

INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

JUDICIAL UPDATES WRIT PETITION

REGISTRATION UNDER COMPOSITION SCHEME CAN BE CANCELLED WITH RETROSPECTIVE EFFECT UPON BREACH OF ANY CONDITION UNDER SECTION 10 OF CGST ACT, 2017

Facts of the case

- M/s. SKP Pharmachem (Taxpayer) had taken inadvertently obtained GST registration as a composition dealer. The Taxpayer received an export order and exported goods in March 2022 without knowing the fact that it had obtained a composition GST registration which did not allow the export of goods under GST law. The Tax Authority accepted a Letter of Undertaking ('LUT') filed by the Taxpayer for exporting goods/services without payment of tax
- On identifying the aforesaid error, the Taxpayer immediately filed an application seeking withdrawal of registration as a composition dealer. Consequently, the registration was converted to the regular scheme with prospective effect
- The Taxpayer intended that the aforesaid withdrawal application be allowed with retrospective effect. However, the said option was not available in the GST Portal ('GSTN')
- Consequently, the Taxpayer filed a grievance on the GSTN and filed an application before the Tax Authorities for retrospective withdrawal. However, the Taxpayer received a response indicating that the withdrawal was only possible with prospective effect (from April 2022) in the absence of the functionality in the GSTN

- The Taxpayer being unable to file returns for March 2022, received a notice for the default in filing returns
- Aggrieved by the above, the Taxpayer filed a writ petition before the Hon'ble High Court of Gujarat.

Contentions of the Taxpayer

- The Taxpayer submitted that it has already deposited applicable tax due as per the periodical GST returns to be filed under the GST law. Since the Tax Authority was aware of the difficulties faced by the Taxpayer, the action to treat the Taxpayer as a defaulter is unsustainable
- It was also contended that the Taxpayer had never supplied goods under the Composition scheme
- The Taxpayer also placed reliance in the case of **Godway Furnicrafts Vs. State of Andhra Pradesh and Ors. [2021 (95) GSTR 385 (AP)]** wherein it was held that the Taxpayer had paid tax under the composition scheme according to the option exercised in the web portal for nearly four quarters
- However, the option exercised by the Taxpayer was self-declaratory, which required verification by the Tax Authorities and the option which had been exercised by the Taxpayer took time for verification by the Tax Authorities
- Otherwise, the same would not stop the Tax Authorities from directing the Taxpayer to pay tax as a regular taxpayer if the option exercised was found to be incorrect.

Contentions of the Tax Authorities

- The Tax Authorities contended that the Taxpayer should have been aware of the aforesaid much earlier i.e., by 20 January 2022 being the due date for filing the first monthly return if they were under the impression that they are registered as a normal taxpayer. Instead, the Taxpayer had filed their quarterly returns i.e., CMP-08 under the composition scheme. This indicates that the Taxpayer was well informed about their registration under the composition scheme
- The Tax Authorities further submitted that there is no restriction for a Taxpayer registered under the Composition scheme for filing LUT
- Further, the GSTN lacks the functionality to withdraw registration with a retrospective effect. Concurrently, there is no provision under the GST law to modify registration from the Composition scheme to the regular scheme with a retrospective effect
- It was also contended that the Taxpayer's request is not in accordance with the GST law and hence, the Taxpayer cannot be considered to have been deprived of the benefits of the Composition scheme, unless and until the Taxpayer has breached the conditions under the Composition scheme.

Observations and Ruling of the Hon'ble High Court

- The Hon'ble High Court observed that since the Taxpayer had already exported goods in March 2022, its contention of being unaware of its operation under the Composition scheme and that it was not entitled to the export goods is not acceptable
- The Hon'ble High Court referred to Rule 6(2) of Central Goods and Services Tax Rules, 2017 and observed that the Taxpayer shall be liable to pay tax under the regular scheme from the day on which he ceases to satisfy any of the conditions stipulated under Section 10 of the Central Goods and Services Tax Act, 2017 (CGST Act)
- It was observed that the limitation of the software (GSTN) should not become the limitation of the implementation of the statute
- It was held that the Taxpayer is correct to the extent that his registration should be cancelled with retrospective effect, from the date when the condition under section 10 of the CGST Act was breached
- While acceding to the Taxpayer's request for retrospective withdrawal from 16 March 2022, the Hon'ble High Court directed the following:
 - The Tax Authority is to take care of the software and its limitations addressed by the highest authority and
 - The Tax Authority is to decide the Taxpayer's liability in accordance with the GST law within 2 weeks.

