



Dimensions – 97th Edition

Judgment under GST era

*M/s. Metenere Ltd v. Union of India and another*¹

Issues for Consideration

Basis allegation of non-maintenance of records at factory premises, whether,

- proceeding under section 73 or 74 of the CGST Act, 2017 needs to be initiated prior to determination of tax payable?
- goods lying as stock at factory premises can be confiscated?
- penalty equivalent to 100% of tax payable can be imposed?

Discussion

- The Petitioner is engaged in manufacture of lead ingots. The Petitioner's factory is located at Noida and its head office is located at Delhi.
- Pursuant to visits at the Petitioner's factory premises, the department alleged that no records of GST were available for the goods lying as stock. An order seizing such goods was passed and a Show Cause Notice ("SCN") was served to show cause as to why,

- the said goods should not be confiscated;
- penalty equivalent to 100% of the tax payable should not be levied.
- The Petitioner submitted that these records were kept at its head office in Delhi, i.e., the principal place of business as per the registration certificate.
- The department passed an order, confirming the aforesaid penalty and confiscating the seized goods giving an option to the Petitioner to pay redemption fine for redeeming these goods. The Petitioner's appeal against this order was rejected.
- Being aggrieved, the Petitioner filed the Writ Petition, raising the following questions:
 - Whether the department was justified in recording that the Petitioner has failed to maintain the records in terms of GST law?
 - Whether the order for confiscation was justified in the present facts of the case?
 - Whether penalty equivalent to 100% of alleged tax payable is justified?
- In this respect, the Hon'ble High Court made the following observations:
 - Section 35(6) of the CGST Act, 2017 provides that when a person fails to keep their accounts for the goods, the proper officer is empowered

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to determine the amount of tax payable, as if such goods had been supplied, and the provisions of section 73 and 74 of the CGST Act, 2017 shall apply accordingly.

- In the present case, no SCN was served prior to determine the tax payable on such 'deemed supply' of goods in terms of section 73 and 74 of the CGST Act, 2017.
- There is **no finding** that any supply was made with an intent to evade payment of tax or the Petitioner did not account for the goods, etc. which was essential to trigger initiation and conclusion of confiscation proceedings under section 130 of the CGST Act, 2017. Accordingly, the confiscation was wholly arbitrary and illegal as none of the ingredients for confiscation existed in the present case.
- The offences, which can be the basis for imposing penalty, can be classified in two categories [basis clauses under section 122(1) of the CGST Act, 2017] i.e.

Column A	Column B
(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xv)	(xi), (xii), (xiii), (xiv), (xvi), (xvii), (xviii), (xix), (xx)

- On a literal reading, it is clear that penalty for the offences specified under 'Column A' is ₹10,000 or the amount of tax evaded, *whichever is higher*. Whereas, for the offences specified under 'Column B' the maximum penalty is ₹10,000, as in such case there is no question of tax evasion.
- In the present case, the penalty for non-maintenance of books of account under section 122(1)(xvi) and (xvii) of the CGST Act, 2017 would fall under Column B above. Also, no exercise for quantification of the tax evaded was done in the present case. Accordingly, the maximum penalty that could be imposed upon the Petitioner is ₹10,000.

Judgment

The Hon'ble High Court allowed the Writ Petition, setting aside the orders in so far as it relates to confiscation of goods and imposition of penalty in excess of ₹10,000.

Dhruva Comments:

The Hon'ble High Court has classified the offences into two categories, based on the quantum of penalty which can be imposed. This interpretation of law could act as a guiding principle while dealing with penalties.

Ruling under GST era

Prettl Automotive India Pvt. Ltd. – Authority for Advance Ruling, Maharashtra²

Issue for Consideration

Whether the financial assistance received by the subsidiary company from its foreign holding company, in respect of a project to be undertaken in India, can be regarded as a supply under GST?

Discussion

- Prettl GmbH, Germany ("Holding Co.") has a subsidiary in India viz. Prettl Automotive India Pvt. Ltd. ("the Applicant"), which is engaged in the supply of electric transformers, static converters, electric wires for electricity transmission, etc.
- The Holding Co. under a program, named 'develoPPP.de programme' ("the program") run by the German Federal Ministry desires to provide a financial assistance to the Applicant. The aim of the program is to promote German company's investment in developing and emerging countries.
- In lieu of the program, the Holding Co. has entered into a service contract with the Applicant, whereby the Applicant would carry out various activities like construction of a training centre, engaging with educational institutes for providing training to students, implementation of training measures,

² 2020-VIL-606-ALH



integration of training content, etc. The Applicant approached the Authority for Advance Ruling (“the Authority”) to contend that the financial assistance received from the Holding Co. does not amount to supply under GST on the following basis:

