DELHI SALES TAX CASES

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HIGHLIGHTS

Consider the reason of the case for nothing is law that is not reason

– Sir John Powell

Editors- in- Chief
Kumar Jee Bhat, Advocate

Sales Tax Bar Association (Regd.)
Knowledge, Diffusion & Promotion Section
Trade & Taxes Department, 2nd Floor, Bikrikar Bhawan, New Delhi-110002

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News from Supreme Court & Bombay High Court

1. Supreme Court Bench imposed a cost of ₹2,000 on an advocate-on-record (AoR) for sending a young junior to appear before the Bench without any papers.

   The Bench headed by the Chief Justice of India (CJI) Dr D.Y. Chandrachud and also comprising Justices P.S. Narasimha and Manoj Misra observed that such conduct was a disservice to the court as well as to the junior advocate.

   When the matter was taken up in the first session, a junior advocate appeared and sought time to file a rejoinder.

   The CJI insisted he argued the matter. However, the junior lawyer submitted that he had no instructions to argue and sought adjournment.

   In addition, he did not have any papers related to the case.

   An unrelenting CJI retorted that the court had instructions under the Constitution of India to go ahead with the matter. The junior again pleaded that he had no instructions.

   The CJI then asked the junior whether he is a junior of an AoR, to which the junior answered in the negative and informed the court that "he is a junior of some senior".

   "We cannot be taken for granted like this", the CJI remarked while summoning the AoR in the case.

   When the matter was taken up again for hearing, yet another lawyer appeared on behalf of the AoR. The Bench was told that the AoR was not feeling well.

   An anguished CJI asked the advocate who was appearing for the AoR whether this was the way a junior is to be trained.

   The CJI then observed that the hearing could not be conducted in this fashion. He adjourned the matter for a week but not before imposing a cost on the AoR who remained absent during the hearing.

2. The Bombay High Court recently directed an advocate to present a book, 'The Indian Constitution: Cornerstone of a Nation' by Granville Austin to his junior advocate as he blamed her for not informing him about a matter listed on certain dates that resulted in dismissal of the appeal. The book provides the history of the Indian Constituent Assembly, which was formed to frame the Constitution.

The bench said “it would be apposite that instead of granting costs in the conventional sense,” the advocate on record for the appellant gift a copy of the book to the junior advocate, who was two-month-old in the profession. It “would serve as a gesture of goodwill and erase any misunderstanding or ill will that may have occurred in the mind of the junior advocate”.

A division bench of Chief Justice Devendra Kumar Upadhyaya and Justice Arif S Doctor on August 19 was hearing an interim plea by a co-operative bank, which sought restoration of the appeal, which was dismissed on December 15, 2022, as none appeared on its behalf.

The appellant stated that the junior advocate, who was entrusted with the work of checking the cause list — a list of cases to be heard — did not inform the appellant’s lawyer that the matter was listed on the weekly cause-list for the period from December 15 to 16 last year.

“We find it most unfortunate that the appellant’s advocate on record has sought to lay the blame for non-appearance at the hands of a junior advocate, who had in fact enrolled as an advocate less than two months before the date on which the said appeal came to be dismissed.

What is worse still is that the said junior advocate has been made to file an affidavit stating that the inadvertence was at her end,” the bench observed.

The lawyer for one of the respondents argued that the interim plea for restoration of appeal was filed in “most cavalier and casual manner” and if appeal is restored, it should be subject to some terms on advocates of appellant bank. The lawyer claimed that the deponent junior lawyer filed an affidavit containing facts that had occurred prior to her joining employment of the appellant bank and it was filed as if it was within the personal knowledge of the junior.

After the court expressed its displeasure at the course of conduct, the lawyer appearing for the appellant immediately tendered an apology to the court. He submitted that the appellant would immediately expunge the name of the junior lawyer from the record.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
[B.V. Nagarathna and Ujjal Bhuyan, JJ]

Petition(s) for Special Leave to Appeal (C) No(s). 22814/2023

(Arising out of impugned final judgment and order dated 20-07-2023 in WP(C) No. 15685/2022 passed by the High Court of Delhi at New Delhi)

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

Versus

Ramky Infrastructure Limited ... Respondent(S)

(IA No.209077/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 20-10-2023

This petition was called on for hearing today.

For Petitioner(s) : Mr. N.Venkataraman, A.S.G.
Mr. Rupesh Kumar, Adv.
Mr. Lalit Mohan, Adv.
Mr. Anmol Chandan, Adv.
Ms. Vishakha, Adv.
Ms. Priyanka Das, Adv.
Ms. Sarita Gautam, Adv.
Dr. Arun Kumar Yadav, Adv.
Mr. Shreekant Neelappa Terdal, AOR

For Respondent(s) : Mr. Rajesh Jain, Adv.
Mr. Virag Tiwari, Adv.
Mr. K.J. Bhat, Adv.
Mr. Ramashish, Adv.
Mr. Avadh Bihari Kaushik, AOR

UPON hearing the counsel the Court made the following

O R D E R

Having regard to the peculiar facts of this case, we are not inclined to interfere with the judgment and order impugned in this petition.

The special leave petition is, hence, dismissed.

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

(Radha Sharma)
Court Master (Sh)

(Malekar Nagaraj)
Court Master (Nsh)

IN THE SUPREME COURT OF INDIA

[Devinder Kumar Jain and Anil R. Dave, JJ]

Civil Appeal Nos. 7637 of 2009, 3088 and 6823 of 2010

Ranbaxy Laboratories Ltd. ... Appellants

Versus

Union of India (UOI) and Ors. ... Respondent

Decided On: 21.10.2011

INTEREST ON DELAYED REFUNDS - WHETHER THE LIABILITY OF THE REVENUE TO PAY INTEREST UNDER SECTION 11BB OF THE ACT COMMENCES FROM THE DATE OF EXPIRY OF THREE MONTHS FROM THE DATE OF RECEIPT OF APPLICATION FOR REFUND OR ON THE EXPIRY OF THE SAID PERIOD FROM THE DATE ON WHICH THE ORDER OF REFUND IS MADE?

Held - Liability of the Revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund was made. Hence, appeal filed by the Assessee was allowed and appeal filed by the Revenue were dismissed.

Editor's Note – The judgment has been referred in the latest case of grant of interest of refund in Writ Petition No. 15684/2022 and VAT Appeal No. 31/2023, March 2023.

Counsels for Appearing Parties	:	Arijit Prasad, B.K. Prasad, Anil Katiyar, Krishna Mohan Menon, Advs.
For M.P.	:	Devanath, Adv., Tarun Gulati, Shruti Sabharwal, Shashi Mathews, Kishore Kunal and Praveen Kumar, Advs.

JUDGMENT

Devinder Kumar Jain, J.

1. The challenge in this batch of appeals is to the final judgments and orders delivered by the High Court of Delhi in W.P. No. 13940/2009 and the High Court of Judicature at Bombay in Central Excise Appeal Nos. 163/2007 and 124 of 2008. The core issue which confronts us in all these appeals relates to the question of commencement of the period for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944 (for short 'the Act'). In short, the question is whether the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made'

2. As aforesaid, in all these appeals the question in issue being the same, these are being disposed of by this common judgment. However, in order to appreciate the controversy in its proper perspective, a few facts from C.A. No. 6823 of 2010 may be noted. These are as follows:

> The Appellant filed certain claims for rebate of duty, amounting to Rs. 4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central Excise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the Appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, Appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate.

3. A show cause notice was issued to the Appellant on 5th July 2005, proposing to reject their claim for interest on the ground that rebate had been sanctioned to them within three months of the receipt of order of the Commissioner (Appeals) dated 30th September, 2004. Upon consideration of the reply submitted by the Appellant, relying on Explanation to Section 11BB of the Act, the Assistant Commissioner rejected the claim.

4. Against the said order, the Appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the

appeal and directed the Assistant Commissioner to compute and pay the interest to the Appellant. Aggrieved by the said direction, the Assistant Commissioner filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (for short 'the Tribunal'). However, the appeal was dismissed by the Tribunal on the ground that it did not have jurisdiction to deal with a rebate claim. Feeling aggrieved, the Assistant Commissioner filed a revision application before the Joint Secretary, Ministry of Finance, Govt. of India who vide his order dated 30th July 2009 set aside the order passed by the Commissioner (Appeals) and held that the appellant was not entitled to interest under Section 11BB of the Act.

5. Being dissatisfied with the said order, the Appellant filed a writ petition in the High Court of Delhi. Relying on the decision of this Court in *Union of India and Anr. v. Shreeji Colour Chem Industries* MANU/SC/8040/2008 : (2008) 9 SCC 515, by the impugned order, the High Court has affirmed the decision of the revisional authority and held that the Appellant is not entitled to interest under Section 11BB of the Act. Hence, in the lead case the Assessee is in appeal before us. However, in the connected appeals, the High Court of Judicature at Bombay having affirmed the decisions of the Tribunal, upholding the claim of the Assessee for interest under Section 11BB of the Act, the revenue is the Appellant.

6. Learned Counsel appearing for the Assessee contended that the language of Section 11BB of the Act is clear and admits of no ambiguity, in as much as the revenue becomes liable to pay interest at the prescribed rate on refunds on the expiry of three months from the date of receipt of application under Section 11B(1) of the Act and such liability continues till the refund of duty. Learned Counsel urged that reliance on the decision of this Court in *Shreeji Colour Chem Industries* (supra) by the Delhi High Court in rejecting the claim for interest is misplaced. It was contended that the said judgment deals with two kinds of interest, viz. (i) equitable interest because of delayed refunds and (ii) statutory interest payable under Section 11BB of the Act. According to the learned counsel in terms of the latter, the judgment supports the assessee's claim, but the High Court has erroneously applied the principle laid down for payment of equitable interest. According to the Learned Counsel, the said decision clearly holds that an Assessee is entitled to interest under the said Section after the expiry of three months from the date of receipt of application for payment of refund. In support of the claim, Learned Counsel commended us to the order passed by this Court in *Union of India v. U.P. Twiga Fiber Glass Ltd. 2009* (243) E.L.T. 27 (S.C.), whereby the appeal preferred by the revenue against the decision of the Allahabad High Court has been dismissed. In

the said decision, following the decision of the Rajasthan High Court in *J.K. Cement Works v. Assistant Commissioner of Central Excise and Customs* MANU/RH/0066/2004 : 2004 (170) E.L.T. 4, the Allahabad High Court had held that the relevant date for the purpose of determining the liability to pay interest under Section 11BB of the Act is with reference to the date of application, laying claim for refund and not the actual determination of refund under Section 11B(2) of the Act. To bolster the claim, Learned Counsel placed strong reliance on a number of Circulars on the point, issued by the Department of Revenue, Ministry of Finance, Govt. of India, clarifying that with the insertion of new Section 11BB of the Act, the department had become liable to pay interest under the said Section if the refund applications were not processed within three months from the date of receipt of refund applications.

7. Mr. Arijit Prasad, Learned Counsel appearing for the revenue, on the other hand, submitted that since in the present cases no refunds were sanctioned under Section 11B of the Act, the provisions of Section 11BB of the Act were not attracted. In the alternative, it was submitted that the refund orders having been sanctioned within three months of the passing of orders by the appellate authority, interest under the said Section was not payable.

8. Before evaluating the rival contentions, it would be necessary to refer to the relevant provisions of the Act. Section 11B of the Act deals with claims for refund of duty. Relevant portion thereof reads as under:

> 11B. Claim for refund of duty.-(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence including the documents referred to in Section 12A as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from or paid by him and the incidence of such duty and interest if any, paid on such duty had not been passed on by him to any other person:
>
> > Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such

application shall be deemed to have been made under this Sub-section as amended by the Act and the same shall be dealt with in accordance with the provisions of Sub-section (2) as substituted by that Act:

Provided further that the limitation of one year shall not apply where any duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty of excise as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's current account maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under Clause (f) of the first proviso shall be issued unless in the opinion of the Central Government, the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal of any Court in any other provision of this Act or the rules made there under or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

(4)...

(5)...

Section 11BB, the pivotal provision, reads thus: 11BB. Interest on delayed refunds.-

If any duty ordered to be refunded under Sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under Sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty ordered to be refunded under Sub-section (2) of section 11B in respect of an application under Sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation: Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under Sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said Sub-section (2) for the purposes of this section.

9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under Sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under Sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

10. It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See: Cape Brandy Syndicate v. Inland Revenue Commissioners(1921) 1 K.B. 64 an d Ajmera Housing Corporation and Anr. v. Commissioner of Income Tax MANU/SC/0623/2010 : (2010) 8 SCC 739

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted 'automatically' for any refund sanctioned beyond a period of three months. The Circular reads thus:

Circular No. 670/61/2002-CX : MANU/EXCR/0051/2002,
dated 1-10- 2002

F. No. 268/51/2002-CX.8

Government of India

Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding

I am directed to invite your attention to provisions of Section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

2. In this connection, Board would like to stress that the provisions of Section 11BB of Central Excise Act, 1944 are attracted

automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX : MANU/EXCR/0032/1998, dated 2-6-98 (MANU/SC/1643/1998 : 1998 (100) E.L.T. 16) wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/ rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed.

(Emphasis supplied)

12. Thus, ever since Section 11BB was inserted in the Act with effect from 26th May 1995, the department has maintained a consistent stand about its interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act.

13. We, thus find substance in the contention of Learned Counsel for the Assessee that in fact the issue stands concluded by the decision of this Court in *U.P. Twiga Fiber Glass Ltd.* (supra). In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

Heard both the parties.

In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in MANU/RH/0066/2004 : 2004 (170) E.L.T. 4 vide Para 33:

> A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for

> the purpose of determining the liability to pay interest is not the determination under sub-section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non- payment of refund to the applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference.

The special leave petition is dismissed. No costs.

14. . At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the Assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.

16. As a sequitur, C.A. No. 6823 of 2010, filed by the assessee is allowed and C.A. Nos. 7637/2009 and 3088/2010, preferred by the revenue are dismissed. The jurisdictional Excise officers shall now determine the amount of interest payable to the Assessees in these appeals, under Section 11BB of the Act, on the basis of the legal position, explained above.

The amount(s), if any, so worked out, shall be paid within eight weeks from today.

17. However, on the facts and in the circumstances of the cases, there will be no order as to costs.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[M.R. Shah, C.T. Ravikumar; JJ]

CIVIL APPEAL NO. 359 OF 2023
(Arising out of SLP (C) No. 19295/2022)

The State of Punjab ... Petitioner

Versus

Shiv Enterprises & Ors. ... Respondent

January 16, 2023

SHOW CAUSE NOTICE – MAINTAINABILITY OF WRIT – THE HIGH COURT HAS MATERIALLY ERRED IN ENTERTAINING THE WRIT PETITION AGAINST THE SHOW CAUSE NOTICE AND QUASHING AND SETTING ASIDE THE SAME. HOWEVER, AT THE SAME TIME, THE ORDER PASSED BY THE HIGH COURT RELEASING THE GOODS IN QUESTION IS NOT TO BE INTERFERED WITH AS IT IS REPORTED THAT THE GOODS HAVE BEEN RELEASED BY THE APPROPRIATE AUTHORITY.

Central Goods and Services Tax, 2017; Section 130 - Observing that it was “premature” on the part of the High Court to quash a show-cause notice issued under Section 130 of the Central Goods and Service Tax Act by invoking Article 226 jurisdiction, the Supreme Court set aside an order passed by the Punjab and Haryana High Court.

Constitution of India, 1950; Article 226 - It was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under section 130 of the CGST Act was issued. Therefore, High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same.

(Arising out of impugned final judgment and order dated 04-02-2022 in CWP No. 18392/2021 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) : Ms. Nupur Kumar, AOR
Mr. Divyansh Tiwari, Adv.

