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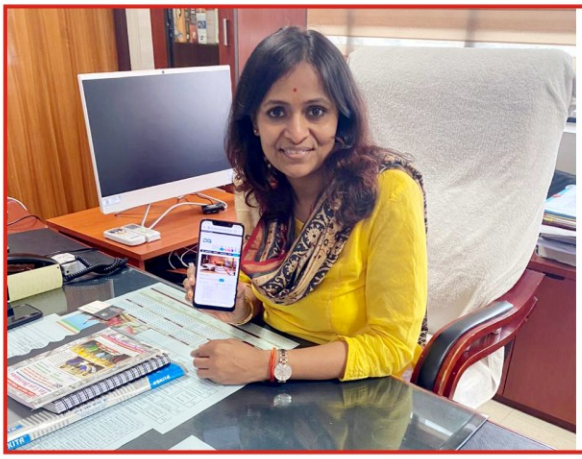
Associate : R.S. Arora Ret. Dy. CCT and Tax Consultant



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टैक्स लॉ डिसीजन्स की नवीन वेबसाइट प्रारम्भ

श्री राघवेंद्र कुमार सिंह जी आयुक्त राज्य कर मध्य प्रदेश को नवीन वेबसाइट के बारे में जानकारी प्रदान करते हुए वरिष्ठ कर सलाहकार श्री आर.एस. गोयल, सदस्य संपादक मण्डल टी.एल.डी और संपादक श्री नीलेश गंगराड़े। आयुक्त महोदय द्वारा शुभकामनाएं प्रेषित करते हुए सराहना की गयी और बहुमूल्य सुझाव भी प्रेषित किये। इस अवसर पर उपयुक्त श्री अनुराग जी जैन द्वारा भी वेबसाइट को बेहतर बनाने हेतु सुझाव दिए. आपके बहुमूल्य सुझावों को जल्द ही वेबसाइट में समाहित कर लिया जावेगा।

जैसे ही विश्वव्यापी विभीषिका ने मार्च माह से अपने पैर पसारने शुरू किये, सब कुछ थम सा गया. जो जहाँ था वह वही रह गया, सब घरों में कैद हो गए. ऐसे समय में टी.एल.डी ने अपने पाठकों तक पहुंचने के लिए और उनको अपडेट रखने के लिए वेबसाइट निर्माण का कार्य तेजी से शुरू किया और अंततः लॉक डाउन के अंत तक जी.एस.टी. वेबसाइट पूर्ण रूप से तैयार हो गयी.

शुरुवात से ही जी.एस.टी में अधिसूचनाएं और परिपत्र बड़ी जल्दी–जल्दी जारी हो रहे है ऐसे में यदि साप्ताहिक अंक भी प्रकाशित किया जावें तब भी पाठकों को अद्यतन अपडेट नहीं किया सकता। इसलिए वेबसाइट के माध्यम से अब डेली अपडेट किया जा सकता है और इसके साथ ही प्रकाशन के 6 नवीन अंको की पूरी पीडीऍफ़ फाइल भी पाठक वेबसाइट के माध्यम से देख सकते है और प्रिंट भी ले सकते है. इसके साथ ही टी.एल.डी के बैक वॉल्यूम्स भी अपलोड किये गए है इसका यह फायदा है कि जो नए सदस्य है जिनके पास पूरे वॉल्यूम्स नहीं है अब वे भी बैक वॉल्यूम्स को देख कर आवश्यकता अनुसार प्रिंट भी ले सकते है और सर्च भी कर सकते है.

अभी इस साइट को वर्ष 2017 से 2020 तक अपडेट किया जा चुका है. अगले चरण में पाठकों से प्राप्त सुझावों को और वर्ष 2016, 2015 आदि इस तरह पीछे के क्रम में अपडेट किया जावेगा।

उपरोक्त मीटिंग में आयुक्त महोदय के साथ श्री अनुराग जैन सा., श्री आर. एस. गोयल, श्री मनीष अग्रवाल और श्री नीलेश गंगराड़े उपस्थित थे.

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(1) जीएसटी की कहानी

- सीए. सुधीर हालाखंडी

जीएसटी भारत में :

1 जुलाई को जीएसटी भारत में लगे अब 36 माह हो चुके हैं और आम करदाता और कर प्रशासन दोनों ही अभी तक जीएसटी के स्थिर होने का इन्तजार कर रहें हैं लेकिन जीएसटी अभी अक प्रक्रियात्मक उलझनों, लेट फीस को लेकर विवाद, इनपुट क्रेडिट से जुड़े कठिन और अव्यवहारिक प्रावधानों, नियमित रूप से जारी होने वाली अधिसूचनाओं, जीएसटी नेटवर्क से जुड़ी समस्याओं से ही संघर्ष कर रहा है। ये भारत में जुलाई 2017 से लगने वाले जीएसटी की कहानी है और इसके मुख्य रूप से दो भाग है एक तो आप मान कर चलिए इतिहास है कि भारत में जीएसटी किस तरह से लगा और दूसरा जीएसटी लगने के बाद इससे जुड़ी समस्याएं क्या रही लेकिन इसके साथ कुछ सुझाव भी है जिनका यदि पालन किया जाए तो जीएसटी एक 'अच्छा और सरल' कर हो सकता है जिसके लिए करदाता, कानून निर्माता और प्रोफेशनल्स सभी को प्रयास करने होंगे। जीएसटी एक नया कर है और इतने बड़े पैमाने पर जब कोई कर प्रणाली लागू की जाती है तो समस्याएं तो आना स्वाभाविक है लेकिन अब जीएसटी को लागू हुए तीन साल हो चुके हैं तो अब जीएसटी को स्थिर हो जाना चाहिए क्योंकि सरलीकरण के नाम पर लाया गया यह कर सुधार तभी अर्थव्यवस्था को पूरा लाभ दे पायेगा। आईये देखें कि भारत में लगने वाले जीएसटी के प्रारम्भ से लेकर इसे लागू किये जाने की कहानी क्या है और अब इससे जुड़ी समस्याएं क्या है ? जीएसटी के इस सफर में हमारे बहुत से साथी

2017 में जुड़े थे या फिर इससे एक या दो साल पहले जब से जीएसटी की भारत में लागू होने की चर्चा शुरू हुई थी। लेकिन जीएसटी की कहानी भारत में बहुत पहले से प्रारम्भ हो गई थी और कुछ लोग जीएसटी से उसी समय से जुड़ गए थे तो आईये प्रारम्भ से आज शुरू करते है भारत में जीएसटी की कहानी।

जीएसटी की बजट में पहली बार चर्चा :

भारत में जीएसटी पर पहली अधिकृत चर्चा वर्ष 2006 के बजट में हुई थी और आप याद करें कि यही वो साल था जब भारत के अधिकांश राज्यों ने पुराने बिक्री कर कानून को हटा कर वेट लागू किया था। इस प्रकार से भारत का लगभग पूरा अप्रत्यक्ष करों का सिस्टम value added Tax system पर आ गया था यानि अब कर चुकाने का सिस्टम यह था कि आप कर चुकाते समय अपने द्वारा खरीद या प्राप्ति पर चुकाए कर को कम करेंगे और इस तरह आप द्वारा सरकार को भुगतान किया हुआ कर उतना ही होगा जो वैल्यू आप ऐड करेंगे उस पर बनेगा। जब यह सब हो गया था तो फिर जीएएसटी की जरुरत क्या थी। इसके लिए समझे कि उस समय केंद्र सेंट्रल एक्साइज और सर्विस टैक्स लगाता था आर राज्य वेट। अब ये दोनों तरह के करों अर्थात केंद्र के कर और राज्य के कर की आपस में क्रेडिट नहीं मिलती थी जैसे जो आपने वेट चुकाया है तो उसकी क्रेडिट सेंट्रल एक्साइज या सर्विस टैक्स चुकाते समय नहीं मिलती थी और उसी तरह आपके द्वारा चुकाए गए सेंट्रल एक्साइज की क्रेडिट वेट में नहीं मिलती थी।

इस प्रकार यह 'कर पर कर' लगने की स्थिति थी जिसे Cascading Effect कहते हैं जो कोई आदर्श स्थिति नहीं थी इसलिए जीएसटी इस यात्रा का अंतिम पड़ाव माना गया था जहाँ यह Cascading Effect समाप्त हो जाता। 2006 से पूर्व भी सरकार ने कुछ समितियां बनाईं थीं इस सम्बन्ध में लेकिन बजट में इसका स्पष्ट जिक्र सन् 2006 में तब के वित्त मंत्री महोदय ने पहली किया था तो आईये इसे भी देख लेते हैं -

155. It is my sense that there is a large consensus that the country should move towards a national level Goods and Services Tax (GST) that should be shared between the Centre and the States. I propose that we set April 1, 2010 as the date for introducing GST. World over, goods and services attract the same rate of tax. That is the foundation of a GST.

बजट भाषण के इस अंश को आप ध्यान से देखेंगे तो आपको पता लगेगा यह एक आदर्श जीएसटी की चर्चा है जिसे केन्द्रीय सरकार एक ही कर एकत्र करती और उसे अपने और राज्यों के बीच वितरित करती और आप मानेंगे कि भारत के उद्योग और व्यापार ने भी इसी एकल कर की मांग और उम्मीद की थी। लेकिन आज आप जो जीएसटी देख रहे हैं वह तो ऐसा नहीं है ... तो आगे हम देखेंगे कि जो जिक्र केन्द्रीय बजट भाषण में 2006 में एकल कर के

रूप में हुआ फिर इस सफर में कब क्या हुआ और क्या करण थे जिनसे इस कर का अंत लागू होते समय दोहरे जीएसटी के रूप में हुआ .... क्या था यह सफर और क्या थे वे कारण इसे आगे देखेंगे ।

जीएसटी का सफर :

वर्ष 2006 के बजट में यह कहा गया कि एक आम सहमति देश में है एक केंद्रीयकृत जीएसटी के बारे में और देखिये कितनी खूबसूरती से इसे दोहराया गया है 2007 के आम बजट में :

116. I wish to record my deep appreciation of the spirit of cooperative federalism displayed by State Governments and especially their Finance Ministers. At my request, the Empowered Committee of State Finance Ministers has agreed to work with the Central Government to prepare a roadmap for introducing a national level Goods and Services Tax (GST) with effect from April 1, 2010.

यहाँ भी एक केन्द्रीयकृत जीएसटी की बात की गयी है और जो मंच इसके लिए इस्तेमाल किया गया था वो भी कोई छोटा मंच नही था वह भारत सरकार का आम बजट था ।

यहाँ एक Empowered Committee of State Finance Ministers की बात की गयी है और कहा गया है कि इस Empowered Committee ने इस बात की सहमति दी है कि वह केंद्र सरकार के साथ बात कर एक ऐसा रास्ता बनाएगी जिससे एक राष्ट्रीय स्तर का जीएसटी पूरे देश में दिनांक 1 अप्रैल 2010 से लागू किया जा सके ।

आईये देखें कि यह Empowered Committee of State Finance Ministers जिसका जिक्र वित्त मंत्री महोदय ने अपने बजट भाषण में किया था । यह वेट से पूर्व बनाई गयी राज्यों के वित्त मंत्रियों की एक समिति थी जिसके अध्यक्ष प्रमुख अर्थशास्त्री और उस समय पश्चिम बंगाल के वित्त मंत्री डॉक्टर असीम कुमार दास गुप्ता थे । वेट एक राज्यों का अपना विषय था और उसमें केंद्र का दखल केवल समन्वय का था जिसे राज्यों को वेट लागू करने के लिए तैयार करने का था । केंद्र के इस समिति में राज्यों से सम्बन्ध बहुत अच्छे थे क्योंकि वेट में केंद्र का राज्यों के साथ कोई हितों का टकराव नहीं था राज्य और केंद्र समिति की वार्ता टेबल पर एक ही और बैठे थे ।

जीएसटी को लेकर जो प्रारम्भिक बयान देकर जो केन्द्रीय जीएसटी का माहौल बनाया गया था वह भी इन्ही अच्छे संम्बंधों की कहानी की अगली कड़ी थी ।

भारत का व्यापार और उद्योग भी इसी तरह के एक जीएसटी की कल्पना करने लगा था जिसमें एक ही कर लगेगा जिसे केंद्र सरकार एकत्र करेगी और उसे अपने एवं राज्यों के बीच

बांटेगी । इससे उन्हें ये उम्मीद थी कि वे अप्रत्यक्ष करों की बड़ी संख्या से बचकर सिर्फ एक ही कर का भुगतान करेंगे जिससे उन्हें व्यापार करने में आसानी होगी ।

आईये समझें कि इस आदर्श जीएसटी का प्रारुप क्या होता । कोई भी एक वस्तु या सेवा की जब बिक्री या सप्लाई होती तो उस पर एक निश्चित दर से कर लगता, मान लीजिये 12% तो बस 12% कर बिल में लगाना था उसमें से अपनी खरीद पर लगाए कर को घटा कर केंद्र सरकार को भुगतान करना था । अब जब यह सारा कर एकत्र हो जाता था केंद्र इसे पाने और राज्यों के बीच बाँट देता ।

भारत में जीएसटी एक दोहरा कर :

आईये आगे देखेंगे कि यह एकल कर जिसमें कर केवल एक ही जगह चुकाना था में क्या समस्याएं या बाधाएं थी जिनके चलते यह लागू नहीं हो पाया .... राज्य क्यों नहीं तैयार थे एकल जीएसटी के लिए ।

भारत सरकार के वर्ष 2006 और 2007 के बजट में जिस तरह से जीएसटी का जिक्र किया गया था उसके अनुसार जीएसटी एक एकल कर होना था जिसमें केंद्र कर को एकत्र करता और उस कर को अपने और राज्यों के बीच बांटना था और इसके लिए राज्यों के वित्त मंत्रियों की एक समिति को वर्ष 2010 में जीएसटी लागू हो सके इसका रोडमैप तैयार करने का काम सौंपा गया ।

देखें 2008 के बजट भाषण में वित्तमंत्री महोदय ने जीएसटी के बारे में क्या कहा :

183. Following an agreement between the Central Government and the State Governments, the rate of Central Sales Tax was reduced from 4 per cent to 3 per cent in this financial year. It is now proposed to reduce the rate to 2 per cent from April 1, 2008. Consultations are underway on the compensation for losses, if any, and once agreement is reached the new rate will be notified. I am also happy to report that there is considerable progress in preparing a roadmap for introducing the Goods and Services Tax with effect from April 1, 2010.

अब आप इसे ध्यान से पढ़िए तो पाएंगे कि अब राष्ट्रीय या एकल जीएसटी की बात नहीं की जा रही है । आईये देखें ये किस तरह से हुआ कि अब जीएसटी को एकल कर के रूप में लागू करने का दावा वित्त मंत्री महोदय को छोड़ना पड़ा ।

देखिये भारत में राज्य के लिए संघीय ढांचा है और इसके तहत केंद्र और राज्यों के अधिकार संविधान द्वारा तय किये गए हैं और इसी के तहत राज्य और केंद्र दोनों ही अप्रत्यक्ष कर लगाते थे और इसी के राज्य माल की बिक्री पर कर लगा सकते थे और केंद्र को उत्पादन की स्थिति

तक कर लगाने का अधिकार था और सेवा कर पर केंद्र का एकाधिकार था। राज्य बिक्री कर या वेट लगा कर कर एकत्र करते थे और केंद्र सरकार मुख्य रुप से सेंट्रल एक्साइज और सेवा कर लगाती थी।

अब यदि केन्द्रीयकृत एकल कर के रूप में जीएसटी लाया जाता तो राज्यों को अपना कर लगाने का अधिकार छोड़ना पड़ता जिसके लिए वे तियार नहीं थे और यह स्वाभाविक भी था क्योंकि स्वयं अपने अधिकारों के तहत कर लागूाना एक अलग बात है और केंद्र द्वारा लगाए गए कर में हिस्सा बंटाना दूसरी बात और राज्यों को यह दूसरी स्थिति स्वीकार करने के लिए तैयार करना संभव नहीं था।

राज्यों के वित्त मंत्रियों के समिति इस बीच अपना जीएसटी पर पहला Discussion Paper तैयार कर रही थी लेकिन इस बीच 2009 का बजट आ गया और इस साल अंतरिम और पूर्ण दो बजट पेश किये गए और इसमें वित्त मंत्री महोदय ने किस तरह का जीएसटी आने वाला है इसका कोई जिक्र ही नहीं किया सिर्फ जीएसटी आने से पहले कर की दरों में परिवर्तन के संकेत दिए और दोहराया कि 1 अप्रैल 2010 से जीएसटी लागू करने के प्रयास तेज किये जायेंगे।

इधर वित्त मंत्री का विश्वास था उधर राज्यों के वित्त मंत्रियों की समिति ने अपना पहला Discussion Paper नवम्बर 2009 में जारी कर दिया जिसमें एकल जीएसटी को खारिज करते हुए एक दोहरा जीएसटी केन्द्रीय जीएसटी और राज्य जीएसटी के नाम से प्रस्तावित किया गया ... और यही से शुरू हुआ भारत में जीएसटी लागू किये जाने के प्रयासों का असली सफर...

आईये आगे देखेंगे कि राज्य और केंद्र के बीच और क्या मसले थे जो 2010 में लगने वाला जीएसटी 2017 में जाकर लगा .... सबसे पहले देखेंगे कि आखिर क्या-क्या खास बातें थी राज्य के वित्त मंत्रियों की समिति के Discussion Paper में।

जीएसटी की भारत में चर्चा शुरू हुई थी बजट 2006 से इसीलिये हमारी जीएसटी की कहानी भी भारत सरकार के वित्तमंत्री महोदय के साल दर साल बजट भाषणों से ही आगे बढ़ रही है। प्राम्भ में वित्त मंत्री महोदय हमेशा जीएसटी को एक एकल कर के रूप में बताते रहे हैं।

ऐसा तो नहीं था कि केंद्र सरकार को राज्यों के कर लगाने के अधिकार के बारे में पता नहीं था या उन्हें एकल कर को लेकर राज्यों के विरोध का आभास ही नहीं था यह सब था लेकिन फिर भी उन्होंने एक प्रयास एकल कर के रूप में जीएसटी को भारत में परिभाषित करने का प्रयास किया और इसे आप केंद्र की एक कोशिश कह सकते हैं कि उन्होंने प्रारंभ में जीएसटी को एकल कर के रूप में प्रस्तावित किया जो कि जीएसटी का आदर्श स्वरुप था।

आईये 2010 के बजट में उस समय के वित्त मंत्री ने जीएसटी को लेकर का कहा :

On Goods and Services Tax, we have been focusing on generating a wide consensus on its design. In November, 2009 the Empowered Committee of the State Finance Ministers placed the first discussion paper on GST in the public domain..... It will be my earnest endeavour to introduce GST along with the DTC in April, 2011.

सबसे पहले तो 1 अप्रैल 2010 से जीएसटी लगने का जो लक्ष्य था वो यहाँ से आगे स्थगित होना शुरू हो गया और नई तारीख दी यह भी एक अव्यवहारिक समय सीमा थी जो कि एक खानापूर्ति के लिए दे दी गयी थी क्योंकि अभी तो जीएसटी का मूल स्वरुप ही तय करने की महत्वपूर्ण प्रक्रिया ही शुरू नहीं हुई थी ।

राज्यों के वित्त मंत्रियों की समिति ने जीएसटी को लेकर जो डिस्कशन पेपर जारी किया, जिसका जिक्र वित्त मंत्री महोदय ने 2010 के बजट भाषण में किया है, में यह स्पष्ट कर दिया था कि भारत में जीएसटी एक ऐसा कर होगा जिसमें केंद्र और राज्य दोनों बिक्री या सप्लाई के एक ही व्यवहार पर कर एकत्र करेंगे और यह कर केंद्र के लिए केंद्रीय जीएसटी (CGST) और राज्यों के लिए राज्य का जीएसटी (SGST) होंगे । यह राज्यों की और से एक दोहरे जीएसटी का प्रस्ताव था और भारत में जीएसटी की विशेष बात यह थी कि राज्यों की सहमति के बिना जीएसटी लागू करना संभव नहीं था ।

दूसरा मसला जो जीएसटी में राज्यों के हितों को लेकर था केन्द्रीय बिक्री कर और कुछ राज्य केन्द्रीय बिक्री कर के रूप में काफी बड़ा कर एकत्र करते थे और जीएसटी लगने के बाद उन्हें इस कर का नुकसान होना था क्योंकि जीएसटी में केन्द्रीय बिक्री कर की कोई जगह नहीं थी और दूसरी बात जीएसटी एक उपभोक्ता कर है इसलिए निर्माता राज्यों को कर का नुकसान भी होना था और भी मुद्दे थे जिनसे राज्यों को आशंका थी कि उन्हें नुकसान होना था और इस इस नुकसान की क्षतिपूर्ती का मसला भी था जो राज्यों और केंद्र के बीच विचारणीय था जीएसटी को भारत में लागू करने से पहले ।

आईये आगे देखेंगे कि राज्यों के जीएसटी डिस्कशन पेपर पर केंद्र सरकार की क्या प्रतिक्रया थी और 1 अप्रैल 2011 को क्यों कहा कि हमने एक अव्यवहारिक और केवल खानापूर्ति के लिए दी गई तारीख ... अभी इन्तजार बहुत लंबा होने वाला था क्यों कि 2017 और 2011 में बहुत लम्बी अवधि थी ।

जीएसटी विमर्श की प्रक्रिया :

आईये 2011 के बजट में उस समय के वित्त मंत्री ने जीएसटी को लेकर का कहा :

Many experts have argued that it will be desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an approach will be very conducive for a nationwide GST. I propose to initiate an informed public debate on the subject to help us finalise the approach to GST.

आईये इस बजट भाषण में जीएसटी के जिक्र को ध्यान से देखें तो आपको पता लग जाएगा कि अब जीएसटी कब लागू होगा इसका जिक्र खत्म हो गया है अब जीएसटी पर विमर्श की एक प्रक्रिया प्रारम्भ हो गयी थी। आईये देखें कि राज्यों के वित्त मंत्रियों की अधिकार प्राप्त समिति ने जो अपने प्रस्ताव जीएसटी डिस्कशन पेपर में दिए थे उनका जवाब केंद्र सरकार के राजस्व विभाग की ओर से क्या दिया गया।

आईये सबसे पहले जीएसटी के दोहरे स्वरुप के बारे में बात करें तो केंद्र सरकार के राजस्व विभाग ने जो टिप्पणी दी थी उसमें बिना किसी विवाद के राज्यों के इस हक को मानते हुए दोहरे जीएसटी को सहमति दे दी गयी थी और आप मान सकते हैं कि जीएसटी एकल कर के रूप में लगेगा यह प्रक्रिया उसी दिन सरकारों के स्तर पर बंद हो गई थी लेकिन यह भ्रम करदाताओं में बहुत दिन तक बना रहा लेकिन यह सरकार द्वारा नहीं फैलाया हुआ था बल्कि यह एक करदाताओं की उम्मीद थी जो उन्हें यह मानने ही नहीं देती थी कि जीएसटी एक एकल कर नहीं होगा। अब यहाँ तीन तरह के कर पर सहमति दी गई थी पहला केंद्र का कर अर्थात सीजीएसटी दूसरा राज्यों का कर एसजीएसटी। इसके अलावा एक और कर था जो दो राज्यों के बीच होने वाले व्यापार के लिए आईजीएसटी जो वास्तव में एक अतिरिक्त कर नहीं था बल्कि एक व्यवस्था थी जिससे दो राज्यों के मध्य होने वाले व्यापार के संचालन को नियंत्रित होना था।

एक और मुद्दा था कि वेट में सामान्य रूप से कर लगने की न्यूनतम सीमा 10 लाख रूपये थी और सेंट्रल एक्साइज में यह सीमा 150 लाख रूपये थी तो राज्यों का यह सुझाव था कि एसजीएसटी में यह सीमा 10 लाख रूपये रखी जाए और सीजीएसटी के लिए यह सीमा 150 लाख रूपये रखी जाए ताकि लघु और मध्यम दर्जे के डीलर्स को राहत मिल सके। लेकिन इसे नहीं माना गया और कहा गया कि एसजीएसटी और सीजीएसटी का थ्रशहोल्ड एक ही होगा।

एक और मांग या सुझाव राज्यों के डिस्कशन पेपर में दिया गया था वह था सेवाओं पर अलग से ऐशहोल्ड तय की जाये लेकिन इस पर भी केंद्र का कोई सकारात्मक रुख नहीं था।

इसके अलावा सभी राज्यों के द्वारा समान वस्तुओं और सेवाओं और एक ही कर की दर पर भी सहमति दे गई थी।

इस डिस्कशन पेपर में राज्यों को जीएसटी लागू होने पर होने वाले नुकसान, यदि कोई हो तो, की क्षतिपूर्ति की मांग की गई थी जिसके जवाब में कहा गया कि यह मामला समिति

ने खुद ही 13 वें वित्त आयोग को सौंप दिया है तो उसकी रिपोर्ट का इन्तेजार कर लिया जाए। वैसे राज्यों ने 5 सालों के लिए क्षतिपूर्ति की मांग की थी।

जीएसटी और संविधान संशोधन :

इसके अलवा बहुत से मुद्दे थे जिनके बारे में केंद्र ने राज्यों के इस डिस्कशन पेपर में उठाये मुद्दों पर अपनी तरफ से एक राय दी थी लेकिन सबसे मुख्य मुद्दा था सविधान संशोधन का और आगे हम चर्चा करेंगे कि क्यों जरुरी था जीएसटी लागू करने से पहले संविधान में संशोधन करना और फिर कब और क्या संविधान संशोधन किया गया जिससे कानूनी रूप से भारत में जीएसटी लागू करने का मार्ग प्रशस्त हुआ।

भारत में जीएसटी लागू करने के लिए राज्यों और केंद्र के बीच जो एक व्यवहारिक समझौता हुआ था जिसके तहत भारत में एक दोहरा जीएसटी लगाने का फैसला किया गया जिसके तहत माल एवं सेवा की सप्लाई के किसी एक ही व्यवहार पर केंद्र एवं राज्य दोनों ही जीएसटी कर वसूल करेंगे लेकिन यह समझौता भारत में जीएसटी लागू करने के लिए काफी नहीं था इसके लिए भारतीय संविधान में भी संशोधन की आवश्यकता थी। तो आईये देखें जीएसटी लागू करने के लिए संविधान में संशोधन की आवश्यकता क्यों थी और इसमें अड़चन क्या थी जो संविधान संशोधन होने में कुछ समय ज्यादा लग गया।

भारत में शासन का संघीय ढांचा है जिसमें कर लगाने के अधिकार भी राज्यों और केंद्र के बीच बंटे हुए थे इसके तहत केंद्र को माल की बिक्री पर कर लगाने का अधिकार नहीं था और इसी तरह राज्यों को सेवाओं पर अधिकार नहीं था और जीएसटी में केंद्र को माल की बिक्री पर कर लगाने का अधिकार देना जरुरी था जो अब तक सिर्फ राज्यों को ही हासिल था और इसके अतिरिक्त सेवाओं पर कर लगाने का अधिकार केंद्र को था जो कि राज्यों को भी दिलवाना जरुरी था तभी केंद्र और राज्य दोनों अपना जीएसटी कर लगा सकता थे। संविधान संशोधन का मुख्य उद्देश्य भी यही था। संविधान संशोधन विधेयक को लेकर जो विशेष बात थी वह यह थी कि इसे पारित कराने के लिये लोकसभा और राज्यसभा में दो तिहाई बहुमत की आवश्यकता थी और इसके अतिरिक्त जितने भी राज्य भारत में हैं उनमें से आधे राज्यों से इसे अनुमोदित करवाना जरुरी था।

राज्य सभा में यह थोड़ा मुश्किल था क्योंकि इस समय की सरकार और पहले की सरकार के पास पर्याप्त संख्या नहीं थी लेकिन विपक्ष के साथ आपसी समझौते के तहत इसे राज्यसभा से इस तरह से पारित करवाया गया कि इस विधेयक के विरुद्ध कोई मत नहीं गया। एक तो इसका कारण यह था कि सरकार ने विपक्ष का एक प्रतिशत अतिरिक्त कर लगाने के विरोध को मान लिए और दूसरा वित्त मंत्री महोदय ने कर की दरों को न्यूनतम रखने का वादा किया था। एक तरह से सरकार का राज्यसभा में यह एक सफल और सार्थक प्रयास था।

लोकसभा में संविधान संशोधन विधेयक 19 दिसम्बर 2014 को रखा गया और इसे दिनांक 6 मई 2015 को लोकसभा द्वारा पारित कर दिया गया। इसी तरह राज्य सभा में यह बिल 14 मई 2015 को Select Commitee को दिया गया था जिसकी रिपोर्ट 22 जुलाई 2015 को पेश की गई और यह विधेयक राज्यसभा द्वारा 3 अगस्त 2016 को पारित कर दिया गया और इसके बाद ही एक संशोधन बिल लोकसभा द्वारा 8 अगस्त 2016 को पारित कर दिया गया।

इसके बाद यह बिल कुल राज्यों की संख्या के आधे राज्यों को अपनी विधानसभाओं से अनुमोदित कराना था और सबसे पहले असम विधान द्वारा इसे अनुमोदित किया गया और उसके बाद एक के बाद एक सभी विधानसभाओं के द्वारा वांछित संख्या में इसे अनुमोदित कर दिया गया।

यह संविधान संशोधन विधेयक भारत के माननीय राष्ट्रपति महोदय द्वारा दिनांक 8 सितम्बर 2016 को अनुमति देने के बाद उसी दिन के राजपत्र में प्रकाशित हो प्रभावी हो गया। इस तरह भारत में केंद्र और राज्यों को जीएसटी लगाने की प्रभावी शक्तियाँ मिल गयीं। यह एक संविधान संशोधन विधेयक था और जीएसटी का कानून बनाने और इसे केंद्र और राज्यों से पारित करवाने का काम बाकी था।

जीएसटी संविधान संशोधन विधेयक के पारित होने के बाद जीएसटी कानून को लागू करने से पूर्व जीएसटी कौंसिल की स्थापना एक जरुरी कदम था और उसके बाद लोकसभा, राज्यसभा और विभिन्न राज्यों की विधानसभाओं से जीएसटी कानून को पास करवाना जरुरी था। यहाँ याद रखें जीएसटी संविधान संशोधन ने केवल केंद्र और राज्यों को जीएसटी लगाने की शक्तियाँ प्रदान की है लेकिन इसे लागू करने के लिए जीएसटी कानून का बनना और लागू होना जरुरी था।

जीएसटी कौंसिल :

