

Legal Communique

Information about important decisions



Department of **Goods and Services Tax** **Government of Maharashtra**

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Presented by :
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Legal Communique Case No. 1

Blossom Industries Limited

v/s

DGGI Surat & Others

BOMBAY HIGH COURT WP No. 11698 of 2023

(Without verifying the crucial factual aspects, court held that no case is made to interfere with the impugned show cause notice or issue a declaration sought by the Petitioner)

Facts of the Case:

- 1) The Petitioner has entered into a licence agreement for the manufacture and sale of beer with (UBL) i.e. United Breweries Limited.
- 2) The petitioner was receiving production overhead charges for producing beer from owners of brand Haywards 5000 and Kingfisher (M/s. UBL) under license agreements.
- 3) The petitioner was paying GST on the production overhead charges received from Haywards 5000 but not on amount received from M/s. UBL.
- 4) In pursuance of an investigation, a show cause notice for evading tax was issued to the petitioner.
- 5) The impugned show cause notice alleges that the petitioner is evading the GST by misclassifying their product as "DDGS, Husk & Cattle Feed (Spent Grain) under HSN 1104 instead of HSN 2303 and clearing/supplying the same on 'Nil' GST rate while HSN 2303 attracts GST @5%." There is a serious issue with this classification. The show cause notice alleged that this is nothing but misclassification.

Point of Dispute:

The petitioner had challenged the show cause notice dated 30 January 2023 issued by the Directorate General of Goods & Services Tax Intelligence, Surat Zonal Unit.

Submission by the Petitioner:

- 1) Advocate for the petitioner submitted that the petitioner has entered into a licence agreement for the manufacture and sale of beer with UBL. He submitted that the impugned show cause notice proposes a tax on the supply of alcoholic liquor for human consumption. Both the section 9(1) of CTGST Act and the Constitutional Scheme, no CGST or IGST could be levied on the sale of alcoholic liquor for human consumption by any authority other than the State Authority and hence impugned SCN is without jurisdiction.
- 2) In the matter of M/s. UBL, the AAR had ruled that the amounts earned and retained by bottlers are not liable to GST. He submitted that though this Advance Ruling was at the behest of UBL, since the Petitioner functions under a licence agreement from UBL, even the Petitioner is entitled to the benefit of this Advance Ruling. The petitioner submitted that such Advance Ruling binds the Respondents, and the issuance of the impugned show cause notice is breach of such Advance Ruling renders the impugned SCN ultra vires and without jurisdiction.

- 3) The production overhead charges for which the impugned show cause is issued do not amount to consideration for the supply of service/agreeing to do any act.

Submissions by Revenue:

- 1) Mr. Mishra, learned counsel for the Respondents, submitted that most of the contentions are based on factual premises that the Petitioner assumed to be true. He submitted that, in any event, the investigation into the factual aspect is imperative, without which the legal principles referred to by Mr. Nankani can never be applied.
- 2) He submitted that the impugned show cause notice is not ultra vires for any reason, and in any event, no case is made out to depart from the rule of exhaustion of alternate remedies. He relied on the decision of the Hon'ble Court in Oberoi Constructions Ltd Vs. The Union of India³ to submit that this Petition may not be entertained.

Judgment:

- 1) The petitioner was nowhere a party in the case and therefore as per the Advance Ruling guidelines, such Ruling did not apply to the Petitioner's case.
- 2) The agreements which were subject matter of Advance Ruling were quite different from the agreement between the petitioner and M/s. UBL.
- 3) Apart from that, even the Advance Ruling obtained by UBL cannot be mechanically applied. Based on the same, we cannot hold that the impugned show cause notice defies this Ruling or that it is otherwise without jurisdiction or ultra vires.
- 4) Without investigation of facts, it cannot be said that the impugned show cause notice is ultra vires or without jurisdiction.
- 5) The fundamental premise that the impugned show cause notice seeks to levy GST on alcoholic liquor for human consumption cannot be accepted at face value. The Petitioner attempts to misread the impugned show cause notice and, based upon such misreading, interdict adjudication proceedings. This is impermissible, and the principles in Whirlpool Limited (supra) do not apply in such a situation.
- 6) The impugned show cause notice is not restricted only to the issue of production overhead charges. The Petitioner has classified their product as "DDGS, Husk & Cattle Feed (Spent Grain) under HSN 1104 instead of HSN 2303 and clearing/supplying the same on 'Nil' GST rate while HSN 2303 attracts GST @5%." There is a serious issue with this classification.
- 7) The matter of misclassification requires a thorough investigation.