For Respondent(s) : Mr. Sandeep Goyal, Adv.
Mr. Pawanshree Agrawal, AOR
Ms. Vidisha Swarup, Adv.
Ms. Shubhangi Negi, Adv.

O R D E R

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 04.02.2022 passed by the High Court of Punjab and Haryana at Chandigarh in Writ Petition No. 18392 of 2021, by which the High Court has set aside the order of detention of the goods/vehicle dated 30.08.2021 issued by the Office of Assistant Commissioner State Tax, Mobile Wing, Chandigarh-2 and also the notice dated 14.09.2021 issued under Section 130 of the CGST Act, 2017, the State has preferred the present appeal.

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

4. From the notice dated 14.09.2021, it can be seen that the original writ petitioner was called upon to show cause within 14 days from the receipt of the said notice, as to why the goods in question and the conveyance used to transport such goods shall not be confiscated under the provisions of Section 130 of the Punjab GST Act, 2017 and IGST Act, 2017 and CGST Act, 2017 and why the tax, penalty and other charges payable in respect of such goods and the conveyance shall not be payable.

5. In the show cause notice, there was a specific allegation with respect to evasion of duty, which was yet to be considered by the appropriate authority on the original writ petitioner's appearing before the appropriate authority, who issued the notice. However, in exercise of powers under Article 226 of the Constitution of India, the High Court entertained the writ petition against the show cause notice and set aside the show cause notice under Section 130 of the Act by observing in para 29 as under:-

> "29. From the pleadings on record, it is clear that there is no allegation that the petitioner has contravened any provision of the Act or the rules framed thereunder much less with an intent to

> evade payment of tax. It is also not the case of the State that the petitioner did not account for any goods on which he is liable to pay tax under the Act or that he supplied any goods liable to tax under the Act without having applied for registration or that he supplied or received any goods in contravention of any of the provisions of the Act. From the perusal of show cause notice issued to the petitioner under Section 130, the case alleged against the petitioner is that of wrongful claim of input tax credit. The petitioner or for that matter any registered person shall be entitled to tax credit of input tax on any supply of goods or services, only when he shall is able to show that the tax in respect of such supply has been paid to the Government either in cash or through utilization of input tax credit admissible in respect of the said supply. Needless to reiterate any person can claim input tax credit under the provisions of the 2017 Act only if the same has been actually paid to the Government. Thus, the action of the respondents in initiating proceedings under Section 130 on the basis of show cause notice dated 14.09.2021 cannot be sustained.

Apart from the fact that the aforesaid is factually incorrect, even otherwise, it was premature for the High Court to opine anything on whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceeding for which the notice under Section 130 of the Act was issued. Therefore, we are of the opinion that the High Court has materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same. However, at the same time, the order passed by the High Court releasing the goods in question is not to be interfered with as it is reported that the goods have been released by the appropriate authority.

6. In view of the above and for the reasons stated above and without expressing anything on merits in favour of either parties, more particularly, against respondent-herein (original writ petitioner), on the aforesaid ground alone, we set aside the impugned judgment and order passed by the High Court to the extent quashing and setting aside the notice dated 14.09.2021, issued under Section 130 of the CGST Act and remand the matter to the appropriate authority, who issued the notice. It will be for the respondent-herein - original writ petitioner to file a reply to the said show cause notice within a period of four weeks from today and thereafter the appropriate authority to pass an appropriate order in accordance with law and on its own merits.

7. All the contentions/defences which may be available to the respondent-original writ petitioner are kept open to be considered by the appropriate authority in accordance with law and on its own merits.

8. The present appeal is partly allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

IN THE COURT OF ALLAHABAD AT ALLAHABAD
[Pritinker Diwaker and Saumitra Dayal Singh, CJ. J]

Case :- WRIT TAX No. - 551 of 2023

Mohini Traders ... Petitioner

Versus

State of U.P. and Another ... Respondent

Date of Order : 3 May, 2023

NATURAL JUSTICE – OPPORTUNITY OF BEING HEARD – THE OBJECTION OF THE PETITIONER WAS THAT THE PETITIONER WAS COMPLETELY DENIED OPPORTUNITY OF ORAL HEARING BEFORE THE ASSESSING AUTHORITY. IT HAS BEEN POINTED OUT; THE ASSESSING AUTHORITY HAD AT THAT STAGE ITSELF CHOSEN TO NOT GIVE ANY OPPORTUNITY OF HEARING TO THE PETITIONER BY MENTIONING "NA" AGAINST COLUMN DESCRIPTION "DATE OF PERSONAL HEARING". THE REVENUE WOULD CONTEND, THE PETITIONER WAS DENIED OPPORTUNITY OF HEARING BECAUSE THE PETITIONER HAD TICK MARKED THE OPTION 'NO' AGAINST THE OPTION FOR PERSONAL HEARING (IN THE REPLY TO THE SHOW-CAUSE-NOTICE), SUBMITTED THROUGH ONLINE MODE.

Held *– Once it has been laid down by way of a principle of law that a person / assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.*

Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms.

The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.

Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required.

Counsel for Petitioner : Vishwjit

Counsel for Respondent : C.S.C

Order

1. Heard Sri Vishwjit, learned counsel for the assessee and Sri Ankur Agarwal, learned counsel for the revenue.

2. Challenge has been raised to the order dated 21.10.2022 passed by the Assistant Commissioner, State Tax, Sector-6, Aligarh for the tax period April 2018, whereby demand in excess to Rs. 5 crores has been raised against the present petitioner.

3. Solitary ground being pressed in the present petition is, the only notice in the proceedings was issued to the petitioner on 20.05.2022 seeking his reply within 30 days. Referring to item no. 3 of the table appended to that notice, it has been pointed out, the Assessing Authority had at that stage itself chosen to not give any opportunity of hearing to the petitioner by mentioning “NA” against column description “Date of personal hearing”. Similar endorsements were made against the columns for “Time of personal hearing” and “Venue where personal hearing will be held”. Thus, it is the objection of learned counsel for the petitioner, the petitioner was completely denied opportunity of oral hearing before the Assessing Authority.

4. Relying on Section 75(4) of the U.P. GST Act, 2017 (hereinafter referred to as the ‘Act’) as interpreted by a coordinate bench of this Court in Bharat Mint & Allied Chemicals Vs. Commissioner Commerical Tax & 2 Ors., (2022) 48 VLJ 325, it has been then asserted, the Assessing Authority was bound to afford opportunity of personal hearing to the petitioner before he may have passed an adverse assessment order. Insofar as the assessment order has raised disputed demand of tax about Rs. 6 crores, the same is wholly adverse to the petitioner. In absence of opportunity of hearing afforded, the same is contrary to the law declared by this Court in Bharat Mint & Allied Chemicals (supra). Reliance has also been placed on a decision of the Gujarat High Court in M/S Hitech Sweet

Water Technologies Pvt. Ltd. Vs. State of Gujarat, 2022 UPTC (Vol. 112) 1760.

5. On the other hand, learned counsel for the revenue would contend, the petitioner was denied opportunity of hearing because he had tick marked the option 'No' against the option for personal hearing (in the reply to the show-cause-notice), submitted through online mode. Having thus declined the opportunity of hearing, the petitioner cannot turn around to claim any error in the impugned order passed consequently.

6. Having hearing learned counsel for the parties and having perused the record, Section 75(4) of the Act reads as under :

> "An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

7. We find ourselves in complete agreement with the view taken by the coordinate bench in Bharat Mint & Allied Chemicals (supra). Once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.

8. Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms. Here, we note, the impugned order itself has been passed on 25.11.2022, while reply to the show-causenotice had been entertained on 14.11.2022. The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.

9. Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required.

10. Accordingly, the present writ petition is allowed. The impugned order dated 25.11.2022 is set aside. The matter is remitted to the respondent no.2/Assistant Commissioner, State Tax, Sector-6, Aligarh to issue a fresh notice to the petitioner within a period of two weeks from today. The petitioner undertakes to appear before that authority on the next date fixed such that proceedings may be concluded, as expeditiously as possible.

IN THE HIGH COURT OF DELHI AT NEW DELHI
[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 7248/2023 & CM APPL. 28227/2023

Advance Systems ... Petitioner

versus

The Commissioner of Central Excise And CGST ... Respondent

Date of Decision: 07th July, 2023

WHETHER A REFUND CLAIM WILL BE DISALLOWED BY MERELY STATING THAT THE SUPPORTING DOCUMENTS WERE NOT COMPLETE "WHEN THE CLAIM WAS ALLOWED BY THE APPELLATE AUTHORITY?

Held – No

Present Through	:	Mr. Siddharth Malhotra, Adv.
Respondent Through	:	Mr. Atul Tripathi, Sr.SC with Mr. Amresh Kumar Jha & Mr. V.K. Attri, Advs.

Vibhu Bakhru, J.

1. The petitioner has filed the present petition, inter alia, praying as under:

> "(i) Issue a writ in the seeking writ of mandamus and/ or any other appropriate writ, directing the respondent department to sanction the refund claims filed by the Petitioner under. Refund Application dated 20.02.2023 (Reference no. AAA070223060035R) for the amount of Rs. 7,45,296/- for the period January, 2021 to March, 2021 and Refund Application dated 20.02.2023 (Reference No.

AA070223060088G) for the amount of Rs. 9,74,094/- for the period April, 21 to Sept,21, along with the applicable interest as per the provisions of the Central Goods and Service Tax Act, 2017 and rules made thereunder;

(ii) Issue writ of mandamus, directing the Respondent Department to allow Form GST PMT-03 with respect to the amount of Rs.31,640/- for the period January, 2021 to March, 2021 and Rs.22,482/- for the period April, 2021 to September, 2021

(iii) Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant relief to the petitioner."

2. The petitioner claims refund of Input Tax Credit (hereafter 'ITC'), in respect of certain exports made under Letter of Undertaking (hereafter 'LUT').

3. The petitioner's claim for refund relates to exports effected during the period January, 2021 to September, 2021.

4. The petitioner had filed two applications pertaining to the said Zero Rated Supplies under Section 54(3)(i) of the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act').

5. The respondent had acknowledged the receipt of the said claims, however, the said acknowledgment was not uploaded online and was not processed.

6. Although the petitioner filed the applications for refund (in Form GST RFD-01) on 20.04.2022; the respondent did not process the same within the stipulated period.

7. After much delay, on 19.05.2022, the respondent issued a Show Cause Notice proposing denial of refund claimed by the petitioner on several grounds.

8. The petitioner sought time to respond to the said Show Cause Notice. However, the respondent rejected the petitioners claim in terms of Orders-in-Original (two in number) dated 17.06.2022. The petitioner appealed the said orders before the appellate authority.

9. The appellate authority examined the petitioner's challenge to the Orders-in-Original (two in number), bearing nos.: ZT0706220299219 and

ZU0706220299086, both dated 17.06.2022 as well as the petitioner's claim for the refund of ITC.

10. The appeals were disposed of by Orders-in-Appeal dated 31.01.2023. The appellate authority partly allowed the petitioner's claim for refund to the extent of ₹7,45,296/- instead of ₹7,76,936/- as claimed by the petitioner for the period, January, 2021 to March, 2021 and further allowed the petitioner's claim to the extent of ₹9,74,094/- instead of ₹9,96,576/- as claimed by the petitioner, for the period, April, 2021 to September, 2021.

11. Notwithstanding that the petitioner had succeeded before the appellate authority, the respondent failed and neglected to process its claim for refund.

12. The petitioner had, once again, filed the claim for refund on the basis of the Orders-in-Appeal dated 31.01.2023. According to the respondent, the said application was deficient as it was not accompanied by an undertaking to the effect that the petitioner would refund the sanctioned amount along with interest in case it is found that the requirements of Section 16(2)(c) of the CGST Act read with Section 42(2) of the CGST Act, were not complied with in respect of the amount refunded.

13. It is material to note that the deficiency memo did not specifically indicate the said deficiency. It merely stated that "supporting documents attached are incomplete". Undisputedly, the petitioner had provided the copy of the Orders-in-Appeal on the basis of which it claimed the refunds.

14. In view of the above, clearly, there was no requirement to furnish any further documents to substantiate the petitioner's claim.

15. We are also of the view that the petitioner was not required to make repeated applications for refund after it had prevailed in its appeals before the appellate authority. The appellate proceedings are a continuation of the petitioner's applications for refund and, therefore, the Orders-in-Appeals were required to be implemented.

16. Mr. Atul Tripathi, learned Counsel appearing for the respondent states that, notwithstanding, that the petitioner had prevailed in its appeal, it was required to submit an online request. He submits that in terms of the circular dated 03.10.2019, a person prevailing in its claim for refund in appeal or in any other forum, is required to file a fresh application in form GST RFD-01.

17. He further submits that the said form is, once again, required to be accompanied by all relevant documents including undertaking and declaration.

18. We are unable to accept that it is open for the respondent to raise any deficiency memo after a tax payer has succeeded in appellate proceedings. Undisputedly, the petitioner had filed its application in the requisite form (GST RFD-01) along with the necessary declarations and undertaking.

19. The respondent had examined the said refund and had denied the same on certain grounds, which were subject matter of appellate proceedings. After the petitioner had succeeded in its appellate proceedings, there is no question of the respondent now raising any deficiency or once again requiring the petitioner to furnish any undertaking or declaration which it had already done at the initial stage.

20. We are unable to accept that a taxpayer is required to make repeated applications for seeking a refund. Once a tax payer has made a claim for refund, the same is required to be processed in accordance with law. If the refund is rejected for any reason and the said party prevails before the appellate authority, it is not open for the respondents to desist from processing the claims on any such technical grounds. The circular dated 03.10.2019 sets out a convenient procedure for moving the concerned authorities, and must be construed as such.

21. Thus, a tax payer may file a fresh online application to trigger the processing of its refund, however, it is not open for the respondents to raise further deficiency memos regarding the same.

22. We are also unable to accept that the petitioner's refund can be withheld merely on the ground that the respondent proposes to review the Orders-in-Appeal dated 31.01.2023. However, it is clarified that the disbursement of the refund in favour of the petitioner would not preclude the respondents from availing their remedies against the Orders-in-Appeal in accordance with law.

23. In view of the above, the petition is allowed. The respondent shall forthwith sanction the refund claim as preferred by the petitioner to the extent as accepted by the appellate authority along with applicable interest in accordance with the provisions of the CGST Act.

24. The respondent shall also process the petitioner's request furnished in Form GST-PMT-03 in accordance with law.

25. All pending applications also stand disposed of.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 6556/2020

Megicon Impex Pvt Ltd ... Petitioner

versus

Commissioner of Central Goods and Services Tax Delhi West & Ors. ... Respondents

6 February, 2023

REFUND – LIMITATION – WHETHER THE APPLICATION FOR REFUND COULD BE REJECTED FOR WANT OF LIMITATION WHEN HON'BLE SUPREME COURT HAD EXTENDED THE SAME VIDE ORDER IN SUO-MOTO WP NO. 3

Held – NO.

Present for Petitioner	:	Mr. Rajesh Mahna, Mr. Akshay Bhatia & Ms. Sonia Sharma, Advs.
Present for Respondent	:	Mr. Harpreet Singh, Sr. SC with Ms. Suhani Mathur & Mr. Akshay Saxena, Advs.

O R D E R : 06.02.2023

1. The petitioner has filed the present petition, inter alia, impugning an order dated 24.07.2020 passed by the adjudicating authority and an order dated 27.08.2020, passed by the Appellate Authority [Additional Commissioner of Central Tax (Appeals)], rejecting the petitioner's appeal against the order dated 24.07.2020.

