***THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH**

AND

***THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN**

+WRIT PETITION No.14564 of 2024

%30-12-2025

Between

BirlaNu Ltd., (registered as ISD unit),
rep. by its Authorized Representative
Mr.B.N.Duth Sripada, Hyderabad. ....Petitioner

vs.

Union of India and 3 others. ....Respondents

!Counsel for the petitioner : Sri Sparsh Bhargava, learned counsel representing Smt.Shireen Sethna Baria

^Counsel for the respondents : Sri Bokaro Sapna Reddy, Standing Counsel for CBIC and Sri B.Mukherjee, learned counsel representing Sri N.Bhujanga Rao, Deputy Solicitor General of India

<Gist :

>Head Note :

? Cases referred

1. AIR 1968 SC 488
2. (1967) 20 STC 367
3. (2009) 15 SCC 570
4. W.P.(T) No.3944 of 2022, dt.26.04.2023
5. (1971)2 SCC 860
6. 1995 Supp(3) SCC 462

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH

AND

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT PETITION No.14564 of 2024

DATE: 30.12.2025

BETWEEN:

M/s. BirlaNu Ltd., (registered as ISD unit), rep. by its Authorized Representative Mr.B.N.Duth Sripada, Hyderabad.

....Petitioner

AND

Union of India and 3 others.

....Respondents

ORDER

Heard Sri Sparsh Bhargava, learned counsel representing Smt.Shireen Sethna Baria, learned counsel for the petitioner; Smt.Bokaro Sapna Reddy, learned Standing Counsel for CBIC and Sri B.Mukherjee, learned counsel representing Sri N.Bhujanga Rao, learned Deputy Solicitor General of India appearing for respondent Nos.1 to 4 and perused the record.

2. The present Writ Petition is filed challenging the constitutional validity of Rule 39(1)(a) of the Central Goods and Services Tax Rules 2017 (for short 'CGST Rules'), the Final Audit Report dated

22.01.2024 and the consequential show-cause notice dated 30.01.2024 proposing a penalty of Rs.8,38,67,332/- under Section 122(1)(ix) of the Central Goods and Services Tax Act, 2017 (for short, 'CGST Act, 2017').

Factual matrix (in brief)

3. The petitioner M/s. BirlaNu Limited is registered as an Input Service Distributor (ISD) under the CGST Act. During the audit for the financial years 2017-2018 and 2018-2019, respondent Nos.2 to 4 observed that the petitioner had accumulated Input Tax Credit (ITC) during each Financial Year (for short, 'FY') and distributed the accumulated ITC in the last month (March 2018-2019) instead of distributing it month wise. This, according to the respondent authorities, is contrary to Rule 39(1)(a) of the CGST Rules, which mandates that the credit available for distribution in a month "shall be distributed in the same month". Consequently, a Spot Memo dated 07.12.2023 (Annexure-P5) was issued, followed by additional Spot Memo (Annexure-P7) and Final Audit Report (Annexure-P11). A show-cause notice dated 30.01.2024 proposing a penalty of Rs.8,38,67,332/- (Annexure-P14) which according to the petitioner was issued without granting the petitioner adequate opportunity to respond.

Contentions of the petitioner

4. Learned counsel for the petitioner raised the following contentions:

i. That Rule 39(1)(a) of the CGST Rules, insofar as it mandates distribution of ITC within the same month, is *ultra vires* Section 20 of the CGST Act as it introduces a mandatory time limitation, not contemplated by the CGST Act, 2017 (for short "Parent Act"). Section 20 of the Parent Act, only prescribes the manner and conditions of distribution and does not empower the rule-making authority to impose any time limit or consequence of lapse.

ii. That eligibility to ITC is governed exclusively by Sections 16 and 17 of the Act, and once validly availed, such credit constitutes a vested and indefeasible right. Procedural provisions relating to distribution by an ISD cannot operate to extinguish or invalidate such substantive entitlement, particularly in the absence of any dispute regarding eligibility or any allegation of revenue loss.

iii. In arguendo, even if Rule 39(1)(a) of the CGST Rules is taken, as it obtains today, it is required to be read as directory and

not mandatory. The use of the expression "shall" in a procedural rule cannot be construed as mandatory where non-compliance causes no prejudice to the revenue and does not defeat the object of the statute, namely avoidance of cascading of taxes.