Way Forward:

The court has held that the impugned show cause notice can never be styled as wholly without jurisdiction or ultra vires. The petitioner is directed to file reply to the Show Cause Notice. By adopting the reasoning in Oberoi Construction Ltd., no case is made to interfere with the impugned show cause notice or issue a declaration sought by the Petitioner without verifying the crucial factual aspects.



Legal Communique Case No. 2

Getalong Enterprises Ltd
V/s.
Superintendent (Anti Evasion), CGST & Central Excise,
Navi Mumbai Commissionerate

BOMBAY HIGH COURT WP No.888 of 2022

(Pending investigation if the Petitioner was entitled to a refund, on any other legal ground, that the Petitioner was not liable to reverse the ITC, then it is open to the Petitioner to apply for reversal/ refund by making a proper application)

Facts of the Case:

- 1) The petitioner had availed total ITC of Rs. 7.61 crores in respect of bogus firms which were non-existent. Under section 69 of the CGST Act, when the Commissioner has reason to believe that the offences committed under section 132 of the CGST Act, the arrest can be effected and the arrested person can be produced before the Magistrate.
- 2) The respondent authorities on the basis that offences are cognizable and non-bailable, arrested the directors of the petitioner and they were produced before the Judicial Magistrate, and the directors applied for remand. Subsequently, the directors were granted bail.

Prayer of the Petitioner:

- 1) To quash the investigation proceedings u/s. 67 and summons u/s.70 of CGST Act.
- 2) To issue refund of Input Tax credit which was reversed by coercion.

Submissions by Revenue:

- 1) Under section 69 of the CGST Act, when the Commissioner has reason to believe that the offences committed under section 132 of the CGST Act, the arrest can be effected and the arrested person can be produced before the Magistrate.
- 2) That when the Directors of the Petitioner were produced before the Magistrate, they made no grievance of any ill- treatment, and they had, in fact, stated that they were not ill-treated, and this theory was an afterthought.

Observation of the Hon'ble Court:

- 1) This civil writ petition filed by the Petitioner, the Petitioner was seeking relief in respect of the investigation and proceedings leading to an offence and, consequently the bail.
- 2) In the decision of the Division Bench of the Hon'ble Court in the case of Nagpur Cable Operators Association vs. Commissioner of Police, Nagpur and another, the Division Bench considered the legal position in detail as to which circumstances a civil writ petition can be filed and in which circumstances a criminal writ petition can be filed.
- 3) The present civil writ petition for prayer of quashing the investigation and consequent summons, was not properly filed.
- 4) There could be various reasons why the Directors of the Petitioner have reversed the ITC.

Judgment:

- 1) Investigation into the matter is pending. If the Petitioner was subjected to a threat or coercion by the investigation officer, then the Petitioner would have their legal remedies open. If the Petitioner was entitled to a refund, on any other legal ground, that the Petitioner was not liable to reverse the ITC, then it was open to the Petitioner to apply for reversal/ refund by making a proper application.
- 2) Findings could not be rendered in a writ jurisdiction that the reversal was due to coercion.

Way Forward:

It is held that pending investigation if the Petitioner was entitled to a refund, on any other legal ground, that the Petitioner was not liable to reverse the ITC, then it is open to the Petitioner to apply for reversal/ refund by making a proper application. Findings could not be rendered in a writ jurisdiction that the reversal was due to coercion.