जीएसटी संविधान संशोधन में भारत में जीएसटी लागू करने के लिए समन्वय हेतु एक संस्था जीएसटी कौंसिल नाम की एक संवैधानिक संस्था की स्थापना करनी थी इस संशोधन के लागू होने के 60 दिन में करनी थी जिसमें राज्यों और केंद्र का प्रतिनिधित्व था और इस संस्था को सरकार को सलाह देनी थी। इस जीएसटी कौंसिल का निम्नलिखित संगठन संविधान द्वारा तय किया गया था आईये उसे देख लें :

1. केन्द्रीय वित्त मंत्री - अध्यक्ष
2. केन्द्रीय वित्त राज्य मंत्री - सदस्य
3. राज्यों के वित्त मंत्री या राज्य सरकारों द्वारा मनोनीत मंत्री - सदस्य

राज्य के प्रतिनिधी मंत्रियों जो कि राज्य वित्त मंत्री या मनोनीत मंत्री हो सकते हैं में से कोई एक इस कौंसिल का उपाध्यक्ष होगा ।

आईये देखें इस कौंसिल में मताधिकार एवं लिए जाने फैसलों को पारित करने के नियम क्या होंगे । देखिये इस कौंसिल में केंद्र को 1/3 मताधिकार प्राप्त है और राज्यों को 2/3 मताधिकार प्राप्त होगा । किसी एक फैसले को पारित करने के लिए 3/4 मतों की जरुरत होती है ।

यह जीएसटी कौंसिल सरकार को जीएसटी से जुड़े मसलों जैसे करमुक्ति, कर की दरें, जीएसटी के मॉडल कानून इत्यादि के बारे में सरकार को सिफारिश करनी थी । आईये देखें कि जीएसटी कौंसिल के पास सरकार को सुझाव देने के लिए मुख्य विषय क्या-क्या थे :

1. कर, सेस और सर चार्ज जो जीएसटी में समाहित होने हैं ।
2. कर की दरें
3. जीएसटी के मॉडल कानून
4. थ्रेशहोल्ड लिमिट तय करना
5. कर मुक्त वस्तुओं की सूची
6. कुछ राज्यों के लिए विशेष कानून बनाना
7. जीएसटी के जुड़े अन्य मामले

इसके अतरिक्त जीएसटी कौंसिल को वह तारीख भी तय करनी है जिस दिन से पेट्रोलियम प्रोडक्ट्स को जीएसटी के दायरे में लेना है ।

जीएसटी कौंसिल की स्थापना 23 सितम्बर 2016 को हुई इसके पहले अध्यक्ष उस समय के वित्त मंत्री स्वर्गीय श्री अरुण जेटली थी और इस कौंसिल की पहली मीटिंग 22-23 सितम्बर को हुई थी जिसमें यह तय किया गया था कि भारत में जीएसटी 1 अप्रैल 2017 से लागू किया जाना तय हुआ । बाद में यह स्थगित हुआ और भारत में जीएसटी 1 जुलाई 2017 को लागू हुआ । यहाँ ध्यान रखें जीएसटी लागू होने के बाद लगभग हर माह ही जीएसटी कौंसिल की मीटिंग हुई है और इस कौंसिल ने जीएसटी से सम्बंधित कई फैसले लिए हैं और इनमें से लगभग सभी सरकार ने माने हैं ।

जीएसटी भारत में लागू हो गया - 1 जुलाई 2017 :

जीएसटी संविधान संशोधन कोई जीएसटी कानून नहीं था लेकिन इस संशोशन के साथ राज्यों और केंद्र को जीएसटी लागू करने की शक्तियां प्राप्त हो गई थीं और इसी के चलते केंद्र और राज्यों ने अपन -अपने जीएसटी कानून बनाए और दिनांक एक जुलाई 2017 को भारत

की संसद का एक विशेष सत्र बुलाया गया जिसमें भारत के माननीय प्रधान मंत्री महोदय ने रात्रि 12 बजे भारत में जीएसटी लागू करने की घोषणा की। इस तरह भारत में जीएसटी लागू हुआ जिसकी आज तृतीय सालगिरह है।

आईये उम्मीद करें कि शीघ्र ही जीएसटी स्थिर होकर एक सरलीकृत रूप में भारत के उद्योग एवं व्यापार की उम्मीदों पर खरा उतरते हुए भारत की अर्थव्यवस्था को समुचित और वांछित योगदान दे सकेगा।

जीएसटी से जुड़ी समस्याएँ :

जीएसटी 1 जुलाई 2017 से लागू तो हो गया लेकिन चूंकि यह एक नया कर था ना सिर्फ करदाताओं के लिए बल्कि कानून निर्माताओं के लिए भी इसलिए इसका अनुपालन प्रारम्भ से ही कठिनाइयों से घिरा रहा।

कठिन प्रक्रियाएं :

प्रारम्भ में जो रिटर्न भरने की प्रक्रिया बनाई गई और घोषित की गई वह पहले माह में ही स्थगित कर दी गई और इसके विकल्प के तौर पर जो फॉर्म GSTR-3B प्रारम्भ के दो माह के लिए लाया गया था वह आज 36 माह तक भी चल रहा है और आज भी खरीददार से उसकी खरीद की सूचि जो कि मूल जीएसटी कानून में थी वह नहीं ली जा रही है। इसके अतिरिक्त GSTR-3B में भूल सुधार की सुविधा नहीं देकर जीएसटी की प्रक्रिया संबंधी मुश्किलों को और भी बढ़ा दिया गया है। जीएसटी में 'बेक टू बेक' डीलर्स से इस तरह रिटर्न मांगे गए हैं कि जैसे उन्हें जीएसटी की प्रक्रियाओं के पालन के अतिरिक्त और कोई काम ही नहीं हो - जैसे व्यापार करना।

जीएसटी नेटवर्क :

जीएसटी नेटवर्क जिसके जिम्मे पूरा जीएसटी सूचना तंत्र को संभालना था जिसमें रिटर्न भरने की प्रक्रिया भी शामिल थी वह अक्सर रिटर्न भरने की आखिरी तिथियों पर असफल होता रहा है जिसके कारण करदाता बहुत परेशान रहें हैं और बार-बार सुधार की कोशिशों के बाद आज भी यह तंत्र पूरी तरह काम नहीं कर पा रहा है। लेकिन अब जीएसटीएन के सेवा प्रदाता ने इसमें सुधार का वादा जीएसटी कौंसिल को किया है तो अब हम यह उम्मीद कर सकते हैं कि शीघ्र ही हम इसमें सुधार देखेंगे क्योंकि जीएसटी की स्थिरता के लिए यह जरुरी भी है। आप यह मान कर चलें कि जीएसटी नेटवर्क में सुधार होना कर दाताओं और कानून निर्माताओं दोनों के लिए जरुरी है। सरकार जीएसटी नेटवर्क के सेवा प्रादाता को नेटवर्क में सुधार के लिए मजबूर करें।

जीएसटी लेट फीस :

1 अप्रैल 2017 से जब से जीएसटी भारत में लगा है तब से ही जीएसटी लेट फीस एक विवाद का मुद्दा बना हुआ है। यहाँ सवाल यह है कि जब जीएसटी भारत में लगा तो यह एक नया कर था प्रशासन और डीलर दोनों के लिए तो प्रारम्भ में देरी होना स्वाभाविक भी था ऐसे में लेट फीस का कोई बहुत अधिक औचित्य नहीं था। एक बात और है कि लेट फीस की रकम का डीलर की कर देयता से सीधा सम्बन्ध नहीं था और ऐसे में यह लेट फीस की रकम कई बार जहाँ कर देयता नहीं थी वहां भी अधिकतम सीमा तक लग गई और फिर सरकार ने जब जीएसटी लेट फीस माफ की तब भी उन डीलर्स ने अपने आप को ठगा हुआ महसूस किया जिन्होंने यह लेट फीस भर कर रिटर्न भर दिए थे।

इसके अतिरिक्त भी GSTR-10 नामक एक रजिस्ट्रेशन निरस्त होने वाले डीलर्स का रिटर्न है जो कि अधिकांश मामलों में शून्य रिटर्न होता है में भी लेट फीस के समस्त प्रावधान लागू हैं और अधिकतम लेट फीस 10000.00 रूपये है। इसके साथ दुर्भाग्य यह है कि जब भी GSTR-3B की लेट फीस माफ की जाती है तब कानून निर्माता हमेशा GSTR-10 को भूल जाते हैं।

जीएसटी के वार्षिक रिटर्न :

जीएसटी के वार्षिक रिटर्न जो ड्राफ्ट किये गए हैं उनमें भी सूचनाओं के मांगने में कोई तार्किकता नहीं रखी गई तो अब जो सूचना वार्षिक रिटर्न में डीलर्स के द्वारा दी जा रही है वह कर निर्धारण में कोई बहुत अधिक काम नहीं आएगी और चूंकि जीएसटी में जीएसटी के एक मुख्य रिटर्न GSTR-3B में सुधार की सुविधा नहीं थी इसलिए वार्षिक रिटर्न में दिए हुए आंकड़ों को जांच करने के लिए नोटिस ही जारी करना होगा। इसका एक विकल्प यह भी हो सकता था कि वार्षिक रिटर्न में ही एक स्टेटमेंट अलग से दे दिया जाता जिससे डीलर अपने द्वारा किये गए सुधार का स्पष्टीकरण दे सके। आप इसे सुझाव भी मान सकते हो।

जीएसटी कौंसिल की मीटिंग्स भी लगभग हर माह होती है और इसमें समस्याओं के हल भी निकाले जाते हैं लेकिन इनकी अनुपालना में सरकार को बहुत अधिक समय लगता है जैसे ग्रॉस टैक्स की जगह नेट टैक्स पर लगने वाला ब्याज।

इसके अतिरिक्त भी जीएसटी कौंसिल एक बार में एक ही समस्या पर चर्चा करती है और इस सम्बन्ध में होना यह चाहिए कि अभी तक की सभी समस्याओं पर एक बार में चर्चा कर इन पर फैसला ले लिया जाए क्योंकि जीएसटी से जुड़ी बहुत सी समस्याएं हैं और एक समस्या पर एक बार में चर्चा हो तो कुल सस्याएं हल होने में जो समय लगेगा उसमें देरी होगी और इसी के साथ जीएसटी सरलीकरण में भी देरी होगी।

जीएसटी में एक समस्या ब्याज को लेकर भी है। देखिये डीलर कभी-कभी टैक्स तो जमा करा देता है लेकिन कभी वह किन्हीं कारणों से रिटर्न नहीं भर पाता है तो उसे टैक्स जमा करा देने के बाद भी ब्याज का भुगतान करना होता है। सरकार को जब टैक्स की रकम मिल ही चुकी है तो फिर इस पर तब तक जब तक की रिटर्न नहीं भर दिया जाए ब्याज लगाने का कोई औचित्य नहीं है। इस समस्या को भी दूर किया जाना चाहिए।

जीएसटी की एक धारा 36(4) है जिसके तहत इनपुट क्रेडिट का एक बहुत बड़ा हिस्सा तब तक के लिए रोक लिया जाता है जब तक कि विक्रेता के द्वारा अपने GSTR-1 में नहीं दिखाया जाता है जहां से यह क्रेता के GSTR-2A में आता है। विक्रेता द्वारा रिटर्न नहीं भरने के कई कारण होते हैं और यदि वे लेट रिटर्न और टैक्स भरते हैं तो वे कर के साथ ब्याज और लेट फीस भी भरते हैं। इसके अतिरिक्त कुछ विक्रेता अपना GSTR-1 त्रैमासिक भरते हैं तो उनकी अत: क्रेता की इनपुट को मासिक रिटर्न में कैसे मिल सकती है और आश्चर्य की बात है कि इस प्रावधान को लागू करते समय इस महत्वपूर्ण बात को ध्यान में ही नहीं रखा गया। अब इसमें किया यह जाना चाहिए कि क्रेता को मिस्मेच को निस्तारण करने के लिए तीन माह का समय दिया जाना चाहिए और यदि तीन माह में इनपुट क्रेडिट के मिस्मेच का निस्तारण नहीं हो तो इस क्रेडिट को स्थगित कर इसे जमा करवा लिया जाए लेकिन इसके लिए उचित समय दिया जाना चाहिए।

क्रेता का एक अधिकार है इनपुट क्रेडिट और इसे धारा 16(4) या 36(4) जैसे प्रक्रियात्मक प्रावधानों से रोका नहीं जाना चाहिए। विशेष तौर पर कि जब जीएसटी एक नया कर है और डीलर्स को इसे समझने और पालन करने के लिए समय दिया जाना चाहिए।

जीएसटी में एक प्रावधान रिवर्स चार्ज का है वह जिन परिस्थितियों के लिए बनाया गया उनके अलावा यह उन स्तिथियों में भी लग गया जहां इसका इसका कोई वित्तीय प्रभाव नहीं था और बाद में इसे हटा भी लिया गया लेकिन जिस दौरान यह लागू था और डीलर्स इसे जमा नहीं करा पाए उनके लिए यह अभी भी मुसीबत बना हुआ है जबकि वह डीलर कुल सामान्य कर इससे ज्यादा भर चुका है। सरकार को चाहिए कि इस तरह के डीलर्स को वह राहत दे क्योंकि वे कर तो जमा करा ही चुके हैं।

एक कर एक देश के नाम पर लाया गया यह कर इस सबसे बड़े जीएसटी एक उद्देश्य की ओर नहीं चल रहा है। आईये इसे भी समझ लें। माल और सेवाओं के लिए प्रारम्भ में जीएसटी की थ्रेशहोल्ड लिमिट 20 लाख रूपये थी लेकिन बाद में जब इसे बढ़ाया गया तो माल पर यह सीमा 40 लाख रूपये हो गई लेकिन सेवाओं पर इसे 20 लाख ही रखा गया। इसका कोई भी तर्क नहीं दिया जा सकता है। सरकार को थ्रेशहोल्ड लिमिट माल और सेवाओं के लिए एक ही रखनी चाहिए लेकिन इसका पालन नहीं किया गया है। यदि यह तर्क दिया

जाए कि सेवाओं पर थ्रेशहोल्ड कम होनी चाहिए तो फिर माल और सेवाओं के लिए तब जीएसटी लागू किया गया तो इसे एक ही क्यों रखा गया और यदि ऐसा किया गया है तो जब सीमा बढ़ाई गयी है तो फिर माल के साथ सेवाओं की भी थ्रेशहोल्ड लिमिट भी बढ़ाई जानी चाहिए।

देखिये जीएसटी भारत में सरलीकरण के लिए लाया गया था और यह कर जब तक सरल नहीं होगा तब तक इसके मूल उद्देश्यों को प्राप्त नहीं कर पायेगा इसलिए सरकार को चाहिए कि जीएसटी सरलीकरण की ओर अपने सार्थक प्रयास तेज करे ताकि जीएसटी के मूल उद्देश्य को प्राप्त कर सके। जीएसटी में समस्याएं है और यह स्वाभाविक भी है कि नया कर है तो समस्याएं तो होंगी ही और इससे निराश होने की कोई जरुरत नहीं है। समय थोड़ा ज्यादा लग सकता है लेकिन जीएसटी एक अच्छी कर प्रणाली के रूप में विकसित होगा और भारतीय अर्थव्यवस्था में अपना वांछित योगदान देगा।

सभी पक्षों को जीएसटी की तीसरी वर्षगांठ पर हार्दिक बधाई !!!!!!!

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(2) सीए. सुधीर हालाखंडी के जीएसटी लेखन, उनके कार्टून और जीएसटी से जुड़े विभिन्न विषयों पर चर्चा

- सीए. अजय शर्मा

सीए. अजय शर्मा :- सुधीर सर, इस बातचीत में आपका स्वागत है। आईये सबसे पहले बात करें कोरोना लॉकडाउन के दौरान आपका समय कैसे निकल रहा है। आप अपनी गतिविधियों में लगातार व्यस्त रहते हैं तो इस समय थोड़ी परेशानी तो हो रही होगी। इस समय लेखन और कार्टून कैसे चल रहें हैं। वैसे आज लगभग 45 दिन हो गये हैं...

सुधीर हालाखंडी :- देखिये, हमारे पास विकल्प क्या है ? इस बीमारी में बचाव ही सबसे बड़ा इलाज है और यही हमारी सरकार भी कह रही है तो हमें घर पर तो रहना ही होगा। हमें स्वस्थ और सुरक्षित रहना है तो फिर हमें वह सभी नियम मानने होंगे जो कि हमारी सरकार के द्वारा बताये गए हैं। यही हमारा कर्तव्य भी है अपने प्रति और अपने लोगों के प्रति।

देखिये जब लॉकडाउन प्रारम्भ हुआ तब से तीन दिन तक तो मैंने पूरा आराम किया और इसका एक कारण था कि मैं तीस साल से एक ही रूटीन पर चल रहा था तो मुझे लगा कि यह एक आराम का सही समय है लेकिन चौथे दिन से मुझे कुछ परेशानी शुरू हो गई। ये मान कर चलिए कि चौथा दिन मेरे लिए बहत मुश्किल था इसीलिये 5वें दिन से ही मैंने अपना पढ़ने लिखने का कार्यक्रम तय कर दिया और अब तक जो जीएसटी इंटरव्यू मैंने लिए हैं वह भी इसी कड़ी का हिस्सा है और आज यह जिम्मेदारी आपको दी गई है। इसके अलवा मैंने कुछ लेख भी लिखें है और एक बार जब पढ़ने और लिखने का काम शुरु हो गया फिर कोई ज्यादा मुश्किल

नही रही... हाँ इस समय पता नहीं क्यों मेरा कार्टून बनाने का मन नहीं करता है ... आज 45 दिन से ज्यादा हो चुके हैं लेकिन मैंने एक भी कार्टून नही बनाया है ... देखें आगे क्या होता है ।

अजय शर्मा :- सुधीर सर, आप जीएसटी विषय पर एक जाने माने लेखक हैं। आपका लेखन कार्य कब से प्रारम्भ हुआ और क्या आप सिर्फ जीएसटी पर ही लिखते हैं ? इस समय तो आपके लेख शायद सिर्फ जीएसटी से ही जुड़े हैं ।

सुधीर हालाखंडी :- देखिये, मैंने कर मामलों पर सन् 2000 से लिखना शुरू किया था और मैंने ICAI के जर्नल के लिए पहला लेख 2003 में लिखा था और अब तक मैं लगभग 500 से अधिक लेख कई प्रकाशकों, अखबारों और वेबसाइट्स के लिए लिख चुका हूँ। जीएसटी के अतिरिक्त मेरा लेखन मुख्य रूप से वेट, आयकर, सेवा कर पर भी था ।

जहां तक मुझे याद है मैंने सबसे पहले लिखना जो शुरू किया वह आयकर पर था और एक समय ऐसा था जब मैं भारत के आम बजट पर एक साथ कई मुख्य प्रकाशकों के लिए लिखता था । इसलिए मेरा लेखन सिर्फ अप्रत्यक्ष कर पर ही नहीं था लेकिन अब इस समय आप कह सकते हैं कि इस समय मैं सिर्फ जीएसटी पर ही लिख रहा हूँ ।

मैंने ICAI के जरनल के लिए अब तक कुल 5 लेख लिखें है उनमें से एक केन्द्रीय बिक्री कर पर, एक आयकर पर, दो सेवा कर पर और एक जीएसटी पर । प्रत्यक्ष करों पर भी मैंने काफी लिखा है । जब टैक्स ऑडिट रिपोर्ट ऑनलाइन फाइल करने का प्रावधान जब पहली बार आया था तब मैंने अपनी पहली ऑडिट रिपोर्ट अपलोड करने के अनुभव एक टैक्स वेबसाईट पर लिखे थे जो कि उस समय काफी लोकप्रिय हुए थे ।

अजय शर्मा :- तब फिर आपके लेखन में जीएसटी का प्रवेश कैसे हुआ? आपके जीएसटी लेखन की शुरुआत कैसे हुई ?

सुधीर हालाखंडी :- सन् 2006 में जीएसटी को पढ़ना प्रारम्भ किया था और यह सच है कि उस समय इस विषय पर बहुत कम जानकारी उपलब्ध थी ।

मैंने मेरा पहला जीएसटी पर एक विस्तृत लेख 2006 में लिखा था जो कि ICAI के CA जर्नल के अप्रैल 2017 अंक में प्रकाशित हुआ था तब से अभी तक जीएसटी पर पढ़ाई और लेखन जारी है । जब भी मैं कहीं लिखता हूँ कि मैंने जीएसटी पर 2007 में लिखा तो जो नए पाठक होते हैं वे मुझे मेसेज भेजते हैं कि इसे ठीक कर 2017 कर लूँ क्योंकि जीएसटी 2017 में लगा था ..... लेकिन मैं क्या कर सकता हूँ मेरे लिए वास्तव में यह 2007 ही था ।

अजय शर्मा :- सुधीर सर, आपका लेखन हिन्दी बेल्ट में बहुत अधिक लोकप्रिय है और आपने

हिन्दी में भी जीएसटी पर एक पुस्तक लिखी थी जिसने आपको काफी लोकप्रियता दिलवाई थी तो आपका यह हिन्दी लेखन किस प्रकार प्रारम्भ हुआ ? व्यवसायिक लेखन जब आप करते थे वह तो लगभग सारा ही अंग्रेजी में था ।

सुधीर हालाखंडी :- मैंने वर्ष 2016 में जीएसटी पर हिन्दी में लिखना प्रारम्भ किया और उस समय यह मेरा एक नया प्रयोग ही था लेकिन 2017 के मध्य में मेरा यह लेखन करदाताओं और व्यापारी वर्ग में, खास तौर पर हिन्दी बेल्ट में काफी लोकप्रिय हो गया था इसलिए फिर मैंने इसको आगे भी जारी रखा और अभी भी यह चल रहा है । एक बात और है कि जीएसटी एक नया टैक्स था इसलिए हिन्दी में पाठकों की संख्या उस समय तुलनात्मक रूप से बहुत अधिक थी और मेरा हिन्दी में लिखा सभी को सहज रुप में उपलब्ध था ।

हाँ मैं जिस समय कुछ बड़े प्रकाशकों के लिए लिख रहा था उस समय में अंग्रेजी में ही लिखा करता था क्योंकि हिन्दी में कर मामलों में व्यवसायिक पत्रिकाएँ या तो थी ही नहीं या बहुत कम थी । एक बात और कर मामलों पर हिन्दी में लेखन का प्रचलन भी बहुत कम था इसलिए यह एक नया प्रयोग था जो आश्चर्यजनक रूप से काफी सफल रहा और ध्यान रखें कि हिन्दी में लिखने वाले भी बहुत ही कम थे ।

इसलिए मैंने जब जीएसटी पर हिन्दी में लिखने की योजना बनाई तो मैंने इसके लिए किसी प्रकाशक का सहारा लेने की जगह सोशल मीडिया का सहारा लिया ।

अजय शर्मा :- सुधीर सर, आपने सोशल मीडिया के सभी मंचों को बहुत ही अच्छी तरह से काम में लिया ..... चाहे वो व्हाट्स एप्प हो, ट्विटर हो, फेसबुक हो, टेलीग्राम या यू ट्यूब हो.....

सुधीर हालाखंडी :- धन्यवाद ! आपने मेरे प्रयास की सराहना की ... यही मेरे लिए प्रेरणा है । हां मेरा यह प्रयास काफी सफल भी रहा और हिन्दी भाषी करदाताओं के लिए काफी उपयोगी भी रहा ।

अजय शर्मा :- जी सर । हिंदी में करो से सम्बंधित लेखन बहुत ही सीमित है और इस सम्बन्ध में आपका कार्य बहुत ही सराहनीय है ... आपके इसी हिन्दी लेखन के कारण कर दाताओं ने, विशेष रूप से हिन्दी बेल्ट के करदाताओं ने जीएसटी को समझना शुरू किया .... पहली बार शायद ऐसा हुआ कि करदाताओं ने एक नए कर के बारे में खुद पढ़ना प्रारम्भ किया ... ये कार्य आपने व्यापार और उद्योग के लिए बहुत ही अच्छा किया सर...

सुधीर हालाखंडी :- धन्यवाद ! व्यापार और उद्योग ने भी मेरे इस प्रयास को काफी सराहा... एक बात और भी थी कि यह लेखन बहुत ही आसानी से सोशल मीडिया के हर माध्यम पर बहुत ही सहजता से उपलब्ध था और इसके एक पाठक से दूसरे तक पहुँचने की गति बहुत तेज थी इसलिए इसकी पाठक संख्या निरंतर बढ़ती गई ।

व्यापार और उद्योग ने भी इस लेखन के महत्त्व को काफी पहचाना और इसकी उपयोगिता को स्वीकार किया ... उन्होंने मेरे प्रयासों की निरंतर सराहना की ... जिससे मुझे हमेशा प्रेरणा ही मिली। वर्ष 2017 में ही उन्होंने मुझे तालकटोरा स्टेडियम नई दिल्ली में अपने अखिल भारतीय व्यापरिक सम्मलेन में जीएसटी पर मुख्य वक्ता के रूप में आमंत्रित किया था जिसमें उस समय के भारत के गृह मंत्री मुख्य अतिथी के रुप में आमंत्रित थे।

अजय शर्मा :- लॉकडाउन के दौरान जो आपने जीएसटी विशेषज्ञों के इंटरव्यू लिए हैं उसके पीछे आपकी प्रेरणा क्या थी और आपको यह महारत कैसे हासिल हुई कि आप जिन विशेषज्ञों से मिले ही नहीं उनसे आप साक्षात्कार लें। कोई आपका पिछला अनुभव भी है ?

सुधीर हालाखंडी :- देखिये इसमें महारत जैसी कोई बात नहीं है ये जो जीएसटी विशेषज्ञ हैं इन्होंने भारत में जीएसटी से सम्बंधित ज्ञान का प्रसार करने में बहुत ही सराहनीय प्रयास किये हैं और आपको पता है मैं भी कुछ कुछ ऐसा ही प्रयास कर रहा था और इन सभी के प्रयासों से मैं काफी समय से परिचित भी हूँ। ये सभी जिनके मैंने इंटरव्यू लिए हैं और इनसे अतिरिक्त भी वे जो मेरे इस कार्यक्रम में शामिल नहीं हुए, इन सभी का भारत में जीएसटी के ज्ञान के प्रसार में काफी योगदान रहा है। मैं स्वयं इनके बारे में जानना चाहता था और ये सबसे उपयुक्त समय था कि ये सभी अपना समय भी दे सकते थे। इसीलिये इस समय इन इंटरव्यू को लेने का सिलसिला शुरू हुआ। इस समय जो विकसित सूचना तकनीक हमारे देश में सहज ही उपलब्ध है उसमें इस तरह की बातचीत के लिए आपस में मिलना कहाँ जरुरी है !!!

ये इंटरव्यू लेने की कला मैंने कैसे विकसित की ... तो यह एक पुरानी कहानी है जब मैंने नई दिल्ली के एक बड़े कर सम्बन्धी प्रकाशक, जिनका मैं निरंतर लेखक था, के लिए ICAI के प्रेसिडेंट का इंटरव्यू लिया था यह शायद 2009 की बात थी और यह सिलसिला 2011 या 2012 तक चला था लेकिन बाद में मैंने व्यवसायिक लेखन से अपने आपको अलग कर लिया और यह श्रृंखला वहीं बंद हो गई... यह उनकी एक मुख्य पत्रिका थी और जिसका मुख पृष्ठ आप मान लीजिये 'स्टार एंड स्टाइल' या 'स्टारडस्ट' जैसे पत्रिकाओं की तरह चमकदार होता था जिसके पूरे मुख पृष्ठ पर ICAI के प्रेसिडेंट का फोटो हुआ करता था। तीन या चार इंटरव्यू के बाद एक बार ये सिलसिला बंद हुआ तो फिर शायद वापिस शुरू ही नहीं हुआ...

अजय शर्मा :- सुधीर जी, आपने अभी बताया कि आपने जीएसटी पर पहला लेख वर्ष 2006-07 में लिखा था तो यह बाताइये कि उस समय आपके पास जीएसटी की जानकारी के स्त्रोत क्या थे ? एक और बात आपको कैसा महसूस होता है जब लोग आपके लिखे जीएसटी पर एक लेख को भारत में इस सम्बन्ध में लिखा हुआ पहला लेख कहते हैं तब क्या आपको गर्व महसूस होता है ?

सुधीर हालाखंडी :- 2006 का जो आम बजट था उसमें उस समय के जो वित्त मंत्री थे उन्होंने कुछ लाइनों में जीएसटी का जिक्र किया था और यह एक संकेत था आने वाले वर्षों में कभी ना कभी भारतवर्ष में जीएसटी लागू होगा। आईये मैं उस समय के वित्तमंत्री महोदय के बजट भाषण के वे अंश जो जीएसटी से सम्बंधित थे दिखाता हूँ :-

It is my sense that there is a large consensus that the country should move towards a national level Goods and Services Tax (GST) that should be shared between the Centre and the States. I propose that we set April 1, 2010 as the date for introducing GST. World over, goods and services attract the same rate of tax. That is the foundation of a GST. People must get used to the idea of a GST.

इसके बाद मैंने इन्टरनेट पर जीएसटी की खोज करना और पढ़ना शुरू किया और उस समय मैंने जो पढ़ा वह यह था कि यह एक केन्द्रीयकृत कर होगा जिसके तहत केवल केंद्र ही कर एकत्र करेगा और उसे राज्यों में बांटेगा।

लेकिन आप जानते ही हैं कि भारत में जो शासन प्रणाली है वह एक संघीय शासन प्रणाली है और उसके अनुसार केंद्र और राज्य दोनों को ही कर लगाने का अधिकार प्राप्त है इसलिए केन्द्रीय रूप से जीएसटी लगाने का प्रस्ताव राज्यों ने उसी समय खारिज कर दिया था और समझौते के तौर पर एक दोहरे जीएसटी पर विचार किया गया जिसमें माल और सेवा की सप्लाई के एक ही व्यवहार पर राज्य और केंद्र दोनों कर लगायेंगे और अंत में यही जीएसटी भारत में लागू हुआ जिसे आज आप देख रहें है।

जीएसटी पर मेरी पढ़ाई और जानकारी का एक और पक्ष था और वह था कि मैंने वर्ष 2003 से वेट को पढ़ना शुरू कर दिया था और वर्ष 2006 में, जब भारत के अधिकांश राज्यों में वेट लागू हुआ था तब मैंने दिल्ली के एक प्रकाशक के लिए वेट पर 6 राज्यों के वेट कानून का अध्ययन कर लेख लिखे थे और मेरे विचार से जीएसटी वेट का ही अगला रूप था इसलिए मेरी यह वेट का अध्ययन जीएसटी की मेरी पढ़ाई में बहुत काम आया।

जहाँ तक मेरा एक जीएसटी लेख – Goods and Service Tax - An Introductory Study जो ICAI के जनरल में अप्रैल 2007 में प्रकाशित हुआ था जिसे मेरे मित्र, शुभचिंतक और पाठक भारत का पहला जीएसटी का लेख मानते हैं लेकिन ऐसा कुछ भी अधिकारिक स्तर उपलब्ध नहीं है कि ऐसा माना जाए। यह आर्टिकल कुछ ज्यादा ही लोकप्रिय हो गया था उसका एक कारण तो यह था कि यह एक नया विषय था और दूसरा जहाँ यह प्रकाशित हुआ वह बहुत बड़ा मंच था। यह लेख जिस प्रकार से लोकप्रिय हुआ इसका एक बड़ा कारण था कि यह ICAI की मुख्य पत्रिका में प्रकाशित हुआ था और इसका सारा श्रेय इसी पत्रिका और उसके पाठकों को है।

अजय शर्मा :- आपका अब तक का सबसे प्रिय आर्टिकल कौन सा है ? मेरे हिसाब से तो Goods and Service Tax - An Introductory Study. मैं सही हूँ सर ?

