

GST

Assessment, Demand & Recovery

CA. Naveen Garg

2023 Edition

With

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THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CHAPTER XII

ASSESSMENT

59. Self assessment. - Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

60. Provisional assessment. - (1) Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment

(5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Rule 98. Provisional Assessment.- (1) Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in FORM GST ASMT – 03, and may appear in person before the said officer if he so desires.

(3) The proper officer shall issue an order in FORM GST ASMT-04 allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty five per cent. of the amount covered under the bond.

(4) The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation.- For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

(5) The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

(6) The applicant may file an application in FORM GST ASMT- 08 for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).

(7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT –09 within a period of seven working days from the date of the receipt of the application under sub-rule (6).

Form GST ASMT - 01
[See rule 98(1)]
Application for Provisional Assessment under section 60

1. GSTIN	
2. Name	
3. Address	

4. Details of Commodity / Service for which tax rate / valuation is to be determined								
Sr. No.	HSN	Name of commodity /service	Tax rate				Valuation	Average monthly turnover of the commodity / service
			Central tax	State / UT tax	Integrated tax	Cesses		
1	2	3	4	5	6	7	8	9
5. Reason for seeking provisional assessment								
6. Documents filed								

7. Verification-

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

Signature of Authorised
 Signatory
 Name
 Designation / Status -----
 Date -----

**Bond for provisional assessment
[Rule 98(3) & 98(4)]**

I/We.....of.....,hereinafter called "obligor(s)", am/are held and firmly bound to the President of India (hereinafter called "the President"/ the Governor of(State) (hereinafter called the "Governor") in the sum of.....rupees to be paid to the President/ Governor for which payment will and truly to be made. I/We jointly and severally bind myself/ourselves and my/our respective heirs/ executors/ administrators/ legal representatives/successors and assigns by these presents; Dated this.....day of.....;

WHEREAS final assessment of Integrated tax/ central tax/ State tax / Union territory tax on (name of goods/services or both-HSN:.....) supplied by the above bounded obligor from time to time could not be made for want of full information with regard to the value or rate of tax applicable thereto;

and whereas the obligor desires that the provisional assessment in accordance with the provisions of Section 60 be made;

AND WHEREAS the Commissioner has required the obligor to furnish bank guarantee for an amount of rupees endorsed in favour of the President/ Governor and whereas the obligor has furnished such guarantee by depositing with the Commissioner the bank guarantee as aforementioned; The condition of this bond is that the obligor and his representative observe all the provisions of the Act in respect of provisional assessment under section 60;

And if all dues of Integrated tax/ Central tax/ State tax/ Union territory tax or other lawful charges, which shall be demandable after final assessment, are duly paid to the Government along with interest, if any, within thirty days of the date of demand thereof being made in writing by the said Officer, this obligation shall be void;

OTHERWISE and on breach or failure in the performance of any part of this condition, the same shall be in full force and virtue:

AND the President/ Governor shall, at his option, be competent to make good all the loss and damages from the amount of bank guarantee or by endorsing his rights under the above-written bond or both;

I/We further declare that this bond is given under the orders of the Central Government/ State Government for the performance of an act in which the public are interested;

IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the obligor(s).

Signature(s) of obligor(s). Date :

Place :

Witnesses

(1) Name and Address

Occupation

(2) Name and Address

Occupation

Date Place

Witnesses

(1) Name and Address

Occupation

(2) Name and Address

Occupation

Accepted by me this.....day of (month)..... (year)
of (Designation) for and on behalf of the President of India./ Governor of (state)".

Form GST ASMT - 02**[See rule 98(2)]**

Reference No.:

Date:

To

_____ GSTIN

-----Name

_____ (Address)

Application Reference No. (ARN)

Dated

Notice for Seeking Additional Information / Clarification / Documents for provisional assessment

Please refer to your application referred to above. While examining your request for provisional assessment, it has been found that the following information/documents are required for processing the same:

<< text >>

You are, therefore, requested to provide the information /documents within a period of << 15 days>> from the date of service of this notice to enable this office to take a decision in the matter. Please note that in case no information is received by the stipulated date your application is liable to be rejected without any further reference to you.

You are requested to appear before the undersigned for personal hearing on << Date - -- Time ---Venue --->>.

Signature Name Designation

Form GST ASMT – 03
[See rule 98(2)]
Reply to the notice seeking additional information

1. GSTIN		
2. Name		
3. Details of notice vide which additional information sought	Notice No.	Notice date
4. Reply		
5. Documents filed		

6. Verification-

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

Signature of Authorised Signatory

Name
Designation / Status
Date

Form GST ASMT – 04*[See rule 98(3)]*

Reference No.:

Date

To

GSTIN -

Name -

Address -

Application Reference No. (ARN)

Dated

Order of Provisional Assessment

This has reference to your application mentioned above and reply dated-----, furnishing information/documents in support of your request for provisional assessment. Upon examination of your application and the reply, the provisional assessment is allowed as under:

<< text >>

The provisional assessment is allowed subject to furnishing of security amounting to Rs.-----
 ----- (in words) in the form of ----- (mode) and bond in the prescribed format by ----
 ----- (date).

Please note that if the bond and security are not furnished within the stipulated date, the provisional assessment order will be treated as null and void as if no such order has been issued.

Signature

Name

Designation

Form GST ASMT - 05
[See rule 98(4)]
Furnishing of Security

1. GSTIN					
2. Name					
3. Order vide which security is prescribed		Order No.	Order date		
4. Details of the security furnished					
Sr. No.	Mode	Reference no. / Debit entry no. (for cash payment)	Date	Amount	Name of Bank
1	2	3	4	5	6

Note – Hard copy of the bank guarantee and bond shall be submitted on or before the due date mentioned in the order.

5. Declaration -

- (i) The above-mentioned bank guarantee is submitted to secure the differential tax on the supply of goods and/or services in respect of which I/we have been allowed to pay taxes on provisional basis.
- (ii) I undertake to renew the bank guarantee well before its expiry. In case I/We fail to do so the department will be at liberty to get the payment from the bank against the bank guarantee.
- (iii) The department will be at liberty to invoke the bank guarantee provided by us to cover the provisional assessment in case we fail to furnish the required documents/ information to facilitate finalization of provisional assessment.

Signature of Authorised Signatory

Name
 Designation / Status -----
 Date -----

Form GST ASMT - 06*[See rule 98(5)]*

Reference No.:

Date:

To

GSTIN -

Name -

Address -

Application Reference No. (ARN)

Date

Provisional Assessment order no. -

Date ----

Notice for seeking additional information / clarification / documents for final assessment

Please refer to your application and provisional assessment order referred to above. The following information / documents are required for finalization of provisional assessment:

<< text >>

You are, therefore, requested to provide the information /documents within a period of << 15 days>> from the date of receipt of this notice to enable this office to take a decision in the matter. Please note that in case no information is received by the stipulated date your application is liable to be rejected without making any further reference to you.

☐

You are requested to appear before the undersigned for personal hearing on << Date -
-- Time ---Venue --->>.

Signature

Name

Designation

Form GST ASMT – 07
[See rule 98(5)]

Reference No.:

Date

To

GSTIN
 Name
 Address

Provisional Assessment order No.

dated

Final Assessment Order

Preamble - << Standard >>

In continuation of the provisional assessment order referred to above and on the basis of information available / documents furnished, the final assessment order is issued as under:

Brief facts –

Submissions by the applicant -

Discussion and finding -

Conclusion and order -

The security furnished for the purpose can be withdrawn after compliance with the order by filing an application.

Signature
 Name

Designation

Form GST ASMT - 08*[See rule 98(6)]***Application for Withdrawal of Security**

1. GSTIN					
2. Name					
3. Details vide which security furnished			ARN	Date	
4. Details of the security to be withdrawn					
Sr. No.	Mode	Reference no. / Debit entry no. (for cash payment)	Date	Amount	Name of Bank
1	2	3	4	5	6

5. Verification-

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

Signature of Authorised Signatory

Name

Designation / Status -

Date -

Form GST ASMT – 09
[See rule 98(7)]

Reference No.:

Date

To

_____ GSTIN
 ----- Name
 _____ Address

Application Reference No.

dated

Order for release of security or rejecting the application

This has reference to your application mentioned above regarding release of security amounting to Rs. ----- [----- Rupees (in words)]. Your application has been examined and the same is found to be in order. The aforesaid security is hereby released. **Or**

Your application referred to above regarding release of security was examined but the same was not found to be in order for the following reasons:

<< text >>

Therefore, the application for release of security is rejected.

Signature
 Name
 Designation
 Date

61. Scrutiny of returns.- (1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Rule 99. Scrutiny of returns.- (1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

Form GST ASMT - 10*[See rule 99(1)]*

Reference No.:

Date:

To _____

GSTIN:

Name :

Address :

Tax period -

F.Y. -

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

<< text >>

You are hereby directed to explain the reasons for the aforesaid discrepancies by -----
- (date). If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Signature

Name

Designation

Form GST ASMT - 11*[See rule 99(2)]***Reply to the notice issued under section 61 intimating discrepancies in the return**

1. GSTIN		
2. Name		
3. Details of the notice	Reference No.	Date
4. Tax Period		
5. Reply to the discrepancies		
Sr. No.	Discrepancy	Reply

6. Amount admitted and paid, if any -

Act	Tax	Interest	Others	Total

7. Verification-

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

Signature of Authorised Signatory

Name

Designation / Status -----

Date –

Form GST ASMT-12
[See rule 99(3)]

Reference No.:

Date:

To

GSTIN
Name
Address

Tax period -
ARN -

F.Y. -
Date -

Order of acceptance of reply against the notice issued under section 61

This has reference to your reply dated ----- in response to the notice issued vide reference no. ----- dated --- . Your reply has been found to be satisfactory and no further action is required to be taken in the matter.

Signature
Name
Designation

2021-TIOL-1293-HC- ORISSA-GST IN THE HIGH COURT OF ORISSA-CUTTACK

Writ Petition (Civil) No.14924 of 2020 M/s HARISH CHANDRA MAJHI

Dated: June 07, 2021

GST - Office Memorandum dated 10th December, 2018 of the Finance Department prescribing guidelines for the implementation of GST in works contract in post-GST regime with effect from 1st July, 2017, the Revised Schedule of Rates-2014 (Revised SoR-2014) and the demand notice issued under Section 61 of the Odisha Goods and Services Act (OGST Act) has been questioned in the present writ petition.