Legal Communique Case No. 3

Raj Kumar Gupta Vs The Union of India & Others

DELHI HIGH COURT (W.P.(C) 15917/2025 & CMAPPL. 65092/2025)

(No violation of the principles of natural justice, given the lack of co-operation from the Petitioner, the detailed evidence in the impugned order, and the fact that cross-examination is not an unfettered right)

Fact of the Case:

- The case relates to the Clandestine Manufacture and Sale of Pan Masala at various premises which are held by the GST Department to be connected to the Petitioner, particularly an unregistered factory premises in the Dabri area, Delhi.
- The Raids and searches were conducted in 2016 at six premises, including the factory and residence of the Petitioner, where goods, raw materials, and cash of Rs. 70,00,000/- were seized. Detailed inventory showed a large stock of finished goods and raw materials of various pan masala/gutkha brands.
- The Petitioner was taken into custody on 18/09/2016, and later released on bail.
- Show Cause Notices (SCNs) were issued, on 07/03/2017 and 08/06/2020.
- The GST Department recorded statements of several witnesses. Two witnesses were examined by the Id. Counsel for the Petitioner. The statements were recorded between 2019 to 2020 and thereafter, the Adjudication was transferred to Mumbai in 2024. A personal hearing was granted on 01/04/2025.
- There were at least six premises, both commercial and residential, which were searched in 2016, and it was found that various brands of pan masala were being manufactured in an undeclared manner including at the unregistered premises in Dabri.
- There were several individuals that were related and connected with each other, and were found to be involved in the manufacture and sale of the pan masala, in a clandestine manner.
- Statements have been recorded of several persons, who have given the mode and manner in which the illegitimate trade of pan masala was being carried out. By way of illustration, Mr. Prashant Kumar stated to the GST Department that he was responsible for transporting goods of Raj Products, owned by the petitioner, and explained the manner in which these goods were transported from the Dabri premises of the Petitioner.
- The Petitioner argued that the Dabri premises were not owned or rented by him. He also claimed that the products being manufactured were counterfeits and that he had filed an Intellectual Property Rights infringement suit in the Commercial Court. He did not file a reply to the SCN dated 08/06/2020.
- The petitioner has challenged an impugned demand order dated 18/06/2025, passed by the Directorate General of GST Intelligence (DGGI), Mumbai.

Arguments by the Petitioner:

- The Adjudicating Authority passed the impugned demand order without affording the Petitioner an opportunity to cross-examine the remaining witnesses, despite a request for the same on 03/04/2025.
- Due to the serious infraction of natural justice, the impugned order cannot be sustained.
- The Petitioner sought permission to cross-examine a few more witnesses after two had already been examined.

Arguments by Department:

- The impugned order is an appealable order under Section 35B of the Central Excise Act, 1944, before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). Therefore, the writ petition should not be entertained.
- The Petitioner's request for cross-examination of 19 co-noticee's was made in a "casual manner without any justification" or mentioning the relevance, essentially converting the proceedings into a mini trial.
- The Petitioner did not file a reply to the main SCN dated 08/06/2020 and sought repeated adjournments, indicating a lack of co-operation and a prima facie lack of bona fides.
- The evidence, including the seizure of eight packing machines and large quantities of unaccounted finished goods and raw materials at the Dabri premises, strongly supports the clandestine manufacture allegations.

Discussions in Hon'ble Court:

(i) On Violation of Natural Justice and Right to Cross-Examination-

- ➔ The Hon'ble Court noted that the Adjudicating Authority had rejected the cross-examination request, finding that the Petitioner provided no reasons for seeking it, particularly after a long hiatus and having already cross-examined two witnesses.
- ➔ Citing its own decision in M/s Vallabh Textiles v. Additional Commissioner Central Tax GST, Delhi East and others, the Hon'ble Court reiterated that the right to cross-examination is not an unfettered right and need not be given as a matter of course in all cases.
- ➔ The Adjudicating Authority is required to be convinced of the reasons and relevance for seeking cross-examination, as a blanket request converts SCN proceedings into "mini-trials."
- ➔ The core principle is whether the denial has resulted in substantial prejudice to the petitioner, which the Hon'ble Court felt was not demonstrated, especially given the "extremely detailed" nature of the impugned order, which included undisputed factual statements, seizures of materials, products, and cash.
- ➔ Considering the Petitioner's non-filing of a reply to the SCN and the repeated adjournments sought, the Hon'ble Court found there was no violation of the principles of natural justice.

