5. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submitted that at the outset, the challenge in the present petition to the validity of the explanation to Rule 93 of the CGST Rules(Relief 'B') was not being pressed into service by the petitioner, who would be restricting its claim to the remaining reliefs sought for in the petition.

5.1 It was submitted that Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 is *ultra vires* and invalid and deserves to be declared unconstitutional and struck down. It was further submitted that the impugned order is illegal, arbitrary and without jurisdiction or authority of law and deserves to be quashed and the respondents be directed to accept/allow the subject refund claims of the petitioner and grant refund of taxes along with interest in favour of the petitioner. Learned Senior counsel elaborated his submissions as under:-

5.2 Rule 89(4)(C) of the CGST Rules is ultra vires Section 54 of the CGST Act read with Section 16 of the IGST Act; the very intention of the zero-rating it to make entire supply chain of "exports" tax free, i.e., to fully 'zero-rate' the exports by exempting them from both input tax and output tax; accordingly, Section 16(3) of the IGST Act allows refund of input taxes paid in the course of making a zero-rated supply, i.e., supplies which covers exports as well as supplies to SEZs. The rule in whittling down such refund is *ultra vires* in view of the well settled principle of law that Rules cannot over-ride the parent legislation.

5.3 Rule 89(4)(C) of the CGST Rules is ultra vires Article 269A read with Article 246A of the Constitution of India as the Parliament has no legislative competence to levy GST on export of goods; neither in Article 246A nor in Article 269A is there a reference to treatment of export of goods or services, while in Article 269A reference is made to import of goods or services or both, particularly when reference to export of goods or services in Article 286 is only for the purpose of placing restrictions on the powers of the State Legislature.

5.4 Rule 89(4)(C) of the CGST Rules is violative of Article 14 and 19(1)(g) of the Constitution of India; it was submitted that the quantum of refund of unutilized input tax credit is restricted only in cases falling under Section 16(3)(a) of the IGST Act, i.e., in cases where export of goods is made without payment of duty under a Bond/Letter of Undertaking(LUT);

however, no such restriction is imposed on cases falling under Section 16(3)(b) of the IGST Act, i.e., in cases where export of goods is made after payment of duty; by virtue of the above, there is a hostile discrimination between two class of persons, viz.,

(i) the class of exporters, who opt to obtain refund of unutilized input tax credit where export of goods are made without payment of duty under a bond/LUT in terms of Section 16(3)(a) of the IGST Act read with Rule 89(4) of the CGST Rules and,

(ii) the class of exporters who opt to obtain refund of tax after payment of duty in terms of Section 16(3)(b) of the IGST Act read with Rule 96A of the rules; the guarantee of equal protection of the laws must extend even to taxing statutes; if person or property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property; if the same class of property or persons similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property or persons.

5.5 It was submitted that Article 14 of the Constitution forbids class legislation; however, Article 14 does not prohibit reasonable classification for the purpose of legislation provided it passes two tests, viz., that the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of the group; and that the differentia must have a rational relation with the object sought to be achieved by the statute; it was submitted that the impugned Rule 89(4)(C) of the CGST Rules is arbitrary and unreasonable, in as much as it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act, in that while Section 16 of the IGST Act seeks to make exports tax-free by “zero-rating” them, the impugned Rule 89(4)(C) of the CGST Rules aims to do just exactly the opposite by restricting the quantum of refund of tax available to the expended in making such exports; it was therefore submitted that including domestic turnover in the definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable.

5.6 Insofar as violation of Article 19(1)(g) of the Constitution of India is concerned, it was submitted that in exports, availability of the rotation of funds is essential for the business to thrive; the entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated,

in case the respondents are permitted to put any limitation and condition that takes away petitioner’s right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies; the incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters who are earning valuable foreign exchange for the country; it was therefore submitted that exporters would have factored in such incentives in the pricing mechanism when they quote and consequently, the restriction of the same by the impugned amended Rule 89(4)(C) would be highly unreasonable.

5.7 Rule 89(4)(C) of the CGST Rules also suffers from the vice of vagueness for the reason that the words “like goods” and “similarly placed supplier” in the impugned Rule 89(4)(C) are completely open-ended and are not defined anywhere in the CGST Act/Rules or the IGST Act/Rules; in this context, it was submitted that considering the business of the petitioner, it is not possible to have any “like goods” and “same or similar placed supplier” for the unique and customized products being manufactured by the petitioner and the preciseness of definitions as found in the customs legislation is missing herein.

5.8 In this context, it was submitted that the impugned Rule fails to clarify, as to what would be the consequence if there are no goods supplied in the domestic market and value of like goods provided by other suppliers is not available or as to what would be the consequences in respect of a supplier who may have different pricing policy for different local customers nor what would be the consequences in respect of a supplier who would be pricing the local goods differently in different states for the same products being exported. It was therefore submitted that when it is impossible for any exporter to show proof of value of “like goods” domestically supplied by the “same or, similarly placed, supplier”, the refund itself cannot be denied to such exporter and consequently, Rule 89(4)(C) of the CGST Rules merely being a machinery provision cannot impose a rigorous condition to take away right to obtain refund, which the petitioner is otherwise entitled to in terms of Section 54 of CGST Act read with Section 16 of the IGST Act.

5.9 The impugned Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 is arbitrary and unreasonable, in as much as the possibility of taking undue benefit by inflating the value of the zero-rated supply of goods, cannot be a ground to amend the Rule, which deserves to be declared invalid on this ground also.

5.10 The impugned refund rejection order has been mechanically passed without any application of mind also violative of principles of natural justice; further, the refund claims of the petitioner pertain to periods prior

to 23.03.2020, when Rule 89(4)(C) of the CGST Rules came into force and since the same cannot be given retrospective or retroactive effect, the impugned order deserves to be quashed.

In support of his contentions, learned Senior counsel placed reliance upon the following judgments:-

(i) CIT vs. Taj Mahal Hotel – (1971) 3 SCC 550;

(ii) Bimal Chandra Banerjee vs. State of Madhya Pradesh – 1970) 2 SCC 467;

(iii) Sangram Singh vs. Election Tribunal – AIR 1955 SC 425;

(iv) All India Federation of Tax Practioners vs. Union of India – 2007) 7 SCC 527;

(v) Shayarabano vs. Union of India – (2017) 9 SCC 1;

(vi) Pitambra Books Pvt. Ltd., vs. Union of India (34) – GSTL 196 (DEL);

(vii) Shreya Singal vs. Union of India – (2015) 5 SCC 1;

(viii) Universal Drinks Pvt. Ltd., vs. Union of India – 1984 (18) ELT 207(BOM);

(ix) Deepak Vegetable Oil Industries vs. Union of India – 1991(52) ELT 222 (GUJ);

(x) Hajee K Assiannar vs. CIT – (1971) 81 ITR 423 (KER);

(xi) CIT vs. Vatika Township Pvt. Ltd., - (2014) 367 ITR 466 (SC);

(xii) Verghese vs. DCIT – (1994) 210 ITR 511 (KAR);

(xiii) ACCT vs. Shukla & Brothers – 2010 (254) ELT 6 (SC);

(xiv) Moopil Nair vs. State of Kerala – AIR 1961 SC 552;

(xv) Deputy Commissioner of Income Tax vs. Pepsi Foods Ltd., - (2021) 7 SCC 413;

(xvi) Reckitt Benckiser vs. Union of India – 2011 (269) ELT 194 (J & K);

(xvii) U.P. Power Corporation vs. Sant Steels & Alloys Pvt. Ltd., - (2008) 2 SCC 777;

Respondents' Contentions:

6. Per contra, learned counsel for the respondents-revenue, in addition to reiterating the various contentions urged in the statement of objections submitted that the petition was not maintainable and was liable to be dismissed. It was submitted that the petitioner has not submitted the proof that the export turnover mentioned in the instant claim is 1.5 times the value of like goods domestically supplied by the same or similarly placed supplier and hence, zero-rated turnover declared by the petitioner cannot be accepted for the purpose of calculation of eligible refund amount. Thus repudiating the various contentions of the petitioner, it was submitted that there was no merit in the petition and the same was liable to be dismissed.

Analysis and Findings:

7. Before adverting to the rival contentions and the relevant statutory provisions, a brief overview of the GST scheme is required; in this context, it is relevant to state that the entire scheme of indirect taxes in India has undergone transformation upon introduction of GST with effect from 01.07.2017. This tax is being levied with concurrent jurisdiction of the Centre and the States on the supply of goods or services. For this purpose, the Constitution of India has been amended vide Constitution (101st Amendment) Act, 2016 with effect from 16th September 2016. The Constitutional Amendment Bill specifically mentions that the objective of introducing GST is to avoid cascading effect of taxes.

8. Central Government enacted the CGST Act to provide for levy and collection of tax on supply of goods or service or both where the supply is intra-state supply; so also, the CGST Rules were also framed including the impugned Rule 89(4)(C);

9. Central Government enacted the IGST Act for the purpose of levy and collection of GST on the supply of goods or services or both where the supply is inter-state supply;

10. The State of Karnataka enacted the KGST Act to levy and collect tax on intra-state supply of goods or services or both within the state of Karnataka.

11. GST is a multi-stage tax, as each point in a supply chain is taxed (unless specifically exempted by law) till the goods and services reach the final consumer. This can be demonstrated by the following:

- A manufacturer procures "input goods" and "input services" to manufacturer his goods and would make "outward supply"

to a wholesale supplier. Here, the levy of GST would be on the manufacturer/seller. However, the incidence of GST would be on the wholesale supplier.

- For the wholesale supplier, the goods procured from the manufacturer/seller becomes "input goods". The wholesale supplier would make value additions thereon and make an "outward supply" of the same to the retailer. In doing so, GST is levied on the wholesale supplier, but the incidence of GST, which was earlier on the wholesale supplier, is further passed on to the retailer.
- The goods procured from the wholesale supplier becomes "input goods" for the retail seller. The retail seller would make value additions thereon and make an "outward supply" of the same to the final consumer. In doing the same, GST is levied on the retail seller, but the incidence of GST, which was earlier on the retail seller, is further passed on to the final consumer.
- The supply chain having been terminated, the final consumer will not be able to pass the incidence of tax any further and thus bears the final burden of tax.
- GST is therefore a destination-based tax on consumption of goods and services. It is levied at all stages right from manufacture up to final consumption with 'credit' of taxes paid at previous stages of supply chain available as setoff. In a nutshell, only value addition will be taxed, and burden of tax is to be borne by the final consumer.

12. In the case of *All India Federation of Tax Practitioners Vs Union of India - (2007) 7 SCC 527*, the Apex Court held as under:

> "6. At this stage, we may refer to the concept of "Value Added Tax" (VAT), which is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.
>
> 7. In the light of what is stated above, it is clear that service tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax."

