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CHARTERED ACCOUNTANTS

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GST Judicial Decisions

GST is not payable on part amount received from employees for canteen facility, bus transportation facility and Notice pay recovery.

Emcure Pharmaceuticals Ltd., In re [2022] 134 taxmann.com 74 (AAR - Maharashtra) – In favour of Assessee – January 4, 2022

Relevant Facts

M/s Emcure Pharmaceuticals Limited, the applicant, a pharmaceutical company with registered office at Pune, Maharashtra, was engaged in developing, manufacturing and marketing of pharmaceutical products, and provided canteen and bus transportation facility to its employees as a part and parcel of the employment arrangement. The Applicant made recoveries at subsidized rates for providing canteen and bus transportation facility to its employees and had engaged third party service providers to provide the said facilities and the service providers raised invoices with applicable GST. Applicant recovered a certain portion of the consideration paid to such third-party service provider from its employees. Further, there were also instances where employees resigned and left the employment without serving the mandated notice period, in part or in full, and the applicant was entitled to monetary compensation, ("Notice Pay Recovery"). In such cases, the applicant deducted salary for the tenure of notice period not served as a compensation for breach of the terms of the employment agreement by the employees.

The applicant sought an advance ruling in respect of the following

- Whether the GST would be payable on recoveries made from the employees towards providing canteen facility at subsidized rates in the factory and office?
- Whether the GST would be payable on the recoveries made from the employees towards providing bus transportation facility?
- Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

Held

Hon'ble Maharashtra AAR referred section 7 and

schedule III of CGST Act and observed the following :-

- Applicant was engaged only in the business of pharmaceutical products and was maintaining canteen as per the provisions of the Factories Act, 1948. Even if the said canteen facility was not provided, the pharmaceutical business of the applicant would still be continuing. Thus, providing canteen facilities to its employees was not the business of the applicant & the same cannot qualify as supply. The canteen facility by the applicant to its employees was also not a transaction made in the course or furtherance of business and therefore the applicant was not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.
- The same above-mentioned reason/logic was applicable for bus transportation charges recovered from the employees as well. Hence, GST was not applicable on recoveries for bus transportation charges as well.
- Services by an employee to the employer in the course of or in relation to his employment is out of the purview of GST. In present case, the said compensation which accrued to the employer was in relation to the services provided by the employee. Such compensation was related to the services not provided by him to the employer during the course of employment. In other words, the employer was being compensated for the employee's sudden exit. Merely because the employer was being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for pre-mature exit. Hence, GST would not be applicable on this.

CNK Comments

Levy of tax on recoveries from employees has always been a matter of litigation and diverse rulings have been given by different authorities. This is a welcome ruling, which covers almost all the aspects of employee and employer relationship and in the true spirit of GST Law.

Limitation extension order passed by Supreme Court in view Covid-19 would also be applicable to applications filed for refund of GST

Saiher Supply Chain Consulting (P.) Ltd Vs. Union of India [2022] 134 taxmann.com 154 (Bombay)- High Court of Bombay – In favour of Assesse – January 10, 2022

Relevant Facts

Petitioner initially filed refund claim application and also rectified deficiencies pointed out twice. Refund application filed third time was rejected on the ground that it was time barred. Department contended that refund application was filed after expiry of two years of time period prescribed as per GST law and was not sustainable.

Ruling

There was an Order passed by the Hon'ble Supreme Court on 23rd March 2020 in Cognizance for Extension of Limitation, due to Covid pandemic. Paragraph Nos. 2 and 3 of the order read as *"To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under article 142 read with article 141 of the Constitution of India and declare that this Order is a binding Order within the meaning of article 141 on all Courts/Tribunals and authorities."* Hon'ble High court has also invited attention to the Order dated 23rd September 2021 in Cognizance for Extension of Limitation with the same object. The Court also observed that the Respondent is also bound by the said Order dated 23rd March 2020 and the Order dated 23rd September 2021 and is required to exclude the period of limitation falling during the said

period of limitation falling during the said period. Since the period of limitation for filing the third refund application fell between the said period 15th March 2020 and 2nd October 2021, the said period stood excluded.

CNK Comments

Logical judgment in accordance with 'Extension of Limitation' Order passed by Supreme Court. There was always a doubt as to whether Extension of Limitation Order applied to refund applications as well. This ruling from Bombay High Court now clarifies the issue.

Blocking of Electronic Credit Ledger under Rule 86-A and insertion of negative balance in ledger when no ITC was available is without jurisdiction and illegal

Samay Alloys India (P.) Ltd. Vs. State of Gujarat [2022] 135 taxmann.com 243 (Gujarat)- High Court of Gujarat – In favour of Assessee – February 3, 2022

Relevant Facts

The Petitioner was engaged in the business of manufacture and sale of MS Billets. When, petitioner attempted to file its monthly return, there was no credit balance in the electronic credit ledger **(ECL)**. Despite the same, the portal displayed a message that the ECL had been blocked by the Department. It was further noticed by the petitioner that a negative balance had been entered in their electronic ledger by the Department. In such circumstances and as a result of such negative balance, if the petitioner would file return for the month by claiming input tax credit **(ITC)** , it would be required to pay an additional amount of output tax under the provisions of the GST Act to the extent of negative balance of the ITC in the ECL. Petitioner further submitted that the negative block of ECL with Nil balance in the credit ledger as on the date of the imposition of the block is wholly without jurisdiction and beyond the scope of Rule 86-A of the GST Rules.