Held:

+ Petitioner has not challenged the tax liability on works contract nor any of the provisions of GST Act. [para 21]

+ The contention of the Petitioner that after issuance of the OM dated 10th December 2018, the agreement between the contractor and employer stands amended or modified accordingly, does not hold any merit for the reason that, it is a purely contractual obligation between the parties to either agree or disagree. [para 23]

+ Petitioner contends that the contractor is liable to pay the tax on material component only after deducting labour and service charges from the works component. But the position has changed after the amendment to the relevant provisions of the Finance Act, 1994 with effect from 1st June, 2007 and upon the coming into force of the CGST Act and the OGST Act with effect from 1st July, 2017. [para 26]

+ In the instant case, three components of the tax, i.e., subject of tax, person liable to pay the tax and rate of tax has been clearly defined in the statute. The OM dated 10th December, 2018 only prescribes the manner/procedure of calculation to determine the amount of tax in a particular eventuality in the transitional period of migration to GST Act with effect from 1st July, 2017. Consequently, the Court finds no merit in the Petitioner's challenge to the said OM in law. [para 28]

+ It is necessary to take note of the fact that the Petitioner has filed the present writ petition after receipt of a notice (Annexure-9) of demand of recovery of excess payment. The notice has been issued under Section 61 of the OGST Act and the order passed pursuant thereto is appealable under the OGST Act. Therefore, the Court refrains from expressing any opinion at this stage on the merits of the said notice and leaves open all the contentions of the parties in relation thereto to be urged at the appropriate stage in those proceedings. [para 29]

+ Court finds no merit in the writ petition, and it is accordingly dismissed. [para 30]

Petition dismissed

Case laws cited:

M/s. Gannon Dunkerley and Co. v. State of Rajasthan - [2002-TIOL-103-SC-CT-CB...Para 26](#)

Larsen and Toubro Limited v. State of Karnataka - [2013-TIOL-46-SC-CT-LB...Para 26](#)

Kone Elevator India Private Limited v. State of Tamil Nadu - [2014-TIOL-57-SC-CT-CB...Para 27](#)

Mathuram Agrawal v. State of M.P. (1999) 8 SCC 667...Para 28

2021-TIOL-2079-HC-JHARKHAND-GST IN THE HIGH COURT OF JHARKHAND-RANCHI

WP(T) No. 2444 of 2021 **M/s NKAS SERVICES PVT LTD Dated: October 06, 2021**

writ petition is allowed

GST - Show-cause notice issued by the Deputy Commissioner of State Taxes under Section 74 of the JGST Act, 2017 has been challenged by the petitioner along with the consequential challenge to summary of show-cause notice in FORM DRC-01 - Petitioner assails the Show Cause Notice (SCN) dated 7th June 2021 as being vague; without jurisdiction and that the proceeding initiated without service of FORM GST-ASMT-10 is void ab-initio.

Held: [para 14 to 18]

- + A bare perusal of the impugned show-case notice creates a clear impression that it is a notice issued in a format without even striking out any irrelevant portions and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax.
- + Proceedings under Section 74 have a serious connotation as they allege punitive consequences on account of fraud or any wilful misstatement or suppression of facts employed by the person chargeable with tax. In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend itself.
- + This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy.
- + Apex Court has [in *Oryx Fisheries P. Ltd.* (2010) 13 SCC 427] held that the concept of reasonable opportunity includes various safeguards and one of them is to afford opportunity to the person to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based.
- + It is also true that acts of fraud or suppression are to be specifically pleaded so that it is clear and explicit to the noticee to reply thereto effectively.
- + Impugned notice completely lacks in fulfilling the ingredients of a proper show-cause notice under Section 74 of the Act. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice.
- + Court is not inclined to be drawn into the issue whether the requirement of issuance of Form GST ASMT-10 is a condition precedent for invocation of Section 73 or 74 of the JGST Act for the purposes of deciding the instant case.

+ Court finds that upon perusal of GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague.

+ Impugned notice and the summary of show-cause notice in Form GST DRC-01 are quashed. Respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks.

Petition allowed

Case laws cited:

Oryx Fisheries P. Ltd. Vs. Union of India reported in (2010) 13 SCC 427 (Para 24 to 27) - 2010-VIL-20-SC... Para 5 ...relied upon

CCE Vs. Shital International - [2010-TIOL-83-SC-CX](#)... Para 6 ...referred

Dilip N. Shroff Vs. CIT - [2007-TIOL-96-SC-IT](#)... Para 6 ...referred

Larsen & Toubro Ltd. Vs. CCE - [2007-TIOL-75-SC-CX](#)... Para 6, 16...relied upon

Y. Narayan Chetty Vs. Income Tax Officer - [2002-TIOL-1242-SC-IT-LB](#)... Para 6...referred

CIT Vs. Chhabil Dass Agarwal - [2013-TIOL-40-SC-IT](#)... Para 7, 8...referred

United Bank of India Vs. Satyawati Tandon reported in (2010) 8 SCC 110... Para 8...referred

Bihar Plastic Industries Ltd. Vs. State of Bihar & Ors. reported in (2000) 117 STC 346-1997-VIL-26-PAT... Para 8...referred

Khem Chand versus Union of India [AIR 1958 SC 300]... Para 14...relied upon

CCE Vs. Brindavan Beverages (P) Ltd - [2007-TIOL-118-SC-CX](#)... Para 16...relied upon

62. Assessment of non-filers of returns. - (1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within **[sixty days]** of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

²[Provided that where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of section 50 or to pay late fee under section 47 shall continue.]²

Notes:

1. The words "thirty days" shall be substituted w.e.f. a date to be notified vide Section 148 of the Finance Act, 2023 (Act No. 8 of 2023), dated 31-03-2023.
2. Proviso shall be inserted w.e.f. a date to be notified vide Section 148 of the Finance Act, 2023 (Act No. 8 of 2023), dated 31-03-2023.

***Refer Rule 100 for Section 62

63. Assessment of unregistered persons. - Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

***Refer Rule 100 for Section 63

64. Summary assessment in certain special cases. - (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional

Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Rule 100. for section 62, 63 and 64

Assessment in certain cases.- (1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in FORM GST DRC-01, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in FORM GST DRC-07.

(3) The order of assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16 and a summary of the order shall be uploaded electronically in FORM GST DRC-07.

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in FORM GST ASMT-17.

(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in FORM GST ASMT-18.

Notes:

1. Rule 100 was substituted w.e.f. 01-04-2019 vide Notification No. 16/2019-Central Tax, dated 29-03-2019. Prior to substitution, it was as below:

100. Assessment in certain cases. - (1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13.

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT- 15.

(3) The order of summary assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16.

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the summary assessment order in FORM GST ASMT-17.

(5) The order of withdrawal or, as the case may be, rejection of the application under subsection (2) of section 64 shall be issued in FORM GST ASMT-18.

FORM GST ASMT- 13
[See rule 100(1)]

Reference No.: _____ Date: _____

To _____
 _____ (GSTIN/ID)
 _____ Name
 _____ (Address)

Tax Period : _____ F.Y. : _____ Return Type : _____

Notice Reference No.: _____ Date : _____

Act/ Rules Provisions:

Assessment order under section 62
(Assessment order under Section 62)

Name
 Designation
 Jurisdiction
 Address

Note –

- Only applicable fields may be filled up.
- Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.
- Place of Supply (POS) details shall be required only if demand is created under IGST Act.

Notes:

- Form GST ASMT-13 was substituted with effect from 1st April, 2019 vide Notification No. 16/2019-Central Tax, dated 29-03-2019.

Preamble - << standard >>

The notice referred to above was issued to you under section 46 of the Act for failure to furnish the return for the said tax period. From the records available with the department, it has been noticed that you have not furnished the said return till date.

Therefore, on the basis of information available with the department, the amount assessed and payable by you is as under:

Introduction :
 Submissions, if any :
 Discussions and Findings :
 Conclusion :

Amount assessed and payable (Details at Annexure):

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Tax period	Ac t	POS (Place of supply)	Tax	Interes t	Penalt y	Other s	Tota l
1	2	3	4	5	6	7	8	9	10	11
Total										

Please note that interest has been calculated up to the date of passing the order. While making payment, interest for the period between the date of order and the date of payment shall also be worked out and paid along with the dues stated in the order.

You are also informed that if you furnish the return within a period of 30 days from the date of service of this order, the order shall be deemed to have been withdrawn; otherwise, proceedings shall be initiated against you, after the aforesaid period, to recover the outstanding dues.

Signature

Form GST ASMT - 14
[See rule 100(2)]

Reference No:

Date:

To _____
 Name
 Address

Tax Period --

F.Y. -----

Show Cause Notice for assessment under section 63

It has come to my notice that you/your company/firm, though liable to be registered under section ----- of the Act, have/has failed to obtain registration and failed to discharge the tax and other liabilities under the said Act as per the details given below:

Brief Facts –

Grounds –

Conclusion -

OR

It has come to my notice that your registration has been cancelled under sub-section (2) of section 29 with effect from ----- ¹[vide Order Reference No. -----] and that you are liable to pay tax for the above mentioned period.

Therefore, you are hereby directed to show cause as to why a tax liability along with interest not be created against you ²[***] and why penalty should not be imposed for violation of the provisions of the Act or the rules made thereunder.

In this connection, you are directed to appear before the undersigned on ----- (date) at ----- (time)

Signature
 Name
 Designation
³[Address]

Notes:

1. Inserted w.e.f. 29-08-2021 vide Notification No. 32/2021-Central Tax, dated 29-08-2021
2. The words "for conducting business without registration despite being liable for registration " were omitted w.e.f. 29-08-2021 vide Notification No. 32/2021-Central Tax, dated 29-08-2021
3. Inserted w.e.f. 29-08-2021 vide Notification No. 32/2021-Central Tax, dated 29-08-2021

FORM GST ASMT - 15
[See rule 100(2)]

Reference No.: _____ Date: _____

To _____

_____ (GSTIN/ID)

_____ Name

_____ (Address)

Tax Period : _____ **F.Y. :** _____

SCN reference no. : _____ Date : _____

Act/ Rules Provisions:

Assessment order under section 63

Preamble - << standard >>

The notice referred to above was issued to you to explain the reasons for continuing to conduct business as an un-registered person, despite being liable to be registered under the

Act.