13. In the case of *Union of India v. VKC Footsteps (India) (P) Ltd., - (2022) 2 SCC 603*, the Apex Court held as under:-

"44. The idea which permeates GST legislation globally is to impose a multi-stage tax under which each point in a supply chain is potentially taxed. Suppliers are entitled to avail credit of tax paid at an anterior stage. As a result, GST fulfils the description of a tax which is based on value addition. Value addition is intended to achieve fiscal neutrality and to obviate a cascading effect of taxation which traditional tax regimes were liable to perpetuate. In a sense therefore, the purpose of a tax on value addition is not dependent on the distribution or manufacturing model. The tax which is paid at an anterior stage of the supply chain is adjusted. The fundamental object is to achieve both neutrality and equivalence by the grant of seamless credit of the duties paid at an anterior stage of the supply chain."

Section 16 of the IGST Act, 2017 reads as under:

Zero rated supply.

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

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

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

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the

provisions of section 54 of the Central Goods and Services Tax Act or the rules made there under.

Section 54(3) of the CGST Act, 2017 reads as under:

Refund of tax.

54. (1) Any person claiming refund of any tax………………

(2)xxxxxxxxxxxxxxxxxxxxxxxx

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty: Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxx

Rule 89(4) of the CGST Rules, 2017 reads as under:

“89. Application for refund of tax, interest, penalty, fees or any other amount.-(1)xxxxxxxxxxxxxxxx

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of subsection

(3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

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

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

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both"

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

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

14. There is no gainsaying the fact that one of the fundamental principles to make exports competitive in the international market is that taxes are not added to the cost of exports. This intention cannot be carried out by merely exempting the output goods or services for the following reasons:-

- The inputs and input services which go into the making of the output goods or services would have already suffered tax and only the final output product would be exempted.

- When the output is exempted, tax laws do not allow availment/ utilization of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense, the entire supply is not zero-rated.

- To overcome the above anomalies, export of goods and services to destinations outside India have been "zero-rated" in the GST regime. The effect of "zero-rating" is that the entire supply chain of a particular zero-rated supply (i.e., export) is tax free i.e., there is no burden of tax either on the input side or output side.

- The detailed write-up on 'zero rating of supplies' issued by the Director General of Taxpayer Services, CBIC(Annexure- K to the writ petition) clarifies the position as under:

What is the need for Zero Rating?

As per section 2(47) of the CGST Act, 2017, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted buy a notification or kept out of the purview of tax (i.e. a non-GST) supply). But if a good or service is exempted from payment of tax, it cannot be said that it is a zero rated. The reason is not har5d to find. The inputs and input services which go into the making of the good or provision of service has already suffered tax and only the final product is exempted. Moreover, when the output is exempted, tax laws do not allow availment /utilisation of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax on input side is not permitted, that becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly.

– What is Zero Rating?

– By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Such an approach would in true sense make the goods or services zero rated.

– All supplies need not be zero-rated. As per the GST Law exports are meant to be zero rated the zero rating principle is

applied in letter and spirit or exports and supplies to SEZ. The relevant provisions are contained in Section 16(1) of the IGST Act, 2017, which states that "zero rated supply" means any of the following supplies of goods or services or both, namely:--

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

– As already seen, the concept of zero rating of supplies requires the supplies as well as the inputs or input services used in supplying the supplies to be free of GST. This is done by employing the following means:

a) The taxes paid on the supplies which are zero rated are refunded;

b) The credit of inputs/input services is allowed;

c) Wherever the supplies are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services i.e. the unutilised input tax credit is refunded.

– The provisions for the refund of unutilised input credit are contained in the explanation to section 54 of the CGST Act, 2017, which defines refund as below:

– "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

– Thus, even if a supply is exempted, the credit of input tax may be availed for making zero-rated supplies. A registered person making zero rated supply can claim refund under either of the following options, namely:--

a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedures as may be prescribed, without

payment of integrated tax and claim refund or unutilised input tax credit; or

b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the CGST Act, 2017 or the rules made there under.

– As per Section 54(3) of the CGST Act, 2017, any unutilised input tax credit in zero rated supplies can be refunded, wherever such supplies are made by using the option of Bo0nd/LUT. The difference between zero rated supplies and exempted supplies is tabulated as below:

Exempted supplies	Zero rated supplies
“exempt supply” means supply of any goods or services or both which attracts nil rate of tax which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of the IGST Act, and includes not-taxable supply	“zero rated supply” shall have the meaning assigned to it in section 16
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free
Credit of input tax needs to be reversed, it taken; no ITC on the exempted supplies	Credit of input tax may be availed for making zerorated supplies, even if such supply is an exempt supply IIC allowed on zero-rated supplies
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration	A person exclusively6 making zero rated supplies may have to register as refunds of unutilised ITC or integrated tax paid shall have to be claimed
A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply	Normal tax invoice shall be issued

– Provisional refund:

– As per section 54(6) of the CGST Act, 2017, ninety percent of the total amount of refund claimed, on account of zerorated supply of goods or services or both made by registered persons, may be sanctioned on a provisional basis. The remaining ten percent can be refunded later after due verification of document furnished by the applicant.

– Non-applicability of Principle of Unjust Enrichment:

– The principle of unjust enrichment shall not be applicable in case of refund of taxes paid wherever such refund is on accounts of zero rated supplies. As per section 54(8) of the CGST Act, 2017, the refundable amount, if such amount is relatable to refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, shall instead of being credited to the Fund, be paid to the applicant.

15. The detailed write-up on 'refund of integrated tax paid on account of zero rated supplies' issued by the Director General of Taxpayer Services, CBIC, (Annexure-L to the writ petition) clarifies the position as under:-

> Under GST, Exports and supplies to SEZ are zero rated as per section 16 of the IGST Act, 2017. By zero rating it is meant that the entire supply chain of a particular zero rated supply is tax free i.e. there is no burden of tax either on the input side or output side. This is in contrast with exempted supplies, where only output is exempted from tax but tax is suffered on the input side. The essence of zero rating is to make Indian goods and services competitive in the international market by ensuring that taxes do not get added to the cost of exports.
>
> The objective of zero rating of exports and supplies to SEZ is sought to be achieved through the provision contained in Section 16(3) of the IGST Act, 2017, which mandates that a registered person making a zero rated supply is eligible to claim refund in accordance with the provisions of Section 54 of the CGST Act, 2017, under either of the following options, namely:--
>
> • He may supply goods or service or both under bond or Letter of Undertaking, subject to such conditions, safeguards and

procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit of CGST, SGST/UTGST and IGST; or

- He may be supply good or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

The second category pertain to refund of integrated tax paid for the zero-rated supplies made by suppliers who opt for the route of export on payment of integrated tax and claim refund of such tax paid. There can be two sub-categories of such suppliers namely:

1. Exporter of goods

2. Service of exporters and persons making supplies to SEZ.

Export of Goods

The normal refund application in GST RFD-01 is not applicable in this case. There is no need for filing a separate refund claim as the shipping bill filed by the exporter is itself treated as a refund claim. As per rule 96 of the CGST Rules, 2017 the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:- (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bill or bills of export; and (b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR3B, as the case may be.

Thus, once the shipping bill and export general manifest (EGM) is filed and a valid return is filed, the application for refund shall be considered to have been filed and refund shall be processed by the department.

Service Exporters and Persons making supplies to SEZ

Under this category also, the supplier may choose to first pay IGST and then claim refund of the IGST so paid. In these cases, the suppliers will have to file refund claim in FORM GST RFD-01

on the common portal, a per Rule 89 of the CGST Rules, 2017. Service Exporter need to file a statement containing the number and date of invoices and the relevant Bank Realisation Certificate, a the case may be, along with the refund claim.

In so far as refund is on account of supplies made to SEZ, the DTA supplier will have to file the refund claim in such cases. The second proviso to Rule 89 stipulates that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the-

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

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

Thus, proof of receipt of goods or service as evidenced by the specified officer of the zone is a pre-requisite for filing of refund claim by the DTA supplier.

The claim for refund when made for supplies made to SEZ unit/ Developer has to be filed along with the following documents:

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

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

3. A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input

tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund I on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer.

Grant of Provisional Refund

The above category of persons making zero rated supplies will be entitled to provisional refund of 90% of the claim in terms of Section 54(6) of CGST Act, 2017.

Rule 91 of CGST Rules, 2017 provide that the provisional refund is to be granted within 7 day from the date of acknowledgement of the refund claim. An order for provisional refund is to be issued in Form GST RFD 04 along with payment advice in the name of the claimant in Form GT RFD 05. The amount will be electronically credited to the claimant's bank account. Rule 91 also prescribe that the provisional refund will not be granted if the person claiming refund has, during any period of five year immediately preceding the tax period to which the claim for refund relate, been prosecuted for any offence under the Act or under an earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

16. The principles emerging from the aforesaid discussion can be summarized as under:-

- The entire supply chain in an export transaction would be tax free and exempt from GST, i.e., GST would be exempt both at input stage as well as output stage.
- There is no bar on availing/utilizing credit of input taxes paid for making/providing the output supply in an export transaction.
- It is seen that the above intention is effectuated vide Section 16 of the IGST Act. Section 16(1)(a) of the IGST Act says that "zero-rated supply" means export of goods and services. Further, Section 16(2) of the IGST Act says that "credit of input tax" may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- Since GST would have been suffered at the input stage, either by actual payment thereof or through utilization of credit of input tax, Section 16(3) of the IGST Act says that a registered person making

zero rated supply shall be eligible to claim refund such taxes paid in accordance with Section 54 of the CGST Act by exercising either of the following options, but subject to such conditions, safeguards and procedure as may be prescribed.

- He may supply goods or services or both under bond or LUT without payment of IGST and claim refund of unutilized input tax credit; or
- He may supply goods or services or both on payment of IGST and claim refund of such tax paid on goods or services or both so supplied.
- Section 54 of the CGST Act deals with refund of tax; Section 54(3) provides that a registered person may claim refund of any unutilized input tax credit at the end of any tax period. Corresponding to Section 16(3) of the IGST Act (supra), Clause (i) of first Proviso to Section 54(3) provides that refund of the said unutilized input tax credit would be available on making zero-rated supplies.
- Section 16 of the IGST Act contemplates that exports are "zero rated" (in other words, exports are tax free) and that therefore, refund can be claimed of input tax credit lying unutilized on account of such zero-rated supplies (i.e., exports) as also on the output tax.
- Section 54 of the CGST Act provides for refund of GST; Section 54(3) provides that a registered person may claim refund of any unutilized input tax credit at the end of any tax period.
- Rule 89 of the CGST Rules contains the machinery provisions to operationalize Section 54 of the CGST Act where exports are done without payment of output tax under bond or LUT.
- The method of calculation of refund under Rule 89 of the CGST Rules prior to its amendment dated 23.03.2020 provided that the refund of unutilized input tax credit is computed by identifying the proportionate input tax credit utilized for export of goods to total supplies, viz., refund value = (turnover of zero-rated supply of goods and/or services ÷ adjusted total turnover) X Net input tax credit for the period; in other words, refund will be in proportion of export turnover to the total turnover during the relevant period.
- By the impugned amendment to Rule 89(4)(C), the phrase "turnover of zero-rated supply of goods" came to be defined; accordingly, refund will be the lesser of: (a) value of zerorated supply of goods;

or (b) value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier.

