DELHI SALES TAX CASES

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HIGHLIGHTS

"If the court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty."

– Dr. D.Y. Chandrachud, J

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NEWS AND UPDATES

1. M/S RAYAPATI POWER GENERATION PVT. LTD. AND ANR Versus INDIAN RENEWABLE ENERGY AGENCY LTD (IREDA)

The view taken in Econ Antri (Supra) has been reiterated and applied by the Supreme Court in Rameshchandra Ambalal Joshi v. State of Gujarat and Another reported as (2014) 11 SCC 759. 16. Recently, a Co-ordinate Bench of this Court in Simranpal Singh Suri v. State and Another reported as 2021 SCC OnLine Del 236 also discussed the issue of limitation at length and relied upon the decision in Econ Antri (Supra) to decide the issues arising under Sections 138/142 N.I. Act.

In view of Econ Antri (Supra), a decision albeit rendered in relation to Section 138(c) and Section 142(b) N.I. Act, it is discernible that the words “of” and “from” used under Section 138 N.I. Act do not imply different meanings.

It is safe to infer that the use of the word „of" in Section 138(b) N.I. Act does not imply either that the day on which information regarding dishonor of cheque is received by the complainant from the bank is to be included while computing the limitation period for issuance of a valid legal notice.

The legal position, as culled out from the judicial dicta referred to hereinabove, is that while computing the limitation period of 30 days prescribed under Section 138(b) N.I. Act for issuance of a valid legal notice, the day on which intimation is received by the complainant from the bank that the cheque in question has been returned unpaid has to be excluded.

2. Maharaja Cables (C/O Maxwell Logistic Pvt Ltd) Vs Commissioner (GST) State Tax Indore (M.P.)

HC held that inadvertent human error in generating E way bill cannot lead to proceedings and penalties under Section 129 of CGST Act, 2017. A tax invoice was generated which reflected the destination as well as the registration number of the vehicle which has been brought on record as Annexure P/1. Thereafter, the petitioner generated E-way bill which is required to be carried along with the consignment. However, the address on the E-way bill was mentioned at registered office of the consignee at Indore, instead of Bhopal and thus, the Revenue Authorities initiated proceedings under Section 129 of Central Goods and Service Tax Act, 2017 which ultimately resulted in passing of the order by which the liability of additional tax as well as penalty was imposed against the petitioner and the appeal against the said order was also dismissed. The petitioner has challenged the order passed by the original as well as appellate Authority. Learned counsel for petitioner submits that the mistake while generating E-way bill was an inadvertent human error and there was no intention to evade the tax liability particularly, when the vehicle number which was transporting the goods was same and hence, prays for quashment of the orders. HC held that as mistake in question being bonofide this Court invoking the principle of parity, directs that the impugned orders dated 05.09.2019 are quashed.

3. M/s Pankaj Cottage Vs. The Goods and Service Tax Officer, Central Tax and Central Excise & Others

HC set aside the order cancelling the registration of the Assessee, observing

that the order has been passed on the basis of proceedings initiated by the issuance of show cause notice issued in the wrong form and not in accordance with the rules prescribed in this regard. Therefore, the action taken by the Officer is clearly without jurisdiction.

The Petitioner filed the writ petition before the Hon'ble High Court challenging the order cancelling its registration passed under CGST/SGST Acts, in the exercise of powers under Section 29 of the said enactments.

4. ROUSHAN KUMAR CHOUHAN VS COMMISSIONER OF STATE TAX, STATE OF JHARKHAND

GST - Levy of penalty under Section 73 of the CGST Act - Petitioner challenge summary of show cause notice in Form GST DRC-01 - Validity of adjudication proceedings in absence of proper show case notice – HELD - Notices under section 73(1) of the CGST Act is in the standard format and neither any particulars have been struck off nor specific contravention has been indicated to enable the petitioner to furnish a proper reply to defend itself. The show-cause notices can therefore, be termed as vague –a summary of show cause notice in Form GST DRC-01 cannot substitute the requirement of a proper show cause notice under section 73(1) of the Act of 2017 – Further, levy of penalty of 100% of tax dues is also in the teeth of the provisions of Section 73(9) of the Act, wherein while passing an adjudication order, the Proper Officer can levy penalty up to 10% of tax dues only - The above infirmity clearly shows non-application of mind on the part of the respondents. Proceedings also suffer from violation of principles of natural justice - the impugned show-cause notices, Summary of the Show Cause Notice and Summary of Orders contained in Form GST DRC-07 are quashed – writ petition is allowed by remand.

5. Manish Kothari (Presently In JC) Vs Director of Enforcement Ministry of Finance Dept. of Revenue Headquarter Investigation Unit

High Court granted the bail to the petitioner (Chartered Accountant) under Prevention of Money Laundering Act 2022 based on the plea of the petitioner that he has acted on the basis of information and records provided by his client.

Conclusion - Generally speaking, the professional would act on the instructions of his client. However, whether he had gone beyond his professional duty is something which is required to be seen and examined during the trial. The allegation against the present petitioner is not that he has done something which was beyond his scope of profession i.e. indulging in some activities which are totally unconnected with the chartered accountancy. The plea of the petitioner that he had acted on the basis of information and record provided to him could not be rejected outrightly at this stage. This was required to be tested during the course of the trial. Any further appreciation of the evidence at this stage may prejudice the case and therefore is not expected. It has repeatedly been held that stage of bail cannot convert into a mini trial. It is also pertinent to mention here that the court had only to take a prima facie view on the basis of the material on record. In the facts and circumstances, the petitioner is admitted to bail on furnishing personal bond in the sum of Rs.5 lakhs with a surety of the like amount to the satisfaction of the trial court.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
[Avinash G. Gharote & Urmila Joshi-Phalke, JJ.]

Writ Petition No. 5645 Of 2022

M/s Guru Storage Batteries,
a partnership firm, through its partner,
Surjit Singh Sabarwal having office at Plot
No.122, Wanjara Layout, Pili Nadi,
Industrial Area, Nagpur – 440026
Email – surjitsabharwal@gmail.com ... Petitioner

Versus

1. The State of Maharashtra,
   Department of Goods and Services Tax,
   through Joint Commissioner State Tax,
   Nagpur Division, GST Bhavan, Civil Lines,
   Nagpur – 440001
2. The Deputy Commissioner of State Tax
   NAG BST-E-001, Nagpur having office at
   GST Bhavan, Civil Lines, Nagpur - 440001
3. State Tax Officer, Kamptee, District Nagpur ... Respondents

Dated : 13th September, 2023

WHETHER STATE TAX OFFICER CAN BLOCK THE ELECTRONIC CREDIT LEDGER UNDER RULE 86A OF CGST ACT?

HELD – NO.

Oral Judgment : (PC)

Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The petition questions the action on the part of the respondent No.3 in blocking the Electronic Credit Ledger of the petitioner. On 14/09/2022, after hearing the learned counsel for the petitioner, this Court had passed the following order.

"1. Heard learned counsel for the petitioner.

2. The contention is that blocking of the Electronic Credit Ledger (ECL) has been done by one Mr. Ujval Shrirampant Deshmukh,

State Tax Officer, Kamptee, as per the impugned communication at page No.16 of the petition and that it cannot be done by State Tax Officer being an Officer below the rank of Assistant Commissioner. He submits that under Rule 86A of the Central Goods and Services Tax Rules, 2017, such blocking can be done either by the Commissioner or any Officer authorised by the Commissioner, who is not below the rank of an Assistant Commissioner. He further submits that prerequisites before blocking order is passed, as highlighted in paragraph No.32 of the judgment of this Court in the case of Dee Vee Projects Ltd. Vs. Government of Maharashtra and ors. reported in 2022(2) Bom.C.R. 239 have also not been fulfilled in the present case, at least as seen from the impugned communication. He further submits that now, illegal notices of recovery are also being issued by the respondents.

3. The points raised by the learned counsel for the petitioner require consideration by this Court although, much of the law in relation to them has already been settled by this Court in the case of Dee Vee Projects Ltd. Vs. Government of Maharashtra and ors.(supra). Therefore, issue notice for final disposal at admission stage to the respondents, returnable after three weeks.

4. Learned Additional Government Pleader waives service of notice for respondent Nos.1 to 3.

5. Meanwhile, having considered the submissions made across the bar, we direct that there shall be stay to the effect and operation of the impugned communication until further orders. We further direct that the ECL be unblocked without any further delay."

3. It is not in dispute that the Electronic Credit Ledger has been blocked by respondent No.3. A perusal of Rule 86A of the Central Goods and Services Tax Rules, 2017, indicates that such a blocking can be done by the Commissioner or an officer authorized by him in this behalf, not below the rank of Assistant Commissioner. Admittedly, the respondent No.3 does not fall within that category and is an Officer of the rank below that of the Assistant Commissioner. Though the Notification dated 24/1/2020 has been relied upon to contend that the power has now been delegated by the Commissioner to the respondent No.3 (page 104), the same is under the State GST Act, whereas Rule 86-A of the aforesaid Act would contemplate a delegation by way of amendment to the Rule. The Notification dated 24/01/2020, would be of no assistance to the respondents. In that view of the matter the action on behalf of the respondent No.3 in blocking the

Electronic Credit Ledger of the petitioner cannot be sustained and the same is hereby quashed and set aside. The petition is allowed in the above terms. No costs.

Rule is made absolute in the above terms.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Vibhu Bakhru & Purushaindra Kumar Kaurav, JJ]

W.P.(C) 6739/2021

Deepak Khandelwal Proprietor
M/s Shri Shyam Metal ... Petitioner

versus

Commissioner of CGST, Delhi West & Anr. ... Respondents

Judgment delivered on: 17.08.2023

WHETHER THE PROPER OFFICER HAS THE POWER TO SEIZE THE CURRENCY AND OTHER VALUABLE ASSETS UNDER SECTION 67 OF THE ACT, EVEN THOUGH HE HAS NO REASON TO BELIEVE THAT THE SAME ARE LIABLE FOR CONFISCATION. THE CONTROVERSY, ESSENTIALLY, RELATES TO INTERPRETATION OF SECTION 67 OF THE ACT.

Held

Thus, even if, it is accepted, which we do not, that the proper officer could seize the currency and other valuable assets in exercise of powers under Sub-section (2) of Section 67 of the Act, the same were required to be returned by virtue of Sub-section (3) of Section 67 of the Act because the silver bars and currency have not been relied upon in the notice issued subsequently.

In view of the above, the petition is allowed. The respondents are directed to forthwith release the currency and other valuable assets seized from the petitioner during the search proceedings conducted on 28.01.2020. It is, however, clarified that the respondents are not precluded from instituting or continuing any other proceedings under the Act in accordance with law. Nothing stated in this order shall be construed as an expression of opinion on the petitioner's liability to pay any tax, penalty or interest under the Act.

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Jain, Mr. Virag Tiwari & Mr. Ramashish, Advs.

For the Respondents : Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advs.

JUDGMENT

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying that directions be issued to the respondents to unconditionally release the two silver bars (weighing 29.5 Kgs. and 14.5 Kgs. respectively); ₹7,00,000/- Indian currency; and, Mobile Phones, which were seized by the respondents from the residential premises of the petitioner. The petitioner also prays that the search of his residential premises and seizure effected, be declared illegal.

Factual Context

2. The petitioner carries on business of trading in non-ferrous metals, inter alia, in the name of his sole proprietorship concern, Shri Shyam Metal. He is registered under the Central Goods and Services Tax Act, 2017 (hereafter 'the Act') under the registration: GSTIN- 07AGCPK1126B2Z5.

3. On 28.01.2020, a search was conducted at the petitioner's residence, House No. 3-4, Pocket 6, Sector-24, Rohini, Delhi, under Sub-section (2) of Section 67 of the Act. During the aforementioned operations, certain items and currency were seized from the ground floor of the petitioner's residence. The relevant extract of the order of seizure (Form GST INS-02) listing out the goods and items seized by the respondent authorities, is reproduced hereinbelow:

"A) Details of goods seized:

Sr. No.	Description of Goods	Quantity/Units	Make/Mark or Model	Remark
01	Silver Bar	Silver Bar 29872 (29.5 kgs)	2017	
02	Silver Bar	Silver Bar 14948(14.5 kgs)	2018	

Sr. No.	Description of books/ documents/ Equipments things seized	Page No.
1.	Sale Bill Book	251-300
2.	Axis Bank Cheque Book 917020084690138	125593-125605
3.	PNB Cheque Book 0155002106140506	260829-260920
4.	PNB Cheque Book 0155002106140506	610455-610460
5.	PNB Cheque Book 0617000100149333	705753-705770
6.	PNB Cheque Book 0617000100292510	929211-929250
7.	PNB Cheque Book 6582002100002424	034980-034990
8.	Green Colour Saraswati Note Book	01-01(Written Page)
9.	Red Colour Redmi 6A Mobile	IMEI 1 No. : 869956041874739 IMEI 2 No. : 869956041874747
10.	Blue Colour Redmi 6A Mobile	IMEI 1 No. : 869956048349958 IMEI 2 No. : 869956048349966
11.	One Plus Brand Mobile	IMEI 1 No. : 99001345485110 IMEI 2 No. : 869430049682205
12.	IPhone 11 Pro	IMEI 1 No. : 353844103083170 IMEI 2 No. : 353844103043356
13.	CASH INDIAN Currency	7 Lakh (10*50*100+50*50*100+ 500*4*100+2000*1*100)
14.	Kachha Parchi	Yellow Packet
		M/s. Nitin Metal, M/s. Adi Shree, M/s. Shree Ganesh Trading Co.,"

4. Thereafter on 29.01.2020, the petitioner was arrested by the Central Tax Officers of GST Commissionerate, North Delhi, as it was alleged that he had committed offences, punishable under Clause (i) of Sub- section (1) of Section 132 of the Act. The petitioner was released on bail on 21.03.2020 by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

5. The Sales Tax Officer Class II/AVATO, Ward 30: Zone 1: Delhi (Delhi State GST Officer) issued a notice under Section 74 of the Act on 10.11.2020 proposing a demand of ₹24,20,900/- including penalty of a sum of ₹12,10,450/-. The petitioner responded to the said notice by his letter dated 16.11.2020. The petitioner contended that, no reliance was placed on any of the documents, Indian currency, or any other items which were seized on 28.01.2020, as detailed in the seizure report, in the said notice.

6. The petitioner, by letter dated 23.03.2021, requested the Additional Commissioner, Central Tax GST, West Delhi, to release the goods, documents and cash seized from his premise on 28.01.2020. The petitioner contended that even if the proviso to Subsection (7) of Section 67 of the Act was applicable, no notice was issued with respect to the seizure of goods, within a period of six months from the date of seizure. Therefore, the seized goods were liable to be restored.

7. The petitioner has filed the present petition under Article 226/227 of the Constitution of India, being aggrieved by the failure on the part of the respondents to release his goods even after lapse of one year from the date of the seizure.

Submissions

8. It is the petitioner's case that the proper officer does not have any powers under Section 67 of the Act to seize currency as the same is not 'goods' as defined under the Act. The petitioner contends that the proper officer has the power to seize the goods under Sub-section (2) of Section 67 of the Act only if he has reasons to believe that the same are liable for confiscation. The petitioner also claims that the goods seized are liable to be returned if no notice in respect of the said goods is served within a period of six months from the date of seizure of the said goods.

9. It is contended that since no notice under Sub-section (2) of Section 67 of the Act was issued in respect of the seized silver bars, which fall within the definition of goods, within the stipulated period of six months, the said goods are liable to be released.

10. Mr. Rajesh Jain, learned counsel appearing for the petitioner contended that the Sub-section (2) of Section 67 of the Act is pari materia Section 105 and Sub-sections (1), (2) and (3) of Section 110 of the Customs Act, 1962, and referred to the decision of the Supreme Court in *I.J. Rao, Asstt. Collector of Customs & Ors. v. Bibhuti Bhushan Bagh & Another: (1989) 3 SCC 202*. On the strength of the said decision, he contended that if a notice is not given within a period of six months from the date of seizure

of the goods and the said period is not extended within the said period of six months, the seized goods are liable to be returned.

11. He submitted that currency neither fell within the definition of the terms 'goods' nor could be considered as 'things'. He contended that the term 'things' was required to be construed by applying the doctrine of ejusdem generis, as taking colour from the preceding words, 'documents' and 'books'.

12. Mr. Harpreet Singh, learned counsel appearing for the Revenue countered the contentions advanced on behalf of the petitioner. He contended that silver bars and cash seized by the proper officer were not covered under the definition of 'goods' and therefore, there was no requirement for issuing any show cause notice for confiscation of the same. He submitted that the silver bars and cash were seized as 'things' and not as 'goods' that were liable for confiscation. He referred to the definition of the word 'goods' under the Act and contended that 'money' and 'securities' were excluded from the said definition. He contended that silver bars were 'securities' and were seized as such.

13. He countered the submission that the proper officer did not have any power to seize cash. He submitted that the proper officer had the power to seize 'things' under Sub-section (2) of Section 67 of the Act and the said term was required to be interpreted in an expansive manner. He referred to the decision of the Madhya Pradesh High Court in *Kanishka Matta v. Union of India & Ors.: 2020 SCCOnline MP 4564* decided on 26.08.2020 in support of his contention.

Reasons & Conclusion

14. The principal controversy to be addressed in the present petition is whether the proper officer has the power to seize the currency and other valuable assets under Section 67 of the Act, even though he has no reason to believe that the same are liable for confiscation. The controversy, essentially, relates to interpretation of Section 67 of the Act. The said section is set out below:

> "67. **Power of inspection, search and seizure.**— (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
>
> (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in

hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break

open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized: Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word —Magistrate, wherever it occurs, the word —Commissioner were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

15. In terms of Sub-section (1) of Section 67 of the Act, the proper officer, not below the rank of Joint Commissioner, is empowered to authorize any officer of the central tax to inspect any place of business of a taxable person or persons engaged in the business of transporting or storing of goods. However, such inspection can be authorized only if the proper officer has reasons to believe that the taxable person has (i) suppressed any transaction relating to supply of goods or services or both; or (ii) suppressed the stock of goods in hand; or (iii) has claimed input tax credit in excess of his entitlement; or (iv) has otherwise contravened any provision of the Act or the Rules made thereunder, to evade payment of tax. Such inspection can also be authorized if the proper officer believes that any person who is engaged in the business of transporting goods, or operating a warehouse or a godown or any other place, is keeping goods that have escaped payment of tax or has kept his accounts or goods in such a manner, which is likely to cause evasion of tax payable under the Act.

16. It is apparent from the above, the power of inspection under Sub-section (1) of Section 67 of the Act is conferred to unearth any evasion of tax or any attempt to evade tax. Sub-section (1) of Section 67 of the Act is not a provision for recovery of tax or for securing the same.

17. The power to seize goods is specified in Sub-section (2) of Section 67 of the Act. In terms of the said Sub-section, if the proper officer has reasons to believe that any goods, which are liable for confiscation, or any documents or books or things, which in his opinion will be useful or relevant for any proceedings under the Act, are secreted at any place;

he may either search and seize the said goods, documents or books or things, or authorize any officer of the Central Tax to do so.

18. It is clear from the plain language of Sub-section (2) of Section 67 of the Act that only those goods can be seized, which the proper officer has reasons to believe are liable for confiscation. Insofar as seizure of documents or books or things is concerned, the same is permissible provided the proper officer is of the opinion that the said documents or books or things shall be useful or relevant to any proceedings under the Act.

19. The first proviso to Sub-section (2) of Section 67 of the Act provides that if it is not practical to seize such goods – that is, goods that are liable for confiscation – the proper officer or any officer authorized by him may direct the owner or custodian of the goods, not to remove or part with the same.

20. The second proviso to Sub-section (2) of Section 67 of the Act clarifies that insofar as seized documents or books or things are concerned, the same shall be retained only so long as it is necessary for their examination and for any inquiry or proceedings under the Act. It is, thus, clear that seizure of documents or books or things are only for the purpose of examination or inquiry or any proceedings under the Act. And, the seized documents or books or things can be retained only so long as it is necessary for the said purpose – for their examination, any inquiry, or proceedings under the Act.

21. Sub-section (3) of Section 67 of the Act further requires that documents or books or things as referred to in Sub-section (2) of Section 67 of the Act or any other documents or books or things produced by the taxable person or any other person "which have not been relied upon" for the issue of notice under the Act or Rules made thereunder shall be returned to such person, within the period not exceeding thirty days from the issue of such notice.