iv. That the impugned proceedings erroneously proceed on the assumption that the credit "available for distribution" is confined to the amount reflected in Form GSTR-6A. It is submitted that GSTR-6A is merely a system-generated, facilitative statement and cannot determine statutory entitlement or availability of ITC under the Act.

v. That the subsequent amendment to Section 20(2) by the Finance Act, 2024, expressly empowering prescription of time limits with effect from 01.04.2025, clearly demonstrates that no such delegation existed during the relevant period, rendering Rule 39(1)(a), to that extent, unsustainable.

vi. That the invocation of extended limitation and penalty provisions is wholly unjustified in the absence of any suppression, misstatement, or fraud. All relevant returns and disclosures were made on the common portal and were within the knowledge of the Department; consequently, the proceedings are barred by limitation and without jurisdiction.

Thus, the impugned audit report and show-cause notice, being founded on an *ultra vires* rule and a misconstruction of the statutory scheme, are arbitrary, contrary to law, and liable to be quashed.

Contentions of the respondents

5. Learned Standing Counsel appearing for the respondents raised the following contentions hereunder:

i. That the Rule 39(1)(a) of the CGST Rules is *intra vires* pre-amended Section 20 of the CGST Act, as it merely prescribes the manner of distribution of ITC, which the statute expressly authorises to be regulated by Rules. The requirement of distributing credit in the same month forms an integral part of such prescribed manner.

ii. That Section 20 of the CGST Act and Rule 39 of the CGST Rules constitute a composite statutory scheme governing Input Service Distributors and must be read harmoniously. The petitioner cannot selectively rely on Section 20 while disregarding the binding procedural mandate under Rule 39(1)(a).

iii. That the amendment to Section 20 of the CGST Act introduced by the Finance Act, 2024 operates prospectively with effect from 01.04.2025 and does not render Rule 39(1)(a) invalid or

ultra vires for the earlier period. The legality of the petitioner's actions must be tested with reference to the law as it stood during the relevant financial years.

iv. That the Rule 39(1)(a) lawfully operationalizes the statutory mandate contained in Section 20(1) and does not travel beyond the scope of delegated legislation.

v. That the impugned proceedings are within jurisdiction and in accordance with law, and that interference at the threshold would seriously prejudice the Revenue.

6. Upon consideration of the affidavit and counter, the following issues are arise for consideration by this Court:

I. Whether Rule 39(1)(a) of the CGST Rules, to the extent it mandates distribution of credit within the same month, is *ultra vires* the parent's statute i.e., Section 20 of GST Act as obtaining prior to 01.04.2025?

II. Whether the impugned Audit Proceedings dated 22.01.2024 and the show-cause notice dated 30.01.2024 are in violation of principles of natural justice?

III. Whether the proceedings are barred by limitation?

IV. Whether the petitioner has an alternative remedy that bars the present writ petition?

V. Whether the delegated legislation has exceeded the authority conferred by the parent enactment?

7. We have taken note of the respective contentions urged.

Analysis and finding

8. This Court is of the considered view that fiscal policy decisions ordinarily invite judicial deference and that the framework of taxation, particularly under the GST regime, involves complex economic considerations entrusted to the legislative and executive domains. However, the present challenge does not call upon this Court to examine the wisdom or desirability of any policy choice. Judicial review in the present situation is not merely permissible but constitutionally necessary to ensure that subordinate legislation remains within the bounds of legislative competence.

Validity of Rule 39(1)(a) of the CGST Rules 2017

9. It is pertinent to note that Section 20 of the CGST Act lays down the statutory framework governing the distribution of Input Tax Credit by an Input Service Distributor (ISD), and does not stipulate any time limit within which such distribution is required to be effected. Prior to 01.04.2025, it merely provides that the credit 'shall be distributed in such manner as may be prescribed'. Rule 39(1)(a) of the CGST Rules, during the relevant period, however, mandates that the credit available for distribution in a particular month shall be distributed in that very month.

10. It is to be noted that the Rule 39(1)(a) travels beyond the scope of the parent provision, by introducing a mandatory time limit for distribution, which is not contemplated under Section 20 of the Act.

