Circular No. 117/36/2019-GST

F. No. 354/136/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax research Unit)

Room No. 146, North Block,
New Delhi,
the 11th October, 2019

To:

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India – reg.

A representation has been received regarding applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India. The same has been examined and following is clarified.

2. Under GST Law, vide Sl. No. 66 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, "educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

3. GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.

4. Section 76 of the Merchant Shipping Act, 1958 (44 of 1958) provides for the certificates of competency to be held by the officers of ships. It states that every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed. Section 78 of the Act provides for several Grades of certificates of competency. Further, Section 79 provides that the Central Government or a person duly authorised by it shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78 of the Act.

5. In order to streamline and monitor the maritime education and trainings by maritime institutes and to administer the assessment agencies, the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 has been notified. Under Rule 9 of the said Rules, the Director General of Shipping is empowered to designate assessment centres. Further the provisions of sub- rules (6), (7) and (8) of the Rule 4 of the said Rules, empowers the Director General of Shipping, to approve (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc.

6. From the above discussion, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017.

7. This clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

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Circular No. 116/35/2019-GST

F. No. 354/136/2019-TRU
Government of India
Ministry of Finance
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(Tax research Unit)

Room No. 146, North Block,
New Delhi,
the 11th October, 2019

To:

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors– Reg.

Representations have been received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

2. The issue has been examined. Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations,

schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

2.1 Some examples of cases where there would be no taxable supply are as follows:-

(a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

(b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

2.2. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

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Circular No. 115/34/2019-GST

F. No. 354/136/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

Room No. 146G, North Block,
New Delhi,
the 11th October 2019

To,

The Principal Chief Commissioners/ Chief Commissioners (All)/
The Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on issue of GST on Airport levies – reg.

Various representations have been received seeking clarification on issues relating to GST on airport levies and to clarify that airport levies do not form part of the value of services provided by the airlines and consequently no GST should be charged by airlines on airport levies. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in the succeeding paras.

2. Passenger Service Fee (PSF) is charged under rule 88 of Aircraft Rules, 1937 according to which the airport licensee may collect PSF from embarking passengers at such rates as specified by the Central Government. According to the rule the airport license shall utilize the said fee for infrastructure and facilitation of the passengers. User Development Fee (UDF) is levied under rule 89 of the Aircraft rules 1937 which provides that the licensee may levy and collect, at a major airport, the User Development Fee at such rate as may be determined under clause (b) of sub-section (1) of section 13 of the Airports Economic Regulatory Authority of India Act, 2008.

2.1 Though the rule does not prescribe the specific purpose of levy and whether it is to be charged from the airlines or the passengers. However, it is seen from section 2(n) of Airports Economic Regulatory Authority of India Act, 2008, that the authority which manages the airport is eligible to levy and charge UDF from the embarking passengers at any airport.

2.2 Further, Director General of Civil Aviation has clarified vide order No. AIC Sl. No. 5/2010 dated 13.09.2010 that in order to avoid inconvenience to passengers and for smooth and orderly air transport/airport operations, the User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For this, collection charges of Rs. 5/- shall be receivable by the airlines from AAI, which shall not to be passed on to the passengers in any manner.

2.3 The above facts clearly indicate that PSF and UDF are charged by airport operators for providing the services to passengers.

2.4 Section 2(31) of the CGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers.

2.5 Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST. UDF was also liable to service tax. It is also clear from notification of Director General of Civil Aviation AIC Sl. No. 5 /2010 dated 13.09.2010, which states that UDF approved by MoCA, GoI is inclusive of service tax. It is also seen from the Air India website that the UDF is inclusive of service tax. Further in order No. AIC S. Nos. 3/2018 and 4/2018, both dated 27.2.2018, it has been laid down that GST is applicable on the charges of UDF and PSF.

2.6 PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of ST/GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. It is the

licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay ST/GST on UDF and PSF.

2.7 Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, –

> *(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
>
> *(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
>
> *(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

"Pure agent" has been defined to mean a person who-

> *(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both; (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply; (c) does not use for his own interest such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

2.8 Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

2.9 The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of ST/GST, there is no question of their not paying ST/GST collected by them to the Government.

2.10 The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

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(2019) ibctax.in 16 HC

IN THE HIGH COURT OF GUJARAT

F S Enterprise
v.
State of Gujarat and Anr.

R/Special Civil Application No. 7061 of 2019 with R/Special Civil Application No. 7062 of 2019 with R/Special Civil Application No. 7063 of 2019 with R/Special Civil Application No. 7064 of 2019
Decided on 11-Oct-19

Ms. Justice Harsha Devani and Ms. Justice Sangeeta K. Vishen

Add. Info:

For Appellant(s): Uchit N Sheth (7336).

For Respondent(s): Trupesh Kathiriya Assistant Government Pleader.

Judgment/Order:

COMMON ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Since the facts and contentions raised in all these petitions are more or less similar, the same were taken up for hearing together and are decided by this common judgment. For the sake of convenience, reference is made to the facts as appearing in Special Civil Application No.7061 of 2019.

2. The petitioner is a proprietary concern and is duly registered under the provisions of the relevant Goods and Services Tax Acts (hereinafter referred to as "the GST Acts"). The petitioner received an order from one M/s. Riya Enterprise, who is a registered person in the State of Maharashtra under the GST Acts for supply of TMT bars and angles. Pursuant to such order, the petitioner was transporting the goods and the driver of the truck duly had with him the tax invoice as well as the transport receipt in respect of such goods. Before commencement of movement of goods, the petitioner had duly generated e-way bill in respect of the transaction on the online GST portal. The details of invoice as well as details of the buyer were duly entered in the online e-way bill.

2.1. The truck along with the goods came to be detained on the highway by the second respondent, viz., the State Tax Officer, Mobile Squad, Sagbara. The driver of the truck duly produced all documents relating to the goods including invoice, transport receipt and e-way bill. However, despite the fact that the petitioner had complied with the procedure for movement of goods as stipulated under the GST Acts, by the JUDGMENT impugned order, the truck with the goods came to be detained/seized under section 129 of the GST Acts on the ground that the transport receipt was a

photocopy and the details filled in the transport receipt were handwritten.

2.2. Subsequently, the second respondent issued a notice demanding payment of tax and penalty under section 129 of the GST Acts for release of the goods. A copy of the statement of the driver in the prescribed format GST MOV 1 was also provided to the petitioner. The petitioner, thereafter, immediately approached the concerned authority and submitted all the documents which are required to accompany the goods under the GST Acts. The e-way bill was admittedly generated prior to the commencement of movement of goods which contained all details relating to invoice as well as the buyer of the goods. Insofar as the transport receipt is concerned, the petitioner explained that it was common practice of the transporter to send scanned copies of the transport receipt through whatsapp/email which were then filled at the place of dispatch and signed by the authorized representative of the transporter. However, no format was prescribed for transport receipt under the GST Acts and thus, there was no question of there being any breach of the provisions of the GST Acts. Despite such written statement and repeated oral requests, the second respondent refused to release the truck with the goods without payment of tax and penalty under section 129 of the GST Acts. Being aggrieved, the petitioner has approached this court challenging the order of detention dated 2.4.2019 passed by the second respondent under section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the provisions of other relevant statutes as well as the notice dated 2.4.2019 issued in FORM GST MOV-07, demanding tax and penalty under section 129 of the GST Acts.

2.3. By an order dated 12.4.2019, this court, by way of interim relief, had directed the respondents to forthwith release truck No.GJ-04-AT-9302 along with the goods contained therein.

3. Mr. Uchit Sheth, learned advocate for the petitioner submitted that section 129 of the GST Acts is a drastic measure and hence, there has to be a serious and grave error for which the authorities can have an apprehension of evasion of tax and that the powers thereunder, should not be exercised lightly as the consequences are grave and that the detention has to be duly justified.

3.1. Adverting to the merits of the present case, it was submitted that the detention/seizure under section 129 of the GST Acts of the truck with the goods, is wholly without jurisdiction, arbitrary and illegal. It was urged that the petitioner had duly complied with the procedure that is required to be followed for dispatch of goods under the GST Acts viz., the tax invoice was duly prepared prior to movement of goods; E-way bill was generated prior to commencement of movement which contained details of the goods, tax invoice as well as the buyer of goods including his registration number under the GST Acts; and the transport receipt of the transporter was also accompanying the goods; and there was absolutely no contravention of any provision of the GST Acts.

3.2. It was further submitted that insofar as the transport receipts are concerned, the petitioner has explained that it was a routine practice for the transporter to send scanned copies of the transport receipts which would then be filled and signed by the authorised representative of the transporter at the place of dispatch. However, there is no format of transport receipt prescribed under the GST Acts, and hence, the detention/seizure of the truck with the goods and subsequent demand of tax and penalty under section 129 of the GST Acts on such flimsy ground, even through there was no contravention of the provision of the GST Acts, is wholly without jurisdiction, arbitrary, bad and illegal.

3.3. It was contended that ultimately the objective of section 129 of the GST Acts is to ensure that there is no evasion of tax through unaccounted movement of goods. It was contended that in the case of the petitioner admittedly when the tax invoice was issued and e-way bill was generated through online GST portal containing all details regarding the goods, there was absolutely no possibility of evasion. Moreover, the fact that the petitioner was transporting goods was conveyed to

the GST authorities through its online portal prior to commencement of movement of goods.