22. In terms of Sub-section (6) of Section 67 of the Act, the goods seized under Sub-section (2) of Section 67 of the Act are required to be released on provisional basis upon execution of a bond and furnishing of a security, in such manner and of such quantum, as may be prescribed or on payment of applicable tax, interest and penalty payable as the case may be.

23. In terms of Sub-section (7) of Section 67 of the Act where goods are seized under Sub-Section (2) of Section 67 of the Act and no notice,

in respect thereof, is given within the period of six months of seizure of the goods, the goods are required to be returned to the person from whom the same were seized. This period of six months can be extended on sufficient cause being shown.

24. In terms of Sub-section (8) of Section 67 of the Act, the Government also has the power to specify goods, which are required to be disposed of by the proper officer, as soon as may be, after its seizure under Sub-section (2) of Section 67 of the Act. Such goods are required to be specified having regard to the perishable or hazardous nature of the goods, constraints of storage space, depreciation in the value of goods with the passage of time, or other relevant consideration.

25. In terms Sub-section (11) of Section 67 of the Act, the proper officer may seize accounts, registers or documents produced before him if he has reason to believe that any person has evaded or attempting to evade payment of tax. However, it is necessary for him to record the reasons in writing for seizure of the accounts, register or documents. However, such accounts, registers or documents can be retained only as long as it is necessary in connection with any proceedings under the Act or the rules made thereunder for prosecution.

26. The question whether the proper officer has any power to seize cash or other asset is required to be addressed bearing in mind the aforesaid scheme of Section 67 of the Act. 27. The expression 'goods' is defined in Sub-section (52) of Section 2 of the Act as under:

> "(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;"

28. The expression 'goods' covers all movable property other than 'money' and 'securities'. The expression 'securities' as defined in Sub-section (101) of Section 2 of the Act has the same meaning as assigned to it in Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956.

29. Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 reads as under:

> "2(h) "securities" —include
>
> (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;"

30. It is at once clear from the above that silver bars being movable assets are not securities within the meaning of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. The contention that silver bars are 'securities', as advanced on behalf of the Revenue, is insubstantial. Although the definition of the term 'securities' is an inclusive definition, the same cannot be read in disregard of Subclauses (i) to (iii) of Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 or the scope of that enactment. Plainly, as silver bars do not fall within the definition of 'securities' under Subsection (101) of Section 2 of the Act read with Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956. Thus, silver bars are included in the term 'goods' as defined under Sub-section (52) of Section 2 of the Act.

31. Cash (Indian currency) is clearly excluded from the definition of the term 'goods' as the same falls squarely within the definition of the word 'money' as defined in Sub-section (75) of Section 2 of the Act

32. Having stated the above, we are of the view that it would not be apposite to construe the word 'things' under Sub-section (2) of Section 67 of the Act to be mutually exclusive to the term 'goods'. The term 'goods' as used in Sub-section (2) of Section 67, essentially, relates to goods, which are subject matter of supplies that are taxable under the Act. Admittedly, the goods that can be seized under Sub-section (2) of the Act are goods, which the proper officer believes are liable for confiscation. In this regard, it is relevant to refer to Section 130 of the Act, which provides for confiscation of goods and conveyances. Subsection (1) of Section 130 of the Act specifies the goods and conveyances that may be liable for confiscation under the said Act and is set out below:

"130. Confiscation of goods or conveyances and levy of penalty.—
(1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;

or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122."

33. A plain reading of Clauses (i) to (iv) of Sub-Section (1) of Section 130 of the Act indicates that the goods, which are supplied or received in contravention of the provisions of the Act with the intent to evade payment of tax; goods which are unaccounted for and chargeable to tax; supply of goods chargeable to tax, by a taxpayer, without applying for registration; and cases where the taxpayer contravenes any provision of the Act with the intent to evade payment of tax, are liable for confiscation.

34. The word 'goods' as defined under Sub-section (52) of Section 2 of the Act is in wide terms, but the said term as used in Section 67 of the Act, is qualified with the condition of being liable for confiscation. Thus, only those goods, which are subject matter of or are suspected to be subject matter of evasion of tax. During the course of search under Sub-section (2) of Section 67 of the Act, the officer conducting the search may find various types of movable assets. Illustratively, in an office premises, one may find furniture, computer, communication instruments, air conditioners

etc. Those assets although falling under the definition of ‘goods’ cannot be seized, if the proper officer has no reasons to believe that those goods are liable to be confiscated.

35. Sub-section (6) of Section 67 of the Act provides for provisional release of the goods so seized on payment of applicable tax, interest and penalty. This also indicates that the goods, which may be seized under Sub-section (2) of Section 67 are goods that are subject matter of evasion of tax or are supplies in respect of which the proper officer has reason to believe, taxes would not be paid.

36. Sub-section (7) of Section 67 of the Act mandates that the goods seized under Sub-Section (2) would be returned to the person from whose possession the goods were seized, if no notice in respect of those goods is issued within a period of six months. It is apparent that a notice in respect of such goods can be issued only where taxes, interest or penalty in respect of the said goods have not been paid or there are reasons to believe so.

37. If the goods are of the nature specified in Sub-section (8) of Section 67 of the Act, that is, are perishable or hazardous; or are depreciable with the passage of time; are subject to constraints of storage space and are so specified by the Government, the same may be disposed of, after their seizure.

38. The second category of items – that is, items other than goods, which the proper officer believes are liable for confiscation – which can be seized are ‘documents or books or things’. Sub-section (2) of Section 67 of the Act makes it amply clear that such items – that is, documents or books or things – may be seized if the proper officer is of the opinion that it shall be useful or relevant to any proceedings under the Act. The words ‘useful for or relevant to any proceedings under the Act’ control the proper officer’s power to seize such items.

39. Documents and books are also covered under the wide definition of ‘goods’ under Sub-section (52) of Section 2 of the Act but the same are not goods that are liable for confiscation. Seizure of such documents or books is not contemplated for the reason that they are subject matter of supplies in respect of which tax has been evaded; seizure of books and documents is contemplated only for the purpose that they may contain information, which may be useful or relevant for any proceeding under the Act. Hence, the purpose of providing for seizure of such items is to secure material information, which may be useful or relevant for the proceedings under the Act.

40. It is clear from the schematic reading of Section 67 as well as other provisions of the Act that the purpose of Section 67 of the Act is not recovery of tax; it is not a machinery provision for enforcing a liability. The purpose of Section 67 of the Act is to empower authorities to unearth tax evasion and ensure that taxable supplies are brought to tax. In respect of goods and supplies, which are subject matter of evasion, the proper officer has the power to seize the goods to ensure that taxes are paid. Once the department is secured in this regard – either by discharge of such liability or by such security or bond as the concerned authority deems fit – the goods are required to be released in terms of Sub-section (6) of Section 67 of the Act.

41. The second limb of Section 67(2) of the Act permits seizure of documents or books or things so as to aid in the proceedings that may be instituted under the Act. The documents or books or things cannot be confiscated and have to be returned. This is amply clear from the plain language of the second proviso to Sub-section (2) of Section 67 of the Act. In terms of the second proviso to Sub-section (2) of Section 67, the documents or books or things seized are required to be retained only for so long as it may be necessary *"for their examination and for any inquiry or proceedings under the Act"*. Once the said purpose is served, the books or documents or things seized under Subsection (2) cannot be restrained and are required to be released.

42. The second proviso, although couched as a proviso, is an integral part of Sub-section (2) of Section 67 of the Act. The same clearly reflects that the legislative intent of empowering seizure of documents or books or things is for enabling their use in aid of the proceedings under the Act. Thus, seizure of such documents or books or things is conditional upon the proper officer's opinion. That the same are "useful for or relevant to" such proceedings.

43. Sub-section (3) of Section 67 of the Act, consistent with the legislative intent of permitting seizure of books or documents or things, provides that if the documents or books or things seized under Sub-Section (2) are not relied upon for issue of a notice under the Act or Rules made thereunder, the same shall be returned within a period of thirty days. Although, there is no ambiguity in the language of Sub-section (2) of Section 67 of the Act that seizure of books or documents or things is permissible only if the same are considered useful for or relevant to the proceedings under the Act; Sub-section (3) of Section 67 makes it amply clear that the purpose of seizure of books or documents or things is only for the purpose of reliance in the proceedings under the Act. It, thus, posits that if the documents or

books or things are not relied upon in any notice that is issued, the same are liable to be returned.

44. It follows from the contextual interpretation of Sub-section (2) and Sub-section (3) of Section 67 that seizure of books or documents or things are only for the purpose of relying on such material in proceedings under the Act.

45. It is also relevant to refer to Sub-section (11) of Section 67 of the Act. The said Sub-section empowers the proper officer to seize, for reasons to be recorded in writing, the accounts, registers or documents, which are produced before him and to retain the same so long as it is necessary "in connection with any proceedings under this Act or the rules made thereunder for prosecution".

46. It is clear from the Scheme of Section 67 of the Act that the word 'things' is required to be read, ejusdem generis, with the preceding words 'documents' and 'books'. It is apparent that the legislative intent of using a wide term such as 'things' is to include all material that may be informative or contain information, which may be useful for or relevant to any proceedings under the Act. Although, documents and books are used to store information; they are not the only mode for storing information. There are several other devices that are used to store information or records such as pen-drives, personal computers, hard disks, mobiles, communication devices etc. The word 'things' would cover all such devices and material that may be useful or relevant for proceedings under the Act. The word 'things' must take colour from the preceding words, 'documents' and 'books'. It denotes items that contain information or records, which the proper officer has reason to believe is useful for or relevant to the proceedings under the Act. The context in which the word 'things' is used makes it amply clear that, notwithstanding, the wide definition of the term 'things', the same is required to be read ejusdem generis with the preceding words. It is apparent that the legislative intent in using a word of wide import is to include all possible articles that would provide relevant information, records, and material which may be useful for or relevant to proceedings under the Act.

47. We are unable to accept that the word 'things' must be read expansively to include any and every thing notwithstanding that the same may not yield and / or provide any material useful or relevant to any proceedings under the Act as contended on behalf of the Revenue. It is necessary to bear in mind that power of search and seizure is a drastic power; it is invasive of the rights of a taxpayer and his private space.

Conferring of unguided or unbridled power of this nature would fall foul of the constitutional guarantees. It necessarily follows that such power must be read as circumscribed by the guidelines that qualify the exercise of such power, and the intended purpose for which it has been granted. As stated above, it is contextually clear that exercise of such power is restricted only in cases where in the opinion of the proper officer, seizure is useful for or relevant to any proceedings under the Act. The second proviso of Sub-section (2) and Sub-section (3) of Section 67 of the Act makes it amply clear that the purpose of seizure is for the purpose of relying on the same in proceedings under the Act.

48. It is relevant to refer the decision of the Bombay High Court in Emperor v. Hasan Mama: AIR 1940 Bom 378. In the said case, the accused was convicted under Section 152 of the Bombay Municipal Boroughs Act, 1925. The allegation against the accused was that he had allowed the hand driven lorries containing fruits to remain on a public street at Ahmedabad for more than half an hour. Section 152 of the Bombay Municipal Boroughs Act, 1925 reads as under:

> "(1) Whoever in any area after it has become a municipal district, or borough
>
> (a) shall have built or set up, or shall build or set up, any wall or any fence, rail, post, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, or
>
> (b) shall deposit or cause to be placed or deposited any box, bale, package or merchandise or any other thing, in any public place or street … shall be punished …"

49. The Division Bench of the Bombay High Court rejected the contention that the hand driven lorry containing fruits could be considered as 'thing' either under Clause (a) or Clause (b) of Subsection (1) of Section 152 of the Bombay Municipal Boroughs Act, 1925. It is held that the word 'thing' in both the clauses is required to be construed ejusdem generis. The hand driven lorry thus could not be considered as a stall or any projecting structure or a box, bale, package or merchandise. The Court further held as under:

> "The question is whether the hand-cart, which the accused had kept in the street, fell within the prohibition contained in s. 152, sub-s. (1), of the Bombay Municipal Boroughs Act. It was conceded in

> the lower Court that the case did not fall within sub-s. (1)(a) of that section. But Mr. G.N. Thakor, who seldom concedes anything, did not concede that proposition. He says that the act of the accused amounted to setting up a stall. No doubt you may have a stall on wheels, but I am clearly of opinion that introducing into a street a lorry on wheels with goods for sale upon it does not amount to setting up a stall within s. 152(1)(a). In my opinion that sub-section deals with making some form of addition or annexe, more or less permanent, to a building in the street. It is directed against the man who has a shop or house in the street, and who encroaches upon the street by making some sort of addition to his house or shop.
>
> I think the real question is whether the case can be brought within s. 152, sub-s. (1)(b). In my opinion the words "or any other thing" must be read ejusdem generis as the words "box, bale, package or merchandise". Those words seem to cover merchandise, and things in which merchandise can be packed, and any other thing must be of the same kind or genus and does not include a vehicle. In my view a motor car or a motor lorry or a horse drawn or hand-propelled vehicle, though containing merchandise and left standing in a street, cannot be said to come within the section. The hand lorry of the accused clearly falls within the definition of vehicle contained in s. 3, sub-s. (21), of the Bombay Municipal Boroughs Act. The control of vehicles in streets is dealt with by the Bombay District Police Act. Whatever the powers of the police may be under that Act, I am of opinion that the learned Sessions Judge was right in the view he took that a vehicle does not fall within the mischief of s. 152."

50. The contextual interpretation of all Sub-sections of Section 67 of the Act clearly indicates that the same do not contemplate seizure of valuable assets, for securing the interest of Revenue.

51. In the case of *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.: (1987) 1 SCC 424*, the Supreme Court held as under:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known.

> With this knowledge, the statute must be read first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

52. In *Balram Kumawat v. Union of India & Ors.: AIR 2003 SC 3268*, the Supreme Court observed that:

> "20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole, statute relating to the subject-matter. The rule of 'ex visceribus actus' should be resorted to in a situation of this nature."

53. In the case of State of West Bengal v. Union of India: AIR 1963 SC 1241, the Supreme Court held as under:

> "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

54. Section 67 of the Act is not a machinery provision for recovery of tax; it is for ensuring compliance and to aid proceedings against evasion of tax. Section 79 of the Act provides for the machinery for recovery of tax. Section 83 of the Act provides for provisional attachment of any property belonging to a taxable person to safeguard the interests of the Revenue. Section 67 of the Act must be read schematically along with other provisions of the Act.

55. The Revenue has averred in its counter affidavit that cash and silver bars in question were seized because "the petitioner could not produce any lawful evidence of its purchase / possession and they appeared to be sale proceeds from the goodless / fake invoices being transacted by the

petitioner". The search and seizure operations under Section 67 of the Act are not for the purpose of seizing unaccounted income or assets or ensuring that the same are taxed. The said field is covered by the Income Tax Act, 1961. Thus, even if it is assumed that the petitioner could not produce any evidence of purchase of the silver bars or account for the cash found in his possession, the same were not liable to be seized under Sub-section (2) of Section 67 of the Act. The power of the proper officer to seize books or documents or things does not extend to seizing valuable assets for the reasons that they are unaccounted for or may be liable to confiscation under any other statute. Concededly, there is no material to indicate that the particular silver bars or cash were received by the petitioner in specie against any particular fake invoice.

56. There may be cases where the Revenue finds that a particular currency note or any particular asset has evidentiary value to establish the Revenue's case. Illustratively, a delinquent dealer supplies goods without invoices only on presentation of a currency note that bears a particular number. The presentation of the currency note is used as a means of authenticating the identity of the purchaser. The number of the particular currency note is recorded in diary maintained by the purchaser. The Revenue Officer ascertains this modus operandi of evasion of taxes. The currency note, corelated with the diary, would be relevant in establishing evasion of tax in respect of certain goods. Undoubtedly, in such cases, the currency note is material that yields information as to the modus adopted for evading tax; the proper officer may seize the currency note for its evidentiary value and relevance in establishing evasion of tax in proceedings under the Act. The same may be relied upon in the proceedings that may ensue. The particular currency note in such a case would yield certain information when read in conjunction with the diary. It is material to note that such currency note can be retained for so long as may be necessary for its "examination and for any enquiry or proceedings under the Act". Cash or other assets, which are not required in species in aid of any proceedings, but represent unaccounted wealth, cannot be seized under Section 67 of the Act. This Court had pointedly asked Mr. Harpreet Singh whether there was any material showing information that the currency or the silver bars that were seized could be traced in species to any transaction which the Revenue required to establish in any proceedings. However, the answer to the same was in the negative. It is, thus, clear that the silver bars and the cash were seized only on the ground that it was 'unaccounted wealth' and not as any material which was to be relied upon in any proceedings under the Act.

57. Mr. Harpreet Singh has placed reliance on the decision of the Madhya Pradesh High Court in Kanishka Matta v. Union of India & Ors. (supra). In that case, the Division Bench at Indore had rejected the

prayer for release of ₹66,43,130/- that were seized from the premises of the petitioner. The Court held that the word 'things' as appearing in Sub-section (2) of Section 67 of the Act is required to be given wide meaning as per Black's Law Dictionary. The Court also referred to Wharton's Law and had noted that the word 'thing' is defined to include 'money'. In addition, the Court had also referred to a decision of the Supreme Court referring to the Heydon's Rule, and concluded that money was included in the word 'things'. With much respect to the Hon'ble Court and its opinion, we are unable to persuade ourselves to adopt the said view. As noted above, the power of search and seizure are drastic powers and are not required to be construed liberally. Further, we find that the legislative intent of permitting seizure of books or documents or things in terms of Subsection (2) of Section 67 of the Act is crystal clear and it does not permit seizure of currency or valuable assets, simply, on the ground that the same represent unaccounted wealth. The mischief rule or the Heydon's rule (propounded in the year 1584 in Heydon's case: 76 ER 637) requires a statute to be interpreted in the light of its purpose. The purpose of the Act is not to proceed against unaccounted wealth. The provision of Section 67 of the Act is also not to seize assets for recovering tax. Thus, applying the principle of purposive interpretation, the power under Section 67 of the Act cannot be read to extend to enable seizure of assets on the ground that the same are not accounted for.

58. It is also material to note that the show cause notice dated 10.11.2020 does not refer to any documents or material relied upon by the Revenue for proposing any such demand. According to Mr. Harpreet Singh, the said notice is not relevant as it is issued by State Authorities. He states that Central Tax Authorities have not issued any notice.

59. The aforesaid contention is unpersuasive as the demand under the said notice issued under Section 74 of the Act includes a demand of ₹6,05,225/- on account of Central Goods and Service Tax.

60. In terms of Sub-section (3) of Section 67 of the Act, the documents, books and things seized under Sub-section (2) which have not been relied upon for issuance of a notice, under the Act or Rules made thereunder, are required to be returned to the person from whom the such items were seized within a period not exceeding thirty days from the issuance of notice.

61. The notice dated 10.11.2020 proposes to raise a demand for the month of April, 2019 (which is prior to the date of the search). Although, Mr. Singh contended that the said notice is not a notice issued by the Central Authorities but he does not dispute that the said notice does not

rely on any of the items seized during the search operations conducted on 28.01.2020. Moreover, in the counter affidavit, it is alleged that "the petitioner had filed ineligible / bogus GST Input Tax Credit on the strength of fake / goodless invoices issued by various bogus / non-existent firms". Thus, it follows that the demand of CGST/SGST raised in the notice dated 10.11.2020 issued under Section 74 of the Act would take into account the said allegation. The notice under Section 74 of the Act does not specify any particular reasons to show that "Input Tax Credit has been wrongly availed or utilized". In the circumstances, we are unable to accept that the notice dated 10.11.2020 is not the "notice" as referred to under Sub-section (3) of Section 67 of the Act.

62. Thus, even if, it is accepted, which we do not, that the proper officer could seize the currency and other valuable assets in exercise of powers under Sub-section (2) of Section 67 of the Act, the same were required to be returned by virtue of Sub-section (3) of Section 67 of the Act because the silver bars and currency have not been relied upon in the notice issued subsequently.

