

While your hands were being sanitized

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No Refund because there is no Tribunal
Profiteering Movie Theatre - curtains down
Please give copies of seized documents

By Vijay Kumar

NO

corona can wither nor lockdown stale the infinite variety that taxmen can think of filling the State coffers. While you were sanitising your hands frequently and positively hoping to keep corona at bay or away from you, these frontline tax soldiers of the government were working hard thinking of ways and means to fatten the coffers before the curve is flattened. Putting themselves to great risks, the GST Intelligence officers are reported to have arrested some directors of a company manufacturing sanitizer and have also seized several drums of the offending sanitizer. I only hope our sincere officers kept a safe distance and were fully sanitized before they undertook this hazardous job of seizing the sanitizer and arresting its manufacturer.

It all started more than a month ago when the DG, GST Intelligence informed all the Chief Commissioners and other Commissioners that some manufacturers of hand sanitizers (alcohol-based) are wrongly classifying the said item under tariff heading 3004 (12% GST) whereas the said item is liable to be classified under tariff heading 3808 (18% GST). It has been informed that sugar mills and distilleries are also engaged in manufacturing/supplying alcohol-based hand sanitizers and are classifying the same under tariff heading 3004 (12% GST) whereas the same are correctly classifiable under heading 3808 (18% GST). Thus, the mis-classification of hand sanitizers appears to have resulted in substantial evasion of GST. A list of 62 manufacturers/suppliers of the item was prepared by DGGI headquarters by identifying the manufacturers with the help of online shopping platforms such as Amazon, Flipkart, etc.,

While this was in active progress, **Springfields (India) Distilleries** filed an application before the Authority for Advance Ruling in Goa that:

Hand Sanitizer is covered under HSN Code: 30049087 - Antihypertensive drugs: Antibacterial formulations not elsewhere specified or included - Rate of GST is 12%.

The Ministry of Consumer Affairs, Food and Public Distribution, in a notification has classified Hand Sanitizers under the Essential Commodities Act, 1955 as an essential commodity and thus exempt from GST.

The learned Authority in its order dated 25.06.2020 - [2020-TIOL-173-AAR-GST](#) held,

Hand Sanitizers manufactured by the applicant are of the category of Alcobased hand sanitizers and are classifiable under heading 3808 of HSN to which rate of GST applicable is 18%.

As far as exempting hand sanitizers as essential commodity since it is classified as such by Ministry of Consumer Affairs, Food and Public Distribution, this Authority is of the view that Exempted goods are covered by Notification no. [2 /2017- Central Tax \(Rate\)](#) dated 28/06/2017. Merely classifying any goods as essential commodity will not be the criteria for exempting such Goods from GST.

The ruling so sought by the Applicant is accordingly answered as under:-

Alcohol Based Hand Sanitizers manufactured by the applicant are covered by HSN 3808 and are accordingly taxable at appropriate rate.

The AAR and the DGGI are in agreement and so the tax payable is 18% and if somebody paid 12% by mistake or otherwise, he could be in jail.

Next time you use the sanitizer to clean your hands, remember you have contributed 18% GST and some manufacturer who sent this sanitizer to you is in jail. Covid has the last laugh.

Can't the Government make it a low tax rated item? Bureaucracy cannot move as fast as Corona and maybe we will have to wait for the next pandemic to have a low rate of tax for such essential items.

No Refund because there is no Tribunal

Today a retired Chief Commissioner spoke to me and during the conversation, he asked me, **"now with Corona and fall in revenue, are they giving any refunds?"**. I said, **"it is just like in your days, sir"**. **"What does that mean?"**, he asked. **"If possible, they don't give refunds"**, I said.

Have a look at this case:

The Commissioner (Appeals) allowed a refund claim of nearly Rs. 1.5 crore in July 2019. Even after nearly a year, the GST Department has not been pleased to make the refund in spite of an order by its own Commissioner (Appeals), which has attained finality. The harried taxpayer approached the Delhi High Court.

