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Composition option lapses automatically on crossing the threshold but differential tax must be computed on cum-tax basis under Rule 35

The GSTAT, Hyderabad Bench in *Sri Parameshwara Bricks v. State Tax Officer & Ors.* [Appeal Nos. APL/126/HYD/2026 & APL/26/HYD/2026, Common Order Nos. 001/HYD/2026 & 002/HYD/2026 dated August 20, 2026] upheld the order of the First Appellate Authority denying the benefit of the composition scheme to a manufacturer of red clay bricks whose aggregate turnover had exceeded the threshold of Rs. 1.50 crore, holding that the option under Section 10(3) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) lapses automatically by force of statute from the day on which the threshold is breached and that a plea of inadvertence or bona fide belief cannot revive the option. However, the Tribunal further held that, since a composition taxpayer is barred under Section 10(4) of the CGST Act from collecting any tax from the recipient, the value declared in the invoices must be treated as inclusive of tax, and the differential tax on the post-lapse supplies is required to be recomputed by applying the cum-tax formula prescribed under Rule 35 of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**), even though the Assessee had never claimed such benefit before any authority.

Facts:

M/s. Sri Parameshwara Bricks (**"the Appellant"**) is engaged in the manufacture and supply of red clay bricks and was registered under the composition scheme under Section 10(1) of the Telangana Goods and Services Tax Act, 2017 (**"the TGST Act"**) read with the CGST Act, discharging tax at the concessional composition rate of 1% on its supplies. The prescribed aggregate turnover threshold for the composition scheme was Rs. 1.50 crore.

The Appellant was subjected to audit by the jurisdictional Audit Officers, who compared the turnover reflected in the e-way bills generated by the Appellant with the turnover declared in FORM GST CMP-08. For FY 2020-21, the e-way bill turnover stood at Rs. 1,95,53,800/- as

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against a declared turnover of Rs. 1,44,86,100/-. Placing reliance on Section 10(3) of the TGST Act, the audit authorities concluded that the Appellant had crossed the threshold of Rs. 1.50 crore and had consequently ceased to be eligible for the composition scheme for FY 2020-21 and FY 2021-22, and that the differential turnover of Rs. 50,67,700/- (being the e-way bill turnover in excess of Rs. 1.50 crore) had escaped assessment at the applicable normal rate.

Show Cause Notices were issued proposing recovery of differential tax for both the years, computed at 28% (14% CGST and 14% SGST) instead of the applicable rate of 5%. On adjudication under Section 73 of the TGST Act, the proper officer restricted the demand to the applicable rate of 5%, after excluding the excess turnover attributable to typographical errors in certain e-way bills, and confirmed differential tax of Rs. 1,27,250/- for FY 2020-21 and Rs. 6,43,856/- for FY 2021-22, along with interest under Section 50(1) and penalty at 10% of the tax under Section 73. The First Appellate Authority upheld the adjudication order and dismissed the appeals (**"the Impugned Order"**).

Before the Tribunal, the Appellant contended that the excess over the threshold occurred inadvertently and without any deliberate or conscious intent, as its business operations were adversely affected by the COVID-19 pandemic, on account of which it was unable to properly monitor its turnover and the consequential tax compliances. It was further contended that the Appellant acted under a bona fide and reasonable belief that it continued to be eligible for the composition scheme, and had neither suppressed any material particulars nor acted with any mala fide intention. The Appellant sought setting aside of the Impugned Order, restoration of the composition benefit, annulment of the demand of tax, interest and penalty, and refund of the pre-deposit.

The Revenue, relying on the cross-objections filed in both the appeals, contended that the voluntary payments made by the Appellant were computed at the composition rate and fell substantially short of the tax actually payable at the regular rate upon the threshold being

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crossed, and that the demand had been determined after duly allowing for the errors appearing in the e-way bills.

Issues:

- Whether the option availed under the composition scheme lapses automatically upon the aggregate turnover exceeding the prescribed threshold of Rs. 1.50 crore, rendering the Appellant liable to discharge tax at the regular rate notwithstanding its plea of inadvertence and bona fide belief?
- Whether the differential tax on supplies made after the lapse of the composition option is to be computed on the entire value declared in the invoices or on a cum-tax basis by applying Rule 35 of the CGST Rules, when the Appellant had not claimed such benefit before any authority?