- In effect, refund of unutilized input tax credit on account of making zero rated supply of goods would now be restricted to a maximum of 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier.

- The effect of the impugned amendment to Rule 89(4)(C) is demonstrated by the petitioner vide the Illustration in the table at Annexure-N as under:-

Sl. No.	**Export / Domestic**	**No.of goods**	**Value per Goods**	**Turnover**	**Turnover of zero-rated supply of goods as per Rule 89(4): Before amendment**	**Turnover of zero-rated supply of goods as per Rule 89(4): After amendment**
1.	**Export goods**	10	100	1000	1000	450 Like goods domestically sold 10 30 300 i.e., 1.5*30*10 = 450 or 1000 whichever is less. Refund is 450 and balance 550 is lost:
	Like goods domestically sold	10	30	300		
2.	**Export goods**	10	100	1000	1000	0 i.e., 1.5*0*10 = 0 or 1000 whichever is less.
	Like goods domestically sold	0	0	0	0	

17. In my considered opinion, the impugned amendment to Rule 89(4)(C) of the CGST Rules is illegal, arbitrary, unreasonable, irrational, unfair, unjust and ultra vires Section 16 of the IGST Act and Section 54 of the CGST Act for the following reasons:-

(a) Rule 89(4)(C) of the CGST Rules is ultra vires Section 54 of the CGST Act read with Section 16 of the IGST Act; the very intention of the zero-rating it to make entire supply chain of "exports" tax

free, i.e., to fully 'zero-rate' the exports by exempting them from both input tax and output tax; accordingly, Section 16(3) of the IGST Act allows refund of input taxes paid in the course of making a zero-rated supply, i.e., supplies which covers exports as well as supplies to SEZs. The rule in whittling down such refund is ultra vires in view of the well settled principle of law that Rules cannot override the parent legislation.

(b) Rule 89(4)(C) of the CGST Rules is violative of Article 14 and 19(1)(g) of the Constitution of India; the quantum of refund of unutilized input tax credit is restricted only in cases falling under Section 16(3)(a) of the IGST Act, i.e., in cases where export of goods is made without payment of duty under a Bond/Letter of Undertaking(LUT); however, no such restriction is imposed on cases falling under Section 16(3)(b) of the IGST Act, i.e., in cases where export of goods is made after payment of duty; by virtue of the above, there is a hostile discrimination between two class of persons, viz., (i) the class of exporters who opt to obtain refund of unutilized input tax credit where export of goods are made without payment of duty under a bond/LUT in terms of Section 16(3)(a) of the IGST Act read with Rule 89(4) of the CGST Rules and (ii) the class of exporters who opt to obtain refund of tax after payment of duty in terms of Section 16(3)(b) of the IGST Act read with Rule 96A of the rules; the guarantee of equal protection of the laws must extend even to taxing statutes; if person or property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property; if the same class of property or persons similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property or persons.

(c) It is trite law that Article 14 of the Constitution forbids class legislation; however, Article 14 does not prohibit reasonable classification for the purpose of legislation provided it passes two tests, viz., that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and that the differentia must have a rational relation with the object sought to be achieved by the statute; the impugned Rule 89(4)(C) of the CGST Rules is arbitrary and unreasonable in as much as it bears no rational nexus with the objective sought to be achieved by Section 16 of

the IGST Act in that while Section 16 of the IGST Act seeks to make exports tax-free by "zero-rating" them, the impugned Rule 89(4)(C) of the CGST Rules aims to do just exactly the opposite by restricting the quantum of refund of tax available to the expended in making such exports; consequently, including domestic turnover in the definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable.

(d) It is significant to note that in exports, availability of the rotation of funds is essential for the business to thrive; the entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies; the incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters who are earning valuable foreign exchange for the country; it follows there from that exporters would have factored in such incentives in the pricing mechanism when they quote and consequently, the restriction of the same by the impugned amended Rule 89(4)(C) would be highly unreasonable.

(e) Rule 89(4)(C) of the CGST Rules also suffers from the vice of vagueness for the reason that the words "like goods" and "similarly placed supplier" in the impugned Rule 89(4)(C) are completely open-ended and are not defined anywhere in the CGST Act/Rules or the IGST Act/Rules; in this context, it is relevant to state that considering the business of the petitioner, it is not possible to have any "like goods" and "same or similar placed supplier" for the unique and customized products being manufactured by the petitioner and the preciseness of definitions as found in the customs legislation is missing herein.

(f) The impugned Rule also fails to clarify, as to what would be the consequence if there are no goods supplied in the domestic market and value of like goods provided by other suppliers is not available or as to what would be the consequences in respect of a supplier who may have different pricing policy for different local customers nor what would be the consequences in respect of a supplier who would be pricing the local goods differently in different states for the same products being exported; when it is impossible for any exporter to show proof of value of "like goods" domestically supplied by the "same or, similarly placed, supplier", the refund itself cannot

be denied to such exporter and consequently, Rule 89(4)(C) of the CGST Rules merely being a machinery provision cannot impose a rigorous condition to take away right to obtain refund which the petitioner is otherwise entitled to in terms of Section 54 of CGST Act read with Section 16 of the IGST Act.

(g) The amendment to the said rule does have the effect of restricting refunds in actuality as shown in the table at Annexure-N without any adequate defining reason for so doing; in a case where the domestic turnover is nil for the particular period or very less, the quantum of refund becomes nil or negligible thereby clearly whittling down the principle of zero rating as is specified in Section 16 of the IGST Act, 2017 which would mean that the taxes on exports do not get refunded adequately; these aspects are contained in the clarifications issued by the respondents at Annexure K and L referred to supra.

(h) The object of zero rating would be lost if exports are made to suffer GST as the exporter would either pass it on to the foreign supplier or would absorb it himself; firstly it would mean that taxes are exported which is against the policy of zero rating supra and secondly, it would make exports uncompetitive being against the stated policy of the Government. The amending words therefore, do not sub serve the objectives set out in Section 16 of the IGST Act, 2017 nor Section 54 of the CGST Act, 2017 and are contrary to the clarifications given above.

(i) The impugned amendment is also unreasonable and arbitrary as adequate reasoning is not present; this would make such amendment unreasonable for the reason that it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act (supra). While Section 16 of the IGST Act seeks to make exports tax-free by "zero-rating" them, the impugned Rule 89(4)(C) of the CGST Rules, as amended on 23.03.2020 aims to do just the opposite by restricting the quantum of refund of tax available in making such exports. Further, what is seen is that including domestic turnover in definition of zero rated supply which is meant to cover only exports is clearly arbitrary and unreasonable as that would defeat the provisions of law to grant refund on zero rated goods.

18. Therefore, I am also of the view that terminology used in the impugned Rule viz., 'like goods and same or similarly placed supplier'

does not have any precise meaning in the said Rules and no guideline is present in that respect.

19. In Shayara Bano's case (supra), the Apex Court held as under:

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

20. In *Shreya Singhal's case* (supra), the Apex Court held as under:-

"68. Similarly, in Kartar Singh v. State of Punjab, (1994) 3 SCC 569 at para 130-131, it was held:

'130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to "steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.'

> 69. Judged by the standards laid down in the aforesaid judgments, it is quite clear that the expressions used in 66A are completely open-ended and undefined.
>
> 76. Quite apart from this, as has been pointed out above, every expression used is nebulous in meaning. What may be offensive to one may not be offensive to another. What may cause annoyance or inconvenience to one may not cause annoyance or inconvenience to another. Even the expression "persistently" is completely imprecise - suppose a message is sent thrice, can it be said that it was sent "persistently"? Does a message have to be sent (say) at least eight times, before it can be said that such message is "persistently" sent? There is no demarcating line conveyed by any of these expressions - and that is what renders the Section unconstitutionally vague."

21. As rightly contended by the petitioner, in exports, availability of the rotation of funds is essential for the business to thrive. The entire concept of refund of unutilized input tax credit relating to zero-rated supply would be obliterated in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies. The incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters, who are earning valuable foreign exchange for the country. It should be noted that exporters would have factored in such incentives in the pricing mechanism when they quote and therefore, the restriction of the same would be highly unreasonable, given the objective of the Government that exports should be zero rated and taxes should not be exported.

22. The respondents-revenue contend that the impugned amendment was based on the minutes of the GST Council's 39th meeting held on 14.03.2020, which discloses that the above the only ground for amendment seems to be a possible misuse without any factual data supporting the same; the reasons for such amendments based on possible misuse without adequate defining data cannot be countenanced as having a reasonable basis in law. Issue of misuse cannot be generalized. Every such misuse is required to be ascertained and verified before asserting that there has been misuse. It is also well settled that if the government perceives that there could be a possibility of abuse of a provision, it should adopt measures to keep a check on the same; however, the law cannot be amended on the premise of distrust.

23. In *Reckitt Benckiser's case* supra, the High Court of Jammu and Kashmir held as under:-

> "29. The issue of misuse cannot be generalized. It has to be case specific covering an individual or group of individuals. Every such misuse is required to be ascertained and verified before asserting that there has been misuse of exemption. By a general survey conducted, it cannot be said that exemption benefit is being misused by the present petitioners. Taking recourse to the fact that exemption granted is being misused without identifying the individual cases would be an exercise which can be termed to have been made by the respondents only to deny the exemption granted to petitioners by way of original notification in pursuance to which they have altered their position. This action on the part of respondents can be termed to be arbitrary in nature."

24. In Sant Steel's case (supra), the Apex Court held as under:-

> "30. It is highly against the public morality that the incumbent who have felt persuaded on account of the representation made by the State Government that they will be given certain benefits and they acted on that representation, it does not behove on the part of the appellant Corporation to withdraw the said benefit before expiry of the stipulated period by issuing the notification revoking the same which the respondents were legitimately entitled to avail. We fail to understand why the appellant Corporation which made a representation and allowed the other party to act upon such representation could resile and leave the citizens in a lurch. In such a situation, the principle of promissory estoppel which has been evolved by the courts which is based on public morality cannot permit the State to act in such an arbitrary fashion.
>
> 31. Other grounds for the purpose of public interest which have been pleaded, namely, that there are two methods of tariff provided by the amendment and the actual consumption has (energy consumption charges have) been reduced based on the calculation of energy charges per KV from 308 paise to 100 paise and there was large scale theft or that units were closing down and there was no mala fide intention in the matter of revocation of the notification and the cost of production of power has gone up to Rs. 2.50 per unit, are considerations which hardly involve any public interest. They were more of a nature of losses which have been suffered by the Corporation and these methods were evolved to reduce and to

> make good the losses. Restructuring benefit to 17% of Tariff 4(A) (demand charges) are the factors which are aimed to make the losses good for the Corporation. This is not case in which serious public repercussion was involved. These are not the factors which put together can constitute a public interest. Theft of the energy if it was proved by cogent data that as a result of giving this benefit to the entrepreneurs in the hill areas, they were misusing it or there was theft of the energy at a large scale by these persons to whom the concession had been given then of course such factors, if all the datas were brought on record of course could have persuaded the Court to take a different view of the matter. But simply because there was theft of energy the State cannot persuade us to hold that the revocation of such concession can be said to be in public interest. Since the benefit was given to these units in the hill areas, there should have been overwhelming evidence to show some mala fide on the part of these consumers which have persuaded the Corporation to revoke it. If there was no misuse of the energy by these units in the hill areas to whom the concession had been granted then in that case it cannot be taken that there was really public interest involved which persuaded the Corporation to revoke the same.
>
> 58. In the present case, the plea of respondents that some unscrupulous manufacturers were involved in bogus production for the purpose of claiming maximum exemption from the payment of excise duty, cannot be generalized but has to be case specific. The same, therefore, cannot be treated to be in the public interest as projected by the respondents. This is because there has been no individual identification of such bogus manufacturers and the action of respondents vide impugned notifications would prejudice the rights of those genuine manufacturers who on the promise of the State, have altered their position and are involved in fair industrial activities. In view of the above discussion, I am of the opinion that there is no supervening public interest in withdrawing the exemption by way of impugned notifications."

