

GAHC010166382021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5398/2021

GNRC LIMITED

A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT GNRC
COMPLEX, DISPUR, GUWAHATI 781006 AND IN THE PRESENT
PROCEEDINGS REPRESENTED BY MR. MADHURJYA BORAH, ONE OF THE
DIRECTORS OF THE PETITIONER COMPANY

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF
FINANCE, DEPTT. OF REVENUE, NEW DELHI.

2:THE COMMISSIONER

CENTRAL GOODS AND SERVICE TAX
GUWAHATI
CENTRAL GST HQRS
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACKHOWA
GUWAHATI 781001

3:THE ASSTT. COMMISSIONER

GST AND CENTRAL EXCISE
GUWAHATI DIVISION-II
2ND FLOOR
GST BHAWAN
KEDAR ROAD
FANCY BAZAR

GUWAHATI 781001

4:THE SUPERINTENDENT

CENTRAL GOODS AND SERVICE TAX
RANGE II D
2ND FLOOR
GST BHAWAN
KEDAR ROAD
FANCY BAZAR
GUWAHATI 781001

5:GST COUNCIL

5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI 11000

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : SC, GST

Linked Case : WP(C)/7336/2021

GNRC LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT GNRC COMPLEX
DISPUR
GUWAHATI-781006 AND IN THE PRESENT PROCEEDINGS REP. BY MR.
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GUWAHATI-781001.

3:THE ASSISTANT COMMISSIONER
GST AND CENTRAL EXCISE
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JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI- 110001.

Advocate for : DR. A SARAF
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/5358/2022

GNRC LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT GNRC COMPLEX
DISPUR

GUWAHATI 781006 AND IN THE PRESENT PROCEEDINGS REPRESENTED
BY MR. MADHURJYA BORAH
ONE OF THE DIRECTORS OF THE PETITIONER COMPANY

VERSUS

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REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
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2:THE COMMISSIONER
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3:THE ASSISTANT COMMISSIONER
GST AND CENTRAL EXCISE
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CENTRAL GOODS AND SERVICE TAX
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5:GST COUNCIL
5TH FLOOR
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JEEVAN BHARTI BUILDING
JANPATH ROAD
CONNAUGHT PLACE
NEW DELHI-110001

Advocate for : DR. A SARAF
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : WP(C)/780/2022

GNRC LIMITED
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT GNRC COMPLEX
DISPUR
GUWAHATI-781006 AND IN THE PRESENT PROCEEDINGS REP. BY MR.
MADHURJYA BORAH
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VERSUS

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REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE
NEW DELHI.

2:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI
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GUWAHATI-781001.

3:THE ASSISTANT COMMISSIONER
GST AND CENTRAL EXCISE
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JANPATH ROAD
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Advocate for : DR. A SARAF
Advocate for : SC
GST appearing for THE UNION OF INDIA AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 19-06-2024

1. Heard Dr. A Saraf, learned Senior counsel assisted by Mr. P Baruah, learned counsel for the petitioners. Also heard Mr. SC Keyal, learned standing counsel for the GST.
2. These three writ petitions are proposed to be disposed of by this common judgment and order, as the controversy is identical in nature and between the same parties.
3. The challenge made in these proceedings are show cause notices issued to the petitioners. Such show cause notices were issued directing the petitioners to show cause as to why the claim of refund made by the petitioners on the ground of exemption of GST available relating to health care services, shall not be rejected. The further challenges are the

orders of rejection of claim of refund on the ground that even without charging the GST on the medicines and the consumable bills by the petitioners, the rate of medicines supplied to the in-house-patients was at the market price and therefore GST was included and the burden of tax has been shifted to the consumer. The impugned show cause notices and the impugned orders relatable to each of the writ petitions are recorded in a tabular form below.

Writ petitions	Show cause notice & date	Impugned orders
WP(C) 5398/2021	Show cause notice dated 29.07.2021.	Order dated 21.08.2021 passed by the Assistant Commissioner, GST & Central Excise, Guwahati Division II.
WP(C) 7336/2021	Show cause notice dated 29.07.2021	Deficiency memos dated 20.10.2021.
WP(C) 780/2020	Show cause notice dated 29.07.2021	Order dated 10.01.2022 passed by the Assistant Commissioner, GST & Central Excise, Guwahati.
WP(C)	Show cause	Order dated

5358/2022	notice dated 13.05.2022	01.07.2022 passed by the Assistant Commissioner, GST & Central Excise, Guwahati Division II.
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4. The petitioner company own a hospital, which is engaged in treatment of various illness and ailment. According to the petitioner, it offers health care services.

5. The brief facts leading to issuance of show cause notice can be recorded as follows:

I. It is the case of the petitioner that in course of treatment, after admission in the hospital, the in-house-patient are provided a comprehensive treatment, which includes rooms, nursing care, medicines, consumable, implants etc.

