

TAX INFO

Dated 29/12/2022

Latest update on GST Law: **HC directs the Department to decide on application for rectification under GST and unblock Electronic Credit Ledger** as given in judgement by **Jharkhand High Court**.

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication.

Name of Petitioner	Prabha Energy Private Limited
Name of Respondent	The State of Jharkhand
Court	Jharkhand High Court
Date of Judgement	08.03.2022
Appeal No.	W.P.(T) No. 3247 of 2020

Brief Facts of the Case Law:

The petitioner-company was subjected to inspection on 1st December 2018 and was asked to furnish a set of documents under Section 71 of the JGST Act, 2017. The petitioner submitted the relevant documents such as purchase register with copy of invoices and vender wise detail of GST credit for the period 1st July, 2017 to 31st October, 2018 and stock register for financial year 2017-18, 2018-19 were furnished. However, petitioner received a summary of show cause notice under GST DRC-01/GST DRC-02 alleging availment of excess Input Tax Credit for the period July, 2017 to September, 2018 proposing to impose tax, interest and penalty to the tune of Rs. 1.09 crores. Petitioner's return was also subjected to scrutiny and GST ASMT-10 was issued in terms of Rule 99 (1) for the period of April, 2018 to March, 2019 which overlaps to the period of DRC-01/ DRC-02 alleging mismatch of GSTR-3B and GSTR-2A. Subsequently, petitioner was surprised to receive a summary of the order under GST DRC-07 issued under Rule 142(5) for the period July, 2017 to September 2018. The petitioner filed an application for rectification on 28th September, 2019 under Section 161 of the Act of 2017 and also submitted reconciliation statements for the period of 1st July 2017 to 30th September 2018 in terms of which an amount of Rs. 4.06 lacs were standing towards ITC in favour of the petitioner.

Contention of the Petitioner:

As per the reconciliation statements there is no difference or mismatch or excess availment of ITC. The grievance of the petitioner is that no order has been passed on the rectification application till date while an amount of Rs. 74.20 lacs of ITC remain blocked in its Electronic Credit Ledger since 16th February 2020 till date much beyond the one year period prescribed under rule 86 A of the JGST Act, 2017.

The writ petition is maintainable on account of violation of principles of natural justice and failure to follow the procedure prescribed in law before passing an adverse order imposing tax, interest and penalty upon the petitioner under Section 73 of the JGST Act. Petitioner has placed reliance on the case of **M/s NKAS Service Pvt. Ltd. Vs. State of Jharkhand**, and submitted that in the absence of a proper show cause notice alleging the contravention committed by the petitioner as stipulated under Section 73 of the Act, no proceedings could have been initiated. Petitioner also took a plea that in case the Department have under taken scrutiny of the return submitted by the petitioner under Section 61 of the JGST Act and issued ASMT-10 showing mismatch or discrepancy in his returns, petitioner was entitled to avail of the statutory period to remove such discrepancy or seek a rectification thereof under Section 161 of the JGST Act. The Department have kept the application for rectification pending and instead blocked the ITC lying in the Electronic Credit Ledger of the petitioner for more than one year.

Decision of the Court:

The Court directed that the summary of the order contained in GST DRC-07 be quashed and the Department was directed to unblock ITC lying in the Electronic Credit Ledger of the petitioner. At the same time the Department was directed to undertake the rectification of the discrepancy as per the reconciliation statements provided by the petitioner. In case the rectification exercise leads to adverse order against the petitioner, he may be allowed the liberty to assail it before the appellate authority under Section 107 of the JGST Act.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>