

Exclusion of small scale ice cream manufacturers from composition scheme benefit to be reconsidered by GST Council

The Hon'ble Delhi High Court in ***Del Ice Cream Manufacturers Welfare's Association v. Union of India and Anr. [Writ Petition No. 5252/2019 and others dated February 9, 2021]*** directed the GST Council to reconsider the exclusion of small scale manufactures of ice cream from the benefit of Composition Scheme under Section 10(1) of the Central Goods and Services Tax, 2017 ("**CGST Act**") on the basis of two parameters i.e. the components used in the ice cream and the GST payable thereon and other similar goods having similar tax effect continuing to enjoy the benefit. It was further directed that GST Council should discuss the aforesaid aspect in its next meeting and to take a decision thereon at the earliest, keeping in view that the ice cream season has just begun.

Facts:-

Del Ice Cream Manufacturers Welfare's Association ("**Petitioner**") representing the interest of more than 50 small scale ice cream manufacturing units operating in Delhi has filed the petition impugning the decision dated June 18, 2017 of the GST Council, in exercise of powers under Section 10(2)(e) of the CGST Act of exclusion of ice cream from the benefits of Composition Scheme.

Petitioner's Contention:-

- The exclusion of ice cream from the benefits of Composition Scheme under Section 10 of the CGST Act is in violation of the spirit of Articles 14 and 19 of the Constitution of India and against the principles of natural justice.
- Ice cream was clubbed with pan masala and tobacco in exercise of powers under Section 10(2)(e) of the CGST Act. It was contended that there was no reason for clubbing ice cream with sin goods like pan masala and tobacco.
- For excluding ice cream from benefit of Section 10(1) of the CGST Act, the reason which prevailed for excluding ice cream was that there is no GST on milk, being a large constituent of ice cream and if small manufacturers of ice cream were to be given benefit of Section 10(1) of the CGST Act, there would be large scale loss of revenue.
- Ice cream comprises of a large number of other components which are assessable to GST and thus the reasoning emanating from the minutes of the 16th meeting of the

GST Council for excluding ice cream from the benefit of Section 10(1) of the CGST Act, is fallacious.

Issue:-

Whether the exclusion of small scale ice cream manufacturers from composition scheme should be reconsidered by GST Council.

Held:-

The Hon'ble Delhi High Court in ***Writ Petition No. 5252/2019 dated February 9, 2021*** has held that:

- Observed that, the legislature has vested the Government with absolute discretion, to exempt goods it may deem necessary, from the benefit of Section 10(1) of the CGST Act. The only limitation placed on the Government is, to act on the recommendation of the GST Council, established under Article 279A of the Constitution of India.
- Noted that, the GST Council is a high powered constitutional entity which comprises of Union Finance Minister, Union Minister of State in charge of Revenue or Finance and the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.
- Referred to the judgement of Supreme Court in ***Rajeev Suri v. Delhi Development Authority and Ors. [Transferred Case (Civil) No. 229 of 2020 and others dated January 5, 2021]*** wherein it was held that courts do not sit in appeal over the decisions of the Government. Further, the courts in the exercise of their jurisdiction, would not transgress into the field of policy decision, as long as no law is violated and people's fundamental right are not transgressed upon. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser.
- Referred the judgement of Supreme Court in ***SK Dutta, Income Tax Officer Salary-Cum-S IB Circle, Assam and Ors. v. Lawrence Singh Ingty [Civil Appeal No. 809 of 1966 dated November 7, 1966]*** and ***Ravi Agarwal v. Union of India [Writ Petition (Civil) No. 1107 Of 2017 dated January 3, 2019]*** wherein it was held that in deciding whether a taxation law is discriminatory or not, it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax and that a statute is not open to attack on the ground that it taxes some persons or objects and

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not others. It would be violative of Article 14 of the Constitution only when the law operates unequally and that cannot be justified on the basis of any valid classification.

- In respect of the above two judgements recorded the contention of the GST Council, that besides pan masala and tobacco, aerated water has also been excluded from the benefit of Section 10(1) of the CGST Act.
- Noted that is a well settled law that the State does not have to tax everything in order to tax something and it entitled to pick and choose, if it does so reasonably.
- Enquire that, whether any study has been done by the GST Council, of the tax effect of extending benefit of Section 10(1) of the CGST Act to small scale manufacturer of other similar goods and services and whether any decision has been taken to exempt all those goods and services from the benefit of Section 10(1) of the CGST Act, the tax effect whereof cannot be absorbed by the State. Further stated that from the minutes of the meetings it does not appear so.
- Directed the GST Council to reconsider the exclusion of small scale manufactures of ice cream from the benefit of Composition Scheme under Section 10(1) of the CGST Act, including on the aforesaid two parameters i.e. the components used in the ice cream and the GST payable thereon and other similar goods having similar tax effect continuing to enjoy the benefit.
- Further directed the GST Council to take up the aforesaid aspect in its next meeting and to take a decision thereon at the earliest, keeping in view that the ice cream season has just begun and preferably within three months.
- Hence, the petition has been disposed off.

Relevant Provision:-

Section 10(1) of the CGST Act:

“(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—

(a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,

(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council.

Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

Explanation.— *For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.”*

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