3.4. Reference was made to Circular No.64/38/2018-GST dated 14.9.2018, issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing, to point out that in paragraph 5 thereof, it has been provided that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:-

> *"a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;*
>
> *b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;*
>
> *c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;*
>
> *d) Error in one or two digits of the document number mentioned in the e-way bill;*
>
> *e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;*
>
> *f) Error in one or two digits/characters of the vehicle number."*

3.5. It was pointed out that paragraph 6 thereof, provides that in case of the above situations, penalty to the tune of Rs. 500/- each, under section 125 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the respective State GST Act should be imposed (Rs.1000/- under the Integrated Goods and Services Tax Act, 2017) in FORM GST DRC-07 for every consignment. It was submitted that having regard to the guidelines laid down in the above circular, for the reasons stated in the detention order, the detention is not tenable, and that the goods in question could not have been seized.

3.6. Next, it was submitted that while the conveyance with the goods was detained on the above ground alone, in the affidavit in reply filed on behalf of the respondents, new grounds have been raised, namely, that the petitioner had not obtained GST registration for the commodities which were being transported and that the driver of one of the vehicles had given a statement that the goods were being transported from Sihor to Aurangabad. It was emphatically argued that addition of reasons by way of an affidavit is not tenable. In support of such submission, the learned advocate placed reliance upon the decision of the Supreme Court in the ***Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi,*** *AIR 1978 SC 851*, for the proposition that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

3.7. It was submitted that insofar as inclusion of the goods in the registration certificate under the GST Acts is concerned, a person is registered as a supplier under the GST Acts, there is no concept of goods-wise registration. In fact even in the FORM GST REG-01, which is the form for application of registration, only the top five commodities need to be specified. Thus, it is only in the nature of general information which has to be provided and that there is no provision which makes a transaction of a commodity not specified in the application for registration to be invalid or illegal. It

was submitted that in fact there can be no such provision since all commodities are not even required to be mentioned in the application for registration.

3.8. It was further submitted that in the present case while due to oversight, the commodities being transported were not mentioned in the application for registration, as a matter of fact, a clear description of the commodities along with HSN Code was given in the invoice as well as the e-way bill and the correct rate of tax was also applied. The e-way bill was generated on the online portal before commencement of movement of goods wherein the description of goods as stated was admittedly in order. It was submitted that this was nothing but online intimation of description of goods intended to be supplied by the petitioner and thus there was no question of any intention of concealing any fact from the department. It was submitted that at best it could be said to be a technical error on the part of the petitioner in filling the application for registration and upon such error being pointed out, the petitioner immediately filed an application for amendment of the registration certificate. It was contended that on such basis, it cannot be said that the goods were being transported in contravention of the provisions of the GST Acts.

3.9. Insofar as the alleged statements of drivers are concerned, it was submitted that such statements have not been relied upon for detention of the trucks with the goods. It was submitted that two of the four drivers have stated that the goods were moving from Sihor in Bhavnagar to Mumbai, one driver has not given any statement and the fourth driver has stated that the goods were moving from Bhavnagar to Aurangabad; whereas in fact all the four trucks were meaning for the same recipient. It was urged that one of the four drivers seems to have erroneously mentioned the destination as Aurangabad and that such statement is uncorroborated and in fact does not even form the basis of the detention orders. It was submitted that when the petitioner approached the driver concerned for clarification, he had conveyed that the authority had simply taken his signature on his alleged statement and that he was not aware of the contents of the statement. It was submitted that this in any case, has absolutely no consequence insofar as the liability of the petitioner is concerned, inasmuch as, the petitioner had disclosed such transaction to be inter-State supplies under the Integrated Goods and Services Tax Act, 2017 and the destination of the goods will have no bearing on the tax liability of the petitioner provided that such destination is outside the State of Gujarat. Thus, there is no question of any mala fide intention on the part of the petitioner.

3.10. The learned advocate next submitted that the petitioner as well as the recipient of the goods, are registered persons under the GST Acts and the invoice as well as the eway bill were admittedly found to be in order, and hence, the detention of the truck with goods is wholly without jurisdiction and illegal.

3.11. The attention of the court was invited to the statement Annexure-II to the affidavit-in-reply filed on behalf of the respondents, on which reliance has been placed by the respondents wherein it has been recorded that the goods were loaded at Sihor in Bhavnagar and were to be unloaded at Aurangabad, to submit that the concerned driver has stated that he is not aware of the contents thereof. Reference was made to the FORM GST MOV-01 issued by the second respondent, to submit that the statutory statement of the driver shows that the goods in question were being transported from Bhavnagar to Virar, Thane. It was emphatically argued that the conveyance containing goods cannot be stopped to make a fishing inquiry and that the impugned order being arbitrary and illegal deserves to be quashed and set aside.

4. Opposing the petition, Mr. Trupesh Kathiriya, learned Assistant Government Pleader, placed reliance upon the averments made in the affidavit-in-reply filed on behalf of the respondents, wherein it has been stated that the vehicle in question was carrying TMT bars and MS Angles, Round bars and Square bars (HSN CODE 7214 taxable at 18%) from Bhavnagar to Virar-Thane, Mumbai. The petitioner was only registered for dealing in Waste, Parings and Scrap of Plastic (HSN

CODE 3915 taxable at 5%) as per the commodity disclosed in the Form GST REG-01 as per rule 8(1). The registration is to be carried out in accordance with section 25, as the registration has been taken voluntary. Therefore, even though the petitioner was having a valid GST registration, the commodity which was being transported was not disclosed in the registration application. The petitioner thereafter, on 8.4.2019, by way of an amendment had added the commodity which was being transported and intercepted and proceedings under section 129 were initiated. It is contended that if it was the case of the petitioner that such disclosure of commodity was not mandatory, amendment was not required to be carried out, then, amending the commodity, itself clearly reflects that the disclosure of commodity is mandatory in view of GST REG- 01, to be precise, clause 18 of the form. It is further averred that the vehicle was detained from Dahej and on recording the statement of the driver, it was found that the vehicle was being taken to Aurangabad from Sihor and not from Bhavnagar to Mumbai. Therefore, also, it creates strong doubt as regards the transaction in question and the e-way bill does not match with the route. It is also submitted that in the facts and circumstances, it is apparent that the petitioner has willfully contravened various provisions of the GGST / CGST Acts only with a view to evade the payment of tax.

4.1. The learned Assistant Government Pleader, accordingly, urged that the provisions of section 129 of the GGST Act/CGST Act have rightly been invoked in the present case and that the petition being devoid of merits deserves to be dismissed.

4.2. It may be pertinent to note that though the above averments with regard to the petitioner not being registered for the commodities which were being transported have been made in the affidavit-in-reply and have also been reiterated by the learned Assistant Government Pleader while making submissions before this court, the learned Assistant Government Pleader, even after taking instructions from the Instructing Officer who was present in the court room, was not in a position to point out any provision of law which requires a supplier to be registered in respect of the goods in which he deals with, nor was he in a position to point out any statutory requirement regarding the format of lorry receipt.

5. From the facts as emerging from the record, it appears that the vehicles in question came to be intercepted and the impugned orders of detention under section 129(1) of the CGST Act/ GGST Act, came to be issued on the ground that lorry receipt issued by the transporter is a photocopy without computerised serial number and contact number details.

6. The question that therefore arises for consideration is, whether on the above ground, the second respondent was justified in exercising powers under section 129(1) of the CGST Act.

7. In this regard, it may be germane to refer to the provisions of section 68 of the CGST Act, which provides for inspection of goods in movement. Sub-section (1) thereof provides that 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. The documents which were required to be kept while transporting the goods are prescribed under rule 138A of the CGST Rules, 2017, which reads thus:-

> ***Rule 138A: Documents and devices to be carried by a person-in-charge of a conveyance***
>
> *(1) The person in charge of a conveyance shall carry—*
>
> *(a) the invoice or bill of supply or delivery challan, as the case may be; and*
>
> *(b) a copy of the e-way bill in physical form or the eway bill number in electronic form or*

mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV- 1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply."

8. On a plain reading of the above rule, it is evident that the documents which are required to be kept by the person in charge of a conveyance while transporting goods are (i) the invoice or bill of supply or delivery challan, as the case may be; and (ii) a copy of the e-way bill. In the present case, admittedly when the trucks in question came to be intercepted, the concerned driver had produced the invoice as well as the eway bill in respect of the goods which were being transported.

9. At this juncture, reference may be made to the provisions of section 168 of the CGST Act /GGST Act which provides for power to issue instructions or directions. Sub-section (1) thereof, which is relevant for the present purpose reads thus:

"(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."

10. In order to ensure uniformity in the implementation of the provisions of the CGST Act across the field formations, the Central Board of Indirect Taxes and Customs in exercise of the powers conferred under section 168(1) of the CGST Act, has issued Circular No.41/15/2018-GST dated 13.4.2018, laying down the procedure for inspection of conveyance for inspection of goods in movement and detention, release and confiscation of goods and conveyances and has issued certain instructions. Such instructions to the extent they are relevant for the present purpose read thus:-

"(b) The proper officer, empowered to intercept and inspect a conveyance, may intercept any

conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance or in the form of a printout, sms or it may be written on an invoice. All these forms of having an e-way bill are valid. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to http://mis.ewaybillgst.gov.in or the Mobile App or through SMS by sending EWBVER <EWB_NO> to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).

(c) … … …

(d) Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance in FORM GST MOV-01. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV- 02, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within twenty four hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

(e) Within a period of three working days from the date of issue of the order in FORM GST MOV-02, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in FORM GST MOV-03 from the Commissioner or an officer authorized by him, for extension of time beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

(f) On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within three days of such physical verification/inspection.

(g) Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in FORM GST MOV-05 and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable. The said notice shall be served on the person in charge of the conveyance.