[High Court of Gujarat-SKP Pharmachem vs Union Of India, 2023-TIOL-302-HC-AHM-GST, 7 January 2023]

OPPORTUNITY OF BEING HEARD TO BE PROVIDED ON THE GROUNDS OF PRINCIPLE OF NATURAL JUSTICE WHERE ORDER PASSED BY AUTHORITIES RESULTS IN CIVIL CONSEQUENCES

Facts of the case

- M/s. Randhawa Construction Company (Taxpayer) is engaged in providing services of equipment erection, ground piping, structural fabrication, construction projects, supply of manpower, and transportation services
- The Taxpayer received a Show Cause Notice (SCN) on 15 November 2021 alleging that the Taxpayer's GST registration is liable to be cancelled due to non-filing of the Form GSTR-3B for a continuous period of six months. The Taxpayer was also directed to file a response within seven working days and was also asked to appear before the Tax Authority on 23 November 2021
- In the absence of proper legal advice, the Taxpayer sought to furnish a response to another officer intimating that it is in the process of arranging funds for discharging applicable GST. However, no such response was furnished to the Tax Authority who had issued the above SCN
- Accordingly, vide a one-line order dated 9 December 2021, the Tax Authority sought to cancel the Taxpayer's GST registration
- The aforesaid order was challenged by the Taxpayer before the appellate authority which confirmed the aforesaid order
- Aggrieved by the aforesaid cryptic order and the absence of granting the opportunity of being heard by the adjudicating authority, the Taxpayer filed a writ petition before the Hon'ble High Court of Gujarat.

Contentions of the Taxpayer

- The Taxpayer submitted that its business was adversely affected due to COVID-19, and hence, it was unable to discharge its obligation to pay tax liabilities
- The Taxpayer did not dispute that GSTR-1 has already been filed and the Taxpayer has not filed GSTR-3B. However, it was submitted that the aforesaid order is cryptic in nature and has been passed without providing an opportunity of being heard
- In this regard, the Taxpayer placed reliance on **Aggarwal Dyeing and Printing Works Vs. State of Gujarat [2022-TIOL-504-HC-AHM-GST]**, which is squarely applicable to the facts of the present case wherein it was held that -
 - It is a settled legal position that reasons are heart and soul of the order, and non-communication of the same amounts to denial of the opportunity of being heard, resulting in miscarriage of justice
 - Wherever an order is likely to result in civil consequences, through the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision.

Contentions of the Tax Authorities

- The Tax Authority submitted that the Taxpayer filed an application for revocation of cancellation of GST registration after a lapse of almost 8 months
- It was argued that the Taxpayer had filed Form GSTR-1 for the period indicating that the liability towards payment of GST was well in their knowledge which was required to be discharged by filing GSTR-3B. Considering that the Taxpayer had defaulted in filing Form GSTR-3B and making payment of applicable GST, the cancellation of registration is justified
- Further, the Tax Authority also contended that the payment of GST was made by a third party instead of the Taxpayer
- It is also submitted that the action on the part of the Taxpayer to challenge the order passed by the adjudicating authority at a belated stage is not justified considering that the Taxpayer failed to furnish a reply to the SCN issued by the Tax Authority. This further substantiates that no equity accrues in favour of the Taxpayer
- As a result, the order for cancellation of GST registration is justified.

Observation and ruling of the Hon'ble High Court

- Hon'ble High Court observed that the issue involved in the present case involves not only civil but penal consequences. Hence, the decision in **Aggarwal Dyeing and Printing Works** (supra) would apply to the present case
- It was also observed that the Tax Authority failed to take note of the decision in **Aggarwal Dyeing and Printing Works** (supra) and that such unpalatable apathy to the principles of natural justice would need a rectificational approach on the part of the Tax Authorities
- It was also observed that
 - In all matters where there is absence/dearth of any reasoning, if, from the date of this order, any mistakes have been committed, the same needs to be corrected by the respective Tax Authority
 - If due to excessive dependence on artificial intelligence, the Tax Authority continues to defend its action of disregarding the ratio in **Aggarwal Dyeing and Printing Works** (supra), the Hon'ble High Court shall need to adopt a stringent approach on a case-to-case basis.
- In view of the above, the writ petition filed by the Taxpayer was allowed on the principles of natural justice. Accordingly, the order for cancellation of GST registration was set aside with a liberty to the Tax

Authority to issue a fresh notice, and provide a reasonable opportunity of hearing to the Taxpayer and pass appropriate speaking order on merits.

[High Court of Gujarat, M/s. Randhawa Construction Company, WP(C) No. 22859 of 2022, dated 7 December 2022]

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

SUPPLY OF ICE CREAM ALONG WITH COOKED FOOD CAN BE CLASSIFIED AS SUPPLY OF 'RESTAURANT SERVICES'

Facts of the case

- M/s. HRPL Restaurants P Ltd ('Taxpayer') is engaged in providing restaurant services which inter alia supplies food (prepared and cooked in the restaurant/eatery) in addition to ice creams (not prepared/manufactured by the Taxpayer)
- These ice creams include MRP products/pre-packaged products as well as non-MRP products.

Contentions of the Taxpayer

- The Taxpayer submitted that none of its outlets merely serve ice creams on their menu and that they supply food as well as ice creams. Considering the variety of transactions involved, such outlets are nothing but a restaurant / eating joint
- It is further contended that such supplies must be treated as 'supply of restaurant service' and hence, liable to GST @ 5% (without input tax credit)
- It was also submitted that the Taxpayer is not an ice cream parlour covered under Circular no:164/20/2021 6 October 2021
- Reliance in this regard was also placed on the Rajasthan AAAR ruling in the case of **M/s. Deepak & Co [Order no:2/DAAAR/22-23/2005-2010/21 June 2022]**.

