1. **<u>High Court of Karnataka in the case of M/s. Wipro Limited[1] - Benefit of Circular 183[2] should be extended in case of bonafide error (quoting of wrong GSTIN):</u>**

   In this case, petitioner has preferred the writ petition to allow him to access the GST portal to rectify the error in Form GSTR-1 that has been uploaded during FY 2017-18, FY 2018-19 and FY 2019-20, so as to enable the recipient to take the credit of the tax paid by the petitioner.

   The petitioner has invited attention of the Court to the circular that has been issued to prescribe the procedure for allowing the recipient to take credit, where there were bonafide errors which got crept in while filing the returns for the period FY 2017-18 and FY 2018-19.

   Since, the present plea is relating to the same years, the petitioner pleaded that the said circular should be applied to him, specifically when the procedure mentioned in the Circular is adopted. The Revenue argued that the Circular cannot be applied to the facts of the instant case.

   After hearing both parties, the High Court held that the Petitioner had wrongly shown the GSTIN of another recipient instead of actual recipient and since the procedure outlined in circular is followed, the credit should be allowed to the recipient. The Court further held that though the Circular is issued for FY 2017-18 and FY 2018-19, since the errors are identical for FY 2019-20, the benefit of the circular should be applicable for FY 19-20 also.

2. **<u>High Court of Orissa in the case of M/s Vedanta Limited[3] – Refund is qua a registered person and not unit wise and there is no legal backup for supplementary refund claim:</u>**

   In this case, the petitioner has three units under a common GSTIN. The petitioner is engaged in export of goods and supplies to SEZ units. Since they are engaged in zero rated supplies, they have become eligible for refund of unutilised input tax credit in terms of Section 54 of CT Act read with Rule 89 of CT Rules. The petitioner has applied for the refund and accordingly received the same. Later, they re-calculated refund unit wise and they have understood that they have lost certain input tax credit as refund by applying refund on a consolidated basis. Hence, to obtain the additional refund (unit wise instead of consolidated claim) they have lodged a supplementary claim. The refund sanctioning authority has rejected the refund stating that there cannot be a refund claim unit wise especially, when all the units have common GSTIN. Aggrieved by this, the petitioner has approached the High Court invoking writ jurisdiction.

   The petitioner argued that refund being the substantive right, the same cannot be denied just because the rules do not provide for claim of refund unit-wise. The petitioner stated when the refund is calculated unit-wise, because of higher input utilisation compared to turnover and other units, the thermal unit is eligible for higher refund as compared to the consolidated claim. The petitioner stated that Circular 125/44/2019 – GST is to be struck down since it

[1] TS-02-HC (KAR)-2023-GST
[2] Circular No. 183/15/2022-GST dated 27.12.2022
[3] [2023] 146 taxmann.com 262 (Orissa)

states that there cannot be any supplementary claim, when there is no such prohibition under Section 54 read with Rule 89. The Revenue objected to the petition stating that when they have a single GSTIN and refund being granted qua GSTIN, it is not in accordance with the law to make a refund claim unit-wise, that too, in supplementary mode. The Revenue also argued that GST laws recognize refund in one category in respect of any tax period identified by GSTIN and hence, the unit-wise claim is not in accordance with the law.

The Court after hearing both the parties has held that reading of 'any' in Section 54 without any ambiguity admits that three units of the petitioner having common GSTIN are to be treated as one 'person' in terms of Section 25 read with Section 2(84) and (94) of CT Act. In light of the above, the petitioner cannot make a claim unit-wise by treating each unit as a separate registered entity. The Court further stated that when the petitioner has filed original refund application on consolidated basis, cannot at a later stage make a supplementary claim based on unit-wise. The Court after referring to various decisions namely TVS Motor Company Limited [2019] 13 SCC 403, Jayam & Co (2016) 96 VST 1 (SC) and others has held that credit is not a substantive right, but a concession provided by the statute and accordingly rejected the ground of petitioner.

Our Comments:

The High Court has rightly held that there is no provision for claiming the refund unit-wise especially when the taxpayer has registered all the three units under a consolidated GSTIN. Since the GST laws allow registration for each unit separately, the taxpayer has to do the calculations for deciding whether to go for registration unit-wise or on a consolidated basis. Once a decision has been taken and registration is obtained, they cannot change the status as it suits them. Hence, it is advisable to do the math before deciding on the registration.

3. **High Court of Allahabad in the case of Skyline Automation Industries[4] - Non-Provision of Intimation vide Part A of DRC-01A prior to issuance of show cause notice under Section 74 is void ab-initio:**

In the present case, the authority has passed an order under Section 74(9) of CT Act without issuing show cause notice in terms of Rule 142(1A) of CT Rules. The said order was challenged by the petitioner stating that there cannot be any adjudication of the matter resulting in order without issuing a show cause notice in the first place. The revenue has argued that though they have not issued any show cause notice, they have given enough opportunities to present the case.

The Court stated that without following the procedure prescribed under Rule 142(1A) of CT Rules, there cannot be any order under Section 74(9) of CT Act. The subsequent reminder will not cure the defect and accordingly held the order passed is bad in law. However, the Court has given the revenue to re-initiate the proceedings by following the procedure stipulated in the law.

[4] [2023] 146 taxmann.com 159 (Allahabad)

4. **<u>High Court of Kerala in Pappachan Chakkiath[5] - Time Extension for passing Order under Section 73(10) also applies for issuance of show cause notice under Section 73(2):</u>**

In an interesting case, the petitioner has approached the High Court seeking cancellation of the order passed by the tax authorities citing the same was passed without jurisdiction. The plea of the petitioner is that under Section 168A of CT Act, there was an extension of time limit for issuance of order for Financial Year 2017-18 till 30.09.2023 and such extension cannot be used for issuance of show cause notice under Section 73(2). In other words, the petitioner argued that the said extension is applicable only for orders and not for notices (which is a precursor to the order).

The Court stated that the time limit for issuance of notice under Section 73(2) has been linked with the time limit for passing of order under Section 73(10). In such case, if the latter is extended, it is obvious that the former also gets extended. Accordingly, the court upheld the order passed stating that the same were within the jurisdiction.

[5] 2023 (1) TMI 982 – Kerala High Court