- There is no supply of goods / services to the Holding Co. The amount to be received is a mere transaction in money. Furthermore, the said activity does not amount to exempt or non-taxable supply and accordingly, the input tax credit on the goods / services procured for the program is not required to be reversed in terms of section 17 of the CGST Act, 2017.
 - However, if the said service is regarded as a supply, then it is to be classified under HSN 9997 – other services not elsewhere classified and taxable at the rate of 18%.
 - The Applicant has entered into a memorandum of understanding with various institutes to provide training to students who enrol with the institute. The institute conducts examination and issues the degree / certificate. The Applicant only bears the cost (which is reimbursed by Holding Co.) for labs, hostel, mess charges, staff salary, stationery, etc. The financial assistance received from Holding Co. if considered as consideration, then, the recipient would be Holding Co. and not the education institutions or students. In such a case, the activity should be regarded as an export of service, as the place of supply is outside India in terms of section 13(2) of the IGST Act, 2017 and the service can be exported without payment of GST.
- The Authority, after analysing the facts of the case and the agreement entered into between the Holding Co. and the Applicant, observed as follows:
 - There is an intention to promote investments of German companies in India for which training of various skilled and unskilled categories will be done by the Applicant in India and the consideration is being received in the guise of financial assistance. A service agreement being

entered into, contradicts the contention that the Applicant is not rendering any service.

- The program intends to promote German investments in India. Accordingly, the Holding Co. has asked the Applicant to undertake some activities for which financial assistance would be provided. The activities undertaken are in pursuance of the agreement and on the directions of Holding Co and amount received / to be received is also in pursuance of the same agreement. Thus, the financial assistance is in the nature of a consideration.
- As per the submissions made by the Applicant, the Holding Co. intends to build up a workbench in India, to produce their products and benefit from lower costs. Hence, the activities being undertaken by the Applicant are towards creating the bench strength.
- The Applicant has ‘agreed to do an act’, which as per clause 5 of the schedule II of the CGST Act, 2017 amounts to supply of service and is classifiable under HSN 999792 - ‘Agreeing to do an Act’.
- Furthermore, in terms of section 13(5) of the IGST Act, 2017, the place of supply of services related to admission to educational, cultural, artistic, etc. event shall be the place where the event is actually held. In the present case, since the training activities are being conducted in India, the place of supply should be India and accordingly, in terms of section 2(6)(iii) of the IGST Act, 2017, the said supply does not qualify as export of services.

Ruling

The financial assistance received by the Applicant amounts to supply of service, classifiable under HSN 999792. The said supply does not amount to export of service.

Dhruva Comments:

Receipt of financial assistance by a subsidiary company, from its holding company, is a very common phenomenon in the trade practice. However, it needs to



be critically evaluated on a case to case basis whether there is any element of supply (subsistence of quid pro quo) between the parties for assessing applicability or otherwise of GST.

GSTN update

Communication between Recipient and Supplier Taxpayers on GST portal³

- A facility of 'Communication between taxpayers' has been provided on the GST Portal, whereby the recipient (or supplier) can send a notification to the supplier (or recipient) regarding the missing documents or any shortcomings in the documents or any other issue related to it.
- The said services would be available to all taxpayers except those registered as TDS, TCS or NRTP. The taxpayer can login into the GST portal and follow the path: *Services > User Services > Communication Between Taxpayers*.
- The counter party will receive an e-mail and SMS on the registered e-mail address and mobile number respectively, for all the notifications received.

Circular

General procedure for GST Audit

- The Maharashtra Government has issued a trade circular⁴ in order to clarify certain aspects in respect of the audits being conducted under section 65 (audit by tax authorities) of the Maharashtra Goods and Services Tax Act, 2017. The same are highlighted below:
 - **Objects of GST audit:** The object is to ascertain the correctness of the returns, annual return and to identify inadequacies in the returns, if any, when checked against the books of accounts maintained by the registered tax payer.

- **Procedure of GST audit:** The audit is to be carried out with prior intimation in Form ADT-01 at the place of business ("POB").
- **Scope of audit:** The Audit officer ("AO") will verify the books of accounts along with the sales / purchase invoices, cashbook, delivery challans, e-way bills, bank statements and any other documents to ascertain the correctness of the returns. The AO may also ask for any other information related to income tax and filings made under the Companies Act, 2013.

Rights and duties of Taxpayer:

Rights

- To check the identity of each and every member of the audit team;
- To get 15 days prescribed time limit for collection, compilation and arrangement of all the audit documents;
- To seek adjournment of proceeding in unavoidable circumstances for document submissions;
- To ensure that opportunity of being heard is given properly to him;
- To receive findings of audit from the AO within 30 days of conclusion of audit.

Duties

- To comply in time with the GST audit notice;
 - To make available all necessary books of accounts to the audit team (physical record, access to accounting system / electronic record);
 - To provide necessary facility to verify the books of accounts and to ensure the presence of his authorized representative at POB where audit is being conducted so that he can explain the books and business activity properly;
 - To extend the necessary cooperation to the audit team for the timely completion of audit.
- **List of key documents to be kept ready:**

³ Dated December 25, 2020

⁴ Trade Circular no. ACST (VAT-3) /GST Audit/ 2020-21 / B-433 / dated December 21, 2020



- Financial statement along with Trial Balance and Tax Audit report;
- Inward-Outward supply summary statement along with invoices including zero rated / exempted supplies;
- RCM ledger and supportive documents;
- Cancelled invoices due to any reason;
- Goods return (inward-outward) register along with credit note / debit note details;
- TRAN-1 details;
- GSTR-2A mismatch, unmatched transactions;
- Reversal of input tax credit;
- Non-GST supply;
- Job work details.





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