2. The impugned order dated 24.07.2020 indicates that the petitioner's application for refund was rejected on the ground that it was filed beyond the period of two years as stipulated under Section 54(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the Act"). Paragraph 3.5 of the said impugned order reads as under:

> "3.5 It is observed that the party has filed refund application for the period of February, 2018 on 29.04.2020 for an amount of Rs. 67,35,077/- The earlier application for the same period was for an

amount of Rs. 92,65,473/-. Thus, amending the same by reducing in by Rs 25,30,396/-. A deficiency memo was issued to the party on 13.05.2020 for clarifying the deficiencies, which arose during verification of refund application. The party had submitted their refund application on 25.05.2020 for the period of February, 2018 for Rs. 6607432/- after rectification of deficiencies."

3. The petitioner had appealed the impugned order dated 24.07.2020 before the Additional Commissioner of Central Tax (Appeals). However, the said appeal was rejected as the Appellate Authority had concluded that the impugned order dated 24.07.2020 was passed in accordance with law and warranted no interference.

4. The learned Counsel appearing for the parties have drawn attention to a notification dated 05.07.2022, whereby the period commencing from 01.03.2020 to 28.02.2022, was directed to be excluded for computing the period of limitation, for filing a refund application under Sections 54 or Section 55 of the Act.

5. It is apparent that the said notification was issued in view of the order passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020: In Re: Cognizance For Extension of Limitation*.

6. In view of the above, the impugned orders cannot be sustained as the benefit of the relaxation in the period of limitation has not been accorded to the petitioner.

7. The respondents are directed to forthwith process the petitioner's application for refund in accordance with law.

8. The petition is disposed of in the above terms.

IN THE ANDHRA PRADESH HIGH COURT

[C. Praveen Kumar and A. V. Ravindra Babu JJ.]

Writ Petition Nos. 3905 and 3795 of 2021 .

Sarojini Engineering Works Private Limited

Versus

Commercial Tax Officer, Dwarakanagar Circle, Visakhapatnam And Others

September 29, 2022.

WHETHER AN APPEAL CAN BE REJECTED ON THE GROUND OF LIMITATION WHEN THE ORDER HAS BEEN PASSED WITHOUT GIVING AN OPPORTUNITY OF BEING HEARD?

Held – *Since the delay in filing appeal was explained and reasons were accepted, but the order was passed without condoning the delay. As the orders of assessment was claimed to have passed without giving an opportunity of hearing, non service of Show Cause Notice, the orders under challenge were set aside and directed to deal with them in accordance with law.*

Section(s): Andhra Pradesh Value Added Tax Act, 2005, s. 31
Favouring: Matter remanded/remitted

Cases referred to :

Assistant Commissioner v. Glaxo Smith Kline Consumer Health Care Limited [2020] 77 GSTR 342 (SC) (paras 16, 19, 20)

Chandra Kumar (L.) v. Union of India [1997] 105 STC 618 (SC) ; [1997] 228 ITR 725 (SC) (para 12)

Electronics Corporation of India Limited v. Union of India [2019] 7 GSTR-OL 48 (T&AP) (paras 5, 12, 13, 14, 16, 17, 18)

Kerala Education Bill [1957], In re [1958] AIR 1958 SC 956 (para 12)

M. P. Steel Corporation v. Commissioner of Central Excise [2015] 80 VST 492 (SC) (paras 4, 8)

Minerva Mills Ltd. v. Union of India [1980] AIR 1980 SC 1789 (para 12) Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited [2017] 5 SCC 42 (para 17)

Panoli Intermediate (India) P. Ltd. v. Union of India [2015] 326 ELT 532 (Guj) [FB] (paras 14, 16, 17, 18)

Phoenix Plasts Company v. Commissioner of Central Excise (Appeal-I) [2014] 25 GSTR 325 (Karn) (paras 17, 18)

Raja Mechanical Company P. Ltd. v. Commissioner of Central Excise [2012] 15 GSTR 1 (SC) (para 19)

Resolute Electronics Pvt. Ltd. v. Union of India [2015] 32 GSTR 435 (T&AP) (para 14)

Star Enterprises v. Joint Commissioner [2016] 41 STR 20 (AP) (para 14)

Present for Petitioner	:	S. Dwarakanath, Senior Counsel, and K. V. J. L. N. Sastry
Present for Respondent	:	The Government Pleader for Commercial Tax.

ORDER

The order of the court was made by

1. C. Praveen Kumar J.—As both the writ petitions are interconnected, the same are disposed of by this common order.

2. Assailing the assessment order No. 63500, dated March 31, 2017, for the year 2012-13 under the CST Act, passed by the first respondent, as barred by limitation and the same came to be passed without giving any opportunity to the petitioner, W. P. No. 3905 of 2021 came to be filed.

3. While W. P. No. 3795 of 2021 came to be filed, seeking issuance of writ of mandamus to set aside the impugned assessment order No. 116695, dated March 15, 2018 for the year 2013-14 under the CST Act, passed by the first respondent, as barred by limitation and without giving any opportunity to the petitioner.

4. Since the facts in both the cases are similar in nature, it would be appro priate to refer to the facts in W. P. No. 3905 of 2021 by taking it as a lead petition, which are as under :

(a) The petitioner herein is an assessee on the rolls of the first respondent, doing business in manganese ore. The petitioner, is a registered dealer under Andhra Pradesh Value Added tax Act, 2005 (for short, “the APVAT Act”) and Central Sales tax Act, 1956 (for short, “the CST Act”). It is stated that the international exports are exempt under section 5(1) of the CST Act, subject to production of documentary evidence namely purchase order of the foreign buyer, proof of export and receipt of consideration in foreign exchange. In respect of inter-State sales against “C” forms, the turnover is liable to be taxed at two per cent., provided the entire declarations are filed, covering the turnover. In respect of transit sales, they are exempt under section 6(2) read with section 3(b) of the CST Act, provided “E1” forms from the first inter-State sales and “C” forms from the buyers are filed.

(b) While things stood thus, the first respondent passed an adverse order for the year 2012-13 levying tax at 14.5 per cent. on the entire turnover, on the ground that the petitioner has failed to produce the documentary evidence in support of his claim for exemption towards exports and transit sales and “C” forms for concessional

rate of tax. The said order which was passed on March 31, 2017 was served on to the petitioner on May 5, 2017. Because of ill-health and hospitalization, the petitioner could not take any steps to challenge the same within the time prescribed under section 31 of the APVAT Act. However, on December 4, 2018, the petitioner preferred an appeal before the second respondent, wherein, he claimed that the exports turnover do not relate to the sales of the foreign country but sales to SEZ units within India, which are also not liable to tax, provided form-I declarations are given by SEZ units, for the transit sales as well. The said appeal was filed with a delay of 540 days. Though, reasons given for filing the appeal with a delay, were accepted, the appellate authority rejected the appeal on the ground that he has no authority or jurisdiction to condone the delay. Challenging the same, the petitioner filed an appeal before the APVAT appellate Tribunal at Visakhapatnam vide T. A. No. 207 of 2019 questioning the rejection of the appeal by the second respondent. The said appeal was also dismissed on the ground that though delay in filing is explained and is acceptable but the same cannot be condoned beyond a period of thirty (30) days, when the provisions of the Limitation Act, are not applicable, in view of the judgment of the honourable Supreme Court in M. P. Steel Corporation v. Commissioner of Central Excise [2015] 80 VST 492 (SC). Now, the present writ petition is filed challenging the original order of assessment itself, as barred by limitation and that the order came to be passed, without giving an opportunity of hearing before confirming the liability.

5. Sri S. Dwarakanath, learned senior counsel for the petitioner, mainly submits that though the petitioner has filed an appeal before the second respondent and thereafter approached APVAT Appellate Tribunal, seeking to condone the delay, there is no bar to challenge the order passed by the assessing authority on March 31, 2017. He relied upon a Full Bench judgment of the combined High Court in Electronics Corporation of India Limited v. Union of India [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018 in support of his plea. He further submits that the order passed by the primary authority on merits does not get merged with the order passed by the appellate authority since the appeal came to be rejected on the ground of delay itself. He further submits that the order passed by the primary authority is also violative of principles of natural justice as the same came to be passed without giving an opportunity of hearing to the petitioner.

6. No counter is filed by the respondents in spite of granting time. In fact, learned Government Pleader for Commercial Tax, appearing for the respondents would contend that since the issue involves legal aspects, the same can be decided without a counter as well. Learned Government Pleader would contend that since the orders of the appellate authority as well as the APVAT Appellate Tribunal have become final, the question of challenging the order passed by the assessing authority, nearly four years after passing of the order, cannot be entertained. According to him, if applications of this nature are entertained, there will not be any end to the litigation. He further submits that in the grounds of appeal filed before the second respondent, the issues relating to limitation was also raised, but, having regard to the order passed by the appellate authority, rejecting the appeal itself, though not on merits, but on the ground of delay, the findings of the assessing authority get merged with the order of the appellate authority which was confirmed by the Tribunal.

7. In so far as the violation of principles of natural justice is concerned, learned Government Pleader would contend that a perusal of the assessment order, would show that though the petitioner has received a showcause notice, he did not file any objections and did not contest the matter and hence he cannot now turn around and say that no opportunity of personal hearing was given before passing the assessment order.

8. Before proceeding further, it is to be noticed that the second respondent as well as the APVAT Appellate Tribunal while rejecting the appeal, filed by the petitioner, on the ground of delay categorically held that though the appellant/writ petitioner has got genuine reasons in filing the appeal beyond the condonable period, but, the Act does not permit admission of the appeal filed beyond the period. It would be appropriate to extract the relevant portion of the order passed by the APVAT Appellate Tribunal, which is as under :

> "(c) As seen from the delay condonation petition the appellant has furnished the proof that appellant has got paralysed from 2016 and hence he was unable to look after the business. Though the appellant has got genuine reasons in filing the appeal beyond the condonable period, but whatsoever grounds may be the Act does not permit to admit the appeal if filed beyond the condonable period. The action of the ADC is restricted by the provisions stated supra and here the Limitation Act of 1963 is also not applicable to the present case as held by the honourable apex court in case of

M. P. Steel Corporation v. Commissioner of Central Excise reported in [2015] 80 VST 492 (SC) that the Limitation Act, 1963 applies only to courts and not to quasi-judicial Tribunals. It is only when a suit, appeal or application of the description in the schedule is to be filed in a court under a special or local law that the provision gets attracted. The 1963 Act including section 14 would not apply to appeals filed before a quasijudicial Tribunal such as the Collector (Appeals) mentioned in section 128 of the customs Act, 1962".

9. Even, the appellate Deputy Commissioner in his order categorically states that the appellant was not able to file appeal due to medical reasons, which are mentioned therein, but as the authority has no power to con done the delay, the appeal was rejected. From the two orders referred to above, it is very much clear that the reasons given by the petitioner for not filing the appeal due to medical reasons were accepted but since they are powerless to condone the delay beyond a particular period, appeals came to be rejected.

10. Keeping this factual aspect in the background, we shall now proceed to deal with the issue as to whether a writ petition would lie ?

11. It is no doubt true that the assessment order, which was passed on March 31, 2017, came to be challenged in the appeal before the second respondent with a delay and before the APVAT Appellate Tribunal. The second respondent as well as the Tribunal rejected the appeals on the ground of delay as stated supra. Thereafter, the present writ petition came to be filed questioning the order passed by the authority, raising grounds which go to the root of the matter.

12. A Full Bench of the composite High Court for the State of Telangana and the State of Andhra Pradesh in Electronics Corporation of India Limited v. Union of India [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018, after referring to the judgments of (i) The Kerala Education Bill 1957, In re reported in AIR 1958 SC 956 ; (ii) Minerva Mills Ltd. v. Union of India reported in AIR 1980 SC 1789 ; and (iii) L. Chandra Kumar v. Union of India reported in [1997] 105 STC 618 (SC) ; [1997] 228 ITR 725 (SC) ; [1997] 3 SCC 261, held that writ jurisdiction conferred upon the High Court under article 226 of the Constitution of India is part of the inviolable basic structure of the Constitution and any law which seeks to take away or restrict the jurisdiction of the High Court under article 226 of the constitution of India must be held to be void.

13. In Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018, the Full Bench dealt with a similar situation, where the orders-in-original dated October 21, 2014 which was appealable under section 35 of the Act of 1944, had to be filed within 60 days ordinarily and the appellate authority was empowered to condone delay only for 30 days thereafter, provided sufficient cause was shown. In the said case, the petitioner-company filed appeals impugning the order-in-original dated October 21, 2014, long after the prescribed period, i. e., on February 2, 2016 along with an application to condone the delay. Vide order dated May 31, 2016, the Commissioner of appeals dismissed the appeals on the ground that the delay cannot be condoned beyond the period of limitation. Thereupon, the petitioner-company preferred an appeal before the jurisdictional Customs, Excise and Service Tax Appellate Tribunal. Vide order dated January 3, 2017, the Tribunal confirmed the order of the Commissioner of appeals. Left with no other option, the petitioner therein filed writ petition before the High Court assailing the order-in-original dated October 21, 2014. Similar objection, as raised in the present case came to be advanced before the Full Bench of the High Court. Dealing with the same, the Full Bench of combined High Court, held as under (paras 11,13 and 14, pages 53 and 54 in 7 GSTR-OL):

> "10. At this stage we may note, with due respect, that absence of challenge to the orders of the appellate authority and the Tribunal in the circumstances obtaining cannot be a factor for non-suiting the petitioner-company. It must be kept in mind that dismissal of the appeals by the appellate authority and, thereafter, by the Tribunal, was only on the ground of limitation and not on the merits of the matter. A decision based purely on technicalities would not be binding on the writ court on the strength of the principle of res judicata. Further, as the fate of the appeals, be it before the appellate authority or the Tribunal, was already sealed owing to the limitation prescribed under section 35(1) of the Act of 1944, they were, in reality, no longer effective appellate remedies available to the petitioner-company. Failure to challenge the said orders would therefore not impact the maintainability of the present writ petitions filed only against the orders-in-original.

12. As the remedy of appeal to the Commissioner (Appeals) is provided under section 35(1) of the Act of 1944, invocation of such remedy would invariably be subject to the restrictions prescribed in the statute. However,

the fundamental issue is whether, when such an appellate remedy stands foreclosed against an order-in-original because the appeal is time-barred in terms of the limitation prescribed in the statute, the said order-in-original would also be immune to judicial review by this court in exercise of its extraordinary writ jurisdiction under article 226 of the Constitution.

13. In our considered opinion, the constitutional power of judicial review vesting in this court under article 226 cannot be whittled down or be made subject to statutory restrictions and parameters prescribed in the context of the remedies provided thereunder. It is only by way of self-imposed restraints that this court sometimes refuses to exercise its discretionary jurisdiction under article 226 of the Constitution in a given case." 14. The Full Bench in Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [FB] also referred to the Full Bench judgment of Gujarat High Court in Panoli Intermediate (India) P. Ltd. v. Union of India reported in [2015] 326 ELT 532 (Guj) where identical issue came up for consideration. In para 25, the court held as under (page 57 in 7 GSTR-OL) :

> "25. In the result, the reference is answered holding that the decisions in Resolute Electronics Pvt. Ltd.'s case [2015] 32 GSTR 435 (T&AP) and Star Enterprises' case [2016] 41 STR 20 (AP), do not constitute good law. A writ petition would lie against an order-in-original, against which an appeal was filed and dismissed as time-barred or no appeal had been preferred as it would have been time-barred, provided sufficient grounds are made out warranting exercise of the power of judicial review under article 226 of the Constitution. In this regard, it would also not be necessary for the writ petitioner to assail the orders, if any, dismissing his appeals as time-barred, be it by the appellate authority or the Tribunal, in the event he chose to invoke such appellate remedies. The writ petitions shall be placed before the appropriate court for further consideration on merits in the light of the observations made supra. The reference stands answered accordingly."
>
> Thus, is urged that in the given set of circumstances, a writ petition would lie.