OR

The notice referred to above was issued to you to explain the reasons as to why you should not pay tax for the period as your registration has been cancelled under sub-section (2) of section 29 with effect from-----

Whereas, no reply was filed by you or your reply was duly considered during proceedings held on ----- date(s).

On the basis of information available with the department / record produced during proceedings, the amount assessed and payable by you is as under:

Introduction :

Submissions, if any :

Conclusion (to drop proceedings or to create demand) :

Amount assessed and payable :

(Amount in Rs.)

Sr. No.	Tax Rate	Turnover	Tax Period	Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From To							
1	2	3	4	5	6	7	8	9	10	11
Total										

Please note that interest has been calculated upto the date of passing the order. While making payment, interest for the period between the date of order and the date of payment shall also be worked out and paid along with the dues stated in the order.

You are hereby directed to make the payment by << date >> failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature
Name
Designation
Jurisdiction
Address

Note –

- Only applicable fields may be filled up.
- Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.
- Place of Supply (POS) details shall be required only if demand is created under IGST Act.

Notes:

- Form GST ASMT-15 was substituted with effect from 1st April, 2019 vide Notification No. 16/2019-Central Tax, dated 29-03-2019.

FORM GST ASMT – 16*[See rule 100(3)]*

Reference No.:

Date:

To

_____ (GSTIN/ID)

_____ Name

_____ (Address)

Tax Period :**F.Y. :****Act/ Rules Provisions:****Assessment order under section 64**

Preamble - << standard >>

It has come to my notice that un-accounted for goods are lying in stock at godown-----
 ---- (address) or in a vehicle stationed at ----- (address & vehicle detail) and you were
 not able to, account for these goods or produce any document showing the detail of the
 goods.

Therefore, I proceed to assess the tax due on such goods as under:

Introduction :

Discussion & finding :

Conclusion :

Amount assessed and payable (details at Annexure) :

(Amount in Rs.)

Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												"

Please note that interest has been calculated upto the date of passing the order. While making payment, interest for the period between the date of order and the date of payment shall also be worked out and paid along with the dues stated in the order.

You are hereby directed to make the payment by << date >> failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature

Name

Designation

Jurisdiction

Address

Note –

Only applicable fields may be filled up.

Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.

Place of Supply (POS) details shall be required only if demand is created under IGST Act.

Notes:

1. Form GST ASMT-16 was substituted with effect from 1st April, 2019 vide Notification No. 16/2019-Central Tax, dated 29-03-2019.

2. Table was substituted w.e.f. 15-10-2020 vide Notification No. 79/2020-Central Tax, dated 15th October, 2020. Prior to substitution was as below:

Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From	To							
1	2	3	4	5	6	7	8	9	10	11	12

Form GST ASMT – 17*[See rule 100(4)]***Application for withdrawal of assessment order issued under section 64**

1. GSTIN /ID		
2. Name		
3. Details of the order	Reference No.	Date of issue of order
4. Tax Period, if any		
5. Grounds for withdrawal		
<p>6. Verification-</p> <p>I _____ hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.</p> <p>Signature of Authorised Signatory</p> <p>Name _____</p> <p>Designation / Status -----</p> <p>Date -</p>		

Form GST ASMT - 18*[See rule 100(5)]*

Reference No.:

Date:

GSTIN/ID

Name

Address

ARN -

Date –

Acceptance or Rejection of application filed under section 64 (2)

The reply furnished by you vide application referred to above has been considered and found to be in order and the assessment order no. ----- dated ----- stands withdrawn.

OR

The reply furnished by you vide application referred above has not been found to be in order for the following reasons:

<<Text box>>

Therefore, the application filed by you for withdrawal of the order is hereby rejected.

Signature

Name

Designation

[See rule 100 (2) & 142(1)(a)]

[See rule 100 (2) & 142(1)(d)]

Reference No: _____ Date: _____

To _____

_____ GSTIN/Temp. ID

----- Name

----- Address

Tax Period ----- F.Y. ----- Act -

Section / sub-section under which SCN is being issued -

SCN Reference No. ---- Date ----

Summary of Show Cause Notice

Brief facts of the case :

Grounds :

Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

Signature

Name

Designation

	Jurisdiction	Address
Note -		
1.	Only applicable fields may be filled up.	
2.	Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.	
3.	Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.	

Notes:

1. Form GST DRC-01 was substituted w.e.f. 01-04-2019 vide Notification No. 16/2019-Central Tax, dated 29-03-2019.
2. Table was substituted w.e.f. 15-10-2020 vide Notification No. 79/2020-Central Tax, dated 15th October, 2020. Prior to substitution, it was as below:

Sr. No.	Tax rate	Turnover	Tax Period		Ac t	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			Fro m	To							
1	2	3	4	5	6	7	8	9	10	11	12
Total 1											

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CHAPTER XIII

AUDIT

65. Audit by tax authorities. - (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.- For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,-

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Rule 101. Audit.- (1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year ¹[or part thereof]¹ or multiples there of.

(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.

(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

Notes:

1. The words "or part thereof" were inserted w.e.f. 31-12-2018 vide Notification No. 74/2018-Central Tax, dated 31-12-2018.

Form GST ADT - 01*[See rule 101(2)]*

Reference No.:

Date:

To,

GSTIN

Name

Address

Period - F.Y.(s) -

Notice for conducting audit

Whereas it has been decided to undertake audit of your books of account and records for the financial year(s) to in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on -----.

And whereas you are required to:-

- (i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
- (ii) furnish such information as may be required and render assistance for timely completion of the audit.

You are hereby directed to attend in person or through an authorised representative on (date) at.....(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.

In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.

Signature ...

Name

Designation

Form GST ADT – 02*[See rule 101(5)]*

Reference No.:

Date:

To,

GSTIN

Name

Address

Audit Report No. dated

Audit Report under section 65(6)

Your books of account and records for the F.Y..... has been examined and this Audit Report is prepared on the basis of information available / documents furnished by you and the findings are as under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature

Name

Designation

66. Special audit. - (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the

said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Rule 102. Special Audit.- (1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

(2) On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

Form GST ADT - 03*[See rule 102(1)]*

Reference No.:

Date:

To,

GSTIN

Name

Address

Tax period - F.Y.(s) -

Communication to the registered person for conduct of special audit under section 66

Whereas the proceedings of scrutiny of return /enquiry/investigation/..... are going on;

And whereas it is felt necessary to get your books of account and records examined and audited by(name), chartered accountant / cost accountant nominated by the Commissioner;

You are hereby directed to get your books of account and records audited by the said chartered accountant / cost accountant.

Signature

Name

Designation

Form GST ADT – 04*[See rule 102(2)]*

Reference No.:

Date:

To,

GSTIN

Name

Address

Information of Findings upon Special Audit

Your books of account and records for the F.Y..... has been examined by -----
 --- (chartered accountant/cost accountant) and this Audit Report is prepared on the basis of
 information available / documents furnished by you and the findings/discrepancies are as
 under:

Short payment of	Integrated tax	Central tax	State /UT tax	Cess
Tax				
Interest				
Any other amount				

[Upload pdf file containing audit observation]

You are directed to discharge your statutory liabilities in this regard as per the provisions of
 the Act and the rules made thereunder, failing which proceedings as deemed fit may be
 initiated against you under the provisions of the Act.

Signature

Name

Designation

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CHAPTER XIV

INSPECTION, SEARCH, SEIZURE AND ARREST

Note: There is no Rule prescribed from section from 67 to 94 and there is no specific form issued.

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 sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted. (2 of 1974.)

(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.

2020-TIOL-1459-HC-AHM-GST IN THE HIGH COURT OF GUJARAT-AHMEDABAD

R/Special Civil Application No. 4043 Of 2020 KARAN TOSHNIWAL

Dated: August 18, 2020

GST - Goods in question came to be seized and detained under Section 67 of the Central Goods and Services Tax Act - Writ applicants have submitted that they are seeking to confine the relief only to the extent of getting the goods released - petitioner points out that the notice issued under Section 130 of the Act is yet to be adjudicated and pray that pending confiscation proceedings, the goods may be ordered to be released as the liability towards tax, penalty and fine has also been determined by the competent authority - Bench drew the attention of the applicants to s.67(6) of the Act, 2017 and suggested that they should prefer an appropriate application under Section 67(6) of the Act for the provisional release of the goods - the applicant agrees to make such application at the earliest and accordingly, the competent authority is directed to look into the same at the earliest and pass an appropriate order on such application within a period of fifteen days from the date of receipt of such application - Writ application disposed of: High Court [para 6, 7]

Application disposed of

2020-TIOL-1376-HC-KERALA-GST IN THE HIGH COURT OF KERALA-ERNAKULAM

WA No.943 of 2020 SURESH KUMAR PP AND MR.ABOOBACKER SIDHIQUE

Dated: August 14, 2020

Appellant Rep by: Sri Mathai M Paikaday(SR.) Sri Sandeep Gopalakrishnan smt Jinnu Sara George shri Zafar Antonio

Appeal Dismissed

GST - Appellants allege that illegal proceedings were taken against them, purportedly under the Central Goods and Services Tax Act, 2017, and their residences and offices were raided, both of them kept under illegal custody and an amount of Rupees One Crore extorted from them; that on the intervention of their Advocate at mid-night, they were released, allege the appellants - Single Judge found that the writ petition is premature and there was no evidence produced by the petitioners to substantiate the contention of harassment perpetrated on them - Single Judge refused exercise of discretion under Article 226 and the reliefs sought for were declined - petitioners are in appeal against this order of the Single Judge - in the meantime, their bank accounts were attached after disposal of the petition by the Single Judge.

