



## Dimensions – 76<sup>th</sup> Edition

### Judgment under GST era

#### *Jian International v. Commissioner of Delhi Goods and Services Tax<sup>1</sup>*

##### Issue for Consideration

Examine the validity of the deficiency memo issued belatedly by the department in the course of granting GST refund.

##### Discussion

- The Petitioner filed a Writ Petition before the Hon'ble High Court seeking directions for granting refunds along with interest on zero-rated supply of goods and services for the month of August 2019 under section 54 of the CGST Act, 2017.
- The application has not been processed by the Respondents as neither any acknowledgment in Form GST RFD – 02 has been issued nor has any deficiency memo been issued in Form GST RFD – 03 within the prescribed timelines.
- The Petitioner submitted the following in support of its claims:

- Section 54(6) of the CGST Act, 2017 mandates the authorities to refund at least 90% of the refund claimed on zero rated supplies within seven days of date of acknowledgement issued under rule 90 of the CGST Rules, 2017.
- No communication has been received even after the expiry of 15 days from the date of filing the refund application.
- Furthermore, the Petitioner had to file Writ Petitions for prior period to obtain the refund along with partial interest.
- The Respondent admitted laxity on their part in processing the application and stated that a formal deficiency memo must be issued as certain documents, although annexed with the present petition, have not been uploaded along with the refund application.
- The Hon'ble High Court observed as follows:
  - Rule 90(2) and (3) of the CGST Rules, 2017 requires the authorities to either communicate the deficiency in the application or acknowledge the refund application within 15 days of filing of such an application;

<sup>1</sup> 2020-VIL-328-DEL



- In cases involving deficiencies in the application, the applicant has to file a fresh refund application after necessary rectifications.
- Section 56 of the CGST Act, 2017 provides for interest on refund in the event of non-compliance or delay in issuing refunds.
- The present refund application would be presumed as complete in all respects in the absence of any acknowledgement being issued or in the absence of any communication of deficiency.
- A deficiency memo cannot be allowed to be issued now since it would amount to enabling the authorities to process the refund application beyond the statutory timelines provided under rule 90 of the CGST Rules, 2017. Such an action could be construed as rejection of the initial application and the Petitioner would need to file a fresh application after rectification of the defects curtailing the Petitioner's right to claim interest from the relevant date of filing the original application for refund.
- The Court also observed that the issuing of a deficiency memo is a hyper-technical plea since all the relevant documents have been annexed with the present Writ Petition and the Respondent is satisfied about its authenticity.
- The Respondent has lost the right to point out deficiency in the refund application at this belated stage.

### Judgment

The Hon'ble High Court directed the Respondent to pay the refund along with interest within two weeks in accordance with the law.

### **Dhruva Comments:**

The judgment critically evaluates the refund provisions and dismisses revenue's plea for permitting the issue of deficiency memo belatedly. The judgment would certainly go a long way in streamlining the refund

process and provide relief to taxpayers. This is indeed a welcome judgment.

## Ruling under GST era

### ***M/s Sundharams Private Ltd. – Authority for Advance Ruling, Maharashtra<sup>2</sup>***

#### Issue for Consideration

Can input tax credit ("ITC") be availed on the purchase of paver blocks ("PBs") laid on the land?

#### Discussion

- The Applicant is engaged in providing warehousing, storage, and support services to the Original Equipment Manufacturers ("OEMs") of automobile industry, transport cars / tractors using its fleet of car carrier vehicles. As part of the service contract, cars are stored in the Applicant's stockyard prior to their transit to the respective car dealers. The Applicant receives storage rentals from the OEMs for such services and pays the applicable GST.
- The Applicant had purchased PBs which were laid in the parking area where the cars are stored. This was done to ensure efficient and safe parking of automobiles, else if the wheels of such automobiles are placed on ordinary surface then it would be subject to quicker wear and tear due to accumulation of water, dust, etc.
- The Applicant approached the Authority for Advance Ruling ("the Authority") to contend that ITC was available on such PBs, on the basis of the following grounds:
  - The PBs are not permanently embedded in the earth and are capable of being removed / dismantled as such without causing damage to them for reuse elsewhere. Furthermore, upon the expiry of the land lease, the Applicant is required to remove and take possession of such PBs. Hence, such PBs are to be regarded as movable items and laying of PBs on land does not amount to construction of immovable

<sup>2</sup> 2020-VIL-224-AAR



property under section 17(5)(c) of the CGST Act, 2017.

