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HIGH COURT OF ANDHRA PRADESH

WRIT PETITION No.10637 OF 2021

Varshan Enterprises

Vs.

Office of GST Council

(09.12.2022)

Due to an inadvertent error, the GST Department is not able to retain the disputed amount paid.

Brief fact of the case:

The brief facts of the case were that the company namely Varshan Enterprises has been involved in the provision of telecom pipe-laying services in the state of Telangana, similarly to M/s Vodafone Mobile Services Limited, Kandlakoya Village, and Telangana State's Medchal Mandal, whose other office is in Mumbai. Cable line services were provided by the petitioner in the region of Telangana's Kandlakoya.

The petitioner, however, incorrectly generated two tax invoices for the provision of cable-laying services to Mumbai's Vodafone Mobile Services Limited. The two other tax invoices were issued to M/s. Vodafone Mobile Services Limited, Mumbai, for the tax period of June 2018 declared the IGST liability and issued a credit note to reduce the original supply consideration.

Inadvertently, the GSTIN of Vodafone Mobile Services Limited, Mumbai, was entered into the details and returns information section of the GST common portal. It was a completely unintentional mistake caused during the GST regime's tax period, the actual recipient of cable-laying services from the petitioner in Telangana was unable to claim credit for the IGST paid by the petitioner due to human error. The petitioner realized the error in May 2020 and made several attempts to rectify it, but all in vain, as the GST common portal did not permit a such correction. The department argued that the petitioner was responsible to follow the procedure outlined in the Circular for 2019, that under Section 54 of the CGST Act, his claim falls, which stipulated a two-year limitation period, and that the petitioner's claim was time-barred.

Key Highlights of the Order:

The division bench of Justice C. Praveen Kumar and Justice A.V. Ravindra Babu ruled that the amounts paid by the petitioner who provided incorrect information cannot legally be taken as a tax due from the department or respondents. The department cannot assert that the petitioner's potential claim is time-barred.

The court ruled that the petitioner cannot be required to comply with the Circular of 2019, which prohibits manual filing. The petitioner cannot be required to perform actions that are impossible to perform. The court ordered the petitioner to submit a written application for a refund of the amount, and the respondents to issue legal orders within four weeks.

IN THE HIGH COURT OF TELANGANA

WRIT PETITION NO. 20885 OF 2018

Smt. K. Himabindu

Vs

TSRTC

(12.01.2023)

If Service Tax Was Agreed To Be Paid In Agreement, Subsumption Of Service Tax Will Not Release Liability To Pay GST.

Brief fact of the case:

The Telangana High Court ruled in a Writ Petition that the Petitioner is obligated to pay the Goods and Services Tax (GST) on the licence fee in lieu of service tax, as the Petitioner was paying service tax separately under the terms of the Deed of License.

The Telangana State Road Transport Corporation granted the petitioner a license to operate a popcorn stand upon payment of the agreed-upon license fee, and for this purpose, she signed an agreement titled "Deed of License."

It was contended that TSRTC demanded payment of GST beginning on July 1, 2017, and that this demand is contrary to the terms of the Deed of License.

In the Deed of License performed by the Petitioner, it was stipulated that the licensee must pay a 14% service tax on the monthly license fee. The TSRTC was charging service tax separately, and the petitioner was paying it without objection.

It was argued by TSRTC that in accordance with the Deed of License, the licensee had agreed to pay service tax on the monthly license fee in addition to the periodic licensee fee. With the introduction of Goods and Services Tax (GST) on 1 July 2017 in place of service tax, TSRTC demanded payment of GST as a substitute tax.

Key Highlights of the Order:

Division bench of Hon'ble Justice T. Vinod Kumar and Hon'ble Justice Pulla Karthik held that the petitioner's claim that she is not required to pay GST on the license fee is without merit, and the Writ Petition failed on this ground.

MADRAS HIGH COURT
WRIT PETITION NO. 33593
Easwaran Brother India Private Limited
Vs
The Assistant Commissioner (ST)(FAC)
(15.12.2022)

Refund or Carry-Over the ITC to GST regime is up to the dealer.

Brief fact of the case:

The petitioner was a registered dealer under the Tamil Nadu Value-Added Tax Act of 2006. When the GST system went into effect on July 1, 2017, the former TNVAT Act was absorbed. Those dealers who had "Input Tax Credit" (ITC) could either request a refund or carry the ITC forward to the GST regime. The writ petitioner chose the refund option. There was a technical error with the choice. In the Filco Trade Case, the matter travelled to the Supreme Court. The Supreme Court issued an order directing the Department to open a common portal for availing transitional credit through TRAN-1 and TRAN-2 for two months, i.e. from 1 September 2022 to 31 October 2022, which was extended to 2024.