Observations and Ruling by AAR

- Supply of readily available food items which are not prepared/cooked in the restaurant, and sold over the counter, whether consumed in the outlets/restaurant or by way of takeaway, do not qualify as 'restaurant services' and is a supply of 'goods'
- The Taxpayer's outlets sell already manufactured ice-creams which do not require any form of cooking whereas the restaurant service involves the aspect of cooking/preparing during the course of providing service
- As recommended by the GST Council, the supply of ice cream which is not prepared/cooked by the outlets of the Taxpayer, cannot be considered as the supply of 'restaurant service'

- Further, the Taxpayer's activity entails the supply of ice cream as goods and not as a service, even if certain ingredients of service are present
 - In view of the above, it was held that
 - Ice cream sold by the Taxpayer's outlet would not fall within the ambit of 'restaurant service' and would be treated as a supply of goods and hence, liable to 18% GST
 - However, ice cream supplied as a dessert along with cooked or prepared food is naturally bundled and supplied in conjunction with the principal supply i.e., cooked/prepared food, in the ordinary course of business. Hence, such supply would assume the character of composite supply, with the principal being the supply of 'restaurant service'. Thus, leviable to GST @ 5% without input tax credit.
- [AAR-Gujarat, M/s. HRPL Restaurants P Ltd, Ruling no:GUJ/GAAR/R/2023/08, 22 February 2023]*

CUSTOMS

NOTIFICATION

DISCONTINUATION OF GLOBAL TARIFF RATE QUOTA (TRQ) EXEMPTION ON CRUDE SUNFLOWER OIL AND CRUDE SOYABEAN OIL

Notification no:30/2022-Customs has been amended to discontinue the exemption available on import of crude sunflower oil and crude soyabean oil from Basic Customs Duty (BCD) and Agricultural Infrastructure and Development Cess when the import is below 2 Mn. MT in the financial year. The aforesaid exemption, which would have otherwise expired on 31 March 2024, will now expire on 31 March 2023.

[Notification no:15/2023 dated 3 March 2023]

EFFECTIVE RATE OF BCD ON 'TUR WHOLE'

Notification no:50/2017-Customs has been amended to exempt BCD on 'Tur Whole' falling under HSN 0713 60 00. It is to be noted that Tur products other than 'Tur Whole' are still chargeable to BCD at the rate of 10%.

[Notification no:16/2023 dated 3 March 2023]

INSTRUCTIONS

EXTENSION OF REQUIREMENT OF HEALTH CERTIFICATE ACCOMPANIED WITH THE IMPORT OF FOOD CONSIGNMENTS

The requirement for having a health certificate on the import of food consignments by the Food Safety and Standards Authority of India (FSSAI) under the provisions of Food Safety and Standards (Import) Regulations, 2017 ('FSS Regulations') has been deferred till further notice. The food products covered under the aforesaid provisions are viz. Milk, Fish, Pork, and their products.

[Instruction no:08/2023-Customs dated 3 March 2023]

RECTIFICATION OF LABELLING INFORMATION FOR IMPORTED FOOD CONSIGNMENTS

- The FSSAI issued an order allowing non-compliant labels on imported food to be rectified at the Customs bonded warehouse before the inspection. The labels can be rectified by affixing a non-detachable sticker or any other non-detachable method
- The Authorised Officer or his representative shall verify the label compliance during the visual inspection, and the consignment will be subjected to sampling and testing only if it complies with the FSS regulations
- If the labels are found to be non-compliant during laboratory analysis, the importer may rectify them, and the Authorised Officer will issue a No Objection Certificate.

[Instruction no:09/2023-Customs dated 7 March 2023]

NEWS FLASH

“Amnesty for pre-GST tax arrears extended”

<https://timesofindia.indiatimes.com/city/mumbai/amnesty-for-pre-gst-tax-arrears-extended/articleshow/98529457.cms>

[Source: Times of India, 10 March 2023]

“Foreign Tourists May Soon Be Able to Claim Tax Refund On Departure, Says Report”

<https://www.news18.com/business/gst-foreign-tourists-may-soon-be-able-to-claim-tax-refund-on-departure-says-report-7249375.html>

[Source: News18, 9 March 2023]

“E-way bill generation dipped to 3-month low in February, GST collection may be impacted in March”

<https://www.thehindubusinessline.com/economy/e-way-bill-generation-dipped-to-3-month-low-in-feb-gst-collection-may-be-impacted-in-march/article66591701.ece>

[Source: The Hindu Business Line, 7 March 2023]

“Approach GST seva kendras to simplify tax payment”

<https://timesofindia.indiatimes.com/city/madurai/approach-gst-seva-kendras-to-simplify-tax-payment/articleshow/98489344.cms.html>

[Source: Times of India, 8 March 2023]

“As GST Tribunal Not Formed Yet, Assessee's Declaration Of Appeal Intent Can Protect From Recoveries: Bombay HC”

<https://www.news18.com/business/as-gst-tribunal-not-formed-yet-assessee-declaration-of-appeal-intent-can-protect-from-recoveries-bombay-hc-7260403.html>

[Source: News18, 10 March 2023]

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