सुधीर हालाखंडी :- आपने मुझे मेरे प्रिय लेख के बारे में पूछा लेकिन साथ ही आपने अपनी पसंद भी बताई है लेकिन मुझे मेरा उत्तर देने दीजिये। जो लेख आप बता रहे हैं वह एक लोकप्रिय लेख तो है लेकिन मेरे प्रिय लेख नहीं है ... इस लेख को कई जगह पहचान मिली ... इसे लोकसभा सचिवालय ने संसद सदस्यों को जीएसटी समझाने के लिए जो सामग्री प्रकाशित की उसमें भी रिफरेन्स के रूप में काम में लिया था। इस लेख ने कई विश्वविद्यालयों के सिलेबस में भी जगह पाई है लेकिन यह मेरा प्रिय लेख नहीं है। आईये मैं अपने प्रिय लेखों की चर्चा आपसे करता हूँ।

मेरा एक अच्छा आर्टिकल था ''Income Tax Law in Pakistan - Interesting Similarities with us'' ये लेख मेरा प्रकाशित हुआ था जोधपुर के एक टैक्स जर्नल में और यह लगभाग 15 साल पुरानी बात है और इस लेख में मैंने दोनों देशों के आयकर कानूनों में समानताओं की चर्चा की थी। इसकी शुरुआत कैसे हुई आईये यह भी देखते हैं ...

एक बार मैं इंटरनेट पर हिन्दू अविभक्त परिवार के बारे में कुछ ढूँट रहा था तो अचानक मैंने देखा कि पाकिस्तान में रहने वाले हिन्दू परिवारों के लिए भी वहां के आयकर कानूनों में भी हिन्दू अविभक्त परिवार - HUF के प्रावधान हैं ... उसके बाद मैंने पूरा अध्ययन किया और पाया कि हमारे और पाकिस्तान के आयकर कानून में काफी समानता है ... यह बहुत पुरानी कहानी है और अब तो मेरे पास इस लेख की कोई कॉपी भी नहीं है।

इसके अलावा मैंने एक लेख ICAI जर्नल के लिए लिखा था "Service Tax for Small Service Providers - Myths and Realities" और यह भी मेरे प्रिय लेखों में से एक है।

"Taxability of Gifts in India - What the Law should be" भी एक ऐसा ही लेख था जो मैंने एक बड़े टैक्स प्रकाशक के लिए लिखा था वह भी एक अच्छा लेख था।

मैंने अभी तक 500 से अधिक लेख लिखें है उनमें कई ऐसे हैं जो मुझे काफी पसंद है।

इसके अलावा जो मेरी हिन्दी की जीएसटी ई –बुक है वह भी मेरे जीएसटी पर लिखे कुछ हिन्दी लेखों का ही एक संकलन है।

अजय शर्मा :- इसी से जुड़ा एक और सवाल ! आपके जीवन का सबसे खुशी देने वाला क्षण कौन सा था ? मेरे हिसाब से जब आपकी जीएसटी पर लिखी पुस्तक पर किसी टीवी चेनल ने प्राइम टाइम पर एक कार्यक्रम किया वह भी उस भारत में जीएसटी लगने की पूर्व संध्या को। जहां तक मुझे याद आता है अभी हाल ही वर्षों में शायद ही किसी सीए की लिखी पुस्तक

पर किसी चेनल के प्राइम टाइम पर चर्चा हुई हो ?

सुधीर हालाखंडी :- आईये आपके सवाल का जवाब देते हैं... मेरे लिए सबसे महत्त्वपूर्ण क्षण वो था जब भारत सरकार के अधिकृत जीएसटी ट्विटर हेंडल ने मुझे फॉलो किया। यह जीएसटी का भारत में प्रारम्भिक समय था और सरकार का यह ट्विटर GST@GOI डीलर्स और प्रोफेशनल्स के सवालों के जवाब दे रहा था और एक दिन मैंने इस ट्विटर हेंडल पर दिए गए लगातार 3 सवालों के जवाबों से असहमत होते हुए उनमें संशोधन कर दिए ... और कुछ देर बाद मैंने देखा कि यह ट्विटर मुझे फॉलो कर रहा है !!!!!!

मैं उस समय अर्थात् 2017 की बात कर रहा हूँ समय यह ट्विटर हेंडल 6 अन्य गणमान्य व्यक्तियों को और संस्थाओं को फॉलो करता था जिसमें माननीय प्रधानमंत्री महोदय के PMO को शामिल करते हुए 2 खाते, माननीय वित्त मंत्री महोदय, केन्द्रीय राजस्व सचिव महोदय, जीएसटी कौंसिल, केन्द्रीय उत्पाद शुल्क विभाग.... और 7वां मैं था !!!!!

मुझे आश्चर्य के साथ खुशी भी बहुत हुई लेकिन मेरा ये खेल 36 घंटे या उससे कम समय में ही खत्म हो गया लेकिन तब तक मैं इसका स्क्रीन शॉट ले चुका था और अपने मित्रों और शुभचिंतको में शेयर कर चुका था। ये स्क्रीन शॉट मैंने अभी सुरक्षित रख रखा है।

हो सकता हो कि मुझे गलती से फॉलो कर दिया गया हो... या प्रोटोकोल की समस्या हो... या ये सिर्फ मेरा एक सपना था... लेकिन ये मेरे लिए एक सर्वश्रेष्ठ क्षण था जिसे मैंने उस समय भरपूर जी लिया।

हर इंसान को अपनी सपनों की दुनिया में जीने का अधिकार है... और मैं इसका कोई अपवाद नहीं हूँ।

अजय शर्मा :- सर, जो नए प्रोफेशनल आ रहें हैं उनमें से भी कुछ होंगे जो आपकी तरह लिखना चाहते हैं... उनके लिए आपके क्या सुझाव हैं ? एक और बात आप इतना समय कैसे निकाल लेते हैं ? एक साथ इतनी ज्यादा गतिविधियों को कैसे सम्हाल पाते हैं ? सर, आप अपने टाइम मैनेजमेंट के बारे में कुछ बताइये।

सुधीर हालाखंडी :- ये एक बहुत अच्छा सवाल है। आईये इसका जवाब देते हैं... मेरा उन प्रोफेशनल्स को जो राइटर बनना चाहते हैं सलाह यह है कि बहुत अधिक पढ़िए... आप अपने आप ही लिखने लग जायेंगे। कुछ भी पढ़िए। कर कानून, कर मामलों पर लेख, सवाल-जवाब, जो भी उलब्ध हों... इन्टरनेट के इस दौर में बहुत कुछ साहित्य उपलब्ध है... कुछ भी पढ़िए - कहानियाँ, नावेल, आत्मकथाएं, पत्रिकाएँ, अखबार और कॉमिक्स भी - बिल्लू, चाचा चौधरी... यदि आपमें पढ़ने की आदत नहीं है तो आपका लिखना क्षणिक ही होगा और आपका लेखकीय जीवन लम्बा नहीं होगा। यदि आप पढ़ नहीं सकते तो फिर इस क्षेत्र

में प्रवेश ना करें आप परेशान हो जायेंगे... आपकी लेखन शैली ही विकसित नहीं हो पाएगी। मैं पिछले 20 साल से लगातार लिख रहा हूं और जितना मैंने लिखा है उससे 100 गुना मैंने पढ़ा है और आप ये मान कर चलिए लिखना हमेशा पढ़ने का ही परिणाम होता है।

कर मामलों पर आपको लिखना है तो पहले कई बार उस विषय को पढ़िए जिस पर आप लिखना चाहते हैं और कई बार पढ़िए और उसके बाद लिखिए... और अपने मित्रों को भेजिए... अपनी गलतियों की चिंता मत करिए... लोग उन्हें ठीक करवा देंगे और फिर आप खुद ही अच्छा लिखना सीख जायेंगे।

लिखते समय अपनी गलतियों से मत डरिये... मैं आज भी गलतियां करता हूँ लोग उसे बता देते हैं और हम उन्हें धन्यवाद दे देते हैं और यह मान कर चलिए कि कोई आपको आपकी गलती बता रहा है चाहे वो स्पेलिंग मिस्टेक ही क्यों ना हो... इसका अर्थ ही है कि कोई आपको पढ़ रहा है... बस लिखना सीखने का यही सीधा तरीका है।

आपने मेरे टाइम मैनेजमेंट के बारे में पूछा है तो मैं कुछ ऐसा खास नहीं कर रहा हूँ कि समय कोई समस्या बने और कई बार तो मुझे यह समस्या आती है कि समय कैसे पास करें... मेरा ऑफिस का समय 10 बजे से 7 बजे तक है और इस समय लेखन से सम्बंधित कोई कार्य नहीं करता हूँ... कभी-कभी इस बीच दिमाग में कोई कार्टून आ जाता है तो बात अलग है... लेकिन वह तो सिर्फ 5 मिनिट का काम होता है।

मैं जिस शहर से काम करता हूँ वहां दूरियां ज्यादा नहीं है और मेरे घर से ऑफिस का रास्ता सिर्फ तीन मिनिट का है... हाँ एक बात और है कि मेरा शहर से बाहर जाने का काम कम ही रहता है या आप मान कर चलिए नहीं रहता है... तो समय कोई समस्या नहीं है... वैसे मेरा सुबह उठने का समय 5 बजे है...

एक बात और है टाईम मैनेजमेंट नाम की कोई चीज होती ही नहीं है और ये शब्द सिर्फ मोटिवेशनल स्पीच के लिए ही ठीक है... आप मान कर चलिए आप समय को मैनेज कर ही नहीं सकते, हमेशा समय ही आपको मैनेज करता है। यही जीवन की वास्तविकता है।

अजय शर्मा :- आईये अब जीएसटी पर बात करें... जीएसटी को भारत में आये हुए 30 माह से भी अधिक हो चुके हैं। आपकी क्या राय है जीएसटी के भारत में लागाये जाने और उसकी अभी तक की यात्रा के बारे में।

सुधीर हालाखंडी :- जीएसटी भारत में अब तक का सबसे बड़ा कर सुधार था और यदि कानून निर्माता इसकी तैयारी में और समय लेते तब वे सिर्फ इन्तजार ही करते रह आते क्योंकि इतने बड़े कर सुधार का कोई पूरी तरह से आजमाया हुआ मॉडल तो हो नहीं सकता तो जिस भी समय जीएसटी लागू किया गया वही इसका सही समय था।

देखिये 2006 में भारत सरकार द्वारा यह कहा गया था कि 2010 में भारत में जीएसटी लागू कर दिया जाएगा और इसके स्वरुप के बारे में जो केंद्र और राज्यों के बीच जो अड़चन थी वह जैसे ही वह दूर हो गई तो उसके बाद का हर समय एक ऐसा समय था जब जीएसटी भारत में लगाया जा सकता था। 2017 तक सरकार ने इन्तजार किया यही बहुत था।

जीएसटी बिलकुल सही समय पर लागू किया गया और कानून निर्माताओं का काम यहीं तक था लेकिन इसके बाद जिस टीम ने जीएसटी को सम्हाला वो पूरी तरह तैयार ही नहीं थी। जीएसटी एक नया कानून था तो प्रारम्भ में इसमें भ्रम और असमंजस की स्थिति तो होनी ही थी लेकिन जैसे-जैसे स्पष्टीकरण आये उनसे स्थिति और भी मुश्किल और असमंजस भरी होती गयी लेकिन इसके लिए हम देश के राजनैतिक नेतृत्व को दोष नहीं दे सकते उन्होंने जीएसटी लागू कर अपना काम पूरा कर दिया था।

जो लोग जीएसटी को प्रारम्भिक रूप में लागू करने के जिम्मेदार थे उन्होंने प्रारम्भ से ही ऐसी गलतियां की जो अभी भी उनकी ही इतनी मेहनत के बाद भी सुधर नहीं रही है। देखिये जीएसटी में कठोर प्रक्रियाएं एक समस्या है और होना यह चाहिए था कि प्रारम्भ में प्रक्रियाएं आसान होतीं और धीरे-धीरे इन्हें आवश्यकतानुसार कठिन बनाया जाता तो जीएसटी का पालन काफी आसान हो जाता लेकिन हुआ इसका बिलकुल उल्टा और यही अब एक समस्या बन गया है।

लेकिन एक बात ध्यान रखिये डीलर्स और प्रोफेशनल्स ने बहुत ही कौशल और साहस के साथ जीएसटी को लागू करने में मदद की है और ये भी तब जब कि प्रारम्भिक दौर में ही प्रक्रियाएं बहुत ही मुश्किल थी। इसके साथ ही जीएसटी की एक विशेष बात यह है कि इसने प्रोफेशनल्स के कार्य के घंटे और पढ़ने की आदत को काफी हद तक बढ़ा दिया है जो उनके लिए काफी फायदेमंद है और लम्बे समय तक उन्हें इसका फायदा मिलेगा...

तो इस तरह से मेरी राय यह है कि जीएसटी का भारत में लगाया जाना सही समय पर लिया गया कदम है लेकिन इसकी अब तक की यात्रा बहुत सारे भ्रम, कठिनाइयों और परेशानियों से भरी हुई रही है। डीलर्स और प्रोफेशनल्स ने अच्छा काम किया है और यह सब इसके बाद हुआ कि कठिनाइयां बहुत अधिक थी।

अब मुझे उम्मीद है कि जीएसटी से जुड़े सभी पक्ष इसे एक अच्छा और सरल कर बनाने के लिए कार्य करेंगे और आने वाले समय में जीएसटी एक गुड और सिंपल टैक्स होगा जैसा कि हमारे प्रधानमंत्री महोदय ने प्रारम्भ में कहा था।

अजय शर्मा :- जीएसटी लागू करते समय यह कथन भी काफी चर्चा में था कि जीएसटी भारत की अर्थव्यवस्था को पलट कर रख देगा और इसका हमारी अर्थव्यवस्था पर सकारात्मक प्रभाव पड़ेगा। इस बारे में आपके क्या विचार हैं ?

सुधीर हालाखंडी :- जीएसटी एक कर एकत्र करने की प्रणाली है और आप मेरे 2017 के लेख देखेंगे तो मैंने तब लिखा था कि कोई कर प्रणाली कभी भी किसी अर्थव्यवस्था को यों सीधा फायदा नहीं दे सकती है। अर्थव्यवस्था के विकास के कई और भी कारण होते हैं लेकिन एक बात ध्यान रखें कि यदि कर प्रणाली आसान हो तो व्यापार करने में आसानी होती है और अगर ऐसा होता है तो अर्थव्यवस्था में सुधार भी होता है लेकिन ये सब इतनी जल्दी और तुरंत नहीं होता है और इसके लिए हमें पहले जीएसटी में सरलीकरण के उद्देश्य को पूरा करना होगा जो अभी भी अधूरा है।

अजय शर्मा :- सुधीर सर, आप ट्विटर पर अपने जीएसटी के मैसेज के साथ बहुत अधिक सक्रीय हैं। आपने जीएसटी लेट फीस को लेकर भी कई बार ट्विट किया है। आप बताइये जीएसटी लेट फीस को लेकर आपकी क्या राय है। क्या आपकी राय में यह लेट फीस कर दाताओं को लौटा देनी चाहिए ?

सुधीर हालाखंडी :- जीएसटी पर मेरे tweets ने मुझे 16000 नए दोस्त और शुभचिंतक दिए हैं और 140 शब्दों में अपने आप व्यक्त करने का यह एक अच्छा प्लेटफार्म है और मैंने अभी तक 3500 tweets किये हैं और कुछ एक को छोड़कर लगभग सभी ही जीएसटी से ही सम्बंधित हैं। ये भी हुआ है कि कुछ समाचार पत्रों ने भी मेरे tweets को अपने जीएसटी संबंधी समाचारों में जगह दी है।

लेट फीस के बारे मैं मैंने कई बार लिखा है और मेरा यह कहना है कि जीएसटी में जब कुछ अभी प्रयोगात्मक ही चल रहा है तो लेट फीस का कोई औचित्य नहीं है और सरकार ने जो भी लेट फीस ली है वह अब लौटा देनी चाहिए।

इसका एक पक्ष और भी है कि एक समय ऐसा भी आया था जब दोषी डीलर्स जिन्होंने रिटर्न ही नहीं भरे उनकी लेट फीस सरकार ने माफ कर दी है लेकिन इसी समय पर जिन डीलर्स ने ईमानदारी से लेट फीस जमा कर कर रिटर्न भर दिए उन्हें उनसे ली हुई लेट फीस लौटाई नहीं गई है और यह तो सीधा-सीधा भेदभाव ही है और ऐसा करने से तो डीलर्स का कानून पर से ही विश्वास उठ जाता है।

अजय शर्मा :- आपकी राय में जीएसटी का सबसे बड़ा प्रक्रियात्मक दोष क्या है... मुझे पता है आप कहेंगे कि बहुत से हैं.... लेकिन मेरा सवाल है सबसे बड़ा दोष ?

सुधीर हालाखंडी :- जीएसटी में जो एक रिटर्न केवल दो माह के लिए लाया गया था और जो अभी भी जारी है वह रिटर्न है 3B और इस रिटर्न में रिविजन की सुविधा नहीं देना अब तक लागू हुए जीएसटी का सबसे बड़ा प्रक्रियात्मक दोष है और इसी दोष ने डीलर्स की परेशानियां काफी बढ़ा दी है।

अजय शर्मा :- सुधीर सर, आईये अब बात करते हैं जीएसटी के वार्षिक रिटर्न्स के बारे में... ये रिटर्न्स क्या कर निर्धारण में मदद कर पायेंगे ? वार्षिक रिटर्न्स के बारे में आपके कोई सुझाव हैं तो दीजिए ?

सुधीर हालाखंडी :- देखिये अभी मैंने बताया आपको कि जीएसटी में सबसे बड़ा प्रक्रियात्मक दोष जीएसटी के मासिक रिटर्न 3B में संशोधन की सुविधा का अभाव है और इसी के चलते वार्षिक रिटर्न भी कर निर्धारण में कोई मदद नहीं कर पायेगा ।

इसके अलावा वार्षिक रिटर्न में भी स्पष्टीकरण की भी एक जगह होनी चाहिए जिसमें डीलर यह बता सके कि छूटी हुई इनपुट क्रेडिट उन्होंने अगले साल किस माह के रिटर्न में क्लेम की है या किस माह में छूटा हुआ आउटपुट टैक्स दिखाया है या डीलर कोई मुद्दे पर स्पष्टीकरण देना चाहे क्योंकि इसके अभाव में इन सब को जांचने के लिए नोटिस जारी करने होंगे और इतने ज्यादा जारी होंगे कि जीएसटी का सरलीकरण का मकसद ही समाप्त हो जाएगा ।

अजय शर्मा :- सर आईये अब कुछ बात हो जाये जीएसटी कौंसिल के बारे में... क्या जीएसटी कौंसिल जीएसटी से जुड़ी समस्याओं को हल करने में सफलतापूर्वक कार्य कर रही है ? क्या आप संतुष्ट हैं जीएसटी कौंसिल के अब तक के कार्य और उनके परिणाम से...?

सुधीर हालाखंडी :- केंद्र और राज्यों को समुचित प्रतिनिधित्व देने वाली जीएसटी कौंसिल एक बहुत ही अच्छा विचार था जो कि हमारे देश के संघीय ढांचे को देखते हुए जरुरी था । इसकी मीटिंग्स हमेशा निरंतर और सही समय पर हो रही है लेकिन अभी मैंने बताया कि जीएसटी में समस्याएं बहुत अधिक हैं । मैं यह कह सकता हूँ कि जीएसटी कौंसिल में समस्याएं जाती तो हैं और उन पर विचार भी होता है लेकिन समस्याओं के समाधान इतने धीमे आते हैं कि तब तक डीलर्स काफी परेशान हो जाते हैं । इसके साथ सरकार भी जीएसटी कौंसिल के फैसलों को, विशेष तौर पर जहां डीलर्स को कोई रिलीफ मिलना हो, तो उसके पालन करने में भी काफी समय लागती है । देरी से भरे टैक्स के ब्याज के सम्बन्ध में इसी देरी ने डीलर्स को काफी परेशान किया और कानूनी रूप से अभी भी यह सरकार के स्तर पर अटका हुआ ही है ।

जीएसटी कौंसिल ने जीएसटी नेटवर्क से जुड़ी समस्याओं के बारे में विचार करने में भी काफी समय लगाया है जबकि यह समस्या जीएसटी के शुरू से ही थी ।

इन स्तिथियों को छोड़ दें तो जीएसटी कौंसिल ठीक ही काम कर रही है ।

अजय शर्मा :- आईये अब आपके ही प्रिय विषय पर – जीएसटी नेटवर्क... और ये सवाल आपने भी अभी तक जितने भी विशेषज्ञ आपके इंटरव्यू में आये थे उन सबसे पूछा है तो अब आपकी राय भी हो जाए इसी विषय पर... जीएसटी नेटवर्क किस तरह से काम कर रहा है ? डीलर्स और प्रोफेशनल्स में काफी असंतोष है जीएसटी नेटवर्क को लेकर... आप इस बारे में क्या कहना चाहते हैं ?

सुधीर हालाखंडी :- जीएसटी नेटवर्क के जिम्मे जीएसटी की सफलता के कई सूत्र थे क्योंकि जीएसटी पूरी तरह से सूचना प्रोद्यौगिकी पर आधारित कर है और इसके लिए जीएसटी नेटवर्क का हर तरह से सक्षम होना जरुरी था ताकि ये पूरे जीएसटी कर को एक स्थायित्व दे सके लेकिन यह दुर्भाग्य की बात है कि जीएसटी नेटवर्क जीएसटी लागू होने के 30 माह बाद भी खुद ही स्थायित्व की तलाश में है और इस समय जीएसटी से जुड़ी समस्याओं का मुख्य कारण भी है।

मेरी एक बात नोट कर लें यदि सरकार जीएसटी डीलर्स से वसूल की गई लेट फीस लौटानी हो तो जीएसटी नेटवर्क की असफलता को इसका कारण बता कर ऐसा किया जा सकता है।

मेरी व्यक्तिगत राय यह है कि जीएसटी नेटवर्क को लेकर जो समस्याएँ पिछले 30 माह से चल रही हैं उन्हें देखते हुए इसके सेवा प्रदाता को बदल देने के बारे में गंभीरता से सोचना चाहिए क्योंकि सरकार जीएसटी नेटवर्क के सेवा प्रदाता को दोष देकर मुक्त नहीं हो सकती है क्योंकि आम करदाता जो परेशान हैं उसके लिए जीएसटी नेटवर्क और सरकार में कोई फर्क नहीं है और इसमें जो इमेज खराब हो रही है वो सरकार की ही हो रही है।

सरकार को किसी भी तरह से अब जीएसटी नेटवर्क से जड़ी समस्याएं हल कर लेनी चाहिए चाहे इसके लिए कोई भी उपाय करना पड़े।

देखिये जीएसटी नेटवर्क के साथ समस्याएं वर्ष 2017 से ही आ रही हैं लेकिन इन्हें स्वीकार करने में 2020 आ गया और यह कोई याद रखने लायक उपलब्धि नहीं है।

अजय शर्मा :- जीएसटी में डीलर्स की गिरफ्तारी के प्रावधान भी हैं जिनको लेकर प्रारम्भ में काफी भ्रम और डर की स्थिति थी। आपने भी कई बार इस भ्रम को दूर करने की कोशिश की है। आईये एक बार हमारे पाठकों को भी कुछ इस बारे में बताइए। क्या इस तरह के प्रावधान पहले भी कर कानूनों में थे या पहली बार ही ऐसे प्रावधान लाये गए हैं। आम करदाता इन प्रावधानों से किस प्रकार से प्रभावित होगा ?

सुधीर हालाखंडी :- सबसे पहले तो आपको बता दूँ कि इस तरह के प्रावधान कोई नए नहीं है और पहले भी इस तरह के प्रावधान कर कानूनों में रहे हैं लेकिन चूँकि जीएसटी के बारे में चर्चा बहुत हुई इसीलिये जीएसटी में गिरफ्तारी के प्रावधानों के बारे में भी लोंगों ने ज्यादा पढ़ा और इसीलिये भ्रम भी ज्यादा फैला।

आम करदाता का इस प्रावधान से कोई लेना देना नहीं है क्योंकि आमतौर पर यह प्रावधान 2 करोड़ रूपये की कर चोरी के मामलों पर लागू होते हैं इसलिए आम करदाता पर ये प्रावधान लागू ही नहीं होंगे।

डीलर्स में डर यह है कि इन प्रावधानों का दुरुपयोग हो सकता है और डीलर्स की गलतियों

को कर चोरी का नाम देकर उन्हें परेशान किया जा सकता है लेकिन आप यहाँ ध्यान रखें कि यहाँ प्रावधान कर चोरी की रकम 2 करोड़ रूपये से ज्यादा होने पर ही लागू होंगे इसलिए आप यह मान कर चलिए कि आम करदाता पर इसका कोई ज्यादा प्रभाव पड़ने वाला नहीं है ।

इसके अतिरिक्त जीएसटी अधिकारियों को गिरफ्तारी का फैसला लेने का अधिकार ही नहीं है और यह अधिकार सिर्फ जीएसटी आयुक्त को ही है इसलिए भी इस प्रावधान के दुरूपयोग का अवसर भी कम ही है ।

अजय शर्मा :- आईये एक बार फिर से आपकी व्यक्तिगत जिंदगी के बारे में एक बड़ा सवाल आप एक कार्टूनिस्ट भी हैं... हमने आपके जीएसटी कार्टून भी देखे हैं इन दिनों में... कब से शुरू हुआ आपका ये एक और शौक ?

सुधीर हालाखंडी :- एक बहुत ही अच्छा सवाल है और इसका इंतजार मुझे हमेशा रहता है... इससे मेरी बचपन की यादें जुड़ी हैं। मैंने रविवारीय अखबारों से कार्टून बनाना शुरू किया... फिर बच्चों की पत्रिकाओं के लिए भी कार्टून बनाये - जैसे लोटपोट, मधुमुस्कान, बालभारती... मुझे याद है कि जब मैं 8वीं क्लास में था उस समय हिन्दुस्तान टाइम्स की एक लोकप्रिय हिंदी पत्रिका 'साप्ताहिक हिंदुस्तान' में भी मेरा कार्टून प्रकशित हुआ था। बाद में मैंने कुछ राजनैतिक कार्टून बनाये और उस के बाद 'कर मामलों' पर और अभी हाल ही में जीएसटी कार्टून... जो जीएसटी समस्याओं से प्रेरित थे ।

अजय शर्मा :- आप स्वयं सुधीर हालाखंडी को किस तरह से परिभाषित करेंगे ? एक प्रोफेशनल, एक राइटर, एक कार्टूनिस्ट या एक...

सुधीर हालाखंडी :- एक प्रोफेशनल जो लिखना भी चाहता है और कभी-कभी कार्टून भी बना लेता है... जिसके लिए प्रोफेशन पहले है जिसे अपने प्रोफेशन से बहुत ज्यादा प्यार है...

सुधीर हालाखंडी एक लेखक भी है जिससे लिखते समय बहुत सी गलतियाँ होती हैं लेकिन जो कभी लिखना नहीं छोड़ता है... वो हर विषय पर लिखना चाहता है इसलिए कई बार असफलता स्वाभाविक है... इसके बावजूद वो यह सोचता है कि कारवाँ चलता रहना चाहिए...

अजय शर्मा :- सुधीर सर, लगता है आपको किसी आलोचक की जरुरत ही नहीं है... आप खुद ही अपने सबसे बड़े आलोचक हैं...

आईये अब एक सवाल उन प्रोफेशनल्स की ओर से जो छोटे शहरों में काम कर रहे हैं...

सुधीर हालाखंडी :- अच्छा ! मेरी भी उन सभी को शुभकामनाएँ... मैं खुद भी उनमें से एक हूँ... मैं भी एक छोटे शहर से ही काम कर रहा हूँ ।

अजय शर्मा :- सुधीर सर, आपने जीएसटी को लेकर इसकी जानकारी करदाताओं तक पहुंचाने में बहुत ही अच्छा काम किया है लेकिन कभी-कभी आप यह भी कहते हैं कि आप एक ऐसी

जगह से कार्य कर रहें है जो अभी तक जिला भी नहीं बना है... अभी भी आप वहीं से काम कर रहे हैं या...

सुधीर हालाखंडी :- हाँ यह बात तो सही है कि जहाँ मैं रहता हूँ वो शहर अभी जिला नहीं बना है... यह शहर है ब्यावर जो अजमेर जिले में स्थित है और मेरा जन्मस्थान भी है... यह एक औद्योगिक शहर है लेकिन पहले मैं यहाँ कभी रहा नहीं क्योंकि मेरी स्कूल और कॉलेज दोनों ही अजमेर से हुई है क्योंकि मेरे पिताजी वहीं काम करते थे... वे अजमेर में आर्य समाज की उस समय की कई शिक्षण संस्थाओं से जुड़े थे इसलिए मेरा बचपन और शिक्षा इस शहर में नहीं हुई... मैं प्रोफेशनल डिग्री लेने के बाद इस शहर में आया जहाँ मेरे दादाजी सेल्स टैक्स सलाहकार थे, हो सकता है अप्रत्यक्ष करों में मेरी रूचि यहीं से आई हो... इस शहर से मुझे काफी कुछ मिला है इसलिए अब असंतुष्ट होने का तो कोई प्रश्न ही नहीं है ...

