



Dimensions – 96th Edition

Judgment under GST era

M/s Kiran Enterprise v. The State of Tripura¹

Issue for Consideration

Whether the adjudicating authority has the authority to condone the delay in filing application for rectification of errors under section 161 of the CGST Act, 2017?

Discussion

- The Petitioner is the distributor of Airtel, as engaged by Bharati Hexacom Limited (“Bharti Hexacom”) for Dharmanagar jurisdiction.
- The Petitioner has another proprietorship firm in the name of ‘M/s New Kiran Enterprise’ under the same PAN as the Petitioner but with a different GSTIN.
- The Department conducted a search wherein it was alleged that the Petitioner had availed and utilised input tax credit (“ITC”) in GSTR-3B for the period from July 2017 to March 2018 in excess of the ITC available as per Form GSTR-2A.
- The tax invoices were seized by the Department and a Show Cause Notice (“SCN”) was issued raising demand for the excess availment and utilisation of ITC, along with interest and penalty.

- The Petitioner submitted that Bharti Hexacom has erroneously raised tax invoices in the name of the Petitioner i.e., M/s Kiran Enterprise instead of M/s New Kiran Enterprise, but mentioned the GSTIN of M/s New Kiran Enterprise on the invoice.
- The Department passed an order dated November 15, 2018 confirming the aforesaid demand.
- The Petitioner filed a petition before the Superintendent of State Tax (“the Superintendent”), being the authority passing the aforesaid order, after expiry of approximately one year from the date of the aforesaid order for rectification of error in the tax invoices under section 161 of the CGST Act, 2017.
- The Superintendent quashed the said petition on the premise that section 161 of the CGST Act, 2017 does not provide for any rectification after expiry of six months from the date of issue of such decision, order or notice. Further, though the said limitation would not apply to the matters pertaining to clerical or arithmetical error, but this is not the case in the present petition.
- In this respect, the Petitioner filed the present Writ Petition before the Hon’ble High Court, raising the question whether the Superintendent can condone

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the delay in filing petition for rectification of errors under section 161 of the CGST Act, 2017 basis the following contentions:

- Bharti Hexacom erroneously prepared the tax invoices in the name of the Petitioner instead of M/s New Kiran Enterprises.
 - These errors are errors apparent on the face of the record and, therefore, are liable to be rectified under section 161 of the CGST Act, 2017.
 - In absence of any provision for condoning the delay, section 5 read with section 29(2) of the Limitation Act, 1963 should apply. The Petitioner placed reliance upon various judgments to support this contention.
- The respondents, on the other hand, contended as follows:
 - Rectification sought is of the tax invoices, which were never issued by any authority under the GST law, but was issued by Bharti Hexacom.
 - As per section 161 of the CGST Act, 2017, the error can be rectified only within a period of three months from the date of reference, order, notice etc. and an absolute bar is created for such rectification after a period of six months except in case of rectification involving arithmetic error from accidental slip or omission. Hence, the department does not have the authority to condone the delay under section 161 of the CGST Act, 2017.
 - Section 29(2) of the Limitation Act, 1963 can be applied only in case where suit, appeal or application is filed in a Court and not before any statutory authority. Reliance was placed on various judgments in support of this contention.
 - After hearing both the sides, the Hon'ble High Court made the following observations:
 - It is apparent from section 161 of the CGST Act, 2017 that this is a complete code within itself and it impliedly excludes the Limitation Act, 1963. Thus, the Superintendent's observation, while quashing the petition for rectification, does not suffer from any infirmity.

- The Limitation Act, 1963 does not apply automatically unless it is extended to the special statute such as CGST Act, 2017 in as much as law in this regard is unambiguous. Thus, the Petitioner's contention in respect of extension of the Limitation Act, 1963 stands dismissed.
- The rectification as sought by the Petitioner is not covered by section 161 of the CGST Act, 2017.

Judgment

The Hon'ble High Court of Tripura dismissed the Writ Petition.

Dhruva Comments:

The Hon'ble High Court struck down the writ petition denying rectification not being covered under section 161 of CGST Act, 2017. Separately, with respect to input tax credit mismatch, argument could have been made that reviewing mismatches through GSTR-2A was yet to be notified, which otherwise could have assisted in reconciling credits and avoiding such error. More importantly, the judgment highlights important aspects for application of provisions of the Limitation Act, 1963 and could be interesting to evaluate in other cases whereby the GST law provides for a specific time limit to file an application.