Held:

+ Circular Exhibit A6 at its beginning refers to the requirement of DIN, to ensure transparency and accountability - Bench does not think, Exhibit P4 issued to the appellants, which is also an order of seizure of documents, made in the presence of the appellants, to effectuate seizure requires a DIN or even subsequent generation of the same - As far as summons at Annexures A2 and A3, there is proper generation of DIN, which has been verified by the Senior Counsel and the Instructing Counsel: High Court [para 10]

+ The allegations raised of harassment and high-handedness cannot be considered in a petition under Article 226 of the Constitution - An operation carried out by a statutory authority invested with the powers of search, inspection and seizure, by reason only of such activities having been carried out in the residences and offices of any person under investigation for a long time, cannot be labeled as harassment or high-handed - Nor could the inconvenience caused to the person under investigation, especially of remaining in the premises for the entire duration, termed to a detention pursuant to an arrest - A search and seizure operation necessarily brings with it certain discomforts, which are to be endured in the best interest of the person under investigation who witnesses every action of the inspection team - The allegations are also not substantiated which, we perfectly understand, are impossible of substantiation, especially in a petition under Article 226 - Apart from the invalidity urged of the very search, inspection and seizure, we are not considering any of the issues so raised in the writ petition and in the appeal - We do not express any opinion and the appellants, if desirous, could take appropriate proceedings with substantiating material. [para 11]

+ Section 67 is a more onerous procedure which can be initiated only on the satisfaction of an Officer not below the rank of a Joint Commissioner of, suppression of taxable transactions, excess claim of input tax credit, contravention of the provisions of the Act and Rules, keeping of goods and accounts in contravention of the provisions, escapement of tax, secreting of goods or material liable to confiscation or relevant or useful in any proceedings under the Act and any act leading to evasion of tax. Investigation under Section 67 is no routine procedure as is an audit under section 65 - Looking at the various proceedings it cannot be, for a moment, believed that the appellants were taken off guard by the abrupt proceedings taken under Section 67 as they would allege. We do not find any infirmity in the audit and investigation proceeding being continued simultaneously [para 17]

+ When an investigation is in progress and the premises of any person is being searched and seizure effected; again at any time, in the course of the proceedings, the person is enabled payment of tax, interest and penalty at the reduced rate of penalty so as to save himself from a higher penalty. In the course of inspection, often a generation of the prescribed form and deposit in accordance with the Rules may not be possible. This is why Section 87(3) proviso speaks of the restriction for deposit upto ten thousand rupees per challan, in case of over the counter payments being exempted in situations under clauses (a), (b) and (c) of that proviso. An officer above the rank of a Joint Commissioner or one authorized by such officer carrying out the investigation or enforcement activity is so exempted and can deposit any amounts collected, by way of cash, cheque or demand draft, during the investigation or enforcement activity. This does not require generation of the Forms prescribed. The proper officer or the one authorized, hence is enabled to receive cash, cheque or demand draft in the course of an

investigation or enforcement activity from the taxpayer. We do not find any extortion having been effected against the statute and Exhibit P3 specifically indicates that it is a voluntary payment, although it is made under protest. [para 22]

+ We have also found that the issuance of the cheque is voluntary and its receipt by the SIO, is sanctioned by the statute and the rules prescribed there under. Hence, the Department could proceed for encashment of the cheque in accordance with the procedure prescribed. [para 24]

+ Principles of Natural justice before ordering attachment of bank accounts - Said principle does not apply insofar as an attachment made to protect the interest of the revenue. If notice is issued before attachment, then the account holder could as well defeat the purpose, by withdrawing the amounts kept in such accounts. The rule for a hearing does not arise prior to attachment. Whether it arises before seeking disbursement of the amounts remaining in the account, we are not called upon to adjudicate as of now. We leave the matter to be adjudicated before the appropriate authorities or forum. We do not think that the proceedings initiated under Section 67 is improper, illegal or that the actions projected before us were in any manner proceeded with, in an arbitrary or high-handed fashion. [para 27]

68. Inspection of goods in movement. - (1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the **said person shall be liable to produce the documents and devices and also allow the inspection of goods.**

69. Power to arrest. - (1) Where the **Commissioner** has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, **authorise any officer of central tax to arrest such person**

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorised to arrest the person shall inform such

person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973, - **(2 of 1974.)**

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

132. Punishment for certain offences. - (1) ¹[Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences]¹, namely:-

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

²[(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;]²

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax ³[***]³ or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

⁴[(g) omitted]⁴

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

⁴[(j) omitted]⁴

⁴[(k) omitted]⁴

(l) attempts to commit, or abets the commission of any of the offences mentioned in ⁵[clauses (a) to (f) and clauses (h) and (i)]⁵ of this section,

shall be punishable-

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of ⁶[an offence specified in clause (b)],⁶ where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) ⁷[***]⁷, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be noncognizable and bailable. **(2 of 1974.)**

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.- For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Notes:

1. The words "Whoever commits any of the following offences" were substituted w.e.f. 01-01-2021 vide Section 127 of the Finance Act, 2020, dated 27-03-2020 read with Notification No. 92/2020-Central Tax, dated 22-12-2020.

2. Clause (c) was substituted w.e.f. 01-01-2021 vide Section 127 of the Finance Act, 2020, dated 27-03-2020 read with Notification No. 92/2020-Central Tax, dated 22-12-2020. Prior to substitution, it was as below:

(c) avails input tax credit using such invoice or bill referred to in clause (b);

3. The words ", fraudulently avails input tax credit" were omitted w.e.f. 01-01-2021 vide Section 127 of the Finance Act, 2020, dated 27-03-2020 read with Notification No. 92/2020-Central Tax, dated 22-12-2020.

4. Clauses (g), (j) and (k) shall be omitted w.e.f. a date to be notified vide Section 156 of the Finance Act, 2023 (Act No. 8 of 2023), dated 31-03-2023. Prior to omission, they were as below:

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

5. The words, brackets and letters "clauses (a) to (k)" shall be substituted w.e.f. a date to be notified vide Section 156 of the Finance Act, 2023 (Act No. 8 of 2023), dated 31-03-2023.

6. The words "any other offence" shall be substituted w.e.f. a date to be notified vide Section 156 of the Finance Act, 2023 (Act No. 8 of 2023), dated 31-03-2023.

7. The words, brackets and letters "or clause (g) or clause (j)" shall be omitted w.e.f. a date to be notified vide Section 156 of the Finance Act, 2023 (Act No. 8 of 2023), dated 31-03-2023.

2019-TIOL-1021-HC-MAD-GST IN THE HIGH COURT OF MADRAS

Writ Petition No.5501 of 2019 - WMP No.6251 of 2019

M/s JAYACHANDRAN ALLOYS PVT LTD Dated: April 04, 2019

Appeal Allowed

GST - The premises of the assessee-company were subjected to Search proceedings during the relevant period - Such operations carried on over several days, whereupon voluminous amount of documents were seized - Statements of various persons, including the assessee-company's Managing Director, were recorded - During the investigation, the assessee sought

copies of the statements recorded as well as of other material seized - However, the assessee received no response from the Revenue - Hence the present writ petition was filed seeking that directions be issued to the Revenue to provide the material sought for by the assessee - A Miscellaneous Petition was also filed by the assessee seeking that interim injunction be granted, restraining the Revenue from taking coercive steps against the assessee such as arrest u/s 69 of the Act, pending disposal of the writ.

Held - *The GST law subsumes several enactments such as the Central Excise Act, the Finance Act & the State VAT Acts - Thus the interpretation given to the provisions of these statutes would equally govern the functioning of the GST law as well - While the Revenue's interests are paramount & must be protected, the actions of the Revenue draw their power only from a holistic interpretation of the legal provisions - Any excess in this regard vitiates the legitimacy of the exercise - Through the discussions and conclusions rendered in the Finance Act 1994, it is seen that they are equally applicable to the provisions of the CGST Act as well - Section 132 of the Act imposes punishment on an assessee who commits an offence - The term commits clarifies that the act of committal of the offence is to be fixed first before punishment is imposed - The Revenue's allegation is that the assessee contravened provisions of Section 16(2) of the Act by availing excess ITC without movement of goods & existence of bogus transactions - Hence determination of excess credit as per procedure u/s 73 or 74 is prerequisite for recovery thereof - When recovery is made subject to determination in an assessment, the Revenue's argument that punishment for the offence alleged can be imposed even prior to such assessment, is clearly incorrect and amounts to putting the cart before the horse - The exceptions to this rule of assessment are only those cases where the assessee is a habitual offender penalized for violating legal provisions - Only then is the Revenue justified by pre-empting assessment to initiate action u/s 132 - There is no allegation that the assessee is an offender, leave alone a habitual one - Considering the facts & circumstances, the Revenue attempted to intimidate the assessee with the possibility of punishment u/s 132 & such action is contrary to the scheme of the CGST Act - While an assessee's activities being contrary to the Act must be addressed swiftly & effectively, they do not give a warrant to the Revenue to act in excess of such authority vested by the Act - Hence the power to punish is triggered only after establishing that an assessee committed an offence that has to necessarily be post-determination of the demand due from an assessee, that itself has to necessarily follow the process of an assessment: HC (Para 2,3,33,36-40)*

2019-TIOL-1746-HC-AHM-GST IN THE HIGH COURT OF GUJARAT -AT AHMEDABAD

VIMAL YASHWANTGIRI GOSWAMI R/Special Civil Application No.13679 of 2019

Dated: August 7, 2019

Appeal Allowed

GST - *Petitioner praying for issue of a Writ of Mandamus and/or Writ of Prohibition and/or any other appropriate writ, order of direction, directing the respondents not to take any actions against the petitioner being proprietor of the Heugo Metal exercising powers under Section 69 read with Section 132 without following due procedure of law of assessment and*

adjudication of alleged evasion of GST as contemplated under Section 61, Section 73 of under Section 74 of the Central Goods and Service Tax Act, 2017.