63. In view of the above, the petition is allowed. The respondents are directed to forthwith release the currency and other valuable assets seized from the petitioner during the search proceedings conducted on 28.01.2020. It is, however, clarified that the respondents are not precluded from instituting or continuing any other proceedings under the Act in accordance with law. Nothing stated in this order shall be construed as an expression of opinion on the petitioner's liability to pay any tax, penalty or interest under the Act.

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

W.P.(C) 11629/2023

Bansal International ... Petitioner

Versus

Commissioner Of Dgst And Anr. ... Respondents

Judgement delivered on: 21.11.2023

WHETHER THE PERIOD FOR WHICH THE INTEREST IS PAYABLE UNDER SECTION 56 OF THE DGST ACT – WHICH IS SIMILARLY WORDED AS SECTION 56 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (HEREAFTER 'THE CGST ACT')

– COMMENCES FROM THE DATE IMMEDIATELY AFTER EXPIRY OF SIXTY DAYS FROM THE RECEIPT OF AN APPLICATION FOR REFUND OR FROM A LATER DATE, IN CASE THE REFUND IS INITIALLY DENIED BUT SUBSEQUENTLY ALLOWED BY THE APPELLATE AUTHORITY, APPELLATE TRIBUNAL, OR A COURT?

Held

The applications for refund filed pursuant to orders passed by the Appellate Authority, do not invite any fresh adjudication. The said applications are merely to implement the orders already passed. Sensu stricto, such application is only for the purposes of convenience and to retrigger the processing of the refund claimed. It is obvious that the petitioner's claim for refund cannot be subjected to repeated rounds of adjudication by the Adjudicating Authority. Once an application for refund under Section 54(1) of the CGST Act has been filed, the same requires to be carried to its logical conclusion. If the said claim is denied by the Adjudicating Authority and the applicant prevails before the Appellate Authority, the order of the Appellate Authority is required to be implemented. However, in one sense, the subsequent application filed by a person pursuant to succeeding before the Appellate Authority, is solely for the purposes of giving a nudge to the process of disbursal of the refund claim and for the proper officer to determine and disburse the interest as payable.

The petition is, accordingly, allowed. The impugned order is set aside. The Adjudicating Authority is directed to process the petitioner's application for refund filed on 16.05.2023, in accordance with this decision.

Present for the Petitioner	:	Mr Rajesh Jain, Mr Virag Tiwari, Mr K.J. Bhat & Mr Ramashish, Advocates.
Present for the Respondents	:	Mr Rajeev Aggarwal and Mr Aadish Jain, Advocates for R-1.

JUDGMENT

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning an order dated 11.07.2023 (hereafter '**the impugned order**') passed by the Additional Commissioner, Department of Trade and Taxes (hereafter 'the Adjudicating Authority'), whereby the petitioner's claim for interest of ₹13,12,761/- calculated at the rate of 9% per annum, on the refund of GST already granted, was rejected. The Adjudicating Authority referred to Section 56 of the Delhi Goods and Services Tax Act, 2017 (hereafter ' DGST

Act') and had held that in terms of the proviso to Section 56 of the DGST Act, interest was payable only if the refund was not made within sixty days from the receipt of the application filed pursuant to the order passed by the Appellate Authority. Since in the present case, the refund was processed within the period of sixty days from the date of such application, no interest was payable under Section 56 of the DGST Act.

2. According to the petitioner, the Adjudicating Authority has misinterpreted the provisions of Section 56 of the DGST Act. The petitioner claims that he is entitled to interest for the period immediately after the expiry of sixty days from the date of the first application for a refund and not after sixty days from the application filed after succeeding in his claim for refund before the Appellate Authority.

3. In view of the above, the principal controversy to be addressed is whether the period for which the interest is payable under Section 56 of the DGST Act – which is similarly worded as Section 56 of the Central Goods and Services Tax Act, 2017 (hereafter 'the CGST Act') – commences from the date immediately after expiry of sixty days from the receipt of an application for refund or from a later date, in case the refund is initially denied but subsequently allowed by the Appellate Authority, Appellate Tribunal, or a court.

4. Briefly stated, the context in which the aforesaid controversy arises is as under:

4.1. The petitioner (Arun Bansal) carries on business of export of goods in the name of its proprietorship concern, Bansal International. On 06.02.2020, the petitioner filed an application claiming a refund of Input Tax Credit (hereafter 'ITC') of ₹53,92,516/- (₹8,62,883/- Central GST, ₹8,62,883/- Delhi GST and ₹36,66,750/- Cess) in respect of goods exported without payment of tax in the month of November, 2019.

4.2. The petitioner's application for the refund was acknowledged on 30.07.2020 and on the same date, the concerned officer issued a Show Cause Notice (in form RFD-08) proposing to reject the petitioner's application for a refund on the ground that his claim was wrongful. Thereafter, the concerned officer passed an order dated 10.11.2020 sanctioning a refund of ₹1,08,293/- but rejecting the remaining refund claim of ₹52,84,223/- as not tenable under Section 62(2)(c) of the DGST Act.

4.3. The Adjudicating Authority found that there was no inward supply to M/s Suvidha Enterprises, which was the supplier from whom the petitioner claims to have received the supplies. This was on account of the non-

generation of E-way Bills. According to the petitioner, the finding that no supplies had been received by M/s Suvidha Enterprises was incorrect as one M/s U.K. Traders of West Bengal had supplied goods to M/s Suvidha Enterprises through Railways. The petitioner also contended that its claim could not be denied on account of any doubt as to the supplies received by M/s Suvidha Enterprises. The petitioner contended that since there was no dispute that it had paid taxes on input supplies received from its supplier (M/s Suvidha Enterprises), it was entitled for a refund of the same.

4.4. The petitioner filed an appeal before the Appellate Authority assailing the order dated 10.11.2020 to the extent that the petitioner's claim for refund was rejected.

4.5. The Appellate Authority found the appeal in favour of the petitioner. The petitioner's claim that one M/s U.K. Traders of Calcutta had supplied goods to M/s Suvidha Enterprises, Delhi through the Railways, was verified and confirmed by the Railways pursuant to a letter dated 09.09.2022, issued to the Chief Parcel Officer Northern Railways. The Appellate Authority also accepted the petitioner's contention that it was open for a taxpayer to discharge its tax obligations either in cash or through utilisation of ITC admissible in respect of such supplies. Accordingly, the Appellate Authority set aside the order dated 10.11.2020 passed by the Adjudicating Authority to the extent that it rejected the petitioner's claim for refund. The petitioner was directed to file an application for fresh refund and the Adjudicating Authority was directed to process the petitioner's application in accordance with the timeline as prescribed in the CGST/DGST Act and the Central Goods & Services Tax Rules, 2017 (hereafter 'the Rules'). The petitioner's claim for interest was denied.

4.6. On 23.11.2022, the petitioner once again filed an application (in RFD-01) for the refund of ₹52,84,223/- as well as the interest. Pursuant to the said application, the Adjudicating Authority passed an order dated 28.12.2022 sanctioning a refund of balance amount of ₹52,84,223/- . However, the Adjudicating Authority did not sanction any amount on account of interest on the said amount. Thus, the petitioner's claim for refund was allowed in entirety but interest on the said amount was denied.

4.7. The amount of ₹52,84,223/- was credited into the petitioner's account on 03.01.2023. The petitioner once again filed an application on 16.05.2023 claiming an interest of ₹13,12,761/- computed at the rate of 9% per annum on refund already granted (Central GST = ₹2,09,120/, Delhi GST = ₹2,09,120/- and Cess = ₹8,94,521/-). The said application was rejected by the impugned order.

5. The petitioner has filed the present petition, inter alia, assailing the impugned order dated 11.07.2023 as well as the order dated 28.12.2022. The petitioner also impugns orders allocating the jurisdiction to the Additional/Special Commissioner to act as an Appellate Authority. However, the petitioner had confined the present petition to the denial of its claim of interest on the refund pertaining to the tax period, November, 2019.

6. At the outset, it would be relevant to refer to Section 56 of the CGST Act (which is identically worded as Section 56 of the DGST Act). The said Section reads as under:

> "56. **Interest on delayed refunds.** — If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:
>
> Provided that where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.
>
> Explanation. —For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)."

7. In terms of Section 54(1) of the CGST Act, any person claiming refund of tax and any interest paid on such tax or any other amount paid by him can make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. If his refund as ordered, is not paid within a period of sixty days from the date of the

application, the applicant is required to be paid interest not exceeding 6% per annum from the date immediately after the expiry of sixty days from the date of receipt of the said application.

8. Sub-section (4) of Section 54 of the CGST Act requires the said application for refund to be accompanied by such documentary evidence as may be prescribed to establish that a refund is due to the applicant and such documentary or other evidence to establish that the incidence of tax and interest claimed has not been passed on to any other person. Sub-section (1) and Sub-section (4) of Section 54 of the CGST Act are relevant and are set out below:

"54. Refund of tax.–

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

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed."

** ** ** ** **

(4) The application shall be accompanied by-

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person."

9. Chapter X of the Rules contains provisions regarding refund. Rule 89 of the Rules stipulates that an application for refund would be made electronically in form GST RFD-01 through common portal either directly or through a facilitation centre notified by the Commissioner.

10. Sub-rule (2) of Rule 89 of the Rules prescribes the documents required to be filed to establish that a refund is due to the applicant. Sub-rule (2) of Rule 89 of the Rules is set out below:

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

(1) xxx xxx xxx

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

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

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

(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled 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) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward

Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

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

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

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

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

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

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

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

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

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

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

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

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

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

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

Explanation. - For the purposes of this rule-

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

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

11. Sub-rule (3) of Rule 89 of the Rules provides that before making an application relating to refund of ITC, the applicant would debit the electronic credit ledger by an amount equal to the refund claimed. Sub-rule (4) of Rule 89 of the Rules relates to computation of the refund payable in case of zero-rated supplies, without payment of tax.

12. Rule 90 of the Rules stipulates that an acknowledgement of an application for refund would be issued in Form GST RFD-02 and the period of sixty days within which a proper officer is required to make an order in respect of the application, as prescribed under Section 54(7) of the CGST Act, would be reckoned from the date of issuance of the acknowledgment. Sub-rules (1), (2) and (3) of Rule 90 of the Rules are set out below:

"Rule 90. Acknowledgement. -

(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who

shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under subsection (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."

13. It is apparent from the scheme of the CGST Act that an order in respect of an application for refund is required to be made within a period of sixty days from the date of receipt of an application, complete in all respects.

14. The provisions of Section 56 of the CGST Act read with the provisions of Sections 54(7) and 54(8) of the CGST Act makes it amply clear that an applicant would be entitled to interest on the amount of refund due for the period commencing from the date immediately after the expiry of sixty days from the date when an application (complete in all respects) has been received and acknowledged by the proper officer.

15. The petitioner's entitlement for interest cannot be defeated merely because the proper officer passed an incorrect order, which is subsequently rectified in the appellate proceedings.

16. In terms of Section 107 of the CGST Act, any person aggrieved by any decision or an order passed by an Adjudicating Authority under the CGST Act, the SGST Act or the UT CGST Act may appeal to the Appellate Authority within a period of three months from the date of communication of the said order. It is well settled that the appellate proceedings are in continuation of the original proceedings. In terms of Sub-section (11) of

Section 107 of the CGST Act, the Appellate Authority is required to pass such orders as it thinks fit and proper confirming, modifying, annulling the decision or the order appealed against. It is also specifically provided that the Appellate Authority shall not refer the case back to the Adjudicating Authority that has passed the decision or the order. Similarly, Section 112 of the CGST Act entitles any person aggrieved by an order passed under Sections 107 or 108 of the CGST Act (by the Appellate Authority or the revisional authority) to appeal to the Appellate Tribunal. Section 117 of the CGST Act provides an appeal to a High Court against any order passed by the Appellate Tribunal if the case involves a substantial question of law.

17. It is relevant to note that the appellate proceedings are in continuation of the original proceedings[1] and an order passed by the Adjudicating Authority would stand merged with the order passed by the Appellate Authority or the Appellate Tribunal/High Court. Once a person has triggered the proceedings for claiming refund by filing an application under Section 54(1) of the CGST Act along with all relevant documents as specified under Section 54(4) of the CGST Act read with Rule 89(2) of the Rules, which are acknowledged in terms of Rule 90 of the Rules, and his claim is ordered but not paid within a period of sixty days, his entitlement to interest is crystalised. In case where the claim initially is denied by the Adjudicating Authority but subsequently ordered by the Appellate Authority, Appellate Tribunal or the court, the said orders are deemed to be the orders passed under Section 54(5) of the CGST Act. This is expressly stipulated in the Explanation to Section 56 of the CGST Act. It is obvious that the right to receive interest would arise only if the refund is ordered under Section 54 of the CGST Act. The period for which the interest is to be calculated would commence from the date immediately after the expiry of sixty days from the date of the refund application.

18. Mr Rajeev Aggarwal, learned counsel appearing for the Revenue had contended that the grant of interest was not a matter of equity and therefore, is required to be granted strictly in accordance with the statute. He submitted that Rule 89(2) of the Rules, inter alia, provides that the person seeking refund must file an application accompanied by an order passed by the proper officer, or the Appellate Authority or the Appellate Tribunal or the court resulting in such refund. He submitted that Clause (a) of Sub-rule (2) of Rule 89 of the Rules made it clear that a separate application was required to be filed in case the claim of refund was allowed by the Appellate Authority, Appellate Tribunal or the court as the case may

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1 ***State of Kerela v. K.M Charia Abdullah & Co****: AIR 1965 SC 1585;* ***Gojer Bros Pvt Ltd v Ratan Lal Singh****: (1974)* 2 SCC 453.

be. He submitted that proviso to Section 56 of the CGST Act read with Rule 89(2)(a) of the Rules makes it clear that the interest would run from the date immediately after expiry of sixty days from the date of an application filed pursuant to the order passed by the Appellate Authority, Appellate Tribunal or the court.

19. We are unable to accept the said contention. There is no cavil that the taxpayer's right to interest is circumscribed by the text of the statutory provisions. It is also not the petitioner's case that he is entitled to interest in equity and in disregard of the provisions of Section 56 of the CGST Act.

20. As stated at the outset, the controversy essentially relates to the interpretation of Section 56 of the CGST Act. A plain reading of the main provision of Section 56 of the CGST Act clearly indicates that an applicant would be entitled to interest from the date immediately after expiry of sixty days from the date of receipt of application under Sub-section (1) of Section 54 of the CGST Act. Thus, on a plain reading of Section 56 of the CGST Act, the petitioner's entitlement to interest was required to be reckoned from the date of receipt of the application under Section 54 of the CGST Act. This, obviously, refers to the first application for refund, which is required to be made within a period of two years from the 'relevant date' as defined under Explanation (2) of Section 54 of the CGST Act.

21. The assumption that any application for the refund filed pursuant to any orders passed by the Appellate Authority, Appellate Tribunal or the court is required to be considered as a fresh application under Section 54(1) of the CGST Act, is clearly unmerited. This is apparent when one considers that an application under Section 54(1) of the CGST Act is required to be made within a period of two years from the relevant date. The logical sequitur of the Revenue's contention is that the period spent by the taxpayer in pursuing its appellate remedies would also be disregarded for the purposes of calculating the period of two years within which an application is required to be made under Section 54(1) of the CGST Act. Resultantly, the taxpayer would be denied its claim for refund altogether in cases where the first application for refund was made within the stipulated period of two years from the relevant date (as defined under explanation to Section 54 of the CGST Act) but the proceedings before the appellate forum had carried on beyond the said period. This is, plainly, unacceptable, and therefore, the assumption that the application filed after the appellate orders is required to be treated as a fresh application is clearly flawed.

22. It is well settled that an interpretation of a statute that leads to an absurd result must be eschewed. A statute must be interpreted to further

its object. The object of providing a period of limitation is clearly to deny the remedies to a person who has not availed the same within the period as stipulated. The rationale is that matters must rest finally within a defined period of time. Thus, the applicant cannot be denied interest on account of the time involved in appellate fora.

23. It is also well settled that an interest is a measure to compensate a person for denial of funds. In ***Union of India Through Director of Income Tax v. M/s Tata Chemicals Ltd.***[2], the Supreme Court had observed as under:

> "38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing Statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course."

24. It is also well settled that where a statute specifies or regulates the payment of interest, it would be payable in terms of the statute. But where the statute is silent and the payment of interest is not proscribed, the court would award reasonable interest on equitable grounds[3].

25. The object of providing payment of interest after the expiry of sixty days from the date of the refund application is to ensure that a taxpayer is

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2 (2014) 6 SCC 335

3 ***Modi Industries Ltd., Modi Nagar & Ors. v. Commissioner of Income Tax, Delhi & Anr:*** *(1995) 6 SCC 396;* ***Godavari sugar Mills Ltd. v. State of Maharashtra & Ors.:****(2011) 2 SCC 439;* ***Union of India & Ors. v. Willowood Chemicals Pvt Ltd. & Anr.*** *(2022) 9 SCC 341*

adequately compensated for denial of the funds that were legitimately due to it after accounting for a reasonable period of sixty days for processing its claim. The right of a taxpayer to receive such compensation would be severally diluted if the reference to the date of receipt of application under Section 54(1) of the CGST Act, in Section 56 of the CGST Act is construed to mean the date of an application for refund filed subsequently – that is, after the first application for refund is rejected in whole or in part – pursuant to the orders passed by the appellate fora.

26. We are of the view that on a plain reading of the main provisions of Section 56 of the CGST Act, a taxpayer would be entitled to interest from the date immediately after the expiry of sixty days from the receipt of the first application under Section 54(1) of the CGST Act, which is accompanied by the documents as specified under Section 54(4) of the CGST Act read with Rule 89 of the Rules.

27. We are also unable to accept that the proviso to Section 56 of the CGST Act in any manner dilutes the right of a taxpayer to receive interest under the main provisions of Section 56 of the CGST Act. It is well settled that a provsio to a clause must be read in the context of the main clause and not as a separate or an independent clause. The main clause and the proviso must be read as a whole.

28. In *Dwarka Prasad v. Dwarka Das Saraf*[4]*, V. R. Krishna Iyer, J.* observed that:-

> "18. ….The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (Thompson v. Dibdin, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

4 (1976) 1 SCC 128

"The proper course is to apply the broad general Rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (Maxwell on Interpretation of Statutes, 10th Edn., p. 162)"

29. In Union of India & Ors. v. VKC Footsteps (India) (P) Ltd.[5], the Supreme Court had observed as under:-

"91. Provisos in a statute have multi-faceted personalities. As interpretational principles governing statutes have evolved, certain basic ideas have been recognised, while heeding to the text and context. Justice G.P. Singh, in his seminal text, Principles of Statutory Interpretation [Justice G.P. Singh, Principles of Statutory Interpretation, (14th Edn., Lexis Nexis, 2016) pp. 215-234.] formulates the governing principles of interpretation which have been adopted by courts while construing a statutory proviso. The first rule of interpretation is that:

"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As stated by Lush, J. [Mullins v. Treasurer of the County of Surrey, (1880) LR 5 QBD 170] : (QBD p. 173) '… When one finds a proviso to the section, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso.' In the words of Lord Macmillan [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7]: (SCC OnLine PC) '… The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.' The proviso may, as Lord Macnaghten [Local Govt. Board v. South Stoneham Union, 1909 AC 57 (HL)] laid down, be 'a qualification of the preceding enactment which is expressed in terms too general to be quite accurate' (AC p. 62). The general rule has been stated by Hidayatullah, J. [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] , in the following words : (AIR p. 1600,

5 (2022) 2 SCC 603

para 9) '9. … As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule.' And in the words of Kapur, J. [CIT v. Indo-Mercantile Bank Ltd., AIR 1959 SC 713] : (AIR p. 717, para 9) '9. … The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment.…'"

92.2. A proviso is construed in relation to the subject-matter of the statutory provision to which it is appended:

"The language of a proviso even if general is normally to be construed in relation to the subject-matter covered by the section to which the proviso is appended. In other words, normally a proviso does not travel beyond the provision to which it is a proviso. 'It is a cardinal rule of interpretation', observed Bhagwati, J. [Ram Narain Sons Ltd. v. CST, AIR 1955 SC 765, p. 769, para 10] , 'that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'" [Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn., Lexis Nexis, 2016) p. 221.]

92.4. An effort should be made while construing a statute to give meaning both to the main enactment and its proviso bearing in mind that sometimes a proviso is inserted as a matter of abundant caution:

"The general rule in construing an enactment containing a proviso is to construe them together without making either of them redundant or otiose. Even if the enacting part is clear effort is to be made to give some meaning to the proviso and to justify its necessity. But a clause or a section worded as a proviso, may not be a true proviso and may have been placed by way of abundant caution." [Id, p. 226.]

30. Thus, the proviso to Section 56 of the CGST Act must not be read as replacing the main clause or diluting its import; it merely addresses a situation which is covered by the main clause.

31. It is important to note that the rate of interest as specified in the main provision of Section 56 of the CGST Act and the proviso to Section 56 of the

CGST Act is materially different. Whereas, the main provision of Section 56 of the CGST Act provides for an interest at the rate not exceeding 6% per annum, the proviso to Section 56 of the CGST Act stipulates interest at the rate not exceeding 9% per annum.

32. The learned counsel also informed this Court that the interest at the rate of 6% per annum and 9% per annum has been notified for the purposes of Section 56 of the CGST Act and the proviso to the said section, respectively. Thus, there are two separate rates of interest specified under Section 56 of the CGST Act. The interest at the rate of 6% is payable for the period commencing from a date immediately after expiry of sixty days from the date of an application under Section 54(1) of the CGST Act, however, this rate is enhanced for the period covered under the proviso to Section 56 of the CGST Act. The proviso to Section 56 of the CGST Act expressly provides that an interest at the rate of 9% per annum would be payable from the date immediately after the expiry of sixty days from the receipt of an application, which is filed as a consequent to an order passed by the Appellate Authority, Adjudicating Authority, Appellate Tribunal or a court that has attained finality. This clearly indicates that if a person's claim for refund is a subject matter of further proceedings, which finally culminate in orders upholding the applicant's entitlement, and yet the payment is not made within a period of sixty days from an application filed pursuant to such orders, the person is required to be compensated at a higher rate of interest, of 9% per annum. This higher rate of interest would run from the date immediately after the expiry of sixty days of the filing of such an application – that is, the application filed pursuant to the orders of the appellate fora and not the first application.

33. It is clear from a plain reading of Section 56 of the CGST Act that whereas the main provision of Section 56 of the CGST Act refers to the rate of interest applicable on the amount of refund due, which remains unpaid even after sixty days from the date of application for refund; the proviso provides for an increased rate of interest for the period that commences from the date immediately after the expiry of sixty days from the date of application which is filed pursuant to the claim for refund attaining finality in appellate proceedings. Section 56 of the CGST Act, thus, works as follows. The applicant claiming a refund is entitled to interest at the rate of 6% per annum from a date immediately after the expiry of sixty days from making an application under Section 54(1) of the CGST Act. However, if a person's claim is denied (or if granted is not accepted by the Revenue) and the order of the Adjudicating Authority is carried in appeal to the Appellate

Authority or to the Appellate Tribunal/High Court, which finally upholds the claim, the applicant may have to file a second application to secure the refund. If such application for refund filed by the person consequent to succeeding before the Appellate Authority, Appellate Tribunal or court, is not processed within a period of sixty days of filing the application, the applicant would be entitled to a higher rate of 9% per annum commencing from the date immediately after the expiry of sixty days of his application filed pursuant to the appellate orders. However, this does not mean that the rate of 6% per annum is not payable for the period commencing from the date immediately after expiry of sixty days from his first application till sixty days after filing of his second application pursuant to the appellate orders. In another words, the proviso merely enhances the interest payable to a person for the period commencing from the date immediately after sixty days from the date of his application filed pursuant to its entitlement to refund claim attaining finality.

34. The applications for refund filed pursuant to orders passed by the Appellate Authority, do not invite any fresh adjudication. The said applications are merely to implement the orders already passed. Sensu stricto, such application is only for the purposes of convenience and to retrigger the processing of the refund claimed. It is obvious that the petitioner's claim for refund cannot be subjected to repeated rounds of adjudication by the Adjudicating Authority. Once an application for refund under Section 54(1) of the CGST Act has been filed, the same requires to be carried to its logical conclusion. If the said claim is denied by the Adjudicating Authority and the applicant prevails before the Appellate Authority, the order of the Appellate Authority is required to be implemented. However, in one sense, the subsequent application filed by a person pursuant to succeeding before the Appellate Authority, is solely for the purposes of giving a nudge to the process of disbursal of the refund claim and for the proper officer to determine and disburse the interest as payable.

35. In *SBI Cards & Payment Services Ltd. v. Union of India*[6], the Division Bench of Punjab and Haryana High Court had interpreted Section 56 of the CGST Act in a similar manner as is evident from the chart setting out the computation of interest, which was accepted by the Court. Paragraph 12 of the said decision, which sets out the computation of the interest payable to the petitioner in that case is set out below:

6 CWP-1851/2022 decided on 06.01.2023

"12. The Chart (Annexure P-3) indicating the delay in days is as follows:-

Sl. No.	Particulars	Amount in Rs.
1	Date of filing of refund application via Form GST RFD-01A (ARN No. AA060419007521I)	5-Apr-19
2	Amount of refund claimed	1,084,122,958
3	Interest rate u/S 54 proviso & Notification No. 13/2017 - Central Tax dated 28 June 2017	6%
4	60 days from filing of refund application	4-June-19
5	Date of filing of refund application via Form GST RFD -01A (ARN No.AA0610210489594) against High Court Order	28-Oct-21
6	60 days from filing of refund application against high court Order	27-Dec-21
7	Actual Date of Refund	4-Jan-22
8	Period of Interest upto 27 Dec 21	937
9	Interest amount up to 60 days of refund application against high court order	166,984,638
10	Interest rate u/S 56 proviso	9%
11	Additional Interest amount after 60 days of refund application against high court order	2,138,544
	Total Interest	1,69,123,181
	CGST 84,561,591	
	SGST 84,561,591"	

36. The petition is, accordingly, allowed. The impugned order is set aside. The Adjudicating Authority is directed to process the petitioner's application for refund filed on 16.05.2023, in accordance with this decision.

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Yashwant Varma & Dharmesh Sharma, JJ]

W.P.(C) 5820/2022

ITD-ITD CEM JV ... Petitioner

Through : Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Sanjay Sharma and Mr. Ramashish, Advs.

versus

Commissioner of Delhi Goods And Services Tax ... Respondent

Through : Mr. Anuj Aggarwal, ASC, GNCTD along with Ms. Ayushi Bansal and Ms. Arshya Singh, Advs.

W.P.(C) 8352/2022 and CM APPL. 25160/2022 (Stay)

ITD-ITD CEM JV ... Petitioner

Through : Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Sanjay Sharma and Mr. Ramashish, Advs.

versus

Commissioner of Delhi Goods And Services Tax ... Respondent

Through : Mr. Anuj Aggarwal, ASC, GNCTD along with Ms. Ayushi Bansal and Ms. Arshya Singh, Advs.

Date of Order : 26.09.2023

The petitioner questions the jurisdiction of the OHA to commence hearing on those objections in light of the provisions contained in Section 74(9) of the DVAT Act and which embodies a legal fiction bidding us to hold that the objections submitted by an assessee would be deemed to have been allowed consequent to a failure of the OHA to dispose them of within a period of 15 days when computed as commencing from a written notice that may be submitted in terms of Section 74(8) of the DVAT Act.

The respondents have sought to adjust the amount of tax together with interest and penalty as was held to be due for FY 2010-2011 as well as a demand that stood raised for the first quarter of FY 2017-2018. The aforesaid adjustment is assailed with the petitioner contending that by the time the aforesaid adjustment came to be made, the OHA stood deprived of the jurisdiction to consider the objections in light of Section 74(9) of the Act. In the alternative and without prejudice to the above, it was submitted that even if it were to be assumed that the objections for FY 2010-2011were pending before the OHA, the provisions of Section 35(2) of the Act would apply and consequently, in the absence of an enforceable demand existing, no adjustment could have been made in light of Section 38(3)(a)(ii) of the Act.

Held

The objections tendered by the petitioner before the OHA remain pending on its board. The demand for the first quarter of FY 2017-2018 is clearly rendered unenforceable and could not have been adjusted against the refund as claimed by the petitioner for the first quarter of FY 2016-2017. This aspect is clearly covered by the decision in Flipkart.

We accordingly allow the instant writ petitions and quash the Hearing Notice dated 24 May 2022. The Refund Order of 29 April 2022 shall for reasons aforenoted stand set aside to the extent that it adjusts an amount of Rs. 13,60,14,547/-. The petitioner is held entitled to all consequential reliefs.

O R D E R

1. These two writ petitions were, with the consent of parties, heard together and are being disposed of in terms of the present common order. The principal question arises from W.P.(C) 8352 of 2022 with W.P.(C) 5820 of 2022 being limited to the framing of an appropriate direction commanding the respondents to refund the amounts claimed along with interest as per the return which was submitted by the petitioner for the first quarter of Financial Year[1] 2016-2017 under the relevant provisions of the Delhi Value Added Tax Act, 2004[2].

2. For the purposes of delineation of the issues which arise, we deem it apposite to reproduce the reliefs which are claimed in W.P.(C) 8352 of 2022 and which read as follows:-

> "a) quash and set aside the impugned hearing notice dated 24.5.2022 issued by the Spl. Commissioner-I for the same being non-est and without the authority of law;
>
> b) declare and hold that the deeming fiction as envisaged u/s 74(9) had come into play on the failure of the OHA to make the decision against the objections of 2010-11 within a period of 15 days form the service of notice in DVAT-41 on 4.5.2022;
>
> c) set aside the demand of tax and interest of Rs.8,80,89,920/- and penalty of Rs. 4,66,96,421/- as framed through DVAT-24 & DVAT-24A respectively on 29.3.2017; d) set aside the adjustment

1 FY

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of Rs.13,47,86,341/- made in the refund order issued in DVAT-22 on 29.4.2022 in consequence of coming into play of Sec 74(9);

e) held and declare the petitioner to be entitled to refund of Rs.13,47,86,341/- along with interest which has been adjusted while granting refund for the first quarter of 2016-17;"

3. As would be manifest from the aforesaid reliefs, the first challenge is laid to a Hearing Notice dated 24 May 2022 and which pertains to the objections which were filed by the petitioner before the Objection Hearing Authority[3] in respect of the Assessment Order dated 29 March 2017 framed for FY 2010-2011. Those objections are stated to have been filed on or about 29 May 2017. The petitioner questions the jurisdiction of the OHA to commence hearing on those objections in light of the provisions contained in Section 74(9) of the Act and which embodies a legal fiction bidding us to hold that the objections submitted by an assessee would be deemed to have been allowed consequent to a failure of the OHA to dispose them of within a period of 15 days when computed as commencing from a written notice that may be submitted in terms of Section 74(8) of the Act.

4. The petitioner additionally challenges the Refund Order dated 29 April 2022 and which has while disposing of the Refund Application dated 23 December 2017 made in connection with a return which was submitted for the first quarter of FY 2016-2017 adjusted an amount of Rs. 13,60,14,547/-. The details of that adjustment have been disclosed by the respondents themselves in their affidavit filed in W.P.(C) 5820 of 2022 and the tabular statement so set out in their affidavit is reproduced herein below:-

S. No.	Period	Tax + Interest	Penalty
1.	Annual 2010-11 Annexure R-3 (Colly)	Rs.8,80,89,920/-	Rs.4,66,96,421/-
2.	1st Quarter, 2017-18 Annexure R-4	Rs.12,28,206/-	NA
	Total	Rs.13,60,14,547/-	

5. As would be manifest from the aforesaid table, the respondents have sought to adjust the amount of tax together with interest and penalty as was held to be due for FY 2010-2011 as well as a demand that stood raised for the first quarter of FY 2017-2018. The aforesaid adjustment is assailed with the petitioner contending that by the time the aforesaid adjustment came to be made, the OHA stood deprived of the jurisdiction to consider the

3 OHA

objections in light of Section 74(9) of the Act. In the alternative and without prejudice to the above, it was submitted that even if it were to be assumed that the objections for FY 2010-2011were pending before the OHA, the provisions of Section 35(2) of the Act would apply and consequently, in the absence of an enforceable demand existing, no adjustment could have been made in light of Section 38(3)(a)(ii) of the Act.

6. We note that insofar as the first submission is concerned, the petitioner also seeks to draw sustenance from the judgment rendered by the Court in Combined Traders v. Commissioner of Trade and Taxes[4] and which had interpreted the statutory fiction as constructed in terms of Section 74(9) of the Act as well as the procedure liable to be followed in light of Section 74(8) of the Act.

7. For the purposes of answering the questions that stand posited, the following essential facts may be noticed. An Assessment Order for FY 2010-2011 came to be framed on 29 March 2017. The said assessment order created a total demand of Rs. 13,47,86,341/- which represented the assessed liability towards tax along with interest and penalty payable. The petitioner is stated to have filed objections before the OHA in respect of the said assessment order on 29 May 2017. Undisputedly, those objections had not been disposed of by the Commissioner at least till the issuance of the Hearing Notice dated 24 May 2022 which stands impugned in W.P.(C) 8352 of 2022. It becomes pertinent to note that while the said objections remained pending, the petitioner is stated to have served a notice bringing to the attention of the Commissioner that the objections dated 29 May 2017 had not been decided and thus seeking to place the said authority on notice of its obligation to decide and dispose of the same within a period of 15 days therefrom. The aforesaid notice is stated to have been deposited with the Central Resources Unit[5] of the respondents on 04 May 2022. The submission of that notice is fortified from a perusal of the endorsement which appears on that notice and finds reference at page 54 of the digital record of the Court. According to the petitioner, the period of 15 days must thus be computed from 04 May 2022 and since the notice of hearing came to be issued after the expiry of the said period, the objections dated 29 May 2017 would be deemed to have been duly accepted and the demand as raised in terms of the assessment order being effaced.

8. The respondents undisputedly appear to have adjusted the tax demand which stood created for FY 2010-2011 despite the aforesaid

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admitted position which emerges from the record. The second adjustment which has been made in the Refund Order of 29 April 2022 relates to a demand of tax which stood raised for the first quarter of FY 2017-2018 and emanates from an Assessment Order which was drawn on 01 September 2021. The respondents do not dispute the fact that the petitioner had assailed the said assessment by filing objections before the OHA on 01 October 2021. The fact that the said objections are pending before the OHA is neither denied nor questioned by the respondents in these proceedings.

9. The pendency of objections before the OHA and its resultant impact would have to be considered bearing in mind the provisions of Section 35(2) of the Act, which is extracted hereinbelow:-

> **—35 Collection of assessed tax and penalties**
>
> (2) Where a person has made an objection to an assessment or part of an assessment and has complied with the condition, if any, to entertain such objection in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of balance amount in dispute under that assessment until the objection is resolved by the Commissioner."

10. As is manifest from a reading of sub-section (2) of Section 35, till such time as objections are disposed of by the OHA, the tax liability in dispute cannot be enforced. The significance of the procedure as structured in terms of Section 35 of the Act was highlighted by this Court in its decision in *Flipkart India Private Limited v. Value Added Tax Officer, Ward 300 & Ors.*[6] and where the legal position was explained as under:-

> "41. The respondents also cannot possibly seek to justify the retention of the refund claim on account of the default assessment notices which were issued on 15 May 2014 and 07 June 2014. This since the petitioner had duly filed objections before the OHA and in terms of Section 35(2) of the DVAT Act, and the demand as raised in terms thereof could not have been enforced.
>
> 42. We note that Section 38(2) of the DVAT Act uses the expression "recovery of any other amount due under this Act". The Commissioner in terms of Section 38(2) is thus entitled to apply any amount found to have been paid by an assessee in excess of the amount due from him before making a refund only

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if there exists an enforceable demand against that assessee. As is manifest on a conjoint reading of Section 35(2) and 38(2) of the DVAT Act, as long as objections remain pending with the OHA, any amount claimed by the respondents would clearly not answer the description of an amount due or payable as contemplated under Section 38(2). This is also evident from the exposition of the legal position in Bhupendra Auto International.

xxx xxx xxx

46. There thus existed no justification for the respondents adjusting the sum of Rs. 10,74,67,218/- on 03 December 2018. This since evidently the objections were yet to be disposed of by the OHA on that date. We thus find ourselves unable to sustain the stand as taken by the respondents and observe that they clearly acted in flagrant violation of the mandate of Section 38 of the DVAT Act. The writ petitioner is thus entitled to the grant of the writs as prayed for."

11. We, in *Flipkart* also had an occasion to construe the scope and ambit of Section 38(3) of the Act as also the meaning to be ascribed to the phrase —any other amount due" as appearing in sub-section (2) thereof. For the sake of clarity, we extract Section 38 hereunder:-

"38. Refunds

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

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

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

(a) refunded to the person,—

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

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

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

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

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

(6) The Commissioner shall grant refund within 15 days from the date the dealer furnishes the security to his satisfaction under subsection (5).

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

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

(b) furnish the additional information sought under Section 59; or (c) furnish returns under Section 26 and Section 27; or

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

(8) Notwithstanding anything contained in this section, where—

(a) a registered dealer has sold goods to an unregistered person; and

(b) the price charged for the goods includes an amount of tax payable under this Act;

(c) the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section; no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

(9) Where—

(a) a registered dealer has sold goods to another registered dealer; and

(b) the price charged for the goods expressly includes an amount of tax payable under this Act, the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.

(10) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

(11) Notwithstanding anything contained to the contrary in subsection (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act."

12. On due consideration of the import of the said provision, we had in Flipkart held that where a refund is claimed and stands embedded in the self-assessment form which is submitted, the respondents are liable to release the amount as claimed within two months from the date when the return is furnished in a situation where the assessee submits return on a quarterly basis. Undisputedly it is the provisions of Section 38(3)(a)(ii) of the Act which apply to the petitioner here.

13. We had also explained the ambit of Section 38(2) of the Act and held that an adjustment against a refund claim could only be made in

respect of a tax demand which is —due‖ and —enforceable‖. On a conjoint reading of the said provision along with Section 35(2) of the Act, we had ultimately come to conclude that till such time as objections are pending before the OHA, the tax demand cannot be said to have —crystalised‖ so as to be adjusted against the refund as claimed.

14. In the facts of the present case we find that not only have adjustments been made contrary to the mandate of Section 38 of the Act, the demand as raised for FY 2010-2011 and which has been adjusted against the refund as claimed is additionally liable to be set aside on grounds resting on the provisions contained in Section 74 of the Act.

15. Section 74 of the Act stands framed in the following terms:-

—74 Objections

(1) Any person who is dis-satisfied with –

(a) an assessment made under this Act (including an assessment under section 33 of this Act); or

(b) any other order or decision made under this Act; may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner;

PROVIDED that no objection may be made against a non-appealable order as defined in section 79 of this Act:

PROVIDED FURTHER that no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid failing which the objection shall be deemed to have not been filed:

PROVIDED ALSO that the Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained.

PROVIDED ALSO that only one objection may be made by the person against any assessment, decision or order.

PROVIDED ALSO that in the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended.

PROVIDED ALSO that no objection shall be made to the Commissioner against an order made under section 84 or section

85 of this Act if the Commissioner has not delegated his power under the said sections to other Value Added Tax authorities.

(2) A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or order, or undertake any other procedure under this Act, within six months after a request in writing was served by the person, may make an objection against such failure.

(3) An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.

(4) The objection shall be made –

(a) in the case of an objection made under sub-section (1) of this section, within two months of the date of service of the assessment, or order or decision, as the case may be,; or

(b) in the case of an objection made under sub-section (2) of this section, no sooner than six months and no later than eight months after the written request was served by the person:

PROVIDED that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

(5) The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any other document or information as may be relevant:

PROVIDED that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

(6) Where a person has requested a hearing under sub-section (5) of this section and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person.

(7) Within three months after the receipt of the objection, the Commissioner shall either –

(a) accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or

(b) refuse the objection or the remainder of the objection, as the case may be; and in either case, serve on the person objecting, a notice in writing of the decision and the reasons for it, including a statement of the evidence on which it is based:

PROVIDED that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

PROVIDED FURTHER that the person may, in writing, request the Commissioner to delay considering the objection for a period of up to three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

(8) Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within fifteen days.

(9) If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-section (8) of this section, then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.

(10) Where on the date of commencement of this Act a dispute under the Delhi Sales Tax Act, 1975 (43 of 1975) has been pending before a sales tax authority referred to in section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975), the dispute shall be disposed of within a period of [ten] years from the date of the commencement of this Act.

(11) Where the dispute referred to in sub-section (10) of this section has not been decided within the time required, the dispute shall be deemed to have been resolved in favour of the dealer."

16. In terms of sub-section (8) of Section 74, where objections have remained pending for a period of 5 months [the maximum time frame as

prescribed by Section 74(7)], the assessee may serve a written notice apprising the Commissioner of the aforesaid circumstance and calling upon him to render a decision within 15 days.

17. In terms of Section 74(9), if the Commissioner fails to dispose of the objections by the end of the period of 15 days after being placed on notice, the objections would be deemed to have been allowed. This position was lucidly explained by the Division Bench of the Court in Combined Traders in the following terms:-

> "22. Mr. Jain also placed reliance on the decision of this Court in CST v. Behl Construction (2009) 21 VST 261 (Del) in support of his plea that the fifteen day period in terms of Section 74(8) of the DVAT Act was the mandatory time limit and if an order was not passed within that period the objection would be deemed to have been accepted. Mr. Jain submitted that the time limit under Section 34(2) of the DVAT Act, which provides that the Commissioner may make an assessment of tax within one year after the date of the decision of the Appellate Tribunal or Court, would not apply in the instant case. In the Petitioner's case the re-assessment order was of 8th January, 2018 which had not been disturbed by this Court while remanding the matter to the OHA on 28th September, 2018. All that the OHA was required to do was to dispose of the objections under Section 74 of the Act. The order that had been set aside by this Court was the one dated 17th May, 2018 of the OHA passed under Section 74(7) of the Act.
>
> 23. In reply, Mr. Shadan Farasat, learned counsel for the Respondent, first submitted that after the order dated 17th May, 2018 had been passed by the OHA rejecting the earlier objections, the question of three months period again reviving in terms of Section 74(6) read with Section 74(8) did not arise. According to him, after the order dated 28th September, 2018 of this Court restoring the Petitioner's objections to the file of the OHA for a fresh disposal, there was no time limit as such for the OHA to dispose of the objections.
>
> 24. This Court is unable to agree with the above submissions of Mr. Farasat.
>
> xxx xxx xxx
>
> 28. Learned counsel for the Petitioner is right in his contention that this three-months period not having been adhered to, the procedure under Section 74(8) of the DVAT Act would kick in. The

Respondent has not controverted the assertion of the Petitioner that despite best efforts service of notice under DVAT-41 could not be effected in person on the OHA and was ultimately served on the Commissioner on 4th January 2019. Admittedly, the objections were not decided within fifteen days from that date.

29. Mr. Farasat next submitted that the Petitioner had not complied with Section 74(8) of the DVAT Act since the notice under DVAT-41 was not served _in person' on the OHA but on the Commissioner. He submitted that unless the conditions for applicability of Section 74(8) of the DVAT Act read with Rule 56 of the DVAT Rules are fulfilled, it cannot be invoked and in support thereof relied on the decision in Mancheri Puthusseri Ahmed v. Kuthiravattam Estate Receiver (1996) 6 SCC 185.

30. The above submission appears to overlook the fact that the Respondent has not controverted the statements made on oath by the Petitioner in the petition that despite best efforts to personally serve the DVAT 41 on the OHA he could not do so. It is seen from Annexure P-5 to the petition, that on the copy of the DVAT-41 Form served on the Commissioner by the Petitioner, there is an acknowledgement stamp with the diary no. E-820717 dated 4th January, 2019. The stamp is of the Central Resources Unit, DT& T.

31. Mr. Jain produced before this Court reply received by him from the Public Information Officer (PIO)/Assistant Commissioner in the DT&T, GNCTD dated 22nd February, 2017 in response to an application under the Right to Information Act where in response to the specific question: —What is the medium of personal service of documents in the CVAT's office generally? How they are received and who receives them?‖, the response received was:

> "Generally, an employee is deployed for receiving letter/ DAK to receive the same of personal service of documents in Commissioner (VAT) Office."

32. The above reply appears to be consistent with the general practice in Government offices where services of notice upon public officials are usually done at one desk where the offices are located. There is a clerk who usually receives all notices and gives an acknowledgement. The Court is therefore unable to accept the plea of Mr. Farasat that there was non-compliance with Section 74(8) of the DVAT Act read with Rule 56 of the DVAT Rules."

18. As would be evident from the aforesaid extracts of Combined Traders, the Court not only accepted the position which would directly flow from Section 74(9) of the Act, it also specifically dealt with the contention of the respondents who had urged that the submission of a notice under Section 74(8) of the Act in the CRU would not be compliant with the statutory requirements. Even this submission was negated.

19. The position which therefore emerges is that not only would the Hearing Notice of 24 May 2022 be rendered unsustainable in law, even the adjustments which have been made in the Refund Order of 29 April 2022 would be contrary to the provisions of the Act. We come to this conclusion since it is manifest that insofar as the demand for FY 2010-2011 is concerned, the objections would be deemed to have been accepted and granted by the Commissioner upon the expiry of 15 days when computed from 04 May 2022. The demand as created in terms of the assessment order as framed would thus clearly not survive. This clearly in light of the legal fiction which stands placed in that provision and as a consequence of which the Commissioner would stand denuded of the jurisdiction to adjudicate upon those objections once the statutory fiction comes into effect. Section 74(9) in that sense not only accords a closure but commands us to hold that the objections preferred by the assessee would be deemed to have been accepted.

20. Turning then to the adjustments which have been made with respect to the demand for the first quarter of FY 2017-2018, the respondents do not dispute that the objections tendered by the petitioner before the OHA remain pending on its board. The demand for the first quarter of FY 2017-2018 is clearly rendered unenforceable and could not have been adjusted against the refund as claimed by the petitioner for the first quarter of FY 2016-2017. This aspect is clearly covered by the decision in Flipkart.

21. We accordingly allow the instant writ petitions and quash the Hearing Notice dated 24 May 2022. The Refund Order of 29 April 2022 shall for reasons aforenoted stand set aside to the extent that it adjusts an amount of Rs. 13,60,14,547/-. The petitioner is held entitled to all consequential reliefs.

22. The respondents shall consequently compute the amounts which would become refundable to the petitioner in light of our observations appearing hereinabove and affect disbursement accordingly. The aforesaid refunds shall be disbursed along with interest in terms of Section 42 of the Act.

23. The writ petitions along with pending applications, if any, shall stand disposed of on the aforesaid terms.

OFFICE OF THE APPELLATE AUTHORITY (DELHI GST)/
ADDITIONAL COMMISSIONER
DEPARTMENT OF TRADE & TAXES
GOVT. OF N.C.T OF DELHI
ROOM NO. 801, VIII FLOOR, VYAPAR BHAWAN,
I.P. ESTATE, NEW DELHI-110002
(APL-04)

Ref. No. Dated: -

Name of the Appellant	:	M/s Sapry Marketing Pvt. Ltd.
Address	:	Basement, 1-65, Jalvihar Road, Lajpat Nagar-1, South Delhi, Delhi, 110024
GSTIN	:	07AAACS2100G1Z1
Ward No.	:	86
Representative of the objector	:	Sh. Sunil Minocha, STP

Date : 17.11.2023

WHETHER A REFUND APPLICATION CAN BE REJECTED BY PASSING AN ORDER IN GST-07 U/R 100 & 142 OF GST RULES BY ARBITRARILY INVOKING SECTION 73 OF THE SAID ACT IN BIZARRE AND UNLAWFUL MANNER?

HELD – No.

The provisions of the Act and Rules made thereunder provides for revision of returns in respect of details furnished in GSTR-3B and the time limit upto which such rectification can be done by the taxpayer. In this case the proper officer issued ASMT-10, before the taxpayer could revise the return.

I am of the considered view that the impugned summary order passed by proper officer appears to be not justifiable and not tenable in accordance with the provisions of the CGST / DGST Act and Rules made therein under the order is hereby set aside.

ORDER

1. This instant order shall dispose of an appeal in FORM GST APL -01 dated 27.11.2021 filed by M/s Sapry Marketing Pvt. Ltd. (GSTIN:07AAACS2100G1Z1) (hereinafter referred to as “Appellant”)

challenging the impugned order in DRC-07 vide ref. no. ZD070921004621R dated 06.09.2021 passed by the Proper Officer (Ward-86) whereby a demand of Rs. 16,20,184/- under the IGST Act, CGST Act and DGST Act respectively inclusive of tax and penalty was raised.

2. Being aggrieved the appellant filed the present appeal under Section 107 of the CGST/DGST Act and rules made therein on 27.11.2021 against the impugned GST DRC-07 dated 06.09.2021, whereby the Proper officer has raised the demand towards tax and penalty amounting to Rs. 16,20,184/-due to a mismatch of ITC amounting of Rs. 8,10,092/- as reported in GSTR3B and GSTR 2A for the Financial Year April 2020 to March 2021. Perusal of the appeal in Form GST APL-01 shows that the appellant has deposited 10% of the disputed amount of tax as per sub section (6) of section 107 of the DGST Act, 2017.

3. Brief facts of the case are that the ASMT-10 was issued to the Appellant on 06.08.2021 wherein it has been observed that "Whereas an investigation against your firm under the DGST Act, 2017 is being carried out, it has come to my notice that you have claimed excess ITC amounting to Rs. 8,10,092/-, which is the result of mismatch of GSTR 3B and GSTR 2A, and on which tax has not been paid for the financial year 2020-21." Accordingly, in view of such discrepancy, the Appellant was directed to furnish the reply within 15 days and also to appear for personal hearing on 20.08.2021. However, the Appellant has neither appeared for personal hearing nor filed any reply in response to the said ASMT-10 as a result of which DRC-07 has been issued to the Appellant on 06.09.2021 stating that "you have claimed excess ITC amounting to Rs. 8,10,092/-, which is the result of mismatch of GSTR 38 and GSTR 2A, and on which tax has not been paid for the financial year 2020-21" creating demand of Rs. 16, 20,184/- including tax and penalty. Another ASMT-10 was issued to the Appellant dated 09.12.2021 to which the reply in ASMT-11 was furnished by the Appellant vide dated 03.01.2022 stating that "In addition to our reply dt 06-09-2021 against ASMT-10 dt.06-08-2021, we had submitted letters manually twice on 29.11.2021, 06-12-2021 along with Appeal Ack dt.27.11.21 against DRC-07 Summary Order dt 06-09-2021. Besides, the bonafide mistake in claiming extra ITC in Jan,2021 on the basis of system generated GSTR 38 has been rectified in GSTR 3B for the month of September,20 and no additional benefits have been obtained. There is no mens rea either. Appeal hearing date has not yet been fixed by GST Appellate Authority. Hence, the coveted Refund in Qr-2.2019-20 be issued at the earliest with due interest as per GST law. All requisite documents are annexed for your perusal and prompt action. Refund timelines as prescribed under sec. 54 & Rule 91,92 be adhered to in letter and spirit, and bring an end to the avoidable deadlock."

4. During the course of the hearing, the AR of the Appellant, Sh. Sunil Minocha, STP, has appeared on various dates of hearing and after hearing him at length, the matter was kept for order accordingly.

5. Grounds of Appeal:-

a. That the proper officer has grossly erred by failing to serve upon the appellant not only the mandatory SCN, but also an intimation vide Part A of Form GST DRC-01A. Section 73 of the CGST Act, 2017, that has been invoked by the erring proper officer in the present case, talks about determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful mis-statement or suppression of facts. Show cause notice shall be issued at least 3 months before the due date of passing of adjudication orders i.e. 2 years and 9 months from due date of Annual Return.

b. Further, the Counsel argued that the first Opportunity of Zero penalty- The Officer will serve an intimation vide Part A of Form GST DRC 01A (which act is conspicuously absent in the present case under appeal), asking the person to remit the tax along with interest. Details about the tax demand will be stated briefly in Part A. This is a mandatory facility that must be allowed before SCN so that the taxpayer who turns down this opportunity also gives up the concession that goes along with this facility, the concession being that in cases covered by section 73, if tax demanded along with interest is paid before SCN then, penalty payable will be 'nil';

c. That the proper officer has grossly erred and has been totally oblivious to the prescribed rules contained under Rule 142 (1) and (1A) of CGST Rules, 2017 which are reproduced hereunder for better understanding and to get more clarity on the subject matter under consideration: (a) Sub-rule (1) says "The proper officer shall serve along with the (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in Form GST DRC-01, (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof a summary thereof electronically in Form GST DRC-02, specifying therein the details of the amount payable. In support of this contention, a landmark judgment delivered by Honorable Supreme Court of India in the case of "SWADESHI COTTON MILLS etc. etc., Vs Union of India

etc.etc." and reported in AIR 1981 SUPREME COURT 818 wherein Honorable SC has held that "Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth" Hearing at pre-decisional stage must be given--Rule of audi alteram partem not excluded;

d. The appellant emphatically challenges The Arbitrary and vociferously The Arbitrary Denial of ITC due to mismatch between GSTR-3B GSTR-3B and GSTR-2A by invoking section 16 (4) of the CGST Act, 2017 and resulting in creation of frivolous and imaginary demand of Tax of Rs. 8,10,092/- & Penalty of Rs. 8,10,092/- The entire demand emanating from an ex- party and unconstitutional Summary of impugned Order by the proper officer is contrary to the provisions of law, unlawful, unconstitutional and in gross violation of the principles of natural justice, even as the time limit prescribed under the Act had not elapsed. Therefore, in the light of above facts and the legal provisions, since the unwarranted additional demand of Rs. 16,20,184/- (Tax-Rs.810,092-& Penalty- Rs.8,10,092-) cannot stand the scrutiny of law, the same it is prayed, be annulled and quashed in toto in the interest of justice and in order to hold the tenets of the law of jurisprudence;

e. The proper officer continued to turn a blind eye to the submissions of the appellant and with a pr-determined biased mindset, framed an ex-party Summary of order. Further, as per Section 75(4) of the Central Goods and Service Tax Act, 2017, it is clearly held that "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", denoting that when the adjudication officer on completion of adjudication, decides to impose penalty or any penalty imposed against the assessee, naturally, an opportunity is to be given. In this case, no such opportunity was afforded to the hapless taxpayer for no rhyme and reason.

f. It was further submitted that the appellant had filed a Refund Application for the Tax period- July, 2019 - Sept, 2019 in Form GST RFD-01 on 06-08-2021 vide ARN: AA070821022269A for Rs. 6,19,953/- towards refund of ITC on Export of Goods & Services without payment of Tax, in accordance with the provisions

contained under sub-section (1) of Section 54 of CGST/SGST Act, 2017 read with Rules 89 & 90 of CGST/SGST Rules, 2017. Having scant respect of legal provisions and prescribed timelines under the GST law, the proper officer resorted to defy law with impunity, and instead of issuing Refund Order under sub-section (5) and (6) of the said Act within the timelines provided therein i.e. within the stipulated period of sixty days from the date of receipt of application complete in all respects, as enshrined under sub-section (7) of section 54 of the CGST Act, 2017, issued an ex-party Summary of order in Form GST DRC-07 under Rule 100 (1), (2) (3) & 142 (5) of CGST Rules, 2017 for FY 2020-21 by arbitrarily invoking Section 73 of the said Act and creating a Tax demand of Rs. 8,10,092/- and a penalty of Rs. 8,10,092/ in a bizarre and unlawful manner, which has been vociferously challenged tooth and nail through an appeal petition filed in GST APL-01;

g. That, the Principles of Natural Justice have been Denied to the hilt. Besides, in supportof this contention, strong reliance is placed upon the landmark judgments delivered by Honorable Delhi High Courtin the case of- (1) “KIRLOSKAR ELECTRIC CO.LTD. V. COMMISSIONER OF SALES TAX “duly reported in (1991) 83 STC 485 (DEL), wherein it has been held, that “The State is entitled to the tax which is legitimately due to it.” OPPORTUNITY AFFORDED OPPORTUNITY-MUST BE A ‘REASONABLE OPPORTUNITY (ii) (1993) 199 ITR 530 (SC):- C. B. GAUTAM VS UNION OF INDIA-HELD, “that to deny an opportunity of being heard to a person before creating a demand is against the principles of natural justice. This is one of the most important principles of natural justice. It is a ‘sine qua non’ of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void -ab-initio” “AIR 1978 SUPREME COURT OF INDIA 597-MA NEKA GANDHI vs. UNION OF INDIA.”

h. In the High Court of Judicature at Madras, a Judgment delivered on Dated 08-12-2021 in the case of: M/s AATHI HOTEL, by Commissioner (ST) (FAC), Mayiladuthurai, Nagapattinam District.. Respondent W.P.No.3474 of 2021. The honourable Court held that “The ratio in the above case is to be distinguished on facts as in the present case although credit was wrongly attempted to be transitioned, it was never utilized. Further before levying penalty or interest, a proper excise was required to be made by a proper officer under Section 74(10) after ascertaining whether the credit was wrongly availed and wrongly utilised. Though under Sections

73(1) and 74(1) of the Act, proceedings can be initiated for mere wrong availing of Input Tax Credit followed by imposition of interest penalty either under Section 73 or under Section 74 they stand attracted only where such credit was not only availed but also utilised for discharging the tax liability;

i. That the order passed by the Ld. Assistant Commissioner, ward-86, zone- 09 Delhi, is against the principal of natural justice as no opportunity of being heard has been given to the appellant;

j. That the passing of the order and raising the demand along with interest and penalty without investigation and reconciliation of the differences with facts and figures, is bad in facts and in law;

k. That it is prayed that the impugned summary of order of rejection of ITC of Rs. 8,10,092/-and imposition of penalty of Rs. 8,10,092/- be set-aside on the above mentioned grounds.

Submission of the DR and Proper Officer :-

6. Per contra, DR has submitted that the impugned order has been correctly passed considering the facts as well as legal provisions. Also, despite of affording opportunities of being heard, Appellant failed to respond to the notice in Form GST ASMT-10 well in time and the Appellant failed to put ASMT-11 dated 09.09.2021.

7. On the other hand, the Proper officer on report submitted that only difference reflecting on the portal in the Appellant's GSTR 3B and GSTR 2A is of Rs. 77,938/- and the Appellant firm had reversed the ITC in his GSTR 3B return in the month of Sept. 2021 amounting to Rs. 3,96,299.78/-
.

8. The AR of the Appellant has stated that the said mismatch of tax liability in GSTR-3B & GSTR-2A has arisen due to the bonafide mistake in claiming extra ITC in Jan, 2021 on the basis of system generated GSTR 3B has been rectified in GSTR 3B for the month of September, 20 and no additional benefits have been obtained. There is no mens rea either and no ineligible ITC amount has been claimed by the Appellant firm.

9. Further, the Appellant referred various Judgments passed by the various High Courts on the above-mentioned issue such as the "Hon'ble High Courthas taken a view in very similar circumstances as in the present case, in the case of Sun Dye Chem V. Assistant Commissioner (2021 (44) GSTL 358) reiterated in Pentacle Plant Machineries Pvt. Ltd. V. Office of the GST Council, New Delhi (2021 (52) GSTL 129) to the effect that those

petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assessee. The errors committed are clearly inadvertent and, the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fashion by the petitioner and connected assessees."

10. I have gone through the impugned order and the records available along with the submissions of the Appellant along with the said rulings thereof Perusal of the impugned order clearly reveals that the Appellant had reversed the ITC in his GSTR 3B return in the month of Sept 2021 amounting to Rs. 3,96,299.78/- It is also observed that the Appellant was not granted enough opportunities on the basis of which the demands towards tax and penalty amounting to Rs. 16,20,184/- have been confirmed on the Appellant vide the impugned DRC-07 dated 06.09.2021.

11. The Comments of the Proper Officer were also sought vide letter dated 12.06.2023 in which he has rebutted to the grounds raised by the Appellant in the instant Appeal by stating therein that the said difference was rectified by reversing the ITC in the month of Sept. 2021 itself.