(h) Where the owner of the goods or any person authorized by him comes forward to make the payment of tax and penalty as applicable under clause (a) of subsection (1) of section 129 of the CGST Act, or where the owner of the goods does not come forward to make the payment of tax and penalty as applicable under clause (b) of sub-section (1) of the said section, the proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules, release the goods and conveyance by an order

in FORM GST MOV-05. Further, the order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

(i) Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.

(j) Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05. The order in FORM GST MOV-09 shall be uploaded on the common portal and the demand accruing from the order shall be added in the electronic liability register and, upon payment of the demand, such register shall be credited by either debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act."

It may be noted that the above instructions issued by the Board are binding upon all the officers discharging duties under the GST Acts.

11. At this juncture, it may be apposite to refer to the decision of the Supreme Court in the case of ***Commissioner of Customs, Calcutta v. Indian Oil Corporation Ltd.,*** *(2004) 3 SCC 488,* wherein the court has held thus:-

"9. This Court has, in a series of decisions, held that circulars issued under Section 119 of the Income Tax Act, 1961 and Section 37-B of the Central Excise Act are binding on the Revenue.

10. The somewhat different approach in Hindustan Aeronautics Ltd. v. CIT, (2002) 2 SCC 127, by two learned Judges of this Court, apart from being contrary to the stream of authority cannot be taken to have laid down good law in view of the subsequent decision of the Constitution Bench in CCE v. Dhiren Chemical Industries (I), (2002) 2 SCC 127. After this Court had construed an exemption notification in a particular manner, it said:

> *"11. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."*

11. Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in CCE v. Dhiren Chemical Industries (II), (2002) 10 SCC 64, where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37-B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in

fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commr. of Customs, (2003) 5 SCC 528.

12. The principles laid down by all these decisions are:

(1) Although a circular is not binding on a court or an assessee, it is not open to the Revenue to raise a contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.

(3) A show-cause notice and demand contrary to the existing circulars of the Board are ab initio bad.

(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

12. Since the above decision was rendered in the context of section 37B of the Central Excise Act, reference may be made to the said section, which reads thus:-

*"37B. **Instructions to Central Excise Officers.-** The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:*

Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Principal Commissioner of Central Excise or Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

13. Thus, section 37B of the Central Excise Act is more or less in pari materia with the provisions of section 168 of the GST Acts. Hence, the above decision would be squarely applicable even to instructions issued by the Central Board of Indirect Taxes and Customs under the GST Acts. The officers and all other persons employed in the execution of the GST Acts are, therefore, bound to observe and follow such orders, instructions and directions of the Board.

14. Examining the facts of the present case in the light of the above statutory provisions and binding instructions issued by the Board, the conveyances in question with goods being TMT Bars etc. were intercepted by the second respondent on 2.4.2019 and FORM GST MOV-01 came to be issued to the persons in charge of the conveyance The annexures to the forms contain the details of the invoice as well as the e-way bill, which clearly indicates that both the documents prescribed under rule 138A of the CGST Rules had been produced when the conveyances came to be intercepted. It seems that inspection of the conveyances was not carried out; however, an order of detention came to be made under section 129(1) of the CGST Act, detaining the conveyance with the goods on the following

ground:

> *"Supplier GSTin Regi effective date is 14/3/19. Recipient GSTin Regi effective date is 28/03/19. L.R. issued by transport is photo copy without computerised serial No. and contact No. detail."*

15. Thereafter, a notice under section 129(3) of the CGST Act came to be issued in FORM GST MOV-07 proposing to levy tax and penalty and calling upon the petitioner to appear before the second respondent on 9.4.2019 at 11:30 a.m.

16. Thus, though the person in charge of the conveyance had produced the documents which were statutorily required to be kept with him during the course of transportation of the goods, the vehicle in question was detained on extraneous grounds namely that the lorry receipt issued by the transporter was a photocopy without computerised serial number and contact number details.

17. In terms of the instructions contained in the above circular dated 13″ April, 2018, the proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. In the present case, since no FORM GST MOV-02 has been issued, no Part A of Form GST EWB-03 has been uploaded on the common portal, no FORM GST MOV-04 has been issued and no Part B of Form GST EWB-03 has been uploaded on the common portal, it is clear that the conveyance has been intercepted for verification of documents and not for physical verification inasmuch as, if the officer intended to undertake an inspection he was required to issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02 and thereafter upload Part A of Form GST EWB-03 on the common portal, prepare a report in FORM GST MOV-04 and furnish the same to the petitioner and to upload the final report of the inspection in Part B of Form GST EWB-03 on the common portal. On a perusal of FORM GST MOV-01, it is abundantly clear that both the documents prescribed under rule 138A of the CGST Rules, viz. the invoice and the e-way bill, were produced by the person incharge of the conveyance. The proper officer, upon verification of these two documents has not found any discrepancies therein. Hence, in terms of the instructions contained in paragraph 2(b) of the above circular, the proper officer was required to allow the conveyance to move further. However, the proper officer has issued an order of detention under section 129(1) of the CGST Act on the ground that the lorry receipt was a photocopy and did not bear a computerised serial number or contact number details. Thus, the impugned order has been passed contrary to the statutory requirements which do not require production of a lorry receipt by the person in-charge of a conveyance as well as contrary to the instructions issued by the Board in the above referred circular.

18. It may be pertinent to note that subsequently, in the affidavit-in-reply filed on their behalf, the respondents have improved upon their original case, and have come up with totally new grounds which are not reflected in the order made under section 129(1) of the CGST Act, namely that the conveyance in question was carrying TMT bars and MS Angles, Round Bars and square bars from Bhavnagar to Virar-Thane, Mumbai, whereas the petitioner was registered for dealing in waste, parings and scrap of plastic as per the commodity disclosed in FORM GST REG-01 as per rule 8(1) of the CGST Rules. Therefore, though the petitioner had a valid GST registration, the commodity which was being transported was not disclosed in the registration application. The second ground is that in case of one of the conveyances, the driver had stated that the goods were being transported from Sihor to Aurangabad.

19. Insofar as the additional grounds raised in the affidavit-in-reply are concerned, it is settled legal position as held by the Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner,*** *(supra)* that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to court on

account of challenge, get validated by additional grounds later brought out. The court referred to the following extract of its earlier decision in ***Commissioner of Police v. Gordhandas Bhanji,*** *AIR 1952 SC 16.*

> *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*
>
> *Orders are not like old wine becoming better as they grow older."*

20. Thus, it is not permissible for the respondents to try to supplement the grounds set out in the order under section 129(1) of the CGST Act in the affidavit-in-reply filed on their behalf. Nonetheless for the purpose of clarifying the legal position, the said grounds may also be dealt with.

21. Insofar as the second ground based on a subsequent socalled statement of driver of one of the conveyances bearing No.GJ-04-AT-9302 is concerned, it may be noted that such statement is said to have been recorded on 2.4.2019, wherein the driver has stated that he had loaded the goods at Sihor in Bhavnagar and was to unload them at Aurangabad. It may also be noted that FORM GST MOV-01 has been issued by the proper officer on 2.4.2019, wherein against column 4, it has been recorded thus:

> *"4. I am transporting the goods from Bhavnagar (GJ) to Virar, Thane (MH)."*

22. Thus, in the statutory form, the statement of the driver has been recorded stating that the goods were being transported from Bhavnagar to Virar, Thane, but the respondents seek to place reliance upon some unverified statement produced on record with the affidavit-in-reply, which is not permissible in law. Besides, there is force in the submission made by the learned advocate for the petitioner that the destination of the goods will have no bearing on the tax liability of the petitioner, provided the destination is outside the State of Gujarat and, therefore, no mala fide intention can be imputed to the petitioner as the petitioner as well as the recipient of goods, are registered under the GST Acts and both the invoice and e-way bill are found to be in order.

23. Insofar as the first additional ground is concerned, reference may be made to rule 8 of the CGST Rules, which reads thus:-

> *"8.* ***Application for Registration***
>
> *(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*
>
> *Provided that a person having a unit(s) in a Special Economic Zone or being a Special*

Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone:

Provided further that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.

(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.

(3) On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit."

24. Under sub-rule (4) of rule 8 of the CGST Rules, the person seeking registration is required to submit an application in Part-B of FORM GST REG-01, reference may, therefore, be made to Part-B of the said form. A perusal of Part B of FORM GST REG-01 shows that column 18 thereof requires the person seeking registration to give details of the goods supplied in the business and requires him to specify the top five goods with description of the goods and corresponding HSN Code (four digits). Thus, a person is required to specify the top five goods which he wants to supply, but is not prohibited from supplying goods other than those mentioned in the form. Therefore, merely because the petitioner had specified goods like waste, parings and scrap of plastic (HSN Code 3915 taxable at 5%) and the vehicle was carrying TMT Bars and MS Angles, round bars and square bars (HSN Code 7214 taxable at 18%) is no ground to detain such goods, more so, when the goods are correctly described in the invoice and GST payable is computed at 18%. It would have been a different matter if the above goods were shown in the invoice to be waste, parings and plastic scrap taxable at 5%, but when the goods are correctly described at the appropriate taxable rate, there is no violation of any provision of law merely because such goods are not specified in Part B of FORM GST REG-01, inasmuch as the person who seeks registration is required to specify only the top five goods and not all the goods which he seeks to supply. Indubitably, many suppliers would be dealing with more than five goods; however, in terms of column 18 of the prescribed form, a supplier is required to specify only the top five goods with description of the goods and corresponding HSN Code, therefore, the contention that as the petitioner was not registered qua the goods which were being transported there was breach of any provision of law, does not merit acceptance. Moreover, the learned

Assistant Government Pleader is not in a position to pinpoint the provision which has been contravened by the petitioner by transporting goods other than those specified in the registration form.