15. The learned senior counsel for the petitioner further submits that the assessment order came to be passed without giving an opportunity of hearing and that even otherwise the said order is passed beyond the period of limitation except for the month of March, 2013. Though, the order

impugned states that there was no response to the show-cause notice issued, the learned senior counsel for the petitioner strenuously contends that the said show-cause notice was never served on him and only the order passed by assessing authority on March 31, 2017 was served on him in the month of May, 2017. Since the issue of limitation, which is now pleaded to be a mixed question of fact and law and as no counter is forthcoming disclosing the dates as to when the assessments for every month came to be filed and also as to the person responsible for passing the order with delay, pleads that it would be just and proper to remand the matter back to the assessing authority to deal with the point raised namely delay in passing the assessment order.

16. The learned Government Pleader for Commercial Tax, appearing for the respondents relied upon a judgment of the honourable Supreme Court in Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited [2020] 77 GSTR 342 (SC) ; [2020] SCC Online (SC) 440 to contend that the Full Bench judgment of the combined High Court in Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [2018] 3 ALD 321 (HC) ; MANU/AP/0150/2018 and the judgment of the Gujarat High Court in Panoli Intermediate [2015] 326 ELT 532 (Guj) were held to be at fault by the honourable Supreme Court and as such, no relief can be claimed basing on the said judgment.

17. In order to appreciate the same, it would be appropriate to refer to the relevant paras of the said judgment, which are as under (pages 369-371 in 77 GSTR) :

> "14. A priori, we have no hesitation in taking the view that what this court cannot do in exercise of its plenary powers under article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to article 226 of the Constitution. The principle underlying the rejection of such argument by this court would apply on all fours to the exercise of power by the High Court under article 226 of the Constitution.
>
> 15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. [2019] 7 GSTR-OL 48 (T&AP) [FB] (), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) P. Ltd. v. Union of India [2015] 326 ELT 532 (Guj) and also of the Karnataka High Court in Phoenix Plasts Company v.

Commissioner of Central Excise, (Appeal-I), Bangalore [2014] 25 GSTR 325 (Karn). The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction-by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this court in Oil and Natural Gas Corporation Limited [2017] 5 SCC 42. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. . . .

18. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such."

18. From the judgment of the honourable Supreme Court referred to above, it very clear that the Full Bench decision of the composite High

Court in Electronics Corporation of India Limited [2019] 7 GSTR-OL 48 (T&AP) [FB] ; [2018] 3 ALD 321 (AP) ; MANU/AP/0150/2018, which has agreed with the view taken by the Full Bench of Gujarat High Court in Panoli Intermediate (India) P. Ltd. [2015] 326 ELT 532 (Guj) and also of the Karnataka High Court in Phoenix Plasts Company v. Commissioner of Central Excise, (Appeal-I), Bangalore reported in [2014] 25 GSTR 325 (Karn) ; [2013] 298 ELT 481 (Karn), was held to have proceeded on a fallacious premise, with regard to its jurisdiction under articles 226 and 227 of the Constitution of India. The court held that it is not a matter of taking away the jurisdiction of High Court.

19. At this stage, it would be appropriate to refer to paragraph No. 19 of the judgment in Glaxo Smith Kline Consumer Health Care Limited [2020] 77 GSTR 342 (SC) ; [2020] SCC Online (SC) 440. After referring to the facts of the said case and the findings given by the High Court, the honourable Supreme Court in last four lines of the said paragraph held as under (page 372 in 77 GSTR) :

> "Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on September 24, 2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

In paragraph No. 20 of the said judgment, the court while dealing with the argument of the respondent namely, having failed to assail the order passed by the appellate authority, dated October 25, 2018, rejecting the application for condonation of delay, the assessment order passed by the Assistant Commissioner, dated June 21, 2017, stood merged, was not accepted, in view of the exposition of the apex court in Raja Mechanical Company P. Ltd. v. Commissioner of Central Excise, Delhi [2012] 15 GSTR 1 (SC); [2012] 12 SCC 613. The honourable Supreme Court held that, it is well settled that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order.

20. From the judgment of apex court in Glaxo Smith Kline [2020]77 GSTR 342 (SC) ; [2020] SCC Online (SC) 440, it is very clear that the request of the petitioner therein came to be rejected mainly on the ground

of inability to file an appeal within the prescribed time was not properly substantiated or explained. Further, the court also observed that the order of the High Court does not indicate violation of principles of natural justice or noncompliance of statutory requirements in any manner. The court also held that the order of assessment does not get merged with the order rejecting the request to condone the delay.

21. That being the position, in the instant case, the appellate authority as well as VAT Tribunal, categorically held that there was sufficient cause for preferring the appeal with delay, but, as they have no power to extend the period of limitation, rejected the appeals. Apart from that, it is also urged that, the assessment order came to be passed without giving an opportunity of hearing and there is no material to show that the show-cause notice was served on the petitioner. Since, the delay in filing the appeals was explained and the reason given by the petitioner was accepted, but the delay was not condoned due to limitation prescribed under the Act and as the assessment order is said to have passed without giving an opportunity of hearing, more particularly, the non-service of show-cause notice, we feel that it is a fit case where the matter requires reconsideration.

22. Accordingly, the writ petitions are disposed of setting aside the orders under challenge, in both the writ petitions and the matters are remanded back to the assessing authority to deal with the same afresh in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

IN THE ANDHRA PRADESH HIGH COURT
[C. Praveen Kumar and Tarlada Rajasekhar Rao JJ.]

Writ Petition Nos. 11194 , 11198 , 11206 , 11263 ,
17275 , 28836 , 30292 of 2021.

Sembcorp Energy India Limited ... Petitioner

Versus

State of Andhra Pradesh and Others ... Respondent

August 26, 2022.

CAN A BENEFIT WHICH ACCRUES BY WAY OF LEGISLATION BE DENIED OR ENTAILED, MORE SO WHEN IT IS CLARIFICATORY IN NATURE AND HAS TO BE MADE RETROSPECTIVE?

Held *– NO – the law does not compel a man to do things which he could not possibly perform.*

The existence of alternative remedy is not a complete bar to the maintainability for a writ petition, more so when the GST Tribunal is not yet constituted.

Cases referred to :

Assistant Commissioner of State Tax v. Commercial Steel Limited [2021] 93 GSTR 1 (SC) (paras 15, 17)

Commissioner of Income-tax v. Alom Extrusions Ltd. [2009] 319 ITR 306 (SC) (para 43) Commissioner of Income-tax v. Gotla (J. H.) [1985] 156 ITR 323 (SC) (para 43) Commissioner of Income-tax v. Vatika Township P. Ltd. [2014] 367 ITR 466 (SC) (para 44)

Commissioner of Customs v. Frontier Aban Drilling (India) Limited [2010] 254 ELT 63 (Mad) ; MANU/TN/0035/2010 (para 33)

Govt. of India v. Indian Tobacco Assn. [2005] 7 SCC 396 (para 44)

Kaliamurthi (T.) v. Five Gori Thaikkal Wakf [2008] 9 SCC 306 (para 45)

PVR Limited v. State of Telangana [2019] 9 TMI 641 ; MANU/TL/0306/2019 (para 32)

R. B. Jodha Mai Kuthiala v. Commissioner of Income-tax [1971] 82 ITR 570 (SC) (para 42) Vijay v. State of Maharashtra [2006] 6 SCC 289 (para 44)

Wipro Limited v. Union of India [2013] 61 VST 194 (Delhi) (para 31)

Present for Petitioner	:	Raghavan Ramabhadran
Present for Respondent 1	:	The Addl. Advocate-General-II
Present for Respondent 2 & 3	:	Suresh Kumar Routhu, Senior Standing Counsel for CBIC

JUDGMENT

The judgment of the court was delivered by

1. C. Praveen Kumar. J.—Heard Sri Raghavan Ramabhadran, learned counsel for the petitioner, learned Special Government Pleader for Com- mercial Tax, for respondent No. 1 and Sri Suresh Kumar Routhu,

learned senior standing counsel for the Central Board of Indirect Taxes and Cus- toms (for short, "CBIC") for respondent Nos. 2 and 3.

2. The issues involved in all the seven (7) writ petitions are one and the same. It is to be noted that W. P. Nos. 11194, 11206 and 11263 of 2021 came to be filed against the order of the Additional Commissioner, (GST Appeals) and W. P. Nos. 11198, 17275, 28836 and 30292 of 2021 are filed against the order of the Deputy Commissioner of Central Tax.

3. W. P. No. 11194 of 2021, which is filed, against order-in-Appeal No. GUN-GST-000-APP-001-20-21 GST, dated April 30, 2020, wherein the order rejecting refund was upheld, is taken as a lead petition for the pur- pose of deciding the issues involved.

4. In a nut-shell, the facts in issue, are that there was a memorandum of understanding for the purpose of supply of power between India and Bangladesh. The petitioner participated in the tender process floated by the Bangladesh Power Development Board (for short, "BPDB") and was awarded contract by BPDB, pursuant to which, a letter of intent for pur- chase of 250MW electricity power, was issued on August 7, 2018. There- after, the petitioner entered into a power purchase agreements (PPAs) with BPDB and started supplying electricity/electrical energy to BPDB in accord- ance with the Indian Electricity Act, 2003 and the Rules and Regulations made thereunder. The Central Electricity Regulatory Commission, which is a statutory body under section 76 of the Electricity Act, 2003, framed Regu- lations and Guidelines on Cross Border Trade of Electricity (Guidelines for Import/Export (Cross Border) of Electricity, 2018). Necessary guidelines to that effect were issued on December, 2018. As per the regulations, the participating entities in India, proposing to engage in cross-border trade of electricity with neighbouring countries, shall first obtain approval of desig- nated authority appointed by the Central Electricity Authority. The material on record show that the petitioner, after obtaining approval from the Central Electricity Authority, Ministry of Power, Government of India, entered into power purchase agreement, with a unit in Bangladesh. It is needless to mention that the electricity to be supplied by the petitioner to BPDB would be as per the dispatch schedule provided by BPDB and then injected to the transmission grid at the interconnection point located in Andhra Pradesh. Reading meters would be installed at the place, where the electricity generated is injected into inter-State transmission line, so as to record the quantum of electricity that has been supplied by the petitioner to BPDB. The injected electricity would then get transmitted from the inter- connection point to Bohrompur sub-station, West Bengal, India, which

is the “delivery point” through an Inter-State transmission line. From the said point, the electricity would be transmitted to Bangladesh through the cross-border transmission line, between Bohrompur sub-station, India and Bheramara sub-station, Bangladesh :

(a) The material on record further indicates that regional energy account (REA) report is being issued on monthly basis by the Southern Regional Power Committee, which is a unit of Central Electricity Authority of Government of India, indicating the number of units of electricity trans- mitted by each supplier of electricity to a particular recipient. The report also identifies the destination to which electricity is supplied by the petitioner.

5. The circumstances, which made the petitioner to file the writ petition, are :

(a) Since export of electrical energy is treated as zero rated supply under section 16 of the IGST Act, 2017, the petitioner applied for refund of unutilized input-tax credit through a refund claim by filing application under form GST RFD-01A in terms of section 54 of the CGST Act, 2017 read with section 16(3) of the IGST Act, 2017.

(b) On May 17, 2019, the third respondent issued a memo, demanding the petitioner to file (1) copy of input-tax credit register ; (2) Copy of input-tax credit invoices and (3) A statement containing the number and date of shipping bills or bills of exports and the number and date of the relevant export invoices. Except for the statement containing the number and date of shipping bills or bills of export, the petitioner submitted all other documents including the regional energy account showing the units of electricity exported as demanded in the memo. In so far as non-sub- mission of the shipping bill, the petitioner addressed a letter to third respondent, stating that shipping bill will not be available and there is no requirement under the customs law, for filing of shipping bill or any similar documents showing export of electrical energy as required for physical export of tangible goods. It is stated that generation and filing of shipping bill is not possible for transmission of electricity and there is no require- ment for filing of any shipping bill or bill of export for electrical energy.

(c) On June 28, 2019, a show-cause notice was served on the petitioner, rejecting the claim for refund to an extent of Rs. 5,67,94,499,

on the ground that as the petitioner failed to submit shipping bill and export general manifest (EGM) along with refund application, evidencing delivery of electricity at Bohrompur station, the same cannot be termed as 'export of goods' under section 2(5) of the IGST Act. A detailed reply came to be filed by the petitioner on July 24, 2019 and a personal hearing was also given. On Speedbar 20, 2019, the third respondent rejected the request for the month of March, 2019. An appeal came to be filed before the second respondent reiterating the submissions.

(d) On April 30, 2020, the impugned order came to be passed upholding the order-in-original, rejecting the claim of refund on the following grounds (1) there is no provision of law, exempting the submission of ship- ping bill in respect of export of electricity and that the sanctioning authority cannot extend an exception which is not there in the law ; (2) Adjudicating authority cannot be expected to condone or overlook non-filing of shipping bill since they are not vested with such discretion power and (3) as the delivery point of electricity is in India, it cannot be said that the impugned transaction amounts to export of goods. Challenging the same, the present writ petitions came to be filed.

6. From the above, it is clear that the request came to be rejected mainly on the two grounds : (1) The shipping bill, as required under rule 89 (2)(b) of the Central Goods and Service tax Rules, 2017, is not submitted to the authorities and (2) there is no evidence to show that the power transmitted by the petitioner from Bohrompur sub-station, Murshidabad, India is the same power which reached Bheramara sub-station, Bangladesh.

7. Coming to the first issue, namely, non-submission of the shipping bills, learned counsel for the petitioner would contend that under rule 89 of the CGST Rules, 2017 application for refund of input-tax credit should be accompanied by statements containing the number and date of shipping bills or bills of export, etc. According to him, in so far as transmission of electricity is concerned, it is impossible to generate such bills, as the supply from one place to another place and from one country to another country is only through transmission lines. In other words, his argument is that shipping bill is a custom document and the same cannot be made applicable to show supply of electricity ; which is intangible in nature.

8. To substantiate that there was export of electricity, learned counsel for the petitioner submits that he has placed other documents (REA reports),

which amply establish the same. According to him, in a meeting held on February 18, 2020, with the Ministry of Power, under the Chairmanship of the Central Electrical Authority, it was decided that monthly regional energy accounts (REAs) issued by the Regional Power Committee (RPC) can be used as a document to establish proof of export in case of electricity. He also placed on record the notification dated July 5, 2022 issued by the Government of India amending rule 89 of the CGST Rules, 2017, which gives clarification as to how the export of electricity can be proved.

9. In so far as, the second issue is concerned, learned counsel for the peti tioner would contend that though in first three cases, the authorities issued show-cause notice demanding proof, for export of electricity to Bheramara sub-station, Bangladesh, but in subsequent notices issued for the months- June, 2019 to September, 2021, they realized their mistake and dropped the said issue in the notice. The very fact of dropping the demand, with regard to filing of proof in respect of export of electricity in the subsequent notices, would show that the authorities realized the impossibility in fulfilling the same and as such the same applies to earlier notices as well. The learned counsel further submits that amendment to rule 89(2) of the CGST Rules, should be given a retrospective effect as it is a beneficial Legislature.

10. A counter came to be filed by the second and third respondents, dis puting the averments made in the affidavit filed in support of the writ petition. A reading of the counter shows that the documents produced by the petitioner do not confirm export of goods, as defined in section 2(5) of the IGST Act. It is further urged that in the absence of any material showing that the energy generated by the petitioner was the same energy which was transmitted from India to Bangladesh, and in the absence of any documents evidencing the same, in terms of rule 89 of the CGST Rules, 2017, the order impugned warrants no interference.