(ii) On Maintainability of Writ Petition

- ➔ The Hon'ble Court emphasized the existence of a statutorily prescribed appellate remedy under Section 35B of the Central Excise Act, 1944.
- ➔ In matters involving allegations of clandestine manufacture and sale of pan masala, the Hon'ble Court opined that writ jurisdiction ought not to be exercised, as it is an extraordinary remedy.
- ➔ The Petitioner's argument for bypassing the statutory appeal-that he cannot afford to pay the pre-deposit-was rejected, holding that the mere adverse financial condition for not making the pre-deposit cannot be a reason to entertain a writ petition.

Decision of Court:

- The Hon'ble High Court dismissed the Writ Petition.
- The Hon'ble Court found that there was no violation of the principles of natural justice, given the lack of co-operation from the Petitioner, the detailed evidence in the impugned order, and the fact that cross-examination is not an unfettered right.
- The proper course of action for the Petitioner was to avail the statutory appellate remedy before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

Way Forward:

The Hon'ble court has held that there was no violation of the principles of natural justice, given the lack of co-operation from the Petitioner, the detailed evidence in the impugned order, and the fact that cross-examination is not an unfettered right.



Legal Communique Case No. 4

S Mahendrakumar Devichand
V/s.
The Union of India & Ors.

BOMBAY HIGH COURT (WRIT PETITION NO. 914 of 2023)

(Challenge to demand of inadmissible ITC and penalty under CGST Act)

Fact of the case:

Demand of on account of inadmissible input tax credit (₹. 20.63 crore) under Section 74 CGST Act was dropped by the adjudicating officer.

Interest under Section 50 CGST Act was also dropped.

Penalty under Section 74 CGST Act was also dropped.

Penalty under Section 122(1)(vii) CGST Act was imposed at ₹. 20.63 crore.

Above penalty amount was appropriated from ₹. 24.51 crore already paid by petitioner.

Hon'ble Court's Observations:

- 1) Statutory Remedy Available: Appeal under Section 107 CGST Act lies against the order-in-original. Both counsels agreed appeal is the proper course.
- 2) Refund Consequence: Since ITC demand was dropped, petitioner is entitled to refund of amounts paid, subject to retention of pre-deposit.
- 3) Petitioner's Intent:
 - Will challenge penalty of ₹. 20.63 crore in appeal.
 - Also intends to claim interest on ITC deposit in appellate proceedings.

Hon'ble Court's Directions:

- 1) Appeal Filing: Petitioner permitted to file appeal within 4 weeks.
- 2) No Coercive Action: Revenue restrained from coercive steps for 4 weeks.
- 3) Refund: Respondents to refund amounts within 4 weeks, after retaining 10% of penalty (₹. 2.06 crore) as pre-deposit.
- 4) No Further Deposit: Retention suffices for appeal maintainability.
- 5) Refund Mode: Refund to be made in the same manner as deposits were made.
- 6) Contentions: All merits/contentions left open for appellate authority.
- 7) Interest Claim: Petitioner free to urge claim for interest in appeal.

Way Forward:

The Hon'ble High Court disposed of the writ petition without going into merits, since the adjudicating officer's order had already dropped the ITC demand. The petitioner was relegated to the statutory appellate remedy to challenge the penalty, with protective directions ensuring refund and safeguarding appeal rights.



Legal Communique Case No. 5

VMG Foods (P.) Ltd.
V/s.
Principal Commissioner of Central Tax Delhi North & Anr.