25. Besides, the petitioner has immediately thereafter, amended the registration and specified the goods in question. It may also be noted that rule 19 of the CGST Rules which provides for amendment of registration requires verification at the end of the proper officer in case of change in the legal name of business, change in address of the principal place of business or any additional place(s) of business or addition/deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business, which does not warrant cancellation of registration under section 29. However, insofar as any change relating to any particulars other than those specified in clause (a) of the proviso to sub-rule (1) of rule 19 is concerned, the certificate of registration shall stand amended upon submission of the application in FORM GST REG-14 on the common portal.

26. FORM GST REG-14 is the form prescribed under rule 19(1) of the CGST Rules and provides the format for application for amendment in registration details. Below the form, instructions for submission of application for amendment are provided. Reference may be made to Instructions No.2 and 3 thereof, which read as under:-

> *"2. Changes relating to Name of Business, Principal place of Business, additional place(s) of business and details of partners or directors, karta, Managing Committee, Board of Trustees, Chief Executive Officer, or equivalent, responsible for day to day affairs of the business which does not warrant cancellation of registration, are core fields which shall be approved by the Proper Officer after due verification.*
>
> *3. For amendment in Non-Core fields, approval of the Proper Officer is not required."*

27. Thus, change in specification of goods is a non-core field and, therefore, does not require the approval of the proper officer while making amendment in the registration form. The respondents in the affidavit-in-reply rely upon the fact that on 8.4.2019, the petitioner, by way of an amendment, added the commodity which was being transported, to submit that the disclosure of the commodity in the registration was mandatory on the ground that had it not been mandatory, the petitioner was not required to carry out the amendment. Such submission on the part of the respondents who are responsible officers of the State Government is quite perturbing, inasmuch as, the officers under the Act are required to make submissions based upon the legal provisions and not on the conduct of the party. Merely because the petitioner subsequently amended the registration cannot be a ground to submit that reflecting such goods in the registration was mandatory, without referring to the statutory provision which mandates such requirement.

28. From the facts and circumstances noted hereinabove, it is evident that the person in-charge of the conveyance carrying the goods in question had in his possession, the invoice as well as the e-way bill in respect thereof, and both such documents were produced before the proper officer when the conveyance in question came to be intercepted. It is not the case of the respondents that any discrepancy was found in the aforesaid two documents. Under the circumstances, in the light of the instructions contained in Circular dated 13.4.2018 issued by the Board, it was incumbent upon the second respondent to issue a release form in FORM GST MOV-05 and allow the conveyance to move further. However, the conveyance in question has been detained on the ground of discrepancy in transport certificate which is not a requirement prescribed under the statute. Under the circumstances, the second respondent was not justified in passing the order of detention under section 129(1) of the CGST Act.

29. Insofar as the two additional grounds raised in the affidavit-in-reply are concerned, as discussed hereinabove, apart from the fact that it was not permissible for the respondents to supplement the original order by additional reasons in the affidavit-in-reply, even otherwise such reasons have no statutory basis. Under the circumstances, the impugned orders of detention passed by the second respondent under section 129(1) of the CGST Act and other connected statutes as well as the notices issued under section 129(3) of the CGST Act and other connected statutes cannot be sustained.

30. For the foregoing reasons, the petitions succeed and are, accordingly, allowed. The impugned orders of detention dated 2.4.2019 as well as the impugned notices dated 2.4.2019 in each of the petitions, are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(HARSHA DEVANI, J)
(SANGEETA K. VISHEN,J)

Original judgment copy is available here.

Circular No. 114/33/2019-GST

F. No. 354/136/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

Room No. 146G, North Block,
New Delhi,
the 11th October 2019

To,

The Principal Chief Commissioners/ Chief Commissioners (All)/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both – reg.

Representations have been received from trade seeking clarification on the scope of the entry *"services of exploration, mining or drilling of petroleum crude or natural gas or both"* at Sr. No. 24 (ii) of heading 9986 in Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

2. The matter has been examined. Most of the activities associated with exploration, mining or drilling of petroleum crude or natural gas fall under heading 9986. A few services particularly technical and consulting services relating to exploration also fall under heading 9983. Therefore,

following entry has been inserted under heading 9983 with effect from 1st October 2019 vide Notification No. 20/2019- Central Tax(Rate) dated 30.09.2019; –

> *"(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both"*

3. Explanatory Notes to the Scheme of Classification of Services adopted for the purposes of GST, which is based on the United Nations Central Product Classification describe succinctly the activities associated with exploration, mining or drilling of petroleum crude or natural gas under heading 9983 and 9986.

3.1 The relevant Explanatory Notes for Heading 9983 are as follows:

> ***998341 Geological and geophysical consulting services***
> *This service code includes provision of advice, guidance and operational assistance concerning the location of mineral deposits, oil and gas fields and groundwater by studying the properties of the earth and rock formations and structures; provision of advice with regard to exploration and development of mineral, oil and natural gas properties, including pre-feasibility and feasibility studies; project evaluation services; evaluation of geological, geophysical and geochemical anomalies; surface geological mapping or surveying; providing information on subsurface earth formations by different methods such as seismographic, gravimetric, magnetometric methods & other subsurface surveying methods*
>
> *This service code does not include*
> *– test drilling and boring work, cf. 995432*
>
> ***998343 Mineral exploration and evaluation***
> *This service code includes mineral exploration and evaluation information, obtained on own account basis*
>
> *Note: This intellectual property product may be produced with the intent to sell or license the information to others.*

3.2 The relevant Explanatory Notes for Heading 9986 are as follows:

> ***998621 Support services to oil and gas extraction***
> *This service code includes derrick erection, repair and dismantling services; well casing, cementing, pumping, plugging and abandoning of wells; test drilling and exploration services in connection with petroleum and gas extraction; specialized fire extinguishing services; operation of oil or gas extraction unit on a fee or contract basis*
>
> *This service code does not include:*
> *– geological, geophysical and related prospecting and consulting services, cf. 998341*
>
> ***998622 Support services to other mining n.e.c.***
> *This service code includes draining and pumping of mines; overburden removal and other development and preparation services of mineral properties and sites, including tunneling, except for oil and gas extraction; test drilling services in connection with mining operations, except for oil and gas extraction; operation of other mining units on a fee or contract basis*
>
> *This service code does not include:*
> *– mineral exploration and evaluation services, cf. 998343*
> *– geophysical services, cf. 998341*

4. It is hereby clarified that the scope of the entry at Sr. 24 (ii) under heading 9986 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 shall be governed by the explanatory notes to service codes 998621 and 998622 of the Scheme of Classification of Services.

4.1 It is further clarified that the scope of the entry at Sr. No. 21 (ia) under heading 9983 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 inserted with effect from 1st October 2019 vide Notification No. 20/2019- CT(R) dated 30.09.2019 shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services.

4.2 The services which do not fall under the said entries under heading 9983 and 9986 of the said notification shall be classified in their respective headings and taxed accordingly.

5. Difficulty, if any, in implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

Shashikant Mehta
OSD (TRU)

Circular No. 113/32/2019-GST

F.No.354/131/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
Tax Research Unit

North Block, New Delhi
Dated,11th October, 2019

To,

Principal Chief Commissioners/ Principal Directors General,
Chief Commissioners/ Directors General
Principal Commissioners/ Commissioners
of Central Tax and Customs

Madam/ Sir,

Subject: Clarification regarding GST rates & classification (goods)–reg.

Representations have been received seeking clarification in respect of applicable GST rates on the following items:

(i) Classification of leguminous vegetables such as grams when subjected to mild heat treatment

(ii) Almond Milk

(iii) Applicable GST rate on Mechanical Sprayer

(iv) Taxability of imported stores by the Indian Navy

(v) Taxability of goods imported under lease.

(vi) Applicable GST rate on parts for the manufacture solar water heater and system

(vii) Applicable GST on parts and accessories suitable for use solely or principally with a medical device

2. The issue wise clarifications are discussed below:

3. Classification of leguminous vegetables when subject to mild heat treatment (parching):

3.1. Doubts have been raised whether mild heat treatment of leguminous vegetables (such as gram) would lead to change in classification.

3.2. Dried leguminous vegetables are classified under HS code 0713. As per the explanatory memorandum to the HS 2017, the heading 0713 covers leguminous vegetables of heading 0708 which have been dried, and shelled, of a kind used for human or animal consumption (e.g., peas, chickpeas etc.). They may have undergone moderate heat treatment designed mainly to ensure better preservation by inactivating the enzymes (the peroxidases in particular) and eliminating part of the moisture.

3.3. Thus, it is clarified that such leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713. Such goods if branded and packed in a unit container would attract GST at the rate of 5% [S. No. 25 of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017]. In all other cases such goods would be exempted from GST [S. No. 45 of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017].

3.4. However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc) or sold as namkeens then the same would be classified under Sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate.

4. Classification and applicable GST rate on Almond Milk:

4.1. References have been received as to whether “almond milk” would be classified as “Fruit Pulp or fruit juice-based drinks” and attract 12% GST under tariff item 2202 99 20.

4.2. Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20.

4.3. Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%.

5. Applicable GST rate on Mechanical Sprayer:

5.1 Representations have been received seeking clarification on the scope and applicable GST rate on “mechanical sprayers” of entry No. 195B of the Schedule II to notification No. 1/2017- Central

Tax (Rate), dated 28.06.2017. The entry No. 195B was inserted vide notification No. 6/2018- Central Tax (Rate), dated 25th January, 2018.

