

1. Delhi High Court in Seema Gupta vs. Union of India & Ors¹ - Renting of Residential Dwelling under reverse charge is challenged especially when the renting is not taken in business account:

An interesting issue has come up before the Honorable Delhi High Court in the above matter. Seema Gupta, the writ petitioner has challenged the constitutional validity of insertion of an entry in reverse charge notification Entry 5AA in Notification No 13/2017 – CT (R) [inserted by way of Notification No 5/2022- CT (R)].

The said entry was introduced with an intention to bring the renting of a residential dwelling to a registered taxable person under the ambit of reverse charge mechanism, wherein the registered person is obliged to pay tax. Prior to this insertion, the renting of residential dwelling was exempted from payment of tax [Entry 12 of Notification No 12/2017 – CT (R)].

The petitioner was registered as a proprietor under GST laws for the purpose of carrying the business. The petitioner argued that since she was registered for the purposes of carrying the business, the Entry 5AA in Notification No 13/2017 – CT (R) is making her to pay tax under reverse charge, though the rent is met from her personal account and not taken in her business account. The petitioner stated that the denial of exemption on sole reason that they have registered under the GST laws lacks the intelligible differentia and accordingly to be set aside as it violated Article 14 of Constitution of India.

The Respondent has filed an affidavit clarifying that renting of residential dwelling to a proprietor or registered proprietorship who rents it in his personal capacity for use as his own residence and not for use in the course or furtherance of business of his proprietorship firm and such renting is in his own account, then the same shall continue to be exempted from tax. The Respondent has also stated that an appropriate proposal is put forward before the GST council to get more clarity in the said entry that the reverse charge obligation kicks in only if the residential dwelling is used for the purposes of business.

Our Comments:

This is a welcome move and certainly evident that the Government has not thought about this situation before introduction. An appropriate amendment in the reverse charge notification would put an end to the prospective litigation.

2. Karnataka High Court in Shree Renuka Sugars Limited² - Once an assessee has chosen the writ jurisdiction despite, he given an opportunity to pursue the alternative remedy, he cannot seek the benefit available in the alternative remedy:

This is another interesting issue. A show cause notice was issued demanding tax on supply of Extra Neutral Alcohol (ENA). The said notice was challenged in writ petition before the Single

¹ 2022 (9) TMI 1387 – Delhi High Court

² 2022 (9) TMI 986 – Karnataka High Court

Judge of High Court. The Learned Single Judge has granted an interim stay order subject to a condition that the petitioner furnishes a bank guarantee for 25% of the amount demanded.

The said order asking the petitioner to pay 25% of the demand amount was challenged before the larger bench of the High Court. The petitioner pleaded that he cannot be made worse off by filing the writ petition. The petitioner pleaded that if he had appeared before the notice issuing authority and obtained an order and challenged the same under Section 107 of CT Act, then in terms of Section 107(7), he would have got a stay, if 10% of demanded amount is paid. However, by approaching the writ jurisdiction, he was asked to pay 25% of the demand as deposit. The petitioner pleaded this cannot be the case.

The larger bench stated that when the petitioner has himself approached the single member bench in writ proceedings, despite of the fact that he has right to go before the notice issuing authority and thereby appeal, cannot seek the rescue under Section 107(7) and accordingly upheld the order of single member bench.

Our Comments:

It is unfortunate that the petitioner has asked to pay 25% of the demanded amount. The taxability of ENA was not given any clarity though this was a discussion point in many GST council meetings. Further, the notice issuing authorities do not take into consideration the credit that was foregone which was used for making the supply of ENA. It is possible that taxpayers do not take credit since they have taken a stand that GST was not payable on supply of ENA. However, the notice issuing authorities do not take the said credit while determining the demand. Hence, the demand will be more. Further, asking them to deposit of 25% on such high amounts of demand is kind of unwarranted. Normally, writ petitions are filed to obtain stay order without any deposit. However, it is necessary to be prepared for these kinds of eventualities. In one of our client's case, the High Court has asked to pay 25% of demanded amount. The tax authorities started to pursue the client to pay him 25% of tax, interest and penalty. We have filed another application for intervention of High Court to restrict 25% on the tax amount only and got the same in the favor of Client.

3. Calcutta High Court in RP Buildcon Private Limited & Anr³ - Simultaneous audit for the same period by three different authorities should not be pursued

In this matter, the petitioner has approached to a larger bench of Honorable High Court against the order of single member bench. The issue involved is that the petitioner has been subjected to scrutiny/audit/investigation by three authorities for the same financial years. The anti-evasion, the superintendent of audit commissionerate and range superintendent have tried to proceed for the same financial years. The petitioner pleaded that they have already been responding to the audit commissionerate and meanwhile, the other two authorities have initiated the proceedings and asked to quash the other two proceedings. The respondent stated that the other two authorities have started the proceedings because that they were not

³ 2022 (10) TMI 501 – Calcutta High Court

aware that audit commissionerate is already pursuing the case. The Court allowed the plea of the petitioner and passed restraint orders on the other authorities for the same period.

Our Comments:

This is also another disappointing issue under the GST laws. Concurrent audits for the same period, each claiming that they have right to carry the audit/investigation/proceedings is seriously harmful in the interests of business. There are already judgements in place where it was stated that though the taxpayer falls under the state jurisdiction, the center jurisdiction can investigate and vice-versa. Though those judgments are in place, this judgment proves that there is still an opportunity for taxpayer if the proceedings were tried to be conducted for the same period simultaneously.