The refund request of the petitioner has been processed, and the respondent has issued a provisional refund order. The department issued a FORM-P indicating unequivocally that the writ petitioner was entitled to a refund based on ITC for the assessment year 2017-18. The petitioner for the writ had not yet received the refund. The respondent has issued an order requiring the petitioner to choose to carry forward the ITC under the GST regime.

The petitioner argued that there are two options, that is carry forward or refund, and that the order should not have been issued when the writ petitioner opted for a refund, especially when a provisional refund order was issued after processing the refund application.

Key Highlights of the Order:

The single bench of Justice M. Sundar determined that the dealer cannot be compelled to choose between the two options, i.e., refund or carry forward of ITC to the GST regime. Ultimately, it is an option given to the dealer. The provisional refund order issued by the department and the issuance of a "Form-P" clearly outlined the dealer's entitlement.

The court has quashed the notice because the petitioner has already requested a refund, it has been processed by the department, and a provisional refund order has been issued alongside the FORM-P, which is a refund procedure.

IN THE HIGH COURT OF DELHI

WRIT PETITION NO. 12499 of 2021

Arvind Goyal CA

Vs

Union of India

(19.01.2023)

The GST Act Does Not Include a Provision for Confiscating Currency From Premises.

Brief fact of the case:

The petitioner/taxpayer has contested the legality of the search operation. The petitioner argued that the concerned officers had no reason to suspect that any confiscable items were located on the petitioner's property. The officers had no reason to believe that any relevant records to the proceedings were present on the premises.

The petitioner argued that the GST officers lacked the authority to seize cash in accordance with Section 67(2) of the GST Act. The ability to seize goods under Section 67(2) of the GST Act could only be exercised if the goods were subject to confiscation. The documents, books, or objects could only be seized if they are useful or pertinent to a proceeding under the GST Act.

The petitioner argued that currency is excluded from the definition of goods and cannot therefore be seized as such. The currency is also not useful or relevant for conducting any proceedings, so there is no basis for exercising Section 67(2) of the GST Act to seize currency.

Key Highlights of the Order:

The division bench of Justices Vibhu Bakhru and Amit Mahajan observed that the powers of search and seizure are draconian and must be exercised strictly in accordance with the statute and only under the necessary conditions.

The court observed that the department was unable to identify a provision in the GST Act that authorizes a GST officer to merely "resume" assets. Clearly, the petitioners did not voluntarily hand over the cash to the concerned officers. The police officers' actions were coercive. Hence

the Delhi High Court ruled that the GST Act contains no provision authorizing the forced removal of currency from the premises of any individual.

HIGH COURT OF JAMMU & KASHMIR & LADAKH

WRIT PETITION NO. 638 of 2018

Godrej Consumer Products Limited

Vs

Union of India

(03.01.2023)

Units located in J&K that were exempted from central excise duty prior to July 1, 2017, are required to pay GST.

Brief fact of the case:

The petitioner is a Fast-Moving Consumer Goods (FMCG) company that manufactures household insecticides, personal care products, and home goods.

The petitioner argued that Notification No. 1 for 2010—Central Excise, dated February 6, 2010 (Excise Exemption Notification), was issued to permit manufacturers to set up new units or engage in substantial expansion by utilizing the central excise benefit at a later date. The Excise Exemption Notification did not include a sunset clause, allowing existing units to engage in substantial expansion at any time without restriction.

The department argued that Article 279A of the Constitution requires the GST Council to make recommendations to the Union and States, among other things, on matters relating to special provisions for the states of Arunachal Pradesh, Assam, Jammu & Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand. In its meeting on 30 September 2016, the GST Council left it to the discretion of the Central and State Governments to notify schemes of budgetary support to units where the former schemes were in effect on 18 July 2017. In response, the Central Government provided Budgetary Support to eligible units for the remainder of the fiscal year in the form of partial reimbursement of goods and services tax paid by the unit, limited to the Central Government's share of CGST and IGST retained after devolving a portion of these taxes to the States.

Key Highlights of the Order:

The division bench of Justice Tashi Rabdsan and Justice Mohan Lal ruled that Jammu and Kashmir-based units are entitled to central excise duty exemption prior to July 1, 2017, and are therefore obligated to pay GST.

The court noted that the withdrawal of an exemption in the public interest is a matter of government policy and that the courts would not forever bind the government to its policy decision. When the government acts in the public interest and there is no allegation or proof of fraud or lack of good faith, the courts do not interfere with fiscal policy. The Court dismissed the petition as devoid of merit.