5.2 All goods of heading 8424 i.e. [Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines (other than fire extinguishers, whether or not charged)] attracted GST @18% [S.No.325 of Schedule III] till 25th January, 2018. Subsequently, keeping in view various requests/ representations, the GST Council in its 25th meeting recommended 12% GST on mechanical sprayers. Accordingly, vide amending notification No. 6/2018- Central Tax (Rate), dated 25thJanuary, 2018, GST at the rate of 12% was prescribed (entry No. 195B I Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017) Simultaneously, mechanical sprayers were excluded from the ambit of the said S. No. 325 of Schedule III.

5.3 Accordingly, it is clarified that the S. No. 195B of the Schedule II to notification No. 1/2017-Central Tax (Rate), dated 28.06.2017 covers "mechanical sprayers" of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.).

6. Clarification regarding taxability of imported stores by the Indian Navy:

6.1 Representation has been received from the Indian Navy seeking clarification on the taxability of imported stores for use of a ship of Indian Navy.

6.2 Briefly stated, in accordance with letter No. 21/31/63-Cus-IV dated 17 Aug 1966 of the then Department of Revenue and Insurance, the Indian Naval ships were treated as "foreign going vessels" for the purposes of Customs Act, 1962, and the naval personnel serving on board these naval ships were entitled to duty-free supplies of imported stores even when the ships were in Indian harbour. However, in the GST era, no such circular has been issued regarding exemption from IGST on purchase of imported stores by Indian Naval ships. The doubt has arisen as there is a no specific exemption, while there is a specific exemption for the Coast Guard (vide S. No. 4 of notification No. 37/2017-Customs dated 30.6.2017). Similar exemption has not been specifically provided for Navy.

6.3 Indian Naval ship stores are exempted from import duty in terms of section 90(1) of the Customs Act, 1962. Further, as per section 90(2), goods "taken on board a ship of the Indian Navy" shall be construed as exported to any place outside India. Also, section 90(1) and 90(3) of the Customs Act, 1962 provides that imported stores for the use of a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service will be exempted from duty.

6.4 Accordingly, it is clarified that imported stores for use in navy ships are entitled to exemption from GST.

7. Clarification regarding taxability of goods imported under lease:

7.1 Representations have been received seeking clarification on the taxability of goods imported under lease.

7.2 In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the Central Goods and Service Tax Act, 2017 are exempted from IGST *vide* S. No. 547A of notification No. 50/2017-Customs dated 30.06.2017, subject to condition No. 102, which reads as under :-

The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself, –

> *(i) to pay integrated tax leviable under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;*
>
> *(ii) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;*
>
> *(iii) to re-export the goods within three months of the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5 (f) of Schedule II of the Central Goods and Services Act, 2017;*
>
> *(iv) to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.*

7.3 Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST *vide* S. No. 557A of the said notification. Subsequently, all goods, vessels, ships (other than motor vehicles) imported under lease, by the importer for use after import, were also exempted from IGST vide S. No. 557B of the said notification. Both these entries are subject to the same condition No. 102 of the said notification.

7.4 The intention of S. No. 557 A and 557 B is to exempt from IGST the imports of goods under an arrangement of supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 so as to avoid double taxation.

7.5 Accordingly, it is hereby clarified that the expression "taken on lease/imported under lease" (in S. No. 557A and 557B respectively of notification No. 50/2017-Customs dated 30.06.2017) covers imports under an arrangement so as to supply services covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 to avoid double taxation. The above clarification holds for such transactions in the past.

7.6 Further, wordings of S. No. 557A and 557B of notification No. 50/2017-Customs dated 30.6.2017, have been aligned with Condition No. 102 of the said notification [vide notification No. 34/2019-Customs dated 30.09.2019 w.e. f 01.10.2019] to address the concerns raised.

8. Applicability of GST rate on parts for the manufacture solar water heater and system:

8.1 Representations have been received seeking clarification on applicable GST rate on Solar Evacuated Tubes used in manufacture of solar water heater. While 5% GST rate applies to parts used in manufacture of Solar Power based devices (S.No. 234 of Notification No. 1/2017 -Central tax (Rate) dated 28.06.2017), doubts have been raised in respect of parts of Solar water heaters on the ground that Solar Based Devices are being considered only as devices which run on Solar Electricity.

8.2 As per entry No 232, solar water heater and system attracts 5% GST. Further, as per S. No. 234 of the notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, solar power-based devices and parts for their manufacture falling under chapter 84, 85 and 94 attract 5% concessional GST. Solar Power based devices function on the energy derived from Sun (in form of electricity or heat). Thus, solar water heater and system would also be covered under S. No 234 as solar power device. Thus, Solar Evacuated Tubes which falls under Chapter 84 and other parts falling under chapter 84, 85 and 94, used in manufacture of solar water heater and system would be eligible for 5% GST under S. No. 234.

8.3 Accordingly, it is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

9. Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device:

9.1 Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

9.2 Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12% GST. The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12% GST by classifying it under heading 9018. However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18% IGST. In this background, representations have been received from trade and industry, seeking clarification in this matter

9.3 The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only. Chapter note 2(b) (of Chapter 90) reads as below: –

"2 (b): other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;"

9.4 Thus, as per chapter note 2(b), parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.

9.5 In view of the above, it is clarified that 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

10. Difficulty, if any, may be brought to the notice of the Board immediately. Hindi version shall follow.

Yours faithfully,

(Gunjan Kumar Verma)
Under Secretary to the Government of India

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IN THE HIGH COURT OF GUJARAT

Sitaram Roadways (URP) through Proprietor Vashrambhai Arjanbhai Dangar
v.
State of Gujarat

R/Special Civil Application No. 15107 of 2019
Decided on 10-Oct-19

Ms. Justice Harsha Devani and Ms. Justice Sangeeta K. Vishen

Add. Info:

For Appellant(s): Mr. D K. Puj(3836)

For Respondent(s): Mr. Trupesh Kathiriya, Assistant Government Pleader.

Judgment/Order:

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Rule. Mr. Trupesh Kathiriya, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents.

2. By this petition under article 226 of the Constitution of India the petitioner has challenged the order dated 24.8.2019 passed by the second respondent in Form GST MOV-11 whereby he has ordered confiscation of the conveyance as well as the goods contained therein.

3. The petitioner is a transporter and conveyance bearing number GJ-04-AT-9932 belongs to the petitioner. The conveyance in question was intercepted by the second respondent on 6.8.2019 at 6.45 p.m. at Vagharol, Taluka Dantiwada. It appears that the person in charge of the conveyance was not in a position to produce the mandatory documents in the nature of invoice and e-way bill.

4. Vide an order dated 6.8.2019 issued in Form GST MOV-02, the person in charge of the conveyance was directed to station the conveyance carrying goods at Vagharol at his risk and responsibility. Thereafter, a notice dated 21.8.2019 came to be issued in Form GST MOV-10 for confiscation of the goods or conveyance and levy of penalty under section 130 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act') read with the relevant provisions of other related statutes. In terms of the said notice, the petitioner was directed to appear before the second respondent on 28.8.2019 at 11 a.m. Thereafter, without waiting for the petitioner to appear before him, the second respondent vide order dated 24.8.2019 passed an order of confiscation under section 130 of the CGST Act in Form GST MOV-11 computing the tax, penalty, fine in lieu of confiscation of goods and fine in lieu of confiscation of conveyance. Being aggrieved, the petitioner has filed the present petition.

5. Mr. Kavi Patel, learned advocate for Mr. D.K. Puj, learned advocate for the petitioner submitted that after the conveyance with the goods came to be intercepted and detained, petitioner has deposited the amount of fine and penalty on 5.9.2019. A copy of the payment receipt of CGST Act has been brought on record. It was submitted that while the notice in Form GST MOV-10 called upon the petitioner to appear before the second respondent on 28.8.2019, the impugned order came to be passed on 24.8.2019 without affording any opportunity of hearing to the petitioner. Referring to the provisions of section 130 of the CGST Act it was submitted that sub-section (4) thereof provides that no order of confiscation of goods or conveyance or imposition of penalty shall be issued without giving the person an opportunity of being heard. It was submitted that therefore, the impugned order has been passed in contravention to the provisions of sub-section (4) of section 130 of the

CGST Act. Hence, the petition requires to be allowed by granting the reliefs as prayed for therein.

6. On the other hand, Mr. Trupesh Kathiriya, learned Assistant Government Pleader, submitted that the person in charge of the conveyance was not in a position to produce either the invoice or the e-way bill. It was submitted that the impugned order has been passed after due notice to the petitioner and hence, there is no warrant for interference by this court. He, however, was not in a position to dispute the fact that while by the notice dated 21.8.2019, the petitioner was called upon to remain present before the second respondent on 28.8.2019, the impugned order had been passed on 24.8.2019.

7. From the facts as noted hereinabove it is evident that though by the notice dated 21.8.2019 issued in Form GST MOV-10 for confiscation of goods or conveyance and levy of penalty under section 130 of the CGST Act, the petitioner was called upon to appear before the second respondent on 28.8.2019, the second respondent without waiting till that date, has in undue haste, passed the impugned order on 24.8.2019. While it appears that the petitioner has given a kabulatnama (declaration) to the effect that he is voluntarily taking the responsibility of paying the outstanding taxes in respect of the goods and is ready to pay the amount shown in the GST memo and has requested that upon payment of such amount the conveyance be released, such fact does not absolve the second respondent from granting an opportunity of hearing to him before passing the order under section 130 of the CGST Act.