यहाँ शुरुआती साल काफी संघर्ष के रहे। लेकिन धीरे-धीरे सब ठीक हो गया है और मेरी अगली पीढ़ी भी यहीं से काम कर रही है तो आप समझ सकते हैं कि सब कुछ ठीक ही चल रहा है... इसलिए संतोष कोई नहीं है लेकिन मैं जानता हूँ कि छोटे शहरों से काम करने में थोड़ी मुश्किल तो आती है इसलिए मैं हमेशा इन शहरों से काम करने वाले प्रोफेशनल्स की हिम्मत की तारीफ करता हूँ...

अजय शर्मा :- सर, आप छोटे शहरों में काम कर रहे प्रोफेशनल्स के लिए एक प्रेरणा के स्त्रोत हैं। आपसे एक अच्छी बातचीत हुई, आपने समय निकाला और मुझे भी एक मौका दिया इसके लिए आपका हार्दिक धन्यवाद...

सुधीर हालाखंडी : आपका भी हार्दिक धन्यवाद और आपके पाठकों को हार्दिक शुभकामनाएं...

❑

(3) Notification u/s 128 of CGST Act, 2017 amending Notification No. 76/2018-Central Tax dt. 31-12-2018 in order to provide conditional waiver of late fees for the period from July, 2017 to July, 2020.

No. 57/2020-Central Tax

G.S.R. 424(E). New Delhi, Dated 30th June, 2020 - In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act, the 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. 76/2018–Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vid*e number G.S.R. 1253(E), dated the 31st December, 2018, namely :-

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

Provided also that for the class of registered persons mentioned in column (2) of the Table of the above proviso, who fail to furnish the returns for the tax period as specified in column (3) of the said Table, according to the condition mentioned in the corresponding entry in column (4) of the said Table, but furnishes the said return till the 30th day of September, 2020, the total amount of late fee payable under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil:

Provided also that for the taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year, who fail to furnish the return in **FORM GSTR-3B** for the months of May, 2020 to July, 2020, by the due date but furnish the said return till the 30th day of September, 2020, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of two hundred and fifty rupees and shall stand fully waived for those taxpayers where the total amount of central tax payable in the said return is nil.

2. This notification shall be deemed to have come into effect from the 25th day of June, 2020.

Note : The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 1253(E), dated the 31st December, 2018 and was last amended *vide* notification number 52/2020–Central Tax, dated the 24th June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 405(E), dated the 24th June, 2020.

[*Published in the Gazette of India dated 30-6-2020*]

❑

(4) CGST (Eighth Amendment) Rules, 2020

No. 58/2020-Central Tax

G.S.R. 426(E). New Delhi, Dated 1st July, 2020 - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Eighth Amendment) Rules, 2020.

(2) They shall come into force from 1st July,2020.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), for the rule 67A, the following rule shall be substituted, namely:-

"67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.-

Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies through a short messaging service using the registered mobile number and the said return or the details of outward supplies shall be verified by a registered mobile number based One Time Password facility.

Explanation. - For the purpose of this rule, a Nil return or Nil details of outward supplies shall mean a return under section 39 or details of outward supplies under section 37, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B or FORM GSTR-1,** as the case may be.".

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and last amended vide notification No. 50/2020 - Central Tax, dated the 24-6-2020, published vide number G.S.R. 403 (E), dated the 24th June 2020.

[*Published in the Gazette of India dated 1-7-2020*]

❑

(5) Notification u/s 148 of CGST Act, 2017 extending the due date for filing FORM GSTR-4 for financial year 2019-2020

No. 59/2020-Central Tax

G.S.R. 443(E). New Delhi, Dated 13th July, 2020 - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:-

In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words 15th day of July, 2020 , the figures, letters and words 31st day of August, 2020 shall be substituted.

Note: The principal notification No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, vide number G.S.R. 322(E), dated the 23rd April, 2019 and last amended by notification No. 34/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 234(E), dated the 3rd April, 2020.

[*Published in the Gazette of India dated 13-7-2020*]

❑

(6) Noti. u/s 15-B(1)(ii) of C.G. Vat Act, 2005 amending Noti. No. (104) dt. 10-12-18 relating to exemption from Part C of Form 18 for FY 2016-17 date extended upto 30-11-2020

No. F 10-59/2020/CT/V (82). Atal Nagar, Dated 25th June 2020 - In exercise of the powers conferred by clause (ii) of sub-section (1) of section 15-B of the Chhattisgarh VAT Act, 2005 (No. 2 of 2005), the State Government, hereby, makes the following amendment in this departments notification No. F-10-63/2018/CT/V (104), dated 10-12-2018, namely :-

AMENDMENT

In the said notification,-

For the figures and punctuation "30-6-2020", wherever they occur the figures and punctuation "30-11-2020" shall be substituted.

❑

(7) Delegation of power by Commissioner State Tax, C.G.

कार्यालय राज्य कर आयुक्त, छत्तीसगढ़

नार्थ ब्लॉक, कैपिटल काम्प्लेक्स, सेक्टर-19, अटल नगर, जिला रायपुर

क्रमांकः आ.राक/निज सहा./2020/ अटल नगर, दिनाँक : 25-6-2020

// आदेश//

छत्तीसगढ़ मूल्य सवंर्धित कर अधिनियम, 2005 की धारा 39 के अधीन व्यवसायियों को अधिक कर या शास्ति, ब्याज, आगतकर रिबेट या अन्य किसी राशि के प्रतिदाय को स्वीकृत करने एवं विलंबित होने पर ब्याज की भुगतान की स्वीकृति देने का प्रावधान है। **अधिनियम के अंतर्गत संपूर्ण शक्तियां आयुक्त, वाणिज्यिक कर को दी गयी है।**

वाणिज्यिक कर आयुक्त के द्वारा अधिनियम के अधीन प्राप्त शक्तियों का प्रत्यायोजन किया जाकर वापसी की स्वीकृति के अधिकार कार्यालयीन आदेश क्र. **आ.राक/निजसहा/2020/157 अटल नगर, दिनांक 29-5-2020 को निरस्त करते हुये प्रत्यायोजन की सीमा को पूर्ववत करते हुये निम्नानुसार संशोधन किया जाता है:**

वाणिज्यिक कर अधिकारी - यदि वापसी की राशि रु. 2 लाख से अधिक न हो, सहायक आयुक्त - यदि वापसी की राशि रु. 5 लाख से अधिक न हो, उपायुक्त - यदि वापसी की राशि रु. 10 लाख से अधिक न हो, अपर आयुक्त - यदि वापसी की राशि रु. 50 लाख से अधिक न हो तो, आयुक्त के निर्देशानुसार प्रेषित प्रकरण में अपर आयुक्तों को रु. 50 लाख सीमा तक।

यह आदेश तत्काल प्रभाव से लागू होगा।

आयुक्त, वाणिज्यिक कर, छत्तीसगढ़

❑

(8) Notification u/s 148 of M.P. GST Act, 2017 making amendments to special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.

No. F A 3-09/2020/1N (44). Bhopal, dated 6th July, 2020 - In exercise of the powers conferred by Section 148 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following amendments in this department's notification No F A-3-09-2020-1-V (39) dated the 04 May, 2020, namely:—

In the said notification

(i) in the first paragraph, the following proviso shall be inserted, namely:

"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP.";

(ii) for the paragraph 2, with effect from the 21st March, 2020, the following paragraph shall be substituted, namely: -

"**2. Registration.-** The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/ RP or by 30th June, 2020, whichever is later:.".

2. This notification shall be deemed to have come into force with effect from the 05th May, 2020.

❑

(9) Notification u/s 20(8) of M.P. Vat Act, 2002 amending Notification No. (64) dated 27-9-2019 and (91) dated 29-11-2019 extending the date of completion of assessments and reassessment proceedings for the period 1-4-2017 to 30-6-2017 and for all remaining cases which has not completed upto 30-6-2020 upto 31-12-2020

F A-3-40-2018-1-V-(42). Bhopal, Dated 30th June 2020 - In exercise of the powers conferred by sub-section (8) of Section 20 of the Madhya Pradesh Vat Act, 2002 (No. 20 of 2002), the State Government hereby, makes the following further amendment in this department's notification No. F A 3-40-2018-1-V-(64) dated 27th September 2019 and No. F A 3-46-2019-1-V-(91) dated 29th November 2019, namely:—

AMENDMENT

In the said notifications, for the word and figure "30th June 2020", the word and figure "31st December 2020" shall be substituted.

❑

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TAX LAW DECISIONS

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Full Reports Notes on Reported and Unreported Cases Entries of Schedule, AAR, Interpretation of Statutes Words & Phrases

(2020) 65 TLD 1 In the High Court of Telangana

Hon'ble M.S. Ramachandra Rao & T. Amarnath Goud, JJ.

ACC Limited

Vs.

Asst Commissioner CT and others

W.P. No. : 943 of 2014

April 27, 2020

Deposition : *In favour of Petitioner*

Refund - Section 33-C of APGST Act,1957 - Power to withhold refund in certain cases - Refund can not be withheld for 'want of cross-verification details' which is not a ground mentioned in Sec.33-C for withholding the refund.

Writ petition allowed

In the instant case, the respondents had withheld the refund for 11 years on ground of 'want of cross-verification details' which is not a ground mentioned in Sec.33-C for withholding the refund due to petitioner. [Para 43]

Admittedly no proceeding such as an appeal or revision was pending against the petitioner. So Sec.33 F(2) of the APGST Act is also in applicable. [Para 44]

Also a refund withholding order must invariably specify (as per Sec.33C) the period of time during which it will be in force and a refund cannot be withheld indefinitely as has been done in the instant case. [Para 45]

Sec. 33-E and 33-F of the APGST Act give 6 months time to the respondents to complete the verification and the authorities cannot with hold the refund beyond the said period. [Para 46]

Thus there has been an ex-facie abuse of power by the respondents 1 and 2 in denying refund to the petitioners of the sum of Rs.28,10,432/-. [Para 47]

Therefore the writ petition is allowed with costs of Rs.25,000/- to be paid by the 5th respondent to the petitioner; a Writ of Mandamus is issued declaring that the impugned order dt. 5.5.2009 of the 2nd respondent withholding the refund of Rs.28,10,432/- is arbitrary, illegal and without jurisdiction; the said order is accordingly set aside; and the respondents 1-5 are directed to refund the said amount with interest at 12% p.a from 2.8.1993 to 22.1.2004 as per Sec.33-F of the Act and also at 12% p.a from 5.11.2009 till date as per Sec.33-F of the Act. [Para 48]

As a sequel, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed. [Para 49]

Cases referred :

* CIT Vs. Ogale Glass Works Ltd. (1955) 1 SCR 185 : AIR 1954 SC 429 : (1954) 25 ITR 529
* E.C.Muthuswami Gounder Vs. V.K. Chennimalai Goundar (1970) 1 MLJ 341 (FB)
* National Sugar Industry and another Vs. Narala Venkiah (Died) per L.R 1994 (3) ALT 276 (AP)
* Pulp N'Pack Private Ltd. Vs. The Commercial Tax Officer and Ors. MANU/AP/0094/2009 = 2009(23) VST 573 (DB)(AP)
* Reddy Laboratories Limited Vs. Asst. Commissioner (CT) LTU (2011) 37 VST 76 (AP) (DB)

Sri S.R.R.Viswanath for the petitioner.
G.P. for Commercial Taxes, Telangana for the respondents.

:: ORDER ::

The Order of the Court was made by **M.S. RAMACHANDRA RAO, J. :**

The Background facts

The petitioner in this Writ Petition is M/s. ACC Limited, a Company registered under the Companies Act, 1956 and engaged in the manufacture of cement and cement products.

2. The petitioner was assessed to Sales tax during the years 1979-80 and 1980-81 on the turnover relating to packing material i.e. gunnies under the APGST Act, 1957 (for short 'the Act'). Vide order dt. 27-3-1984, the original adjudicatory authority levied tax at basic rates of 3% and 8% on packing material and cement respectively and completed assessment for 1979-80. Similar order was passed on 20-3-1985 for the assessment years 1980-81.

3. Subsequently, the said orders were revised by the Dy. Commissioner (CT), Begumpet Division on 11-3-1987 (1979-80) and 9-3-1987 (1980-81) on the ground that the Commercial Tax Officer had levied basic tax at 3% instead of 8% on packing material, and so an additional demand was raised by Form B-3 demand notice.

4. The said additional demand was the subject matter of challenge before the Supreme Court of India in WP.No.1688 of 1987. Pursuant to an interim order passed by the said Court, petitioner paid Rs.13,03,679/- and Rs.15,06,753/- through Demand drafts bearing No. 014826 and 014827 both dt. 31-5-1988 drawn on the Central Bank of India, Secunderabad in favor of the Commercial Tax Officer, Company Circle, Punjagutta. The Supreme Court on 25-9-1989 remanded the matter to the 2nd respondent.

5. By order dt. 24-1-1990, the 2nd respondent again confirmed the levy on packing material at the basic rate of 8% and levied additional tax of Rs.28,10,432/-.

6. Aggrieved by the said order, petitioner preferred TA.No.s398 and 399 of 1990 before the Sales Tax Appellate Tribunal.

7. The said Tribunal, by a common order dt. 3-2-1993 allowed the appeals filed by the petitioner.

8. In spite of the said orders the said amount of Rs.28,10,432/- was not refunded to petitioner. Petitioner therefore seeks refund of Rs.28,10,432/-

from the respondent.

9. Further for 1991-92, there was a demand dt. 22-1-2014 against the petitioner for Rs.52,82,922/- and after adjusting the excess refund of Rs.28,10,432/- , petitioner paid the balance tax of Rs.24,72,450/-.

10. There was also an excess refund on 4-1-2009 of Rs.4,21,05,330/- for the years 1989-90, 1994-95, 1996-97 to 1999-00.

11. While refunding the said amount through order Rc.No.21141/96- 97 dt. 5-5-2009, the Dy.Commissioner (CT), Begumpet Division, Hyderabad (respondent no.2) directed to withhold Rs.28,10,472/- for want of getting cross verification on payment details from the Commercial Tax Officer concerned.

12. This is assailed by petitioner in this Writ Petition.

The prayer in the Writ petition

13. The petitioner seeks a Writ of Mandamus declaring that the impugned order dt. 5-5-2009 withholding the refund of Rs.28,10,432/- is arbitrary, illegal and without jurisdiction; to set aside the same; and to direct the respondents to refund the said amount with interest at 12% p.a from 2-8-1993 to 22-1-2004 as per Sec.33-F of the Act and also at 12% p.a from 5-11-2009 till date as per Sec.33-F of the Act apart from costs.

14. In the counter affidavit filed on behalf of the respondents on 31-3-2015, it is stated that in the absence of realization particulars relating to the amount of Rs.28,10,432/-, credit was not given, which resulted in withholding of the said amount.

15. So on 21-4-2015, a Division Bench presided over by Justice R. Subash Reddy (as his Lordship then was) recorded all the above facts , noted that under the Act, if there is delay in refunding the amount due to the assessee, interest is also required to be paid to the assessee, called for a report from the Commissioner of Commercial Taxes (Telangana) to be submitted by 28-4-2015 indicating the reasons for withholding the said amount and whether such amount paid by the petitioner by way of Demand Draft were realized or not and if not realized, why the same was not realized, and the persons responsible for such dereliction of duty.

16. Thereafter the matter was listed on 28-4-2015, 15-6-2015, 24-9-2019, 24-10-2019, 7-11-2019, 13-11-2019 but no report as directed by this Court in it's order dt. 21-4-2015 has been filed more than 4 ½ years.

17. On 26-11-2019, this Court issued show cause notice to Mr. V. Anil Kumar, IAS, Commissioner of Commercial Taxes, State of Telangana to show cause as to why proceedings under the Contempt of courts Act, 1971 should not be initiated against him for willful disobedience of the said order. The Special Government Pleader for the State of Telangana was directed to communicate this order to the said officer.

18. Thereafter on 29-11-2019, an affidavit was filed by the said Officer stating that after he received the order dt. 21-4-2015, he asked the Deputy Commissioner (CT) (FAC), Begumpet Division, Hyderabad to verify and report and that the latter gave a report on 27-4-2015.

19. In the said report dt. 27-4-2015 of the Dy. Commissioner, he certified that the amount of Rs.28,10,432/- was paid by the petitioner through the two Demand drafts mentioned above; that later the Company Circle was disbanded and the file of the petitioner was transferred to other circles such as Punjagutta, Begumpet and Secunderabad Division; that letters were addressed to the Punjagutta Division and the S.D. Road Circle for particulars of challans for the said DDs, but they expressed their inability to furnish the details; and for want of the challan particulars, refund could not be made to petitioner of the said amount.

20. The Commissioner further stated that he informed the Government Pleader on 18-6-2015 that the Dy. Commissioner (CT), Begumpet informed him that he had contacted the District Treasury Office, but the latter had expressed inability to furnish the information of the challans as only challans up to 3 years would be preserved as per the State Government norms. He further stated he was retiring from service the next day i.e. 30-11-2019.

21. He denied that he committed contempt of court and stated that there was no intentional or deliberate disobedience of the orders passed by the Court.

The consideration by the Court

22. The fact however remains that the Commissioner did not file any report in this Court before 28-4-2015 or till 29-11-2019. He has thus clearly disobeyed the order passed by this Court.

23. Be that as it may, admittedly the respondents admit in their counter affidavit filed on 31-3-2015 stating in para 6 that petitioner has paid Rs.13,03,679/- vide DD No.014826 dt. 31-5-1988 and Rs.15,06,753/-

vide DD No.014827 dt. 31-5-1988 both drawn on the Central Bank of India in favor of Commercial Tax Officer, Punjagutta.

24. The delivery of these Demand Drafts was as per Rule 35 r/w Rule 17 of the APGST Rules, 1957 pursuant to revision demand through Form B-3 notice made by the 1st respondent who had given effect to the revision made by the 2nd respondent. By doing so, payment by the petitioner was complete and nothing more was expected of it.

25. Sec. 64(1) of the Negotiable Instruments Act,1881 makes presentation of a bill of exchange (like a Demand Draft) to the drawee equivalent to payment. In other words, handing over payment by Demand Draft tantamounts to payment in cash and discharges petitioner of it's obligations. The presentation of the Demand draft and it's encashment is the exclusive responsibility of the respondents, the petitioner has nothing to do with it and the respondents cannot take advantage of any lapse , if any, in presenting the two Demand drafts to the Bank for realisation.

26. In **National Sugar Industry and another Vs. Narala Venkiah (Died) per L.R 1994 (3) ALT 276** by the A.P. High Court, this Court also held that handing over Demand Drafts amounts to payment**.** In the said case, this Court held:

> "12. Admittedly, the plaintiff had to pay 25% of the cost price to the defendants out of Rs. 2,34,715/-, amounting to Rs. 58,000/- for which only Rs. 40,000/- were paid and a balance of Rs. 18,000/- were outstanding. This is made emphatic both in the pleadings and the evidence. But at the same time, admittedly, the balance out of 25% of the cost price was not at all paid much less the plaintiff was interested in paying the same as a part of pursuing or concluding the contract. Therefore, in other words, the transaction failed due to the non-payment of the agreed part payment of the cost-price. There is nothing to indicate either from the pleadings or from the evidence as to where the balance of the agreed part payment was to be paid. Therefore, that may not decide the basis to fix the jurisdiction of the court. However, there is a clear admission and evidence in the case that Rs. 40,000/- were paid by the plaintiff to the defendants by means of two bank drafts (one for Rs. 35,000/- and another for Rs. 5,000/-) which were handed over to one Krishnaswami at Nirmal and it is not denied by the defendants that they received the drafts from Krishnaswami at

Madras. P.W.1. has testified about it in emphatic terms. … When the fact remains that Krishnaswami received the two drafts at Nirmal from the plaintiff through P.W.1. within Adilabad district and handed over the same to the defendants, that should decide the place of payment and acceptance as a connecting factor regarding the cause of action. … As rightly pointed out by the learned Advocate for the plaintiff, payment by demand draft tantamounts to payment by cash as the encashment of demand draft is not part of payment. It is common knowledge that in case of demand draft which is almost like a currency note, nothing more has to be done to mean it encashment, except the receipt of the same. Therefore, when the demand drafts were handed over by the plaintiff through P.W.I to Krishnaswamiat Nirmal, the payment of Rs. 40,000/-was complete. Therefore, that created part of cause of action to fix the situs of contract for the purpose of jurisdiction."(emphasis supplied)

27. A Full Bench of the Madras High Court in **E.C.Muthuswami Gounder Vs. V.K. Chennimalai Goundar (1970) 1 MLJ 341 (FB)** considered a situation where a debtor had sent money to the creditor by way of money order. A question arose for consideration 'whether the date of payment i., acknowledgement of the debt is the date of payment made to the post office by the debtor or the date of receipt of the money by the creditor'. The Court held that the date the money was handed over to the post office will be the date of payment. It declared that if a debtor pays a cheque towards a debt which was not in dispute at that time and there is a delay in encashment thereof, nevertheless the payment by cheque made by the debtor to the creditor, as evidenced by the cheque, is to be deemed to take effect from the date when the cheque was drawn and posted by the debtor to the creditor. The date when the creditor realizes the cheque is not significant. And the same principle would be applicable even to payments sent through the media of post office.

28. In **CIT Vs. Ogale Glass Works Ltd. (1955) 1 SCR 185 : AIR 1954 SC 429 : (1954) 25 ITR 529,** the Supreme Court also held that

"The engagement of the Government was to make payment by cheques. The cheques were drawn in Delhi and received by the assessee in Aundh by post. According to the course of business usage in general to which, as part of the surrounding circumstances, attention

has to be paid under the authorities cited above, the parties must have intended that the cheques should be sent by post which is the usual and normal agency for transmission of such articles and according to the Tribunal's findings they were in fact received by the assessee by post. Apart from the implication of an agreement arising from such business usage the assessee expressly requested the Government to "remit" the amounts of the bills by cheques. This, on the authorities cited above, clearly amounted in effect to an express request by the assessee to send the cheques by post. The Government did act according to such request and posted the cheques in Delhi. It can scarcely be suggested with any semblance of reasonable plausibility that cheques drawn in Delhi and actually received by post in Aundh would in the normal course of business be posted in some place outside British India. This posting in Delhi, in law, amounted to payment in Delhi. In this view of the matter the referred question should, with respect, have been answered by the High Court in the affirmative. We, therefore, allow the appeal and *answer the question accordingly.*" (emphasis supplied).

29. We hold, on the basis of the above decisions , that once the respondents admit the receipt of both the Demand drafts dt. 31-5-1988 from the petitioner for the sum of Rs.28,10,432/- , payment by the petitioner is deemed to be complete and the petitioner is absolved of it's obligations; and the withholding of the refund by the respondents on the alleged ground that challans are not traceable in the Sub Treasury of deposit of the Demand Drafts by the Commercial Tax Department, after receipt of the Demand Drafts, i.e cross verification is not possible, cannot be a valid reason at all to withhold the refund of the said sum to the petitioner.

30. In our opinion, this action of the respondents is also violative of Art. 14, 19, 265 and 300-A of the Constitution of India. The respondents cannot be permitted to take advantage of their own negligence, assuming that the Demand drafts handed over by the petitioner, were not presented and encashed by the respondents.

31. In **Reddy Laboratories Limited Vs. Asst. Commissioner (CT) LTU (2011) 37 VST 76 (AP) (DB)** and another, this aspect about delays in refund of Tax being violative of Art.265 of the Constitution of India was dealt with. The Division Bench of the A.P. High Court observed:

"12. … …on a mere subjective opinion that the refund would affect the Revenue adversely, it cannot be withheld. The Government as a litigant to the case before the appellate Tribunal cannot be permitted to withhold the refund only on the ground that they intend to file a tax revision case. Section 40(2) of the VAT Act requires prior approval to withhold the refund by the Deputy Commissioner. When the statute prescribes the authority and also prescribe other authorities for refund/ adjustment of VAT/TOT, notwithstanding the fact that the approving authority is a higher official, the legislative choice of conferring power on the Deputy Commissioner cannot be ignored. Even if the Joint Commissioner, by virtue of Rule 59 of VAT Rules, is the authority to approve refund if the amount exceeds Rs. 10,00,000/-, in the event of withholding refund, necessary approval of the Deputy Commissioner has to be obtained. We do not find any inconsistency or incongruity therein. More often than not any quasi-judicial authority would be inferior in the organizational set up in comparison to an authority who takes administrative decisions. On that ground also the advice of the second respondent to the first respondent based on which the impugned endorsement is issued cannot be sustained.

13. Before parting with this case, we are compelled to observe certain things that are recurring in the VAT administration in the State of Andhra Pradesh especially in the area of refunds/adjustments . More often than not we have come across cases where Joint Commissioners/ Additional Commissioners have sent proposals for refund to the Government and the approval never comes from the Government. As observed by the Division Bench in BSNL, so as to achieve the distinction of enforcing a fair tax paying structure, the State must act fairly. If the appropriate prescribed authority decides the amount to be refunded, any lapse on the part of the State Government or any of its agents in withholding the same would certainly be violative of Article 265 of the Constitution of India. Repeated contravention of Constitution provision cannot be approved. The State Government would do well to prescribe a time schedule to ensure timeliness in granting approvals for refund of the amounts which it appears has been in place not by reason of the statute or the delegated legislation but only because of certain executive instructions. As there is no challenge to these instructions, we refrain from saying anything more. The

argument that the delayed refund would attract interest at 12% per annum is no answer if one appreciates the fact that no businessman or merchant would like the money to be locked up just for the sake of 12% return on the refund, which might come long after the requirement for money is over. Keeping this in view, we direct the Government to pass appropriate orders in all pending refund matters within a period of six weeks." (emphasis supplied)

32. A feeble defence was also raised by the learned government Pleader relying on Sec.33C of the APGST Act.

33. Section 33 enacts that the assessing authority or the licensing authority as the case may be, shall refund the tax or the license fee if any paid, provisionally by an assessee or licensee for any particular period if it is found to be in excess of the tax or the license fee payable by him for the said period, or on the option of the assessee or licensee to adjust such excess towards any tax or license fee due in respect of any other period.

34. Sections 33A to 33F were inserted by Act 16 of 1963 w.e.f. 1-8-1963.

35. Section 33C of the Act states:

"**S.33-C. Power to withhold refund in certain cases**: Where an order giving rise to a refund to an assessee or licensee is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and the assessing or the licensing authority is of the opinion that the grant of the refund is likely to adversely affect the revenue, the assessing or the licensing authority may, with the previous approval of the Deputy Commissioner, withhold the refund till such time as the Deputy Commissioner may determine."

36. It thus empowers the assessing or licensing authority, if of the opinion that the grant of refund is likely to adversely affect the revenue, where an order giving rise to a refund to an assessee or licensee is the subject matter of an appeal or further proceeding or where any other proceedings under the Act of 1957 is pending, with the previous approval of the Dy. Commissioner, to withhold the refund till such time as the Dy. Commissioner may determine.

37. The provisions of Sections 33E and 33F deal with interest on delayed refund.

38. Section 33E mandates that if the assessing authority or the licensing authority does not grant the refund within six months from the date on which the claim for refund is made by the assessee or the licensee.

39. Under Section 33A, the State shall pay the assessee or licensee simple interest @ 12% p.a. on the amount directed to be refunded following the expiry of the period of six months aforesaid to the date of the order granting the refund.

40. Section 33F enjoins that where a refund is due to the assessee or licensee in pursuance of an order referred to in Section 33B and the assessing or licensing authority does not grant the refund within a period of six months from the date of such order, the State shall pay the assessee or the licensee simple interest @ 12% p.a. on the amount of refund due from the date following the expiry of the period of six months aforesaid to the date on which the refund is granted.

41. Sub-section (2) of Section 33F deals with the refunds withheld under the provisions of Section 33C and enjoins the State Government to pay interest @ 12% p.a. on the amount of refund ultimately determined to be due as a result of the appeal or further proceedings for the period commencing after the expiry of six months from the date of the order referred to in Section 33C to the date the refund is granted.

42. In **Pulp N'Pack Private Ltd. Vs. The Commercial Tax Officer and Ors. MANU/AP/0094/2009 = 2009(23) VST 573 (DB)(AP)**, a Division Bench of the A.P. High Court considered the scope of exercise of the discretionary power under Sec.33 C by the competent authority to with hold refunds o Tax under the APGST Act, 1957. It held:

> "36. From an interactive analysis of the provisions of the 3rd proviso to Sections 21(2), 33-C and 33-F(2) it is apparent: (a) that where no order withholding a refund is passed exercising power Under Section 33C, simple interest @ 18% p.a. on the amount of deposit to be refunded shall have to be paid if refund of the deposit is not made within 60 days from the date of receipt of the order passed Under Section 19 or 21; and (b) that where an order withholding a refund is passed Under Section 33C and the amount of refund is ultimately determined to be due as a result of an order in an appeal or further proceeding, simple interest @ 12% p.a. shall become payable on the amount of refund determined to be due, if the same is paid after the

expiry of 6 months from the date of the order referred to in Section 33-C to the date the refund is granted. 37. In the above circumstances an order Under Section 33C withholding the refund does adversely impact the dealer. Not only is he deprived of a higher rate of interest payable by the State for delayed refund of the amounts deposited (at 12% as against 18% p.a.) but the period for which interest is payable is also postponed pejoratively to the dealer's interest i.e., after 60 days from the date of receipt of an order passed Under Sections 19 of 21 [vide the 3rd proviso to Section 21(2)]; as against the dealer's entitlement to only a lower percentage of interest (12% p.a.) and if the refund is withheld for a period beyond 6 months from the date of the order referred to in Section 33C [Section 33-F(2)].

38. Since Section 33-C confers a discretionary but not an absolute power to withhold refund and only on the formation of an opinion as to the adverse impact on revenue, the assessing authority must exercise discretion on relevant grounds and for germane reasons.

43. If power granted for a particular purpose by the Statute, is exercised for a different purpose, that power has not been validly exercised. If the exercise of a discretionary power is influenced by considerations that cannot lawfully be taken into account or by the disregard of relevant considerations required to be taken into account, the Courts would hold that the power has not been validly exercised. The interpretation of statutory purpose and of the relevancy of considerations are closely related; since the question in regard to the considerations taken into account in reaching a decision is normally whether that consideration is relevant to the statutory purpose. Where the statutory purpose is explicit, the power conferred, though discretionary, is a grant of discretion to be exercised within the locus of the permitted statutory purpose. Whether the exercise is consistent with the statutory purpose is an aspect falling within judicial review."

(emphasis supplied)

43. In the instant case, the respondents had withheld the refund for 11 years on ground of 'want of cross-verification details' which is not a ground mentioned in Sec.33-C for withholding the refund due to petitioner.

44. Admittedly no proceeding such as an appeal or revision was pending against the petitioner. So Sec.33 F(2) of the APGST Act is also inapplicable.

45. Also a refund withholding order must invariably specify (as per Sec.33C) the period of time during which it will be in force and a refund cannot be withheld indefinitely as has been done in the instant case.