25. It is also relevant to note that in the aforesaid GST Council Meeting, it was stated that the FOB value of exports will not be changed, which would mean that there is no doubt about the valuation of the goods; therefore, if there is no doubt about the value of the goods, the artificial restriction of refunds by taking the value of domestic supplies seems irrational. Further, the policy of the Government itself will have to satisfy the test of rationality

and must be free from arbitrariness and discrimination. In *Pepsi Foods (case) supra*, the Apex Court held as under:-

> "27. We have already seen how unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India. Also, the expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down, as has been found in para 20 above."

26. As rightly contended by the learned Senior counsel for the petitioner, the impugned Rule 89(4)(C) is arbitrary and unreasonable, in as much as the possibility of taking undue benefit by inflating the value of the zero-rated supply of goods, cannot be a ground to amend the Rule, which deserves to be declared invalid on this ground also.

27. Insofar as the other contentions urged by the respondents – revenue in their statement of objections and before this Court, the same are neither relevant nor germane for adjudication of this petition and consequently, the same have not been referred to in detail in this order.

28. For the foregoing reasons, I am of the considered opinion that the impugned Rule 89(4)(C) of the CGST Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-Central Tax dated 23.03.2020 deserves to be declared ultra vires and invalid and consequently deserves to be quashed. So also, the impugned order dated 30.06.2020 which is based on the impugned amended Rule also deserves to be quashed and consequently, respondents are to be directed to accept the refund applications of the petitioner and grant refund in favour of the petitioner together with applicable interest within a stipulated time frame.

29. The issue regarding validity of the Explanation to Rule 93 of the CGST Rules is however kept open to be dealt with in an appropriate case.

30. In the result, I pass the following:-

ORDER

(i) The writ petition is hereby allowed;

(ii) The impugned offending words, "or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier" appearing in Rule 89(4C) of the Central Goods

and Services Tax Rules, 2017 as amended vide Para 8 of the Notification No.16/2020-Central Tax(F.No.CBEC- 20/06/04/2020-GST) dated 23.03.2020 is declared ultra vires the provisions of the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 as also violative of Articles 14 and 19 of the Constitution of India and resultantly, the same are hereby quashed;

(iii) The impugned order at Annexure-C dated 30.6.2020 passed by the 3rd respondent is hereby quashed;

(iv) The respondents-revenue are directed to accept the refund claims/applications of the petitioner at Annexures D-1 to D-6 and grant refund together with applicable interest in favour of the petitioner within a period of three (3) months from the date of receipt of a copy of this order.

IN THE HIGH COURT OF MADRAS AT MADURAI

[B. Pugalendhi, J.]

WP (MD) No. 6580 of 2024

Jones Diraviam ... Petitioner

Versus

The Deputy Commissioner (GST Appeal) & Ors. ... Respondents

Date of Order: 27.03.2024

WHETHER CANCELLATION OF GST REGISTRATION FOR NON-FILING OF RETURNS IS JUSTIFIED AND WHETHER APPEAL FILED LATE U/S 107 SHOULD BE DISMISSED?

HELD – No - In similar circumstances, this Court, in Suguna Cutpiece Vs. Appellate Deputy Commissioner (ST) (GST) and others reported in 2022(2) TMI 933, allowed the writ petitions by holding that no useful purpose would be served by keeping the petitioner out of the Goods and Service Tax regime.

Present for Petitioner : Mr. M. Iniyavan

Present for Respondent : Mr. A. Baskaran, Addl. Govt. Pleader.

Editor’s Note: Please see judgments of Allyssum Infra R/Spl. Civil Appl. No. 23556 / 2022 and R.K. Jewelers D.B. Civil Writ Petition No. 4236 of 2023 on the same point

ORDER

The petitioner is a supply contractor and he has GST registration. The petitioner has failed to submit his returns and therefore, his GST registration was cancelled by the 2nd respondent. The petitioner has also filed an appeal before the 1st respondent, however, with a delay of 260 days.

2. According to the petitioner he was unaware of the notice issued for non-filing of the returns and further due to his inadvertent oversight he failed to submit his reply. However, the respondents have passed an order cancelling his GST registration. In view of the cancellation of registration, he is not in a position to do his business and his livelihood is affected.

3. The learned Additional Government Pleader submits that the petitioner has been issued with notice and however he has not filed any reply and he has also not filed the appeal in time.

4. This Court considered the rival submissions and perused the materials placed on record.

5. A similar issue has been dealt with by a Hon'ble Division Bench of Bombay High Court in WP.No.11833 of 2022, wherein it has been held as follows:

> "8. We have considered the submissions advanced by both the sides. It appears that the petitioner was earning his livelihood through his fabrication business and requires registration under GST Act to run the business. The entire world suffered during the pandemic. The small scale industrialists and service providers like petitioner lost their business for more than two years. The financial losses suffered during this time cannot be ignored particularly when it comes to small scale businesses and service providers. To add apathy to this situation, the petitioner suffered medical emergency. He was required to undergo medical treatment for heart disease and the procedure like angioplasty. The stringent provisions of GST Act took its own course. The petitioner suffered cancellation of registration. Even he lost his appellate remedy because of lapse of limitation. The petitioner has been practically left remediless. He seeks to invoke jurisdiction of this Court under Art. 226 of the Constitution of India.
>
> 9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce

to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1) (g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.

10. There is one more aspect as far as the issue regarding limitation in filing the appeal under Section 107 of MGST Act is concerned. Indeed the Deputy Commissiosner of State Tax has no power to condone the delay beyond 30 days. But then one cannot overlook the aspect of provisions stipulating limitations. The objective is to terminate the lis and not to divest a person of the right vested in him by efflux of time.

11. Since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.

12. In this regard, a reference can be made to the judgment of the Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536. The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies. True that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

13. Applying the aforesaid gidelines to the facts of the present case, we find that the petitioner, who is sufferer of unique circumstances resulting from pandemic and his health barriers, would be put to great hardship for want of GST registration. The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood

would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India.

14 Even looking to the object of the provisions under GST Act, it is not in the interest of the government to curtail the right of the entrepreneur like petitioner. The petitioner must be allowed to continue business and to contribute to the state's revenue. The learned advocate for the petitioner has submitted before us that the petitioner is ready and willing to pay all the dues along with penalty and interest as applicable. In the light of the above submission, we are inclined to allow the writ petition as under :-

(i) The writ petition is allowed.

(ii) The order dated 28-02-2022 suspending the GST registration, the order dated 14-03-2022 cancelling GST registration of the petitioner passed by the State Tax Officer and the order dated 21-10-2022 passed by the Dy. Commissioner of Tax, Aurangabad (Appeal) No.DC/APP/E-001/ABAD/GST/323/2022-2023 are quashed and set aside.

(iii) We hold and declare that the registration No. 27AHQPD2485F1Z7 in the name of the petitioner is valid, from 28-02-2022 onwards subject to the condition that the petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MAST Rules, 2017. (iv) The Rule is made absolute in above terms."

6. The High Court of Uttarakhand in Special Appeal No.123 of 2022, dated 20.06.2022 in a similar situation has observed as follows:

"8) Viewing from another angle, it is apparent that the law made by the Parliament as well as the Legislature with regard to the appeals is very strict, insofar as, that it does not provide an unlimited jurisdiction on the First Appellate Authority to extend the limitation beyond one month after the expiry of the prescribed limitation. In such case, the petitioner/appellant is put to hardship and is left without remedy. In such cases, the party concerned may face starvation because of denial of livelihood for want of GST

Registration. In this case, the petitioner/appellant is a semi-skilled labourer working as a painter doing painting on doors, windows of the houses. Now-a-days bills for any work executed for a private player or, even for the Government agency, are drawn on-line. In most cases, the payments are made direct to the bank on 6 production of the bill with the GST registration number.

In the absence of GST registration number, a professional cannot raise a bill. So, if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works. Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because of the fact that his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood springs from the right to life as enshrined in Article 21 of the Constitution of India. In this case, if we allow the situation so prevailing to continue, then it will amount to violation of Article 21 of the Constitution, and right to life of a citizen of this country."

7. This Court in ***Suguna Cutpiece Vs Appellate Deputy Commissioner (ST)(GST)*** and others reported in 2022 (2) TMI 933 wherein it was held that no useful purpose would be served keeping the petitioners out of the Goods and Service Tax regime as such the assessee would still continue to his businesses and supply goods and services.

8. The petitioner is a contract supplier. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc... are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. The object of any Government is to promote the trade and not to curtail the same. The cancellation of registration certainly amounts to a capital punishment to the traders, like the petitioner.

9. In similar circumstances, this Court, in *Suguna Cutpiece Vs. Appellate Deputy Commissioner (ST) (GST)* and others reported in 2022(2) TMI 933, allowed the writ petitions by holding that no useful purpose would be served by keeping the petitioner out of the Goods and Service Tax regime. By applying the above ratio, this writ petition is allowed and the impugned order is set aside. The matter is remitted back to the respondents for fresh consideration. No costs.

IN THE HIGH COURT OF ORISSA AT CUTTACK

[B.R. Sarangi & G. Satapthy, J.J.]

WP(C) No. 289 of 2015

M/s Hindustan Tyre House ... Petitioner

Versus

Dy. Commissioner of Sales Tax, Sambalpur ... Respondent

Date of Order: 02.05.2024

WHETHER AN ASSESSMENT / REASSESSMENT CAN BE FRAMED ON THE BASIS OF A TAX EVASION REPORT OR AN AUDIT REPORT, WITHOUT FRAMING HIS OWN OPINION?

HELD – No.

Present for Petitioner : Mr. R.P. Kar, Sr. Adv. alongwith Mr. B.P. Mohanty, Adv.

Present for Respondent : Mr. S. Das, ASC

ORDER

This matter is taken up by hybrid mode.

