



Dimensions – 46th Edition

Judgment under GST era

1. M/s Kushal Ltd. v. Union of India¹

Issue for Consideration	Can the authorities attach the bank accounts in absence of pending search proceedings under section 67 of the CGST Act, 2017?
Discussion & Judgment	<p>Discussion:</p> <ul style="list-style-type: none"> • The Petitioner is engaged in the manufacture and sale of paper and paper waste and in trading of various commodities. The Petitioner had entered into certain transactions of sale of goods with registered persons under GST on ‘as is where is’ basis in the year 2017-18. • The authorities later initiated search proceeding at the premises of the Petitioner and demanded evidence regarding the trading i.e. purchase and sale transactions. The Petitioner intimated that the goods were sold on ‘as in where is basis’ without involving movement of goods. These goods were purchased from registered persons and the entries were duly reflected in Form GSTR-2A on the online GST portal. The Petitioner utilised the Input Tax Credit (ITC) of tax paid on purchases towards payment of outward liability and the differential amount was paid in cash. • Subsequently, summonses were issued to the Managing Director (MD) of the Company, which were duly complied by the MD. The Authorities again visited the premises of the Petitioner to scrutinize the transactions and issued an arrest memo to the MD under section 69 of the CGST Act, 2017. Thereafter, the Respondents proceeded to provisionally attach the bank accounts of the Petitioners under section 83 of the CGST Act, 2017. Aggrieved, the Petitioner filed a Writ Petition before the Hon’ble High Court

¹ 2019-VIL-619-GUJ - The High Court of Gujarat at Ahmedabad



- The Petitioner submitted that the provisional attachment of bank accounts in absence of any pending proceedings under section 67 of the CGST Act, 2017 is wholly without jurisdiction and illegal. It was also submitted that no tax liability shall arise under the GST Act in absence of actual sales or purchases.
- The Respondents, on the other hand submitted that ITC was availed only on the basis of invoices and no goods were actually received by the Petitioner. The Petitioner agreed to reverse partial GST credit where ITC was availed on strength of invoices without actual receipt of goods on statements recorded during course of second inspection. The proceedings initiated are still pending as no amount has been deposited by the Petitioner and accordingly action to provisionally attach the bank accounts was undertaken.
- On perusal of section 67 and 83 of the CGST Act, 2017, the Hon'ble High Court observed as under:
 - In order to exercise power to provisionally attach the bank accounts under section 83 of the CGST Act, 2017, proceedings should be pending under the requisite provisions under the GST law. In the instant case, pursuant to search under section 67(2) of the CGST Act, 2017 no inquiry or other proceedings under the GST law was initiated. Thus, since the basic requirement for exercise of powers under section 83 of the CGST Act, 2017 was not satisfied, the provisional attachments of the bank accounts of the Petitioners is not in consonance with the provisions thereof and cannot be sustained.
 - Further, the issue of eligibility of the ITC being beyond the scope of the instant petition, the Hon'ble High Court directed the Petitioners to raise such contentions in appropriate proceedings before the appropriate forum.

Judgment:

The Hon'ble High Court quashed and set aside the orders of provisional attachment of the bank accounts of the Petitioners and directed to release the attachments in absence of any pending proceedings under the requisite provisions of the GST law.

**Dhruva
Comments /
Observations**

- The intent of section 83 of the CGST Act, 2017 is to safeguard the interest of the revenue. This section specifically states that in order to exercise the power of provisional attachment of the property of a taxable person, proceedings should be pending under the requisite provisions specified therein.
- This is a welcome judgement and would provide necessary aid when such powers are summarily invoked by the GST authorities.



Judgment under the Pre-GST regime:

2. Commissioner, CGST Commissionerate v M/s International Tobacco Company Ltd- Allahabad ²	
Issues for Consideration	<ul style="list-style-type: none">• Whether the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) mis interpreted rule 16(1) of Central Excise Rules, 2002 (CER) by including goods sold as scrap within its scope and allowing assessee to avail CENVAT Credit?• Whether CESTAT was justified to revoke penalty imposed under rule 26 of CER?
Discussion & Judgment	<p>Discussion:</p> <ul style="list-style-type: none">• Assessee is engaged in manufacture of various brands of cigarettes on job work basis.• The assessee clears goods from factory on payment of Excise Duty. However, certain duty paid goods were returned to the factory for various reasons.• The assessee claimed CENVAT credit on the bought back goods under rule 16(1) of CER on the ground that the said goods were to be used for refining purpose.• Rule 16(1) of CER provides that if duty paid goods are bought back to the factory for being re-made, refined, reconditioned or for any other reason, then the assessee can avail CENVAT credit of such goods.• In the instant case, the CESTAT observed that since rule 16(1) of CER includes the phrase '<i>or for any other reason</i>', its scope is wide enough to include the goods brought back by assessee. Accordingly, CESTAT allowed the CENVAT credit availed by the assessee. Further, CESTAT dropped the penalty imposed under rule 26 of CER.• The revenue filed an appeal before the Hon'ble High Court against the said order. The observations of the Hon'ble High Court are as under:<ul style="list-style-type: none">- Goods were brought back for the purpose of scrapping and not refining-<ul style="list-style-type: none">○ The cartons that were returned were found in packed condition. Hence, the alleged defects in goods, as claimed by assessee could not be ascertained.○ The receipts were not found to be reliable. There are no records of reasons given by purchasers for rejecting the consignments.○ The assessee tried to pass scrapped goods as refined goods.- Scrapping is not included within the scope of rule 16(1) of CER-<ul style="list-style-type: none">○ Goods may be brought back to factory and may be subjected to processing and thereafter removed after having become saleable commodities.○ The phrase '<i>or for any other reason</i>' has to be necessarily read on the construction canon of ejusdem generis. Any other rule of interpretation would make the rule unworkable and defeat the intention of legislature.○ The legislative intent was not to read the phrase '<i>or for any other reason</i>' in rule 16(1) of CER in isolation or to give it a wide scope. Otherwise there would be no necessity to precede the said phrase with processes of '<i>re-made</i>', '<i>refined</i>' and '<i>re-conditioned</i>'.