Held: Powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection - Prosecution should normally be launched only after the adjudication is completed - To put it in other words, there must be, in the first place, a determination that a person is "liable to a penalty" - Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee - In the two decisions MAKEMYTRIP (INDIA) PVT. LTD. - **2016-TIOL-1957-HC-DEL-ST** as well as M/s. Jayachandran Alloys (P) Ltd. - **2019-TIOL-1021-HC-MAD-GST**, emphasis has been laid on the safeguards as enshrined under the Constitution of India and in particular Article 22 which pertains to arrest and Article 21 which mandates that no person shall be deprived of his life and liberty for the authority of law - Notice be issued to the respondents returnable on 18th September, 2019 - In the meantime, no coercive steps of arrest shall be taken against the writ applicant: High Court [para 3.1, 4.1]

Notice issued

Case laws Cited:

MAKEMYTRIP (INDIA) PVT. LTD. vs. UNION OF INDIA - 2016-TIOL-1957-HC-DEL-ST...Para 2

M/s. Jayachandran Alloys (P) Ltd. vs. The Superintendent of GST and Central Excise and Others in the Writ Petition No.5501 of 2019 - 2019-TIOL-1021-HC-MAD-GST...Para 2

D.K. Basu vs. State of West Bengal - 2002-TIOL-230-SC-MISC...Para 3.1

2020-TIOL-1300-HC-ORISSA-GST IN THE HIGH COURT OF ORISSA-CUTTACK

BLAPL No. 2217 of 2020 AMIT BERIWAL Dated: July 27, 2020

Bail Application Rejected

GST - Petitioner, who is in custody, has filed the instant bail application - Underlying complaint and the prosecution report indicates that a large number of fraudulent business transactions were made using several fictitious firms - Petitioner and proprietors of the alleged fictitious firms, individually and in collusion with each other, are stated to have created several dummy and non-existent entities to avail bogus Input Tax Credit (ITC), for the purpose of defrauding the Revenue - These fake and fraudulent transactions have, among others, alleged caused huge loss to the State exchequer at least to the tune of Rs.122.67 crores.

Held: [para 20 to 28]

+ There are four named accused persons in the present case and two of them are still evading arrest. Given the factual scenario, at this stage, this court is inclined to accept the submission of the Respondent State that if the accused persons are granted bail, the same could also pose difficulties in apprehending the other accused persons. It is brought to the notice of the court

that the authorities have made a prayer before the trial court for issuance of NBW against the absconding co-accused. Further, the flight risk of the petitioner herein cannot be ruled out.

+ There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the touchstone of its own generic facts and individual merits. However, the discretion of the court has to be exercised judiciously sans any element of arbitrariness. Even if the "bail is the rule and jail is the exception" -- the basic bail jurisprudence remains unaltered, but in the instant case, the alleged GST fraud committed by the petitioner is having humongous ramification on the revenue collection by the State. At this backdrop, the possibility of the accused tampering the evidence and/or influencing/intimidating the witnesses also cannot be ruled out.

+ Moreover, the courts cannot lose sight of the adverse impact such activities would have in the economy. It appears that a large number of cases have now emerged in different parts of the country, where such persons, with vested interests, have created a host of unscrupulous and bogus entities. These fake entities are then used for the purpose of indulging in issuances of false and fabricated invoices, without actual movement or supply of goods and services and without payment of any GST to the public exchequer, but for the purpose of claiming ITC, by defrauding the Revenue.

+ Enormity of such devious activities touch the raw nerve of the economic system and strike at the root of the proper and effective functioning of the GST regime, which has been set up with the laudable object of "One Nation, One Tax, One Market", by subsuming various earlier indirect levies such as Central Excise Duty, Service Tax, VAT etc.; expecting that goods and services would be cheaper and beneficial to the common man. One cannot lose sight of the fact that GST regime is relatively new and is still evolving. Unfortunately, the attempts to dampen the spirit of its proper implementation are already assuming huge proportions and need to be curbed with an iron fist so that the contours of fiscal compass will be extended to the advantage of the people.

+ Court is well aware of the complications thrown in by the new GST regime and the problems posed in its implementation. It seems a countrywide cartel specializing in defrauding the GST system is operating to bring the economy to its knees. These complications created by the unscrupulous fraudsters, one would fear, could lead to arrest of innocent businessmen and traders. However, a reading of the GST code would make it abundantly clear that it is rooted with several checks and balances to ensure that the initiation of prosecution or an arrest is to be made only after following due and elaborate process.

+ One cannot lose sight of the fact that the Governments are making their best efforts to enhance the ease of doing business, to reduce the burden on the tax payers, to make the procedures simpler with the use of new technologies. The Government officials have also been making all efforts to ensure efficient collection of tax, so that the burden on the genuine tax payers can be reduced. All these efforts cannot be permitted to be sabotaged by such criminals who prey on the public exchequer. The text book notion of tax collection needs to be overhauled by conjuring with the emerging technologies so as to get rid of practical hiccups.

+ It may be apposite to note that in the year 2018-19, 1620 cases involving a sum of Rs.11251.23 crores, were registered with respect to fake invoice(s) involving fraudulent Input

Tax Credit in GST by the Central GST alone (Answer by the Minister of Finance to the Unstarred Question No.1385 (on 1.07.2019) in the Lok Sabha). Further, during the year 2019-20 (till 25.06.2019), 535 cases involving a sum of Rs.2565.40 crores were registered. These numbers are quite alarming and effective measures, in terms of ensuring increased bandwidth of efficiency of the tax officials, have to be devised to streamline the system, to ensure that the ITC is not misused.

+ Taking into account a holistic view of the facts and circumstances in the instant case, Court is not inclined to release the accused Petitioner on bail at this stage. Accordingly, the bail petition filed on behalf of the accused/petitioner stands rejected. It is, however, clarified that the above observations shall not come in the way of a fair trial before the Ld. Trial Court and it will proceed to decide the matter on its own merits, uninfluenced by any of the observation made hereinabove.

70. Power to summon persons to give evidence and produce documents. - (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908. **(5 of 1908)**

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code. **(45 of 1860.)**

71. Access to business premises. - (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66-

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013; **(18 of 2013.)**

v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and **(43 of 1961.)**

(vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

72. Officers to assist proper officers. - (1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CHAPTER XV

DEMANDS AND RECOVERY

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

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax

periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

2021-TIOL-2370-HC-AHM-GST IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/Special Civil Application No. 7468 Of 2021 M/s HARDIK TEXTILES

Dated: December 22, 2021

GST - The petitioner is seeking to approach this Court being aggrieved by fact that the eligible refund amount which was credited in wrong account due to inadvertent mistake of petitioner's consultant should not penalize the petitioner - The bank details are to be entered under RFD-05 - The petitioner also did not raise grievance immediately and made an application with reference to said issue after nearly three months - The amount which had gone to the wrong account of M/s. Meet Textiles had been refunded by way of DRC-03 under Section 73(5) by way of voluntary payment - It emerges that second time when the application had been made by petitioner, rejection has come as there is a technical glitch - Even by specifying that the refund is being claimed under head "others" system has not permitted the amount to be given by way of refund to petitioner - Undoubtedly, it was a mistake which was committed by consultant of petitioner and therefore, the third party namely M/s. Meet Textiles had been benefited where the amount had been deposited - The amount once again has gone back to the authority by way of DRC-03, hence, the only way out now for availing legitimate claim of petitioner is by depositing the amount in his account which he has mentioned - Let the refund amount be accordingly credited in bank account of petitioner, as it is not the fault of petitioner to be deprived of this amount of refund and the stand on the part of both the counsels of respondents also being fair, according to them, this is a technical glitch as the system itself does not permit it to happen, therefore, court is constrained to interfere - The process to be completed in four weeks period, lest it shall **fetch interest at the rate of 12% from date of second application:** HC

Petition disposed of

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

~~(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.~~

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.-For the purposes of section 73 and this section,-

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under ¹[sections 122 and 125]¹ are deemed to be concluded.

Explanation 2.- For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Notes:

1. The words and figures ♦sections 122, 125, 129 and 130♦ were substituted w.e.f. 01-01-2022 vide Section 113 of the Finance Act, 2021 (13 of 2021) read with Notification No. 39/2021-Central Tax, dated 21-12-2021.

2022-TIOL-271-HC-JHARKHAND-GST. IN THE HIGH COURT OF JHARKHAND-RANCHI

WP (T) No. 2659 of 2021

M/s NKAS SERVICES PVT LTD -KOLKATA Dated: February 08/09, 2022

Writ petition allowed

GST - *The present petition was filed to challenge SCN issued u/s 73 of the Jharkhand Goods and Services Tax (JGST) Act, 2017 and the summary of the show cause notice in Form DRC-01 also issued by the Revenue under Rule 142(1)(a) of the JGST Rules, 2017 since the previous show cause notice dated 07.06.2021 issued under Section 73 of the JGST Act has been withdrawn.*

Held - *The show cause notice does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice: HC*

+ A perusal of the impugned show cause notice at Annexure-1 creates a clear impression that it is a notice issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner. The summary of the show cause notice under DRC-01 indicates that as per the statistics received from the headquarter/ government treasury, it has come to the notice of the department that the petitioner has received a sum as payment from the government treasury against works contracts services completed / partly completed during the above mentioned period April 2020 to March 2021 whereas the liability reflected by him through filed returns is less than the above mentioned sum as per GSTR-3B. As such, he was not reflecting the total payment received and consequent total liability accrued in the filed returns just to evade payment of due tax to the government. It needs to be mentioned here that even the summary of the show cause notice does not disclose the information as received from the headquarter / government treasury as to against which works contract service completed or partly completed the petitioner has not disclosed its liability in the returns filed under GSTR-3B. We have held in the case of the same petitioner in W.P.(T) No. 2444 of 2021 related to a show cause notice under Section 74 of the JGST Act that a summary of show cause notice as issued in Form GST DRC-01 in terms of rule 142(1) of the JGST Rule, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of proper show cause notice. (Para 11);

+ As held there in, the requirement of principles of natural justice can only be met if (i) a show cause notice contains the materials / grounds, which according to the Department necessitate an action; (ii) the particular penalty/ action which is proposed to be taken. Even if it is not specifically mentioned in the show cause notice, but it can be clearly and safely discerned from the reading thereof that would be sufficient to meet this requirement;

+ We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner. As noted herein above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section 75(7) of the JGST Act. (Para 14);

Case laws cited:

Gorkha Security Servies vs Government (NCT of Delhi) reported in (2014) 9 SCC 105 ... Para 6

Metal Forging & another vs Union of India & others reported in 2003(2) SCC 36... Para 6

Commissioner of Central Excise, Chandigarh vs Shital International - 2010-TIOL-83-SC-CX... Para 6

Union of India vs Bharti Airtel Ltd. - 2021-TIOL-251-SC-GST ... Para 7

Khem Chand vs Union of India [AIR 1958 SC 300] ... Para 15

Oryx Fisheries P. Ltd. vs Union of India reported in (2010) 13 SCC 427... Para 15

Magadh Sugar & Energy Ltd. vs State of Bihar & others reported in 2021 SCC Online SC 801... Para 16

2022-TIOL-288-HC-JHARKHAND-GST IN THE HIGH COURT OF JHARKHAND AT RANCHI

WP(T)No. 1404 of 2020 R K TRANSPORT PVT LTD. Dated: February 16, 2022

Petition allowed

GST - Interest amounting to Rs.83,96,873/- on the alleged ground of delay in furnishing GSTR-3B return for the period July 2017 to December 2019 has been levied by the impugned letter – Petitioner challenges this letter on the ground that without any adjudication proceeding under Section 73 or 74 of the CGST Act which has not been done admittedly in this case,

liability cannot be crystallised; that no rules have been prescribed in terms of Section 50 Sub-Section (2) for computation of the interest under Sub-Section (1).