2. Heard Mr. R.P. Kar, learned Senior Counsel along with Mr. B.P. Mohanty, learned counsel appearing for the petitioner and Mr. S. Das, learned Additional Standing Counsel appearing for the opposite party.

3. The petitioner has filed this writ petition seeking to quash the order of assessment/reassessment dated 29.09.2014 passed by the opposite party in Form VAT 312 under Annexure-3 as well as the notice of demand in Form VAT 313 under Annexure-4 and the notice issued by the opposite party in Form 307 under Annexure-1, and further to issue direction restraining the opposite party from collecting the tax and penalty as involved in the order of assessment along with the demand notice under Annexure-3 & 4 respectively.

4. Mr. R.P. Kar, learned Senior Counsel along with Mr. B.P. Mohanty, learned counsel appearing for the petitioner brings to the notice of this Court the docket note of Annexure-2, the order sheet maintained by the opposite party, which states that “A fraud case report has been received from DCST, Vigilance, Sambalpur in respect of the above dealer and period, which suggests sale suppression. If approved notice in VAT- 307

will be issued to dealer. Put up for order". It is further contended that on the basis of fraud case, if the authority proposed to take steps and issue notice, he should have formed opinion as required under Section 43 of the OVAT Act. Without forming opinion, issuance of demand notice to the petitioner under Annexure-4 and the order of assessment/reassessment dated 29.09.2014 under Annexure-3 cannot be sustained in the eye of law.

5. Mr. S. Das, learned Additional Standing Counsel appearing for the opposite party contended that in view of provisions contained in Section 98(1) of the OVAT Act, the order of assessment/reassessment dated 29.09.2014 passed by the opposite party is well justified, which does not warrant interference of this Court.

6. This Court considered the contentions raised by learned counsel for the parties and went through the records. Section 98 (1) of the OVAT Act reads as follows:

> "98. **Assessment proceedings, etc. not to be invalid on certain grounds.-**
>
> (1) No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken , or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act."

As it appears, the docket note clearly mentions that when a fraud case report has been received from DCST, Vigilance, Sambalpur in respect of the petitioner-dealer and the period in question and follow up action, i.e., assessment/reassessment has been made, in that case Section 43 of the OVAT Act is required to be complied with, which speaks that opinion has to be formed by the Assessing Authority before passing the order and, as such, no opinion has been formed by the Assessing Authority while dealing with the fraud case, as stated in the docket note. Learned Senior Counsel appearing for the petitioner has placed reliance on Indure Ltd. v. Commissioner of Sales Tax, (2006) 148 STC 61 (Ori), wherein this Court has held that it is not enough if the Assessing Officer refers to the tax evasion report or an audit report, but has to independently apply his mind

and record his satisfaction that there has been an escapement of tax. That is the mandatory minimum requirement of Section 43 of the OVAT Act.

7. In view of the above principle of law laid down by this Court, since the Assessing Authority has not formed opinion, as required under Section 43 of the OVAT Act, the order of assessment/reassessment dated 29.09.2014 passed by the opposite party in Form VAT 312 under Annexure-3 and the demand notice in Form VAT 313 under Annexure-4 cannot be sustained in the eye of law. Thereby, the same are liable to be quashed and are hereby quashed. Accordingly, this Court remits the matter to the Assessing Authority for making fresh adjudication and passing appropriate order in accordance with law after giving opportunity of hearing to the petitioner.

8. With the above observation and direction, the writ petition stands disposed of.

IN THE SUPREME COURT OF INDIA

[C.T. Ravikumar & M.R. Shah, J.J.]

Civil Appeal No. 230 of 2023

The State of Karnataka ... Petitioner

Versus

M/s Ecom Grill Coffee Trading Pvt. Ltd. ... Respondent

Date of Judgment: 13.03.2023

WHETHER ITC CAN BE REJECTED ON THE GROUND THAT THE REGISTRATION OF SELLING DEALERS IS EITHER CANCELLED OR NIL RETURNS HAVE BEEN FILED?

HELD – In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed

by the High Court and the second Appellate Authority allowing the ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the Assessing Officer denying the ITC to the concerned purchasing dealers, confirmed by the first Appellate Authority are hereby restored.

Present for Petitioner : Mr. SHUBHRANSHU PADHI.

Present for Respondent : Mr. PAI AMIT[R-1]

ORDER

M.R. SHAH, J.

1. As common question of law and facts arise in this group of appeals and the issue is with respect to interpretation of Section 70 of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the 'KVAT Act, 2003'), all these appeals are decided and disposed of together, by this common judgment and order.

2. For the sake of convenience, Civil Appeal No. 231 of 2023 arising from the impugned judgment and order dated 26.02.2021 passed by the High Court of Karnataka at Bengaluru in S.T.R.P. No. 82 of 2018 is treated as the lead matter, as in some matters, the said decision has been relied upon.

3. By the impugned judgment(s) and order(s) passed by the High Court, the High Court has dismissed the revision applications preferred by the revenue – State of Karnataka and as such has allowed the Input Tax Credit (hereinafter referred to as the 'ITC') claimed by the respective purchasing dealers. The impugned judgment(s) and order(s) passed by the High Court are the subject matter of present appeals. Civil Appeal No. 231/2023 (The State of Karnataka v. M/s Tallam Apparels)

4. The facts leading to the present appeal in nutshell are as under:

That the respondent herein – M/s Tallam Apparels (hereinafter referred to as the 'purchasing dealer') purchased readymade garments from other dealers for the purposes of further sale. The purchasing dealer claimed the ITC on such sale to the extent of Rs. 4,18,818/-. Vide order dated 26.12.2014, the Assessing Officer disallowed the ITC claim for the Assessment Year 2012-2013 on the ground that the dealers from whom M/s Tallam Apparels have purchased the readymade garments have either got their registration cancelled or have filed 'NIL' returns. Thus,

the Assessing Officer doubted the sale and the payment of tax on such sale of which the ITC was claimed. An Appeal was filed by the purchasing dealer. The Appellate Authority dismissed the same by holding that the burden under section 70 of the KVAT Act, 2003 has not been discharged. However, the Karnataka Appellate Tribunal reversed the orders passed by the Assessing Officer as well as the first Appellate Authority on the ground that the purchasing dealer should not suffer due to default of seller. The revision application before the High Court has been dismissed by the impugned judgment and order.

4.1. In other cases, the Tribunal as well as the High Court have allowed the ITC in favour of the purchasing dealers solely/mainly on the ground that the sale price was paid to the seller by an account payee cheque and that copies of invoices were produced.

4.2 Insofar as the case of M/s Ecom Gill Coffee Trading Private Limited being Civil Appeal No. 230 of 2023 is concerned, M/s Ecom – purchasing dealer purchased green coffee bean from other dealers for the purposes of further sale in exports and in domestic market. Upon finding some irregularities in Input Tax Rebate claimed by the purchasing dealer for Assessment Year 2010-2011, the Assessing Officer issued notice under section 39 of the KVAT Act, 2003 seeking furnishing of accounts, books, tax invoices etc. Re-assessment order came to be passed. It was found that the purchasing dealer had claimed ITC from mainly 27 sellers and out of aforesaid 27 sellers , six were found to be de-registered; three had effected sales to the respondent but did not file taxes and six have outrightly denied turnover nor paid taxes.

Therefore, ITC came to be disallowed to the extent of Rs. 10.52 lacs. The first Appellate Authority confirmed the findings of the Assessing Officer. However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee from the registered dealer under genuine tax invoices and consequently allowed the ITC claimed. The revision application before the High Court has been dismissed, relying upon its earlier decision in the case of M/s Tallam Apparels (supra).

5. Shri Nikhil Goel, learned AAG has appeared on behalf of the State of Karnataka and the respective learned counsel have appeared on behalf of the respective purchasing dealers.

6. Shri Nikhil Goel, learned AAG appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in dismissing the revision applications and

confirming the respective orders passed by the Appellate Authorities in allowing the Input Tax Credit in favour of the respective purchasing dealers.

6.1 It is vehemently submitted that the High Court has not properly appreciated that when the Assessing Officer doubted the genuineness of the transactions/sales and when it was found that the sale transactions were only paper transactions and even in some of the cases, the registration of the sellers were cancelled and nothing was on record that any tax was paid by the seller, the purchasing dealers shall not be entitled to the Input Tax Credit.

6.2 It is vehemently submitted by Shri Nikhil Goel, learned AAG appearing on behalf of the State that the High Court ought to have appreciated that as such a duty is cast upon the purchasing dealers to prove the transactions/financial transfers, which in the present case, the purchasing dealers failed to discharge. It is submitted that for the purposes of Section 70 of the KVAT Act, 2003, the burden required to be discharged is slightly higher than showing financial transfers and should show actual movement of goods. It is submitted that mere production of invoices or even payment to the seller by cheque cannot be said to be sufficient and may not be said to discharging the burden to claim Input Tax Credit, to be discharged under Section 70 of the KVAT Act, 2003. It is submitted that actual movement of goods is required to be established and proved, over and above the invoices, payment by cheques and actual payment and even the demand of tax by the seller.

6.3 Shri Goel, learned AAG has heavily relied upon the decision of the Karnataka High Court in the case of M/s. Bhagadia Brothers Vs. Additional Commissioner of Commercial Taxes, STA No. 4 of 2018 dated 29.01.2020, against which the special leave petition has been dismissed as well as the decision of the Gujarat High Court in the case of Madhav Steel Corporation Vs. State of Gujarat, Tax Appeal No. 742 of 2013 and other allied tax appeals against which also the special leave petition has been dismissed, however, keeping the question of law open and has also relied upon another decision of the Gujarat High Court in the case of Shreeji Impex Vs. State of Gujarat, Tax Appeal No. 330 of 2014, 2014 SCC OnLine Guj 8074, in support of his above submissions.

6.4 It is further submitted by Shri Nikhil Goel, learned AAG appearing on behalf of the State that the High Court has failed to appreciate that the revenue cannot recover from the seller who is not registered or who has filed 'NIL' returns, thereby denying sale. It is further submitted that the High Court has materially erred in observing and holding that once the purchases are

made by the purchasing dealer by account payee cheque, the purchasing dealer is deemed to have discharged his burden. It is submitted that the High Court has also materially erred in observing that if the seller of the goods from whom the dealer has purchased does not deposit such tax, the dealer (purchasing dealer) cannot be held liable for that. It is submitted that as such the purchasing dealer is entitled to the Input Tax Credit on the tax paid by the seller and/or on the tax paid. It is submitted that therefore, for the purposes of Input Tax Credit, the purchasing dealer has to prove the actual payment of tax and actual transfer of goods and mere paper transaction is not sufficient.