Notification

Amendment in CGST Rules, 2017

- The Government has issued notification no. 94/2020-Central Tax dated December 22, 2020, whereby various amendments have been made in the CGST Rules, 2017 ("the Rules"). Some of the key amendments are as follows:
 - Rule 21 (*Registration to be cancelled in certain cases*) has been amended to provide additional scenarios in which the registration can be cancelled:



- Input tax credit (“ITC”) is availed in violation of provisions of section 16 of the CGST Act, 2017 (“the Act”) or the Rules made thereunder;
- Details of outward supplies furnished in GSTR-1 for one or more tax periods is in excess of outward supplies declared by the taxpayer in GSTR-3B;
- ITC is availed in violation of Rule 86B of the Rules (*Rule 86B is inserted w.e.f. January 01, 2021 discussed below*).
- Rule 21A (*Suspension of registration*) has been amended, whereby,
 - If the proper officer has reason to believe that the registration of a person is liable to be cancelled, then he can suspend the registration without granting an opportunity of personal hearing, which was previously available.
 - If on comparison of the GSTR-1 and GSTR-3B returns, it is found that there are significant differences or anomalies indicating contravention of the Act or the Rules, leading to cancellation of registration, then the officer can suspend the registration and shall intimate the same to the taxpayer in Form GST REG-31 electronically on common portal or by sending an email, highlighting the said differences / anomalies and seeking explanation within a period of 30 days as to why registration should not be cancelled.
 - Where the registration is suspended, no refund would be granted under section 54 of the Act.
- Rule 36 (*Documentary requirements and conditions for claiming input tax credit*) has been amended whereby under sub clause (4) credit to be availed in respect of those invoices / debit notes which have not been furnished by the supplier in the GSTR-1 / Invoice Furnishing Facility should not exceed 5% (*previously 10%*) of the eligible credit available in respect of invoices / debit notes which have been furnished in the GSTR-1 / Invoice Furnishing Facility.
- Sub clause (5) has been added to Rule 59 (*Form and manner of furnishing details of outward supplies*) providing,
 - A person shall **not** be allowed to file his GSTR-1 return, if he has not furnished his GSTR-3B returns for the preceding two months. Similarly, in respect of the quarterly return filers, the filing of GSTR-1 shall **not** be allowed, if he has not furnished his GSTR-3B return for the preceding tax period.
 - A registered person who is restricted to use the amount available in electronic credit ledger (“ECL”) under rule 86B, shall not be allowed to file his GSTR-1 return or use Invoice Furnishing Facility, if he has not furnished his GSTR-3B return for the preceding tax period.

[*Note – Rule 59 would be completely substituted w.e.f. January 01, 2021 vide notification no. 82/2020-Central Tax dated November 10, 2020*]
- Rule 86B (*Restrictions on use of amount available in electronic credit ledger*) has been inserted w.e.f. January 01, 2021, whereby a registered person whose value of taxable supply other than exempt supply and zero-rated supply in a month exceeds fifty lakh rupees, would **not** be allowed to use the balance in ECL towards the outward tax liability which is in excess of 99% of such tax liability. The said rule shall **not** be applicable in the following cases:
 - The said person or proprietor or karta or managing director or any of its two partners, whole time directors, members of managing committee of associations or board of trustees, as the case may be have paid more than ₹ 1 lakh as income tax in each of the last two financial years for which the time limit to file return under Income-tax Act, 1961 has expired;
 - A registered person has received refund of more than ₹ 1 lakh in the preceding



financial year on account of unutilised ITC due to zero rated supplies made without payment of tax or accumulation of credit due to inverted duty structure;

- A registered person has discharged his output tax liability through electronic cash ledger for an amount in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year;
- The registered person is government department / public sector undertaking / local authority / statutory body.
- Rule 138 (*E-way bill*) has been amended whereby under sub clause (10) an E-way bill issued for a distance of upto 200 km (*previously 100 km*) shall be valid for one day and for every additional 200 km (*previously 100 km*) or part thereof one additional day.
- Rule 138E dealing with restrictions on generation of an E-way bill is amended to include registered persons whose registration stands suspended.

Dhruva Comments:

The amendments proposed by these notifications with a view to identify and address defaults by assesseees in discharging output tax liability / credit mismatches will have far reaching implications. Whilst the said measures seem a step in the right direction for addressing the menace of fake invoices, but it could impact genuine transactions, when there are inadvertent errors made while filing GST returns. It would be extremely crucial that these measures are being taken only against fraudulent activities and genuine taxpayers do not suffer any hardship. Denial of opportunity of personal hearing before suspension may be challenged as it has been a long standing position that any assessee should have a right of representation before any adverse action is taken against them. Also, the provisions seeking to restrict the utilisation of input tax credit could also have large ramifications especially for the MSME sector.





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,
Prahladnagar, 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

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