- The explanation to section 17(5)(c) and (d) of the CGST Act, 2017 states that ‘construction’ includes reconstruction, additions, alterations or repairs, to the extent it is capitalized to the said immovable property. In the present case, the expenses of PBs are not capitalised in the books of accounts as a part of immovable property (land) but treated as revenue expenditure. Hence, ITC should be allowed on PBs.
- Even if it is assumed that PBs acquire the character of ‘immovable property’, ITC shall be allowed on the same basis as the judgment of the Orissa High Court in the case of *Safari Retreats Pvt. Ltd. v. Chief Commissioner of CGST*<sup>3</sup>.
- The jurisdictional officer contended as follows:
  - On the basis of the photographs submitted by the Applicant, PBs are fastened to the land using interlocking blocks and are firmly supported by the outer wall. PBs are not kept loosely on the ground. Merely because cement has not been used does not mean that the PBs are not fastened to the earth.
  - Laying of PBs is a time consuming and skilful job that should be carried out with due diligence and same applies for the activity of dismantling of PBs. PBs cannot be shifted as and when required like movable goods. The flexibility to re-use does not mean that they will be removed and re-erected frequently. They are meant to be permanently fixed to earth and can be removed only when the need arises. Primarily, nobody will lay paver blocks with the intention of removing them.
  - Reliance was placed upon the judgment of the Hon’ble Supreme Court in the case of *Municipal Corporation of Greater Bombay and others v. Indian Oil Corporation Ltd.*<sup>4</sup> to state that once laid on the land, the PBs cannot be moved to another place of use in the same position unless dismantled and laid again at another place.

Hence, PBs are permanently embedded in the earth and the laying of PBs amounts to construction of immovable property as per section 17(5) of the CGST Act, 2017. Accordingly, the ITC of PBs should not be eligible.

- After considering the submissions of the Applicant and the jurisdictional officer, the Authority observed the following:
  - The impugned activity does not involve the supply of PBs as a chattel. It is not a case where a system can be removed and put on some other piece of land ‘as it is’, because the installation of PBs takes support from boundary walls and the contours of the new land may not be the same as those of the old one. The removal of PBs will always involve a total dismantling, which cannot be done without loss or damage. Hence, it needs to be determined whether or not the activity results into immovable property.
  - The Hon’ble Supreme Court in the case of *Municipal Corporation of Greater Bombay (supra)* has held that if the chattel is movable to another place as such for use, it is considered movable but if it has to be dismantled and reassembled or re-erected at another place for such use, such a chattel would be considered immovable. Applying this test, laying of PBs results into an immovable property. The manner in which the parking facilities are erected does not answer the description of ‘goods’ [as per section 2(52) of the CGST Act, 2017].
  - Reliance was also placed upon the judgment of the Bombay High Court in the case of *Bharti Airtel Ltd. v. Commissioner of Central Excise*<sup>5</sup> to determine what constitutes an immovable property.
  - On the basis of the principles laid in the above judgments, laying of PBs does not result into supply as a chattel. Once the parking system is operational, it obtains a state of ‘permanency’.

<sup>3</sup> 2019-VIL-223-ORI

<sup>4</sup> 1990-VIL-10-SC

<sup>5</sup> 2014-VIL-242-BOM-CE



It cannot be easily removed and put at another place. Furthermore, the Applicant has stated that PBs would be removed only when the need arises, which means the Applicant will not use the PBs with an intention to remove it and use the same as movable property.