6.5 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

7. While opposing the present appeals, learned counsel appearing on behalf of the respective assessees/dealers, who claimed the Input Tax Credit have vehemently submitted that in the present case, as such, the purchasing dealers have discharged the burden of proof cast under Section 70 of the KVAT Act, 2003 and proved the genuineness of the transactions by producing the genuine invoices and even the payment made through cheques. It is submitted that therefore once the dealer has discharged the burden cast under Section 70 of the KVAT Act,2003, the purchasing dealer is entitled to the Input Tax Credit and if at all it is found that a tax is not paid by the seller, the same can be recovered from the seller. However, so far as the purchasing dealer is concerned, they are entitled to the ITC, once having discharged the burden under Section 70 of the KVAT Act, 2003.

7.1 It is further submitted by learned counsel appearing on behalf of the respective dealers that in fact they have discharged the burden of proof cast under Section 70 of the KVAT Act, 2003 by producing the valid invoices and making the payment online to the supplier. It is submitted that registration of the dealer and online payments were never disputed. It is further submitted that apart from Section 70 of the KVAT Act, 2003, the Karnataka Value Added Tax Rules, 2005, namely Rules 27 and 29 provide for the details and obligations upon the dealer to issue the tax invoice and also the particulars of the tax invoices. It is submitted that neither the KVAT Act nor the Rules provide for any other document or any other obligation, which are statutorily required for the purposes of establishing the claim for seeking refund towards Input Tax Credit.

7.2 It is submitted that therefore the decision of the adjudicating authority was beyond the Act and Rules. It is further submitted by the learned counsel appearing on behalf of the respective assessees / dealers that the

only requirement of law, as far as the purchasing dealers wanting to avail the benefit of Input Tax Credit is concerned, is that he has to make sure that the selling dealer is a registered dealer and has issued the tax invoice in compliance with the requirement of the KVAT Act and the Rules made thereunder. It is submitted that once the purchasing dealer demonstrates that he has complied with such requirement, he cannot be denied the ITC only because the selling dealer fails to discharge his obligation under the KVAT Act. 7.3 It is submitted that in the present case, the respondents are purchasing dealers, who have complied with the requirement of KVAT Act and have ensured that the purchases made by them are in compliance with the requirements of the KVAT Act and Rules for claiming ITC. Reliance is placed on the decision of this Court in the case of Corporation Bank Vs. Saraswati Abharansala, (2009) 19 VST 84 (SC). It is further submitted that the ITC could be denied where the purchasing dealer has acted without due diligence, i.e., by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration. It is submitted that denial of ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bonafide. It is submitted that in the case of The Additional Commissioner of commercial Taxes Zone – II and Ors. Vs. M/s. Transworld Star Manjushree, Civil Appeal Nos. 216-217 of 2023 @ SLP (Civil) No. 6337-6338 of 2022, both the seller and dealer were registered.

7.4 Making above submissions, it is prayed to dismiss the present appeals.

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

We have gone through the orders passed by the Assessing Officer and the first Appellate Authority as well as the orders passed by the second Appellate Authority/Tribunal and also the impugned judgment(s) and order(s) passed by the High Court dismissing the revision applications. The respondents herein – all purchasing dealers claimed the Input Tax Credit on the alleged purchases made from the respective dealers. The Assessing Officer, on appreciation of evidence and considering the other material on record, doubted the genuineness of the transactions and the purchases made from the respective dealers and denied the ITC. The findings of fact recorded by the Assessing Officer came to be confirmed by the first Appellate Authority. However, the second Appellate Authority and the High Court have allowed the ITC, by observing that as the purchasing dealers produced the invoices issued by the respective dealers and that in some of the cases they also made the payment through cheques, the

Assessing Officer was not justified in denying the ITC. Against the grant of ITC, the State is before this Court.

8.1 Therefore, the short question which is posed for the consideration of this Court is, "whether, in the facts and circumstances of the case, the second Appellate Authority as well as the High Court were justified in allowing the Input Tax Credit?"

9. While considering the aforesaid issue/question, Section 70 of the Karnataka Value Added Tax Act, 2003 is required to be referred to, which reads as under:

> "70. Burden of proof.- (1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.
>
> (2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:
>
> (a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and
>
> (b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.
>
> (3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty." 9.1 Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The

burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per section 70 of the Act, 2003.

10. Even considering the intent of section 70 of the Act, 2003, it can be seen that the ITC can be claimed only on the genuine transactions of the sale and purchase and even as per section 70(2) if a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to take at a lower rate, or that a deduction of input tax is available, such a dealer is liable to pay the penalty. Therefore, as observed hereinabove, for claiming ITC, genuineness of the transaction and actual physical movement of the goods are the sine qua non and the aforesaid can be proved only by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. The purchasing dealers have to prove the actual physical movement of the goods, alleged to have been purchased from the respective dealers. If the purchasing dealer/s fails/fail to establish and prove the said important aspect of physical movement of the goods alleged to have been purchased by it/them from the concerned

dealers and on which the ITC have been claimed, the Assessing Officer is absolutely justified in rejecting such ITC claim.

11. In the present case, the respective purchasing dealer/s has/ have produced either the invoices or payment by cheques to claim ITC. The Assessing Officer has doubted the genuineness of the transactions by giving cogent reasons on the basis of the evidence and material on record. In some of the cases, the registration of the selling dealers have been cancelled or even the sale by the concerned dealers has been disputed and/or denied by the concerned dealer. In none of the cases, the concerned purchasing dealers have produced any further supporting material, such as, furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and therefore it can be said that the concerned purchasing dealers failed to discharge the burden cast upon them under Section 70 of the KVAT Act, 2003. At the cost of repetition, it is observed and held that unless and until the purchasing dealer discharges the burden cast under Section 70 of the KVAT Act, 2003 and proves the genuineness of the transaction/ purchase and sale by producing the aforesaid materials, such purchasing dealer shall not be entitled to Input Tax Credit.

12. Despite the findings of fact recorded by the Assessing Officer on the genuineness of the transactions, while refusing to allow the ITC, which came to be confirmed by the first Appellate Authority, the second Appellate Authority as well as the High Court have upset the concurrent findings given by the Assessing Officer as well as the first Appellate Authority, on irrelevant considerations that producing invoices or payments through cheques are sufficient to claim ITC which, as observed hereinabove, is erroneous. As observed hereinabove, over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers.

13. Now so far as the reliance placed upon Rules 27 and 29 of the Karnataka Value Added Tax Rules, 2005 and the submission

> on behalf of the purchasing dealers that under the provisions of the Rules 2005, more particularly under Rules 27 & 29, the only requirement is to issue the tax invoice and to produce the same and there is no other requirement is concerned, the aforesaid has no substance. Rule 27 cast an obligation on the dealers to issue tax invoice and the particulars of the tax invoice are provided under Rule 29. Merely because the tax invoice as per Rule 27 and Rule 29 might have been produced, that by itself cannot be said to be proving the actual physical movement of the goods, which is required to be proved, as observed hereinabove.
>
> Producing the invoices as per Rules 27 and 29 of the Rules 2005 can be said to be proving one of the documents, but not all the documents to discharge the burden to prove the genuineness of the transactions as per section 70 of the KVAT Act, 2003.

14. Now so far as the reliance upon the decision of the Delhi High Court in the case of On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi (Writ Petition (Civil) No. 6093/2017, decided on 26.10.2017), relying upon by the learned counsel appearing on behalf of the purchasing dealers is concerned, at the outset, it is required to be noted that before the Delhi High Court, Section 9(2)(g) of the Delhi Value Added Tax Act was under consideration, which reads as under:

> "9(2)(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period." The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC.

15. In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and

address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the Assessing Officer was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed by the High Court and the second Appellate Authority allowing the ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the Assessing Officer denying the ITC to the concerned purchasing dealers, confirmed by the first Appellate Authority are hereby restored.

16. The instant appeals are accordingly allowed. However, there shall be no order as to costs.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[N.V. Anjaria & Devan M. Desai, JJ.]

R/Special Civil Appl. No. 23556 of 2022

Allysuum Infra ... Petitioner

Versus

UOI ... Respondents

Date of Order: 17.04.2023

WHETHER REGISTRATION CERTIFICATE CAN BE CANCELLED FOR NON-FILING OF RETURNS?

HELD – The Court is of the opinion that the Petitioner is at liberty to file an application for restoration of registration in view of the Notification dated 31.03.2023 and also lodge its claim for availment of Input Tax Credit.

Present for Petitioner : Mr. Abhay Y Desai

Present for Respondent : Mr. Ms Hetvi H Sancheti & Govt. Pleader

ORDER

Honourable Mr. Justice N.V. Anjaria

Heard learned advocate Mr. Abhay Desai for the petitioners and learned advocate Ms. Hetvi Sancheti for the respondents-department.

2. The petitioner, which is a partnership firm engaged in the business of real estate projects, has challenged in this petition order of cancellation of its Goods and Services Tax Registration. The Goods and Services Tax registration of petitioner came to be cancelled on the ground that the petitioner did not file Goods and Service Tax returns.

2.1 While the order was passed on 11.1.2022, the effect thereof was given from 10.09.2021.

3. When the petition came up for consideration, it was pointed out by learned advocates that the competent authority under the Goods and Services Tax Act, 2017 have issued notification No. 3/2023 dated 31.3.2023. It is contemplated in the said notification that on conditions being fulfilled, the cancellation of registration effected on the ground of non-filling of the GST returns, could be revoked.

4. The said notification stands to the benefit of the petitioners. It was submitted on behalf of the petitioners that the petitioners' case fall within the compass of the said notification.

5. In the aforesaid view, the petitioner is permitted to make application to the competent authority seeking the benefit of the aforesaid resolution dated 31.3.2023 bearing No. 3/2003. As and when such an application is made, the competent authority shall deal with the same and give the benefit of this notification to the petitioner.

5.1 It is made clear that this court has not expressed any opinion on the merits of the case of the either side.

6. It was submitted at this stage by learned advocate for the petitioners that retrospective cancellation of the GST registration of the petitioners may come in its way for claiming Input Tax Credit for the period from the date of cancellation till the date of restoration of the registration.

6.1 In this regard it is observed that when the competent authority considers the issue of revocation of cancellation of petitioners' GST

registration under the aforesaid notification, the petitioners shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.

7. The petition stands disposed of in the above terms and with the observations as above.

Direct service is permitted.

Extension of due date for filing of return in FORM GSTR-3B for the month of November, 2023 for the persons registered in certain districts of Tamil Nadu

NOTIFICATION
No. 01/2024 – CENTRAL TAX

New Delhi, the 5th January, 2024

G.S.R…(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of November, 2023 till the tenth day of January, 2024, for the registered persons whose principal place of business is in the districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu and are required to furnish return under sub- section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

2. This notification shall come into force with effect from 20th day of December, 2023.

[F. No. CBIC-20006/1/2024-GST]
(Raghavendra Pal Singh)
Director

Extension of due date for filing FORM GSTR-9 and FORM GSTR-9C for the Financial Year 2022-23 for the persons registered in certain districts of Tamil Nadu.

NOTIFICATION
NO. 02/2024 – CENTRAL TAX

New Delhi, the 5th January, 2024

G.S.R…(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement.** -(1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2024.