11. In other words, the argument of Sri Suresh Kumar Routhu, learned sen ior standing counsel for CBIC, for second and third respondents, appears to be that there is no separate procedure to waive the requirement of pro- ducing shipping bills as proof of export. He further submits that some of the writ petitions filed directly before this court under article 226 of the Constitution of India without availing the alternate remedy is bad in law. He relied upon the judgments of honourable Supreme Court in support of the same. He further submits that rejection for refund is made not only on the ground of procedural violation, but also on the ground that the supply of electricity by the petitioner does not constitute export of goods,

as the delivery point is only up to a local area. Learned standing counsel further submits that the transmission of power supply by the petitioner stands established only till Bohrompur, West Bengal and not beyond that. Hence, they cannot claim any benefit of refund of input-tax credit. Learned standing counsel further submits that the petitioner has no dedicated electrical lines for transmission of electrical energy from their thermal plant to Bohrompur sub-station and has no dedicated international/cross-border transmission lines for transmission of electricity to Bangladesh. The power is transmitted pursuant to an agreement with Central Electricity Authority under the supervision of Government of India and as such, no benefit can be given for refund of input-tax credit.

12. An additional affidavit came to be filed on behalf of the second and third respondents, referring to notification dated July 5, 2022, amending rule 89 of the CGST Rules, 2017 and the said notification being published in the Gazette on July 5, 2022. Hence, submits that any relief to the petitioner can be extended only be after July 5, 2022 and the same cannot be retrospective in operation.

13. In the rejoinder filed by the petitioner, it is stated that the petitioner has not challenged the statutory provision, but only prays that rule 89 of the CGST Rules, 2017 requiring production of shipping bills as proof of export, is impossible to be fulfilled in their case, owing to its intangible nature.

14. The point that arises for consideration is, whether the authorities were right in rejecting the refund claim made by the petitioner ?

15. Before dealing with issues involved, learned counsel for the respondents raised an objection with regard to the maintainability of writ petitions. He submits that, the present writ petitions are not maintainable, as some writ petitions are filed against order-in-appeal and some are filed against order- in-original, without availing the remedy provided under the statutory provisions and approached this court directly under article 226 of the Con- stitution of India. He placed reliance on Assistant Commissioner of State Tax v. Commercial Steel Limited [2021] 93 GSTR 1 (SC) ; MANU/ SC/0872/ 2021.

16. Whereas, learned counsel for the petitioner urged that though the remedy of filing of an appeal lies before the GST Tribunal, but the same is not done, as the Tribunal is not yet constituted and that there was no effica-

cious or alternative remedy as on the date of filing of the writ petitions. It is further urged that when some of the appeals filed before the appellate authority are rejected, against which, the writ petitions are filed, no useful purpose would be served in preferring an appeal before the appellate authority again seeking the very same relief. In these circumstances, it is pleaded that filing of writ petitions directly before this court, questioning the order-in-original cannot be said to be improper or incorrect. Having regard to the above circumstances, learned counsel for the petitioner con- tends that order under challenge requires interference.

17. It is well-settled principle that this court can entertain writ petitions only in exceptional circumstances, as laid down in Assistant Commissioner's case [2021] 93 GSTR 1 (SC) ; MANU/SC/0872/2021. The existence of an alternate remedy is also not an absolute bar to the maintainability of the writ petitions. However, coming to present case, as Tribunal is not yet constituted by the GST council and as there is no efficacious remedy available to the petitioner, except approaching this court, we are of the view that the writ petitions can be entertained. Moreover, the respondents' contention that the petitioner has to approach Tribunal under section 112 of the CGST Act, when and where it is constituted, cannot be accepted as it may cause irreparable loss to the petitioner.

18. With regard to the writ petitions filed against order-in-original, this court is inclined towards the contention raised by the petitioner, wherein it is urged that when appeals of similar issues are rejected by appellate authority, it would serve no useful purpose to file the same again before the same authority, by the same party, seeking the very same relief.

19. Coming to the point for consideration and to appreciate the rival argu ments advanced, on the legal issues involved, it would be appropriate to refer section 16 of the IGST Act, 2017 which reads as under :

> "(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 pay- ment 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 thereunder."

A reading of section 16(3) of the IGST Act will clearly indicate that a per- son making zero-rated supply shall be entitled to the claim under two options, mentioned in clauses (a) and (b). In so far as clause (b) is concerned, the claim would be in accordance with the provisions of section 54 of the CGST Act and the Rules made thereunder.

20. A perusal of section 54 of the CGST Act, 2017, which deal with claim for refund, would show that the petitioner is entitled to claim refund of input- tax credit. This provision nowhere refer to furnishing of shipping bill for claim of refund, which aspect is not disputed. However, the authorities only refer to rule 89(2)(b) of the CGST Rules, 2017, for production of ship- ping bills, so as to accept the claim made. A situation of this nature would not have been contemplated, at the time when rule 89 of the CGST Rules was framed and incorporated in the statute book. The transmission of elec- tricity across the border is a phenomena that has come into existence from the recent past, i. e., after incorporation of rule 89, and as such, suitable amendments ought to have been made at the time when permissions are granted for transmission of electricity to other countries.

21. Keeping this in the background, it is now to be seen (A) whether the petitioner has supplied electrical energy across the border ? and (B) whether he is entitled for refund of input-tax credit ? It is to be noted here that the petitioner has been awarded a contract for supply of power pur-

suant to a tender floated by BPDB and the letter of intent for producing 250MW of electricity power. The power purchase agreements were entered into with BPDB and the petitioner started supply of energy. Initially, the supply was from February 15, 2018 to December, 2019, but, on extension, the petitioner entered into a long term agreement with BPDB for supply of energy beginning from January 1, 2020 to July 31, 2033. The supply of elec- tricity by the petitioner is made as per the schedule, in terms of which, electricity is generated and injected into transmission grid at the intercon- nection point located in Andhra Pradesh. The reading meters at the inter- connection/injection points are erected, to record the supply of electricity by the petitioner. The injected electricity gets transmitted to Bohrompur sub-station, Murshidabad District, West Bengal (delivery point) by the Interstate transmission lines of M/s. Power Grid Corporation of India Limi- ted. From there, it reaches Bangladesh by cross-border transmission line, between Bohrompur sub-station and Bheramara sub-station of Bangla- desh, through Power Grid Company Bangladesh. The material on record also shows that the actual units of electricity supplied by the petitioner to Bangladesh is recorded in Regional Energy Account, issued on monthly basis, by Southern Regional Power Committee, which is a unit of Central Electricity Authority in India. As the supply of electrical energy, is treated as zero-rated supply, under section 16 of the IGST Act, 2017, the petitioner applied for refund of unutilised input-tax credit through a refund claim by filing applications in required forms. It is also not in dispute that the petitioner has generated electrical energy and transmitted through trans- mission lines of Power Corporation of India and the same reached Bohrompur sub-station and transmission to Bangladesh would be under the supervision of Central Electricity Authority, which is a Government of India undertaking.

22. At this stage, it is to be noted that out of seven writ petitions, three writ petitions came to be rejected on two grounds, namely :

(a) the shipping bill which is required in terms of rule 89(2) of the CGST Rules, 2017 was not submitted, and

(b) no material show that the petitioner has not exported electricity to Bangladesh, as the delivery point is only at Bohrompur in India.

whereas the other four writ petitions were rejected on the sole ground that bills were not produced by the petitioner.

23. A perusal of the above rejection orders would show that the authorities have realized the mistake committed in insisting on production

of material, evidencing export of energy to Bangladesh from the delivery point in Bohrompur, West Bengal, and for the said reason, in the subsequent orders the refund claim was rejected only on the ground that shipping bills were not produced. In other words, the subsequent show-cause notices, for the period June, 2019 to September, 2021 does not dispute export of energy to Bangladesh as the claim came to be rejected due to non-production of shipping bills only. Hence, transmission to Bangladesh by the petitioner was accepted. Therefore, the argument of Sri Suresh Kumar Routhu, learned standing counsel, that the petitioner never transmitted energy across the border cannot be accepted as it is now verifiable.

24. The next question, which falls for consideration would be with regard to rejection of refund claim for non-production of shipping bills in terms of rule 89(2)(h) of the CGST Rules, 2017, which reads, as under :

> "89(2)(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized input-tax credit under sub- section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies."

25. As stated earlier, the petitioner made multiple representations to various authorities, informing them about the difficulty in producing shipping bills for export of electricity. The said issue was also raised before regional power committee meeting, in which it was stated that REA reports made available by regional power committee on monthly basis can be used as proof of export. It would be useful to extract the relevant portion, which is as under :

> "9. After deliberations, following was concluded :
>
> (a) Total energy from a generation project may be sold through a single or more than one contracts, which may include both 'export' and 'domestic sale'.
>
> (b) Taxes are paid by the generators for various components of the inputs that are used in generation of electricity from their project. Therefore, the inputs need to be apportioned between 'exports' and 'domestic sale' for the purpose of allowing input-tax credits.

(c) Regional energy accounts (REAs) which are made available by each regional power committee (RPC) on monthly basis, provide energy scheduled under each contract from a particular generating station situated in their region. Thus, this scheduled energy as avail- able in REA can be used for proof of export of sale.

(d) However, it would be better to use the variable charge component of the bills, if available separately, for proportionating the input-tax credit between 'export' and 'domestic sale'. It would still be better to proportionate the input-tax credit on the basis of energy instead of revenue."

26. As observed earlier, rule 89 of the CGST Rules, 2017, deals with a pro cedure for claiming refund. But, requiring them to produce shipping bills, as proof of export cannot be made applicable to electricity, as it is impossible to produce shipping bill for export of electricity, since the custom law does not refer to electricity and shipping bill is a customs document. Export of electricity can only be through transmission line, but not through rail, road or water, for which, necessary documents can be made available.

27. Pursuant to repeated representations by generators of electrical energy, and their negotiations with the Central authorities from the year 2020, fructified into a notification, which came to be issued in the month of July, 2022, amending rule 89 of the CGST (Amendment) Rules, 2022, which reads as under :

"8. In the said rules, in rule 89,—

(a) in sub-rule (1), after the fourth proviso, the following Explanation shall be inserted, namely :

'Explanation.—For the purposes of this sub-rule, "specified" officer means a —"specified officer" or an—"authorised officer" as defined under rule 2 of the Special Economic Zone Rules, 2006.';

(b) in sub-rule (2),—

(i) in clause (b), after the words-on account of export of goods, the words—,other than electricity shall be inserted ;

(ii) after clause (b), the following clause shall be inserted, namely :

‘(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of elec- tricity as per agreement, along with the copy of statement of sched- uled energy for exported electricity by Generation Plants issued by the regional power committee secretariat as a part of the regional energy account (REA) under clause (nnn) of sub-regulation (1) of regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity ;” ;

(c) in sub-rule (4), the following Explanation shall be inserted, namely :

“Explanation.—For the purposes of this sub-rule, the value of goods exported out of India shall be taken as—

(i) the Free on Board (FOB) value declared in the shipping bill or bill of export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017 ; or

(ii) the value declared in tax invoice or bill of supply, whichever is less.”;

(d) in sub-rule (5), for the words ‘tax payable on such inverted rated supply of goods and services’, the brackets, words and letters ‘(tax payable on such inverted rated supply of goods and services x (Net ITC’ ITC availed on inputs and input services)).” Shall be substituted ;”

28. A reading of the above amendment, inter alia, makes it clear that the petitioner herein can now prove the quantity of electricity transmitted basing on the statement of scheduled energy for export of electricity issued by regional power committee (RPC) secretariat, as a part of regional energy account (REA) under clause (nnn) of sub-regulation (1) of regulation (2) of Central Electricity Regulatory Commission.

29. Further, the amendment to rule 89(2)(ba) of the CGST (Amendment) Rules, 2022 (July, 2022) clearly show that the number and date of the export invoices, details of energy exported, tariff per unit of export as per agreement, along with the copy of scheduled energy for exported electricity by Generation Plants, issued by the regional power committee secretariat, can be made the basis to show the number of units of electricity, trans mitted and supplied across the border. This amendment makes it clear that information relating to generation of electrical energy and its transmission across the border, can be obtained from regional power committee secre-

tariat or regional energy account under the regulations of Central Regulatory Committee.

30. The situation reminds of an age old maxim “lex non cogit ad impossi bilia”, meaning that the law does not compel a man to do things which he cannot possibly perform.

31. Dealing with the aspect of impossibility of compliance, in Wipro Limited v. Union of India [2013] 61 VST 194 (Delhi) ; [2013] 29 STR 545 (Delhi); MANU/DE/0414/2013, the High Court of Delhi, held as under (paras 13 and 17, pages 214, 215, 217 and 218 in 61 VST) :

> “9. We are of the view that there is a good deal of force in what the appellant says. Any condition imposed by the notification must be capable of being complied with. If it is impossible of compliance, then there is no purpose behind it. The appellant is in the business of ren- dering IT-enabled services such as technical support services, cus- tomer-care services, back-office services, etc., which are considered to be ‘business auxiliary services’ under the Finance Act, 1994 for the purpose of levy of service tax. The nature of the services is such that they are rendered on a continuous basis without any commencement or terminal points ; it is a seamless service. It involves attending to cross-border telephone calls relating to a variety of queries from exis- ting or prospective customers in respect of the products or services of multinational corporations. The appellant’s unit in Okhla is one of those places which are popularly known as ‘call centres’-business process outsourcing (BPO) centres. The wealth of skilled, english-speaking, computer-savvy youth in our country are a great source of manpower required by the multinational corporations for such ser- vices. The BPO centres become very active from evening because of the time-difference between India and the European and American continents. The mainstay of the call centres is a sophisticated com- puter system and a technically strong and sophisticated international telephone network. The service consists of providing information relating to the products and services of the MNCs, queries relating to maintenance and after-sales services, providing telephonic assistance in case of glitches during operating the consumer-products or while utilising the services and so on. For instance, the customer sitting in USA has a problem operating a washing machine sold to him by an American company. When he

calls the company, the local telephone number would be linked to the call centre number in India and it will actually be an employee of the Indian call centre who would answer the queries and assist the customer in USA get over the problem. Another example could be of a person in USA wanting to book an international air-ticket from an airline ; his queries over the phone will be answered by the employee of the Indian call centre, sitting in some place in India. The American manufacturer of the washing machine or the American airline company is the source of revenue for the Indian call centre or BPO centre.

13. All the lower authorities, including the Customs, Excise and Service Tax Appellate Tribunal, are unanimous in their view that the requirement, though one of procedure, is nevertheless inflexible as it is conceived with a view to preventing the evasion of service tax and dispensing with the same would deprive the service tax authorities from carrying out the necessary preventive and audit-checks. The cor- rectness of this view, as a broad proposition, need not be decided in this case. The question here is one of impossibility of compliance with the requirement. If, having regard to the nature of the business and its peculiar features-which are not in dispute-the description, value and the amount of service tax and cess payable on input-services actually required to be used in providing the taxable service to be exported are not determinable prior to the date of export but are determinable only after the export and if, further, such particulars are furnished to the service tax authorities within a reasonable time along with the necessary documentary evidence so that their accuracy and genuineness may be examined, and if those particulars are not found to be incorrect or false or unauthenticated or unsupported by documentary evidence, we do not really see how it can be said that the object and purpose of the requirement stand frustrated. In the present case, no irregularity or inaccuracy or falsity in the figures furnished by the appellant both on February 5, 2007 and in the rebate claims has been alleged. Moreover, it appears to us somewhat strange that none of the authorities below has demonstrated as to how the appellant could have complied with the requirement prior to the date of the export of the IT-enabled services."

32. In PVR Limited v. State of Telangana [2019] 9 TMI 641 ; MANU/TL/0306/2019, the High Court of Telangana, observed as under :

"11. Logically, the Film Development Corporation would not be in a position to issue such a certificate without knowing the number of prints of the movie that had been released. As already noted supra, a low budget feature film was one where the number of prints was less than 35. This fact could only be ascertained after release of the movie and not prior thereto. In effect, the condition was practically impos- sible to perform.