12.Further, before deciding the claim of the Appellant on merits, it is imperative to examine the provisions of the DGST Act, 2017 and rules made there under which provides for the revision of returns in respect of details furnished in GSTR-3B and the time limit up to which such rectification may be done by a taxpayer. In this context, a proviso to sub-section (3) of Section 37 of the CGST/DGST Act clearly indicates that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under Section 39 for the month of September following the end of the financial year to which such details pertain or furnishing of the relevant annual return, whichever is earlier. In the present case, the Appellant ought to have revised the return till September 2021, but the taxpayer even before the revision of return, the Proper officer issued the ASMT-10. Further, since the appellant had correctly declared his GSTR-3B, and reversed the ITC well within time as per the provisions submitted the summary and reconciliation statement for the disputed period and referred the various Judgments passed by the Hon'bl High Court in support of his prayer. Thus, in view of the said provisions and observations thereof, the claim of the Appellant is maintainable and hence allowed.

13. I have gone through the entire records/documents placed on record and considered the facts and circumstances of the case as well as the relevant law position. After having perused the impugned summary

order and other documents, it appears that the proper officer issued the DRC-07 without the application of mind which is unsustainable. The Ld. Officer erred in following the procedure laid down under the DGST Act, 2017 and passed the summary of the order without analysing the taxpayer. The proper Officer instead of issuing the summary of the order should have examined the merits of the case. Thus, it appears that there are errors apparent on record and after perusal of the settled legal principles, in the interest of justice, the appeal is hereby allowed.

13. Upon a careful perusal of above deliberations and the facts of the case along with other available records and provisions thereof, I am of the considered view that the impugned summary order passed by the proper officer appears to be not justified and not tenable in accordance with the provisions of the CGST/DGST and rules made therein under. Accordingly, the appeal preferred by the Appellant is allowed and hence the impugned order dated 06.09.2021 is hereby set aside in aforesaid terms to the extent of tax, interest and penalty. This is in accordance with the prescribed procedure under the GST Act and Rules.

14. Ordered Accordingly.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
[T.S. Sivagnanam & Hiranmay Bhattacharyya, JJ]

MAT 1218 OF 2023 WITH I.A NO. CAN 1 OF 2023

Suncraft Energy Private Limited And Another ... Appellant

Versus

The Assistant Commissioner, State Tax,
Ballygunge Charge and Others ... For the State Respondent

RESERVED ON: 21.07.2023
DELIVERED ON:02.08.2023

WHETHER ITC CAN BE REVERSED ON THE BASIS OF DIFFERENCE IN GSTR-2A AND GSTR-3B ON THE GROUND THAT THE SUPPLYING DEALER HAS

NOT REMITTED THE TAX SO COLLECTED WITHOUT ISSUING NOTICE AND VERIFICATION OF FACTS REGARDING GENUINESS OF TRANSACTION AS WELL AS GENUINESS OF DEALER?

Held – NO.

It was held that the purchasing dealer's ITC cannot be denied by the department on the ground that the supplying dealer has not remitted the tax so collected unless there is an exceptional case like the supplier going missing or any situation wherein it becomes impossible for the department to collect tax from such a supplier. Until there is a remote chance of recovering the tax from the supplying dealer, the department shall not deny ITC to the purchasing dealer.

Appearance for the Appellant	:	Mr. Ankit Kanodia, Adv. Ms. Megha Agarwal, Adv. Mr. Jitesh Sah, Adv.
For the State Respondent	:	Mr. Anirban Ray, Ld. Govt. Pleader Md. T.M. Siddiqui, Learned A.G.P. Mr. S. Sanyal, Adv.

JUDGMENT
(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra Court appeal filed by the writ petitioner is directed against the order passed in WPA 12153 of 2023 dated 21.06.2023. The appellant had impugned the order passed by the Assistant Commissioner of State Tax, Ballygunge Charge, the Respondent No. 1 date 20.02.2023 by which the first respondent reversed the input tax credit availed by the appellant under the provisions of West Bengal Goods and Services Tax Act, 2017 (WBGST Act). The 4th respondent is a supplier of the appellant who provided supply of goods and services to the appellant who had made payment of tax to the fourth respondent at the time of effecting such purchase along with the value of supply of goods/ services. However, in some of the invoices of the said supplier was not reflected in the GSTR 2A of the appellant for the Financial Year 2017-18. The first respondent issued notices for recovery of the input tax credit availed by the appellant and the grievance of the appellant is that without conducting any enquiry on the supplier namely, the fourth respondent and without effecting any recovery from the fourth respondent, the first respondent was not justified in proceeding against the appellant. It is seen that a scrutiny of the return submitted by the appellant was made under Section 61 of the Act for the

Financial Year 2017-18 which was followed by a notice dated 03.08.2022 stating that certain discrepancies were noticed. The appellant had submitted their reply dated 24.08.2022. Thereafter the appellant was served with the show-cause notice dated 06.12.2022 proposing a demand as to the excess ITC claimed by the appellant for the Financial Year 2017-18 on the basis of the difference of the amount of ITC in Form GSTR-2A and Form GSTR-3B with respect to the purchase transaction made by the appellant with the fourth respondent. The appellant filed detailed replies on 06.01.2023 and 11.01.2023, denying the allegations made in the show-cause notice and among other things submitted that the appellant had made payment of tax to the fourth respondent arising from the transaction and thereafter availed ITC on the said purchase. The show-cause notice was adjudicated and by order dated 20.02.2023 a demand for payment of tax of Rs. 6,50,511/- along with applicable interest and penalty was confirmed under Section 73(10) of the Act. Challenging the said order, the appellant had filed the writ petition. The learned Single Bench by the impugned order disposed of the writ petition by directing the appellant to prefer a statutory appeal before the appellate authority after complying with the requisite formalities and the appellate authority was directed to dispose of the appeal without rejecting the same on the ground of limitation. Aggrieved by such order, the appellant has preferred the present appeal.

2. We have heard Mr. Ankit Kanodia assisted by Ms. Megha Agarwal and Mr. Jitesh Sah, learned Advocates for the appellant and Mr. T.M. Siddique, learned Government Counsel for the respondent.

3. For a dealer to be eligible to avail credit of any input tax, the conditions prescribed in Section 16 (2) of the Act have to be fulfilled. Sub-section (2) of Section 16 commences with a non-obstante clause stating that notwithstanding anything contained in Section 16 no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services or both to him unless-

(a) he is n possession of 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;

(c) subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of such supply; and

(d) he has furnished the return under Section 39.

4. It is the case of the appellant that they have fulfilled all the conditions as stipulated under Sub-section (2) of Section 16 and they also paid the tax to the fourth respondent, the supplier and a valid tax invoice has been issued by the fourth respondent for installation and commission services and the appellant had made payment to the fourth respondent within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under Section 16(2) of the Act, the first respondent erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid to the fourth respondent at the time of availing the goods/ services. In support of his contention, the learned Counsel for the appellant had placed reliance on the decision of the Hon'ble Supreme Court in *Union of India (UOI) Versus Bharti Airtel Ltd. And Ors.*[1]The learned Advocate for the appellant also placed reliance on the press release dated 18.10.2018 issued by the Central Board of Indirect Tax and Customs and also the press release dated 04.05.2018 to substantiate their argument that the ground on which the first respondent had passed the impugned order of recovery of tax is wholly unsustainable.

5. In the press release dated 18.10.2018 a clarification was issued stating that furnishing of outward details in Form GSTR-1 by the corresponding supplier(s) and the facility to view the same in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of Section 16 of the Act. Further, it has been clarified that the apprehension that ITC can be availed only on the basis of reconciliation between Form GSTR-2B and Form GSTR-3B conducted before the due date for filing of the return in Form GSTR-3B for the month of September, 2018 is unfounded and the same exercise can be done thereafter also. In the press release dated 4th May, 2018, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment 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 supplier or supplier not having adequate assets etc.

6. The effect and purport of Form GSTR-2A was explained by the Hon'ble Supreme Court in Bharti Airtel Ltd. It was held that Form GSTR-2A is only a facilitator for taking a confirm decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms will be of no avail because the dispensation stipulated at the relevant time obliged the registered persons to submit

1 (2022) 4 SCC 328

return on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. In *Arise India Limited and Ors. Versus Commissioner of Trade and Taxes, Delhi and Ors*.[2], the challenge was to the constitutional validity of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (DVAT Act) as being violative of Article 14 of 19(g) of the Constitution of India. Section 9(2) of the DVAT Act sets out the conditions under which tax credit or ITC would not be allowed. Sub-clauses (a) to (f) specify certain kinds of purchase which would not be eligible for the claim of ITC. Clause (g) of the Section 9(2) of the DVAT Act states that to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period, would not be eligible for claim of ITC. The question that arose for consideration was as to whether for the default committed by the selling dealer can the purchasing dealer be made to bear the consequences of the denying the ITC and whether it is the violation of Article 14 of the Constitution. After taking note of the language used in Section 9(2)(g) of the DVAT Act where the expression "dealer or class of dealers" occurring in Section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transaction with validly registered selling dealer who have issued tax invoices in accordance with Section 15 of the said Act where there is no mismatch of transactions in Annexures 2A and 2B and unless the expression "dealer or class of dealers" in Section 9(2)(g) is read down in the said manner, the entire provision would have to be held to be violative of Article 14 of the Constitution. It was further held that the result of such reading down would be that the department is precluded from invoking Section 9(2)(g) of DVAT Act to deny the ITC to the purchasing dealer who had bona fide entered into a purchase transaction with the registered selling dealer who had issued a tax invoice reflecting the TIN number and in the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against a defaulting selling dealer to recover such tax and not denying the purchasing dealer the ITC. It was further held that where however, the department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the department can proceed under Section 40A of the DVAT Act. With the above conclusion, the default assessment orders of tax interest and penalty were set aside. The decision in Arise India Limited was challenged before the Hon'ble Supreme Court by the Government in Commissioner of Trade and Taxes, Delhi Versus Arise India Limited and the special leave petition was dismissed by judgment dated 10.01.2018, reported in MANU/

2 MANU/DE/3361/2017

SCOR/01183/2018. Though the above decision arose under the provisions of the Delhi Value Added Tax Act, the scheme of availment of Input Tax Credit continues to remain the same even under the GST regime though certain procedural modification and statutory forms have been made mandatory.

7. In the show cause notice dated 06.12.2022, the allegation was that the appellant had submitted that the fourth respondent has not shown the Bill in GSTR 1 and hence the appellant is not eligible to avail the credit of the input tax as per Section 16(2) of the WBGST Act, 2017 as the tax charged in respect of such supply has not been actually paid to the Government. The show cause notice does not allege that the appellant was not in possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the appellant has received the goods or services or both.

8. In the reply submitted by the appellant to the said show cause notice the appellant had clearly stated that they are in possession of the tax invoice, they had received the goods and services or both and the payment has been made to the supplier of the goods or services or both. The reason for denying the input tax credit is on the ground that the detail of the supplier is not reflecting in GSTR 1 of the supplier. The appellant had pointed out that they are in possession of a valid tax invoice and payment details to the supplier have been substantiated by producing the tax invoice and the bank statement. The appellant also referred to the press release dated 18.10.2018. What we find is that the first respondent has not conducted any enquiry on the fourth respondent supplier more particularly when clarification has been issued where furnishing of outward details in Form GSTR 1 by a corresponding supplier and the facility to view the same in Form GSTR 2A by the recipient is in the nature of tax payer facilitation and does not impact the ability of the tax payers to avail input tax credit on self-assessment basis in consonance with the provisions of Section 16 of the Act. Furthermore, it was clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by seller. Further it is clarified that in case of default in payment of tax by the seller recovery shall be made from the seller however, reversal of credit from the buyer shall also be an option available with the revenue authorities to address the exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

9. The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they

have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable.

10. In the result, the appeal is allowed, the orders passed in the writ petition is set aside and the order dated 20.02.2023 passed by the first respondent namely the Assistant Commissioner, State Tax, Ballygaunge Charge, is set aside with a direction to the appropriate authorities to first proceed against the fourth respondent and only under exceptional circumstance as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC), then and then only proceedings can be initiated against the appellant. With the above observations and directions the appeal is allowed.

EDITOR'S NOTE: Against this order, the Department filed an SLP in the Supreme Court SLP(C) No. 27827-27828/2023 dt. 14.12.2023 which was dismissed.

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

Petition(s) for Special Leave to Appeal (C) No(s).27827-27828/2023(Arising out of impugned final judgment and order dated 02-08-2023 in MAT No. 1218/2023 02-08-2023 in CAN No.1/2023 passed by the High Court at Calcutta)

The Assistant Commissioner of State Tax,
Ballygunjge Charge & Ors. ... Petitioner(s)

Versus

Suncraft Energy Private Limited & Ors. ... Respondent(s)

(For admission and IA No.255567/2023-Condonation of delay in refiling/curing the defects)

Date : 14-12-2023 These petitions were called on for hearing today.

For Petitioner(s) : Mr. Maninder Acharya, Sr. Adv.
Ms. Madhumita Bhattacharjee, AOR
Ms. Urmila Kar Purkayastha, Adv.
Ms. Niharika Singh, Adv,
Mr. Akash Mohan Srivastav, Adv.
Ms. Srija Choudhury, Adv.

For Respondent(s) : Mr. Ankit Kanodia, Adv.
Mr. Ravi Bharuka, AOR
Ms. Megha Agarwal, Adv.

UPON hearing the counsel the Court made the following

ORDER

Delay condoned.

We have heard learned senior counsel appearing for the petitioners.

Having regard to the facts and circumstances of this case(s)and the extent of demand being on the lower side, we are notinclined to interfere in these matters in exercise of our powersunder Article 136 of the Constitution of India.

The Special Leave Petitions are dismissed, accordingly.Pending application(s), if any, shall stand disposed of

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU
[Sanjeev Kumar and Puneet Gupta, JJ]

WP(C) No.1071/2023

M/S Batra Brothers Pvt. Ltd. ... Petitioner(s)

Vs

Union Territory of Ladakh and another ... Respondent(s)

Date of 15.09.2023

WHETHER PAYMENT OF 25% OF THE PENALTY AMOUNT PAID BY THE APPELLANT THROUGH ELECTRONIC CASH LEDGER DOES NOT AMOUNT TO PAYMENT OF REQUIRED DEPOSIT FOR ENTERTAINMENT OF APPEAL AS PRE-DEPOSIT AS MANDATED U/S 107(6) PROVISO (1) OF CGST R/W SECTION 21 OF THE UTGST ACT.

Held

Since, the requisite amount is already deposited in the electronic cash ledger by the petitioner it would be appropriate and in the interest of justice to permit the respondents to take out and utilize the amount of pre-deposit in the manner, the pre-deposit is utilized. The petitioner, if required, shall facilitate the utilization of the aforesaid amount for the purposes of appropriating it towards the pre-deposit.

Present for Petitioner(s) : Mr. Subodh Singh Jamwal, Advocate with Mr. Ashish Nanda, Advocate.

Present for Respondent(s) : Mr. Vishal Sharma, DSGI

ORDER

01. The petitioner has called in question order No.SAA/UTL/2022-23/06 dated 01.12.2022 passed by the respondent No.2 in the appeal No.ARN AD380722000012S dated 30.07.2022 whereby the appeal filed by the petitioner has been dismissed for non-payment of 25% pre-deposit of the penalty as mandated under proviso (1) to sub-Section (6) of Section 107 of CGST Act 2017, read with Section 21 of the UTGST Act, 2017.

02. On being put on notice Mr. Vishal Sharma, learned DSGI appearing for the respondents has filed objections. The payment of 25% of the penalty amount by the appellant is not denied, however, it is submitted that the petitioner has deposited the amount in electronic cash ledger and, therefore, cannot be construed to be the payment of 25% pre-deposit as mandated by proviso (1) to sub-Section (6) of Section 107 of CGST Act, 2017, read with Section 21 of UTGST Act, 2017.

03. We have considered the rival contentions and are of the view that the objections taken by the respondent is technical in nature. The mandate of proviso (1) to sub-Section (6) of Section 107 of CGST Act, 2017 and Section 21 of UTGST Act, 2017 is clear and unequivocal and makes the appeal maintainable only if the person filing appeal makes a pre-deposit to the tune of Rs.25% of the penalty with the respondents. It is true that the petitioner herein has instead of depositing the said pre-deposit amount with the respondents has deposited the same in the electronic cash ledger.

04. From reading of Section 49(3) of CGST Act, 2017 it is evident that the amount available in the electronic cash ledger can be used by the petitioner for making any payment towards tax, interest, penalty, fees or

any other amount payable under the provisions of this Act or the rules made there-under in such manner and subject to such conditions and within such time as may be prescribed.

05. Since, the requisite amount is already deposited in the electronic cash ledger by the petitioner it would be appropriate and in the interest of justice to permit the respondents to take out and utilize the amount of pre-deposit in the manner, the pre-deposit is utilized. The petitioner, if required, shall facilitate the utilization of the aforesaid amount for the purposes of appropriating it towards the pre-deposit.

06. On doing so, the appeal shall be taken up for consideration on merits.

07. The petition is disposed of.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

[Biren Vaishnav and Bhargav D. Karia]

R/Special Civil Application No. 5010 of 2021

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyof the judgment ?
4	Whether this case involves a substantial questionof law as to the interpretation of the Constitutionof India or any order made thereunder ?

Pee Gee Fabrics Private Limited ... Petitioners

Versus

Union Of India ... Respondents

Date : 15/09/2023

WHETHER A MANUFACTURING COMPANY LIABLE TO PAY TAX @ 5% ON THE SALE OF FABRICS, WHEREAS RAW MATERIALS USED FOR MANUFACTURING OF FABRICS I.E. YARN, COLOUR AND CHEMICALS, STORES AND CONSUMABLES, POWER AND FUEL ARE CHARGEABLE AT A HIGHER RATE RANGING FROM 12% TO 18% IS NOT ELIGIBLE TO REFUND OUT OF ITC DUE TO INVERTED DUTY STRUCTURE AS PER SECTION 54(3)(11) OF THIS GST ACT.

Held

The impugned order dated 12.09.2019 passed by respondent no.3 and confirmed by respondent no.2 vide order dated 29.09.2020 are hereby quashed and set aside. The respondent authorities are directed to sanction the refund of Rs. 8,06,852/- as per the refund application filed by the petitioners on 08.08.2019 within a period of six weeks from the date of receipt of a copy of this order along with applicable rate of interest in accordance with law.

Appearance:

Present for the Petitioner(s) No. 1,2 : Hiren J Trivedi (8808)

Present for the Respondent(s) No. 1 : Mr Harsheel D Shukla (6158)

Present for the Respondent(s) No. 3 : Mr Nikunt K Raval (5558)

NOTICE SERVED for the Respondent(s) No. 2

CAV JUDGMENT
(Per : Honourable Mr. Justice Bhargav D. Karia)

1. Heard learned advocate Mr. H.J. Trivedi for the petitioners, learned advocate Mr. Harsheel D. Shukla for respondent no.1 and learned advocate Mr. Nikunt Raval for respondent nos.2 and 3.

2. Learned advocate Mr. H.J. Trivedi has tendered a draft amendment. The same is allowed in terms of the draft. To be carried out forthwith.

3. By the draft amendment, learned advocate has sought to replace Annexure-G with order dated 12.09.2019 whereby the refund application of the petitioners is rejected.

4. Rule returnable forthwith. Learned advocate Mr. Harsheel D. Shukla waives service of notice of rule on behalf of respondent no.1 and learned advocate Mr. Nikunt Raval waives service of notice of rule on behalf of respondent nos.2 and 3.

5. By this petition under Article 226 of the Constitution of India, the petitioners have challenged order dated 29.09.2020 issued on 21.10.2020 passed by the Joint Commissioner, (Appeals), Ahmedabad confirming the order dated 12.09.2019 passed by the Deputy Commissioner, Central GST, rejecting the refund application dated 08.08.2019 filed by the petitioner no.1 in Form GST RFD-01A file bearing ARN No. AA240819017945S.

6. The petitioner no.1-Company is registered as manufacturing services in textile division under the Central Goods and Service Tax Act, 2017 (For short "the GST Act") having Registration No. 24AAACP8774BIZI. The petitioner Company is engaged in the business of textile manufacturing of fabrics i.e. from raw yarn and trading activity of fabrics.

7. The petitioner company is liable to pay GST at the rate of 5% on the sale of fabrics whereas raw materials used for manufacturing of fabrics i.e. yarn, colour and chemical, stores and consumable, Power and Fuel are chargeable at higher rate ranging from 12% to 28% under the GST Act.