8. Section 130 of the CGST Act provides for confiscation of goods or conveyances and levy of penalty. Sub-section (4) thereof provides that no order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard. In the present case, on a perusal of the documents annexed along with the petition it appears that pursuant to the notice dated 21.8.2019 issued by the respondent, the petitioner appeared before the respondent on 24.8.2019 and showed willingness to pay the amount of tax and penalty for the purpose of securing release of the vehicle in question. Thereafter, the second respondent, without affording any opportunity of hearing to the petitioner as contemplated under sub-section (4) of section 130 of the CGST Act, has proceeded to pass the impugned order on 24.8.2019. It appears that merely because the petitioner appeared before the respondent and showed willingness to pay the tax and penalty for the purpose of securing release of the vehicle in question, the second respondent has proceeded to pass the impugned order without hearing the petitioner on the question of confiscation of the goods and conveyance.

9. As can be seen from the impugned order, it is in the format provided therefor, viz. in FORM GST MOV-11. In paragraph 1 of the impugned order all the blanks have been filled up which indicate the registration number of the conveyance and the time, place and date and by whom the conveyance came to be intercepted. Paragraphs 3 and 4 thereof do not contain any details in the blank spaces meant to be filled in. One of the significant paragraphs in the statutory form is paragraph 5, which reads thus:

> *"The person in charge has not filed any objections/the objections filed were not acceptable for the reasons stated below:*
>
> *a)…*
>
> *b)….*

Thus, in terms of the statutory format provided for passing an order under section 130 of the CGST Act, the officer adjudging is required to provide the reasons for confiscating the goods and conveyance. Reference may also be made to paragraph 6 of the statutory form, which reads thus:

> *"6. In view of the above, the following goods and conveyance are confiscated by the undersigned by exercising powers vested under section 130 of the Central Goods and Services Tax Act ....."*

On a conjoint reading of paragraphs 5 and 6, it is clear that the officer adjudging the case passed the order confiscating the goods and conveyance described in paragraph 6, for the reasons set out in paragraph 5.

10. In this regard a perusal of the impugned order of confiscation, shows that column 5 wherein the officer adjudging it is required to set out the reasons for concluding that the goods and conveyance are required to be confiscated, is totally blank. As a necessary corollary it follows that the goods and conveyance have been ordered to be confiscated without disclosing the reasons therefor. The impugned order is, therefore, a non-speaking order, which is totally bereft of any reasons whatsoever.

11. At this stage, it may be apposite to refer to the legislative scheme contained in section 130 of the CGST Act. Sub-section (1) of section 130 thereof, reads thus:

> ***130. Confiscation of goods or conveyances and levy of penalty.—*** *(1) Notwithstanding anything contained in this Act, if any person—*
>
> *(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
>
> *(ii) does not account for any goods on which he is liable to pay tax under this Act; or*
>
> *(iii) supplies any goods liable to tax under this Act without having applied for registration; or*
>
> *(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
>
> *(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,*

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

12. Thus, in terms of clauses (i) and (iv) of sub-section (1) section 130 of the CGST Act, the goods can be confiscated provided that the person supplies or receives goods in contravention of the provisions of the Act or the rules made thereunder with the intent to evade payment of tax; or contravenes any provisions of the Act and the rules made thereunder with the intent to evade payment of tax respectively. Insofar as clauses (ii) and (iii) are concerned, the very fact that the person does not account for the goods on which he is liable to pay tax under the Act; or supplies any goods which are liable to tax under the Act without having applied for registration, would be sufficient for ordering confiscation of the goods. Therefore, while making an order of confiscation under section 130 of the CGST Act, the officer adjudging it will have to state as to which clause of sub-section (1) of section 130 of the CGST Act is attracted in the facts of the said case. If it is the case of the officer adjudging it that the case falls under clauses (i) or (iv) of sub-section (1) of section 130 of the CGST Act, then for the purpose of making an order of confiscation, he will have to come to the conclusion that the goods were supplied or received in contravention of the provisions of the Act or the rules made thereunder with the intent to evade payment of tax. In other words, the officer

adjudging the case, while making an order of confiscation under clauses (i) or (iv) of sub-section (1) of section 130 of the CGST Act, has to record twin satisfaction: firstly that there is a contravention of the provisions of the Act or the rules made thereunder, with specific reference to the provision of the Act or the rules that has been contravened; and secondly, that such contravention is with the intent to evade payment of tax. Therefore, in a case falling under clauses (i) and (iv) of sub-section (1) of section 130 of the CGST Act, the proper officer is required to record a specific finding as to why he has come to the conclusion that the contravention is with the intent to evade payment of tax. In cases falling under clause (ii) of sub-section (1) of section 130 of the CGST Act, the proper officer will be required to record a finding that the person concerned has not accounted for the goods in respect of which is he liable to pay tax; and in cases falling under clause (iii) thereof, he would be required to record a finding that the person concerned has supplied goods which are liable to tax under the Act without having applied for registration.

13. In the present case, the impugned order is totally silent as regards which provision of the Act or the rules has been contravened; which clause of sub-section (1) of section 130 of the CGST Act is attracted in the present case; and as to why the officer adjudging it has come to the conclusion that there is contravention of the provisions of the Act and the rules made thereunder with the intent to evade payment of tax.

14. Moreover, a perusal of the impugned order reveals that fine determined in lieu of confiscation of goods is equal to the market value of the goods viz. Rs.6,81,556/-. Reference may therefore be made to sub-section (2) of section 130 of the CGST Act, which reads thus:

> *"(2) Whenever confiscation of any goods or conveyance is authorised by the Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:*
>
> *PROVIDED that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.*
>
> *PROVIDED FURTHER that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129.*
>
> *PROVIDED ALSO that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon."*

Thus, sub-section (2) of section 130 of the CGST Act provides that the fine leviable shall not exceed the market value of the goods, less the tax chargeable thereon. It is, therefore, clear that the fine provided under the first proviso to sub-section (2) of section 130 of the CGST Act is the maximum fine leviable. Consequently, the proper officer adjudging the case is required to examine the seriousness of the contravention and impose fine accordingly. It is not as if in every case the proper officer should levy the maximum fine. The order of confiscation should, therefore, reflect due application of mind on the part of the proper officer to the quantum of fine imposed by him.

15. A perusal of the impugned order reveals that the proper officer has levied more than the maximum fine leviable in terms of the first proviso to sub-section (2) of section 130 of the CGST Act, inasmuch as, he has levied fine equal to the market value of the goods without deducting the tax chargeable thereon. Moreover, there is nothing in the order to reflect application of mind to the quantum of fine.

16. At this juncture reference may be made to the decision of the Supreme Court in ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan,*** *(2010) 9 SCC 496,* wherein the court in the context of necessity to give reasons, has held thus:

> *"47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
>
> *(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
>
> *(g) Reasons facilitate the process of judicial review by superior courts.*
>
> *(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*
>
> *(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
>
> *(j) Insistence on reason is a requirement for both judicial accountability and transparency.*
>
> *(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
>
> *(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.*
>
> *(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)*
>
> *(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, (1994) 19 EHRR 553 and Anya v. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to*

Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

17. In ***CCT v. Shukla & Bros.****,(2010) 4 SCC 785,* the Supreme Court held thus:

"14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

18. In ***Tata Engineering & Locomotive Co. Ltd. v. Collector of Central Excise, Pune,*** *2006 (203) ELT 360 (SC),* the Supreme Court was dealing with a case where by a cryptic and non-speaking order, the Tribunal had upheld the order passed by Commissioner by applying the ratio of the decision of the Larger Bench in TISCO Ltd., without recording any findings of fact. The court held that it is not sufficient in a judgment to give conclusions alone but it is necessary to give reasons in support of the conclusions arrived at. The court, set aside the order of the Tribunal as the findings recorded by the Tribunal were cryptic and non-speaking, and remitted the matter back to the Tribunal for taking a fresh decision by a speaking order in accordance with law after affording due opportunity to both the parties.

19. In ***State of Punjab v. Bhag Singh,*** *2004 (164) ELT 137 (SC),* the Supreme Court was considering a case where the High Court had dismissed the appeal without giving any reasons. The court held that reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. The court further held that right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out.

20. Thus, the Supreme Court has consistently held that a quasi-judicial authority must record reasons in support of its conclusions and that reasons are an indispensable component of a decision making process. In ***CCT v. Shukla & Bros*** (supra) the Supreme Court has held that giving reasons in support of the conclusions arrived at is an ingredient of the principles of natural justice.

21. Viewed in the light of the principles enunciated in the decisions referred to hereinabove, the impugned order is in breach of the principles of natural justice on two counts: firstly, that though the matter was kept for hearing on 28.08.2019, the second respondent passed the impugned order on 24.08.2019 without affording any opportunity of hearing to the petitioner; and secondly, because the

impugned order is a totally non-speaking order which does not reflect the reason as to why the proper officer has come to the conclusion that the goods and the conveyance are liable to be confiscated, which renders the order unsustainable. The impugned order, therefore, deserves to be set aside and the matter is required to be remitted to the proper officer to decide the matter afresh in accordance with law, keeping in mind the principles discussed hereinabove, after affording reasonable opportunity of hearing to the petitioner.

22. The record further reveals that subsequently, on 5.9.2019, the petitioner has deposited the amount of tax and penalty. Therefore, pending the proceedings before the proper officer, the court deems it fit to direct the respondents to release the conveyance with the goods contained therein, subject to the final outcome of the proceedings under section 130 of the CGST/GGST Act.