12. Significantly, the petitioner company asserted that it was alone being singled out for this discriminatory treatment and other similarly situated theatres were allowed to furnish the certificates from the Film Development Corporation later and not in advance. This assertion by the petitioner-company was not rebutted by the third respondent in her counter-affidavit. No explanation is forthcoming even now as to why the petitioner-company alone is being picked upon for violation of the condition of furnishing the certificates in advance. The third respondent also does not dispute, that the certificates were produced by the petitioner-company after release of the movies and there is no shortcoming or lacuna in this regard. If that is so, mere failure on the part of the petitioner-company to produce such certificates in advance, which it could not have done in any event, is not a ground to deny it the benefit of G. O. Ms. No. 604 dated April 22, 2008. The assessment orders, which proceeded only on the premise that such benefit could not be extended to the petitioner-company owing to belated production of the certificates, therefore cannot be countenanced."

33. In Commissioner of Customs v. Frontier Aban Drilling (India) Limited [2010] 254 ELT 63 (Mad) ; MANU/TN/0035/2010, the Madras High Court observed as under :

"4. We have carefully considered the arguments of the learned counsel for the appellant and perused the materials available on record as well as the orders of the lower authorities. No such condition has been imposed or stated to be imposed in the notification. It is the admitted case of the Department that the blow out preventer and its accessories were immersed in the deep water of the sea and became irretrievable. Hence, the importer cannot be directed to per- form the function, which is impossible of performance. It is a different matter if it is the case of the Department that the importer retrieved the sheared off part of the drill ship and diverted it for

some other purpose. On the contrary, it is the admitted case of the Department that the blow out preventer has been sheared off and immersed in the deep water of the sea, which is irretrievable. That was the reason given by the Tribunal for confirming the order of the Commissioner of Customs, who set aside the proposal of the Department to recover a sum of Rs. 5,75,84,140 and for imposition of penalty. We do not find any merit in this case so as to entertain the appeal in the above-stated facts and circumstances of the case."

34. Having to the above discussion and the judgments referred to above, we hold that the rule 89 of the CGST Rules, 2017 and the amendment made thereto cannot curtail the benefit of input-tax credit. The petitioner, in our view, was justified in not producing shipping bills to prove the quantity of energy units transmitted and that the reports of REA filed by the petitioner, could be made the basis to deal with the claim for refund of input-tax credit.

35. At this stage, Sri Suresh Kumar Routhu, learned senior standing counsel for CBIC submits that the amendment/notification issued by the Govern- ment of India on July 5, 2022 to rule 89(3) of the CGST (Amendment) Rules, 2022 cannot be made retrospective in operation, more so, when the notification in the Gazette postulates that it will come into effect from July 5, 2022.

36. On the other hand, the learned counsel for the petitioner submits that though the amended rule came into effect from July 5, 2022 but since this being a clarificatory and beneficial legislation, it has to be given retrospective effect.

37. The issue that props up now for adjudication at this stage is to whether amended rule 89(2) of the CGST Rules, 2022 is clarificatory or declaratory ?

38. Circular No. 175/07/2022-GST, dated July 6, 2022 issued by Ministry of Finance, Government of India, with regard to the manner of securing refund of unutilized ITC on account of export of electricity, is as under :

"Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of

unutilised input-tax credit (ITC) on account of export of electricity. It has been represented that though electricity is classified as 'goods' in GST, there is no requirement for filing of shipping bill/bill of export in respect of export of electricity. However, the extant provisions under rule 89 of the CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and a statement 3B has been inserted in form GST RFD-01 of the CGST Rules, 2017 vide Notification No. 14/2022-CT, dated July 5, 2022. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity."

The above circular clearly establishes that amendment to rule 89 of the CGST (Amendment) Rules, 2022 was carried out to cure the defect in rule 89 of the CGST Rules, 2017, because of the problem faced by power gen- erating units in filing refund claims of unutilised input-tax credit on export of electricity.

39. Further, a perusal of the amendment to rule 89(2) of the CGST Rules, would inter-alia show that the said rule came to be amended only to clarify the anomaly that was existing with regard to production of material evi- dencing export of a thing which is intangible in nature. This clarification came to be made since the situation namely transmission of energy could not have been visualized when rule 89(2) was incorporated in the statute book. Production of shipping bills will not prove or establish by any means the quantity of energy transmitted. Hence, by no stretch of imagination, the amendment can be said to be declaratory in nature, but it can only be a one, which would be curing the defect by issuing necessary clarification as to how transmission of electrical energy can be proved.

40. Hence, we are of the view that the rule 89 of the CGST (Amendment) Rules, 2022 is only clarificatory in nature.

41. When amendment/notification dated July 5, 2022 issued by Government of India is held to be curative or clarificatory in nature, the question now would be whether the said clarification is retrospective in nature ?

42. A proviso, which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omis- sion in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole. (R. B. Jodha Mai Kuthiala v. Commissioner of Income-tax, Pun- jab, Jammu and Kashmir and Himachal Pradesh [1971]82 ITR 570(SC)).

43. In Commissioner of Income-tax v. Alom Extrusions Ltd. [2009]319 ITR 306 (SC) ; [2010] 1 SCC 489, the Parliament has explicitly stated that the Finance Act, 2003, will operate with effect from April 1, 2004, but the mat- ter before the court involved the principle of construction with regard to the provisions of the Finance Act, 2003. Referring to judgment of Com- missioner of Income-tax v. J. H. Gotla [1985] 156 ITR 323 (SC), the hono- urable Supreme Court held that the Finance Act, 2003, to the extent indi- cated above, should be read as retrospective. In fact, in J. H. Gotla case [1985] 156 ITR 323 (SC), the honourable Supreme Court observed (pages 339 and 340 in 156 ITR) :

> ". . . we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result, i.e., a result not intended to be sub-served by the object of the legislation found in the manner indicated before, then if another con- struction is possible apart from strict literal construction, then that construction should be preferred to the strict literal construction.
>
> Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction."

44. The Constitutional Bench of the honourable Supreme Court in Com missioner of Income-tax v. Vatika Township P. Ltd. [2014] 367 ITR 466 (SC); [2015] 1 SCC 1 while deciding the question as to whether the inser- tion of proviso to section 113 by the Finance Act, 2002 is retrospective, dis- cussed the general principles concerning retrospectivity. The honourable Supreme Court observed as under (para 33, page 487 in 367 ITR) :

> "30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a

benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospec- tive. In Govt. of India v. Indian Tobacco Assn. [2005] 7 SCC 396 the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [2006] 6 SCC 289. It was held that where a law is enacted for the ben- efit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here."

45. It is well-settled law that no statute shall be construed to have a retros pective operation until its language is such that would require such con- clusion. The exception to this rule is enactments dealing with procedure. This court held that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to the proceedings pending at the time of enactment as also to the proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, the court held that there is an excep- tion to the rule also, where the right of suit is barred under the law of lim- itation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. T. Kaliamurthi v. Five Gori Thaikkal Wakf [2008] 9 SCC 306.

46. From the judgments referred to above, it is very clear that any benefit that gets accrued by way of legislation cannot be denied/curtailed, more so, when it is clarificatory in nature like the present one and as such it has to be made retrospective in operation.

47. The petitioner's contention on the retrospective operation is also sub stantiated by the Department action through the deficiency memo dated July 7, 2022 issued by the Assistant Commissioner, Nellore Division, for the refund claim filed for the period January, 2022 to March, 2022. The defi- ciency memo has advised the petitioner to resubmit the refund

application as prescribed vide CBIC Circular No. 175/07/2022-GST, dated July 6, 2022 along with all supporting documents. Copy of the refund claim in RFD-01 filed on June 23, 2022 along with deficiency memo dated July 7, 2022 is submitted before this Court along with a memo in USR No. 42132 of 2022, dated July 15, 2022.

48. From the above, it is clear that the Department has applied Notification No. 14/2022-Central Tax, dated July 5, 2022 even for the refund claim filed for the period prior to July 4, 2022 acknowledging the amendment as retrospective in operation.

49. Accordingly, these writ petitions are allowed and the orders under chal lenge are set aside and the W. P. Nos. 11194, 11206 and 11263 of 2021 are remanded back to the Additional Commissioner (GST Appeals) and the W. P. Nos. 11198, 17275, 28836 and 30292 of 2021 are remanded back to the Deputy Commissioner of Central Tax to deal with the claim of refund in terms of this common order. The petitioner shall file relevant reports evidencing transmission of electricity before appropriate authorities, if not already filed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

[Sheel Nagu and Dwarka Dhish Bansal, JJ]

Writ Petition No.26956 of 2022

BETWEEN:-

Concord Tieup Pvt. Ltd. A Company Incorporated Under the Companies Act 1956 through its Director Naval Agarwal S/o Naresh Chandra Agarwal Aged About 40 Years Occu. Business having Its Registered Office at near Bye Pass Satna Rewa Road Statna (M.P.)R/o Ward No. 1, Amoudha Kala Panna Road Opp. City Cars Satna (M.P.) ... Petitioner

AND

1. The State Of Madhya Pradesh Through Its Secretary Department Of State Tax Mantralaya Vallabh Bhawan, Bhopal (M.p.)
2. Joint Commissioner Audit Wing Commercial Tax Officer Ghantaghar Jabalpur (M. P.) ... Respondents

On the 25th of April, 2023

WHETHER DEPARTMENT CAN ISSUE THE SCN WITHOUT PROVIDING THE DATE, TIME AND PLACE FOR PERSONAL HEARING AND PASS AN ORDER ON THE BASIS OF SUCH NOTICE.

***Held** – NO – on the basis of Bharat Mineral Allied Chemicals vs. Com. Of Commercial Tax, an opportunity of being heard have to be granted by Revenue Department.*

Present for Petitioner : Shri Sanjay Mishra - Advocate)

Present for Respondent : Shri Darshan Soni – Government Advocate)

This petition coming on for admission this day, JUSTICE DWARKA DHISH BANSAL passed the following:

ORDER

By way of this writ petition under Article 226 of the Constitution of India, challenge has been made to the order dated 24.08.2022 (Annexure P/4) passed under section 74 of the MPSGST/CGST Act, 2017 and section 20 of IGST Act, 2017 by Deputy Commissioner, Audit Wing, Jabalpur upholding the tax, interest and penalty mentioned in the show cause notice dated 22.07.2022 (Annexure P/3).

2. Learned counsel for the petitioner submits that upon issuance of notice/intimation of tax ascertained as being payable under Section 74(5) of the M.P.G.S.T. Act (in short "the Act"), reply was submitted on 23.06.2022, thereafter show cause notice under Section 74 of the Act dated 22.07.2022 (Annexure P/3) was issued making mention about personal hearing to the effect that "you may appear before the undersigned for personal hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below", but no date, time and venue for personal hearing was shown in the notice. He submits that as per Section 75(4) of the Act, before passing the impugned order, personal hearing was necessary, which is mentioned in the notice itself, as such in absence of personal hearing, the order dated 24.08.2022 (Annexure P/4) is not sustainable. In support of his submissions, he placed reliance on the co-ordinate Bench decision of Allahabad High Court in the case of Bharat Mint & Allied Chemicals Vs. Commissioner of Commercial Tax, 2022

(59) G.S.T.L. 394 (All.). The relevant paragraphs of which are quoted as under:-

"5. We have carefully considered the submissions of learned counsel for the parties.

Question

The two question involved in this writ petition are as under :-

(i) Whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act, 2017 ?

(ii) Whether under the facts and circumstances of the case the impugned adjudication order has been passed in breach of principle of natural justice and consequently it deserves to be quashed in exercise of powers conferred under Article 226 of the Constitution of India ?

6. We have perused the show cause notice dated 09.09.2021 in which it has been mentioned as under:

> "You may appear before the undersigned for personal hearing either in person or through representative for representing your case on the date, time and venue, if mentioned in the table below."

7. In the table below the aforementioned lines, date, time and venue of personal hearing has not been mentioned. Section 75(4) of the Act, 2017 provides that opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

8. Section 75(4) of the Act, 2017 reads as under:

> "An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

9. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal

hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person."

3. Learned counsel appearing for the respondents supports the impugned order and prays for dismissal of the writ petition, although has failed to justify the impugned order on the ground of non-affording of personal hearing to the petitioner. However, he submits that the petitioner has alternative remedy of appeal against the impugned order, therefore, no interference is warranted in the limited scope of Article 226 of the Constitution of India.

4. Heard learned counsel for the parties and perused the record.

5. The show cause notice dated 22.07.2022 (Annexure P/3) issued under Section 74 of the Act, itself shows that before passing final order dated 24.08.2022 (Annexure P/4), the intention of the respondents was to give personal hearing to the petitioner as required under the law, but in the table given below, captioned as "Details of personal hearing etc.", no Date, Time and Venue of personal hearing has been shown and in front of columns 3,4&5 of Date, Time and Venue, NA has been mentioned, which is sufficient to infer that no personal hearing was given to the petitioner before passing the impugned order dated 24.08.2022.

6. So far as argument raised by counsel for the respondents regarding availability of alternative remedy of appeal, is concerned, it is well settled that when due opportunity of hearing, as required under the law, has not been afforded and principle of natural justice has not been followed, then the question of availability of alternative remedy does not come in the way for exercising jurisdiction under Article 226 of the Constitution of India.

7. In view of the aforesaid and following the law laid down by the co-ordinate Bench of Allahabad High Court in the case of Bharat Mint & Allied Chemicals (supra), the impugned order is not sustainable and deserves to be and is hereby quashed and the matter is remitted back to the Deputy Commissioner, Audit Wing, Jabalpur for passing order afresh, after giving personal hearing to the petitioner as indicated above.

8. Resultantly, writ petition succeeds and is allowed. No order as to the costs.

9. Interim application(s), if any, shall stand disposed off.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru and Amit Mahajan, JJ]

W.P.(C) 15684/2022

Consortium of Sudhir Power Projects Ltd. and Sudhir Gensets Ltd
... Petitioner

versus

Commissioner Of Delhi Goods And Services Tax ... Respondent

Date of Decision: 31st January, 2023

WHETHER A DEALER IS ENTITLED TO INTEREST ON REFUND FROM THE PERIOD OF 2 MONTH AFTER FILING OF RETURN UNDER DVAT ACT U/S 42?

Held: Yes

The said issue was considered by a coordinate bench of this Court in *IJM Corporation Berhad v. Commissioner of Trade and Taxes : 2017 SCC OnLine Del 11864*. This Court had held that in terms of Section 42 of the DVAT Act, interest would be payable if the refund is not paid within a period of two months of filing of the return.

This Court is also constrained to note that delays on the part of the respondent in processing the pending claims for refund result in unnecessary burden of interest on the ex-chequer not to mention, unnecessary imposition on judicial time. The Commissioner, Department of Trade and Taxes is directed to take expeditious steps to ensure that all pending refund claims are processed as expeditiously as possible.

Present for Petitioner	:	Mr. Rajesh Jain, Mr. Virag Tiwari and Mr. Ramashish, Advs.
Present for Petitioner	:	Mr. Satyakam, ASC with Ms. Pallavi Singh, Adv.; Mr. Amit Sharma, Legal Assistant DT&T; Mr. Akshay Allagh, Legal Assistant DT&T; and Mr. Ashok, AVATO, DT&T.

Vibhu Bakhru, J. (Oral)

1. The petitioner has filed the present petition, inter alia, praying for the direction to be issued to the respondent to refund an amount of

₹59,56,772/-, which the petitioner claims is due for the fourth quarter of the year 2013-14. The petitioner further claims that he is entitled to interest on the said amount which has been outstanding since several years.

2. The petitioner had filed a return claiming a refund of the Neutral Citation Number 2023/DHC/000844 sum of ₹59,59,499/- for the fourth quarter of the year 2013-14 on 09.05.2014. Thereafter, it filed a revised return on 15.01.2015 reducing its claim of refund to ₹59,56,772/-. The petitioner's return was not processed immediately.