II. The pharmacy department of the petitioners' company treated this transferred as taxable supply of goods to the in-house-patients department and calculated output tax on transaction value of the transfers of the inputs, namely, medicines and consumable and such other items to the in-house-patients department without issuance of any tax invoice of the said goods. According to the petitioners, the said output tax so calculated was paid by declaring this transaction in the same way as pharmacy sales.

III. It is further claim of the petitioners that the said goods were not supplied to the recipients i.e. the patients but were rather

used for providing treatment to the patients for which, consideration from patients is received is in nature of health care services and therefore, such health care service is exempted in terms of entry SL No. 74(a) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

IV. It is the further claim of the petitioners that the petitioners do not charged any GST to the in-house-patients/ recipients. The tax paid on such internal transfer to the in-house-patients department was not liable to be paid but was paid in excess by mistake due to ignorance, lack of clarity of provision of law. However, on proper legal advice, the petitioners could know that the services provided by the petitioners' hospital to the in-house patients was a composite supply of health services and was exempted from payment of GST. Accordingly, the petitioners took steps for filing of application for refund of the said taxes paid by the petitioners under Section 54 of the CGST Act/ SGST Act read with Rule 89 of the CGST Rules.

V. According to the petitioners, though GST was not billed and charged to the recipients/ in-house-patients or recovered from them, GST was calculated on open market value of goods as done by the petitioners at the time of internal transfer to the in-house-patients department. Accordingly, refund applications were filed. However, after submission of refund applications, the petitioners' received a deficiency memo seeking further documents in respect of certain period. Subsequently, the petitioners through e-mail submitted supporting documents required for further verification of claim relating to tax payment and requested to process the refund

application at an early date.

VI. According to the petitioners, such invoices and vouchers could not be uploaded due to limited size of uploads allowed by portal. According to the petitioners, the respondent No. 5 subsequently verbally directed the petitioners to give supporting documents so as to verify the claim of the petitioners for refund of excess tax paid.

VII. It is the case of the petitioners that said documents were submitted by the petitioners and same were verified and no infirmity whatsoever found.

VIII. Thereafter, impugned show cause notices were issued directing the petitioners to show cause as to why the refund claim should not be rejected on the ground that the exemption was given only for services provided (health care services) and not for goods or other items supplied and hence, the taxes paid for supplying the medicines, consumable and other items to their in-house-patients by the tax payer during the said period as per law and there was no excess payment of tax.

IX. Another reason for refund was that even without charging GST on the medicines and consumable bills by the petitioners, the rate of medicines consumable supplied to the in-house-patient was at the market price, hence, GST was included and burden of tax has been passed to the consumers.

X. After receipt of the aforesaid show cause notices, by an e-mail the petitioners prayed for two weeks time to reply to the show cause notices.

XI. It is the further case of the petitioners that as the common portal was not allowed to make a request for extension of time and therefore, the petitioners requested the authorities to grant time till 03.09.2021 for filing detailed reply. However, according to the petitioners, without considering the prayer of the petitioners for grant of time for submitting reply to the show cause notices, the petitioners were served with the impugned orders rejecting the claim of refund of the petitioners with effect from.

XII. In the aforesaid impugned orders, it was recorded that the petitioners neither replied to the show cause notice nor attended the personal hearing fixed. It was a further ground stated in the impugned order that the petitioners do not fall under SL No. 74(a) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and therefore, there is no excess payment of tax.

XIII. In substance, it is the case of the petitioners that the supply of medicines, consumable etc. as a composite supply of health care services and are exempted items in terms of notification dated 28.06.2017.

6. Mr. Keyal, learned counsel for the respondent has raised an objection as to the maintainability of the present writ petitions on the ground of availability of an efficacious alternative remedy of appeal under Section 107 of the Act, 2017.

7. Dr. Saraf learned counsel submits that the power of this Court under Article 226 of the Constitution of India is plenary in nature and cannot be limited by the provision of 107 of the CGST Act, 2017 inasmuch as the exercise of power under Article 226 is a discretionary power.

According to Dr. Saraf, serious question law is involved in this case as argued by him and therefore, in such circumstances, the petitioner should not be non-suited for having an alternative remedy. It is also his case that this matter is pending since 2021 and therefore if the matter is relegated at this stage to the appellate authority, same will be travesty of justice.

8. As a question of maintainability has been raised, let this court first determine the maintainability issue.

9. Section 107 of the CGST Act, 2007 deals with appeals and revisions. Section 107(1) is as follows:

“107. Appeals to Appellate Authority-(1) Any person aggrieved by any decision or order passed under this Act or the State goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

10. Sub-section 1 of Section 107, thus makes it clear that an appeal to the appellate authority is available against a decision/ order passed under CGST Act by an adjudicating authority.