46. Sec.33-E and 33-F of the APGST Act give 6 months time to the respondents to complete the verification and the authorities cannot with hold the refund beyond the said period.

47. Thus there has been an ex-facie abuse of power by the respondents 1 and 2 in denying refund to the petitioners of the sum of Rs.28,10,432/-.

48. Therefore the writ petition is allowed with costs of Rs.25,000/- to be paid by the 5th respondent to the petitioner; a Writ of Mandamus is issued declaring that the impugned order dt. 5-5-2009 of the 2nd respondent withholding the refund of Rs.28,10,432/- is arbitrary, illegal and without jurisdiction; the said order is accordingly set aside; and the respondents 1-5 are directed to refund the said amount with interest at 12% p.a from 2-8-1993 to 22-1-2004 as per Sec.33-F of the Act and also at 12% p.a from 5-11-2009 till date as per Sec.33-F of the Act.

49. As a sequel, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

❑

(2020) 65 TLD 13

In the High Court of New Delhi
Hon'ble Vipin Sanghi & Sanjeev Narula, JJ.

Bharti Airtel Ltd.

Vs.

Union of India & Ors.

W.P. (C) No. : 6345/2018, CM APPL.: 45505/2019

May 05, 2020

Deposition : *In favour of Petitioner*

Form GSTR-3B - Rectification - Circular No. 26/26/2017-GST dated 29-12-2017 - The rectification of the return for that very month to which it relates is imperative - The High Court allowed the petition and permitted the petitioner to rectify Form GSTR-3B for the period to which the error relates.

Writ petition allowed

We would also like to add that the Respondents have also not been

able to expressly indicate the rationale for not allowing the rectification in the same month to which the Form GSTR-3B relates. The additional affidavit filed by the Respondents as per the directions of this Court, also skirts this question and has only attempted to give some explanation which is not convincing and lacks objectivity and rationality. Respondents have admitted that the facility of Form GSTR-2A was not available prior to 2018 and, as such, for the months of July, 2017 to September, 2017 the scheme as envisaged under the CGST Act was not Respondents have also clearly acknowledged that there could be errors in Form GSTR-2A which may need correction by the parties and have, in fact, permitted the rectification, clearly reinforcing the stand of the Petitioner. The refund of excess cash balance in terms of Section 49 (6) read with Section 54 of the CGST Act does not effectively redress Petitioner's grievance. Therefore, the only remedy that can enable the Petitioner to enjoy the benefit of the seamless utilization of the input tax credit is by way of rectification of its annual return i.e. GSTR-3B. The hypothetical situations canvassed by Mr. Singh, would not deter us from granting the relief sought by the Petitioner. Each case would have to turn on its own facts. As and when a situation is brought to our notice, we would have to test the legality of the provision at that stage. Merely if there is any fanciful or absurd outcome in a given situation, as illustrated by Mr. Harpreet Singh, it does not mean that the Petitioner should not be given the benefit of rectification if the same is genuine. The correction mechanism is critical to sustaining successful implementation of GST. [Para 23]

Thus, in light of the above discussion, the rectification of the return for that very month to which it relates is imperative and, accordingly, we read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred. Accordingly, we allow the present petition and permit the Petitioner to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017. We also direct the Respondents that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified. In view of the fact that the final relief sought by the Petitioner has been granted and the petition is allowed,

no separate order is required to be passed in the application seeking interim relief. Accordingly, the said application is disposed of as such. [Para 24]

Mr. Tarun Gulati, Sr. Adv. with Mr.Sparsh Bhargava, Mr. Vipin Upadhyay, Mr.Shashi Mathews, Mr. Kamal Arya, Advs. for the petitioner.
Mr. Harpreet Singh, Sr. Standing counsel with Ms. Suhani Mathur, Adv. for R-2 to 4.

:: JUDGMENT ::

The Judgment of the Court was delivered by **SANJEEV NARULA, J. :**

[*Full text of the judgment not produced here. For full text of the judgment login to* ***www.dineshgangrade.com*****]**

❑

(2020) 65 TLD 15

In the Supreme Court of India
Hon'ble Deepak Gupta & Aniruddha Bose, JJ.

Commercial Taxes Officer

Vs.

Bombay Machinery Store

Civil Appeal No. : 2217 of 2011, 2220 of 2011, 10000 of 2017 & 10001 of 2017

April 27, 2020

Deposition : *In favour of Respondents*

Inter-state sale - Sections 3 and 6 of the Central Sales Tax Act, 1956 - Movement of goods, from one State to another shall terminate, where the good have been delivered to a carrier for transmission, at the time of when delivery is taken from such carrier.

Appeals dismissed

The question is as to whether as a condition of giving the benefit of Section 6(2) of the said Act, the tax authorities can impose a limit or time frame within which delivery of the respective goods has to be taken from a carrier when the goods are delivered to a carrier for transmission in course of inter-state sale.

The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own

perception of trade practise. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature.

Cases referred :

* Arjan Dass Gupta and Brothers Vs. Commissioner of Sales Tax, Delhi Administration (1980) 45 STC 52 (Delhi)
* CTO Vs. Bhagwandas & Sons (1996 Tax World 107)
* Guljag Industries Limited Vs. State of Rajasthan & Another (2003) 129 STC 3 (Raj)

:: JUDGMENT ::

The Judgment of the Court was delivered by **ANIRUDDHA BOSE, J. :**

All these four appeals are being dealt with by this judgment as they all involve adjudication on a common question of law arising out of Sections 3 and 6 of the Central Sales Tax Act, 1956 (1956 Act), which was operational at the material point of time.

The question is as to whether as a condition of giving the benefit of Section 6(2) of the said Act, the tax authorities can impose a limit or timeframe within which delivery of the respective goods has to be taken from a carrier when the goods are delivered to a carrier for transmission in course of inter-state sale. For proper appreciation of the dispute involved in these appeals, the aforesaid provisions are reproduced below:-

> "**3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce**. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-
>
> (a) occasions the movement of goods from one State to another; or
>
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.
>
> Explanation 1 - Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2 - Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

Explanation 3 - Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another."

6. Liability to tax on inter-State sales.- [(1)] Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales [of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

[Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.]

[(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.]

[(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods, -

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of section 8,

shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made –

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent. (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub-section.

[(3) Notwithstanding anything contained in this Act, if -

(a) any official or personnel of -

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention to which India is a party or under any law for the time being in force; or

(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub-clause (i) or sub-clause (ii) of clause (a), purchases any goods for himself or for the purposes of such mission, United Nations or other body, then, the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act."

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be."

2. We shall narrate the factual context of Civil Appeal No.2217 of 2011, before we address the legal issue involved in these appeals, treating this to be the lead case. The dispute relating to the other three appeals are not identical, but the question of law being the same in all these appeals, we shall avoid narrating in detail the sequence of events which led to filing of the said appeals, except to the extent such narration is necessary for understanding the scope of these appeals. In Civil Appeal No.2217 of 2011, the period of assessment is 1995-96. The respondent-assessee Bombay Machinery Store had purchased electricity motors and its parts in the said financial year out of the State and sold them to purchasers within the Kota region of the State of Rajasthan. For such sales, they obtained the benefit of exemption under Section 6(2) of the 1956 Act. These goods had remained with the transport company upon arrival in Kota for more than a month. Revenue's case is that after importing these goods into Rajasthan, sale was effected through bilty (transport receipt) on obtaining separate orders. Such sale, it is the revenue's case, constituted sale within the State and hence taxable @12% per annum under the Rajasthan Sales Tax Act, 1954. Civil Appeal No.2220 of 2011 relates to the same firm but for the assessment year 1994-95. Quantum of sales for the year 1994-95 effected through the same process was Rs.3,15,639/- and for 1995-96 it was Rs.2,60,93/-. Claim of benefit under Section 6(2) of the 1956 Act was rejected and tax along with interest and penalty was imposed under the State Act by Commercial Tax Officer, Anti-Evasion Circle-I, Kota after a survey by two orders, both dated 11th December, 1997. The appeals by Bombay Machinery Stores were allowed

by the Deputy Commissioner (Appeals), Commercial Taxes, Kota following a decision delivered on 8th March, 1996 by the Rajasthan Tax Board in the case of **CTO Vs. Bhagwandas & Sons (1996 Tax World 107).** The orders of the first appellate authority were passed on interpretation of the first explanation to Section 3B(1) of the 1956 Act. Imposition of tax, interest and penalty under the State Act was quashed. In State Tax authority's appeal before the Tax Board, reliance was placed on two circulars issued by the Commissioner bearing S.No.1132A: CCT Circular F.11(3)CST/Tax/CCT/1/61 dated 15th April, 1998, clarified by a further circular dated 19th July, 1999. The Board did not take into consideration these two circulars. These were not referred to in the orders of the Tax Assessment Officer. The Board sustained the view of the Deputy Commissioner (Appeals) in a composite order. This order was challenged by the revenue by filing two revision petitions before the High Court, as two appeals were disposed of by the Board by its order dated 24-11-2004. The High Court, in the judgment delivered on 14th September, 2007 confirmed the Board's order and quashed two circulars bearing S.No.115B dated 16th September, 1997 and S.No.1132A dated 15th April, 1998. These circulars sought to impose a time limit on retention of goods in the carrier's godown, beyond which time the revenue was to treat obtaining of constructive delivery of the goods involved. That judgment is under appeal before us. Before we deal with this judgment, we shall briefly refer to the other appeals which have been heard together.

3. In Civil Appeal No.2220 of 2011, incidences of sale relate to different dates between 24th March, 1994 and 30th January, 1995.

4. Civil Appeal No.10000 of 2017 and Civil Appeal No. 10001 of 2017 relate to another assessee, Unicolour Chemicals Company. That firm purchased chemical and colour from a Gujarat based company, and the goods reached the godown of the carrier transport company on 12th May, 2000. They were sold to a firm in Jaipur in two tranches, after 55 days and 80 days from the date of arrival. The monetary value of these goods was Rs.1,27,592. In Civil Appeal No. 10001 of 2017, revenue's case is that survey of the business place of the same firm revealed that:-

> "the stock of taxable good colour chemical of price Rs.4,72,653/- has been found less and on doubt on the nature of sale showing in the Section 6(2) of the Central Sales Tax Act and seeing the possibility of tax evasion the record found in the survey of the business firm has been seized." [quoted from the order annexed to the paper book]

These goods had reached the godown of the transport company on 25th July, 2001. These were brought against bilty and the documents were transferred to the same firm on 4th September, 2001. There was thus delay of 41 days. The tax fixation authorities directed application of the State Act treating the transactions to be local sales. This order was sustained by the Deputy Commissioner (Appeals) and the order of the Tax Board also went against Unicolour. The High Court, following the judgment in the case of **Bombay Machinery Store** (which we are treating as the lead case in this judgment), quashed the orders of the statutory authorities in both the appeals and also invalidated the two circulars.

5. The two circulars issued by the Commissioner, Commercial Taxes Department, Rajasthan have been quoted in the impugned judgment in the case of Bombay Machinery Store. Henceforth, wherever we refer to the expression judgment under appeal, we shall imply that judgment only, unless we specifically refer to any of the three other decisions under appeal. These circulars read:-

> "**S. No. 1115B : CCT Circular F.11(3)/CST/Tax/CCT/1997/1563 dated 16-9-1997**
>
> As you are aware of the fact that to avoid multiple taxation of goods sold by transfer of documents of title to the goods in their single movement from one State-to another, provisions for exemption of such transaction are embodied in S. 6(2), CST Act, 1956. It appears that application of this provision has been made more or less mechanical by the assessing authorities in as much as on furnishing form E-I/E-II and C forms without looking into the material facts regarding single inter-State movement of such goods, benefits are conferred to such dealers. If the movement of the goods from one State to another terminates, the subsequent sales will be treated as intra-State sales and benefit of the above sub-section (2) of Section 6 will not be available in such cases. It is found that trade is often claiming large exemptions under this provision, particularly in respect of paper, dyes and chemicals, etc. It is, therefore, directed that all the assessing authorities should specifically examine the nature of transactions before granting benefit under the said section.
>
> It may be argued that in view of the Explanation I to Section 3 of the CST Act, 1956, inter-State movement of goods continues until the

consignee obtains physical delivery of goods from the carrier, after arrival of these goods at the destination. This argument is based on the incorrect notion that "delivery" in the Explanation means only "physical delivery". This argument can be countered on the basis of the well settled proposition of "constructive delivery".

The material fact to be looked into by the assessing authorities while granting benefit of Section 6(2) of the CST Act relate to the termination of the movement of goods in the inter-State transactions. If after arrival of the goods at the destination, the consignee asks the transporter expressly or impliedly, to retain the goods at his godown until further directions, then the carrier ceases to hold the goods as transporter, and in the eyes of law, the goods are as much in possession of the consignee as if he had taken them into his own godown. As per the settled legal concept this sequence of events tantamounts to constructive delivery of the goods by transporter to the consignee and transit ends. Any sale by the consignee thereafter will be local sale and benefit of Section 6(2) will not be available.

The transporters, whether Railways or Roadways, impose condition of delivery of goods transported through them at the destination usually within ten days and the consignee is required to check up with such transporting agency as to the arrival of the goods. In these circumstances, if the carrier retains the goods for an extended period, then there is a clear inference that the consignee was aware of the arrival of his goods and the transporter is holding the goods on his behalf as a bailee for the consignee. These factual matrix leads to the conclusion that there is a local sale and not sale under said Section 6(2). Payment of warehouse rent/demurrage charges by the consignee to the transporter is conclusive evidence that transporters have assumed the role of bailee and transit having ended. It may be observed that bailment can be either gratuitous or for remuneration or partially both. In law, there can also be bailment without contract.

As per legal position, 'transit' gets over as soon as a reasonable time elapses for the consignee to elect whether he would take the goods away or leave them in the transporters premises, because at the conclusion of reasonable time there is deemed to be a constructive delivery of goods from the transporters to the consignee. If a dealer claims that the had not obtained the delivery of goods, the burden of

proving that the goods really remained with the carrier from the date of their arrival till the date of their clearance is on the dealer. If the dealer fails to furnish this proof, then the assessing authority would be justified in concluding that the dealer had himself taken physical delivery of the goods from the carrier and thereby disallowing his claim of exemption under S. 6(2), CST Act.

The decision of the Delhi High Court in *Arjun Dass Gupta and Bros. Vs. Commer of Sales Tax, New Delhi*, reported in (1980) 45 STC 52, lays down the basic guidelines regarding exemption of sales under S. 6(2), CST Act. The Delhi High Court had held that Explanation I to S. 3(b) of the CST Act, 1956 did not permit the dealer to expand the movement of goods beyond the time of physical landing of the goods in the Union Territory of Delhi. As to the knowledge except this there are no other directly relevant or contra judgment reported from any other High Court. It is understood that Special Leave Petition is pending in the Supreme Court on the issue but there is no stay. As such Delhi High Court judgment holds the field.

It is therefore, enjoined upon the assessing authorities that in future they should not grant the benefit of exemption under S. 6(2), CST Act, simply on furnishing of the Form E-I/E-II and C Form. If on the contrary it is found that assessee had taken physical delivery or the goods remained with the transporter beyond a reasonable time looking to the facts and circumstances of each case, the doctrine of constructive delivery should be invoked and action be taken accordingly.

S. No. 1132A : CCT Circular F.11(3) CST/Tax/CCT/61 dated 15-4-1998

It may be recalled that vide circular dated 16-9-1997 [S. No.1115B], instructions were issued clarifying therein the legal position of granting benefits under Section 6(2) of the CST Act, 1956. It has been clarified that the concept of constructive delivery shall also be invoked while determining when the transit comes to an end. It was also clarified that the Railways or Roadways usually impose conditions of delivery of goods transported by them at the destination within 10 days and the consignee is required to check up with such transporting agency as to the arrival of the goods. In view of this, it was desired by the above referred circular that the AAs should ascertain the fact that whether

the goods remained with the transporter beyond reasonable time. Looking to the facts and circumstances of each case, the doctrine of constructive delivery should be invoked and action be taken accordingly.

The representatives of various associations of trade and industry had brought to the notice that in almost all cases the AAs are invoking the doctrine of constructive delivery in a mechanical manner immediately after ten days of arrival of the goods at the destination. As per these Associations, this approach has resulted in hardship to the dealers and avoidable harassment is being caused to them with adverse effect on the trade. They have requested for increasing this limit.

Keeping in view these factual aspects and the discussions at the Govt; level, it is reiterated that the reasonability of the time should be looked into after analysing the facts and circumstances of each case and the usual period of treating constructive delivery which may even extend upto thirty days instead of ten days as suggested in the above referred circular.

Deputy Commissioner (Admn) should ensure that, while ensuring the State revenue, no harassment shall be caused to the dealers by enthusiastic assessing authorities while determining the end of transit."

6. The High Court has referred to two decisions, one by the Rajasthan High Court itself, in the case of **Guljag Industries Limited Vs. State of Rajasthan & Another** reported in **(2003) 129 STC 3 (Raj.)** and the other of the Delhi High Court in the case of **Arjan Dass Gupta and Brothers Vs. Commissioner of Sales Tax, Delhi Administration (1980) 45 STC 52 (Delhi)**. In the latter decision, a Bench of the Delhi High Court construed certain provisions of 1956 Act and the Bengal Finance (Sales Tax) Act, 1941, (as it was applicable to Delhi at the material point of time). On the aspect of what would be implication of the expression 'delivery' in Section 3(b) of the 1956 Act, it was, inter-alia, held:-

"**10**…….Normally, when the goods are carried by a carrier from one State to another, the delivery is taken by the importer immediately after the goods land in the importing State. Thus, normally, the landing of the goods in the importing State and the delivery of the goods are almost simultaneous acts, although technically there will be some hiatus between the two. Considering these commercial facts, it is difficult to accede to the retailer's contention that the movement of goods

continues even if the goods have landed in Delhi only because the importer has transferred the documents of title to the purchasing retailers and such retailers take delivery from the railways at a subsequent time. If taking delivery is the test of termination of movement and not the landing of the goods in an importing State, Explanation 1 to Section 3(b) of the Central Sales Tax Act would lead to anomalous results. If, after the landing of the goods in Delhi, the railway receipts are endorsed one after another to ten persons and the delivery is taken by the tenth person, say after three months, the movement of goods would on the dealer's interpretation artificially continue for three months after the landing of the goods in Delhi."

7. In the judgment under appeal, the Rajasthan High Court, however, disagreed with this view of the Delhi High Court relying on the case of **Guljag Industries Limited** (supra), in which three appeals were dealt with in a common judgment. It was held by the High Court in the judgment under appeal:-

"**12.** Therefore, the proposition of law by the learned Commissioner in the impugned circulars that "as per legal position, 'transit' gets over as soon as a reasonable time elapses for the consignee to elect whether he would take the goods away or leave them in the transporters premises, because at the conclusion of reasonable time there is deemed to be a constructive delivery of goods from the transporter to the consignee", cannot be said to be a correct legal position. The subsequent Circular dated 15-4-1998 purportedly issued to ameliorate the situation for dealers created by previous circular dated 16-9-1997, merely ended up extending the time limit of 10 days to 30 days without undoing the damage done by the previous circular by propounding a particular view of constructive delivery. In fact, the very power to issue such circulars by the learned Commissioner giving a particular interpretation of law purportedly binding on all the assessing authorities is doubtful. There is no specific provision in the Sales Tax Act, either under the RST Act or under the CST Act, empowering the Commissioner to issue such circulars, as against such powers conferred under Section 119 of the Income Tax Act on the Central Board of Direct Taxes. Even Section 119 of the Income Tax Act, which empowers the highest administrative body under the Act, namely CBDT, by way of its proviso restricts and provides that no such order, instruction or

direction shall be issued so as to require any Income Tax authority to make a particular assessment or dispose of a particular case in a particular manner and such orders or instructions shall also not interfere with the discretion of the Commissioner (Appeals) in exercise of its appellate functions. Therefore, this court cannot countenance the issuance of such circulars by the Commissioner of Sales Tax, which unduly fetter with the quasi-judicial discretion of the assessing authorities, who are expected in law to give their findings of fact and interpret the statutory law in their own quasi-judicial discretion in accordance with the law as interpreted by the Supreme Court or jurisdictional High Court. The circulars issued by the Commissioner in the aforesaid manner like done vide Circulars dated 16-9-1997 and 15-4-1998 are likely to hamper and throttle such quasi-judicial discretion which vests with the assessing authorities. Therefore, the aforesaid circulars issued by the Commissioner aforesaid on 15-4-1998 (S. No. 1132A) and 16-9-1997 (S. No. 1115B) are in conflict with the Division Bench decision of this Court in *Guljag Industries Ltd's case* (supra) and even otherwise they are found to be without any authority of law. Consequently, both these circulars are found to be ultra vires and are hereby quashed.

13. In view of aforesaid, since there was no basis for the learned Commissioner to stipulate the time frame of 10 days or 30 days and thereafter, to require the assessing authority to invoke the concept of constructive delivery so as to deny the exemption of CST on subsequent sales made by transfer of documents of title to the goods made under Section 6(2) of Act, though requisite conditions of Section 6(2) of the Act are fulfilled by the dealer and such circulars have already been held to be ultra vires and have been quashed and in absence of any other material justifying the denial of exemption under Section 6(2) of the Act to the assessee, the impugned order of the Tax Board allowing such exemption to the assessee is not required to be interfered with in the present revision petitions filed by the Revenue."

8. We must add here that the decision in the case of **Guljag** (supra) was subsequently carried up in appeal before this Court. It appears from the records of this Court that two of these appeals were disposed of on 30th September, 2010 as the assessee chose to approach the statutory forum whereas another appeal was dismissed having regard to the quantum of tax

involved in the appeal.

9. We, accordingly, shall test the revenue's case including the question of legality of the said two circulars in the context of the provisions of Sections 3 and 6 of the 1956 Act. The respondent in this case had taken benefit of sub-section (2) on the ground that this was a case involving inter-state sale and the sale took place by way of transfer of documents of title of such goods during their movement from one State to another. It is also the respondents' case that the requisite forms and certificates were duly furnished pertaining to such sales. On the part of the State, barring retention of the goods in the transporters' godown at the destination point for a long period of time, default on no other count by the assesses has been asserted.

10. In the two appeals in which the respondent is Bombay Machinery Stores, sales pertained to financial years before the circulars came into subsistence. In these instances of sales, the Commercial Tax officer in the respective orders treated retention of goods beyond 30 days in the transporters' godown as the cut-off period. After that date, the assessee was deemed to have had taken constructive delivery of goods and sale beyond that period within the State of Rajasthan was held to be local sales and subjected to sales tax under the State Law. Same reasoning was followed in the respective orders of the tax authorities forming subject-matters of two appeals involving Unicolour Chemicals Company. The Tax Board, while deciding the issue in favour of revenue, referred to the aforesaid two circulars in upholding the concept of constructive delivery.

11. As per the aforesaid circulars, retention of goods by the transporter beyond the time stipulated therein (being 30 days as per the later circular) would imply that constructive delivery of the goods has been made by the transporter to the consignee. In such a situation, the transit status of the goods would stand terminated and the deeming provision in first explanation to Section 3 of the 1956 Act conceiving the time-point of delivery as termination of movement shall cease to operate.

12. In this set of appeals we have already indicated that transfer of documents of title were effected subsequent to the goods reaching the location within destination State. But when the goods are delivered to a carrier for transmission, first explanation to Section 3 of the 1956 Act specifies that movement of the goods would be deemed to commence at the time when goods are delivered to a carrier and shall terminate at the time

when delivery is taken from such carrier. The said provision does not qualify the term 'delivery' with any timeframe within which such delivery shall have to take place. In such circumstances fixing of timeframe by order of the Tax Administration of the State in our opinion would be impermissible.

13. Before the High Court, the revenue authorities has relied on Section 51 of the Sale of Goods Act, 1930 (hereinafter referred to as the "1930 Act"). But the said provision also does not aid or assist the revenue. Section 51 of the 1930 Act reads: -

> "**51. Duration of transit**.- (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.
>
> (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
>
> (3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.
>
> (4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.
>
> (5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.
>
> (6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.
>
> (7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances

as to show an agreement to give up possession of the whole of the goods

14. Sub-clause (1) of the said provision specifies when the goods shall be deemed to be in course of transit and sub-clause (3) thereof lays down the conditions for termination of transit. That condition is an acknowledgment to the buyer or his agent by the carrier that he holds the goods on his behalf. There is no material to suggest such an acknowledgment was made by the independent transporter in these appeals. In such circumstances we do not think the decision of the High Court requires any interference.

15. In the case of **Arjan Dass Gupta** (supra) principle akin to constructive delivery was expounded and we have quoted the relevant passage from that decision earlier in this judgment. In our opinion, however, such construction would not be proper to interpret the provisions of Section 3 of the 1956 Act. A legal fiction is created in first explanation to that Section. That fiction is that the movement of goods, from one State to another shall terminate, where the good have been delivered to a carrier for transmission, at the time of when delivery is taken from such carrier. There is no concept of constructive delivery either express or implied in the said provision. On a plain reading of the statute, the movement of the goods, for the purposes of clause (b) of Section 3 of the 1956 Act would terminate only when delivery is taken, having regard to first explanation to that Section. There is no scope of incorporating any further word to qualify the nature and scope of the expression "delivery" within the said section. The legislature has eschewed from giving the said word an expansive meaning. The High Court under the judgment which is assailed in Civil Appeal No.2217 of 2011 rightly held that there is no place for any intendment in taxing statutes. We are of the view that the interpretation of the Division Bench of the Delhi High Court given in the case of **Arjan Dass Gupta** does not lays down correct position of law. In the event, the authorities felt any assessee or dealer was taking unintended benefit under the aforesaid provisions of the 1956 Act, then the proper course would be legislative amendment. The Tax Administration Authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practise. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature.

16. For these reasons, we do not want to interfere with the judgments of the High Court in these four appeals. The appeals are dismissed. Any

connected applications shall also stand disposed of.

There shall be no order as to costs.

❑

(2020) 65 TLD 30 In the High Court of Andhra Pradesh
Hon'ble D.V.S.S. Somayajulu & Smt. Lalitha Kanneganti, JJ.

Walchandnagar Industries Limited

Vs.

Commercial Tax Officer & Others

Writ Petition No.: 8425 and 8451 of 2020

May 11, 2020

Deposition : *In favour of Petitioner*

Opportunity of hearing - Requests for adjournment from personal appearance on the ground of the prevalent pandemic situation, namely COVID-19 - The High Court opined that there is a failure of the rules of natural justice which entail a 'fair' hearing.

Writ petitions allowed

This Court does not wish to go further into the matter but would not like to remind the 1st respondent that the order passed by Hon'ble Supreme Court of India is binding on all the citizens/Tribunals/Courts of this country, including those exercising Quasi Judicial functions. It appears that 1st respondent's understanding of the law as declared by the Hon'ble Supreme Court of India is clearly misconceived. In these circumstances, without going further into this issue, this Court is of the opinion that the petitioner is entitled to the reliefs as prayed for. [Para]

J.V. Rao, Advocate for the petitioner.
GP for Commercial Tax for the respondents.

:: COMMON ORDER ::

The Order of the Court was made by **D.V.S.S. SOMAYAJULU, J.:**

Heard the learned counsel for the petitioner and learned Government Pleader for Commercial Taxes.

Without going into the merits and demerits of the matter, the learned counsel for the petitioner pointed out that basing on a notice issued by the 1st respondent, the petitioner which is an industry, based at Pune was asked to appear before 1st respondent. The learned counsel drew attention of this

Court to a series of letters that were addressed to 1st respondent, requesting for exemption from personal hearing, because of the prevalent pandemic situation. The learned counsel submits that to submit a detailed reply also, they had no opportunity to coordinate with their offices, which were situated in other States and because of the prevalent pandemic COVID-19, they could not file reply. The learned counsel points out that all the requests for adjournment were refused and that the impugned order and the penalty order were also passed without hearing the petitioner. It is his contention that the petitioner has to file detailed reply setting out the legal and factual aspects and also appear personally before 1st respondent and explain it's case. In addition the learned counsel also draws the attention of this Court to the fact that the Hon'ble Supreme Court of India has extended the period of limitation in all matters and therefore, the apprehension of the respondents that unless a consequential order is passed, within three years from the date of original order, the same will not be valid, is not a correct interpretation. According to him, the order of the Hon'ble Supreme Court of India will also take care and safeguard the interests of the State. Therefore, the learned counsel submits that this is a matter which has to be remanded and heard afresh, with a personal hearing.

In reply to this, the learned Government Pleader for Commercial Taxes, states that there is an effective and alternative remedy available and the writ petition is therefore not maintainable. Apart from that, he pointed out that more than adequate opportunity has been given to the petitioner to appear and explain their case. Therefore, the learned Government Pleader for Commercial Taxes states that there are no merits in the writ petition and that the same should be rejected, since more than adequate opportunity was given and the petitioner failed to act on the same.

This Court, after hearing both the learned counsel, notices that all the requests for adjournment from personal appearance etc., were made on the ground that because of the prevalent pandemic situation, namely COVID-19, the petitioner could not file a detailed reply nor appear in person before the 1st respondent. This Court also notices that they have sought time on the ground that they could not access all the records and to prepare their statement of objections. The existence of an alternative remedy is also not a bar on this Court. The writ in the opinion of this court is maintainable, as this Court opines that there is a failure of the rules of natural justice which entail a 'fair' hearing. A reading of the impugned order shows that it also

relates to the period 2014-2015 onwards. Therefore, this Court finds sufficient strength in the statement made that old records had to be accessed in order to prepare a detailed reply. This Court also notices that 1st respondent has also noticed the orders passed by the Hon'ble Supreme Court of India in the 'taken up' matters by which limitation was extended for all matters, including limitation prescribed in the Statutes. 1st respondent for his own reasons has disagreed with the order passed by the Hon'ble Supreme Court of India. This Court does not wish to go further into the matter but would not like to remind the 1st respondent that the order passed by Hon'ble Supreme Court of India is binding on all the citizens/Tribunals/Courts of this country, including those exercising Quasi Judicial functions. It appears that 1st respondent's understanding of the law as declared by the Hon'ble Supreme Court of India is clearly misconceived. In these circumstances, without going further into this issue, this Court is of the opinion that the petitioner is entitled to the reliefs as prayed for.

The impugned order dated 17-4-2020 and the consequential order 23-4-2020 are both set aside. Therefore, both writ petitions are allowed, with the following directions:

1) Immediately after the pandemic situation eases and the restrictions are lifted on the movement of men and material etc., 1st respondent is directed to issue a notice to the petitioner giving him two weeks time to appear along with his reply and all his documents.