(2) They shall come into force on the 31st day of December, 2023.

2. In the Central Goods and Services Tax Rules, 2017, in rule 80,–

(a) after sub-rule (1A), the following sub-rule shall be inserted, namely:-

"(1B) Notwithstanding anything contained in sub-rule (1), for the financial year 2022-2023, the said annual return shall be furnished on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.";

(b) after sub-rule (3A), the following sub-rule shall be inserted, namely:-

"(3B) Notwithstanding anything contained in sub-rule (3), for the financial year 2022-2023, the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the tenth day of January, 2024 for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar in the state of Tamil Nadu.";

[F. No. CBIC-20006/1/2024-GST]
(Raghavendra Pal Singh)
Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and were last amended vide notification No. 52/2023 - Central Tax, dated the 26th October, 2023 vide number G.S.R. 798(E), dated the 26th October, 2023.

Seeks to rescind Notification No. 30/2023-CT dated 31 st July, 2023

NOTIFICATION
No. 03/2024- Central Tax

New Delhi, dated the 5th January, 2024

S.O.....(E).– In exercise of the powers conferred bysection148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as thesaid Act),the Central Government, on the recommendations of the Council, hereby rescinds the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 30/2023-CT, dated the 31st July, 2023 published vide number S.O. 3424(E), dated the 31st July, 2023, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force from 1st day of January, 2024.

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.

NOTIFICATION
NO. 04/2024–CENTRAL TAX

New Delhi, the 5th January,2024

S.O…(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by a registered person engaged in manufacturing of the goods, the description of which is specified in the corresponding entry in column (3) of the Schedule appended to this notification, and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule, namely:—

1. **Details of Packing Machines.**– (1) All the registered persons engaged in manufacturing of the goods mentioned in Schedule to this notification shall furnish the details of packing machines being used for filling and packing of packages in **FORM GST SRM-I**, electronically on the common portal,within thirty days of coming into effect of this notification.

(2) Any person intending to manufacture goods as mentioned in the Schedule to this notification, and who has been granted registration after the issuance of this notification, shall furnish the details of packing machines being used for filling and packing of packages in **FORM GST SRM-I** on the common portal, within fifteen days of grant of such registration.

(3) The details of any additional filling and packing machine being installed at the registered place of business shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such installation in PART (B) of Table 6 of **FORM GST SRM-I**.

(4) If any change is to be made in the declared capacity of the machines, the same shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such change in Table 6A of **FORM GST SRM-I**.

(5) Upon furnishing of such details in **FORM GST SRM-I**, a unique registration number shall be generated for each machine, the details of which have been furnished by the registered person, on the common portal.

(6) In case, the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organisation, the same shall be furnished by the said registered person in Table 7 of **FORM GST SRM-I** on the common portal, within fifteen days of filing such declaration or submission: Provided that where the said registered person has submitted or declared the production capacity of his manufacturing unit or his machines, to any other government department or any other agency or organisation, before the issuance of this notification, the latest such certificate in respect of the manufacturing unit or the machines, as the case may be, shall be furnished by the said registered person in Table 7 of **FORM GST SRM-I** on the common portal, within thirty days of issuance of this notification.

(7) The details of any existing filling and packing machine disposed of from the registered place of business shall be furnished, electronically on the common portal, by the said registered person within twenty four hours of such disposal in Table 8 of **FORM GST SRM-I**.

2. **Special Monthly Statement.**– The registered person shall submit a special statement for each month in **FORM GST SRM-II**, electronically on the common portal, on or before the tenth day of the month succeeding such month.

3. **Certificate of Chartered Engineer.**– (1) The taxpayer shall upload a certificate of Chartered Engineer **FORM GST SRM-III** in respect of machines declared by him, as per para 1 of this notification, in Table 6 of **FORM GST SRM-I**.

(2) If details of any machine are amended subsequently, then fresh certificate in respect of such machine shall be uploaded.

4. This notification shall come into effect from 1st day of April, 2024.

Schedule

S. No.	Chapter/ Heading / Sub-heading / Tariff item.	Description of Goods.
(1)	(2)	(3)
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube)– bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube)–bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	‘Hookah’ or ‘gudaku’ tobacco bearing a brand name
6.	2403 11 10	tobacco used for smoking ‘hookah’ or known as ‘hookah’ tobacco or ‘gudaku’ not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	“Homogenised” or “reconstituted” tobacco, bearing a brand name
12.	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco ‘Gutkha’
23.	2403 99 90	All goods, other than pan masala containing tobacco ‘gutkha’, bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco ‘gutkha’, not bearing a brand name

Explanation.– (1) In this Schedule, “tariff item”, “heading”, “sub-heading” and “Chapter” shall mean respectively, a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act,1975, including the section and chapter notes and the General Explanatory notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(3) For the purposes of this notification, the phrase “brand name” means brand name ortrade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

FORM GST SRM-I

Registration and disposal of packing machines of pan masala and tobacco products

1. GSTIN	
2. Legal name	
3. Trade name, if any	
4. ARN	
5. Date of filing	

6. Details of the machines

Sr. no.	Make, if available	Model no., if available.	Name of manufacturer.	Machine no.	Date of purchase	Address of the place of installation.	No. of tracks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package).	Total packing capacity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Registration no. of the machine (to be auto-generated by the system).	Working status (Y/N)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (8×10)	(12)	(13)	(14)

Part (A) Existing														
Part (B) Newly Added														

6A. Amendment to the details of machines.

Sr. no.	Registration no. of the machine.	Make	Model no.	Name of manufacturer	Machine no.	Date of purchase	Address of place of installation.	No. of tracks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package).	Total packing capacity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Working status (Y/N).	Date of change in any parameter listed.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (9×11)	(12)	(13)	(14)	(15)

7. Details of the intimation of the machines furnished to other departments.

Sr. no.	Date of intimation	Name of Govt. department / any other agency or organisation.	Details of declaration (to be uploaded as pdf)
(1)	(2)	(3)	(4)

8. Disposal of the packing machines.

Sr. no.	Regis-tration no. of the ma-chine.	Make	Model no.	Name of man-ufac-turer	Ma-chine no.	Date of purch-ase.	Ad-dress of place of instal-lati-on.	No. of tracks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages which can be packed for a particular weight of package)	Total packi-ng capac-ity of the machi-ne for a specif-ic weigh-t of packa-ge to be packe-d.	Date of dis-posal.	Reason of disposal (Supplied/ Con-demned)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

9. Product details.

Sr. no.	Brand name	Packing type	Quantity in grams in each package	HSN	Description of the product
(1)	(2)	(3)	(4)	(5)	(6)

10. Details of the Documents uploaded.

1. Certificate of chartered engineer.
2. Information given to other departments
3. Any other document to be mentioned by taxpayer.

11. Verification

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name

Designation / Status

Place

Date

Instructions to Form GST SRM-1

1. Terms used:

(i) GSTIN: Goods and Services Tax Identification Number
(ii) HSN: Harmonized System of Nomenclature
(iii) MRP: Maximum Retail Price
(iv) KWH: Kilo Watt Hour
(v) Packing type: Pouch, Zipper etc.

2. Table 6: Details of existing machines should be provided in Part-A and details of new machines added thereafter have to be provided in Part-B. Column wise details of the information to be provided is given in the table below:

Column no.	Description
(2)	Make of the machine, if available should be provided as to whether it is semi-automatic orautomatic .
(3)	Mention model number of the machine, if available.
(4)	Name of the manufacturer of the machine to be provided.
(5)	Machine number to be provided.
(6)	Date of purchase as mentioned on the invoice or any other document in lieu thereof, issued bysupplier, have to be provided.
(7)	Address of the place where machine has been installed has to be selected from the drop down provided for the same based on the details of places of business provided by the manufacturer in FORM GST REG-01.
(8)	Number of tracks associated with the machine to be provided.
(9)	Weight of package which can be packed by the machine (in grams) is to be declared here. Theregistered person can enter multiple entries of the same for each machine.
(10)	Packing capacity of each track has to be provided in terms of number of packages which can be packed by the machine on the said track per hour for the particular weight of package declared in column 9.
(11)	Total packing capacity of the machine for a specific weight of package which can be packed would be computed by System based on information provided in column 8,9 &10.
(12)	Electricity consumption capacity of the machine to be provided in KWH.
(13)	Unique registration no. of the machine would be generated by System after filing the form. Structure of the unique no. will be GSTIN followed by three digits.
(14).	Whether the machine is working or is at standby. Accordingly, Y or N to be selected from thedrop down menu.

3. Table 6A: Amendment to the details of the machine already provided in Table 6 or amended thereafter to be provided. After entering registration number of the machine assigned by the System in column 12 of Table 6 , other details of the machine would be auto-populated. The same can be edited wherever required. Certificate of chartered engineer shall also be uploaded for the machines whose details have been amended if the particulars given in the certificate uploaded earlier undergoes any change and the details of the documents uploaded should be given in Table 10. Any such change in any of the details of the machine including its working status which needs to be amended, has to be communicated within twenty four hours of the said change carried out by the registered person.

4. Table 7: Details of the intimation of the machines furnished to other department have to be provided. Documents should be uploaded in pdf format after making entries and the details of the documents uploaded should be given in Table 10.

5. Table 8: Details of the machines disposed of (supplied /condemned) shall be provided. After entering registration number assigned to the machine by the System, other details would be auto-populated. Date of disposal and reason for the same to be provided.

6. Table 9: Details of the brands, packing type, HSN and description of the products manufactured to be provided in this table. If there is any change in the information already furnished in this table, the details need to be amended accordingly.

7. Table 10: List of Documents uploaded:

- Single Certificate of chartered engineer to be uploaded in pdf format for all machines in the format as per **FORM GST SRM-III** after entering the particulars of the machines.

- Certificate of chartered engineer, in the format as per FORM GST SRM-III, shall also be uploaded for the machines whose details have been amended if the particulars given in the certificate uploaded earlier undergoes any change.

- Document in pdf format providing details of the intimation of the machines furnished to other department have to be uploaded.

FORM GST SRM-II

Monthly Statement of inputs used and the final goods produced by the manufacturer of goods specified in the Schedule

1. GSTIN	
2. Legal name	
3. Trade name, if any	
4. Financial year	
5. Tax period	
6. ARN	
7. Date of filing	

8. Details of inputs

Sr. No.	HSN	Description	Unit (UQC)	Opening balance	Quantity procured	Value of the quantity procured (Rs.).	Quantity consumed	Closing balance	Waste generated
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

9. Details of production

Brand name	Machine registration number	Packing type	Quantity in grams in each package	HSN	Description of the product	Number of packages packed	MRP per package packed. (Rs.)	Total value (in MRP)of the packages packed by machine. (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9) (7x8)
Total								

10. Power consumption

Sr. No.	Meter / DG set no.	Initial meter reading on first day of the month.	Final meter reading on the last day of the month.	Consumption (KWH)
(1)	(2)	(3)	(4)	(5)
(A) Electricity meter reading				
(B) DG set meter reading				
(C) Solar power having battery				
(D) Others				

11. Details of grid integrated solar power

Sr. No.	Initial meter reading on first day of the month	Final meter reading on the last day of the month	Generation/Export / Import /Consumption (KWH)
(1)	(2)	(3)	(4)
(A) Solar meter reading (Generation)			
(B) Power meter reading (Import of electricity)			
(C) Power meter reading (Export of electricity)			
(D) Net consumption [A+B-C]			

12. Verification

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name

Designation / Status

Place

Date

Instruction to Form GST SRM-II

1. Terms used:

(i) GSTIN: Goods and Services Tax Identification Number
(ii) HSN: Harmonized System of Nomenclature
(iii) MRP: Maximum Retail Price
(iv) KWH: Kilo Watt Hour
(v) DG set: Diesel Generator set used for power generation
(vi) Packing type: Pouch, Zipper etc.