23. In the light of the above discussion, the petition succeeds and is accordingly allowed. The impugned order dated 24.8.2011 passed by the second respondent is hereby quashed and set aside. The matter is restored to the file of the second respondent to decide the same afresh in accordance with law, after affording a reasonable opportunity of hearing to the petitioner. Needless to state that the second respondent shall pass a reasoned order keeping in mind the statutory provisions as discussed hereinabove.

24. In view of the fact that the petitioner has already deposited the amount of tax and penalty as computed by the second respondent, the conveyance as well as the goods in question shall be forthwith released by the second respondent subject to the final outcome of the proceedings under section 130 of the CGST Act. Rule is made absolute to the aforesaid extent.

25. Direct service, is permitted.

(HARSHA DEVANI, J)
(SANGEETA K. VISHEN,J)

Original judgment copy is available here.

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IN THE HIGH COURT OF GUJARAT

Saraf Natural Stone and Anr.
v.
Union of India and Ors.

R/Special Civil Application No. 15925 of 2018
Decided on 10-Jul-19

Mr. Justice J.B. Pardiwala and Mr. Justice A.C. Rao

Add. Info:

For Appellant(s): Mr. Vinay Shraff, Advocate with Mr. Vishal J Dave (6515), Mr. Vinay Shraff, Advocate with Nipun Singhvi (9653).

For Respondent(s): Mr. PY Divyeshvar (2482), Viral K Shah(5210).

Judgment/Order:

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B. PARDIWALA)

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicants have prayed for the following reliefs:-

> *4(a) To issue writ of mandamus and/or any other appropriate writ(s) for directions to the Respondents for providing appropriate compensation as well as interest, for delay in the granting of refund;*
>
> *(b) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;*
>
> *(c) To award costs of and incidental to this application be paid by the Respondents;*

2. The case of the writ-applicants in their own words as pleaded in the writ-application is as follows:-

> *2.1. The petitioner no.1 is a registered partnership firm having registration number 99984019206 and its principal place of business is at 902, 9th Floor, Indraprasth Corporate, Opposite Shell Petrol Pump, Satellite, Ahmedabad, Gujarat380015. The petitioners state that the petitioner no.1 is registered under the CGST Act and IGST Act 2017, vide registration bearing no.24ADDFS3029H1ZA.*
>
> *2.2 The petitioner no.2 is a citizen of India and partner of the petitioner no.1 firm. In the instant case, by reasons of the wrongful and illegal actions of the respondents, the rights of the petitioner no.2 to carry on business and/or hold property through the agency and/or instrumentality of the petitioner no.1 has been seriously prejudiced and adversely affected.*
>
> *2.3 The respondent no.1 is the Union of India, represented through the Ministry of Finance, Department of Revenue and is responsible for notifying the IGST Act, 2017 and also responsible for framing the rules thereunder. The respondent no.2 is the Central Board of Indirect Tax and Custom, Department of Revenue and responsible for implementation of rules as framed by the Respondent No.1. The respondent No.3 is Goods and Services Tax Network (GSTN) which is a Section 8, non-Government, private limited company. The company has been set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST).*
>
> *2.4 The petitioners state that the cause of action in the instant case has arisen within the territorial jurisdiction of this Hon'ble Court.*
>
> *2.5 The petitioners state that in terms of Section-16 of the IGST Act, 2017, a registered person making exports of goods outside India, shall be eligible to claim, refund of either unutilized input tax credit on export of goods under bond or letter of undertaking, or refund of integrated tax paid on export of goods.*

2.6 The petitioners further state that Section 16(3) of the IGST Act, provides that refund should be claimed in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder. Section 20 of the IGST Act further provides that provisions of CGST Act relating to refunds shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as they apply in relation to central tax as if they are enacted under this Act.

2.7 The petitioners further state that Rule 2 of the Integrated Goods and Services Tax Rules, 2017 provides that the Central Goods and Services Tax Rules, 2017, for carrying out the provisions specified in section 20 of the Integrated Goods and Services Tax Act, 2017 shall, so far as may be, apply in relation to integrated tax as they apply in relation to central tax.

2.8 The petitioners further state that, section 54 of the CGST Act provides for refund as envisaged under section 16 of the IGST Act in a time bound manner. 2.9 The petitioners state that Rule 91 of CGST Rules, 2017 inter-alia provide that the provisional refund is to be granted within 7 days from the date of acknowledgment of the refund claim. An order for provisional refund is to be issued in Form GST RFD-04 along with payment advice in the name of the claimant in Form GST RFD 05. The amount will be electronically credited to the claimant's bank account.

2.10 The petitioners state that Rule 90 of the CGST Rules provides that acknowledgment for application for claim for refund in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically within fifteen days of the filing of the application. If any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

2.11 The petitioners further states that it appears from the bare perusal of Section 54(6) of the CGST Act read with Rule 91 of the CGST Rule that a registered person exporting goods is entitled to provisional refund of 90% of his refund claim within a period not exceeding seven days from the date of the acknowledgment unless the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, has been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees or the proper officer, after scrutiny of the claim and the evidence submitted in support thereof is prima facie not satisfied.

2.12 The petitioners further state that, Rule 96 of the CGST Rule envisages the refund of integrated tax paid on goods exported outside India. Rule 96 provides that the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported outside India subject to filing of export general manifest and valid return in Form GSTR-3 or Form GSTR-3B.

2.13 The petitioners further state that Section 56 of the CGST Act further provides that if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six percent as may be specified in the notification issued by the Government on the recommendations of the GST Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

2.14 The petitioners further state that the Central Government vide Notification No.13/2017 – Central Tax, dated 28-06-2017 and Notification No.6/2017 – Integrated Tax dated 28-06-2017

has fixed the rate of interest from the 1st day of July, 2017 at 6% p.a. and 9% p.a. for the purposes of section 56 and proviso to section 56 of CGST Act 2017 respectively.

2.15 The petitioners state that it is evident from the bare perusal of the Rule 94 of the CGST Rules that proper officer is mandated to order sanctioning of interest on delayed refunds suo motu, where any interest is due and payable to the applicant under section 56, without any application to be made by the registered person for any delay in the refund.

2.16 Without prejudice to the submission in para 2.15 above, the petitioners further state that there is also no option available on the common portal to enable the registered person to make application for claiming compensation/ interest on delayed refund. It would be evident from the perusal of the above user manual that the options available on the GST portal regarding selection of the refund type has no option to claim interest for delayed refund.

2.17 The petitioners further state that it received the refund of integrated tax paid on export of goods after substantial period of delay.

2.18 The petitioners further state that it did not receive any deficiency notice also as prescribed under Rule 90 in FORM GST RFD-03 about the deficiencies, fi any, in the application for refund.

2.19 The petitioners further state that it has not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees during any period of five years immediately preceding the tax period to which the claim for refund relates.

2.20 The petitioners further state that it has not defaulted in furnishing any return, tax, interest or penalty.

2.21 The petitioners further state that it has not exported the goods in violation of the provisions of the Customs Act, 1962.

2.22 The petitioners having no option available with it to lodge their claim of interest on delayed refund also approached their jurisdictional GST authorities i.e. Assistant Commissioner, Commissionerate: Ahmedabad, Ghatak:9 to guide them about claim of interest on refund. However, the above officer expressed his inability to help the petitioner in any which manner, stating that all refund related processing is only being done through GST portal and he is not empowered or authorized to entertain any application or prayer in this respect.

3. Thus, from the pleadings and the other materials on record, the writ-applicants are seeking compensation and interest towards the substantial delay in making payment of the refund of the Integrated Tax paid on the export of goods in terms of Section-16 of the Integrated Goods and Services Tax (IGST) Act, 2017 and the Rules made thereunder, *mutatis mutandis* read with the provisions relating to the refund of the Central Goods and Services Tax (CGST) Act, 2017 and the Rules made thereunder.

4. Mr Shraff, the learned counsel appearing for the writ-applicants vehemently submitted that the inaction leading to inordinate delay in granting of refund could be termed as arbitrary and violative of Articles-14 and 19 of the Constitution of India. Mr. Shraff submitted that the inordinate delay in granting of refund severely impacted the working capital of the company and thereby substantially, diminished its ability to continue its business. 5. Mr. Shraff submitted that the respondents have failed to even file any reply for the purpose of explaining the delay. In such circumstances referred to above, Mr. Shraff, the learned counsel prays that this Court may award appropriate compensation

alongwith the interest for the delay in granting of refund.

6. On the other hand, this writ-application has been vehemently opposed by the learned counsel appearing for the respondents. The learned counsel appearing for the respondents submitted that unless there is a specific provision providing for the entitlement of the interest of refund, no interest would be available since equity has no role to play in the matters of taxation. The learned counsel appearing for the respondents submitted that there is no express provision made for the entitlement to the interest to the assessee as referred to above. The learned counsel for the respondents submitted that there being no merit in this application, the same may be rejected.

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is – whether the writ-applicants are entitled to seek compensation alongwith the interest for the delayed refund?

ANALYSIS:-

8. Before adverting to the rival submissions canvassed on either side, we should look into few relevant provisions of the Act and the Rules.

9. Section16 of the IGST Act is set out below:-

> ***Section16. Of the IGST Act***
>
> *(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:––*
>
> > *(a) export of goods or services or both; or*
> >
> > *(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*
>
> *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.*
>
> *(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:––*
>
> > *(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or*
> >
> > *(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.*

10. Section-54 of the CGST Act is set out below:-

> ***Section-54 of the CGST Act***
>
> *(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the*

amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under subsection (5) within sixty days from the date of receipt of application complete in all respects.