Ruling

The Court held that invocation of Rule 86A for the purpose of blocking the ITC may be justified if the concerned authority or any other authority, empowered in law, is of the prima facie opinion based on some cogent materials that the ITC is sought to be availed based on fraudulent transactions like fake/bogus invoices etc. However, the subjective satisfaction should be based on some credible material or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief. The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons. The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee, nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

CNK Comments

Very well delivered judgment in line with GST act. It supplements the Circular No 20/16/5/2021 dated 2nd November 2021 of CBEC on Rule 86A guidelines. This would prevent misuse of Rule 86A which may have an irreversible and detrimental effect on the business of the person concerned.

Application can be processed, and credit can be carried forward into GST regime where service tax was paid after due date for filing TRAN-1 form for services received before implementation of GST

Ganges International (P.) Ltd. Vs. Assistant Commissioner of GST & Central Excise, Puducherry [2022] 136 taxmann.com 168 (Madras) - High Court of Madras – In favour of Assessee – February 22, 2022

Relevant Facts

The petitioner was engaged in providing various construction services to Government/Private parties. During the course of audit of accounts conducted by CERA Audit party for the erstwhile regime, it was pointed out that, the petitioner

was liable to pay service tax under reverse charge on services rendered at two quarries, for which, royalty had been paid by the petitioner to the Government of Tamil Nadu for mining stones. Since it was an input service and the petitioner was a service recipient and had paid the service tax as stated above, therefore, he was entitled for credit of service tax paid under reverse charge since the service had been used by the petitioner for providing output service. It was to be noted that, for the purpose of claiming various transitional credits, a return in form GST TRAN-1 had to be filed by every taxpayer, claiming transitional credit, within extended due date of 27.12.2017. Petitioner had paid the service tax on 30.12.2017. In order to get the refund/carried forward of the said amount, he had made an application to the Revenue. However, the said application seeking for refund filed by the petitioner was rejected by the Department on the ground that though it was found that, the assessee was eligible for taking Cenvat credit of the amount so paid under Service Tax Rules there was no provision in the new regime to allow as ITC in GST/credit in Electronic cash ledger/payment in cash and in the absence of any specific provision, such kind of plea made by the petitioner for refund of the ITC could not be considered.

Held

Madras High Court observed that the eligibility of the petitioners to claim the Cenvat Credit under normal circumstances under the erstwhile law prior to 30.06.2017 was not in dispute. Since the facts were very peculiar, where the petitioners availed service prior to 01.04.2017, for which, the amount payable by them have been paid to the service provider, but the tax alone has not been paid i.e., service tax as well as the duty referred to above and this has been paid only after the action taken by the Revenue, but this payment has been made within the reasonable/permissible period. However, before making these payments since the transitional period has come into effect; the peculiar situation has arisen. Otherwise, had there been no GST regime from 01.07.2017, the petitioners would have been eligible to claim Cenvat credit of all these amounts paid. Merely because, the transitional provision has come into effect from 01.07.2017 and under Section 140(1) of the Act, the persons like the petitioners can make a claim only in respect of the credit which is already accrued as on 30.06.2017 and these credit had come into the account of the petitioners only subsequently, for which, claim under Section 140(1) could not have been made, the chance of making such an application to seek the refund or otherwise of such a credit which has subsequently accrued in the account of the petitioners, cannot be denied. In that view of the matter, this Court felt that, in these kind of special situations, for which, the provision if not Section 142(3), no other eligible provision is available. Therefore, this Court felt that, since it is a dire necessity, as these kind of situation necessarily to be met with by the Legislation, for which, these transitional provision has been brought in in the statute book, there can be no impediment for invoking Section 142(3) of the Act by invoking the "Doctrine of Necessity".

CNK Comments

Welcome judgment by Hon'ble High court, which may help many assessees to claim / refund of ITC, which is otherwise denied by the Department due to lack of any procedure and provision in GST Act.

KEY TAKE AWAY

- No GST applicability on part amount received from employees for providing canteen and bus transportation facility. GST also not applicable on Notice pay recovery.
- Limitation of extension order passed by Supreme court in view of Covid-19 would also be applicable to applications filed for GST Refund.
- Blocking of Electronic Credit Ledger under Rule 86-A and insertion of negative balance in ledger when no ITC was available is without jurisdiction and illegal.
- Application can be processed and credit can be carried forward into GST regime where service tax was paid after due date for filing TRAN-1 form for services received before implementation of GST.

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