Held: Issue at hand is whether interest liability under Section 50 of the CGST Act can be determined without initiating any adjudication proceeding either under Section 73 or 74 of the CGST Act in the event the assessee disputes its liability towards interest - It is not in dispute that no such proceeding has been initiated in the case of the petitioner, though the liability has been disputed by the petitioner by way of a reply to the notice of recovery under Section 79 of the **CGST Act, 2017** - Issue, as on date, stands answered by the decision rendered by the Coordinate Bench of this Court in the case of **Mahadeo Construction Company - 2020-TIOL-850-HC-JHARKHAND-GST** and wherein while quashing the impugned order and the garnishee notices, liberty was left to the respondent authorities to initiate appropriate adjudication proceedings either under Section 73 or 74 of the CGST Act against the petitioner-assessee and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner - Earlier, by an order dated 8th May 2020 a Coordinate Bench of this Court had been pleased to grant interim protection from any coercive steps against the petitioner pursuant to the impugned demand - Impugned demand contained in letters dated 28th February 2020 / 2nd March 2020 is quashed and liberty is left to the respondent authorities to initiate appropriate adjudication proceedings and determine the liability of interest - Petition allowed: High Court [para 9, 12, 13, 14]

Case laws cited:

Mahadeo Construction Company Vrs . Union of India - 2020-TIOL-850-HC-JHARKHAND-GST ... Para 3, 10, 11, 13...followed

M/s L.C. Infra Projects Pvt. Ltd. Vrs . Union of India - 2020-TIOL-827-HC-KAR-GST ... Para 7...referred

2018-TIOL-3108-HC-AP-GST- IN THE HIGH COURT OF TELANGANA-AT HYDERABAD

Writ Petition No. 33777 of 2018 D RAMA KOTIAH AND COMPANY Dated: 26-09-2018

Writ petition partly allowed

GST - The petitioner filed the present petition to challenge an order passed by the Revenue authorities, directing the petitioner to pay tax and interest u/s 50 of the APGST Act and penalty of 15% of the duty demanded, however, without having passed an assessment order u/s 61 of the APGST Act - The petitioner also claimed that no SCN was issued and that the proceedings against the petitioner were illegal, arbitrary and lacking in jurisdiction - The petitioner would face recovery proceedings u/s 79 of the Act, if such duty and interest and penalty were not paid.

Held - While an SCN is required to be issued under Section 74(1) of the APGST Act for recovery of penalty equivalent to the tax specified in the notice, Section 74(5) of the said Act enables the dealer to pay 15% penalty on his own accord before receipt of a notice under Section 74(1)

of the Act - Section 74(5) of the APGST Act enables the dealer to avoid payment of penalty beyond 15%, if penalty at 15% is paid before receipt of a SCN - That does not entail that even without a SCN being issued, the dealer is obligated to pay penalty at 15% under Section 74(5) of the Act - Section 74(5) of the Act merely enables the petitioner to pay penalty at 15% on his own accord, in which event the assessing authority cannot thereafter issue a notice seeking recovery of the balance 85% penalty - It is for the assessee to decide whether penalty at 15% should be paid or not - While the petitioner would run the risk of being subjected to penalty at 100% of the tax specified, the power conferred on the assessing authority to recover penalty, equivalent to the tax specified in the notice, is only after a notice is issued calling upon the petitioner to show cause why penalty should not be imposed on him - Hence the order to the extent of imposing penalty, is set aside: HC

2022-TIOL-271-HC-JHARKHAND-GST IN THE HIGH COURT OF JHARKHAND-AT RANCHI

WP (T) No. 2659 of 2021 M/s NKAS SERVICES PVT LTD Dated: February 08/09, 2022

Writ petition allowed

The writ petition is allowed in the manner and to the extent indicated hereinabove.

GST - The present petition was filed to challenge SCN issued u/s 73 of the Jharkhand Goods and Services Tax (JGST) Act, 2017 and the summary of the show cause notice in Form DRC-01 also issued by the Revenue under Rule 142(1)(a) of the JGST Rules, 2017 since the previous show cause notice dated 07.06.2021 issued under Section 73 of the JGST Act has been withdrawn.

Held - The show cause notice does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice: HC

+ A perusal of the impugned show cause notice at Annexure-1 creates a clear impression that it is a notice issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner. The summary of the show cause notice under DRC-01 indicates that as per the statistics received from the headquarter/ government treasury, it has come to the notice of the department that the petitioner has received a sum as payment from the government treasury against works contracts services completed / partly completed during the above mentioned period April 2020 to March 2021 whereas the liability reflected by him through filed returns is less than the above mentioned sum as per GSTR-3B. As such, he was not reflecting the total payment received and consequent total liability accrued in the filed returns just to evade payment of due tax to the government. It needs to be mentioned here that even the summary of the show cause notice does not disclose the information as received from the headquarter / government treasury as to against which works contract service completed or partly completed the petitioner has not disclosed its liability in the returns filed under GSTR-3B. We have held in the case of the same petitioner in W.P.(T) No. 2444 of 2021 related to a show cause notice under Section 74 of the JGST Act that a summary of show cause notice as issued in Form GST DRC-01 in terms of rule 142(1) of the JGST

Rule, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of proper show cause notice. (Para 11);

+ As held there in, the requirement of principles of natural justice can only be met if (i) a show cause notice contains the materials / grounds, which according to the Department necessitate an action; (ii) the particular penalty/ action which is proposed to be taken. Even if it is not specifically mentioned in the show cause notice, but it can be clearly and safely discerned from the reading thereof that would be sufficient to meet this requirement;

+ We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner. As noted herein above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section 75(7) of the JGST Act. (Para 14);

Case laws cited:

Gorkha Security Servies vs Government (NCT of Delhi) reported in (2014) 9 SCC 105 ... Para 6

Metal Forging & another vs Union of India & others reported in 2003(2) SCC 36... Para 6

Commissioner of Central Excise, Chandigarh vs Shital International - 2010-TIOL-83-SC-CX... Para 6

Union of India vs Bharti Airtel Ltd. - 2021-TIOL-251-SC-GST ... Para 7

Khem Chand vs Union of India [AIR 1958 SC 300] ... Para 15

Oryx Fisheries P. Ltd. vs Union of India reported in (2010) 13 SCC 427... Para 15

Magadh Sugar & Energy Ltd. vs State of Bihar & others reported in 2021 SCC Online SC 801... Para 16

JUDGEMENT

2020-TIOL-1382-HC-PATNA-GST IN THE HIGH COURT OF PATNA

Civil Writ Jurisdiction Case No.7144 of 2020SHIV KISHOR CONSTRUCTION PVT LTD

Dated: July 13, 2020

Appeal Allowed

GST - Impugned order dated 2nd of March, 2020 is passed by the Deputy Commissioner of State Tax, Patna Central Circle, Bihar, Patna who issued a notice asking the petitioner to show cause by a particular date - However, for unexplained reasons and circumstances, without any prior intimation or knowledge, the matter was preponed and without affording any opportunity of hearing, decided, holding the view of the revenue - The order does entail civil and pecuniary consequences, causing prejudice to the petitioner - On all fours, principles of natural justice stand violated - On this short ground alone, the impugned order dated 02.03.2020 and the consequential DRC-07 order dated 04.03.2020 passed by the Deputy Commissioner of State Tax, Patna Central Circle, Bihar, Patna are quashed and set aside with the matter remanded back to the authority for consideration afresh: High Court

Matter remanded

2022-TIOL-271-HC-JHARKHAND-GST IN THE HIGH COURT OF JHARKHAND-RANCHI

WP (T) No. 2659 of 2021- M/s NKAS SERVICES PVT LTD February 08/09, 2022

GST - The present petition was filed to challenge SCN issued u/s 73 of the Jharkhand Goods and Services Tax (JGST) Act, 2017 and the summary of the show cause notice in Form DRC-01 also issued by the Revenue under Rule 142(1)(a) of the JGST Rules, 2017 since the previous show cause notice dated 07.06.2021 issued under Section 73 of the JGST Act has been withdrawn.

Held - The show cause notice does not **fulfill the ingredients of a proper show cause** notice and amounts to violation of principles of natural justice: HCparadi

75. General provisions relating to determination of tax. - (1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

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

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

¹[Explanation. ♦♦ For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.]¹

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Notes:

1. Inserted w.e.f. 01-01-2022 vide Section 108 of the Finance Act, 2021 (13 of 2021) read with Notification No. 39/2021-Central Tax, dated 21-12-2021.

76. Tax collected but not paid to Government. - (1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

77. Tax wrongfully collected and paid to Central Government or State Government. - (1)

A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

78. Initiation of recovery proceedings. - Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him

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

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall

proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him. **(2 of 1974.)**

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

[Explanation.♦♦For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.]¹

Notes:

1. Explanation was inserted vide Section 24 of the Central Goods and Services Tax (Amendment) Act, 2018 (No. 31/2018), dated 29-08-2018.