3. However, on 19.10.2015, the concerned Value Added Tax Officer (VATO) issued a notice under Section 59(2) of the Delhi Value Added Tax Act, 2004 (DVAT Act).

4. Thereafter, default assessment was framed on 31.03.2018 and a demand for the fourth quarter of the year 2013-14 was framed raising a demand of ₹34,582/-. A notice was issued for the aforesaid amount.

5. The petitioner claims that the liability for the said amount was assessed on account of some difference in the output tax liability and the input tax credit.

6. The petitioner claims that it continued to pursue the concerned authority for seeking the refund, which according to the petitioner, was due within a period of two months from filing of the return / revised return.

7. The petitioner also contends that even if the additional liability of ₹34,582/- is accepted, the petitioner's claim for refund would at best be reduced by the aforesaid amount. And, there is no possible reason for the respondent to have withheld the said amount.

8. In the aforesaid context, the petitioner had filed the present petition.

9. The present petition was listed on 15.11.2022 and this Court had expressed a *prima facie* view that the petitioner would be entitled for a refund along with interest for at least previous three years.

10. There is no dispute that the petitioner was entitled to the refund of the excess tax paid. The respondent has since refunded the excess tax and also paid interest for the period of three years. In the circumstances the only question that falls for consideration of this Court is whether the petitioner is entitled to interest for the period prior to the said three years.

11. Concededly, the return filed by the assessee is required to be considered as an application for refund and the respondent is required to process the same.

12. The said issue was considered by a coordinate bench of this Court in *IJM Corporation Berhad v. Commissioner of Trade and Taxes : 2017 SCC OnLine Del 11864.* This Court had held that in terms of Section 42 of the DVAT Act, interest would be payable if the refund is not paid within a period of two months of filing of the return. Paragraph 16 and 17 of the said judgment are relevant and read as under:

> "16. Section 42 relates to interest and sub-section (1) thereof stipulates that an assessee who is entitled to refund shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the government from time to time computed on a daily basis. It fixes the time from which the interest is payable i.e. the date on which refund was due to be paid to the assessee; or the date when the overpaid amount was paid by that person, whichever was later. Interest is payable up to the date on which the refund is given. Subsection (1), therefore, fixes the starting point and the end point. With reference to the starting point, the date on which the refund was due to be paid to the assessee or the date when the overpaid amount was paid by the assessee, whichever is later is applicable. There is also stipulation in the first proviso with regard to adjustment, deduction etc. with which we are not concerned in the present case. The second proviso stipulates that if the amount of such refund is enhanced or reduced, as the case may be, the interest would be enhanced or reduced accordingly. Explanation to the sub-section (1) states that if the delay in grating the refund is attributable to the assessee, whether wholly or in part, the period of delay attributable to him shall be excluded from the period for which interest is payable.
>
> 17. When we harmoniously read Sections 38 and 42 of the Act, which relate to processing of claim for refund and payment of interest, it is crystal clear that the interest is to be paid from the date when the refund was due to be paid to the assessee or date when the overpaid amount was paid, whichever is later. The date when the refund was due would be with reference to the date mentioned in Section 38 i.e. clause (a) to sub-section (3). This would mean that interest would be payable after the period specified in clause

(a) to sub-section (3) to Section 38 of the Act i.e. the date on which the refund becomes payable. Two sections, namely, Sections 38(3) and 42(1) do not refer to the date of filing of return. This obviously as per the Act is not starting point for payment of interest."

13. Mr. Rajesh Jain, learned counsel appearing for the petitioner has also pointed out that in terms of the explanation to Section 42 of the DVAT Act, if the delay in granting refund is attributable to the assessee, whether wholly or in part, the said period would be excluded from the period for which interest is payable under Section 42 of the DVAT Act.

14. In the present case, there is no material on record to indicate that the petitioner was responsible for any part of the delay in processing the refund. There is no allegation to the aforesaid effect either.

15. Mr. Satyakam, learned counsel appearing for the respondent has submitted that there has been some delay on the part of the petitioner in approaching this Court by filing a writ petition and therefore, the period of delay ought to be excluded for the purpose of computing the period for which interest is payable to the petitioner. He referred to the decision of the Hon'ble Supreme Court in *Union of India v. Tarsem Singh : (2008) 8 SCC 648* and on the strength of the said decision, contended that the belated claim would be rejected on the ground of delay and latches or limitation where the remedy is sought by filing a writ petition.

16. We are unable to accept that the said decision is applicable in the given facts of this case. In that case the respondent (Tarsem Singh) was invalidated from the services of the Indian Army in the year 1983 and he had applied for disability pension in the year 1999. In that context, the court had held that consequential relief in service could in certain circumstances be limited to a period of three years. This decision has no application in the facts of this case.

17. On a closer examination of the facts of this case, we are unable to accept that the petitioner can be denied interest on the amount of refund which has been unjustifiably withheld, mainly for two reasons. First, that there is no dispute that the petitioner is entitled to the refund and his return was required to be considered as an application for the same. The petitioner was not required to approach or pursue the authorities for its claim for refund of excess tax. Second, that the delay in processing claims for refund is endemic to the DVAT authorities and if the same

is considered, the delay on the part of the petitioner approaching this court is not long.

18. The respondent filed an affidavit in compliance with the directions issued by this Court which indicates that the respondent department has collated the data from the year 2005 till date and 14,024 refund claims are pending in respect of 9,990 assesses as on 21.02.2023.

19. This Court is also conscious of the fact that any person would reflect before taking a legal recourse and would approach the courts only as a matter of last resort.

20. In the facts of the present case, the petitioner had received a notice under Section 59(2) on 19.10.2015 and in view of the same, was aware that some proceedings were pending before the DVAT authorities. The default assessment was framed on 31.03.2018. Obviously, the petitioner could not be expected to immediately approach this Court thereafter.

21. Further the period of two years till 28.02.2022 is required to be excluded while calculating any period of limitation pursuant to the orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 In Re: Cognizance for Extension of Limitation.

22. Although the petitioner has not approached this Court immediately after the refund of tax became due, we are unable to accept that the same disentitles the petitioner from claiming what is rightfully due.

23. In the given circumstances, this Court directs the respondents to process the petitioner's claim for interest in accordance with law.

24. After some arguments, there is a consensus that the petitioner would be entitled to interest commencing from the period of two months after 15.01.2015 till the date of refund.

25. This Court is also constrained to note that delays on the part of the respondent in processing the pending claims for refund result in unnecessary burden of interest on the ex-chequer not to mention, unnecessary imposition on judicial time. The Commissioner, Department of Trade and Taxes is directed to take expeditious steps to ensure that all pending refund claims are processed as expeditiously as possible.

26. The petition is disposed of in the aforesaid terms.

In the High Court of Andhra Pradesh
[U. Durga Prasad Rao and V.Gopala Krishna Rao JJ]

WP 4663/2023

Sri Sai Balaji Associates .. Petitioner

Versus

The State of Andhra Pradesh ... Respondent

Date of Order : 07-03-2023

WHETHER BY NOTICE U/S 70(1) OF CGST ACT THIRD PARTY CAN BE DIRECTED TO STOP MAKING PAYMENT WHICH THE PARTY IS TO RECEIVE FROM THAT CUSTOMER?

Held: No.

Accordingly, this writ petition is allowed and the impugned portion of the notice issued under Section 70 (1) of GST Act i.e., "in view of the above explanation you are hereby requested stop all further payments from here onwards until clearance is given by the undersigned" is set aside and liberty is given to the 3rd respondent to proceed in accordance with law so far as the other part of the notice issued by him under section 70 (1) of GST Act is concerned. No costs.

Present for Petitioner : Mr. G V Shivaji

Present for Petitioner : Mr. GP for Commercial Tax

ORDER (per UDPR,J)

The challenge in this writ petition is to the notice under Section 70 (1) of GST Act, 2017 issued by the 3rd respondent to M/s. Sterlight technologies limited, Vishakapatnam who are the customers of the petitioner.

2. Heard learned counsel for petitioner Mr. G.V.Shivaji and learned Government Pleader for Commercial Taxes II.

3. The grievance of the petitioner as ventilated by learned counsel is that though the 3rd respondent in terms of Section 70 (1) of G.S.T Act, has power to summon any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in any inquiry in the same manner, however that power is not extended to

direct the summoning of a party to stop all further payments, which he ought to receive from the customers. Learned counsel would submit in notice such a direction is contained which is beyond the jurisdiction of the 3rd respondent. He would thus pray to allow the writ petition and delete the last paragraph in the impugned notice.

4. Learned Government Pleader while admitting that in a notice issued Under Section 70 (1) of GST Act, the concerned officer may not have power to issue a direction to stop payment by the summoning party to the assessee, would however argue, he has such power Under Section 83 of GST Act which deals with provisional attachment of any property or bank account of the assessee.

5. As can be seen, the impugned notice was issued under Section 70(1) of GST Act but not under Section 83 of GST Act. Section 70 (1) of GST act only says that the proper officer shall have the power to summon any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in the enquiry and nothing more. Therefore, it is obvious that under Section 70 (1) of GST Act the proper officer cannot exercise powers to direct the summoning party to stop payment to the assessee which is beyond the scope of 70 (1) of GST Act. Of course, under Section 83 of GST Act, if the Commissioner is of the opinion that for the purpose of protecting the government revenue, he may by order provisional attachment of any property including bank account belonging to the taxed person or any person specified in Sub Section 1 (A) of Section 122 in such manner as prescribed. The impugned notice was issued under Section 70 (1) of GST Act but not in exercise of powers conferred under Section 83 of GST Act. Thus at the outset, it is clear that the 3rd respondent has exceeded his power in directing M/s. Sterlight Technologies Limited to stop further payments to the petitioner herein. Therefore, such a direction is beyond the jurisdiction of the 3rd respondent. The same is liable to be set aside to that extent.

6. Accordingly, this writ petition is allowed and the impugned portion of the notice issued under Section 70 (1) of GST Act i.e., “in view of the above explanation you are hereby requested stop all further payments from here onwards until clearance is given by the undersigned” is set aside and liberty is given to the 3rd respondent to proceed in accordance with law so far as the other part of the notice issued by him under section 70 (1) of GST Act is concerned. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

IN THE HIGH COURT OF CALCUTTA

[T. S. Sivagnanam and Uday Kumar, CJ, J.]

J.L. Enterprises ... Appellant

Vs.

Assistant Commissioner, State Tax,
Ballygunge Charge & Ors. ... Respondent

Date of order: 16.06.2023

WHETHER BY AN ORDER U/S 83, CASH CREDIT A/C OF A SUPPLIER CAN BE PROVISIONALLY ATTACHED?

Held – NO.

Editors Note: Please also see judgment of M/s Merlin Facilities Pvt. Ltd., WPC No. 5931/2023 (Delhi High Court)

For the Appellants	:	Mr. Vinay Kr. Shraff Miss. Priya Sarah Paul Mr. R. Banerjee Mrs. S. Dey
Present for the State	:	Mr. A. Ray, Ld. G.P. Mr. T.M. Siddiqui

Order

1. We have elaborately heard the learned advocates appearing for the parties.

2. This intra-Court appeal is directed against the order dated 25.05.2023 passed in WPA 12132 of 2023. By the said order the writ petition was disposed of by relegating the appellant to resort to the remedy provided under Section 159(5) of Central Goods and Services Tax Rules 2017 (for short “the Rules”).

3. The petitioner was aggrieved by an order of provisional attachment of cash credit account maintained by the appellant with its banker. The legal question involved in the writ petition was whether an order of provisional attachment can be made to a cash credit account. In fact, the learned

Single Bench has noted all the decisions, which were cited by the learned advocate for the appellant and has held that the cash credit facility is not a debt and, therefore, it cannot be made attachable and that the writ Court is bound by the precedent. The operative portion of the order reads as follows:

> "It is submitted by the learned advocate for the petitioner referring to a decision of this Court in the case of Jugal Kishore Das Vs. Union of India reported in 2013 SCC Online Cal 19941 that the cash-credit limit is a facility provided by the bank to its customers to use and utilise the money and if such facility availed of, it would attract the interest to be charged for the same so utilised. It is further held that the cash-credit facility is not a debt to be attached by the respondent authority.
>
> Learned counsel appearing for the petitioner further refers to another decision of the Division Bench of Gujarat High Court reported in 2022 (64) GSTL 482 (Guj) wherein it is specifically held that the law is well-settled that a cash-credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act.
>
> Referring to a decision of the Hon'ble Supreme Court in Radha Krishan Industries Vs. State of Himachal Pradesh reported in 2021 (48) GSTL 113 (SC). It is submitted by the learned advocate for the petitioner that the order of provisional attachment before assessemnt order should be imposed in rarest of rare cases and sparingly.
>
> The Hon'ble Supreme Court quoted the observation of the Gujarat High Court in Valerius Industries Vs. Union of India reported in 2019 (30) GSTL 15 (Guj) as hereunder:
>
> "52. […]
>
> The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information … It is not any and every material, howsoever vague and indefinite or

distant, remote or far-fetching, which would warrant the formation of the belief.

(1) The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and farreaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons. (3)The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.

(4) The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

(5) The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(6) The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

(7) The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things:

(i) whether it is a revenue neutral situation.

(ii) the statement of “output liability or input credit”. Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not

be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment."

Thus, it is submitted by the learned advocate for the petitioner that cash-credit facility is not a debt and it is not provisionally attached under Section 83 of the CGST Act and rules made thereunder.

The learned advocate for the respondent, on the other hand submits that Section 83 of the Central Goods and Services Tax Act, 2017 gives power to the GST authority to provisionally attach the bank accounts to protect revenue in certain cases. cash-credit facility is also a bank account issued by the bank in favour of the petitioner wherefrom the petitioner is using credit facility for the purpose of his business. It is found from the record of the case that even the petitioner has been paying GST from the said cash-credit account.

Be that as it may, it is held by this Court that cash-credit facility is not a debt and therefore, it cannot be made attachable. This Court is bound by the above-stated precedent."

4. In the light of the above conclusion, it goes without saying that the Court has accepted the legal position which has been settled by various decisions which have been referred to in the impugned order. If such be the case, no useful purpose will be served by relegating the petitioner to avail the remedy under sub-Section 5 of Section 159 of the Rules. Therefore, we are of the view that the learned writ Court ought to have allowed the writ petition in its entirety instead of relegating the appellant to a remedy which is inapplicable to the cases where there is an order of provision attachment of a cash credit account.

5. In the light of the above, the appeal stands allowed and the order passed by the learned writ Court is set aside insofar as it directs the appellant to avail the remedy under Sub-Section 5 of Section 159 of the Rules and in other respect where the learned writ Court has rightly accepted the legal position stands confirmed.

6. In the light of the above conclusion the respondents are directed to lift the order of provisional attachment of the cash credit account within 10 days from receipt of the server copy of this order.

7. Needless to state that this order will not in any manner prejudice the rights of the department to initiate other proceedings in accordance with

law and this order pertains only to the provisional attachment of the cash credit account and not to the other bank accounts of the appellant.

8. In the result, the appeal stands allowed to the extent indicated hereinabove. Consequently, the connected application stands allowed.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
[G.R. Swaminathan, J]

W.P.(MD)Nos.2127, 2117, 2121, 2152, 2159, 2160, 2168, 2177, 2500, 2530, 2532, 2534, 2538, 2539, 2540, 2503 & 2504 of 2021

and

W.M.P(MD)Nos.1791, 1781, 1784, 1805, 1807, 2160, 1814, 1816, 2076, 2078, 2080, 2092, 2093, 2094, 2096, 2098 & 2099 of 2021

W.P.(MD)No.2127 of 2021

D.Y. Beathel Enterprises,
Rep. by its Proprietor Y.Godwin Prasad,
11/1/21, Mancode, Vellachiparai,
Kanyakumari District - 629 121 ... Petitioner

Vs.