DELHI HIGH COURT (W.P.(C) 12908 of 2025)

(Whether a Hon'ble High Court should exercise its extraordinary writ jurisdiction under Article 226 to adjudicate a GST demand order involving complex allegations of fraudulent Input Tax Credit (ITC))

Issue:

The petitioner had challenged the impugned Order-in-Original dated 4th February, 2025 along with the accompanying impugned Form DRC-07 dated 22nd February, 2025. The Petitioner has also challenged the impugned Show Cause Notice dated 24th May, 2022.

Issue involved was whether a Hon'ble High Court should exercise its extraordinary writ jurisdiction under Article 226 to adjudicate a GST demand order involving complex allegations of fraudulent Input Tax Credit (ITC) and non-existent suppliers, or if the petitioner must exhaust the alternative statutory remedy of appeal under Section 107 of the CGST Act.

Facts:

- **The Investigation:** DGGI, Gurugram received intelligence regarding fraudulent ITC availment by five exporters. The investigation covered these exporters and their major suppliers, including the petitioner.
- **The Allegation:** The petitioner **M/s. VMG Foods (P.) Ltd.** had issued invoices to a firm named **M/s. SM Enterprises** and said firm on the basis of said invoices availed ITC of approximately **Rs. 89 lakhs**.
- **Search Findings:** A physical verification revealed that **M/s. SM Enterprises was non-existent** at its registered premises. The petitioner's authorized representative admitted to issuing invoices to M/s. SM Enterprises while delivering the goods to other locations ("bill trading").
- **The Order:** Based on the SCN and investigation, an Order-in-Original (OIO) was passed under **Section 74** (fraud/suppression). It confirmed the demand for CGST/SGST, interest, and an equivalent penalty. A separate penalty was also imposed on the authorized representative.
- **The Challenge:** The petitioner filed a writ petition challenging the order, the summary of demand (DRC-07), and the SCN.

Decision:

- The Hon'ble High Court **dismissed the writ petition** (ruling in favour of the Revenue on maintainability).
- **Writ Not Maintainable :** The Hon'ble Court held that matters involving **fraudulent ITC or GST evasion** typically involve complex disputed facts and voluminous evidence. Such matters are best adjudicated by the statutory appellate authorities, not by a Hon'ble High Court in writ proceedings.

- **Exceptions Not Met:** The Hon'ble Court noted that writ jurisdiction is usually reserved for cases involving a breach of fundamental rights, violation of natural justice, excess of jurisdiction, or a challenge to the vires of the Act. None of these exceptions applied here.
- **Parity with Co-Noticees:** It was observed that co-noticees in the same proceedings had already been relegated to the statutory appeal remedy.
- **Relief Granted:** While dismissing the writ, the Court granted the petitioner **liberty to file a statutory appeal** under Section 107 by **30 November 2025**.
- The Hon'ble Court directed the Appellate Authority **not to dismiss the appeal on the ground of limitation**, provided it is filed by this date with the requisite pre-deposit.

Way Forward:

- **Fraud Cases belong in Appeal:** The Hon'ble High Courts are extremely reluctant to entertain writ petitions in cases alleging fraud, evasion, or fake invoicing (Section 74), as these require a deep dive into facts, evidence, and cross-examination, which is the domain of the Appellate Authority.
- **Alternate Remedy Rule:** The "Rule of Alternate Remedy" is strictly applied in tax evasion cases to protect the interest of the exchequer and ensure due process.
- **Protection of Appeal Rights:** Even when dismissing a writ petition as misdirected, Hon'ble High Courts often protect the taxpayer's statutory right to appeal by condoning the delay caused by the writ litigation.
- **Admissions are Fatal:** The admission by the authorized representative regarding the discrepancy between the invoice address and delivery location was a critical factual finding that weakened the petitioner's case for writ intervention.

Referred judgements can be accessed through the QR Code Provided on the note

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