11. It is to be noted that while delegated legislation ordinarily enjoys a presumption of validity, such presumption stands rebutted where the rule demonstrably travels beyond the limits of authority conferred by the parent statute. In this regard, Section 20 of the CGST Act as it stood prior to 01.04.2025 is extracted hereunder:

> ***Section 20. Manner of distribution of credit by Input Service Distributor.-***
>
> *(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed*
>
> *(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely*
>
> > *(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed:*
> >
> > *(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;*
> >
> > *(c) the credit of tax paid on input services attributable to a recipient of credit shallbe distributed only to that recipient:*
> >
> > *(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;*

> *(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period...*

12. A plain and textual reading of Section 20 of the CGST Act reveals that the legislature has consciously confined the delegated power to regulate the procedural mechanism of distribution and has not contemplated the imposition of any time limit for such distribution. In the absence of any express or implied statutory mandate authorising the prescription of a limitation period, the rule-making authority cannot, under the guise of prescribing the "manner", introduce a substantive restriction which has the effect of extinguishing a vested statutory entitlement.

13. Section 20 of the CGST Act is intended to ensure seamless flow and equitable distribution of ITC. Any interpretation of the rule-making power that imposes rigid time constraints not envisaged by the statute would defeat this object and run contrary to the purpose of the provision. In ***Lakshmi Rattan Engineering Works Limited v. CST***[1], the Apex Court had declared as under:

> *11. It is to be remembered that all rules of procedure are intended to advance justice and not to defeat it*

[1]AIR 1968 SC 488

14. In this context, this Court finds substance in the reliance placed by the petitioner on the decision of the Hon'ble Supreme Court in ***Sales Tax Officer v. K. I. Abraham***[2], wherein it has been authoritatively held that a rule-making authority cannot introduce a period of limitation in the absence of any such prescription in the parent statute.

15. It is well settled that a rule framed 'for carrying out the purposes of the Act' constitutes a general delegation of power, which cannot be exercised to create substantive obligations, disabilities, or conditions not contemplated by the Legislature. Where such a rule introduces a condition that directly impairs or nullifies a statutory entitlement, it ceases to be procedural, assumes the character of substantive law, and thereby exceeds the limits of delegated authority. In this regard, the Hon'ble Supreme Court in ***Global Energy Limited v. Central Electricity Regulatory Commission***[3]**,** has held as under-

> *25. It is now a well-settled principle of law that the rule-making power "for carrying out the purpose of the Act" is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of that said Act.*

---

[2](1967) 20 STC 367
[3](2009) 15 SCC 570

> *26. We may, in this connection refer to a decision of this Court in Kunj Behari Lal Butail v. State of H.P. [(2000) 3 SCC 40] wherein a three – Judge Bench of this Court held as under: (SCC p. para 14)*
>
> > *14. We are also of the opinion that a delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercises as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.*

16. It is to be noted that Section 20 of the CGST Act is conspicuously silent with regard to the timeline for distribution of credit. The rule-making power under Section 164 of the CGST Act is intended to enable the implementation of the provisions of the Act and cannot be exercised to introduce substantive conditions or restrictions not envisaged by the legislature. By mandating distribution of credit within the same month, Rule 39(1)(a) imposes an inflexible condition which has the effect of denying or forfeiting legitimately accrued Input tax credit, thereby defeating the fundamental objective of the GST regime, namely, the elimination of cascading of taxes.

17. It is relevant to note that where the legislature intends to authorise the prescription of a time limit through subordinate legislation, it has done so expressly. The absence of any such provision in Section 20 of the CGST Act, as it stood prior to 01.04.2025, is therefore to be treated as intentional and not accidental. This legislative choice cannot be altered by delegated

legislation. In similar circumstances, the Jharkhand High Court in ***M/s. Kirloskar Brothers Limited v. State of Jharkhand and others***[4] after referring to a Judgment of Hon'ble Supreme Court in ***Bharat Barrel and Drum Manufacturing Company Limited v. ESI Corporation***[5] has held as under:

> *9. .....Where the legislature intends to provide the period of limitation it specifically provides for the same in the main Act and does not leave it to the government under its delegated legislation.*

18. It is trite law that when the parent statute does not provide for a limitation period, the rule-making authority cannot introduce a time restriction by invoking general rule-making powers, particularly where such restriction results in extinguishment of a statutory right, as this would amount to rewriting the statute and is impermissible in law.

19. It is also relevant to note that the Act permits a recipient unit to avail ITC directly until the due date for filing of the return for the month of September or November of the subsequent financial year. The denial of an identical benefit solely on the ground that the credit is routed through an ISD results in hostile discrimination and is manifestly arbitrary and violation of Articles 14 and 300-A of the Constitution of India.