2020-TIOL-2002-HC-AP-GST IN THE HIGH COURT OF ANDHRA PRADESH

WP No. 15336 of 2020 SPY AGRO INDUSTRIES LTD Dated: October 20, 2020

Petition Allowed

GST - *Petition filed seeking for issuance of a writ of mandamus declaring the garnishee notice issued by first respondent as illegal, improper and incorrect - Petitioner submits that GST liability could not be cleared in time due to certain unforeseen circumstances but subsequently the same was cleared - case of the petitioner is that they discharged the tax liability of Rs.4,18,42,306/- through DRC-03 and also through GSTR-3B return and intimated the details of payment to 2nd respondent vide letter dated 10.08.2020 - impugned garnishee notice dated 26.08.2020 came to be issued by the first respondent requiring the 4th respondent to pay an amount of Rs.12,14,61,114/- on behalf of the petitioner u/s 79(1)(c)*

of the Act, 2017 - petitioner submits that without giving them an opportunity or notice about imposing penalty, passing an order directing the petitioner to pay Rs.4,27,19,191/- as penalty is illegal, improper and incorrect.

Held: Point which arises for consideration is whether the garnishee notice issued by the first respondent is in tune with the principles of natural justice - For the tax period January 2020 to June 2020, the Office of the Superintendent passed an assessment order in form ASMT-14 dated 13.08.2020 - An appeal against such order lies before the Commissioner of Central Tax (Appeals) on payment of amount and the period for filing the appeal shall be within three months from the date of communication of the order and the amount to be paid for admitting the appeal would be 10% of the remaining amount of tax in dispute arising from the said order - since the assessment order came to be passed on 13.08.2020, the petitioner had three months time for preferring the appeal but without waiting for the said period the impugned garnishee notice came to be issued on 26.08.2020 - insofar as the recovery for the period January 2019 to December 2019 is concerned, notice intimating discrepancy in the return came to be issued in form GSTR ASMT-10 on 28.07.2020 - Even before waiting till 27.08.2020, the time given to the petitioner to explain the reasons for discrepancies contained in the return, the garnishee notice for the said period came to be issued on 26.08.2020 to the bank in terms of s.79(1)(c) of the Act, 2017 - Inasmuch recovery proceedings were initiated even before the period given for filing reply is over, the same is in contravention of the principles of natural justice - Writ petition is allowed by setting aside the garnishee notice dated 26.08.2020 issued by the first respondent, however, leaving it open to the authorities to proceed in accordance with law: High Court [para 15, 16, 17, 20]

Petition allowed

2020-TIOL-1803-HC-AHM-GST IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/Special Civil Application No. 13679 of 2019 VIMAL YASHWANTGIRI GOSWAMI

Dated: October 20, 2020

Petition Rejected

Respondent Rep by: Mr Kamal Trivedi, Adv. General, Mr Chintan Dave, Assistant Government Pleader, Mr Devang Vyas, Additional Solicitor General of India, Mr Nirzar Desai & Mr Ankit Shah

GST - The pivotal question which falls for consideration is whether the power to arrest as provided under section 69 read with section 132 of the CGST Act can be invoked by the Commissioner only upon completion of the adjudication process of finalising the assessment and determination of liability as per the provisions of the CGST Act?

Held:

+ Power to arrest as provided under section 69 of the CGST Act can be invoked if the Commissioner has reason to believe that the person has committed offences as provided under

the clauses (a), (b), (c) or (d) of sub-section (1) of section 132 of the CGST Act, which are punishable under the clause (i) or clause (ii) of sub-section (1) or sub-section (2) of the section 132 of the CGST Act without there being any adjudication for the assessment as provided under the provisions of the Chapter XII of the CGST Act. The reference to section 132 in section 69 of the CGST Act is only for the purpose of indicating the nature of the offences on the basis of the same the reasonable belief is formed and recorded by the Commissioner for the purpose of passing an order of arrest.

+ The Commissioner is required to record reasons of belief to arrest a person as per sub-section (1) of Section 69 of the CGST Act. However sub-section (2) and sub-section (3) of section 69 with reference to the provisions of sub-section (4) and sub-section (5) of section 132 of the CGST Act, differentiates between the cognizable and non-cognizable offences. The sub-section (2) of section 69 provides for informing such a person about grounds of arrest if he is alleged to have committed a cognizable and non bailable offence and sub-section (3) authorises the Deputy Commissioner or Assistant Commissioner subject to the provisions of the Code for releasing the arrested person on bail if he is alleged to have committed non cognizable and bailable offences by exercising the power as an officer in charge of the police station.

+ Therefore, it is not necessary for the Commissioner to provide a copy of the reasons recorded by him for his belief if he has reason to believe that any person has committed offences which are cognizable and non bailable.

+ Sub-section (2) of section 69 of the CGST Act provides statutory duty upon the officer authorised to arrest to inform such person about grounds of his arrest and in case if the person is ordered to be arrested for offences which are non-cognizable and bailable, he would be released on bail as per provision of sub-section (3) of section 69 of the CGST Act.

+ The Commissioner while recording his reasons to believe that a person has committed any offence has only to form a prima facie opinion based on cogent materials and credible information.

+ The words “reason to believe” contemplate an objective determination based on intelligence, care and deliberation involving judicial review as distinguished from a purely subjective consideration and hence he is not required to conclude that the person sought to be arrested is guilty of any offence.

+ The expression 'any person' in Section 69 of the CGST Act includes a person who is suspected or believed to be concerned in the evasion of tax or availing illegal input tax credit.

+ However, a person arrested by an authorised Officer because he is found to be evading tax or availing input tax credit as specified in the clauses (a) to (d) of the sub-section (1) of the section 132 of the CGST Act is not, when called upon by the authorised Officer to make a statement or to produce a document or thing, accused of an offence within the meaning of Article 20(3) of the Constitution of India.

+ Where an authorised Officer arrests a person and informs that person of the grounds of his arrest, for the purposes of holding an inquiry into the infringement of the provisions of the CGST Act which he has reason to believe has taken place, there is no formal accusation of an

offence. The accusation could be said to have been made when a complaint is lodged by an officer competent in that behalf before the Magistrate.

+ The arrest and detention are only for the purpose of holding effective inquiry under the provisions of the CGST Act with a view to adjudging the evasion of GST and availing illegal input tax credit and imposing penalty.

+ The order authorising any officer to arrest may be justified if the Commissioner or any other authority empowered in law has reasons to believe that the person concerned has committed the offence under section 132 of the Act. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or farfetching, which would warrant the formation of the belief.

+ The power conferred upon the authority under Section 69 of the Act for arrest could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.

+ The power under Section 69 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

+ The above are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another.

+ The Commissioner must be able to justify the arrest apart from his power to do so. A person is not liable to be arrested merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the authority effecting the arrest that such arrest is necessary and justified.

+ Any person can be arrested for any offence under the section 69 of the CGST Act, 1962, by the authorised officer to whom authority to arrest is given by the Commissioner if the Commissioner has reasons to believe that such person has committed an offence punishable under the clauses (a) to (d) of the subsection (1) which is punishable under the clause (i) or Clause (ii) of the sub- section (1) or sub-section (2) of the Section 132 of CGST Act.

+ When any person is arrested by the authorised officer, in exercise of his powers under Section 69 of the CGST Act, the authorised officer effecting the arrest is not obliged in law to comply with the provisions of Sections 154 to 157 of the Code of Criminal Procedure, 1973. The authorised officer, after arresting such person, has to inform that person of the grounds for such arrest, and the person arrested will have to be taken to a Magistrate without unnecessary delay, if the offences are cognizable and non bailable.

+ By its language, the sub-section (3) does not equate the officers of the GST with an officer-in-charge of a police station, nor does it make him one by implication. It only, therefore, means that he has got the powers as defined in the Code of Criminal Procedure for the purpose of releasing such person on bail or otherwise. This does not necessarily mean that a person

alleged to have committed a non-cognizable and bailable offence cannot be arrested without a warrant issued by the Magistrate.

+ The authorised officer exercising power to arrest under section 69 of the CGST Act, is not a Police Officer and, therefore, is not obliged in law to register FIR against the person arrested in respect of an offence under Sections 132 of the CGST Act.

+ An authorised Officer is a 'proper officer' for the purposes of the CGST Act. As the authorised Officers are not Police Officers, the statements made before them in the course of inquiry are not inadmissible under Section 25 of the Evidence Act.

+ The power to arrest a person by an authorised Officer is statutory in character and should not be interfered with. Section 69 of the CGST Act does not contemplate any Magisterial intervention.

*+ The constitutional safeguards emphasised (by the Supreme Court in case of **D.K. Basu**) in the context of the powers of police officers under the Code of Criminal Procedure and of officers of central excise, customs and enforcement directorates, are applicable to the exercise of powers under the GST Act in equal measure. An officer whether of the Central Excise department or another agency like the DGCEI, authorised to exercise powers under the Central Excise Act and/or the FA will have to be conscious of the constitutional limitations on the exercise of such power.*

+ Section 69 of the CGST Act requires certain preconditions to be fulfilled prior to the arrest. In particular, the reasons to believe have to be recorded in writing in the file. The second aspect of Section 69 of the GST Act is the communication of the grounds of arrest. Although, Section 69 uses the word "inform" in the context in which it appears, yet a mere communication of the grounds would not be sufficient. Merely reading out the grounds of arrest to the detenu would defeat the very object of requiring the reasons to believe to be recorded in writing and communicated to the detenu.

+ While producing the person arrested under Section 69 of the CGST Act, the importance of valid, proper and exhaustive arrest memo should not be undermined. Every authorized officer under the Act, 2017 carrying out arrest must be clear that the preparation of an arrest memo is mandatory.

+ Unlike the powers of the police to lodge and register F.I.R. at the police station, the authorized officer under the GST can only lodge a complaint in writing before the Court concerned. Again the cognizance of such complaint has to be taken by the Court concerned only in accordance with Section 134 of the Act 2017.

+ In most of the cases when arrest is effected under Section 69 of the Act, a person arrested would be produced before the Magistrate and the Magistrate may thereafter remand the arrested person to judicial custody after looking into the arrest memo. At the time of production of the accused and also at the time when the person arrested is remanded to the judicial custody, the Magistrate may not have any idea as to on what basis and what type of allegations, the person has been arrested by the authorized officers of the GST and has been produced before him.