What were the options before the Department?

1. Give the refund (which is not the norm)
2. Get a Stay from a higher authority like the GST Appellate Tribunal.

But there is no Tribunal. Why is there no Tribunal? Because the Government has not constituted the Tribunal. Whose fault is it? And what happens when the Government fails to create the Tribunal? Simple, don't give refund.

And this is what the Government told the Court:

1. inaction on their part of not disbursing the refund amount was owing to the non-functioning of the GST Appellate Tribunal which is beyond their control. (Then whose control is it in?)
2. The competent authority in pursuance to the opinion of the review branch has directed filing of an appeal before the Appellate Tribunal challenging the order in appeal passed by the Commissioner (Appeals).

You understand how helpless the poor government is and still you have the audacity to ask for refund!

The High Court in its order delivered on 10th July - [2020-TIOL-1168-HC-DEL-GST](#) stated

It is apparent that the petitioner has succeeded in appeal vide order dated 23rd July, 2019. Though nearly a year has passed, yet no proceeding has been filed challenging the said order till date.

In the opinion of this Court, the petitioner cannot be asked to wait endlessly for the respondents to challenge the order dated 23rd July, 2019. Consequently, the present writ petition is disposed of with a direction to the respondents to refund the amount as directed by the Commissioner (Appeals) vide order dated 23rd July, 2019 within four weeks. During this period, it shall be open to the respondents to file appropriate proceedings in accordance with law. All rights and contentions of the parties including objection, if any, to the maintainability of such proceedings are left open.

Now the Government has two options:

1. Refund the amount
2. File an appeal in the non-existing Tribunal.
3. Go to the Supreme Court challenging the High Court order.

Profiteering Movie Theatre - curtains down

Prasad's is an iconic IMAX theatre and multiplex in Hyderabad. Recently they were before the giant screen of the Anti-Profiteering Authority for not reducing the price of cinema tickets when the GST was reduced.

In a cinematic order delivered by the National Anti-profiteering Authority a couple of weeks ago - [2020-TIOL-37-NAA-GST](#), the movie-house was asked to pay an amount of over thirty lakhs of rupees with 18% interest for not passing on the benefit of lower tax to the unfortunate viewers.

This Authority has found that the Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices of the service commensurately, despite a reduction in GST rate on Services by way of admission to exhibition of cinematograph films from 28% to 18% w.e.f. 01.01.2019 to 30.06.2019. On this account, the Respondent has realized an additional amount to the tune of Rs. 30,13,058/- from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus the profiteering is determined as Rs. 30,13,058/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is therefore directed to reduce the prices of his tickets as per the provisions of Rule 133 (3) (a) of the CGST [Rules, 2017](#)

, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of Rs. 30,13,058/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited.

It has also been found that the Respondent has denied the benefit of rate reduction to his customers/recipients in contravention of the provisions of Section 171 (1) of the CGST [Act, 2017](#)

and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. Therefore, he is liable for the imposition of penalty under the provisions of the above Section. Accordingly, a notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him

Further, the Authority as per Rule 136 of the CGST Rules 2017 directs the jurisdictional Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as Ordered by the Authority is deposited in the respective CWFs. A report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 3 months from the date of receipt of this Order.

Please give copies of seized documents

In a recent case before the Calcutta High Court, the petitioner submitted that unless the appellant/petitioner is allowed to make copies of the seized documents by the respondent Additional Assistant Director, Directorate General of GST Intelligence, the appellant/petitioner is not in a position to participate in the proceedings. The High Court allowed the petitioner to make copies.

The documents are seized from the petitioner/taxpayer; then what is the problem in giving him copies? Should he be driven to the High Court to get copies of the documents seized from him? [Please see - [2020-TIOL-1181-HC-KOL-GST](#)]

My heart is there in the coffin

Have men lost their reason?

Bear with me;

My heart is in the Covid there;

And I must pause till it comes back to me.

Until next week