2) In view of the fact that the petitioner is aware of the case set up against him, he is directed to use the interim period to prepare his counter and also his objections to the extent possible.

3) 1st respondent is therefore, directed to give two weeks notice, after the Central Government relaxes the lock down in India, fix a suitable date for the appearance of the petitioner and for disposal of the matter. It is made clear that if the petitioner seeks time or otherwise tries to delay the matter, 1st respondent is at liberty to proceed strictly in accordance with law.

With these directions, the writ petitions are allowed. No costs.

Consequently, miscellaneous petitions, pending if any, in the writ petition shall stand closed.

❑

(2020) 65 TLD 33 In the High Court of New Delhi
Hon'ble Ms. Hima Kohli & Subramonium Prasad, JJ.

Mangla Hoist P. Ltd.

Vs.

Union of India and Ors.

W.P.(C) 3572/2020 and CM APPL. 12707/2020

June 17, 2020

Deposition : *In favour of Petitioner*

Form GST Trans-1 - The High Court directed the respondents to ensure compliance of the captioned judgment (Brand Equity) by 19-6-2020 i.e. by opening its common portal to enable the petitioner and all similarly placed parties to upload Form GST Trans-1, for claiming CENVAT tax credit.

Writ petition allowed

[Note : Hon'ble Supreme Court stayed the operation of Brand Equity judgment by order dated 19-6-2020 in pending Special Leave To Appeal (C) No(S). 7425-7428/2020 in Union of India Vs Brand Equity Treaties**]**

Cases referred :

* Brand Equity Treaties Limited Vs. Union of India (2020) 64 TLD 330 (Del) W.P.(C) 11040/2018 order dtd. 5-5-2020.

Mr. Ruchir Bhatia, Advocate for the petitioner.
Mr. Asheesh Jain, CGSC with Mr.Adarsh Kumar Gupta, Advocate for R1. Mr. Kuldeep Singh, Advocate for R2. Mr. Harpreet Singh, Senior Standing Counsel for GST/R3.

:: ORDER ::

HEARD THROUGH VIDEO CONFERENCING.

1. The petitioner seeks directions to the respondents/Union of India; Commissioner, CGST, Delhi South; Superintendent of Range and Goods and Services Tax Council to open the Portal to enable it to file its claim of CENVAT tax credit as on 30th June, 2017, in Form Trans-1. The second relief in the present petition is for declaring Rule 117 of the CGST Rules, 2017 as *ultra vires* and quashing the same.

2. Mr. Bhatia, learned counsel for the petitioner states that despite repeated efforts made by the petitioner to upload its claim for credit in Form

GST Trans-1 on the portal of the respondents, it could not do so due to errors in their system including technical difficulties faced in uploading credit Form GST Trans-1. He submits that despite repeated requests made to the respondents by several parties to extend the last date for filing the claim of credit input in Form GST Trans-1, they have refused to extend the deadline.

3. Recently, a Division Bench of this Court in **W.P.(C) 11040/2018** entitled **Brand Equity Treaties Limited Vs. Union of India (2020) 64 TLD 330 (Del)** has held on 5-5-2020, that the time limit of 90 days prescribed in Rule 117 of the CGST Rules is not mandatory but directory in nature. Further, the respondents have been directed to publicise the said judgment including by uploading it on their website so that all the Assessees, who were unable to upload Form/GST Trans-1, could do so on or before 30th June, 2020.

4. Learned counsel for the petitioner states that despite the aforesaid categorical order passed by the co-ordinate bench, the respondents have not made compliances and the petitioner has been compelled to approach this court for seeking directions to the respondents to open the common portal to enable it to upload its claim in Form GST Trans-1 well before 30-6-2020.

5. Issue Notice.

6. Mr. Kuldeep Singh, learned counsel for the respondents enters appearance and starts by stating that the petitioner has erroneously impleaded the Commissioner, Central Goods and Service Tax, Delhi South as the respondent No.2 whereas the petitioner falls under the jurisdiction of the Commissioner, Central Goods and Service Tax Delhi East. He further states that the respondents have decided to challenge the judgment in **Brand Equity Treaties Limited (supra)** and are in the process of filing an appeal before the Supreme Court.

7. Admittedly, the judgment in **Brand Equity Treaties Limited (supra),** has not been stayed so far and therefore, the respondents are under an obligation to abide by the directions issued therein by adequately publicizing the said decision and uploading it on their website as also by opening its common portal to enable the petitioner and all similarly placed parties to upload Form GST Trans-1, for claiming CENVAT tax credit. The respondents are directed to ensure compliance of the captioned judgment by 19-6-2020, particularly since the cut of date fixed by the court in the said case is 30th June, 2020, which would leave only ten clear days for the petitioner and similarly placed assessees to take necessary steps.

8. The present petition is disposed of along with the pending application with the aforesaid directions. No orders as to costs.

❑

(2020) 65 TLD 35

In the High Court of New Delhi
Hon'ble Vipin Sanghi & Sanjeev Narula, JJ.

Pitambra Books Pvt. Ltd.

Vs.

Union of India & Ors.

W.P. (C) No. : 627/2020

January 21, 2020

Deposition : *In favour of Petitioner*

Refund - Restriction pertaining to the spread of refund claim across different financial years is arbitrary - There is no rationale or justification for such a constraint - Respondents were directed to process the petitioner's claim.

Writ petition allowed

In the instant case, where exports are not made in the same financial year, question arises as to whether Respondents can restrict the filing of the refund for tax periods spread across two financial years and deprive the petitioner of its valuable right accrued in his favour.

Having regard to the aforenoted circumstances, till the next date of hearing, we stay the rigour of paragraph 8 of Circular No. 125/44/2019-GST dated 18.11.2019 and also direct the Respondents to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from today.

Respondents are directed to process the petitioner's claim in accordance with law once the tax refund is filed.

Cases referred :

* Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries (2008) 13 SCC 1 (SC)

* Pioneer India Electronics (P) Ltd. Vs. Union of India & Anr. ILR (2014) II DELHI 791

Mr. Puneet Agrawal & Mr. Yuvraj Singh, Advocates for the petitioner.

Mr. Satyender Kumar, CGSC for R-1. Ms. Sonu Bhatnagar & Ms. Venus Mehrotra, Advocates for R-2, 3 & 5.

:: ORDER ::

W.P.(C) 627/2020

1. Issue notice. Counter-affidavit be filed within six weeks. Rejoinder, if any, be filed before the next date.

2. List the petition for hearing on 11-8-2020.

C.M. No. 1740/2020

3. The petitioner - who is engaged in the business of manufacturing and trading of books, is registered under the Goods and Service Tax Act (hereinafter referred to as "the Act"). The business involves procuring raw materials and allied goods from the domestic market for manufacture of final product through its in-house manufacturing facility, which is then exported to markets in Sudan, Russia, Ethiopia, Guinea and other African/Asian countries etc. The export activity of the petitioner is categorised as zero-rated supplies as defined under Section 16(1)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "the IGST Act").

4. The present petition *inter-alia* impugns Circular No.37/11/2018-GST dated 15-3- 2018 and Circular No. 125/44/19-GST dated 18-11-2019. Mr. Puneet Agrawal, learned counsel for the petitioner submits that owing to the restrictions imposed in the aforenoted circulars, Petitioner has been deprived of the benefit of availing refund claim of the unutilised input tax credit for the period from April, 2018 to June, 2018. This is causing serious financial hardship as more than Rs.30 crores of accrued and unutilised input tax credit, that is eligible for refund is now lying stuck. The implementation of the aforesaid circulars on the GSTN portal has occasioned the disablement of the option for filing the refund of tax. He submits that the problem stems from paragraph 8 of impugned circular no. 125/44/2013/GST dated 18th November, 2019, which inhibits refund claims for a period of two separate (not successive) financial years. He argues that this is in contravention of Section 44 as also Rule 89 of the IGST rules. The aforesaid paragraph reads as under**:**

> "8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different

financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier."

5. Mr. Agarwal, relies upon Article 286(1) of the Constitution of India which provides that no law of state shall impose, or authorise the imposition of tax on the supply where said supply takes place in the course of export out of the territory of India. He also refers to the definition of "export of goods" as provided in Section 2(5) of the IGST which reads as under:

"(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;"

6. Mr.Agarwal also relies upon Section 16(1)(a) of the IGST Act which deals with zero rated supply and reads as under:

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

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

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

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

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

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

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

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

(Emphasis Supplied)

7. He argues that the petitioner as exporter of goods, has a substantive right to claim refund of "unutilised input tax credit". He submits that sub clause (a) of Sub Section (3) of Section 16 provides that a registered person making zero rated supplies shall be eligible to claim refund by making supply of goods and services under bond or letter of undertaking subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit in accordance with Section 54 of the Central Goods and Service Tax (CGST) Act or the rules made thereunder. Section 54(1) of the CGST provides as under**:**

"Section 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.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be

prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

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

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

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

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

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

[Emphasis Supplied]

8. Section 54(3) of the said Act provides that a registered person claiming refund of any "unutilised input tax credit" at the end of any tax period, *may* make an application before the expiry of two years from the relevant date as *enabled by Section 54(1)*. Further, Rule 89(4)(F) of CGST rules define the term "relevant period" as the period for which the claim has been filed. He submits that on a harmonious reading of the aforesaid provisions, it emerges that a person making zero rated supplies can claim refund of unutilised input tax credit at the end of any tax period by making refund application before the expiry of two years from the relevant date in such form and manner as may be prescribed. He further submits that Circular No. 17/17/2017 earlier provided that the refund period could not spread across different months. However, on receiving representations from traders and the stakeholders, the Government became cognizant of the difficulties faced by the exporters while claiming refund, and the CBIC issued the impugned

Circular No. 37/11/2018, recognising the difficulties faced by exporters, which is evident from the following clauses of the said circular:

> "11.1 In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.
>
> 11.2 In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. the calendar month(s)/ quarter(s) for which refund claim has been filed, however, cannot spread across different financial years."

9. Mr. Agarwal argues that the language of clause 11.1 indicates that respondents have acknowledged that in a situation where exports have been made in the period where no input tax credit has been availed, the relevant period in the context of refund claim cannot be linked to a tax period. He submits that despite recognising the difficulties faced by the exporters, the respondents have failed to address the scenario in which the petitioner is placed, wherein the refund claim pertains to a different financial year. Under Clause 11.2, the exporter has been given an option to file a refund claim for one calendar month/quarter or by clubbing successive calendar months/ quarters, however, the said clause restricts the claim of refund in case it is spread across different financial years. The aforesaid restriction is *ultra vires* the Act and the provisions contained there under. He further argues that the petitioner was availing the Input Tax Credit (ITC) pertaining to zero rated exports and taxable supplies. GST paid on raw materials which were used solely for making exempted supplies were separately identified and were reversed in accordance with the provisions of Rule 42 of the CGST Rules. The ITC relatable to zero rated and taxable supplies so availed was utilised for meeting the output tax for domestic supplies. The ITC balance after utilising the same against output tax liability is eligible for refund subject to the computation of maximum eligible amount i.e. the amount computed as per Rule 89(4), which provides as under:

> "[(4) In the case of zero-rated supply of goods or services or both

without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula – Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero rated supply of services) x Net ITC ÷ Adjusted Total Turnover Where, - (A) "Refund amount" means the maximum refund that is admissible; (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both; (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period; [(E) Adjusted Total TurnoverÁ means the sum total of the value of- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and **(b) the turnover of zero-rated supply of services determined in terms of clause (D)** above and non-zero-rated **supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.']132 (F)** Relevant period means the period for which the claim has been filed**"**

10. For the period from November, 2017 to June, 2018 i.e. for eight months, Petitioner claims that the eligible refund in terms of the above

extracted Rule 89(4) would be Rs. 2.80 crores in accordance with the figures available in the GSTR 3B return. For the period from July, 2018 to March, 2019, the amount of eligible refund is Rs.14.32 crores. At the end of June, 2018, the balance ITC was Rs.6.49 cores and likewise, the balance at the end of March, 2018 is Rs.20.68 crores which includes the ITC claimed and allowed till October, 2017. The petitioner exported finished products worth Rs.2,31,934,457 out of the raw-material received in the month of June, 2018. Upon export, the petitioner became eligible for claiming refund of unutilised ITC amounting to a total of Rs.2.80 crores. Petitioner procured raw material after paying GST from domestic market and manufactured the final product in the months from November, 2017 to June, 2018. However, the production done in the above months was exported only in June, 2018. Therefore, the ITC earned by the petitioner is spread over two financial years i.e. 2017-18 and 2018-19 and whereas the export against the said purchases was made only in the financial year 2018-19. Mr. Agrawal submits that in terms of Section 16(1) and 16(3) of IGST r/w 54(3) of CGST Act, the petitioner is eligible for the refund of accumulated unutilised ITC of Rs. 2.80 crores on account of export of goods. The current position is that by virtue of the circulars, the petitioner is not able to claim the refund as the option of selecting the tax period which lies with the petitioner in terms of the aforesaid provisions, has been denied. Petitioner has been trying to file the refund application for the unutilised input tax credit claimed in the respective months of production; however the impugned circulars have denied the petitioner the statutory rights. Rule 89(4) of the CGST Rules which provides the formula for calculating input tax for refund is in contravention of Section 16 of the IGST Act r/w Section 54 of CGST Act as the said Rule restricts the computation of the refund taking the basis of ITC *"availed during the relevant period"*. The "relevant period" has been defined in Rule 89(4)(F) as the period for which the claim has been filed and said provision is also impugned in the petition. Mr. Agarwal argues that the impugned circulars, in so far as they restrict the refund claims only on monthly basis, are contrary to the rights conferred by the Act.

11. Ms. Bhatnagar, learned senior standing counsel for revenue on the other hand, has argued that under the scheme of the Act, the tax period is on month to month basis. She submits that though the Government has provided for clubbing of the months and the quarters, however, under no circumstances can the refund claims spill over from one year to another. She argues that

Petitioner does not have unfettered rights for claiming refund. Section 16(3) of the IGST Act, clearly stipulates that the refund is subject to conditions, and therefore, the Government is well within its jurisdiction to impose conditions by way of the impugned circular. Further, she submits that under Section 2(106) of the GST Act, the tax period has been defined to mean a period for which a return is required to be filed. The return under the Act has to be filed on a month to month basis and, therefore, the petitioner does not have any right to claim refund for one financial year, in another.

12. The matter certainly requires our consideration and we have already called upon the respondents to file a detailed counter affidavit to meet the contentions of the petitioner. However, at this stage, we are of the *prima facie* view that by way of the impugned circulars, though the respondents recognise the difficulties faced by the exporters and have permitted them to file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters, yet the restriction pertaining to the spread of refund claim across different financial years is arbitrary. There is no rationale or justification for such a constraint. In the instant case, where exports are not made in the same financial year, question arises as to whether Respondents can restrict the filing of the refund for tax periods spread across two financial years and deprive the petitioner of its valuable right accrued in his favour. In exports, availability of the rotation of funds is essential for the business to thrive. Moreover, businesses do not run according to the whims of the executive authorities. The business world cannot be told when to place orders for exports; when to manufacture the goods for export; and; when to actually undertake the exports. Respondents' impugned circulars have thus blocked the capital of the petitioner and the unutilised ITC and it has accumulated huge amount of unutilised ITC to the tune of Rs.30 crores. Merely because the petitioner made exports in the month of June, 2018, we do not see any justification to deny the refund of the ITC which have accumulated in the previous financial years. The entire concept of refund of ITC relating to zero rated supply would be obliterated in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero rated supplies. The incentive given to the exporters would lose its meaning and this would cause grave hardship to the exporters who are earning valuable foreign exchange for the country. The Respondents cannot, artificially by acting contrary to the fundamental spirit and object of the law,

contrive ways to deny the benefit, which the substantive provisions of the law confer on the tax payers. Thus, in our considered opinion, the petitioner has a strong *prima facie* case, and we cannot deny the petitioner of its right to claim refund which is visible from the mechanism provided under the Act. The impugned circulars take away the vested right of the taxpayer that has accrued in the relevant period. It would be profitable to refer to the judgment in this Court in **Pioneer India Electronics (P) Ltd. Vs. Union of India & Anr. ILR (2014) II DELHI 791** wherein impugned Circular stipulating that section 27 of the Customs Act had no application was quashed, holding that Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law**.** Further the Constitution Bench of the Supreme Court in the case of **Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries (2008) 13 SCC 1,** it was held as under:

> "**7.** *Circulars and instructions issued by the Board are no doubt* binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.
>
> 8. ..... To lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against the very concept of majesty of law declared by this Court and the binding effect in terms of Article 141 of the Constitution."

13. Having regard to the aforenoted circumstances, till the next date of hearing, we stay the rigour of paragraph 8 of Circular No. 125/44/2019-

GST dated 18-11-2019 and also direct the Respondents to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from today.

14. Respondents are directed to process the petitioner's claim in accordance with law once the tax refund is filed.

❑

(2020) 65 TLD 45 In the Supreme Court of India

Hon'ble A.M. Khanwilkar, Dinesh Maheshwari & Sanjiv Khanna, JJ.

Union of India & Ors.

Vs.

Chogori India Retail Ltd.

Special Leave Petition (Civil) Diary No(s). 7374/2020

June 03, 2020

Deposition : *In favour of Respondent*

TRAN-1 - The Supreme Court dismissed the SLP against High Court order in which the High Court directed the respondent to either re-open the Portal to enable the petitioner to file its TRAN-1 Form electronically failing which to permit it to file manually.

Petition dismissed

Case referred :

* Chogori India Retail Ltd. Vs. Union of India (Del) WP(C) No. 762/2019 judgment dated 9-8-2019

Mr. K.M. Natraj, ASG, Mr. Sharath Nambiar, Adv. & Mr. B.V. Balaram Das, AOR for the Petitioner(s)

:: ORDER ::

Delay condoned.

In the facts of the present case, we are not inclined to interfere in this Special Leave Petition. The Special Leave Petition is dismissed accordingly. However, question of law are kept open.

Pending applications, if any, stand disposed of.

❑

2020) 65 TLD 46 In the High Court of Telangana
Hon'ble M.S. Ramachandra Rao & K. Lakshman, JJ.

Infosys Limited

Vs.

Deputy Commissioner St Stuiii

Writ Petition No. : 7444 of 2020

June 10, 2020

Deposition : *In favour of Petitioner*

Opportunity of hearing - Order Passed without fair opportunity during lockdown period causing serious prejudice to the petitioner - The High Court remitted matter back to respondent.

Writ petition allowed

In these circumstances, we hold that proper opportunity was denied to the petitioner to represent its case and there has been violation of principles of natural justice inasmuch as personal hearings were fixed on 16-3-2020 for the first time during lockdown period disabling the petitioner and causing serious prejudice to the petitioner. [Para 26]

Therefore, the existence of alternative remedy of appeal available to the petitioner to challenge the order of Assessment dt. 31-3-2020 cannot be a bar for the petitioner to avail the extraordinary jurisdiction of this Court under Art 226 of the Constitution of India. [Para 27]

Accordingly, the Writ Petition is allowed; the impugned order of Assessment A.O.No.53433 dt. 31-3-2020 by the 1st respondent is set aside; and the matter is remitted back to the 1st respondent to consider the matter afresh after giving personal hearing to the petitioner and to decide within a period of two (2) months from the date of receipt of a copy of this order. [Para 28]

:: ORDER ::

The Order of the Court was made by **M.S. RAMACHANDRA RAO, J. :**

This Writ Petition is filed by the petitioner questioning the Assessment Order dt. 31-3-2020 passed by the 1st respondent which was received by the petitioner on 1-5-2020 by e-mail, and a signed copy of which was received by it on 21-5-2020 by post.

2. The petitioner is a Company engaged in the sale of Software and provision of IT services.

3. It is a registered dealer on the rolls of the 1st respondent under the provisions of the Telangana VAT Act and also the Central Sales Tax Act, 1996 (for short "the CST Act"). It filed its returns under the VAT Act and CST Act reporting the turnovers and paying applicable tax thereon.

4. Petitioner contends that for the year 2015-16 under the CST Act, the petitioner reported the turnovers; that the exports are not liable to tax under the CST Act; and that the inter-State sales of software is shown as Rs.39,47,93,331/- and tax at 5% was paid thereon.

5. The 1st respondent took up the assessment of the petitioner for the year 2015-16.

6. The petitioner by letter dt.19-3-2019 filed the details of the turnover of CST, export and exempted sales for the year. The petitioner states that it also filed the sample invoice copies of the exempted and export turnover.

7. The 1st respondent issued a show cause notice by email on 13-6-2019 adopting the turnovers which represent the highest figure between the CST returns/waybills and the TINXSYS records for the year 2015-16.

8. Petitioner contends that the 1st respondent adopted the gross turnover as Rs.9475,63,11,243/- and proposed to levy tax at 14.5% on the entire turnover without considering the exemptions claimed towards direct exports, branch transfer and CST collections under the CST Act.

9. The petitioner by letter dt.28-6-2019 drew the attention of the 1st respondent to the details submitted on 19-3-2019.

10. The petitioner received hearing notice from the 1st respondent on 7-3-2020 along with an annexure containing details of the turnover considered for assessment. The petitioner once again on 11-3-2020 replied to the notice referring to the turnovers statement filed on 19-3-2019.

11. The petitioner was informed over phone to appear for personal hearing. The petitioner gave a mail on 30-3-2020 that it is not able to file online response due to technical glitches. The screenshot of the same was also filed with the mail.

12. The petitioner once again made request orally on phone on 31-3-2020 to postpone the personal hearing due to lockdown announced by the Government of Telangana and Government of India due to outbreak of

COVID-19.

13. The petitioner gave another email also on 13-4-2020 that it is unable to attend personal hearing due to nationwide lockdown and that the online response also could not be submitted due to technical glitch on the portal. The petitioner requested the 1st respondent to take up personal hearing after normalcy is restored.

14. But the impugned order dt.31-3-2020 was passed by the 1st respondent and it was served on the petitioner on the same day.

Contentions of Counsel for petitioner

15. Counsel for the petitioner contended that in the impugned order, the export turnover is considered at Rs.9429.00 crore and given exemption, but the turnover for September, 2015 was not considered by the 1st respondent. He also contended that inter-State turnover was wrongly taken as Rs.41,24,45,939/- instead of Rs.39,47,93,331/- and though the entire turnover is liable to tax at 5% as sale of software and reported accordingly, the 1st respondent assessed the turnover to tax at 14.5%. According to the counsel for the petitioner, there is an artificial liability due to higher rate of tax in a sum of Rs.4,00,64,995/-; turnover of Rs.5.27 crore was not reported in the returns as it represents branch transfers to other States in respect of promotional items like T-shirts, employee gifts etc.; though there is no sale to any other person, the levy is imposed alleging absence of documentary evidence; and CST collections of Rs.1.97 crore was admitted by the 1st respondent to be exempted turnover.

16. Counsel for the petitioner also contended that the petitioner was advised to file rectification application to correct the errors in the assessment and it did file such a letter on 7-5-2020 but the 1st respondent did not take any action thereon.

17. More importantly, counsel for the petitioner contended that the impugned Assessment order was passed on the last day when the limitation to make such assessment was to expire i.e 31-3-2020; and that if the 1st respondent taken up assessment much earlier having received documents in March, 2019 itself and issued show-cause notice in June, 2019, the petitioner would have had a reasonable opportunity to make its submissions.

Contentions of the respondents

18. Sri J.Anil Kumar, Special Counsel for Commercial Taxes contended

that the petitioner was given reasonable opportunity by the 1st respondent and in any event the petitioner has a remedy of appeal under the CGST Act which the petitioner ought to avail.

Consideration by the Court

19. From the contentions of the counsel for the petitioner and the material placed on record, it is apparent that the impugned order dt.31-3-2020 was passed by the 1st respondent on the very last day for making such assessment i.e., 31-3-2020 for the period April, 2015 to March, 2016.

20. Though the 1st respondent had initiated the process through a show-cause notice on 13-6-2019, and the petitioner had responded thereto on 28-6-2019, but the 1st respondent fixed the first date of hearing as 7-3-2020 to which the petitioner replied on 11-3-2020. Thereafter, on 30-3-2020, the petitioner informed the 1st respondent that online response could not be given due to technical glitches and even made a request orally on telephone on 31-3-2020 to postpone the personal hearing due to lockdown announced by the Government of Telangana and Government of India due to outbreak of COVID-19.

21. Standing counsel appearing for the 1st respondent does not dispute that there was lockdown announced by the Government of Telangana as well as the Government of India which was lifted partially only in May, 2020 and it would not have been possible for the petitioner's Representative to attend the personal hearing to explain its stand on 16-3-2020.

22. The petitioner's Representative could not be blamed for not attending the personal hearing given by the 1st respondent due to such lockdown, more particularly when the online response also could not be submitted due to technical glitches on the portal of the 1st respondent.

23. However, since the time fixed for making the assessment was to expire on 31-3-2020, without providing a personal hearing as sought by the petitioner on the phone on 31-3-2020, the impugned order was passed.

24. According to the counsel for the petitioner, several errors were also committed by the 1st respondent in the impugned order of Assessment passed on 31-3-2020.

25. It appears that on account of lack of time in view of the impending lapsing of limitation for making the assessment, not only was the petitioner denied proper opportunity to personally represent its case before the 1st

respondent but also errors might have crept into the order of the 1st respondent passed on 31-3-2020.

26. In these circumstances, we hold that proper opportunity was denied to the petitioner to represent its case and there has been violation of principles of natural justice inasmuch as personal hearings were fixed on 16-3-2020 for the first time during lockdown period disabling the petitioner and causing serious prejudice to the petitioner.

27. Therefore, the existence of alternative remedy of appeal available to the petitioner to challenge the impugned order of Assessment dt.31-3-2020 cannot be a bar for the petitioner to avail the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

28. Accordingly, the Writ Petition is allowed; the impugned order of Assessment A.O.No.53433 dt. 31-3-2020 by the 1st respondent is set aside; and the matter is remitted back to the 1st respondent to consider the matter afresh after giving personal hearing to the petitioner and to decide within a period of two (2) months from the date of receipt of a copy of this order.

29. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed. No costs.

❑

(2020) 64 TLD 50 Authority for Advance Ruling, Karnataka

Dr. Ravi Prasad M.P. & Mashhood ur Rehman Farooqui, Members

ID Fresh Food (India) Pvt. Ltd.

Advance Ruling No. : KAR ADRG 38/2020

May 22, 2020

AAR-Kar - Parota - The product 'parota' is classified under Chapter Heading 2106 and is not covered entry No. 99A of Schedule I to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017.

Sri Ankush Surana, C.A. on bahalf of the applicant

:: ORDER ::

UNDER SECTION 98(4) OF THE CGST TAX ACT, 2017 & UNDER 98(4) OF THE KGST ACT, 2017

1. M/s. ID Fresh Food (India) Pvt. Ltd., (called as the 'Applicant' hereinafter), # 37, Doddenakundi Industrial Area, Whitefield Road,

Mahadevapura, Bengaluru-560 048, Karnataka, having GSTIN number 29AAICM3930G1ZD, have filed an application for Advance Ruling under Section 97 of **CGST Act, 2017** & KGST Act, 2017 read with Rule 104 of **CGST Rules 2017** & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a food products company involved in preparation & supply of wide range of ready to cook, fresh foods including idli & dosa batter, Parotas, Chapatis, curd, paneer, whole wheat parota and Malabar parota. The instant application pertains to classification of whole-wheat parota & Malabar parota and the question for which advance ruling is sought is as under:

Whether the preparation of Whole Wheat parota and Malabar parota be classified under Chapter heading 1905, attracting GST at the rate of 5%?

Admissibility of the application: The question is about classification of the goods and hence is admissible under Section 97(2)(a) of the CGST Act 2017.

3. Applicant's interpretation of Law:

The Applicant stated that the product Whole Wheat parota and Malabar (refined floor) parota is available in ambient and frozen form with a shelf life of minimum 3 days and maximum 7 days. The applicant supplies the product to distributors, retailers and other foodservice operators located in India and overseas. The product consists the ingredients of refined wheat flour (maida), RO purified water, edible vegetable oil, edible vegetable fat & edible vegetable salt. After adding all the ingredients, the product will be subjected to heat treatment on a pan or tawa, for making it available for consumption.

The applicant contends that the product merits classification under Chapter heading 1905, under the product description of 'Khakhra, plain chapatti or roti'.

The applicant, quoting the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, as amended by Notification No. 34/2017-Central Tax (Rate) dated 13-10-2017, stated that a new entry No. 99A has been inserted with the description "Khakhra, plain chapatti or roti", without defining the said description. The applicant further quotes the aforesaid notification and claims the applicability of Customs Tariff Act 1975, explanatory notes (HSN

notes) to arrive at the classification of a product, which can be analyzed on the basis of the three parameters i.e.

i. Reference to general rules for the interpretation of tariff embedded in the Customs Tariff Act 1975.

ii. Judicial Precedents

iii. Reference to explanatory notes issued by World Customs Organisation.

4. The applicant submits that the Customs Tariff Act 1975 (CTA) consists 6 rules of interpretation that are need to be adopted for classification of goods; rules 1 to 4 are related and must be applied in sequence, whereas rules 5 & 6 are independent and are to be applied based on the facts. In the instant case the product is made up of wheat or maida flour, refined oil, salt and vegetable fat and is not readily consumable but to be heated before consumption.

The applicant contends that the first step is to identify the section of the custom tariff to which the instant product belongs, which is ready to eat food. On combined reading of the general rules of interpretation along with the explanatory notes, the section heading that merits consideration is - "Section IV" which deals with the "prepared foods stuffs, beverages, spirits and vinegar, tobacco & manufactured tobacco substitutes". The instant product falls under "Prepared Food Stuffs".

The next step is to identify the relevant chapter and on analyzing various descriptions of the chapter along with explanatory notes, the chapter that merits consideration is "Chapter 19" which deals with preparations of cereal, flour, starch or milk; pastrycook's products. Further chapter notes also do not exclude / disqualify the instant product.

The next step is to find the appropriate chapter heading in 4 digits. The explanatory notes relevant to the chapter stipulates as under:

> This chapter covers a number of preparations, generally used for food, which are made of either directly from the cereals of chapter i.e. from the products of chapter 11 or from food floor, meal and powder of vegetable origin of other Chapters (cereal flour, groats and meal, starch, fruits or vegetable flour, meal and powder) or from the goods of headings 0401 to 0404. The chapter also covers pastrycook's products and biscuits, even when not containing flour, starch or other cereal products. ……"

5. The explanatory notes also provides that the expression 'provided such headings or notes do not otherwise require' is intended to make it clear that the terms of the heading and any relative section or chapter notes are paramount i.e. they are the first consideration in determining classification.