Held:



The GSTAT, Hyderabad Bench in **Common Order Nos. 001/HYD/2026 & 002/HYD/2026** held as under:

- Observed that, it was an admitted position that the Appellant had exceeded the prescribed threshold of aggregate turnover in both the financial years. A plain reading of Section 10(3) makes it abundantly clear that the option exercised under the composition scheme ceases to operate from the day on which the aggregate turnover during a financial year exceeds Rs. 1.50 crore, whereupon the registered person becomes liable to discharge tax at the applicable rate under the regular scheme. The consequence flowing from Section 10(3) is automatic and operates by force of statute; the composition levy stands terminated on the occurrence of the disqualifying event.
- Noted that, Rule 6(2) of the CGST Rules statutorily delineates the consequence of such cessation, namely, that the person becomes liable to pay tax under Section 9(1) from

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the day he ceases to satisfy the conditions of Section 10, must issue a tax invoice for every taxable supply made thereafter, and must file an intimation of withdrawal in FORM GST CMP-04 within seven days of the occurrence of such event. The expression “aggregate turnover” bears the meaning assigned under Section 2(6), computed on an all-India basis for persons having the same PAN. The Appellant was accordingly liable at the regular rate on all supplies made on and after the date of lapse, subject to due credit and adjustment of the composition tax already paid on such post-lapse turnover.

- Noted that, the Department had duly considered the Appellant’s contention regarding typographical errors in certain e-way bills and had excluded the turnover attributable thereto while determining the demand. In the absence of any further submissions beyond those on record, no sufficient ground existed to interfere with the figures determined in the Impugned Order or with the findings of the adjudicating authority.
- Observed that, although no argument was advanced on the method of computation of the differential tax, Section 10(4) prohibits a composition taxpayer from collecting any tax from the recipient and from availing input tax credit. The Appellant could not, therefore, have collected GST separately or shown any GST component in its invoices, which must be understood as reflecting the total consideration received from the recipients without any separately identifiable tax component.
- Held that, the case falls squarely within Rule 35 of the CGST Rules. Since the Appellant was not permitted to collect tax separately, and the Department had not alleged that any tax was collected over and above the invoice value, the value declared in the invoices must be treated as inclusive of tax and the tax component worked out in accordance with the formula prescribed under Rule 35. Tax cannot be calculated on an amount which already includes the tax component.
- Held that, the Appellant’s omission to claim the benefit of Rule 35, whether before the Tribunal or the authorities below, cannot disentitle it from receiving a benefit available

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under the Act and the Rules, particularly when the relevant facts are already on record. Relying on the judgment of the Hon'ble Supreme Court in **Unichem Laboratories Ltd. v. Collector of Central Excise, Bombay [2002 (145) E.L.T. 502 (S.C.)]**, the authorities are duty bound to levy and collect tax in accordance with law – no less and no more – and it is no part of their duty to deprive an assessee of a benefit available in law with a view to augmenting revenue. Extending the benefit of Rule 35 grants no concession outside the statute; it merely ensures that tax is correctly calculated in accordance with the prescribed rule.

- Held that, the question of the Appellant's entitlement to input tax credit upon cessation of the composition scheme was left open without expressing any opinion on merits, since such entitlement is neither automatic nor unconditional, is subject to strict compliance with Section 16 and the Rules, the burden lies on the person claiming the credit, and no specific claim was urged by the Appellant.
- Directed that, the proper officer shall recompute the differential tax liability only on the supplies made on and after the date of lapse of the composition option, by treating the declared value as cum-tax and applying the formula prescribed under Rule 35, and communicate the revised computation within two weeks. The consequential liability towards interest and penalty shall be determined afresh on the basis of the revised tax liability. The Impugned Order was accordingly upheld subject to this limited modification, and the appeals were disposed of.

Our Comments:

Composition levy and its automatic lapse: Section 10(1) of the CGST Act permits an eligible registered person whose aggregate turnover in the preceding financial year did not exceed Rs. 1.50 crore (Rs. 75 lakh in the specified special category States), as notified vide Notification No. 14/2019-Central Tax dated March 07, 2019, to pay tax at a concessional rate in lieu of the tax payable under Section 9(1), the rate for manufacturers being 1% (0.5% CGST and 0.5% SGST) of

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the turnover in the State. Section 10(3) provides that the option “shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit”. The lapse is thus not dependent on any order of the proper officer or on the intention or knowledge of the taxpayer; it is a consequence attached by the statute itself to the occurrence of the disqualifying event. Rule 6(2) of the CGST Rules completes the scheme by making the person liable to pay tax under Section 9(1) from the day of cessation, requiring tax invoices to be issued for every taxable supply thereafter and an intimation of withdrawal to be filed in FORM GST CMP-04 within seven days. Section 10(5) further provides that where the proper officer has reasons to believe that a person has paid tax under the composition scheme despite not being eligible, such person is liable to penalty in addition to the tax, and Sections 73 or 74 apply mutatis mutandis for determination of the tax and penalty. The Tribunal’s ruling that inadvertence, pandemic-related disruption or bona fide belief cannot revive a lapsed option is, therefore, a faithful application of the plain language of Section 10(3); a concessional scheme conditioned on a turnover ceiling admits of no equitable extension once the ceiling is breached.

