ACUPRO CONSULTING

WEEK 2, FEBRUARY 2023

THE GST PULSE

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Recent Judgement and Rulings

CGST AND SGST AUTHORITIES CANNOT SIMULTANEOUSLY PROSECUTE THE ASSESSEE ON SIMILAR SUBJECT MATTER

HON'BLE MADRAS HIGH COURT

Tvl Metal Trade Incorporation ("the Petitioner") has filed the petition challenging summons issued by the State Tax Authority ("the Respondent") under Section 70(1) of the TNGST Act, 2017 and by the Central Tax Authority under Section 70(1) of the CGST Act, 2017 on October 18, 2022 ("the Impugned Summons").

The Petitioner challenged the impugned summons on the ground that both the Central Tax Authority and the Respondent do not have powers to initiate proceedings simultaneously under the CGST Act and the TNGST Act on the same subject matter as petitioner was already facing proceedings initiated by the Central Tax Authority. Further, the Petitioner contended that the Respondent is threatening him and calling it for personal hearing when it has already replied to the Summon.

The Hon'ble Madras High Court held that, the State Tax Authority cannot prosecute the assessee, when the Central Tax Authority has already initiated action on the same subject matter. Further held that, to substantiate such defence, the assessee must participate in the personal hearing/enquiry and only after that it can be ascertained whether the proceedings initiated by the Central and State Tax Authority are one and involving the same subject matter. Directed the assessee to appear before the Revenue Department and state all its objections.



REFUND CANNOT BE DENIED FOR AN UNINTENTIONAL ERROR, SUBSEQUENTLY RECTIFIED

HON'BLE DELHI HIGH COURT

M/s. Shri Shyam Footwear ("the Petitioner") had filed a refund application for the period of October – December, 2020 in FORM-GST-RFD-01 on April 7, 2021 claiming the unutilized ITC as prescribed under the CGST Act, 2017. The Revenue Department ("the Respondent") denied the refund application on the ground that it was defective. Consequently, a Show Cause Notice dated May 22, 2021 ("the Impugned SCN") was issued highlighting the error made by the Petitioner. For which Petitioner responded by accepting the error and rectifying the same in FORM-GST-RFD-09 on June 7, 2021. Further, The Petitioner claimed that the reply to the Impugned SCN was reflected on the GST Portal, but the annexure thereto was not reflected. The Respondent issued an Order-in-Original rejecting the refund.

Being aggrieved, the petitioner filed a petition contending that the Respondent had not taken note of the rectified information and had issued the rejection order. Further, the Petitioner had preferred an appeal before the Appellate Authority, but it was rejected on the ground that the annexure was incomplete, which was necessary for processing the refund.

The Hon'ble Delhi High Court set aside the order of the Revenue Department of rejecting the refund application of the assessee on the ground that the rectified information submitted by the assessee was not considered while passing such order. Further held, that it is essential for the Revenue Department to examine the information as submitted by the assessee and process its claim for refund of unutilized Input Tax Credit ("ITC") in accordance with law.



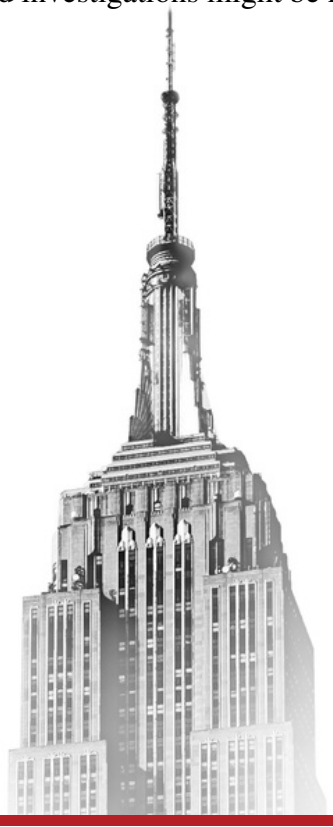
DENIAL OF BAIL TO REGISTERED PERSON ACCUSED OF FAKE INVOICES DUE TO ONGOING INVESTIGATIONS TO DISCOVER MORE FAKE SUPPLIERS

HON'BLE SUPREME COURT OF INDIA

Basudev Mittal ("the Petitioner") is the proprietor of M/s Shree Sainath Enterprises, Raipur. A search was conducted at the petitioner's residential premises on March 28, 2022 in order to recover documents related to evasion of GST. During search and scrutiny of documents, it was found that the Petitioner purchased iron scrap from various firms whose GST registrations has been cancelled and has fraudulently availed Input Tax Credit of more than INR 5 Crore. Thereby committing offence under Section 132(1)(c) of the CGST Act. The Petitioner was taken into custody on March 30, 2022.

The Petitioner had applied for bail on the ground that he was arrested in a total false case of GST evasion and that the alleged offence falls under the category of bailable offences. However, the Hon'ble Chhattisgarh High Court denied the Petitioner's request of bail, on the ground that further investigation is going to find out more suspicious and fake suppliers with whom the Petitioner is alleged to have made transactions in order to avail ITC illegally. Further, if the Petitioner is released on bail, there is a possibility of it hampering with the evidence and interfering with the investigation. Being aggrieved by this the petitioner has filed a special leave petition.

The Hon'ble Supreme Court of India has refused to interfere with the order passed by the Hon'ble Chhattisgarh High Court, wherein bail was denied to the accused in the alleged matter for availment of wrong Input Tax Credit ("ITC"), on the ground that investigations were still going on for detecting more fake suppliers and investigations might be hampered if bail was granted.



GST @18% LEVIABLE ON WORKS CONTRACT SERVICES TO INDIAN RAILWAYS; 12% ON WORKS CONTRACT SERVICES INVOLVING PREDOMINANTLY EARTHWORK

THE AUTHORITY FOR ADVANCE RULING, KARNATAKA

M/s S.K. Swami & Company ("the Applicant") is engaged in executing works contracts to Indian Railways such as construction of rail under bridge works and tunnels; supplying and stacking of ballast; works contract services involving predominantly earthwork and sub contracts of all such works. Further, the Applicant has entered in a contract with Konkan Railway Corporation Limited for supplying and stacking of ballast.

The Applicant is seeking an advance ruling on the rate of GST to be charged for the above-mentioned supply of goods and services.

The AAR, Karnataka has ruled the rate of Goods and Services Tax ("GST") @ 18% is to be levied on works contract services executed to Indian Railways by the applicant either as a main contractor or as a sub-contractor for the construction of railways under-bridge and tunnels. Further, works contract services involving predominantly earth work would attract GST @ 12% as per Notification No. 11/2017 Central Tax (Rate) dated June 28, 2017 ("the Services Rate Notification"). For the supply of ballast to railways GST @ 5% shall be charged as per Notification No. 1/2017- Central Tax (Rate) dated June 28, 2017 ("the Goods Rate Notification").



Thank You!

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