+ The production of a person accused should not be accepted by the Magistrate without being convinced that the arrest is on lawful grounds and on prima-facie materials indicating the complicity of the accused in the alleged offence. It is at that stage that the arrest memo assumes importance. It is not just sufficient to state in the arrest memo that the person arrested and produced has committed offences under Section 132 of the Act, 2017. The arrest memo should contain some details or information on the basis of which the Magistrate can arrive at a subjective satisfaction that the person has been arrested on lawful grounds. It is necessary, therefore, to incorporate some prima-facie material against the accused showing his complicity in the alleged offence.

+ It is high time that the GST department prescribes a standardized format for the arrest memo. The format must contain all the mandatory requirements and necessary additions. The gist of the offence alleged to have been committed must be incorporated in the arrest memo. It would be the duty of the concerned Magistrate to check that an arrest memo has been prepared and duly filled. In a given case, if the Magistrate finds that the arrest memo is absent or improperly filled or bereft of necessary particulars, then the Magistrate should decline the production of the arrested person.

+ Petitions are accordingly ordered to be rejected.

+ Ad interim relief granted earlier stands vacated.

[para 77, 79, 81, 82, 83, 85]

Petitions rejected

Case laws cited:

P.V. Ramana Reddy v. Union of India - 2019-TIOL-873-HC-TELANGANA-GST... Para 10

P.V. Ramana Reddy v. Union of India - 2019-TIOL-216-SC-GST... Para 10

Desai Brothers v. DCIT reported in 204 ITR 121 (Gujarat)... Para 12

Sheth Brothers v JCIT reported in 251 ITR 270 (Guj)... Para 12

GKN Driveshafts (India) Ltd. v. ITO - 2002-TIOL-634-SC-IT...Para 13

Jaychandran Alloys Private Limited v. Superintendent of GST and Central Excise reported in 105 taxman.com 245(Madras)... Para 17

Akhil Krishan Magu v. Deputy Director, Directorate General of GST Intelligence - 2019-TIOL-2615-HC-P&H-GST... Para 18

Sukhdeep Singh Bhoday v. Joint Director General of Foreign Trade and others - 2007-TIOL-569-HC-P&H-EXIM... Para 20

Make My Trip (India) Pvt. Ltd. v. Union of India - 2016-TIOL-1957-HC-DEL-ST.... Para 22

Union of India v. Make My Trip - 2019-TIOL-65-SC-ST.... Para 22

Kunhayammed versus State of Kerala - 2002-TIOL-50-SC-LMT-LB... Para 22

Khoday Distilleries Ltd. (now known as Khoday India Limited) and others v. Sri Mahadeshwara Sahakarasakkare Karkhane Ltd., Kollegal (under liquidation) - 2019-TIOL-139-SC-MISC-LB... Para 22

V.M. Salgacoar & Bros.(P.) Ltd. v. CIT - 2002-TIOL-655-SC-IT... Para 22

D.K. Basu v. State of West Bengal - 2002-TIOL-230-SC-MISC.... Para 23

Km. Hema Mishra Vs. State of Uttar Pradesh reported in (2014) 4 SCC 453... Para 27

Nathalal Maganlal Chauhan - 2020-TIOL-413-HC-AHM-GST... Para 31

Devchand Kalyan Tandel v. State of Gujarat and another reported in (1996) 6 Supreme Court Cases 255... Para 33

CIT v. Vatika Township (P) Ltd. - 2014-TIOL-78-SC-IT-CB... Para 44

CIT v. Vegetable Products Ltd. - 2002-TIOL-574-SC-IT-LB... Para 44

Sheonath Singh [AIR 1971 SC 2451]... Para 51

Barium Chemicals Ltd. vs. Company Law Board [AIR 1967 SC 295]... Para 52

Income-tax Officer, Calcutta and Ors. vs. Lakhmani Mewal Das - 2002-TIOL-886-SC-IT... Para 54

Smt. S.R. Venkatraman vs. Union of India reported in (1979) ILLJ 25(SC)... Para 56

ITO Calcutta vs. Lakhmani Mewal Das- 2002-TIOL-886-SC-IT... Para 56

Radheshyam Kejriwal v. State of West Bengal and another - 2011-TIOL-19-SC-FEMA... Para 66

Sundeeep Mahendrakumar Sangahavi Versus Union Of India in the Special Civil - 2020-TIOL-1571-HC-AHM-CUS... Para 75

C.B.Gautam v. Union of India & ors. - 2002-TIOL-1961-SC-IT-CB... Para 80

80. Payment of tax and other amount in instalments. - On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

81. Transfer of property to be void in certain cases. - Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to

him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

82. Tax to be first charge on property. - Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person. (31 of 2016.)

83. Provisional attachment to protect revenue in certain cases. - ¹[(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.]¹

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Notes:

¹. Substituted w.e.f. 01-01-2022 vide Section 115 of the Finance Act, 2021 (13 of 2021) read with Notification No. 39/2021-Central Tax, dated 21-12-2021. Prior to substitution, it was as below:

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

Relevant Case Laws:

2021-TIOL-2260-HC-AHM-GST-IN THE HIGH COURT OF GUJARAT

R/Special Civil Application No. 15201 of 2021 MADHAV COPPER LTD November 23, 2021

Petition allowed

GST - Petitioner challenges the provisional attachment order attaching the properties u/s 83 of the Act, 2017.

Held: The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled - Such powers when exercised must need to be preceded by the formation of an opinion by the Commissioner that it is necessary to so do it for the purpose of protecting the interest of the Government Revenue and the opinion needs to be formed on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the Government Revenue - Court has prima facie noticed that the allegations made are of such a nature that the respondents have collected the material from the business premise during the investigation revealing that the company has availed the Input Tax Credit by engaging in billing transactions for wrongful availment of the ITC, the huge amount of ITC to the tune of Rs.137 Crores is alleged to be fraudulently claimed by the petitioner and according to the petitioner, the cancellation of registration number of the companies with which it was dealing would not be in any manner putting an onus on the petitioner company - Here is a public limited company, the allegation of wrongful availment of Rs.137 Crores and attachment order is without any credible material on record - According to the petitioner, unless the show cause notices are decided, it will be wrong to say on the part of the respondent that 36 registered dealers who had the GSTN and which were active on the date of supply of the goods and who had also filed the regular returns under the GST, for any default on their part, liability cannot be shifted on the petitioner - So far as the operating of the current account in Bank of Baroda, the credit of the ITC worth Rs.3 Crores and unlocking of the same, no order is presently needed to be passed and the same shall be considered by the authority concerned at the time of adjudication - Petition is being disposed of without entering into the merits of the matter - Investigation shall be completed within 8 weeks and the petitioner shall co-operate without fail - Petition disposed of without entering into the merits of the matter: High Court [para 11.1, 16, 21, 22]

Petition disposed of

2022-TIOL-250-HC-AHM-GST IN THE HIGH COURT OF GUJARAT-AHMEDABAD

R/Special Civil Application No. 188 Of 2022 M/s UTKARSH ISPAT LLP January 27, 2022

Writ petition partly allowed

GST - The petitioner-company is an LLP partnership firm engaged in procuring various types of MS Scrap used for manufacturing TMT bars - The petitioner is registered with the GST Department - On 19th November 2021, the officials of the GST Department undertook search proceedings at the registered premises of the writ applicant and also

at the residential premises of one of the partners namely Niraj Jaydev Arya under Sub-section (2) of Section 67 of the CGST Act - The search was undertaken on the allegation that the writ applicant availed ITC based on fake invoices issued by fictitious firms without movement of goods from the period of May 2019 till date of search - During pendency of search proceedings, the Revenue passed order provisionally attaching multiple properties like factory premises, plant and machinery and bank accounts including the fixed deposits - The assessee was issued Form GST DRC 22 in relation to the attached properties with such Forms being issued u/s 83 of the CGST Act.

Held - Considered the provisions of Section 83 of the CGST Act and guidelines issued by the Central Board of Indirect Taxes and Customs, Government of India dated 23rd February 2021 for provisional attachment of property under Section 83 of the Act, 2017 - Clause 3.4.5. of the Guidelines state that as far as possible, the Department should ensure that the attachment does not hamper the normal activities of the taxable person. It has been clarified that the raw materials and input required for the production or finished goods should not normally be attached by the Department - In the present case, the provisional attachment of the goods is not tenable, more so when the entire stock and receivables have been pledged and a floating charge has been created in favour of the Kalupur Commercial Bank Limited for the purpose of availing the cash credit facility with the provisional attachment of the goods, stock and receivables the entire business will come to a standstill - Hence the present petition succeeds in part - The Form GST DRC 22 issued for attachment of the stock lying in the factory premises and for attachment of sundry debts and for attachment of immovable property belonging to Shri Niraj Arya, are quashed and set aside - All other properties to remain under provisional attachment in accordance with law: HC

Writ petition partly allowed

Case laws cited:

Her Highness Maharcmi Mandalsa Devi vs. H. Ramnarain Private Ltd. reported in 65 B.L.R. 31... Para 25

Kapurchand Shrimal vs. Tax Recovery Officer, Hyderabad - [2002-TIOL-2139-SC-IT-LB...](#) Para 30

Kaish Impex Private Limited vs. Union and others - [2020-TIOL-151-HC-MUM-GST...](#) Para 32

M/s. Radha Krishan Industries vs. State of Himachal Pradesh - [2021-TIOL-179-SC-GST...](#) Para 36

84. Continuation and validation of certain recovery proceedings. - Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings-

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CHAPTER XVI

LIABILITY TO PAY IN CERTAIN CASES

85. Liability in case of transfer of business. - (1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

86. Liability of agent and principal. - Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

87. Liability in case of amalgamation or merger of companies. - (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

(2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

88. Liability in case of company in liquidation. - (1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

89. Liability of directors of private company. - (1) Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. **(18 of 2013.)**

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such

private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

90. Liability of partners of firm to pay tax. - Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

91. Liability of guardians, trustees, etc. - Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92. Liability of Court of Wards, etc. - Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

93. Special provisions regarding liability to pay tax, interest or penalty in certain cases.

- (1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then- **(31 of 2016.)**

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition. **(31 of 2016.)**

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution. **(31 of 2016.)**

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,- **(31 of 2016.)**

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or

(b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

94. Liability in other cases. - (1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation.- For the purposes of this Chapter,-

(i) a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm; **(6 of 2009.)**

(ii) "court" means the District Court, High Court or Supreme Court.



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