---

[4] W.P.(T) No.3944 of 2022 dated 26.04.2023
[5] (1971) 2 SCC 860

20. Further, once ITC is lawfully availed in terms of the Act, it crystallizes into a vested statutory right. Any curtailment thereof through delegated legislation, bereft of express legislative sanction and unsupported by a rational nexus to the statutory objective, cannot be sustained. Such arbitrary deprivation offends Article 14 of the Constitution.

Violation of principles of Natural Justice

21. On perusal of the record, it is relevant to note that the petitioner had sought reasonable time to respond to the spot memos dated 07.12.2023 and 15.12.2023, citing *bona fide* difficulties in collating voluminous data pertaining to the FY 2017–18 and 2018–19, compounded by year-end statutory compliance obligations. Notwithstanding the said request, the respondent-authorities declined to grant any extension and proceeded to conclude the audit in undue haste.

22. It is evident that the audit objections were finalized and the matter was also placed before the Monthly Monitoring Committee Meeting (MMCM) without prior notice to the petitioner and without affording an opportunity of being heard to the petitioner, thereby depriving the petitioner company to present its explanation or clarify its position. This action is in clear derogation of the fundamental principles of natural justice.

23. It is also to be noted that Para 5.13 of the CBIC GST Audit Manual, 2019, mandates that audit objections are required to be discussed with the taxpayer prior to finalization of the audit report. However, in the present case, the said procedural safeguard, though binding on the departmental authorities, was admittedly not adhered. The precipitate manner, in which the audit proceedings were concluded, by denying the petitioner atleast an opportunity to place its case on record, vitiates the entire audit process. The relevant portion of Para 5.13 is extracted hereunder for ready reference:

> *5.13 Apprising the registered person of irregularities noticed and ascertaining his view point*
> *It is important that the auditor discusses all the objections with the registered person before preparing draft audit report. The registered person should have the opportunity to know the objections and to offer clarifications with supporting documents. This process will resolve potential disputes at an early stage and avoid unnecessary litigation.*

Issue of limitation

24. It is pertinent to note that the proceedings pertain to the FY 2017–18 and 2018–19, whereas the show-cause notice was issued on 30.01.2024 which is clearly beyond the normal period of limitation as prescribed under Section 73 of the CGST Act, 2017. The respondents have sought to invoke the extended period of limitation under Section 74 of the CGST Act on the allegation of 'suppression'. However, such invocation does not appear to be sustainable,

inasmuch as the record indicates that the particulars of distribution of ITC were duly disclosed by the petitioner in its periodical returns in Form GSTR-6 and were available to the department on the common GST portal. In circumstances, where the relevant facts are within the knowledge of the tax authorities, the allegation of 'suppression' is legally untenable.

25. In this regard, reference may be made to the Judgment of the Supreme Court in ***Pushpam Pharmaceuticals Company v. CCE***[6], wherein it was held that suppression cannot be alleged when the facts are known to both the parties.

Issue of availing of alternative remedy

26. Though the respondents argued that the petitioner should avail the alternative remedy of replying to the show-cause notice. It is settled law that the existence of an alternative statutory remedy does not operate as an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution of India, particularly in cases where the *vires* of a statutory provision is under challenge or where there is a manifest violation of the principles of natural justice. Thus, we find no merit in the objection raised by the respondents and holds that the writ petition is maintainable.

---

[6]1995 Supp (3) SCC 462

Conclusion

27. For the foregoing reasons, the Writ Petition is allowed with the following terms:

i. Rule 39(1)(a) of the CGST Rules, 2017, to the extent it mandates that Input Tax Credit available for distribution in a month shall be distributed in the same month, is declared *ultra vires* Section 20 of the CGST Act, 2017, and is hereby struck down.

ii. The Final Audit Report dated 22.01.2024 and the show-cause notice dated 30.01.2024, along with all consequential proceedings are hereby quashed and set aside. Petitioner may claim refund of any amount deposited in connection with the impugned proceedings as per law.

As a sequel, miscellaneous petitions, pending if any, stand closed. No costs.

APARESH KUMAR SINGH, CJ

G.M.MOHIUDDIN,J

Date: 30.12.2025
Note: LR copy to be marked.
(B/o) SZT