11. Rule 91 of the CGST Rule is reproduced herein below:-

Rule 91 Grant of provisional refund:

(1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

(2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90 .

(3) The proper officer shall issue a [3]payment advicepayment order in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

12. Rule 90 of the CGST Rule provides that the acknowledgment for application for claim for refund in FORM GST RFD-01 shall be made available to the applicant through the common portal electronically within 15 days of the filing of the application. Rule 90 is set out below:-

Rule 90 Acknowledgement:

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

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal

electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

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

(4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

13. Rule 96 of the CGST Rules envisage the refund of Integrated Tax Paid on goods exported outside India. The same is reproduced herein below:-

Rule 96: Refund of Integrated Tax paid on Goods or Services Exported out of India.

(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be;

(2) The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(4) The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person

claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.

14. Section-56 of the CGST Act provides that if any tax ordered to be refunded under sub-section(5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of the application under sub-section (1) of that section, interest at such rate not exceeding 6% as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of the application under the sub-section till the date of refund of such tax. Section56 of the CGST Act reproduced herein below:-

Section-56: Interest on Delayed Refunds:

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation: For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

15. Rule 94 of the CGST provides for the order sanctioning interest on delayed refunds. It reads as follows:

Rule 94: Order Sanctioning Interest on Delayed Refunds:

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the

amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

16. We shall now look into few decisions of different High Courts including our High Court on the subject.

17. The Calcutta High Court in the case of ***Shiv Kumar Jain Vs. Union of India reported in 2004 (168) E.L.T. 158 (Cal.)*** held as under:-

"4. In my view, the time taken for refund of the money in terms of the CEGAT's order is unreasonable. CEGAT's order was passed on 21st June, 2001 so one could expect either the matter to be taken to higher up, and for this, under law ninety days time is given and on expiry of this time the department was expected to refund this money, since it is a Government Department. So, unlike the ordinary citizen another three months of grace time may be given for taking action. So, the department should have released this amount within the reasonable time of six months, namely by 31st December, 2001. Unfortunately, this has not been done. So, I think after expiry of 31st December, 2001 the Government has no justification for withholding this money, and I hold this is an negligent inaction on the part of the Government. The Government cannot deprive the enjoyment of the property without due recourse to law and this withholding cannot be termed to be a lawful one nor an established procedure under the law. Therefore, this inaction is wholly unjustified and this has really caused the deprivation of the petitioner's enjoyment of the property namely the aforesaid amount. Therefore, this is positively violative of the provision of Article 300A in Chapter IV under Part XII of the Constitution of India. When there is breach of constitutional right either by omission or by commission by the State such breach can be remedied under Article 226 of the Constitution of India. The petitioner could have earned interest during this period but because of the withholding this could not be done. I find in support of my observation from the judgment cited by Mr. Chowdhury as above. In that case a pre deposit amount was directed to be refunded with interest at the rate of 15% per annum. Of course at that point of time the rate of interest of Bank might be higher, but having regard to the present facts and circumstances of this case the rate of interest as allowable now admittedly by the Reserve Bank of India in case of its bond not exceeding 8% per annum, will be appropriate. Therefore, I direct the respondents to pay interest at the rate of 8% on the aforesaid amount of Rs.10 lacs to be calculated from January 2002 till 3rd April, 2003 when the payment of principal amount was effected. This payment of interest shall be made within a period of three months from the date of communication of this order. However, there will be no interest for this period." +

18. A Five Judge Bench of the Supreme Court in the matter of ***K.T. Plantation Pvt. Ltd. & Anr. Vs. State of Karnataka reported at (2011) 9 SCC 1*** in para 143 held that:-

……..

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that Article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

……..

19. A Division Bench of this Court in the matter of ***State of Gujarat Vs. Doshi Printing Press***

reported at MANU/GJ/0420/2015 held that:-

> *16. From the conjoint reading of the decision of the Apex Court in the case of Sandvik Asia Limited Vs. Commissioner of Income Tax & Others (supra) and the latter decision of the Larger Bench in the case of Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals (supra) it appears that the liability to pay interest on interest by the Revenue is not approved and to that extent the contention of the Revenue can be maintained. But the further contention of the Revenue that no interest whatsoever would be payable if the refund of the amount of tax or refund of the amount deposited towards tax is to be made, no interest whatsoever would be available by way of compensatory measure.*
>
> *17. In our view, the general principles for awarding compensation to the Assessee for the delay in receiving monies properly due to it is not disapproved by the Larger Bench of the Apex Court in the case of Commissioner of Income Tax, Gujarat Vs. Gujarat Fluoro Chemicals (supra)."*
>
> *13. In our view, the above-referred observation made by this Court in the above-referred decision in case of Gujarat Fluoro Chemicals (supra) is a complete answer to the contention of the learned A.G.P. that the interest can be awarded even if not expressly barred by the statute or that the taxing statute is silent about the same".*

20. The word 'Compensation' has been defined in ***P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918*** as follows:-

> *"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; some thing given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."*

21. We may now reproduce the Chart indicating the delay in days:-

Delay in refund for SARAF NATURAL STONE

Month	Invoice Date	Refund Amount	Date of filing of GSTR 3	7 days from Return Filing	Date of Refund	Delay in days

	06/07/17	12018			18/06/2018	290
	10/07/17	16380			25/04/2018	236
	10/07/17	12763			25/04/2018	236
	11/07/17	2,33,103			04/12/17	94
	12/07/17	2,77,949			04/12/17	94
	13/07/2017	9183			25/04/2018	236
	13/07/2017	2,17,718			04/12/17	94
July'17	13/07/2017	12534	25/08/2017	01/09/17	25/04/2018	236
	14/07/2017	1,97,712			04/12/17	94
	14/07/2017	2,26,655			04/12/17	94
	14/07/2017	19720			25/04/2018	236
	15/07/2017	16274			04/12/17	94
	15/07/2017	25464			25/04/2018	236
	15/07/2017	12333			25/04/2018	236
	15/07/2017	14917			25/04/2018	236

22. The position of law appears to be well-settled. The provisions relating to an interest of delayed payment of refund have been consistently held as beneficial and non-discriminatory. It is true that in the taxing statute the principles of equity may have little role to play, but at the same time, any statute in taxation matter should also meet with the test of constitutional provision. 23. The respondents have not explained in any manner the issue of delay as raised by the writapplicants by filing any reply. 24. The chart indicating the delay referred to above speaks for itself.

25. In the overall view of the matter, we are inclined to hold the respondents liable to pay simple interest on the delayed payment at the rate of 9% per annum. The authority concerned shall look into the chart provided by the writ-applicants, which is at Page-30, Annexure-D to the writ-application and calculate the aggregate amount of refund. On the aggregate amount of refund, the writ-applicants are entitled to 9% per annum interest from the date of filing of the GSTR-03. The respondents shall undertake this exercise at the earliest and calculate the requisite amount towards the interest. Let this exercise be undertaken and completed within a period of two months from the date of receipt of the writ of this order. The requisite amount towards the interest shall be paid to the writ-applicants within a period of two months from the date of receipt of the writ of this order.

26. With the above, this writ-application is disposed of.

(J. B. PARDIWALA, J)
(A. C. RAO, J)

Original judgment copy is available here.

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
Notification

New Delhi, the 9th October, 2019

No. 47/2019-Central Tax

G.S.R. 770(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) before the due date, as the class of registered persons who shall, in respect of [1][financial years 2017-18, 2018-19 and 2019-20], follow the special procedure such that the said persons shall have the option to furnish the annual return under sub-section (1) of section 44 of the said Act read with sub-rule (1) of rule 80 of the said rules:

Provided that the said return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

[F. No. 20/06/07/2019-GST]
RUCHI BISHT, Under Secy.

References

1. Substituted by Notification No. 77/2020-Central Tax dated 15th October, 2020, for the words "financial years 2017-18 and 2018-19".

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
NOTIFICATION
New Delhi, the 9th October, 2019

No. 46/2019 – Central Tax

G.S.R.769(E). – In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of the Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, for each of the months from October, 2019 to March, 2020 till the eleventh day of the month succeeding such month.

[1][[2][[4][Provided that for registered persons whose principal place of business is in the erstwhile State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial

year, for the month of October, 2019 till 24th March, 2020.]]]

[3][Provided that for registered persons whose principal place of business is in the State of Assam, Manipur or Tripura, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of November, 2019 till 31st December, 2019.]

[5][Provided that for registered persons whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the months of November, 2019 to February till 24th March, 2020.]

2. The time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 of the said Act, for the months of October, 2019 to March, 2020 shall be subsequently notified in the Official Gazette.

[F. No. 20/06/07/2019-GST]
RUCHI BISHT, Under Secy.

References

1. Inserted by Notification No. 58/2019-Central Tax dated 26th November, 2019 , w.e.f. 11.11.2019.

2. Substituted by Notification No. 64/2019-Central Tax dated 12th December, 2019, w.e.f. 30.11.2019, for the proviso "Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 30th November, 2019."

3. Inserted by Notification No. 76/2019-Central Tax dated 26th December, 2019, w.e.f. 11.12.2019.

4. Substituted by Notification No. 22/2020-Central Tax dated 23rd March, 2020, w.e.f. 20.12.2019, for the proviso "Provided that for registered persons whose principal place of business is in the State of Jammu and Kashmir, the time limit for furnishing the details of outward supplies in **FORM GSTR-1** of Central Goods and Services Tax Rules, 2017, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, for the month of October, 2019 till 20th December, 2019."

5. Inserted by Notification No. 22/2020-Central Tax dated 23rd March, 2020, w.e.f. 20.12.2019.