² 2019-TIOL-2944-HC-ALL-CX



	<ul style="list-style-type: none"> ○ The phrase <i>'for any other reason'</i> has to be interpreted in light of the preceding expressions of <i>'remade, refined, re-conditioned'</i>. ○ The essential characteristics of the goods are retained even after subjected to processes of re-made etc. However, in case of scrapping, the original identity of goods completely perishes. ○ Scrapping does not fall within the scope of rule 16(1) of CER. <p>- Based on the aforementioned observations, the imposition of penalty under rule 26 of CER was also upheld.</p> <p>Judgment:</p> <ul style="list-style-type: none"> ● CESTAT misinterpreted rule 16(1) of CER by unlawfully including scrapping within its scope. ● CESTAT was unjustified in setting aside penalty imposed under rule 26 of CER.
<p>Dhruva Comments / Observation</p>	<p>The Hon'ble High Court has interpreted rule 16(1) of CER by following the principle of ejusdem generis and has held that the phrase <i>'for any other reason'</i> has to be interpreted in light of the preceding expressions <i>'remade, refined, re-conditioned'</i>. Scrapping of goods is neither a species nor in the likeness of <i>'remade, refined, re-conditioned'</i> and hence, should not fall within the ambit of rule 16(1) of CER.</p>

Circular under GST:

<h3>1. SOP in case of non-filers of returns³</h3>	
<p>Background</p>	<p>Revenue officers were following divergent practices in case of non-filing of returns by the taxpayers. Accordingly, to clarify the issue and ensure uniformity in the interpretation of the provisions of law, Government issued the present circular prescribing guidelines to be followed by the department for non-filers of GST returns.</p>
<p>Clarification</p>	<p>A brief synopsis of the circular is outlined below:</p> <ul style="list-style-type: none"> ● A system generated message would be sent to all the registered persons 3 days before the due date of filing of return. ● Post the due date for filing GSTR-3B, a system generated mail / message would be sent to all the defaulters i.e. to the authorized signatory as well as the proprietor / partner / director / karta etc. ● 5 days after the due date of furnishing the return, a notice in GSTR-3A shall be issued electronically to defaulters requiring them to furnish such return within 15 days. ● If said return is still not filed within the aforesaid time limit, the proper officer may proceed to assess the tax liability on best judgement basis taking into account the available / gathered materials and issue order in GST ASMT-13. The proper officer would then be required to upload the summary in GST DRC-07.

³ Circular no. 129/48/2019 - GST dated December 24, 2019



- To assess aforesaid tax liability, the proper officer may take into account the details of outward supplies as per GSTR-1, details of inward supplies auto-populated in GSTR-2A, information available from e-way bills, or any other information available from any other source including inspection at business premises.
- If a **valid return is furnished within 30 days** of the service of aforesaid assessment order, the said **assessment order shall be deemed to have been withdrawn. Otherwise, recovery proceedings could be initiated.**
- In deserving cases, the Commissioner may resort to provisional attachment of property to protect revenue, before issuance of Order in GST ASMT-13.

Notifications under GST:

1. Amendments in-line with decisions taken in 38th GST council meeting ⁴

Background	Government has issued various notifications amending provisions of GST law to give effect to the decisions taken in the 38 th GST council meeting.
Amendments	<p>A brief synopsis of the notifications issued is outlined below:</p> <ul style="list-style-type: none"> • Introduction of new rule 86A <i>[effective from December 26, 2019]</i>: <ul style="list-style-type: none"> - Upon having reasons to believe that ITC available in Electronic Credit Ledger has been availed fraudulently or are ineligible, the department may, for reasons recorded in writing, block utilisation or refund of such ITC to the extent it is availed: <ul style="list-style-type: none"> ○ basis tax invoices / debit notes, etc. <ul style="list-style-type: none"> • <u>issued by a registered person</u> who has been found to be <u>non-existent or not to be conducting any business from any place</u> for which registration has been obtained; • <u>without receipt</u> of goods or services or both or ○ basis tax invoices / debit notes, etc. on which <u>tax has not been paid to the Government</u>; or ○ <u>by a registered person</u> who has been found to be <u>non-existent or not to be conducting any business from any place</u> for which registration has been obtained; or ○ <u>without being in possession of prescribed documents</u> such as tax invoices/debit notes, etc. - The Department may unblock the aforesaid ITC upon being satisfied that the corresponding conditions for blocking such ITC no longer exists; - The aforesaid restriction shall cease to have effect after expiry of one year from the date of its imposition.

⁴ Notification no. 74/2019-Central tax, 75/2019-Central tax, 76/2019-Central tax, 77/2019-Central tax and 78/2019-Central tax, all dated December 26, 2019



- **ITC**, in respect of invoices or debit notes not reflected in GSTR-2A, **to be restricted to 10% of the eligible credits shown in GSTR-2A.** *[effective from January 1, 2020]*
- **E-way bill to be blocked** for those taxpayers who have **not filed their GSTR-1 for two tax periods.** *[effective from January 11, 2020]*
- **Late fee waived** on filing of **GSTR-1** between December 19, 2019 to January 10, 2020 for the period of **July 2017 to November 2019.** *[effective from December 19, 2019]*
- **Due date** for filing of GSTR-1, GSTR-3B and GSTR-7 for **November 2019 extended** in respect of a **few North Eastern States.** *[effective from various dates in December 2019]*



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