8. Accordingly, the petitioner no.1 Company is eligible to avail refund of Input Tax Credit (hereinafter referred to as 'ITC') due to inverted duty tax structure as per section 54(3)(ii) of the GST Act.

9. As per the Government Notification No 5/2017, the petitioner company was not entitled to claim refund of unutilised Input Tax Credit on woven fabrics as well as knitted fabrics.

10. It is the case of the petitioners that restriction imposed by Notification No 5/2017 was removed by another Notification 20/2018 dated 26.07.2018. Accordingly, the petitioner company was eligible to claim refund of accumulated ITC under Inverted Refund Structure from August 2018 onwards with condition to comply with the Notification 20/2018 as well as clarification for calculating the lapse of credit as provided in Circular No.56/2018 dated 24.08.2018.

11. The petitioner company filed its return under the GST Act regularly for the Financial Year 2017-2018. The petitioner company came to know about claiming wrong credit on capital goods for the Financial Year 2017 as it had already claimed depreciation on the GST amount which was charged in the invoice while buying such capital goods. The petitioners therefore, were required to reverse the credit claimed on ITC of such capital goods. The bifurcation of such ITC which requires reversal is as under:

Particulars	IGST	CGST	SGST	Total	Remarks
Credit Reversed in August 18 GSTR-3B	9,94,811/-	8,689/-	8,689/-	10,12,189/-	As mentioned in 3B for August 2018
CAPEX Credit for the month of July 2017	9,37,930/-			9,37,930/-	The said credit was for imported looms which the petitioner no.1- company had opted to capitalise and accordingl y reversed in 3B for August 2018.

CAPEX Credit for the month of August 2017	56,880/-			56,880/-	The said credit was for Machine which for which the petitioner no.1-Company opted not to avail the credit
Credit for Service of Telephone bills for the month of August 2018		8,689/-	8,689/-	17,378/-	The petitioner no.1-Company had reversed the credit of Services (not goods) hence does not affect the refund amount as the petitioner no.1-Company have claimed refund for goods only
Total	9,94,810/-	8,689/-	8,689/-	10,12,188/-	

12. It is the case of the petitioners that as per the Rules 42 and 43 of the CGST Rules 2017, Form DRC-03 can be used for reversal of ITC. However, due to non-availability of DRC- 03 on GST Portal, the petitioner Company had reversed the ITC in Form GSTR-3B for the month of August 2018. The petitioner Company also claimed credit in respect of supplies of goods of Rs. 56,01,017/- under the inverted duty tax structure and Rs. 1,14,689/- pertaining to supplies of services, for which the petitioner Company was not entitled to credit under the inverted duty tax structure. The summary of ITC as per GSTR-3B for the month of August 2018 is as under:

Particulars	Amount
ITC available for the month of Aug 2018	57,68,728/-
Less: ITC reversed for FY 2017-18	10,12,188/-
Net ITC available	47,56,539/-
Less: Liability for the month of Aug 2018	(32,02,738/-)
Net ITC available for refund as per portal configuration	15,53,801/-

13. The petitioners have become eligible to claim refund of ITC from August 2018 as per the Notification No. 20/2018 and Circular No. 56/2018 as per the calculation to be made as prescribed under Rule 89 of the CGST Rules, 2017. The petitioner company therefore, was eligible for refund of Rs.22,78,798/- as under:

Sr. No.	Particulars	Amount
1	Turnover for inverted duty tax structure	60,700,548
2	Net ITC (Total ITC Less ITC availed on Input Services) Inverted duty tax structure	5,608,070 (However this figure has been auto captured as Rs.47,56,539/-)
3	Adjusted total turnover	64,061,743
4	Liability on Inverted tax duty tax structure	3,035,027

14. However, in view of reversal of the wrongly claimed credit on capital goods, the amount of the refund claimed by the petitioners was proportionately reduced by Rs. 8,06,852/- in view of the calculation made by the GST Portal.

15. Petitioner no.1 company therefore, by e- mail dated 14.06.2019 raised a query before the CBIC Mitra Helpdesk which was finally resolved by e-mail dated 19.06.2020 wherein the petitioner no.1 Company was asked to file the refund under "any other" category instead of "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It was also informed to the petitioner company that second application for refund should relate to the same tax period in which such reversal has been made.

16. The petitioner company thereafter filed second refund application in FORM GST RFD-01A seeking refund on account of ITC accumulated due to Inverted Tax Structure and acknowledgment was generated on 21.06.2019. However due to the fact that the petitioner no.1 Company had reversed the credit on capital goods, which they had wrongly claimed earlier, the amount of refund got reduced in GSTR-3B and in FORM GST RFD-01A, as FORM GST RFD-01A is automated and captures figures directly from other Forms filed by the petitioners on GST portal. Accordingly, the petitioner Company was allowed to file refund amounting to Rs.14,71,946/-. Therefore, petitioner company relying on clarification provided by circular no. 94/2019 dated 28.03.2019 claimed the balance amount of refund of Rs. 8,06,852/-i.e. [Rs. 22,78,798/- (-) Rs. 14,71,946/-) under the head "any other Specify" and second refund application for the Month of August 2018 was filed on 08.08.2019.

17. The petitioner company received refund of Rs. 14,71,946/- as per the refund application filed on 21.06.2019 but however while processing refund application filed on 08.08.2019 under the head " Any Other head (Please Specify)", the respondent authority issued a show cause notice dated 03.09.2019 proposing to disallow the refund of Rs. 8,06,852/- the on following grounds:

> "(i) As per circular no. 94/13/2019-GST dated 28.03.2019, there is no provision that second refund application can be filled for the same particular month Le. August 2018 under which appellant filed refund claim under the category "Any Other Specify" in inverted rate of structure;
>
> (ii) For the refund application filled, calculation should be as per Rule 89(5):

(iii) The department has never asked to reverse the ITC on capital goods. The appellant had reversed the same on his own."

18. It is the case of the petitioner company that respondent no.3 Deputy Commissioner disregarded all the submissions made by the petitioner Company and rejected the refund application vide impugned order dated 12.09.2019 on the ground that it is impermissible under the law to split the refund claim for a particular month in two parts and further on the ground that refund of reversed ITC on capital goods cannot be claimed as refund.

19. Being aggrieved, the petitioners preferred an appeal before the Joint Commissioner (Appeals) under section 107 of the GST Act who by impugned order dated 29.09.2020 rejected the appeal. The petitioners therefore, being aggrieved by the impugned orders passed by respondent nos. 2 and 3 has preferred this petition.

20. Learned advocate Mr. Hiren J. Trivedi submitted that it is not in dispute that the petitioners are entitled to refund of ITC as per Notification No.20/2018 read with Circular No. 56/2018 under Rule 89 read with Rule 54(3)(ii) of the CGST Rules, 2017. It was submitted that the petitioners are entitled to get refund of ITC as per the inverted duty tax structure amounting to Rs.22,78,798/-. However same got proportionally reduced due to reversal of input tax credit on the capital goods which was wrongly claimed by the assessee for the year 2017-2018 in the month of August 2018. It was therefore, submitted that the respondent authorities could not have rejected the refund application filed by the petitioners on 08.08.2019 on the ground that refund could not have been claimed by filing second application under the head "Any other" category as per Circular No.94/2019 dated 28.03.2019. It was submitted that the findings given by respondent nos. 2 and 3 that reversal of the ITC of Capex Goods in Form GSTR-3B is binding on the petitioners and, therefore, the same cannot be claimed as refund, is contrary to the facts by misreading Circular No.94/2019 dated 28.03.2019 read with Notification No.20/2018 and Circular No. 56/2018.

21. On the other hand, learned advocates for the respondents submitted that the petitioners cannot file second refund application for the same month i.e. August, 2018 as the refund application filed by the petitioners on 21.06.2019 for Rs.14,71,946/- has already been sanctioned and refund is paid. It was submitted that the second refund application filed by the petitioners amounting to Rs.8,06,852/- dated 08.08.2019 for the month of August, 2018 in "any other" category was without any calculation and not as per Rule 89(5) of the CGST Rules, 2017 and therefore, the respondent authorities have rightly rejected the same.

22. It was submitted that the petitioner company had itself reversed ITC of capital goods in August 2018 amounting to Rs.10,12,189/- in GSTR-3B which was not reversed earlier and the same is binding upon the petitioner company and therefore, the refund for reversal of ITC on capital goods cannot now be claimed as refund again due to inverted duty tax structure as per section 54 of the GST Act.

23. Having heard learned advocates for the respective parties, the facts are not in dispute as narrated hereinabove. Notification No.5/2017 dated 28.06.2017 provided that no refund of unutilised tax credit shall be allowed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods which included woven fabrics manufactured by the petitioner company. However, by Notification No.20/2018 dated 26.07.2018 it was provided that Notification No.5/2017 would not be applicable to the items stated therein as under:

> "In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance(Department of Revenue), No.5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.S.R.677(E), dated the 28th June, 2017, namely:-
>
> In the said notification, in the opening paragraph the following proviso shall be inserted, namely:-
>
> "Provided that,
>
> (i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below; and
>
> (ii) in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse."

24. Circular No. 56/2018 dated 24.08.2018 clarified that Notification No.20/2018 would be effective from first day of August 2018 to keep the

accounting simple and refund of ITC for the month of July i.e. on purchases made on or before 31.07.2018 would lapse. Hence, as per the working of Rule 89(5) of the CGST Rules, 2017 the petitioners were entitled to refund of Rs.22,78,798/- as per Notification No.20/2018.

25. However, the petitioners also reversed ITC of Rs.10,12,188/- with regard to wrongly claimed credit on capital goods in the month of August, 2018 in Form GSTR-3B. Accordingly, the refund claim of the petitioners was automatically reduced by Rs. 8,06,852/-. Accordingly, the petitioners were allowed to file refund application for Rs.14,71,946/- by GST Portal on 21.06.2019.

26. The respondent authorities thereafter issued the clarification by Circular No.94/2019 dated 28.03.2019, relevant extract of the circular is as under:

Sr. No.	Issues	Clarification
1	Certain registered persons have reversed, through return in FORM GSTR-3B filed for the month of August, 2018 or for a subsequent month, the accumulated input tax credit (ITC) required to be lapsed in terms of notification No.20/2018- Central Tax (Rate) dated 26.07.2018 read with circular No.56/30/2018-GST dated 24.08.2018 (hereinafter referred to as the "said notification"). Some of these registered persons, who have attempted to claim refund of accumulated ITC on account of inverted tax structure for the same period in which the ITC required to be lapsed in terms of the said notification has been reversed, are not able to claim refund of accumulated ITC to the extent to which they are so eligible. This is because of a validation check on the common portal which prevents the value of input tax credit in Statement 1A of FORM GST RFD-01A from being higher than the amount of ITC availed in FORM GSTR-3B of the relevant period minus the value of ITC reversed in the same period. This results in registered persons being unable to claim the full amount of refund of accumulated ITC on account of inverted tax structure to which they might be otherwise eligible. What is the solution to this problem?	a) As a one-time measure to resolve this issue, refund of accumulated ITC on account of inverted tax structure, for the period(s) in which there is reversal of the ITC required to be lapsed in terms of the said notification, is to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A. It is emphasized that this application for refund should relate to the same tax period in which such reversal has been made. The application shall be accompanied by all statements, declarations, undertakings and other documents which statutorily are required to be submitted with a "refund claim of unutilized ITC on account of accumulation due to inverted tax structure". On receiving the said application, the proper officer shall himself calculate the refund amount admissible as per rule 89(5) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"), in the manner detailed in para 3 of Circular No.59/33/2018-GST dated 04.09.2018. After calculating the admissible refund amount, as described above, and scrutinizing the application for completeness and eligibility, if the proper

		officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GSTRFD-06 and the payment advice in FORM GST RFD-05. c) All refund applications for unutilized ITC on account of accumulation due to inverted tax structure for subsequent tax period(s) shall be filed in FORM GST RFD-01A under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure".

27. Relying upon the clarification as per the aforesaid circular, the petitioners filed second refund application dated 08.08.2019 claiming refund of Rs. 8,06,852/- which could not be applied by the petitioners on account of reversal of the wrongly claimed credit on capital goods in the month of August, 2018.

28. The respondent authorities however, failed to consider that the petitioners were entitled to ITC as per inverted duty tax structure amounting to Rs.22,78,798/- as calculated under Rule 89 of the GST Rules. GST Portal did not allow the petitioners to submit the refund application for the said amount and restricted the same to Rs.14,71,946/ in view of reversal of the credit of Rs.10,12,188/- on account of wrongly claimed credit on capital goods.

29. The petitioners therefore, had no other option but to file second application for claiming balance amount of refund of Rs. 8,06,852/-. The respondent authorities have failed to consider that the petitioners have not filed second refund application for the same month but it has filed application for claiming the balance amount of refund which was not granted though the petitioners were eligible for the same. The petitioners had therefore, no other option but to file refund application in view of Circular No.94/2019 dated 28.03.2019 under the head "any other".

30. The reasons given by the respondent authorities that refund application filed is not as per the calculation made in Rule 89(5) of the CGST Rules is also not correct since as per the calculation made under Rule 89(5) which provides for maximum refund amount, the petitioners are

entitled to refund of Rs.22,78,798/- on the total turnover of inverted duty tax structure which is not in dispute and accordingly, the petitioners were entitled to refund of Rs. 8,06,852/- which the petitioners could not claim in view of the fact that GST Portal did not permit the petitioners to file refund application in view of the reversal of the wrongly claimed credit on capital goods.

31. The respondent authorities have therefore, adopted a pedantic approach by rejecting the refund application filed by the petitioners for balance amount of refund of Rs. 8,06,852/-.

32. It is also pertinent to note that the respondent authorities cannot dispute the claim of the petitioner's eligibility of refund of Rs.22,78,798/- for the month of August 2018 calculated as per Notification No.20/2018 read with Rule 89 of the CGST Rules, 2017. It is also not in dispute that the said claim of the petitioners was restricted to Rs.14,71,946/- by GST Portal in view of reversal of wrongly claimed credit of Rs.10,12,188/- on capital goods by the petitioner company. Therefore, respondent authorities ought to have taken into consideration that the petitioners were eligible for balance amount of refund of Rs. 8,06,852/- which could not have been denied on hyper-technical ground as stated in the impugned orders. Reasoning given by respondent no.3 for rejecting the legitimate claim of the petitioner company that reversal of ITC on capital goods in Form GSTR-3B amounting to Rs.10,12,189/- is binding on the petitioner company and therefore, the petitioner company is not eligible for claim of refund as per Circular No.94/2019 dated 28.03.2019 cannot be accepted. Circular No.94/2019 permited a one time measure for availing refund of ITC on account of inverted duty tax structure as per Notification No.20/2018 read with Circular No.56/2018 as the assessees were not able to claim refund of the accumulated ITC to the extent to which they were eligbile. Therefore, it was clarified by Circular No. 94/2019 that when the assessee was not eligible to claim the refund then ITC is required to be claimed under the category "any other" instead of under the category "refund of unutilized ITC on account of accumulation due to inverted tax structure" in FORM GST RFD-01A for the same tax period in which said reversal has been made. The petitioners taking benefit of such circular preferred Second refund application dated 08.08.2019 for balance amount of ITC on account of accumulated inverted duty tax structure amounting to Rs. 8,06,852/-. Thus the respondent authorities have by adopting such a pedantic approach could not have rejected the legitimate claim of the petitioner company for balance amount of refund claim.

33. In view of the forgoing reasons, the petition succeeds and is accordingly allowed. The impugned order dated 12.09.2019 passed by respondent no.3 and confirmed by respondent no.2 vide order dated

29.09.2020 are hereby quashed and set aside. The respondent authorities are directed to sanction the refund of Rs. 8,06,852/- as per the refund application filed by the petitioners on 08.08.2019 within a period of six weeks from the date of receipt of a copy of this order along with applicable rate of interest in accordance with law.

34. Petition is accordingly disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

High Court of Judicature at Allahabad

[Hon'ble Ashwani Kumar Mishra and Syed Aftab Husain Rizvi, J.]

Neutral Citation No. - 2023:AHC:178819-DB
Case :- WRIT TAX No. - 1020 of 2023

Western Carrier India Ltd ... Petitioner

Versus

State Of U.P. And 4 Others ... Respondent

Order Date :- 15.9.2023

WHETHER THE DEPARTMENT IS BARRED FROM SEIZING A VEHICLE U/S 129 OF CGST ACT WHEN IT IS ACCOMPANIED BY DOCUMENTS LIKE INVOICES AND E-WAY BILL AS PER CIRCULAR ISSUED BY DEPARTMENT DATED 31.12.2018.

Held – YES

We are of the view that the department ought to have considered the petitioner's prayer for release of goods and vehicle upon compliance of the provisions contained U/s 129 (1) (a) of the Act. A direction accordingly is issued to the respondents to act in terms of the above circular and release the goods upon compliance of the condition stipulated U/s 129(1)(a). All other questions are left open to be examined in statutory appeal to be filed before the appropriate authority.

Counsel for Petitioner : Rahul Agarwal

Counsel for Respondent : C.S.C.,A.S.G.I.,Gopal Verma

ORDER

Heard learned counsel for the petitioner, learned Standing Counsel representing State and Sri Gopal Verma learned counsel appearing for respondent nos. 4 & 5.

The petitioner is aggrieved by an order dated 14.08.2023 contained in annexure no.10 to the writ petition whereby the liability has been fixed upon it to pay penalty in terms of Section 129 (1) b of the C.G.S.T. Act, 2017. Further prayer made in the writ is to command the respondents to release the goods and the vehicle seized by respondents by accepting penalty in terms of section 129 (1)(a) of the GST Act.

In addition to other arguments advanced, learned counsel for the petitioner places reliance upon a circular issued by the Board on 31.12.2018 which provides that if the invoice or any other specified document is accompanying the consignment of goods then either the consigner or the consignee should be deemed to be the owner of the goods. Relying upon such circular, it is urged on behalf of the petitioner's that the petitioner is a carrier and the goods transported by it was accompanied by E-Way bill and invoice etc. The submission is that the authorities in such circumstances have erred in imposing penalty upon the petitioner inasmuch as by virtue of the aforesaid circular the petitioner was liable to be treated as the owner of the goods and consequently the provision of section 129(1)(a) alone could have been invoked.

Learned State counsel submits that in respect of the demand of tax, the petitioner has the remedy of filing an appeal U/s 107 of the Act. So far as the prayer for release the goods and vehicle is concerned, learned State counsel does not dispute the petitioners assertion that the goods in transit were accompanied by requisite documents including E-Way bill and invoice etc. The applicability of the circular dated 31.12.2018 is otherwise not doubted.

The department itself has issued a circular dated 31.12.2018 containing clarification on various issues relating to the applicability of the provision, the department is expected to comply with it. The sixth issue is relevant in the circular for the present purposes and is extracted hereinafter.

Issues	Clarifications
Who will be considered as the 'owner of the goods' for the purposes of Section 129 (1) of the CGST Act?	It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consigner or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such case, the proper officer should determine who should be declared as the owner of the goods.

In view of the fact that the department does not dispute the petitioner's assertion that the goods in transit were carrying necessary documents in the form of E-Way bill and invoice etc, we are of the view that the department ought to have considered the petitioner's prayer for release of goods and vehicle upon compliance of the provisions contained U/s 129 (1) (a) of the Act. A direction accordingly is issued to the respondents to act in terms of the above circular and release the goods upon compliance of the condition stipulated U/s 129(1)(a). All other questions are left open to be examined in statutory appeal to be filed before the appropriate authority.

Accordingly, the writ petition stands disposed of.

HIGH COURT FOR THE STATE OF TELANGANA

[P. Sam Koshy and & Laxmi Narayana Alishetty]

WRIT PETITION NO.23431 OF 2023

Between :

M/s. Kesoram Industries Ltd.,
Cement Division Unit, Basantnagar, Peddapalli,
Telangana State, Represented by Sri Vaishnu Sankar
Sankaramanchi, Manager, Legal Cement Division,
Kesoram Industries Ltd. … Petitioner

and

The Commissioner of Central Tax,
Medchal, GST Commissionerate,
Medchal, GST Bhavan, Redhills,
Lakdikapul, Hyderabad and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.09.2023

1. Whether Reporters of Local Newspapers : No
   may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes
   marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
   see the fair copy of the Judgment ?