11. Sub-section 2 of Section 107 provides the following:

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under This Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the appellate authority within six months from the date of

communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

12. Thus, Subsection 2 of Section 107 confers a revisional power upon the commissioner in regard to legality and propriety of a decision or an order passed by an adjudicating authority.

13. Section 2 (4) defines adjudicating authority, which is quoted herein below:

“(4) “adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include [Central Board of Indirect Taxes and Customs], the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority “for Advance Ruling,”² the Appellate Authority and the Authority referred to in sub-section (2) of [section 171](#)”;

14. Section 103 of the Act deals with applicability of advance ruling, which is quoted hereinbelow.

Section 103 – Applicability of advance ruling:

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of [section 97](#) for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(1A) The advance ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961; (43 of 1961.);

(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961. (43 of 1961).

(2) The advance ruling referred to in sub-section (1)² and sub-section (1A) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

15. That being so, an order passed by Assistant Commissioner, GST & Central Excise, Guwahati shall be an appealable order under Section 107 (1).

16. It is by now well settled that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. It is equally well settled that under Article 226 of the Constitution of India, the High Court, is having discretion to entertain or not to entertain a writ petition, having regard to the facts and circumstances of the case. The availability of alternative remedy is a self imposed restriction and normally High Court should not exercise its discretion under writ jurisdiction, when an effective and efficacious remedy is available. However, such alternative remedy shall not operate as a bar, where the writ petition has been filed for enforcement of any of the fundamental right or where there has been violation of the principle of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. It is also well settled that the power under Article 226 of the Constitution of India to issue a writ can be exercised not only for the enforcement of the fundamental right but also for any other purpose as well.

17. It is also by now well settled that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. This Rule of exercise of statutory remedy is a rule of policy and convenience and it is discretionary.

18. The said principle also emphasises that in cases where there are disputed question of facts, the High Court may decide not to exercise its writ jurisdiction.

19. In the case in hand, it is clear that under the scheme of Act there is provision for appeal and revision under Section 107. Thus, rights of appeal and revision have statutorily been created. Such provision of appeal prescribes the remedy and procedure for enforcing right of an aggrieved party, who is aggrieved by an order passed by an adjudicating authority. In the case in hand, the impugned orders have been passed by the Assistant Commissioner, GST & Central Excise, who is an adjudicating authority. That being the position, it is clear that the petitioners are having an alternative efficacious remedy which is statutorily been created.

20. The petitioners have not been able to satisfy and establish that any of the fundamental right protected by Part-III of the Constitution of India has been violated and therefore, the writ, as prayed for, is required to be issued for enforcement for such a fundamental right of the petitioners.

21. It is the petitioners, who initiated the claim of refund.

Admittedly show cause notices were issued to the petitioners and admittedly the petitioners sought for time. However, it did not file any reply to such show cause. Therefore, it cannot also be said that while passing the impugned order, there has been a violation of principles of natural justice. Though it has been alleged that the petitioners could not upload entire documents in the portal and therefore could not file the objection within time and could not seek extension of time, the same cannot be said to be violation of principles of natural justice inasmuch as it is the case of the petitioners that they were allowed to submit their documents physically even otherwise, the allegation made by the petitioners as regards deficiency in portal etc. requires a factual adjudication, which can very well be dealt by the appellate authority under Section 107 of the Act and therefore the petitioners have also failed to demonstrate that there has been a violation of principles of natural justice in the adjudicating proceeding.

22. The petitioners have also not alleged that the orders are wholly without jurisdiction inasmuch it is the petitioners, who have raised the claim of refund before the adjudicating authority.

23. There is also no challenge to the vires of any legislation in the present batch of writ petitions. Therefore, on this count also, this court is not inclined to exercise its discretion under Article 226 of the Constitution of India.

24. Another aspect of the matter is the controversy raised. It is the case of the petitioners that they are providers of health care services and therefore it is exempted from payment of GST, though by mistake of law they had already paid such GST. On the other hand, it is the case of the authority that the petitioners had sold the medicines/ consumable to the

inpatient at market price and thus the burden of tax is transferred to such consumers. The other aspect of the controversy is that according to the authority at the relevant point of time, the pharmacy of the petitioners' hospital was registered as GNRC Pharmacy and food & Beverage Division for supplying of goods (medicines and consumable) but not for health care services and therefore, they are not entitled for such benefits. On the other hand, it is the case of the petitioners that they have subsequently amended their registration and therefore they are entitled for benefits. All these disputes are question of facts and such disputes can be resolved efficaciously by the appellate authority under Section 107 of the Act and accordingly this court is not inclined to exercise its writ jurisdiction more particularly to issue a writ of certiorari for setting aside and quashing the impugned show cause notices and the impugned orders.

25. Accordingly the present batch of writ petitions stand dismissed, with liberty to approach the appellate authority. The period spent in this court shall not be counted for the calculation of prescribed period of time.

JUDGE

Comparing Assistant