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NOTIFICATION ISSUED BY CBIC:

Notification No. 01/2023-Central Tax, dated 04.01.2023

In the exercise of the powers conferred by section 3, read with section 5, of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017(13 of 2017), the Central Government hereby makes the following amendments to the notification of the Government of India, Ministry of Finance (Department of Revenue) No. 14/2017-Central Tax, dated July 1, 2017, which was published in the Gazette of India, Extraordinary, Part II.

Sl no.	Officer	Officer whose powers are to be exercised
(1)	(2)	(3)
“8A.	Additional Assistant Director, Goods and Services Tax Intelligence or Additional Assistance Director, Good and Services Tax or Additional Director, Audit	Superintendent”

CIRCULAR ISSUED BY CBIC:

CIRCULAR NO. 189/01/2023-GST, DATED 13-01-2023

In accordance with the recommendations made by the GST Council at its 48th meeting held on 17 December 2022, the following clarifications regarding the GST levy are issued via this circular.

Rab -classifiable under Tariff heading 1702:

A request for clarification regarding the classification of "Rab" has been received. According to the U.P. Rab (Movement Control Order) of 1967, "Rab" is defined as "massecuite prepared by concentrating sugarcane juice on open pan furnaces, and includes Rab Galawat and Rab Salawat, but excludes khandsari molasses and lauta gur." Rab, a product derived from sugarcane, exists in semi-solid/liquid form and is therefore excluded from heading 1701. In its order in *Krishi Utpadan Mandi Samiti vs. M/s Shankar Industries and others* [1993 SCR (1)1037], the Supreme Court of India distinguished Rab from Molasses. As Rab can be distinguished from molasses, it cannot be classified under the heading 1703. Rab is appropriately classified under heading 1702, which carries an 18% GST rate (Section 11 of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017).

Applicability of GST on by-products of milling of Dal/pulses such as chilka, Khanda, and churi/chunni:

Requests for clarification on the applicable GST rate for by-products of milling dal and pulses like chilka, khanda, and churi/chunni have been received. In its 48th meeting, the GST Council made the recommendation to fully exempt the supply of the in question goods, regardless of their end-use. As a result, starting on January 1, 2023, the aforementioned goods will be exempt from GST under Schedule S.No. 102C of the date 28.06.2017. Additionally, in accordance with the GST Council's recommendation, matters that came up during the intervening period are hereby regularised in light of genuine doubts regarding the applicability of GST on subject goods.

PRESS RELEASE (01.01.2023)

The gross GST revenue collected in December 2022 was Rs. 1,49,507 crore, of which CGST was Rs. 26,711 crore, SGST was Rs. 33,357 crore, IGST was Rs. 78,434 crore (including Rs. 40,263 crore collected on imports), and Cess was Rs. 11,005 crore (including Rs. 850 crore collected on import of goods).

Regular IGST settlements to CGST and SGST total Rs. 36,669 crore and Rs. 31,094 crore, respectively. After regular settlements in December 2022, the Centre and States collected Rs. 63,380 crore for CGST and Rs. 64,451 crore for SGST.

December 2022 GST revenues are 15% higher than last year's. Revenues from the import of goods and domestic transactions (including the import of services) were 8% and 18% higher than last year. November 2022 saw 7.9 crore e-way bills, up from 7.6 crore in October.

PRESS RELEASE(31.01.2023)

The gross GST revenue collected in January 2023 until 5:00 PM on 31.01.2023 is Rs. 1,55,922 crore, of which CGST is Rs. 28,963 crore, SGST is Rs. 36,730 crore, IGST is Rs. 79,599 crore (including Rs. 37,118 crore collected on imports), and cess is Rs. 10,630 crore (including Rs. 768 crore collected on import of goods).

Regular IGST settlements to CGST and SGST total Rs 38,507 crore and Rs 32,624 crore, respectively. After regular settlement, the Centre and States collected Rs. 67,470 crore for CGST and Rs. 69,354 crore for SGST in January 2023.

GST revenues are 24% higher in the current financial year through January 2023. The revenues from import of goods and domestic transactions (including import of services) are 29% and 22% higher, respectively, than last year.

GST collection crossed Rs. 1.50 lakh crore for the third time this financial year. January 2023 GST collection is second only to April 2022. The highest number of e-way bills was generated in December 2022, 8.3 crore, compared to 7.9 crore in November.

Last year, tax base and compliance efforts were made. GST returns (GSTR-3B) and statements of invoices (GSTR-1) filed by the end of the month have increased over time. The graph below shows Oct-Dec return filing trends over the past few years. Till next month, 2.42 crore GST returns were filed in the quarter Oct-Dec 2022, compared to 2.19 crore in the same quarter last year.



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