The State Tax Officer (Data Cell), (Investigation Wing)
Commercial Tax Buildings, Tirunelveli. ... Respondents

Prayer in W.P.(MD)No.2127 of 2021: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33AUMPG3862A1ZZ/2017-18, dated 29.10.2020 and to quash the same as illegal, arbitrary, wholly without jurisdiction and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording an opportunity of cross examination of the sellers to the petitioner by considering the replies dated 01.07.2020 and 21.09.2020 filed by the petitioner.

DATED: 24.02.2021

WHETHER INPUT TAX CREDIT CAN BE REJECTED WITHOUT EXAMINING THE FACTS OF THE SELLER AND ENTIRE TAX LIABILITY PUT ON THE PURCHASER.

Held – No.

Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.

In all writ petitions

For Petitioner : Mr.N.Sudalaimuthu for Mr.S.Karunakar

For Respondent : Mr. S.Dayalan, Government Advocate

Common Order

Heard, the learned counsel on either side.

2. The petitioners' herein are dealers, registered with Nagercoil Assessment Circle. Though the petitions are 17 in number, the issue raised in all these writ petitions is virtually one and the same.

3. The petitioners are traders in Raw Rubber Sheets. According to them, they had purchased goods from one Charles and his wife Shanthi.

4. The specific case of the petitioners is that a substantial portion of the sale consideration was paid only through banking channels. The payments made by the petitioners to the said Charles and his wife, included the tax component also. Charles and his wife are also said to be dealers registered with the very same assessment circle.

5. Based on the returns filed by the sellers, the petitioners herein availed input tax credit. Later, during inspection by the respondent herein, it came to light that Charles and his wife, did not pay any tax to the Government. That necessitated initiation of the impugned proceedings. There is no doubt that the respondent had issued shows cause notices to the petitioners herein. The petitioners submitted their replies specifically taking the stand that all the amounts payable by them had been paid to the said Charles and his wife Shanthi and that therefore, those two sellers will have to be necessarily confronted during enquiry. Unfortunately, without involving the said Charles and his wife Shanthi, the impugned orders came to be passed levying the entire liability on the petitioners herein. The said

orders are under challenge in these writ petitions.

6. The respondent has filed a detailed counter affidavit and contended that the impugned orders, do not warrant any interference.

7. The learned Government Advocate would point out that the petitioners had availed input tax credit on the premise that tax had already been remitted to the Government, by their sellers. When it turned out that the sellers have not paid any tax and the petitioners could not furnish any proof for the same, the department was entirely justified in proceeding to recover the same from the petitioners herein. The respondent cannot be faulted for having reversed whatever ITC that was already availed by the petitioners herein.

8. The learned counsel for the petitioners would draw my attention to the decision of the Madras High Court made in Sri Vinayaga Agencies Vs. The Assistant Commissioner, CT Vadapalani, reported in 2013 60 VST page 283. It was held therein that the authority does not have the jurisdiction to reverse the input tax credit already availed by the assesses on the ground that the selling dealer has not paid the tax. I am afraid that this proposition laid down in the context of the previous tax regime may not be straight-away applicable to the current tax regime.

9. At this stage, the learned counsel brought to my notice that the press release issued by the Central Board of GST council on 4.5.2018. In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on nonpayment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.

10. On section 16(1) & (2) of Tamil Nadu Goods and Services Tax Act, 2017, also makes the position clear. It is extracted hereunder :

> 16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business

and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards

the value of supply of goods or services or both along with tax payable thereon."

11. It can be seen therefrom that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply.

12. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

13. The learned counsel for the petitioners draws my attention to the order, dated 27.10.2020, finalising the assessment of the seller by excluding the subject transactions alone. I am unable to appreciate the approach of the authorities. When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

14. That apart in the enquiry in question, the Charles and his Wife ought to have been examined. They should have been confronted. This is all the more necessary, because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

15. According to the respondent, there was no movement of the goods. Hence, examination of Charles and his wife has become all the more necessary and imperative. When the petitioners have insisted on this, I do not understand as to why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry. Thus, the impugned orders suffers from certain fundamental flaws. It has to be quashed for more reasons than one.

a) Non-examination of Charles in the enquiry

b) Non-initiation of recovery action against Charles in the first place

16. Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. The stage upto the reception of

reply from the petitioners herein will hold good. Enquiry alone will have to be held afresh. In the said enquiry, Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.

17. With these directions, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Summary of all GST Notifications – 2023

Notification No.	Date	Subject	Description
01/2023	04/01/2023	To assign powers of Superintendent of central tax to Additional Assistant Directors in DGGI, DGGST and DG Audit	This notification amends notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, assigning powers of Superintendent of central tax to the Additional Assistant Directors in DGGI, DGGST and DG Audit.
02/2023	31/03/2023	Amnesty to GSTR-4 non-filers	Relief has been given to many taxpayers who did not file GSTR-4 yet but will file between 1st April 2023 to 30th June 2023 for periods July 2017-March 2019 or FY 2019-20 to 2021-22. The late fee over Rs.500 per return (Rs.250 each under CGST and SGST) is waived (no late fee if the return is nil).
03/2023	31/03/2023	Extension of time to apply for revocation of cancellation of GST registration	If GST registration is cancelled on or before 31st December 2022 under clauses (b)/(c) of Section 29(2) of the CGST Act and missed filing revocation by the due date under the law, they can file application for revocation by 30th June 2023.
04/2023	31/03/2023	Amendment in CGST Rules	CGST Rule 8(4A) is revised to segregate cases of just Aadhaar authentication and cases of biometric-based authentication. The time limit to undergo Aadhaar authentication for GST registration is the date of such authentication or 15 days from the date of application in part B of REG-01, whichever is earlier. People identified based on data analysis and risk parameters must undergo biometric-based Aadhaar authentication with photographs with submission of documents either on the GST portal or at facilitation centres.

05/2023	31/03/2023	Seeks to amend Notification No. 27/2022 dated 26th December 2022	The proviso to CGST Rule 8(4A) will apply to only GST registration applicants in Gujarat. The proviso states that people identified based on data analysis and risk parameters must undergo biometric-based Aadhaar authentication with photographs with submission of documents.
06/2023	31/03/202	Amnesty scheme for deemed withdrawal of assessment orders issued under Section 62	Best judgement assessment shall be withdrawn where if the non-filer of returns has submitted returns on or before 30th June 2023 with applicable interest and late fee irrespective of appeal against the assessment order issued on or before 28th February 2023.
07/2023	31/03/2023	Rationalisation of late fee for GSTR-9 and Amnesty to GSTR-9 non-filers	(1) GST amnesty scheme for GSTR-9 delayed filing- The authority has waived off late fee in excess of Rs.20,000 (Rs.10,000 each under CGST and SGST) for delayed filing of GSTR-9 for years 2017-18 up to 2021-22 if filed between 1st April 2023 to 30th June 2023. (2) Rationalisation of late fee for delaying the filing of GSTR-9 FY 2022-23 onwards - Registered persons with Turnover up to Rs.5 crore is fixed at Rs. 50 per day (Rs.25 each under CGST and SGST) subject to max cap 0.04% of turnover in state/UT (0.02% each under CGST and SGST). Registered persons with turnover more than Rs.5 crore to 20 crore is fixed at Rs 100 per day (Rs.50 each under CGST and SGST) subject to max cap 0.04% of turnover in state/UT (0.02% each under CGST and SGST)

08/2023	31/03/2023	Amnesty to GSTR-10 non-filers	Relief has been given to many taxpayers who did not file GSTR-10 yet but will file between 1st April 2023 to 30th June 2023. The late fee over Rs.1,000 per return (Rs.500 each under CGST and SGST) is waived.
09/2023	31/03/2023	Extension of limitation under Section 168A of CGST Act	The extension of limitation period to issue orders under Section 79 is as follows- For FY 2017-18 - up to 31st December 2023 For FY 2018-19 - up to 31st March 2024 For FY 2019-20 - up to 30th June 2024
10/2023	10/05/2023	Seeks to implement e-invoicing for more taxpayers	The e-Invoicing system will get extended to those annual aggregate turnover ranging from Rs.5 crore up to Rs.10 crore starting from 1st August 2023.
11/2023	24/05/2023	Seeks to extend the due date for filing GSTR-1 for April 2023	The due date to file GSTR-1 for GST filers from Manipur is extended up to 31st May 2023, effective from 11th May.
12/2023	24/05/2023	Seeks to extend the due date for filing GSTR-3B for April 2023	The due date to file GSTR-3B for GST filers from Manipur is extended up to 31st May 2023, effective from 20th May.
13/2023	24/05/2023	Seeks to extend the due date for filing GSTR-7 for April 2023	The due date to file GSTR-7 for GST filers from Manipur is extended up to 31st May 2023, effective from 10th May.
14/2023	19/06/2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 30.06.2023 instead of 31.05.2023.

15/2023	19/06/2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.	Date is extended to 30.06.2023 instead of 31.05.2023.
16/2023	19/06/2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April and May, 2023 for registered persons whose principal place of business is in the State of Manipur.	Date is extended to 30.06.2023 instead of 31.05.2023.
17/2023	27/06/2023	Extension of due date for filing of return in FORM GSTR-3B for the month of May 2023 for the persons registered in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the state of Gujarat	Date is extended upto 30th June 2023.
18/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-1 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.
19/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-3B for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.
20/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-3B for quarter ending June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.
21/2023	17/07/2023	Seeks to extend the due date for furnishing FORM GSTR-7 for April, May and June, 2023 for registered persons whose principal place of business is in the State of Manipur	Date is extended to 31.07.2023 instead of 30.06.2023.

22/2023	17/07/2023	Seeks to extend amnesty for GSTR-4 non-filers	Date is extended to 31.08.2023 instead of 30.06.2023.
23/2023	17/07/2023	Seeks to extend time limit for application for revocation of cancellation of registration	Date is extended to 31.08.2023 instead of 30.06.2023.
24/2023	17/07/2023	Seeks to extend amnesty scheme for deemed withdrawal of assessment orders issued under Section 62	Date is extended to 31.08.2023 instead of 30.06.2023.
25/2023	17/07/2023	Seeks to extend amnesty for GSTR-9 non-filers	Date is extended to 31.08.2023 instead of 30.06.2023.
26/2023	17/07/2023	Seeks to extend amnesty for GSTR-10 non-filers	Date is extended to 31.08.2023 instead of 31.07.2023.
27/2023	31/07/2023	Seeks to notify the provisions of section 123 of the Finance Act, 2021 (13 of 2021).	Failure to file information Return by various agencies of Govt etc, Rs 100 will be levied as penalty will be applicable from 01.10.2023.
28/2023	31/07/2023	Seeks to notify the provisions of sections 137 to 162 of the Finance Act, 2023 (8 of 2023).	Sec 149 to 154 will be applicable from 01.08.2023. Sec 137 to 148 & 155 to 162 will be applicable from 01.10.2023.
29/2023	31/07/2023	Seeks to notify special procedure to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018.	Special procedure to file an appeal against the order of Sec 73 or 74 with no pre-deposit condition to file appeal under Sec 107(6).
30/2023	31/07/2023	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.	Following details to be provided by a manufacturer of certain goods :- 1. Detail of packing machine 2. Detail of removal of existing machines 3. Electricity Consumption 4. Production Register

31/2023	31/07/2023	Seeks to amend Notification No. 27/2022 dated 26.12.2022.	Biometric-based Aadhaar authentication for granting GST registrations, starting with a pilot run in the state of Gujarat will now be started in State of Puducherry also.
32/2023	31/07/2023	Seeks to exempt the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.	Form GSTR-9 is to be filed for FY 2022-23 if the aggregate Turnover exceeds 2 crores in FY 2022-23.
33/2023	31/07/2023	Seeks to notify "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017.	Account aggregator means a NBFC which undertakes the business of account aggregator & require to share the information will be effective from 01.10.2023
34/2023	31/07/2023	Seeks to waive the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions.	Conditions – 1. Shall not make any inter state supply, 2. Shall not make supply of through ECO in more than one state, 3. Such person shall have PAN 4. Such person is granted enrolment number from common portal.
35/2023	31/07/2023	Seeks to appoint common adjudicating authority in respect of show cause notices in favour of against M/s BSH Household Appliances Manufacturing Pvt Ltd.	Appointment of officer - Joint or Additional Commissioner of Central Tax, Bengaluru South Central Excise and GST Commissionerate
36/2023	04/08/2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers.	Form GSTR-8 will be applicable on ecommerce operator with effect from 01.10.2023.

37/2023	04/08/2023	Seeks to notify special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons.	The electronic commerce operator shall furnish the details of supplies of goods made through unregistered dealers in the statement in FORM GSTR-8 electronically on the common portal
38/2023	04/08/2023	Seeks to make amendments (Second Amendment , 2023) to the CGST Rules, 2017.	1. Physical verification of business premises in certain cases 2. Insertion of Rule 88D – Difference between ITC in 3B & 2B

Summary of all GST Notifications – 2023

Circular Number	Date	Subject	Description
189/2023	13/01/2023	Clarification regarding GST rates and classification of certain goods.	This Circular clarifies the GST rates and classification of certain goods based on the recommendations of the 48th GST Council meeting, such as rab, chilka, churi, carbonated beverages, etc.
190/2023	13/01/2023	Clarification regarding GST rates and classification of certain services	This circular clarifies the applicability of GST on accommodation services supplied by an Air Force Mess to its personnel and on incentives paid by the Ministry of Electronics and Information Technology to acquiring banks under an incentive scheme for the promotion of RuPay debit cards and low-value BHIM-UPI transactions.
191/2023	27/03/2023	Clarification regarding GST rate and classification of 'R&D' based on the recommendation of the GST Council in its 49th meeting held on 18th February 2023 —reg	Rate of GST on Rab is 5% when sold under pre-package or labelled other wise the rate of GST on Rab is NIL.
192/2023	17/07/2023	Clarification on charging of interest under section 50(3) of the CGST Act, 2017, in cases of wrong availment of IGST credit and reversal thereof.	where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.

193/2023	17/07/2023	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021	This circular further clarifies the earlier circular issued bearing No. 183/2022 for availment of ITC in excess of prescribed limit of 20%,10% & 5% as the case may be
194/2023	17/07/2023	Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction	Where multiple ECO's are involved in a single transaction, buyer side ECO will neither be required to collect TCS u/s 52.
195/2023	17/07/2023	Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period	Almost all the issues on warranty/ replacement of parts and repair services were clarified.
196/2023	17/07/2023	Clarification on taxability of share capital held in subsidiary company by the parent company	Activity of holding / purchase/ Sale of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.
197/2023	17/07/2023	Clarification on refund-related issues	Clarification on — 1. Manner of calculating Adjusted Turnover, 2. Undertaking to be issued with RFD-01 3. refund claims for a tax period from January 2022 onwards has already been disposed of by the proper officer before the issuance of this circular shall not be reopened
198/2023	17/07/2023	Clarification on issue pertaining to e-invoice	Govt Departments registered solely for TDS on GST are liable for compulsory registration are required to issue e-invoices after threshold limit.

199/2023	17/07/2023	Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons	Taxability Of Services Provided By An Office Of An Organisation In One State To The Office Of That Organisation In Another State, Both Being Distinct Persons.
200/2023	01/08/2023	Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023	GST levy related to the following items are being issued through this circular: i. Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion; ii. Fish Soluble Paste; iii. Desiccated coconut; !v. Biomass briquettes; iv. Imitation zari thread or yarn known by any name in trade parlance; v. Supply of raw cotton by agriculturist to cooperatives; vi. Plates, cups made from areca leaves viii. Goods falling under HSN heading 9021
201/2023	01/08/2023	Clarifications regarding applicability of GST on certain services	1. Supply Of Food Or Beverages In A Cinema Hall Is Taxable As 'Restaurant Service' 2. Services Supplied By A Director Of A Company In His Personal Capacity will not attract RCM.