In the instant case, the cereal used for making the product is wheat, falling under chapter 10 and wheat flour & maida flour falls under chapter 11. Further the product requires cooking before consumption. Accordingly, on combined reading of general rules of interpretation & explanatory notes with respect to chapter 19, the relevant chapter heading that merits classification of the instant product would be "1905 - Bread, pastry, cakes, biscuits and other baker's wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, Sealing wafers, rice paper and similar products."

The next level of classification is 6 digit one. All the products at this level may not be explicitly listed with their description and the said description is illustrative but not exhaustive. Accordingly some products may be named explicitly and the rest would be referred to as "Other". It is evident from explanatory notes to chapter heading 1905 that the said heading covers all the bakers wares, the common ingredients of which are cereal flours, leavens, salt and others. The instant product is not covered explicitly under chapter heading 1905 and hence the right classification would be "1905 90-Other".

The last level of classification is 8 digit one. On perusal of various subheadings enlisted in the chapter, the tariff item that merits the classification of the instant product is "1905 90 90 - Other."

The applicant intend to place reliance on the ruling passed by the Advance Ruling Authority, Maharashtra, in the case of M/s. Signature International Foods India Private Ltd., wherein it is held that paratha & paratha wraps are covered by the scope of entry 99A of **Notification 34/ 2017-Central Tax (Rate) dated 13-10-2017.**

6. In view of the above, the applicant contends that their product merits classification under Chapter heading 1905.

Further, the applicant also contends, without prejudice, that their product should not be classified under residual entry at Sl.No. 453 of Schedule III to Notification No.01/2017-Central Tax (Rate) dated 28-6-2017, on the basis of the following grounds:

i. Application of Residual entry to an item can be resorted to, only when no other heading expressly or by necessary implication applies to the product. The instant product is classifiable under chapter heading 1905 & Sl.No.453 of Schedule III reads as "Any chapter-Goods which are not specified in Schedule I, II, IV, V or VI" and hence it is evident that the Sl.No.453 is a residual entry to classify commodities that are not classifiable under any of the other entries.

ii. The ratio of various judgements of the Supreme Court, High Court and Tribunals regarding classification of commodities under Customs Tariff / Central Excise Tariff are equally applicable and have precedent value in relation to classification of goods under GST Tariff/Rate Schedule, which are aligned and based on the HSN.

iii. The applicant contends that it has been consistently held by courts that application of residuary item can be resorted to only when it is not possible to classify the goods under specific entries in the tariff. The applicant places reliance on the following judgements.

a. CCE Vs. Jayant Oil Mills 1989 (40) ELT 287 (SC)

b. Dunlop India Ltd., & Madras Rubber Factory Ltd., Vs. Union of India 1983 (13) ELT 1566 (SC)

c. Bharat Forge and Press Industries (P) Ltd., Vs. CCE, Baroda (1990) 45 ELT 525 (SC)

d. CCE Vs. Wockhard Life Sciences (2012) 277 ELT 299 (SC)

In view of the above, the applicant contends that the product whole-wheat parota and Malabar (refined flour) parota, in sum and substance akin to 'Roti' and are manufactured / prepared through an identical process and hence cannot be classified under the residual entry.

PERSONAL HEARING / PROCEEDINGS HELD ON 9-1-2020.

7. Sri Ankush Surana, C.A., M/s. Pricewaterhouse & Co., LLP, and duly authorised representative of the applicant appeared for personal hearing proceedings held on 9-1-2020 & reiterated the facts narrated in their application.

8. FINDINGS & DISCUSSION:

8.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Sri

Ankush Surana, C.A., M/s. Pricewater house & Co., LLP & duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

8.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

8.3 The applicant is engaged in the preparation / manufacture and supply of the products whole wheat parota and Malabar (refined flour) parota, which are made up of whole wheat flour and refined flour (maida) respectively. The other common ingredients are RO purified water, edible vegetable oil or refined oil, edible common salt and edible vegetable fat. The products are not readily consumable (ready to eat), but need to be heated before consumption.

8.4 The applicant contends that their products merit classification under heading 1905, whose description akin to "Khakhra, plain chapatti or roti" and therefore are taxable at 5% GST, in terms of entry No.99A of Schedule I to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, as amended vide Notification No. 34/2017-Central Tax (Rate) dated 13-10-2017.

8.5 In view of the above the question before this authority to decide is whether the impugned products are classifiable under heading 1905 or not. We proceed to examine, discuss & decide the right classification of the impugned products. In this regard we draw reference to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, specifically to explanation (iii), which stipulates that "Tariff item", "subheading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and explanation (iv), which stipulates that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

8.6 The applicant contended that as per General Chapter Note in Chapter

19, the product falls under Chapter heading 1905 since it is made from cereals of chapter 11 or from food flour of other Chapters (including cereal flour). They further rely upon General Rules of Interpretation to state that since Chapter 19 specifically mentions, "Preparation of Cereals, flour…", the product should fall under Chapter Heading 1905. Lastly they contend that the product should not be classified under the residual entry at Sr. No. 453 of the 3rd Schedule of Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017 since the product merits classification under Chapter Heading 1905.

8.7 The applicant contended that their products merit classification under heading 1905 90 90, whose description is as under:

Tariff Heading	Description
1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.
1905.90	Other
1905.90.90	Other

It could be easily inferred from above that Chapter 19 covers preparations of flour, generally used for food, which are made from the products of chapter 11. The product wheat flour is covered under chapter 11 and the impugned products are made up of the same (wheat flour), which is the predominant ingredient. Heading 1905 covers Bread, Pastry, Cakes etc., which are completely cooked foods and ready for consumption.

8.8 The impugned products having description "parota" do not have any specific entry in the Customs Tariff Act, 1985/ GST Tariff. The products covered under heading 1905 are already prepared or completely cooked products and no further process is required to be done on them for consumption and hence they are ready to use food preparations. In the instant case the impugned products are admittedly not ready for consumption, but need to be heated before consumption. Thus the impugned products do not merit classification under heading 1905.

8.9 The applicant, with regard to the competing tariff entry for classification of the impugned products, contends that their products are specifically

covered under heading 1905 and hence should not be classified under the residual entry at Sl. No. 453 of the Schedule III to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, as amended, as the goods falling under any chapter and not specified under schedule I, II, IV, V or VI of the said Notification.

In view of the above, we proceed to examine the right classification of the impugned products. In this regard we draw attention to chapter 21, which covers Miscellaneous Edible Preparations and heading 21.06 covers food preparations not elsewhere specified or included. Further Explanatory Notes to the **Harmonized Commodity Description and Coding System**, with regard to heading 2106, at clause (A) specify that the said heading 2106 90 covers Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption, provided that they are not covered by any other heading of the Nomenclature. In the instant case the impugned goods i.e. 'parota' are not covered under any other heading and also need to be processed for human consumption. Therefore the impugned goods are rightly classifiable, more specifically, under heading 2106 90.

8.10 In this regard, to conclude the classification, we draw attention to the General Rules of Interpretation for classification of goods under Schedule I to the Customs Tariff Act 1975, which are as under:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods

consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

It could be seen from the above that Rule 1 is not applicable since no Heading, Chapter Note or Section Note mention 'porota'. Rule 2 is also not applicable since there is no mention of the finished article, i.e. 'porota' anywhere in the tariff. Rule 3 is about classification of mixed or composite goods, prima facie, classifiable under two or more headings. In the instant case the product 'porota' is though, made up of whole wheat flour or refined flour (maida) along with common ingredients like RO purified water, edible vegetable oil or refined oil, edible common salt and edible vegetable fat, there is no specific entry competing against a general entry (Rule 3 (a)); or has any specific essential characteristic by which we can describe the product (Rule 3 (b)).

Rule 3 (c) provides that when goods can't be classifiable under Rule 3(a) or 3(b), then they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Thus even if the applicant's argument of classification of impugned products under

heading 1905 as well as the classification under heading 2106 are considered as two relevant headings, the heading 2106 occurs last in numerical order and hence the heading 2106 would be more appropriate and right classification by virtue of Rule 3(c) supra.

8.11 Now the remaining issue to be discussed, as the classification issue has been resolved, is the applicability of the benefit of entry No.99A of Schedule I to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, as amended vide Notification No.34/2017-Central Tax (Rate) dated 13-10-2017, which specifies the applicable rate of GST as 5%, in respect of the goods covered under heading 1905 or 2106 and having description as "Khakhra, plain chapatti or roti".

8.12 It could be seen from the foregoing that the GST rate of 5% is applicable to the products subject to fulfillment of the conditions that (i) they should be classified under heading 1905 or 2106 and (ii) they must be either khakhra, plain chaptatti or roti. In the instant case the first condition of classification is fulfilled as the classification of the impugned products has been resolved as 2106. As for as the second condition is concerned the impugned products are described as "parota" and hence are neither khakhra, plain chaptatti nor roti. Further the products khakhra, plain chaptatti or roti are completely cooked preparations, do not require any processing for human consumption and hence are ready to eat foods preparations, whereas the impugned products are not only different from the said khakhra, plain chaptatti or roti but also are not like products in common parlance as well as in respect of the essential nature of the product. These products also require further processing for human consumption, as admitted by the applicant. Thus the benefit of entry No. 99A of Schedule I to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, as amended vide Notification No. 34/2017-Central Tax (Rate) dated 13-10-2017 is not applicable to the instant case and the applicant is not entitled for the same.

9. In view of the foregoing, we pass the following

RULING

The product 'parota' is classified under Chapter Heading 2106 and is not covered entry No. 99A of Schedule I to the Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017, as amended vide Notification No.34/2017-Central Tax (Rate) dated 13-10-2017.

❑

(2020) 65 TLD 60 In the High Court of M.P.
Hon'ble Prakash Shrivastava & Ms. Vandana Kasrekar, JJ.

Subhash Joshi & another

Vs.

Director General of GST Intelligence (DGGI) & Ors.

W.P. No.: 9184/2020

July, 03, 2020

Deposition : *In favour of Respondents*

Search and seizure - Section 67 of the Central Goods and Services Tax Act, 2017 - The High Court held that no such legal right has been pointed out, the submission of the counsel for petitioner to carry out the search and seizure operation in the presence of the petitioner cannot be accepted.

Writ Petition dismissed

Cases referred :

* Akhil Krishan Maggu & another Vs. Dy. Director, Directorate General and GST Intelligence and others, CWP No.24195/2019 dated 15-11-2019 (P&H)
* Poolpandi Vs. Superintendent, Central Excise (1992) 3 SCC 259
* Sudhir Kumar Aggarwal Vs. Directorate General of GST Intelligence 2019 SCC OnLine Del 11101

Shri Sunil Jain, learned Sr. Counsel with Shri Kushagra Jain, learned counsel for the petitioner.
Shri Prasanna Prasad, learned counsel for respondent.
Shri Shailesh Kumar Mehta, Sr. Intelligence Officer also present in person.

:: ORDER ::

The Order of the Court was made by **PRAKASH SHRIVASTAVA, J. :**

By this petition, the petitioner has challenged the notice dated 20th June, 2020 whereby the premises of the petitioner has been sealed under the provisions of The Central Goods and Services Tax Act, 2017 (for short "GST Act").

2. The case of the petitioner is that the petitioner is the manufacturer of sweet betel nut and which has all the necessary licenses and permissions for

this purpose and is regularly paying the GST. Further case of the petitioner is that the Plot No.15-A/B-1, Sector-B, Industrial Area, Sanwer Road, Indore belongs to Shri Kishore Wadhwani and petitioner has taken this plot on lease from Shri Kishore Wadhwani and the petitioner is running the manufacturing unit on this plot. The further case of the petitioner is that apart from the above, it has no connection with Shri Kishore Wadhwani. Earlier in the year 2011 Excise Department had taken certain action against the petitioner but nothing incriminating was found. On 20th June, 2020, by the impugned notice the factory premises of the petitioner has been sealed. Petitioner apprehends that since the action was initiated against Shri Kishore Wadhwani for evasion of tax, therefore, the premises of the petitioner has been sealed. According to the petitioner, on 20th June, 2020 he was out of station, and, therefore, the petitioner had sent the notice dated 26-6-2020 for demand of justice and, thereafter the present petition has been filed.

3. Learned counsel for petitioner submits that though the action relating to search and seizure u/S.67 of the GST Act has been taken, but the requisite procedure has not been followed. He has submitted that the petitioner apprehends that the search and seizure may not be carried out in a fair manner and the confession of the petitioner may be recorded under pressure, therefore, a direction be issued for carrying out the search in the present of an Advocate. He has further submitted that as per the requirement of Sec.67, two independent reputed witnesses of the locality are necessary, but the respondents want to carry out the search by keeping their own pocket witnesses.

4. Learned counsel for respondents has submitted that the officials of the respondents had approached the factory premises of the petitioner on 20th June, 2020 for the purpose of search and seizure by following the due procedure in accordance with Sec.67 of the Act, but since the premises was found locked, therefore, the option was either to break open the lock and carry out the search or to seal the premises and thereafter carry out the search of the premises in the presence of the petitioner. He submits that the officials of the respondents had adopted the second option of sealing the premises and now they want to carry out the search in the petitioner's presence. He further submits that there is no provision in law allowing the petitioner's prayer for presence of an Advocate during search and seizure. He has also submitted that the two independent witnesses will be kept as required by law and procedure prescribed in law will be duly followed in true letter and spirit.

5. We have heard the learned counsel for parties and perused the record.

Sec.67 of the GST Act reads as under:-

"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 sub-section (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 subsection (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 (2 of 1974), 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."

6. In terms of sub-section 10 of Sec.67, the provisions of search and seizure as contained in Cr.P.C are applicable. Sub-section (4) of Sec.100 Cr.P.C provides as under:-

"(4)- Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and

witness the search and may issue an order in writing to them or any of them so to do."

7. In terms of the above sub-section presence of two or more independent and respectable inhabitants of the locality is necessary as witness to the search.

8. The search is yet to take place in the present case and the counsel for respondents has duly assured this court that the aforesaid provision will be complied with therefore no direction in this regard at this stage is required.

9. Another submission of counsel for petitioner is that the search should be carried out in the presence of the Advocate, but counsel for petitioner has failed to point out any statutory provision or any such legal right in favour of the petitioner.

10. Some what similar issue had come up before the Supreme Court in the matter of **Poolpandi and others Vs. Superintendent, Central Excise & Ors. (1992) 3 SCC 259** wherein during the investigation and interrogation under the provisions of Foreign Exchange Regulations Act 1973 and Customs Act, a prayer was made for assistance of the lawyer. Hon. Supreme Court denying such a prayer had held that:-

"11- We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering question it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will

be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."

11. The same issue came up before the Delhi High Court in reference to the GST Act in the matter of **Sudhir Kumar Aggarwal Vs. Directorate General of GST Intelligence 2019 SCC OnLine Del 11101** and the Delhi High Court placing reliance upon the earlier judgments of the Supreme Court on this point has held that:-

"21- Perusal of the above case law reveals that presence of a lawyer cannot be allowed at the time of examination of a person under the Customs Office. The petitioner in the present case has been summoned by the Officers under GST Act who are not Police Officers and who have been conferred with the power to summon any person whose attendance they consider necessary to give evidence or to produce a document. The presence of the lawyer, therefore, is not required during the examination of the petitioner as per the law laid down by Hon'ble Supreme Court in Pool Pandi's case (supra). So far as apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well settled law now that no inquiry/investigating officer has a right to use any method which is not approved by law to extract information from a witness/suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action. The order dated 20.09.2019 which is against the judgment passed by Hon;'ble supreme Court in 'Pool Pandi Vs. Superintendent, Central Excise (1992) 3 SCC 259 : 1992 AIR 1795 (SC), therefore, stands modified and it is clarified that presence of a lawyer cannot be allowed to the petitioner at the time of questioning or examination by

the officers of the respondent."

12. Having regard to the above position in law and the fact that no such legal right has been pointed out, the submission of the counsel for petitioner to carry out the search and seizure operation in the presence of the petitioner cannot be accepted.

13. Counsel for petitioner has placed reliance upon the judgment of Punjab & Haryana High Court dated 15-11-2019 in CWP No.24195/2019 in the case of **Akhil Krishan Maggu & another Vs. Dy. Director, Directorate General and GST Intelligence and others,** but the part of the judgment relied upon by counsel for petitioner relates to need for arrest whereas in the present case, there is no issue of arrest is involved nor any action of the respondents relating to the arrest of the petitioner has been questioned.

14. Having regard to the aforesaid analysis, we are of the opinion that no case for interference in the present writ petition at this stage is made out. The petition is accordingly **dismissed**.

❑

(2020) 65 TLD 67

In the High Court of New Delhi
Hon'ble Vipin Sanghi & Rajnish Bhatnagar, JJ.

Rehau Polymers Private Limited

Vs.

Union of India & Ors.

W.P. (C) No. : 3824/2020

June 30, 2020

Deposition : *Listed for hearing on 16-9-2020*

GST Tran-1 - The Delhi High Court directed in case the SLP preferred against the decision in Brand Equity Treaties is rejected, and our decision is upheld, it goes without saying that this Court would not be powerless to direct the respondents to accept the GST Tran-1 Form of the petitioner at a later point of time.

Cases referred :

* Brand Equity Treaties Ltd. Vs. The Union of India (2020) 64 TLD 330 (Del), W.P.(C.) No. 11040/2018.

Mr. Abhishek Rastogi, Advocate for the Petitioner.

Mr. Ajay Digpaul, Advocate for respondents No.1 & 3. Ms. Sonu Bhatnagar & Ms. Venus Mehrotra, Advocates for respondents No. 2 & 4.

:: ORDER ::

C.M. No. 13701/2020

Exemption allowed, subject to all just exceptions.

The Court Fees be paid within a week.

The application stands disposed of.

C.M. No. 13702/2020

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 3824/2020 and C.M. No. 13700/2020

Issue notice. Mr. Digpaul accepts notice on behalf of respondents No.1 & 3 and Ms. Sonu Bhatnagar accepts notice on behalf of respondents No.2 & 4.

The petitioner has preferred this writ petition to seek a direction to the respondents to open the GST portal to enable the petitioner to upload the GST Tran-I Form. The petitioner has placed reliance on the decision of this Court in **Brand Equity Treaties Limited Vs. The Union of India & Ors. (2020) 64 TLD 330 (Del), W.P.(C.) No. 11040/2018,** and other connected writ petitions decided on 5-5-2020. Admittedly, that decision in **Brand Equity Treaties Limited** (supra) is pending consideration before the Supreme Court, and the operation of the said decision has been stayed by the Supreme Court.

The submission of learned counsel for the petitioner is that, even in these circumstances, this Court may permit provisional manual filing of the GST Tran-I Form in terms of our decision in **Brand Equity Treaties Limited** (supra). He submits that in case the Supreme Court upholds the decision of this Court in **Brand Equity Treaties Limited** (supra), the respondents should not be permitted to present a *fait accompli* by pleading that 30th June, 2020 has already passed.

We are not inclined to pass any such direction as sought by the petitioner. However, considering the fact that the petitioner has approached this Court by filing the writ petition before 30-6-2020 - which has been listed on 30-6-2020, in case the Special Leave Petition - preferred by the

respondents before the Supreme Court against the decision in **Brand Equity Treaties Limited** (supra) is rejected, and our decision is upheld, it goes without saying that this Court would not be powerless to direct the respondents to accept the GST Tran-I Form of the petitioner at a later point of time.

Ms. Sonu Bhatnagar submits that - even if the decision in **Brand Equity Treaties Limited** (supra) is upheld, according to the respondents, the petitioner would not be entitled to the relief as sought in the petition. This aspect would be considered as and when the writ petition is taken up for hearing.

List on 16-9-2020 along with other similar matters.

❑

(2020) 65 TLD 69 In the High Court of Chhattisgarh

Hon'ble P.R. Ramachandra Menon, CJ. & Parth Prateem Sahu, J.

Shivshankar Solvent Extraction Private Limited

Vs.

Commissioner, Commercial Tax, Chhattisgarh

Writ Appeal No. : 211 of 2020

May 26, 2020

Deposition : *In favour of Department*

Second Appeal - Pre-deposit - Section 48(4)(ii) of C.G. Value Added Tax Act, 2005 - Mandatory pre-deposit of 20% of demand as envisaged u/s 48(4)(ii) is must for filing VAT appeal before Chhattisgarh Commercial Tax Tribunal.

Appeal dismissed

Cases referred :

* Punjab State Power Corporation Limited Vs. State of Punjab and others reported on 2016 (90) VST 66
* UV Engineers Ltd. Vs. Commissioner of Commercial Tax and others reported in 16 SCC online MP 3421

Shri Palash Tiwari, Advocate for the Appellant.

:: CAV JUDGMENT ::

The Judgment of the Court was delivered by **PARTH PRATEEM**

SAHU, J. :

1. Heard on IA-1 of 2020, which is an application for condonation of delay in filing the writ appeal. Instant appeal is filed after delay of 64 days. Though we are not satisfied with the reasons stated in the application, but looking to the larger interest of justice, delay in filing the appeal is condoned and the matter is being heard.

2. Challenge in this appeal is to the order dated 23-10-2019 passed in WPT- 132 of 2019, wherein learned Single Judge disposed off the petition granting 30 day's time to the appellant/petitioner – Company for making mandatory deposit before the Tribunal in Second Appeal Case No.A/229/45/2018/Prantiya and further directed that upon depositing the said mandatory deposit, aforesaid appeal would stand restored and the Tribunal is directed to decide the appeal on its merit.

3. Facts of the case in nutshell are that appellant establishment is registered for the VAT with state having TIN number 22021701545. Suo-Moto proceedings were initiated by Commissioner of Commercial Tax, Raipur under Section 49 (3) of the Chhattisgarh Value Added Tax (VAT). F-form issued by the dealers mentioned in schedule were unregistered, which is liable to be rejected. Notices were issued proposing tax to be levied @ 4% on Rs.8,96,01,955/-. Appellant / Assessee submitted reply to the notice, Commissioner upon considering reply passed order dated 23-2-2017 assessing the liability of tax of Rs.35,84,078/- upon appellant.

4. The order dated 22-2-2017 was put to challenge before Chhattisgarh Commercial Tax Tribunal in appeal case No.A/229/45/2018. This appeal came to be dismissed for non-enclosing the receipt of deposit of 20% of the demand as envisaged under Section 48(4)(ii) of the VAT Act vide order dated 5-3-2019.

5. Order of Tribunal was challenged by the appellant before this Court by filing a Tax Case bearing No.TAXC- 68 of 2019, which was withdrawn by the appellant as tax case filed in its form was not maintainable. After withdrawing of Tax Case-68 of 2019, appellant filed WPT- 132 of 2019 which came up for hearing before learned Single Judge on 23-10-2019. After considering the grounds raised in tax case as well as in the writ petition, learned Single Judge disposed off the petition by remitting back the case to Tribunal, granting 30 days' time to the appellant / petitioner for making mandatory deposit before the Tribunal and further directed the Tribunal for

restoring the appeal and deciding it on merits subject to depositing the mandatory deposit of the amount as envisaged under Section 48(4)(ii) of the VAT Act.

6. Appellant, aggrieved by the above order filed this appeal, mainly, raising the ground that appellant is not in a position to make pre-deposit in terms of Section 48(4)(ii) of VAT Act and learned Single Judge has not considered submissions made by learned counsel for the appellant appearing therein. Appellant further placed reliance in the matter of **Punjab State Power Corporation Limited Vs. State of Punjab and others reported on 2016 (90) VST 66** and another case of Madhya Pradesh High Court in the matter of **M/s UV Engineers Ltd. Vs. Commissioner of Commercial Tax and others reported in 16 SCC online MP 3421** in support of its pleadings.

7. Learned counsel for the appellant submitted that due to mishap of fire in the appellant's factory, appellant has suffered huge loss and even loss of business. Appellant is finding it extremely hard to meet the requirements of provisions of VAT particularly of the Section 48(4)(ii). He further submits that looking to the facts and circumstances of the case, as also position of appellant, entire amount of pre-deposit i.e. 20% of amount is to be relaxed and the appeal filed before the Tribunal to be considered for hearing on its merit. It is also pointed out that if the appeal filed before the Tribunal is not heard on merit, appellant will suffer adversely. He also referred the case law pleaded in his appeal.

8. We have heard learned counsel for the appellant, (as well as respondent) and also gone through the record available before us.

9. Annexure-A 2 is the order passed by this court in Tax Case- 68/2019 filed by the appellant challenging order of Tribunal. Appellant after arguing for some time, withdrew the Tax Case to challenge the order of Tribunal in an appropriate proceeding before appropriate forum. The said case was filed with delay and learned counsel for appellant appearing therein made submissions that they have somehow managed to arrange required amount for mandatory pre-deposit. It was also recorded by this Court in order of Tax Case- 68 of 2019, which reads as under:

> "During the course of hearing, it is noted that the petitioner has specifically stated in "Ground-6" of the proceedings that the tribunal ought to have granted an opportunity to the appellant to effect the minimum deposit of 20%. It is stated that the Appellant / Assessee after

striving hard has made necessary arrangement to meet the requirement in this regard. But the question to be considered is whether this "appeal" as such can be held as maintainable, as the proceedings have been filed in terms of Section 55 of the Act, which only provides for a "reference" and the manner in which it is to be pursued."

10. This court has taken note of Ground-6 raised by appellant in that case that some time ought to have been granted to the appellant to comply with requirement of Section 48(4)(ii) of VAT Act. By oral submissions, learned counsel also tried to convince this Court that now the appellant, somehow was able to arrange the amount required for the pre-deposit and as such, by recording submissions of learned counsel for the appellant, Annexure A2 order was passed. Learned Single Judge, while considering writ petition challenging order of the Tribunal dismissing the appeal for not making of pre-deposit of 20% as per requirement of Section 48(4)(ii) of VAT act, has taken note of submissions made by learned counsel for the petitioner in Tax Case-68 of 2019 mentioned in para-3 of order dated 4-9-2019 and has given following reasons for disposing off the petition.

"4. At this juncture, it would be relevant to take note of the observations made by the division bench of this court in tax case no.68/2019 filed by the petitioner assailing the very same order dated 5-3-2019 which is under challenge in the present writ petition. For ready reference paragraph 3 of t said order is produced herein under:

"During the course of hearing, it is noted that the petitioner has specifically stated in "Ground-6" of the proceedings that the tribunal ought to have granted an opportunity to the appellant to effect the minimum deposit of 20%. It is stated that the Appellant / Assessee after striving hard has made necessary arrangement to meet the requirement in this regard. But the question to be considered is whether this "appeal" as such can be held as maintainable, as the proceedings have been filed in terms of Section 55 of the Act, which only provides for a "reference" and the manner in which it is to be pursued."

5. A plain reading of the aforesaid observation of the division bench makes it clear that in due course of time, the petitioner had made arrangements to meet the requirement as is required under subsection 4 of section 48 of the act of 2005.

6. Reading paragraph 3 of the order of the division bench passed in tax case Annexure-A2 which was based on the "Ground No.6" of the proceedings of this court is of the view that the petitioner has by now made sufficient arrangement for meeting the pre-condition required for filing an appeal and in a position to make the deposit.

7. Given the said facts and circumstances of the case and also taking into consideration the Punjab and Haryana High Court in the case of Punjab State Power Corporation Limited (supra), learned Single Judge is of the opinion that ends of justice would meet if the matter is remitted back to the tribunal for deciding it on merits by granting 30days time to the petitioner in making mandatory deposits before the tribunal in 2nd appeal case No.A/229/45/2018/Prantiya. Subject to the petitioner making mandatory deposit within 30days from the date of receipt of copy of this order, 2nd appeal case no. A/229/45/2018/Prantiya would stand restored and the tribunal shall decide the appeal on its merit."

11. Looking to the pleadings of appellant in tax case no.68/2019 and in WP 132/2019, particularly ground no.6 wherein the appellant wanted an opportunity to make the default good. The other thing is that this court while passing orders in tax case no.68/2019, has recorded the submission of the learned counsel for the petitioner that by now somehow they managed to arrange funds to comply the provision of mandatory deposit. In the aforementioned facts of the case, appellant will not be permitted to raise the different pleas in different proceedings.

12. The case law relied upon by appellant i.e. **Punjab State Power Corporation** (supra), Hon'ble High Court of Punjab and Haryana observed that the jurisdiction of waiving off partial or entire pre-deposit is not to be exercised in a routine way, or a matter of course, in view of special nature of taxation and revenue laws. It can be exercised only when a strong *prima facie* case is made out. The other case i.e. **M/s. UV Engineers Ltd.** (supra) is on different facts.

13. In view of submissions made by learned counsel for the appellant in Tax Case-68 of 2019 that appellant, after making hard effort, has made necessary arrangements to meet the requirements of pre-deposit, the case law relied upon by the appellant is of no help.

14. In view of aforementioned discussions, we do not find any tenable ground calling interference in the impugned order. Appeal is dismissed.

However, looking to the facts and circumstances, as well as considering that, if time for depositing mandatory deposit in terms of Section 48(4)(ii) of VAT Act is not extended, appellant will remain unheard, which will be prejudicial to the interest of the appellant, we direct that 30 days' time granted by learned Single Judge in para-7 will start from the date of passing of this order. It is made clear that, if the appellant deposits mandatory deposit before the Tribunal within a period of 30 days from passing of this order, then he will be entitled to get benefit of further directions issued by learned Single Judge in para-7 of the impugned order.

15. With aforementioned observation, appeal stands dismissed.

❑

(2020) 65 TLD 74

In the High Court of Chhattisgarh
Hon'ble P. Sam Koshy, J.

Dadhichi Iron And Steel Pvt. Ltd.

Vs.

Chhattisgarh G.S.T. Through Principal Commissioner & Others

WPT No. : 42 of 2020

February 25, 2020

Deposition : *In favour of the Respondents*

Investigation - Section 6(2)(b) of Central GST Act, 2017 - The High Court does not find any substance that the investigation and the proceedings now initiated is one, which hit by Section 6(2)(1)(b) of the CGST Act of 2017 -There is a clear distinction between a proceeding drawn for the demand of tax evaded by the petitioner-establishment and the investigation be conducted by the Department of the DG, GST Intelligence Wings in respect of an offence committed by an establishment by way of using bogus and fake invoices and illegally availing ITCs, which the petitioner-establishment otherwise was ineligible.

Appeal dismissed

Mr. Bishwa Ahluwalia, Advocate along with Mr. Rahul Tamaskar, Advocate for the petitioner.

Mr. Jitendra Pali, Dy. A.G. for State & Mr. Manish Sharma, Advocate for

respective Respondents.

:: C.A.V. ORDER ::

1. The present writ petition has been filed questioning the investigation initiated by the respondents and the summons issued in connection with the said investigation. The primary challenge to the investigation and the summons issued was a specific bar under the GST Act, 2017.

