

**Service tax recovered in excess of amount approved by resolution plan is to be refunded by GST department**

In *M/s. Jagat Janani Services v. Goods & Service Tax Council and Others [W.P.(C) No.17196 of 2020 dated September 21, 2021]*, M/s. Jagat Janani Services (“the Petitioner”) has filed this writ petition challenging the realization of service tax / GST by the Opposite Parties and seeks the relief of refund.

The Petitioner, M/s. Jagat Janani Services is a registered partnership firm that is registered under the Finance Act of, 1994 and after coming into force of the Odisha GST / Central GST Act of, 2017 (“the CGST Act”), it has also obtained GST registration under the said statute. The Petitioner was raising invoices from time to time charging service tax prior to 1st July, 2017 and GST thereafter for various services rendered by it. It is stated that against various services against which invoices were raised by the Petitioner for the period January to December, 2017 has not been paid Rs.21,42,70,161/-. It is also stated that Opposite Party had availed of the input tax credit (“ITC”) in respect of the above sum in the input credit ledger maintained by it. It has now been clarified in the counter affidavit filed by the Opposite Party that this entry of ITC has been reversed in the ledger.

In terms of the Resolution Plan, and as per the excerpt of the list of Operational Creditors, the name of Petitioner appears against the amount of Rs.21,42,70,161/-, the admitted sum payable was indicated as Rs.18,14,03,659/-. Pursuant to the decision of the Supreme Court, the claim of the Petitioner was to be settled at 20.5% of the total claim, i.e. 20.5% of the aforementioned sum of Rs.18,14,03,659/-.

The case of the Petitioner is that it has already paid towards service tax Rs.1,41,12,429.94 and towards GST Rs.1,92,66,932/- for the aforementioned period January to December 2017. Accordingly, it submits that there has to be a pro-rata reduction of the liability since it is to get only 20.5% of the outstanding amount, which works out to Rs.3,71,87,750/- and a tax payable works out approximately to Rs. 45 lakhs. The Petitioner accordingly has calculated the excess tax paid as Rs. 2.16 crores approximately and claims this is refund from the Opposite Party. In the counter affidavit by Opposite Party, it is clarified that the service tax amount that has been paid is Rs.1,41,12,429.94 and the credit taken in this regard has now been reversed.

The Hon’ble Orissa High Court relied upon the case of *GGs Infrastructure Private Limited v. Commissioner of CGST & Central Excise [WP-LD-VC-NO.268 of 2020 dated December 22, 2020]* and directed the Respondent to issue, calculate and refund to the Petitioner the excess service tax paid by it by acknowledging that the Petitioner is entitled to receive only 20.5% of the admitted claim amount which works out to Rs.3,71,87,750/-. The excess

service tax so calculated will be refunded to the Petitioner in accordance with the extant rules within a period of eight weeks. Hence, the Writ petition is allowed.

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