- Reliance placed by the jurisdictional officer on the case of *Municipal Corporation of Greater Bombay (supra)* is applicable to the present case. The PBs are not simply arranged on the land. They are fastened to earth using interlocking blocks and are firmly supported by the outer walls and therefore PBs are to be considered as immovable property.
- The Applicant has himself built the immovable property (parking) for which he has received the PBs. Accordingly, as per section 17(5)(d)<sup>6</sup> of the CGST Act, 2017, ITC shall not be available. In this regard, reliance was also placed upon the advance ruling pronounced in the case of *Sree Varalakshmi Mahaal LLP*<sup>7</sup>, wherein ITC of goods and services used for the construction of a marriage hall on own account, even if used for renting, was not allowed to be eligible.
- Reliance placed by the Applicant upon the case of *M/s. Safari Retreats Pvt. Ltd (supra)* cannot be relied upon since an appeal has been filed by the department before the Hon'ble Supreme Court and has not attained finality.

## Ruling

Laying of the PBs qualifies as an immovable property and therefore ITC cannot be availed on PBs in terms of section 17(5)(d) of the CGST Act, 2017.

## **Dhruva Comments**

The concept of immovable property continues to be debated under the GST regime. Whether the goods without being fastened to earth attains the character of being immovable needs to be evaluated. Furthermore, the Authority has also not commented upon the

argument that the cost of such PBs are not being capitalized in the books of accounts, which is a requirement for treating the goods and services as used for 'construction'.

## **Notification under GST era**

### **Amendment in e-invoicing provisions<sup>8</sup>**

- With effect from October 1, 2020, the provisions of e-invoicing in respect of B2B supplies are applicable to the registered persons having an aggregate turnover in a financial year exceeding ₹100 crores, other than a banking company, NBFC, goods transport agency, supplier of passenger transportation service and cinemas in multiplex screens [as per notification no. 13/2020 - Central Tax dated March 21, 2020].
- The Government has now amended the said notification to state that:
  - Limit of aggregate turnover for e-invoicing now stands increased to ₹500 crore;
  - Special Economic Zone unit would also be excluded from the issuance of e-invoice.

## **Dhruva Comments**

By increasing the limit of the aggregate turnover to ₹500 crore, the Government has brought the same at par with the issuance of e-invoice in the case of B2C supplies for which also the aggregate turnover limit notified<sup>9</sup> was of ₹500 crore.

Industry would have to quickly gear up for another round of digitisation and speed up the e-invoicing implementation project.

<sup>6</sup> Section 17(5)(d) restricts the availment of ITC on goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business

<sup>7</sup> 2019-VIL-481-AAR

<sup>8</sup> Notification no. 61/2020-Central Tax dated July 30, 2020

<sup>9</sup> Notification no. 14/2020-Central Tax dated March 21, 2020





## ADDRESSES

### Mumbai

11th Floor, One World Centre,  
Tower 2B, 841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahlanagar, Corporate Road,  
Ahmedabad 380 015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart, Baner,  
Pune 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
U-Bora Tower 2, 11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel: + 971 56 900 5849

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

### Niraj Bagri

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

---

WTS Dhruva Consultants recognised as **Best Newcomer Firm of the Year 2020 Europe** - International Tax Review

**“India Tax Firm of the Year”** 2017, 2018, and 2019 - International Tax Review’s Asia Tax Awards

**“India Tax Disputes and Litigation Firm of the Year”** 2018 - International Tax Review’s Asia Tax Awards

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review’s in its World Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing practice** in the International Tax Review’s Transfer Pricing Guide.

Dhruva Advisors in 2019 for the first time ranked as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review’s Indirect Tax Guide.

**Best Newcomer of the Year 2016** - ASIA - International Tax Review’s Asia Tax Awards

## Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication

