GIB/TN/Transtonnelstroy Afcons/21.09.2020/HC-148

High Court Category : Inverted Duty Structure

State : MADRAS

Order No.: GIB/TN/Transtonnelstroy Afcons/21.09.2020/HC-148

Name of Entry :
Tvl. Transtonnelstroy Afcons Joint venture Vs Union of India

Date : 21-09-2020

Breif Issue :

Facts & Issue Involved:

At the heart of this batch of writ petitions is the question whether the Petitioners are entitled to a refund of the entire unutilised input tax credit that each of them has accumulated on account of being subjected to an inverted duty structure. In certain cases, the constitutional validity of Section 54(3)(ii) of the **Central Goods and Services Tax Act, 2017**(the CGST Act) is impugned, whereas, in others, a declaration is prayed for that the amended Rule 89(5) of the **Central Goods and Services Tax Rules, 2017** (the CGST Rules) is ultra vires Section 54 of the CGST Act and the Constitution of India. As a corollary, a declaration of entitlement to refund is also prayed for in some cases.

One of the issues that takes centre-stage in these cases is the correct meaning to be ascribed to the word “inputs” in Section 54(3)(ii) of the CGST Act and in the definition of “Net ITC” in the amended Rule 89(5) of the CGST Rules. Therefore, except while dealing with the text of Section 54 and Rule 89 where the word “inputs” is used, for the sake of clarity, the words ‘input goods’ is used while dealing with goods that are used as inputs, and ‘input services’ is used while dealing with services that are used as inputs. All the Petitioners are engaged in businesses wherein the rate of tax on input goods and/or input services exceeds the rate of tax on output supplies. This contingency is referred to as an inverted duty structure. As a result, the registered person is unable to adjust the available input tax credit fully against the tax payable on output supplies; consequently, there is an accumulation of unutilised input tax credit. The case of the Petitioners is that they are entitled to a refund of the entire unutilised input tax credit, irrespective of whether such credit accumulated on account of procurement of input goods and/or input services by paying tax at a higher rate than that paid on output supplies. On the contrary, the case of the Union of India and the Tax Department, both at the Central and State level, is that refund of unutilised input tax credit is permissible only in respect of the quantum of credit that has accumulated due to the procurement of input goods at a higher rate than that paid on output supplies, and that credit accumulation on account of procuring input services at a rate of tax higher than that paid on output supplies is liable to be disregarded for refund purposes.

Decision of Advance Ruling Authority :

Decision:

In view of the aforesaid analysis and discussions we hold as follows:

(i) All the writ petitions challenging the constitutional validity of Section 54(3)(ii) are dismissed.

(ii) All the writ petitions challenging the validity of Rule 89(5) of the CGST Rules on the ground that it is ultra vires Section 54(3)(ii) of the CGST Act and/or the Constitution are dismissed.

(iii) Consequently, all the writ petitions for a mandamus to direct the refund claims to be processed are dismissed.

(iv) Hence, all the connected miscellaneous petitions are closed. There will be no order as to costs in the facts and circumstances.