2. It would be relevant at this juncture to take note of the relief sought for by the petitioner:

> "10.1 It is prayed that this Hon'ble Court may kindly be pleased to issue a writ in nature of Quo Warranto and/or any other appropriate writ requiring the respondents to show under what authority the impugned action of investigation and summon dated 3-2-2020 has commenced despite there being a specific bar in the CGST Act, 2017.
>
> 10.2 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any other appropriate writ directing the respondents No.2 & 3 to provide copies of documents seized during the investigation so that appropriate representation may be made by the petitioner before the respondents in the interest of justice.
>
> 10.3 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any other appropriate writ quashing the investigation proceedings commenced by the proper officer of the DGGSTI under CGST Act, 2017 and impugned summon dated 3-2-2020 against the petitioner holding the same to illegal.
>
> 10.4 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any appropriate writ to direct the respondents to return forthwith the material, documents, electronics and personal effects of the Petitioner, Directors & Employees of the petitioner; and
>
> 10.5 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any appropriate writ commanding/directing respondents to restrain from any coercive action against the petitioner during pendency of investigation if the same is held to be legal.
>
> 10.6 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any appropriate writ commanding/directing

respondents to follow the due process of law and issue appropriate notices and follow adjudication proceedings along with the principles of natural justice before any recovery of tax and/or prosecution may be done against the petitioner or its Directors/employees."

3. If we peruse the relief nos. 10.2, 10.4 and 10.6 it would clearly reveal that the petitioner through this writ petition was ready to face the investigation provided the aforesaid relief sought in paragraph 10.2, 10.4 and 10.6 is complied with.

4. The brief facts which led to the filing of the present writ petition is that the petitioner is a registered company, registered under the Companies Act, 1956. The said company is engaged in the business of trading of iron and steel items. The nature of business which the petitioner carries is that of purchasing goods from the steel manufacturers and sell the same to the different customers in different parts of the country. According to the counsel for the petitioner, the petitioner pays CGST/SGST/IGST on the goods purchased from the manufacturers and further pays CGST/SGST/IGST on the value of the supply of said goods made at the time of sale being made by the petitioner to other customers.

5. According to the counsel for the petitioner, the petitioner, therefore, was entitled for the Input Tax Credit on the GST paid on the goods and service purchased. According to the counsel for the petitioner, the respondents initially commenced an investigation against the petitioner on the allegation of the petitioner allegedly purchasing goods from bogus dealers and thereby issuing fake invoices and a notice in this regard was issued to the petitioner, based upon which subsequently the Input Tax Credit available to the petitioner was blocked and thereafter a proceeding was drawn in-respect-of the illegal availing of the Input Tax Credit. The said notice was subjected to challenge in WPT No. 130 of 2019. This court disposed-off the said writ petition directing the petitioner to file a detailed representation/objection to the concerned authorities under the department, who in turn was further directed to take-into-consideration the contents of the representation/ objection and decide the same. According to the counsel for the petitioner, the respondent officers have already issued a show cause notice on 25-10-2019 proposing cancellation of registration of the petitioner for the reasons of dealing in fake invoices. Subsequently, on 15-11-2019 the respondents had cancelled the registration of the petitioner.

6. Subsequently, the respondents again issued a show cause notice on 12-12-2019 proposing to cancel registration of the petitioner on the same allegations of issuance of fake invoices to which also even before the petitioner could response to the proceedings commenced, the respondents had vide order dated 28-8-2019 cancelled the registration of the petitioner.

7. The petitioner again applied for restoration of registration vide application dated 31-12-2019, which is still pending consideration before the concerned authorities. Meanwhile, the respondents issued a show cause notice dated 2-1-2020 proposing a tax demand of Rs. 11 crores for allegedly dealing with fake dealers and using of fake invoices. Since it was only a summary show cause notice, the petitioner immediately filed a representation on 3-1-2020 before the concerned officer requesting to provide the details of the show cause notice enabling the petitioner to effectively participate in the proceedings before taking any decision on the application filed by the petitioner. The respondents conducted a raid on the premises of the petitioner including the house of few employees of the petitioner's establishment on 31-1-2020. Subsequently, one of the directors Mr. Dadhichi has been arrested by the respondents in-connection with the aforesaid investigation proceedings on 4-2-2020 by the DGCGST. It is this which has led to the filing of the present writ petition challenging it on the ground of it being illegal as there is an express bar under Section 6(2)(1)(b) of the CGST Act, 2017.

8. The primary contention of the counsel for the petitioner was that once when a show cause notice proceeding initiated by the respondents dated 14-11-2019 is pending before the concerned authorities under the CGSGST, the respondents could not have issued or initiated another investigation or proceeding in-respect of the same subject matter, which otherwise is not permissible under the provisions of Section 6(2)(1)(b). Referring to the aforesaid provision of law, the petitioner submitted that the whole investigation proceeding initiated by the respondents including that of the arrest that has been made is without and beyond jurisdiction.

9. According to the counsel for the petitioner, once the matter ceased by the officers of the CGSGST Act, 2017, the same cannot be simultaneously put to another investigation by the officers appointed under section 3 of the CGSGST Act, 2017 in view of the express bar under section 6(2)(b). According to the counsel for the petitioner, the subject matter in both the proceedings is in-respect-of the alleged use of fake and fictitious invoices.

Thus, the entire subsequent investigation and the proceedings drawn deserves to be quashed.

10. The counsel for the respondents No.2 to 4 opposing the petition submitted that the writ petition is totally misconceived in as much as the grounds raised by the petitioner in the instant case is not one which is sustainable. According to the petitioner, the show cause notice initially issued was firstly in respect of using of fake invoices for the purpose of Input Tax Credit (ITC) and the subsequent show cause notice is in respect of the tax demand proposed of Rs. 11 crores on account of dealing with the fake dealers and fake invoices. However the present investigation, which has been initiated and where one of the Directors of the petitioner-establishment has been arrested, has been at the instance of the officers of the Directorate of General of GST Intelligence Wing, which had received certain secret information in respect of the petitioner issuing fake ITC invoices worth crores of rupees to different Firms in the Country. According to the counsel for the respondents No.2 to 4, the petitioner was dealing with the fake transactions by issuance of fake and bogus invoices relating to the transactions of Steel goods without the actual supply of goods being made and subsequently these bogus and fake invoices were used for facilitating for the discharge of his own GST liabilities. Since the offences reflected from the transactions were made in more than one State, the respondents had all the powers for initiating a proceeding under the provisions of Section 132 of the CGST Act, 2017.

11. The counsel for the respondents No.2 to 4 further referring to the documents enclosed along with the writ petition submitted that from the perusal of the records in the course of investigation as of now the respondents have been able to detect the petitioner of having availed ineligible ITCs of approximately Rs. 60 crores and the said amount is likely to increase manifold in the course of further investigation taking into consideration the large number of bogus transactions that the petitioner-establishment have shown to have been made.

12. The further contention of the counsel for the respondents No.2 to 4 is that since the nature of offence now being investigated is entirely different than the proceedings drawn in the show cause notice or the proceedings pending before the State Authorities are concerned, it would not be hit by the provisions of Section 6(2)(1)(b). According to the counsel for the respondents No.2 to 4, the present investigation is more in respect of the

defrauding of the government revenue committed by the petitioner in contravention to the provisions of the CGST Act and the nature of offence committed by the petitioner is one which false under the provisions of Section 132(1)(i) and in view of the provision of Section 132(5) of the said Act, the offence is also a cognizable offence and is a non-bailable offence as well. Thus, prayed for the rejection of the writ petition.

13. Having heard the contentions put forth on either side and on perusal of record and also taking note of the provisions of the Act what clearly reflects is that the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the petitioner, wherein he had used fake and bogus invoices for the purpose of availing ineligible ITC, whereas subsequent to a secret information being received and further investigation being made, particularly in the course of a raid, which was conducted at the premises of the petitioner-establishment and other related premises, it was reveled that the magnitude of the offence committed by the petitioner-establishment was far more grave and serious. It was in the course of raid found that the petitioner had been making false and bogus transactions and has illegally availed ineligible ITC credits. The magnitude of which detected by now is approximately Rs.60 crores and with further investigation the amount is likely to increase manifold.

14. This Court does not find any substance in the arguments of the petitioner, when they say that the investigation and the proceedings now initiated is one, which hit by Section 6(2)(1)(b) of the CGST Act of 2017. What has also to be appreciated is the fact that there is a clear distinction between a proceeding drawn for the demand of tax evaded by the petitioner-establishment and the investigation be conducted by the Department of the DG, GST Intelligence Wings in respect of an offence committed by an establishment by way of using bogus and fake invoices and illegally availing ITCs, which the petitioner-establishment otherwise was ineligible.

15. So far as the judgments referred to by the petitioner in support of his contention what cannot be lost sight of is the fact that those judgments were rendered under entirely different contextual background as compared to the factual matrix in the present case and the ratio laid down in those judgments are also not what could be applied at this juncture. Even the judgments of the Division Bench of this Court referred to by the petitioner-establishment again is one, which has been decided in an entirely different contextual background as compared to the facts of the present case and those judgments

are distinguishable on facts itself.

16. The writ petition thus fails and is accordingly rejected. ❑

(2020) 65 TLD 80

In the High Court of Allahabad
Hon'ble Siddhartha Varma, J.

Versatile Construction

Vs.

State Of U.P. And 4 Others

Writ Tax No. : 271 of 2020

July 07, 2020

Deposition : *In favour of Petitioner*

Revocation of cancellation of registration - The Central Goods and Services Tax (Removal of Difficulties) Order, 2020 - Extending the time limit for filing an application for revocation of cancellation of registration for specified taxpayers by Order dated 25-6-2020 - The High Court set aside the orders of lower authorities and remanded the matter in view of Order dated 25-6-2020.

Writ petition disposed of

Nripendra Mishra, Praveen Kumar Mishra for the petitioner.
C.S.C., A.S.G.I. for the respondent.

:: ORDER ::

The Order of the Court was made by **ARUN MISHRA, J. :**

The defects reported by Stamp Reporter are being ignored due to prevailing Covid-19 infection. Counsel for the petitioner may remove the defects as and when Covid-19 infection subsides.

The petitioner had a registration under the Goods and Services Tax Act, 2017, which when the Assessing Authority cancelled on 19-1-2019 under Section 29(2)(c) of the Goods and Services Tax Act, 2017(hereinafter referred to as 'the Act), the petitioner filed an application for the revocation of the cancellation order. When, however, the application was rejected on 2-11-2019, the petitioner filed a First Appeal under Section 107 of the Act. Upon the dismissal of the First Appeal on 31-12-2019, in the absence of Tribunal, the instant writ petition was filed.

The contention of the learned counsel for the petitioner is that the orders of the Assessing Authority and of the First Appellate Court cannot be

sustained now in view of the Central Goods and Services Act (Removal of Difficulties Order), 2020 issued under Section 172 of the Act.

Since the learned counsel for the petitioner read out the Gazette Notification issued on 25-6-2020, the relevant portion of the notification is being reproduced here as under:-

"NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:-

1. **Short title.-**

This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2020.

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating the period of thirty days for filing application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act for those registered persons who were served notice under clause (b) or clause (c) of sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and where cancellation order was passed up to 12th June, 2020, the later of the following dates shall be considered:-

a) Date of service of the said cancellation order; or

b) 31st day of August, 2020."

Learned Standing Counsel did not dispute that the Gazette Notification.

Under such circumstances, the orders dated 2-11-2019 passed by the Assistant Commissioner, Sector-8, Jhansi and 31-12-2019 passed by the Additional Commissioner Grade -2 (Appeal) 1st Commercial Tax, Jhansi, are set aside. The application dated 19-10-2019 which was filed by the petitioner for the revocation of the cancellation order dated 19-1-2019 shall now be decided in accordance with law within a period of 15 days from the date of production of a copy of this order.

The Authority concerned may verify the correctness of this order from the Official Website of the High Court, Allahabad, if a certified copy is not submitted.

The writ petition is disposed of. ❑

(2020) 65 TLD 82

In the High Court of Punjab & Haryana
Bench at Chandigarh
Hon'ble Jaswant Singh & Sant Parkash, JJ.

Amba Industrial Corporation

Vs.

Union of India & Anr.

CWP No. 8213 of 2020 (O&M) : 44517 of 2018

June 18, 2020

Deposition : In favour of Petitioner

TRAN-I - The High Court in view of various decisions directed the respondents to permit petitioner to upload TRAN-I on or before 30-6-2020 and in case respondent fails to do so, the petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020.

Writ petition allowed

A Division Bench of this Court consisting one of us (Jaswant Singh J) vide order dated 4-11-2019 allowed a bunch of petitions which included CWP No. 30949 of 2018 titled as ***Adfert Technologies Pvt. Ltd. Vs Union of India.*** *The revenue assailing decision of this court filed SLP before Hon'ble Supreme Court which stands dismissed vide order dated 28-2-2020. Following opinion in* ***Adfert Technologies (Supra)*** *a number of writ petitions involving identical question have been disposed of by this Court, wherein Respondents have been directed to open portal so that assessee may upload TRAN-I and in case Respondent fails to open portal, Petitioners have been permitted to take ITC in monthly return GSTR-3B. Division Bench of Delhi High Court in the case of* ***SKH Sheet Metals Components vs. Union of India*** *WP(C) 13151 of 2019, vide order dated 16-6-2020 has permitted Petitioner to revise TRAN-I on or before 30-6-2020. Delhi High Court while passing aforesaid order has relied upon its recent decision in* ***Brand Equity Treaties Ltd. Vs. Union of India*** *(Supra) wherein Court had held that Government cannot adopt different yardsticks while evaluating conduct of the tax payers and its own conduct, acts and*

Note : *The Supreme Court of India has stayed Delhi High Court decision in case of Brand Equity Treaties Limited Vs. Union Of India (2020) 64 TLD 330 (Del) in which the High Court of Delhi permitted the assessee to file Form Tran-1 on or before June 30, 2020.*

omissions. It would be profitable to extract relevant paragraphs of judgment of Delhi High Court in ***Brand Equity***. [Para 7]

In the above findings, Delhi High Court though has not declared Rule 117 (1A) ultra vires the constitution, nonetheless treated as violative of Article 14 of Constitution of India being arbitrary, discriminatory and unreasonable.

The Petitioner has challenged vires of Rule 117 (1A) of Rules, however we do not think it appropriate to declare it invalid as we are of the considered opinion that Petitioner is entitled to carry forward Cenvat Credit accrued under Central Excise Act, 1944. The Respondents have repeatedly extended date to file TRAN-I where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-I in case of technical glitches as understood by Respondent vindicate claim of the Petitioner that denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-I would amount to violation of Article 14 as well Article 300A of the Constitution of India. [Para 8]

In view of decision of this Court in the case of ***Adfert Technologies Pvt. Ltd. (Supra)*** *and Delhi High Court in the case of* ***Brand Equity Treaties Ltd. (Supra)*** *present petition deserves to be allowed and accordingly* ***allowed****. The Respondents are directed to permit Petitioner to upload TRAN-I on or before 30-6-2020 and in case Respondent fails to do so, the Petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020. No doubt, the respondents would be at liberty to verify genuineness of claim(s) made by Petitioner.* [Para 9]

Cases referred :

* Adfert Technologies Vs. Union of India (2020) 64 TLD 277 (P&H)

* Brand Equity Treaties Limited Vs. Union of India (2020) 64 TLD 330 (Del) W.P.(C) 11040/2018 order dtd. 5-5-2020

* SKH Sheet Metals Components Vs. Union Of India (2020) 64 TLD 332 (Del)

Present : Mr. Deepak Gupta, Advocate for the Petitioner

:: ORDER ::

The Order of the Court was made by **JASWANT SINGH, J. :**

Hearing conducted through Video Conferencing.

1. The Petitioner through instant petition is challenging vires of Rule 117(1A) of Central Goods and Service Tax Act, 2017 (for short 'Rules') and seeking direction to Respondent to permit Petitioner to electronically upload form TRAN-I or avail input tax credit (for short 'ITC') in monthly return GSTR-3B.

2. The Petitioner-a partnership firm, engaged in the business of trading of S.S. Flats, is registered with Respondent-GST Authorities under Central Goods and Services Tax Act, 2017 (for short 'CGST Act'). The Petitioner prior to 1-7-2017 i.e. date of introduction of GST was registered under Central Excise Act, 1944 as a dealer/trader. The Petitioner purchased S.S. Flats and Scrap on payment of Excise Duty amounting to Rs.10,36,201/-. The Petitioner to carry forward unutilized CENVAT Credit, in terms of Section 140 of CGST Act read with Rule 117 (1) was required to upload TRAN-I on the official portal of Respondent, however Petitioner failed to upload TRAN-I by last date i.e. 27-12-2017. As per sub-Rule (1A) of Rule 117 of the Rules, the Commissioner on the recommendation of the Council may extend date for submitting the declaration, in respect of registered persons who could not submit declaration by the due date on account of technical difficulties. The Respondents in exercise of power conferred by sub-Rule (1A) of Rule 117 of the Rules, by order dated 07.02.2020 **(Annexure P-3)** has extended date for filing TRAN-I till 31-3-2020.

3. Counsel for the Petitioner contended that issue involved is squarely covered by judgment of this Court in the case of **Adfert Technologies Vs. Union of India (2020) 64 TLD 277 (P&H)** 2019-TIOL-2519-HC-P&H GST. The SLP filed against aforesaid decision stands dismissed. Delhi High Court in the case of **Brand Equity Treaties Vs. Union of India (2020) 64 TLD 330 (Del)** 2020-TIOL-900-HC-Del-GST following decision of this Court and various other High Courts has permitted Petitioners to file TRAN-I on or before 30-6-2020. Delhi High Court has further directed Respondents to permit all other similarly situated tax payers to file TRAN-I on or before 30-6-2020. Delhi HC has further vide order dated **16-6-2020** in **SKH Sheet Metals Components Vs. Union of India (2020) 64 TLD 332 (Del)** WP(C) 13151 of 2019 approved its earlier opinion in the case of **Brand Equity** and permitted Petitioners to file TRAN-I till 30-6-2020.

4. Notice of motion.

5. Mr. Satya Pal Jain, Additional Solicitor General assisted by Mr. Dheeraj

Jain, Advocate accepts notice on behalf of respondent no.1 while Mr. Sharan Sethi, Senior Standing Counsel accepts notice for respondent no.2-Commissioner of Central Goods & Services Tax. They are unable to controvert the fact that the issue in hand is squarely covered by the judgment of this Court in **Adfert Technologies Pvt. Ltd. (Supra**) and of the Delhi High Court in the case of **Brand Equity (Supra**).

6. Having heard learned Counsel for the parties and perused the cited judgments, we are of the considered opinion that issue involved is squarely covered by judgments of this Court as well as of the aforesaid judgments of Delhi High Court.

7. A Division Bench of this Court consisting one of us (Jaswant Singh J) vide order dated 4-11-2019 allowed a bunch of petitions which included CWP No. 30949 of 2018 titled as **Adfert Technologies Pvt. Ltd. Vs Union of India.** The revenue assailing decision of this court filed SLP before Hon'ble Supreme Court which stands dismissed vide order dated 28-2-2020. Following opinion in **Adfert Technologies (Supra)** a number of writ petitions involving identical question have been disposed of by this Court, wherein Respondents have been directed to open portal so that assessee may upload TRAN-I and in case Respondent fails to open portal, Petitioners have been permitted to take ITC in monthly return GSTR-3B. Division Bench of Delhi High Court in the case of **SKH Sheet Metals Components vs. Union of India** WP(C) 13151 of 2019, vide order dated 16-6-2020 has permitted Petitioner to revise TRAN-I on or before 30-6-2020. Delhi High Court while passing aforesaid order has relied upon its recent decision in **Brand Equity Treaties Ltd. and others vs. Union of India** (Supra) wherein Court had held that Government cannot adopt different yardsticks while evaluating conduct of the tax payers and its own conduct, acts and omissions. It would be profitable to extract relevant paragraphs of judgment of Delhi High Court in **Brand Equity**:

> "18. In above noted circumstances, the arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal". We,

however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies. After all, a completely new system of accounting; reporting of turnover; claiming credit of prepaid taxes; and, payment of taxes was introduced with the implementation of the GST regime. A basket of Central and State taxes were merged into a single tax. New forms were introduced and, as aforesaid, all of them were not even operationalised. Just like the respondents, even the taxpayers required time to adapt to the new systems, which was introduced as a completely online system. Apart from the shortcomings in the system developed by GSTN Ltd., the assessees also faced the challenges posed by low bandwidth and lack of computer knowledge and skill to operate the system. It is very unfair on the part of the respondents, in these circumstances, to expect that the taxpayers should have been fully geared to deal with the new system on day-one, when they themselves were completely ill-prepared, which led to creation of a complete mess. The respondents cannot adopt different standards – one for themselves, and another for the taxpayers. The GST regime heralded the system of seamless input tax credits. The successful migration to the new system was a formidable and unprecedented task. The fractures in the system, after its launch, became visible as taxpayers started logging in closer to the deadline. They encountered trouble filing the returns. Petitioners who are large and mega corporations - despite the aid of experts in the field, could not collate the humongous data required for submission of the statutory forms. Courts cannot be oblivious to the fact that a large population of this country does not have access to the Internet and the filing of TRAN-1 was entirely shifted to electronic means. The Nodal Officers often reach to the conclusion that there is no technical glitch as per their GST system laws, as there is no information stored/ logged that would indicate that the taxpayers attempted to save/submit the filing of Form GST TRAN-1. Thus, the phrase "technical difficulty" is being given a restrictive meaning which is supplied by the GST system logs. Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an

unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963.

19. The introduction of Sub rule (1A) in Rule 117 is a patchwork solution that does not recognise the entirety of the situation. It sneaks in an exception, without addressing situations taken note of by us. This exception, as worded, is an artificial construction of technical difficulties, limiting it to those existing on the common portal. It is unfair to create this distinction and restrict it to technical snags alone. In our view, there could be various different types of technical difficulties occurring on the common portal which may not be solely on account of the failure to upload the form. The access to the GST portal could be hindered for myriad reasons, sometimes not resulting in the creation of a GST log-in record. Further, the difficulties may also be offline, as a result of several other restrictive factors. It would be an erroneous approach to attach undue importance to the concept of "technical glitch" only to that which occurs on the GST Common portal, as a pre-condition, for an assesee/tax payer to be granted the benefit of Sub- Rule (1A) of Rule 117. The purpose for which Sub-Rule (1A) to Rule 117 has been introduced has to be understood in the right perspective by focusing on the purpose which it is intended to serve. The purpose was to save and protect the rights of taxpayers to avail of the CENVAT credit lying in their account. That objective should also serve other taxpayers, such as the petitioners. The approach of the Government should be fair and reasonable. It cannot be arbitrary or discriminatory, if it has to pass the muster of Article 14 of the Constitution. The government cannot turn a blind eye, as if there were no errors on the GSTN portal. It cannot adopt different yardsticks while evaluating the conduct of the taxpayers, and its own conduct, acts and omissions. The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act. The legislature has recognized such existing rights and has protected the same by allowing migration thereof in the new regime under the aforesaid provision. In order to avail the benefit, no restriction has been put under any

provisions of the Act in terms of the time period for transition. The time limit prescribed for availing the input tax credit with respect to the purchase of goods and services made in the pre-GST regime, cannot be discriminatory and unreasonable. There has to be a rationale forthcoming and, in absence thereof, it would be violative of Article 14 of the Constitution. Further, we are also of the view that the CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act. We have, in our judgment in A.B. Pal Electricals (supra) emphasized that the credit standing in favour of the assessee is a vested property right under Article 300A of the Constitution and cannot be taken away by prescribing a time-limit for availing the same." **Emphasis Supplied**

In the above findings, Delhi High Court though has not declared Rule 117 (1A) ultra vires the constitution, nonetheless treated as violative of Article 14 of Constitution of India being arbitrary, discriminatory and unreasonable.

8. The Petitioner has challenged vires of Rule 117 (1A) of Rules, however we do not think it appropriate to declare it invalid as we are of the considered opinion that Petitioner is entitled to carry forward Cenvat Credit accrued under Central Excise Act, 1944. The Respondents have repeatedly extended date to file TRAN-I where there was technical glitch as per their understanding. Repeated extensions of last date to file TRAN-I in case of technical glitches as understood by Respondent vindicate claim of the Petitioner that denial of unutilized credit to those dealers who are unable to furnish evidence of attempt to upload TRAN-I would amount to violation of Article 14 as well Article 300A of the Constitution of India.

9. In view of decision of this Court in the case of **Adfert Technologies Pvt. Ltd. (Supra**) and Delhi High Court in the case of **Brand Equity Treaties Ltd. (Supra)** present petition deserves to be allowed and accordingly **allowed**. The Respondents are directed to permit Petitioner to upload TRAN-I on or before 30-6-2020 and in case Respondent fails to do so, the Petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020. No doubt, the respondents would be at liberty to verify genuineness of claim(s) made by Petitioner.

❑

Ministry of Finance

Clarification on issue of GST rate on alcohol based hand sanitizers

Posted On: 15 JUL 2020 4:46PM by PIB Delhi

The issue of GST rate on alcohol based hand sanitizers has been reported in few sections of media.

It is stated that hand sanitizers attract GST at the rate of 18%. Sanitizers are disinfectants like soaps, anti-bacterial liquids, dettol etc which all attract duty standard rate of 18% under the GST regime. The GST rates on various items are decided by the GST Council where the Central Government and all the state governments together deliberate and take decisions.

It is further clarified that inputs for manufacture of hand sanitizers are chemicals packing material, input services, which also attract a GST rate of 18%. Reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation's policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.

अल्कोहल आधारित हैंड सैनिटाइज़र पर जीएसटी दर के मुद्दे पर स्पष्टीकरण

मीडिया के कुछ भागों में अल्कोहल आधारित हैंड सैनिटाइज़र पर जीएसटी दर के मुद्दे पर रिपोर्ट आई है।

ऐसा कहा गया है कि हैंड सेनिटाइज़र पर 18% की दर से जीएसटी लिया जा रहा है। सैनिटाइज़र साबुन, एंटी–बैक्टीरियल तरल, डेटॉल आदि जैसे कीटाणुनाशक हैं जिन पर जीएसटी व्यवस्था के तहत 18 प्रतिशत की मानक दर लगती है। विभिन्न वस्तुओं पर जीएसटी की दरें जीएसटी परिषद द्वारा तय की जाती हैं जहां केंद्र सरकार और सभी राज्य सरकारें एक साथ विचार–विमर्श करती हैं और निर्णय लेती हैं।

यह आगे स्पष्ट किया जाता है कि हैंड सैनिटाइज़र के निर्माण में लगने वाली सामान में रसायन पैकिंग सामग्री,सामग्री (इनपुट) सेवाएं हैं जिन पर 18 प्रतिशत की जीएसटी दर लगती है। सैनिटाइज़र और इसी तरह की अन्य वस्तुओं पर जीएसटी की दर को कम करने से उल्टे शुल्क ढांचे (इनवर्टेड ड्यूटी स्ट्रक्चर) को बढ़ावा मिलेगा और इससे घरेलू निर्माताओं के साथ–साथ आयातक भी नुकसान की स्थिति में आ जाएंगे। कम जीएसटी दरों से आयात सस्ती हो जाती हैं। यह आत्म–निर्भर भारत की राष्ट्रीय नीति के खिलाफ है। यदि घरेलू विनिर्माण को उल्टे शुल्क ढांचे (इनवर्टेड ड्यूटी स्ट्रक्चर) के कारण नुकसान होता है तो उपभोक्ता भी कम जीएसटी दर से लाभान्वित नहीं होंगे।

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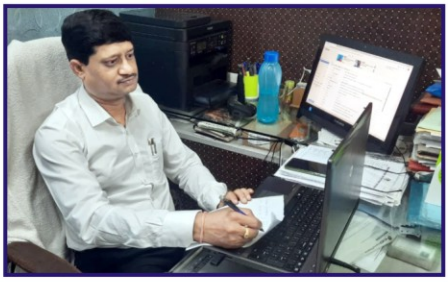
Shri Mukul Sharma, Sr. Tax Consultant, Bhopal birthday celebrated at L.K. Maheshwari & Co. with great fanfare. With active participation of CA. B.S. Lalwani, CA. S. Krishnan, CA. Sanjeev Chanodiya, CA. Amit Chitwar, Anil Patwa, Abrahm Thampi, Ravindra Choudhary etc.

टैक्स प्रैक्टिशनर्स एसोसिएशन, ग्वालियर द्वारा वेबिनार आयोजित

एसोसिएशन के तत्वाधान में GST पर वेबिनार का आयोजन किया गया इस वेबिनार में करीब 500 लोगों ने हिस्सा लिया जिसके मुख्य विषय GST में हुए संशोधनों पर चर्चा एवं धारा 17(5) के अंतर्गत ITC BLOCK CREDIT मुख्य रूप से थे इस वेबिनार को मेरठ (उत्तरप्रदेश) के GST विशेषज्ञ श्री रजत गुरनानी द्वारा संबोधित किया गया। इस वेबिनार में रजत गुरनानीजी ने GST के OPTO TAX SOFTWARE के बारे में भी बताया कि कैसे ये SOFTWARE कर सलाहकारों, सीए. एवं व्यापारियों को GST में मदद करेगा। साथ ही उनके द्वारा कहा गया कि ये SOFTWARE अभी वेबिनार में उपस्थित होने वाले सदस्यों को बिना किसी चार्ज के फ्री में उपलब्ध कराया जायेगा। इस SOFTWARE को समझाने में रजत गुरनानी जी के सहयोगी श्री दिनेश चंद्रा की अहम् भूमिका रही।

वेबिनार का संचालन सचिव अनिल अग्रवाल द्वारा किया गया इस वेबिनार में ग्वालियर के कर सलाहकार एवं सी.ए. के साथ–साथ गुना, मुरैना, शिवपुरी, भिंड, श्योपुर, अशोकनगर एवं म.प्र. के विभिन्न शहरों के कर सलाहकार एवं सी.ए उपस्थित रहे। उपस्थित रहने वालों में मुख्यत श्री जे.सी. गोयल, अश्विन लखोटिया, मनीष त्रिपाठी, विद्या भूषण त्यागी, हेमंत सिरसट, दिलीप शिवहरे, मोनिका गर्ग, अंशुल जैन एवं नीलेश कुशवाह प्रमुख रूप से उपस्थित थे। अंत में आभार अनिल अग्रवाल ने माना।



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Mobile : 898993-5075, 93295-84011 **E-mail :** taxlawdecisions@gmail.com

Editor - Nilesh Gangrade