Tvl. SAM Enterprises & Others vs. Commercial Tax Officer & Others

Whether penalty imposed under Section 122(1)(ii) and Section 122(1)(vii) of the GST Act for availing ineligible Input Tax Credit through circular trading — without actual movement of goods and solely to boost turnover for obtaining bank loans — is sus

Date of Order: February 8, 2026
Case Law No: GIB-MHC-2026-45
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CASE DESCRIPTION / SUMMARY

BACKGROUND

Nineteen writ petitions were filed by multiple petitioners — all engaged in the medical equipment supply business in Coimbatore — challenging assessment orders passed in Form GST DRC-07 under Section 74 of the respective GST enactments for tax periods ranging from 2020-2021 to 2024-2025. The Revenue, after investigation and inspection, found that the petitioners were part of an organised circular trading ring, wherein they billed each other without any actual movement of goods. The sole purpose was not to pass fake ITC to the end user but to artificially inflate their business turnover to create a creditworthy image before banks and obtain bank loans. The assessment orders recorded that 96% to 100% of the total purchase and sales turnover of the petitioners constituted circular trading transactions, with only 1% or less being genuine original transactions.

CRUCIAL FACTS

The assessment orders in Form GST DRC-07 confirmed demands levying penalty under Section 122(1)(ii) — for issuing invoices without supply of goods — and Section 122(1)(vii) — for availing Input Tax Credit without actual receipt of goods. The total penalty imposed across all 19 petitions aggregated to approximately Rs.12.34 crores under Section 122(1)(vii) and Rs.13.67 crores under Section 122(1)(ii). The petitioners' primary legal argument before the High Court was that the maximum penalty imposable under Section 122(1) is Rs.10,000/- and the assessing officers had no authority to impose penalty equivalent to the ITC wrongly availed, as the doctrine of proportionality required the penalty to be commensurate with the gravity of the offence. They relied upon Supreme Court judgments in labour law and service law matters on the doctrine of proportionality. The

Revenue countered that Section 122(1) uses the expression "whichever is higher" — Rs.10,000/- or the amount of tax evaded/ITC irregularly availed — leaving no discretion whatsoever to levy a lower amount. The Respondents further relied on the Supreme Court's ruling in Dharamendra Textile Processors on the mandatory nature of statutory penalties.

COURT OBSERVATIONS (Verbatim — Crucial)

On Circular Trading and the Petitioners' conduct:

"*The above table shows that the above tax payers are involved in circular trading and has 1% or less original transactions that too were done to portray themselves as genuine tax payers but that is not the case. The above tax payers just to boost up their turnover has billed themselves without any goods movement and their aim is not transfer fake ITC but to boost up their business turnover to get bank loans, to create an image that they are big players in this medical equipment supply business.*"

On Section 122(1) — No discretion to levy Rs.10,000/- as minimum:

"*The language in Section 122(1) of the respective GST Enactments also does not give any discretion to the Assessing Officer to levy lesser of the amount i.e., Rs.10,000/- as the expression used is 'whichever is higher'.*"

"*The above decisions of the Hon'ble Supreme Court cannot be applied to the facts of the case specifically in the light of the language in Section 122(1) of the respective GST Enactments. The expression used in Section 122(1) is 'whichever is higher'.*"

On inapplicability of Dharamendra Textile ratio to GST Section 122:

"*Section 11-AC of the Central Excise Act, 1944 which fell for consideration is the above-mentioned decision of the Hon'ble Supreme Court is different from Section 122 of the respective GST Enactments. The Hon'ble Supreme Court in Union of India Vs. Rajasthan Spinning and Weaving Mills, (2009) 13 SCC 448, has pointed out that the ratio was confined to Section 11-AC of the Central Excise Act, 1944 and no observations with regard to the several other statutory provisions that came up for consideration in that decision.*"

On prima facie liability:

"*No doubt that the Petitioners have wrongly availed the Input Tax Credit and have apparently passed on the credit to boost up their respective turn overs with a view to take undue advantage of the system, prima facie they are liable to penalty under Section 122(1) of the respective GST Enactments.*"

On availability of statutory remedy and writ jurisdiction:

"*The provisions of the respective GST Enactments contemplate an appellate remedy before the Appellate Authority under Section 107 of the respective GST Enactments and further appeal before GST Tribunal under Section 122 of the respective GST Enactments and thereafter remedy before the High Court. The finer aspects of law at best can be left to be decided by the Division Bench of this Court in its appellate jurisdiction under Section 117 of the respective GST Enactments which is in line with the Judgment of the Hon'ble Supreme Court in L.Chandrakumar Vs. Union of India and others, (1997) 3 SCC 261.*"

"*The Petitioner cannot short circuit the statutory mechanism prescribed by citing the decisions and the principle laid under the indirect tax enactments which have been subsumed into the respective GST Enactments.*"

On pre-deposit waiver:

"*Since pre-deposit of huge penalty as prescribed under Section 107 of the respective GST Enactments will cause undue hardship to the respective Petitioners and make the appellate remedy illusory, pre-deposit of 10% of penalty under Section 107 of the respective GST Enactments is dispensed with at the time of filing the appeals before the Appellate Authority.*"

FINAL VERDICT

All 19 writ petitions are dismissed. Liberty granted to petitioners to file appeals before the Appellate Authority under Section 107 within 30 days. The mandatory pre-deposit of 10% of penalty under Section 107 is waived in view of the large quantum of penalty, to prevent the appellate remedy from becoming illusory. Appellate Authority directed to decide the appeals preferably within 90 days.

 THUMBS DOWN *(Against Assessees — Writ dismissed; however significant relief granted by way of pre-deposit waiver)*

ADDITIONAL FOOTNOTES

CASES REFERRED BY COURT

S.No.	Case Name	Citation
1.	Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association *(SC — Doctrine of Proportionality in punishment)*	(2007) 4 SCC 669
2.	Charanjit Lamba vs. Commanding Officer, Army Southern Command *(SC — Proportionality; writ court not to substitute punishment unless outrageously disproportionate)*	(2010) 11 SCC 314
3.	S.R. Tewari vs. Union of India *(SC — Perversity of findings; proportionality of punishment)*	(2013) 6 SCC 602
4.	Union of India vs. Dharamendra Textile Processors *(SC — Mandatory nature of penalty; no discretion once conditions satisfied)*	(2008) 13 SCC 369
5.	Union of India vs. Rajasthan Spinning and Weaving Mills *(SC — Ratio of Dharamendra Textile confined to Section 11-AC; cannot be extended to other provisions)*	(2009) 13 SCC 448
6.	L. Chandrakumar vs. Union of India *(SC — Tribunal jurisdiction; Division Bench as final fact-finding forum under GST)*	(1997) 3 SCC 261

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