2. Table 8: Details of inputs used for manufacturing the goods specified in Schedule appended with the notification, have to be provided. Column wise details of the information to be provided are given in the table below:

Column no.	Description
(1)	
(2)	HSN at minimum 4 digit level of the inputs used for manufacturing to be reported.
(3)	Description of the goods as per HSN to be provided.
(4)	Unit of measurement of the goods to be selected from the drop down.
(5)	Quantity available in the beginning of the month to be reported for the first time. From next month onwards, the information will be auto-populated from the closing balance of the previous month.
(6)	Quantity procured during the month have to be reported.
(7)	Value of the quantity procured have to be provided.
(8)	Quantity consumed have to be reported.
(9)	Closing balance should be the sum of quantity reported in col. 5 & 6 reduced by quantity reported in col. 8 (5+6-8)
(10)	Waste generated, if any to be reported.

3. Table 9: Details of the products manufactured to be reported brand wise, machine wise and package wise. Column wise details of the information to be provided is given in the table below:

Column no.	Description
1.	Brand reported in table 9 of Form GST SRM-I to be selected from drop down for reporting production during the tax period.
2.	Registration number of the machine assigned by System to be reported.
3.	Packing type viz. pouch, zipper etc. manufactured during the tax period to be reported.

4.	Description of the packing (Quantity in grams in each pack) to be reported.
5.	HSN, at 8 digit level, of the goods manufactured during the tax period to be reported.
6.	Description of the product manufactured during the tax period to be reported.
7.	Number of packages packed during the tax period to be reported.
8.	Maximum Retail Price (MRP) in Rs. per package packed to be reported.
9.	Total value in MRP of the packages packed during the tax period will be computed by System based on the information provided in col. 6&7.

4. Table 10: Power consumption during the month to be reported. Initial reading of the electricity meter in the beginning of the month to be reported for the first month. From the next month onwards, the final reading reported at the end of previous month will become initial reading of the month. Reading of DG set used, if any should also be reported separately. For reporting the reading of more than one electricity meter or DG set, separate rows to be used. Also, electricity meter reading is to be given of the main meter of the manufacturing unit in case separate meter for machines is not available. Solar power mentioned at PART C pertains to only that generated through batteries not integrated with the grid.

5. Table 11. Here, details of the power consumed from solar power integrated with the grid is to be reported.

FORM GST SRM-III

Certificate of Chartered Engineer

1. GSTIN -

2. Details of the machines for which certificate has been issued -

Sr. no.	Make, if avail-able	Model no., if avai-lable	Name of manu-facturer.	Mac-hine no.	Registration no. assigned by System (in cases where the amend-ment in specifica-tion of the machines in Table 6A to be done).	Date of purc-hase, if avail -able.	No. of trac -ks.	Weight of packages which can be packed on the machine (in grams).	Packing capacity of each track (No. of packages packed for a particular weight of package).	Total packing capac-ity of the machine for a specific weight of package to be packed.	Electricity consumption capacity of the machine per hour (KWH).	Re-mark s if any.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11) (8x10)	(12)	(13)

This is to certify that I have examined --- (no.) machines and the above details are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature

Name –

Registration number –

Address –

Mobile no. –

Date:

Place:

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Amendment in Notification No. 02/2017-CT dated 19th June, 2017.

NOTIFICATION
No. 05/2024 – CENTRAL TAX

New Delhi, dated the 30th January, 2024

G.S.R…(E).— In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 02/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 609(E), dated the 19th June, 2017, namely:–

In the said notification, in Table II, in serial number 83, in column (3), in clause (ii), after the figure and letter "411060,", the figure and letter "411069," shall be inserted.

[F. No. CBIC-20016/18/2023-GST]
(Raghavendra Pal Singh)
Director

Note:-The principal notification No. 02/2017-Central Tax, dated the 19th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended by notification No. 39/2023-Central Tax, dated the 17th August, 2023, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 612(E), dated the 17th August, 2023.

Seeks to notify "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the Central Goods and Services Tax Act, 2017

NOTIFICATION
No. 06/2024 – Central Tax

New Delhi, dated the 22nd February, 2024

S.O…(E)— In exercise of the powers conferred by section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under subsection (2) of Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

Explanation.— For the purpose of this notification, "Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

[F. No. CBIC-20001/1/2024-GST]
(Raghavendra Pal Singh)
Director

Seeks to provide waiver of interest for specified registered persons for specified tax periods

Notification
No 07/2024 – Central Tax

New Delhi, the 08th April, 2024.

S.O….(E).— In exercise of the powers conferred by sub-section (1) of section 50 read with section 148 of the Central Goods and Services Tax

Act, 2017 (12 of 2017) (herein after referred to as the Act), the Government, on the recommendations of the Council, hereby notifies the rate of interest per annum to be 'Nil', for the class of registered persons mentioned in column (1) of the Table given below, who were required to furnish the return in FORM GSTR-3B, but failed to furnish the said return for the months mentioned against the corresponding entry in column (2) of the said Table by the due date, for the period mentioned against the corresponding entry in column (3) of the said Table, namely:–

TABLE

Class of registered persons	Months	Period for which interest is to be 'Nil'
(1)	(2)	(3)
Registered person having the following Goods and Services Tax Identification Numbers who are liable to furnish the return as specified under sub-section (1) of section 39 of the Act but could not file the return for the month as mentioned in the corresponding column (2), by the due date, because of technical glitch on the portal but had sufficient balance in their electronic cash ledger or electronic credit ledger, or had deposited the required amount through challan, namely: -		From the due date of filling return in Form GSTR 3B to the actual date of furnishing such return.
1.19AAACI1681G1ZM	June, 2018	
2.19AAACW2192G1Z8	October 2018	
3.19AABCD7720L1ZF	July 2017 and August 2017	
4. 19AAECS6573R1ZC	July 2017 to February 2018	

[F.No.CBIC-20013/7/2021-GST]
(Raghavendra Pal Singh)
Director

Seeks to extend the timeline for implementation of Notification No. 04/2024-CT dated 05.01.2024 from 1st April, 2024 to 15th May, 2024

NOTIFICATION
No. 08/2024- Central Tax

New Delhi, dated the 10th April, 2024

S.O.…(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred

to as the said Act), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 04/2024-Central Tax, dated the 5th January, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 85(E), dated the 5th January, 2024, namely:-

In the said notification, in para 4, for the words and letters "1st day of April, 2024", the words and letters "15th day of May, 2024" shall be substituted.

2. This notification shall come into force from 1st day of April, 2024.

[F.No.CBIC-20001/7/2023-GST]
(Raghavendra Pal Singh)
Director

Note: - The principal Notification No. 04/2024- Central Tax, dated the 5th January, 2024, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 85(E), dated the 5th January, 2024.

Seeks to extend the due date for filing of FORM GSTR-1, for the month of March 2024

NOTIFICATION
No. 09/2024 – CENTRAL TAX

New Delhi, the 12th April, 2024

G.S.R.....(E).-In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 83/2020 –Central Tax, dated the 10th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 699(E), dated the 10th November, 2020, namely:–

In the said notification, after the fourth proviso, the following proviso shall be inserted, namely:-

"Provided also that the time limit for furnishing the details of outward supplies in FORM GSTR-1 of the said rules for the registered persons required to furnish return under sub-section (1) of section 39 of the said Act, other than the registered persons who are required to furnish return under proviso of the said sub-section, for the tax period March, 2024, shall be extended till the twelfth day of April, 2024."

2. This notification shall be deemed to have come into force with effect from the 11th day of April, 2024.

[F. No. CBIC-20021/1/2024-GST]
(R. Ananth)
Director

Note: The principal notification No. 83/2020 –Central Tax, dated the 10th November, 2020 was published in the Gazette of India, Extraordinary vide number G.S.R. 699(E), dated the 10th November, 2020 and was last amended by notification No. 41/2023 –Central Tax, dated the 25th August 2023, published in the Gazette of India, Extraordinary vide number G.S.R. 624(E), dated the 25th August 2023.

Seeks to amend the Notification no. 02/2017-CT dated 19.06.2017 with effect from 5th August, 2023

NOTIFICATION
No. 10/2024-Central Tax

New Delhi, the 29th May, 2024

G.S.R.....(E).– In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 02/2017-Central Tax, dated the 19th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification, in Table II, with effect from the 5th August, 2023,–

(i) for serial number 7 and the entries relating thereto, the following

serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

“7	Alwar	Districts of Alwar, Khairthal- Tijara, Bharatpur, Deeg, Dholpur, Dausa, Karauli, Sawaimadhopur, Gangapur City, Sikar, Neem Ka Thana and Jhunjhunu and Behror, Bansur, Neemrana, Mandan and Narayanpur tehsils of district Kotputli-Behror in the State of Rajasthan.”;

(ii) for serial number 49 and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

“49	Jaipur	Districts of Jaipur, Jaipur (Rural), Dudu, Ajmer, Beawar, Tonk and Kekri and Kotputli, Viratnagar and Shahpura tehsils of district Kotputli- Behror in the State of Rajasthan.”;

(iii) for serial number 53 and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

“53	Jodhpur	Districts of Jodhpur, Jodhpur (Rural), Phalodi, Nagaur, Didwana- Kuchaman, Pali, Sirohi, Jalore, Sanchore, Barmer, Balotra, Jaisalmer, Bikaner, Churu, Ganganagar, Hanumangarh and Anupgarh in the state of Rajasthan.”;

(iv) for serial number 102 and the entries relating thereto, the following serial number and entries shall be substituted and shall be deemed to have been substituted, namely:-

“102	Udaipur	Districts of Udaipur, Salumbar, Rajsamand, Bhilwara, Shahpura, Chittorgarh, Pratapgarh, Dungarpur, Banswara, Bundi, Baran, Kota and Jhalawar in the state of Rajasthan.”.

[F. No. CBIC-20016/18/2023-GST]
(Raghavendra Pal Singh)
Director

Note:– The principal notification No. 02/2017- Central Tax, dated the 19th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 609(E), dated the 19th June, 2017 and was last amended vide Notification No. 05/2024-Central Tax, dated the 30th January, 2024, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 77(E), dated the 30th January, 2024.