20.09.2023

WHETHER GARNISHEE PROCEEDINGS CAN BE TAKEN U/S 79(1) OF CGST ACT WITHOUT ISSUING A NOTICE AS CONTEMPLATED UNDER THE ACT.

Held – NO

That the petitioner is entitled to prior notice before passing garnishee proceedings, which the respondent authorities have failed to follow and instead, the respondent authorities passed impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 contrary to section 73 (1) of CGST Act, 2017. Hence, impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 are bad in law and are accordingly, set-aside.

Counsel for the Petitioner	:	Sri Srinivas Chatruvedula
Counsel for the Respondents	:	Sri Dominic Fernandes, learned senior standing counsel for respondents 1 to 4.

Cases referred:

[2020(33) G.S.T.L.16(Jhar)]
2020(36) G.S.T.L.343(Jhar)]
W.A.Nos.2127 and 2151 of 2019
2019 (28) G.S.T.L3 (Kar.)
W.P.(C) 8317/2019 (Del.)
1996 (88) E.L.T.12 (SC)

ORDER
(per Hon'ble Sri Justice Laxmi Narayana Alishetty)

The present writ petition has been filed declaring the garnishee proceedings in Form GST-DRC-13, to the Manager, HDFC Bank Limited, in C.No. V/30/04/2019-Pdpl-MNCL, dated 25.07.2023 in DIN NO.20230756YP0800222A74, by which respondent No.2 directed to pay a sum of Rs.1,28,97,344/- and in Form GST-DRC-13 to the Manager, AXIS Bank, in C.No.V/30/04/ 2019-Pdpl-MNCL, dated 28.07.2023 in DIN No.2023756YP080062196C, by which respondent No.2 directed to pay a sum of Rs.1,28,97,344/-, as being arbitrary, illegal and violation of the fundamental rights of the petitioner.

2. The brief facts leading to filing of present writ petition are as under:

3. The petitioner is a Public Limited Company and is engaged in manufacture and supply of Cement under the brand name of Birla Shakti Cement. The petitioner was regular in payment of GST, however, owing to financial crisis, there was a delay in payment of GST. The Respondent No.3 issued letter dated 19.06.2023 to the petitioner demanding payment of interest of Rs.1,28,97,355/- on account of delayed payment of tax from

July, 2017 to January, 2023 along with calculation indicating month wise interest payable on delay in filing of GSTR 3B return. The petitioner was informed to reconcile the interest and pay the same within 07 days of receipt of letter to avoid recovery under section 79 of the CGST Act, 2017.

3. That due to financial crisis, there was a delay in payment of tax dues, however, the petitioner paid the dues along with interest @18% for the delayed period in accordance with section 50 of the GST Act basing on its own calculations. That in response to notice dated 19.06.2023 of the Department, the petitioner submitted letter dated 28.06.2023 seeking three months time for payment of interest in view of severe financial crisis which resulted in late payment of GST and finally requested the authorities not to take any coercive action.

4. In response to the said letter, the petitioner addressed a letter, dated 28.06.2023 informing responding that interest aggregating to Rs.13,07,942/- was paid and further stated that due to severe financial crisis, there was delay in payment of interest, however petitioner sought three months for payment of interest and further, requested to respondent No.3 not to take any coercive steps. The petitioner addressed another letter, dated 25.07.2023 to the respondent No.3 disputing the interest liability arrived at by the respondents and further requested the authority to demand interest from due date of filing of GSTR 3B Return till the date of deposit of GST to Electronic Cash Ledger till the issue is decided by Hon'ble High Court. However, without considering the letters dated 28.06.2023 and 25.07.2023 and without providing any opportunity respondent No.2 issued impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 under section 79(1) (C) of CGST Act, 2017 high handedly contrary to provisions of GST Act and principles of natural justice.

5. The petitioner received a letter dated 07.08.2023 from HDFC Bank Limited, on 10.08.2023 informing the petitioner about issuance of impugned garnishee proceedings, dated 25.07.2023 and in compliance of the bank placed the petitioner's account under "No Debit" status. Similarly, the petitioner received a call from Axis Bank on 10.08.2023 informing the petitioner about impugned garnishee proceedings, dated 28.07.2023 and that the petitioner petitioner's account has been placed under "No Debit" status.

6. Heard Sri Srinivas Chatruvedula, learned counsel for the petitioner and Sri Dominic Fernandes, learned senior Standing Counsel for the respondent Nos. 1 to 4.

7. Learned counsel for the petitioner submitted that the impugned garnishee proceedings were issued though the interest liability in question was disputed by the petitioner and further, the same was issued without issuing any notice to the petitioner under section 73 of the CGST Act, 2017 and without affording an opportunity of personal hearing to the petitioner. He further submitted that the impugned garnishee proceedings are bad in law and the same were issued without conducting requisite proceedings under section 73 of the CGST Act, 2017 and further, both the garnishee proceedings in Form DRC-13 were not issued to the petitioner.

8. He further submitted that the garnishee proceedings are against provisions of Section 79(1)(c) of CGST Act, 2017 read with Rule 145(1) of CGST Rules, 2017 and also Section 50(1) of the CGST Act, 2017. That no late fees is prescribed under section 47(2) of the CGST Act, 2017 and therefore, the garnishee proceedings for demand of Late Fees Under Section 47(2) of the CGST Act, 2017 is perverse, arbitrary, void abinitio and liable to be set-aside. He further submitted that Section 79 of the CGST Act,2017 pertains to Recovery of Tax and is applicable only in cases wherein, any amount is payable by an assessee to the Government under any of the provisions of this Act or the rules made there under and the same is not paid.

9. He further submitted that as per Rule 145 of CGST Rules, 2017, the proper officer may serve upon a person referred to in clause(c) of sub-section (1) of section 79, a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice. Therefore, for a demand to attain the status of money becoming due to the department for issuance of Form DRC-13, there has to invariably an order of the proper officer, issued under the provisions of Section 73 or 74 of the CGST Act, 2017, as the case may be, unless such liability in question is accepted by the assessee himself.

10. The respondent Authorities failed to appreciate that the provisions of Section 79 are not invokable in respect of demands which are in dispute and not subjected to the process of adjudication, as contemplated under Section 73 or 74 of the CGST Act, 2017, as the case may be. That, in the instant case, it is an undisputed fact that the petitioner, vide its letter dated 25.07.2023 had communicated to respondent No.3 that, they are seriously disputing the interest liability figure calculated by the respondents, for reasons explained in the said letter.

11. Therefore, it is prerequisite that any disputed liability, has to undergo the process contemplated by the provisions of Section 73 or 74 of

the CGST Act, 2017 as the case may be and cannot be enforced directly through Section 79(1)(c) of CGST Act, 2017 read with Rules, 2017.

12. It is relevant to reproduce Section 50 (1), 73(1), and 79(1)(c)(i) are as under:-

"Sec.50. Interest on delayed payment of tax:-

(1). Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government, on the recommendation of the Council.

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made there under.

Sec. 79. Recovery of tax"-

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made there under is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(a) & (b) xxxx

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on

account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;"

13. Learned counsel for the petitioner has relied upon following judgments:

i. Godavari Commodities Ltd. vs Union of India and Ors[1]
ii. Mahadeo Constructions Co vs Assistant Commissioner[2]
iii. Assistant Commissioner of CGST & Central Excise and Others vs Daejung Moparts Pvt. Ltd. and Ors[3]
iv. LC Infra Projects Pvt. Ltd. vs. The Union of India & Ors[4]
v. Vision Distribution Pvt. Ltd. v.Commissioner[5]
vi. Pratibha Processors v. Union of India[6]

14. He further submitted that in the absence of the rules that were required to be made under Section 50(2), the respondents cannot resort to any un prescribed method of calculation on their own, as the same will not have the sanction of law.

15. He further submitted that the portal maintained by GST Authorities does not permit and accept if lesser amount than that of demand amount is paid by the assessee. In the present case, the petitioner is already maintained an account with the GST Authority on their portal and the amounts had already paid through their credit ledger, however owing to particular design of the portal, it will not accept unless the entire demand amount is paid. Further, the interest was calculated from the due date of filing of GSTR 3B return till actual date of filing of GSTR 3B return and not the date of deposit of GST to Electronic Cash Ledger by the petitioner. That when the remittances of tax liability was made from the bank account of the company, the said amount would automatically get debited to the

1 [2020(33) G.S.T.L.16(Jhar)]
2 2020(36) G.S.T.L.343(Jhar)]
3 W.A.Nos.2127 and 2151 of 2019
4 2019 (28) G.S.T.L3 (Kar.)
5 W.P.(C) 8317/2019 (Del.)
6 1996 (88) E.L.T.12 (SC)

company's bank account and gets transferred to electronic cash ledger of the company maintained at common GST Portal.

16. He further submitted that Sections 49(2), 49(3), 49(4), Section 39(7), 2(117) indicates that the Act permits furnishing of return without payment of full tax as self assessed as per the said return, but, the return would be regarded as an invalid return. The said return would not be used for the purposes of matching of Input Tax Credit. Thus, although the law permits part payment of tax but no such facility has been made available on the common GST portal.

17. Learned counsel for the petitioner strenuously pointed out that garnishee notices were issued under Section 47(2) of GST Act in respect of late fee, which is impermissible under law.

18. Per contra, learned Standing Counsel for respondent Nos.1 to 4 submitted that petitioner's amounts are still lying in their account and were not transferred/credited to government. He further submitted that tax due amounts can be paid only through cash ledger and cannot be paid through credit ledger. Therefore, even if amounts are lying in the credit ledger account, the same does not amount to payment or transfer to the Department. Therefore, the contention of the petitioner that the amounts are lying with the Government is factually incorrect.

19. Learned Standing Counsel further submitted that the contention of the petitioner that the rules were not framed is factually incorrect, since rules were already framed from date of implementation of GST Act, 2017. He further submits that the petitioner paid the tax with delay, thereby invited interest for the delayed period which is 18% per annum. As per the records of respondent authorities, the petitioner was due a sum of Rs.1,28,97,355/- and despite notice, the petitioner failed to pay tax as well as interest on delayed payments. Therefore, the respondent Authorities are justified in issuing garnishee proceedings to the petitioner's bankers under Section 79 of the CGST Act, 2017.

20. Learned Standing Counsel for respondents had referred to section 39, 50, 75(12) and Rules 61(2), 88(B) to impress upon this Bench that the respondent Authorities have duly followed the procedure as provided under GST Act before issuing garnishee proceedings. Section 39, 50, 75 (12) and Rules 61(2), 88(B) of GST Act are reads reproduced for ready reference:

> **As per under Section 39 of the GST Act:** Every registered person shall for every calendar month or a part thereof, furnished, a return

electronically, inward supplies of goods or services or both, tax payable and tax paid on such other particulars, such form and manner and within such time as may prescribed.

As per under Section 50: Every person who is liable to pay tax in accordance with the provisions of GST Act or the Rules made there under, but fails to pay the tax or any part thereof to the Government within prescribed period shall be liable to pay interest on the said amount at such rate not exceeding 18%.

As per section 79 of GST Act : A proper Officer is empower to recover any amount payable by the person to the Government under any of the provisions of the GST Act.

As per Rule 61(2) of GST Act Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in Form GSTR-3B.

21. By referring to above provisions of GST Act, learned standing counsel strenuously contended that it is duty of every registered person under GST Act to pay the tax dues within prescribed time. In case of delay, the registered person is further liable to pay interest in accordance with section 50 of the GST Act.

22. The learned standing counsel submitted that the judgments cited and relied upon by the petitioner are not applicable to the present case and are distinguishable on facts.

23. He finally submitted that the petitioner failed to make out any case warranting interference by this Court and the respondent authorities have duly followed the procedure as provided under CGST Act, 2017 in issuing garnishee proceedings to the bankers of the petitioner and there is no illegality or arbitrariness in the action of the respondent authorities.

Consideration:

24. From the material and submissions made by learned counsel for the petitioner and standing counsel for respondent-department, it is clear that admittedly there is a delay on the part of petitioner in payment of GST dues. It is also not in dispute that, the petitioner paid the GST

dues belatedly, however along with interest as per it's own calculation. It is noteworthy to mention that the petitioner had addressed letter dated 28.06.2023 to the respondent authorities requesting three months time for payment of interest owing to financial crisis and acute shortage of working capital. The petitioner addressed another letter dated 25.07.2023 disputing the interest liability arrived at by the respondents and further requested the authority to demand interest from due date of filing of GSTR 3B Return till the date of deposit of GST to Electronic Cash Ledger till the issue is decided by Hon'ble High Court.

25. A perusal of Sections 73, 74 and 79 of CGST Act and Rules, 2017 indicate that before issuing garnishee proceedings under Section 79, the authorities shall issue notice to the assessee in terms of Section 73(1) and provide an opportunity to the assessee to submit his reply to the notice and only thereafter, the authorities shall proceed further by taking into consideration the reply / explanation provided by the assessee.

26. In the case of Mahadeo Constructions Co vs Assistant Commissioner2 , Hon'ble Jharkhand High Court held as under:-

> "……. If an assessee has allegedly delayed in filing his return, but discharges the liability of only tax on his own ascertainment and does not discharge the liability of interest, the only recourse available to the proper officer would be to initiate proceedings under section 73 (1) of the CGST Act for recovery of the amount of "short paid" or "not paid" interest on the tax amount ……

27. In Assistant Commissioner of CGST & Central Excise and Others vs Daejung Moparts Pvt. Ltd. and Ors3 (supra), the Hon'ble Madras High Court quashed the garnishee proceedings under section 79 of the CGST Act, 2017 issued to the banker and held as under:-

> 29. A careful perusal of sub Sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid.

28. In the case of LC Infra Projects Pvt.Ltd. vs. The Union of India & Ors4, Hon'ble Karnataka High Court held as under:-

> "…….the issuance of Show Cause notice is sine qua non to proceed with the recovery of interest payable thereon under

> Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent - Authority without issuing Show Cause Notice, which is in breach of principles of natural justice……

29. In the case of Vision Distribution Pvt. Ltd. vs. Commissioner[7], Hon'ble Delhi High Court held that the taxpayer cannot be made to suffer for no fault of his own, on account of failure of the Government in devising smooth GST systems providing of debiting the Electronic Cash Ledger without filing of GSTR 3B Return.

30. Hon'ble Supreme Court in the case of Pratibha Processors v. Union of India[8] observed as under;-

> "In fiscal Statutes, the import of the words -- "tax", "interest", "penalty", etc. are well known, they are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty-- which is penal in character."

31. In the present case, admittedly, the respondent authorities have not issued any notice in terms of Section 79(1) of CGST Act, 2017 to the assessee to submit his reply/explanation to the demand notice for delay payments. Instead, the respondent Authorities have straight away issued garnishee proceedings under Section 79 of CGST Act, 2017, by which the petitioner's bankers were directed to debit the alleged tax dues, which is referred to 73 of the CGST Act, 2017.

32. In considered opinion of this Bench, there is considerable amount of force in the contention of the petitioner that without providing an opportunity of clarifying / explaining, the respondents authorities have calculated that

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7 1996(88) E.L.T.12 (S.C)

8 1996(88) E.L.T.12 (S.C)

the petitioner is liable to pay a sum of Rs. 1,28,97,355/- on account of late filing of GSTR 3B Return for the period July, 2017 to January, 2023 and had issued the impugned garnishee notices under Section 47(2) of the CGST Act, 2017.

33. The respondent authorities are required to issue notice to the assessee seeking their response, clarifications for non-payment of tax, interest on late payment prior to passing garnishee proceedings under Section 79(1) of the CGST Act, 2017. Therefore, the action of respondent authorities in issuing the proceedings under section 73(1) of CGST Act, 2017 are in clear violation of principles of natural justice.

Conclusion:

34. In the above factual background and legal position, this Bench is of the considered opinion that petitioner is entitled to prior notice before passing garnishee proceedings, which the respondent authorities have failed to follow and instead, the respondent authorities passed impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 contrary to section 73 (1) of CGST Act, 2017. Hence, impugned garnishee proceedings dated 25.07.2023 and 28.07.2023 are bad in law and are accordingly, set-aside.

35. The respondent authorities are at liberty to issue notice under Section 73(1) of CGST Act, 2017 to the petitioner as per law and afford an opportunity of hearing and thereafter, proceed further in accordance with law.

36. Accordingly, the present Writ Petition is allowed. No order as to costs.

37. Pending miscellaneous applications, if any, shall stand closed.

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

W.P.(C) 16211/2023 & CM APPL. 65181/2023

Sanchit Jain ... Petitioner

versus

AVATO Ward -46 State Goods and Services Tax & Anr. ... Respondents

Through : Mr. Rajeev Aggarwal A.S.C. along with
Mr. Prateek Bhadwar,
Ms. Shaguftha H. Badhwar and
Ms. Samridhi Vats, Advocates.

Date of oorder : 15.12.2023

WHETHER REGISTRATION CAN BE CANCELLED RETROSPECTIVELY IF SCN HAS BEEN ISSUED FROM A PARTICULAR DATE?

Held

NO.

The petitioner had confined his challenge to the cancellation of the petitioner's GST registration with retrospective effect. It is stated that the petitioner had no objection to his GST registration being cancelled but the same cannot be done with retrospective effect, as the same has a cascading effect on the petitioner's customers whom the supplies were made.

The impugned order to the extent that it directs cancellation of the petitioner's registration with retrospective effect, is set aside. The petitioner's GST registration shall stand cancelled from the date of the issuance of the Show Cause Notice.

O R D E R
15.12.2023

1. Issue notice.

2. Mr. Rajeev Aggarwal, learned Additional Standing Counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition, impugning an order dated 17.07.2023 (hereafter 'the impugned order'), cancelling the petitioner's GST registration with retrospective effect.

4. The impugned order was issued pursuant to a Show Cause Notice dated 06.06.2023, whereby the Proper Officer had proposed to cancel the petitioner's GST registration on the ground of failure to furnish the returns for a continuous period of six months.

5. The petitioner was called upon to furnish a reply to the said Show Cause Notice, within a period of 30 days from the date of service of notice.

He was also called to appear before the concerned Officer on 04.07.2023. Additionally, the petitioner's GST registration was suspended with effect from the date of the Show Cause Notice– 06.06.2023.

6. The impugned order indicates that the petitioner's GST registration was cancelled for the following reasons:

> "Rule 21A(2A)- comparison of returns furnished by registered person under section 39 as selected by PO while issuing REG-31"

7. The registration was cancelled with retrospective effect, from 03.07.2017.

8. The reasons stated in the impugned order are not intelligible.

9. We have asked Mr. Aggarwal, learned counsel, whether he could decipher the same. He too, is unable to explain the said reasons.

10. Further, the impugned order does not provide any reason for cancelling the petitioner's GST registration with retrospective effect.

11. As noted above, the only reasons stated in the Show Cause Notice for cancelling the petitioners GST registration was that he had not filed returns for a continuous period of six months.

12. Clearly, absent anything more, the said reason does not warrant cancelling GST registration even during the period when the petitioner had filed the returns.

13. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act'), a Proper Officer may cancel the GST registration from the said dated as he considers fit including from a retrospective date if the circumstances as set out in Section 29(2) are satisfied. However, the cancellation with retrospective effect cannot be arbitrary.

14. It is necessary that the same be informed by reason and not to the objective satisfaction of the Proper Officer.

15. In the present case, the impugned order does not set out any intelligible reason for cancelling the petitioner's GST registration, let alone doing so with retrospective effect.

16. Having stated above, it is also material to note that the learned counsel for the petitioner had confined his challenge to the cancellation of the petitioner's GST registration with retrospective effect. It is stated

that the petitioner had no objection to his GST registration being cancelled but the same cannot be done with retrospective effect, as the same has a cascading effect on the petitioner's customers whom the supplies were made.

17. In view of the above, the impugned order to the extent that it directs cancellation of the petitioner's registration with retrospective effect, is set aside.

18. The petitioner's GST registration shall stand cancelled from the date of the issuance of the Show Cause Notice, that is, with effect from 06.06.2023.

19. It is clarified that this would not preclude the respondents from initiating any other proceedings if it found that the petitioner had violated any of the statutory provisions.

20. The present petition is disposed of in the aforesaid terms. Pending application(s) also stands disposed of.