Two aspects of the ruling on the first issue deserve attention. First, the Tribunal was careful to confine the regular-rate liability to supplies made “on and after the date of such lapse”, subject to credit and adjustment of the composition tax already paid on such post-lapse turnover. Supplies made up to the day of crossing the threshold continue to be governed by the composition levy. The Department’s methodology of taxing the e-way bill turnover in excess of Rs. 1.50 crore is, at best, a proxy for this date-wise cut-off, and can be contested where the e-way bill data includes non-supply movements (job work, branch transfers, sales returns, or cancelled and duplicated e-way bills) or where the chronological sequence of supplies does not match the aggregate figure. Second, the Tribunal proceeded on the measure of “aggregate turnover” under Section 2(6), computed on an all-India PAN basis and inclusive of exempt supplies and exports, which is the correct yardstick for the Section 10(3) ceiling; a composition

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taxpayer cannot exclude exempt or nil-rated turnover, or the turnover of other registrations under the same PAN, while testing the threshold.

Cum-tax valuation under Rule 35: Section 10(4) prohibits a composition taxpayer from collecting any tax from the recipient, and Section 32(2) bars a registered person from collecting tax except in accordance with the Act. The corollary, which the Tribunal has drawn correctly, is that the bill of supply value of a composition taxpayer represents the total consideration realised, and once the supplies are re-characterised as taxable under Section 9(1), that consideration must be treated as inclusive of the tax payable. Rule 35 of the CGST Rules prescribes the mechanism: $\text{Tax amount} = (\text{Value inclusive of taxes} \times \text{tax rate in \%}) / (100 + \text{sum of tax rates in \%})$. On a declared value of Rs. 100 taxable at 5%, the tax works out to Rs. 4.76 and not Rs. 5, and the differential demand, interest and penalty reduce correspondingly. The Tribunal's direction that this benefit must be extended suo motu, even though it was never pleaded, rests on the principle laid down by the Hon'ble Supreme Court in *Unichem Laboratories Ltd.* (supra) that the authorities must levy and collect the tax "no less and also no more", and that it is no part of their duty to deprive an assessee of a benefit available in law in order to augment revenue.

The cum-tax principle has a long lineage in indirect tax jurisprudence. In *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd.* [2002 (141) E.L.T. 3 (S.C.)], the Hon'ble Supreme Court held that where the sale price realised is a cum-duty price, the element of excise duty is to be excluded in arriving at the assessable value, since the amount collected from the buyer cannot be regarded as wholly the price of the goods. The Larger Bench of the CESTAT in *Srichakra Tyres Ltd. v. Collector of Central Excise, Madras* [1999 (108) E.L.T. 361 (Tri.-LB)], affirmed by the Hon'ble Supreme Court [2002 (142) E.L.T. A279 (S.C.)], extended the benefit even where no duty had been charged in the invoices, and the Legislature thereafter codified the principle by inserting the Explanation to Section 4(1) of the Central Excise Act, 1944 with effect from May 14, 2003, deeming the price-cum-duty to include the duty payable. In *Amrit Agro Industries Ltd. v. Commissioner of Central Excise, Ghaziabad* [2007 (210) E.L.T. 183 (S.C.)],

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the Hon'ble Supreme Court allowed the cum-duty benefit to an assessee who had cleared goods under the belief that they were exempt – a situation closely analogous to that of a composition taxpayer whose option has lapsed without his knowledge. Under the service tax regime, Section 67(2) of the Finance Act, 1994 embodied the same rule, and the CESTAT in *Commissioner of Central Excise, Kolkata v. Advantage Media Consultant* [2008 (10) S.T.R. 449 (Tri.-Kolkata)], affirmed by the Hon'ble Supreme Court [2009 (14) S.T.R. 149 (S.C.)], held that the gross amount realised is to be treated as inclusive of service tax where the tax was not separately charged. Rule 35 of the CGST Rules is the GST counterpart of these provisions, and the present ruling is among the first pronouncements of the GST Appellate Tribunal applying it to a composition-lapse demand.

Limits of the benefit: The benefit is not unqualified. Rule 35 is attracted only “where the value of supply is inclusive of” tax; where the Department establishes that the supplier in fact collected tax over and above the invoice value, the value is not cum-tax and the benefit is unavailable – indeed, any amount collected as representing tax by a person not entitled to collect it becomes recoverable under Section 76 of the CGST Act, irrespective of whether the supply was taxable. Certain benches of the CESTAT have also declined the cum-duty benefit in cases of clandestine removal, reasoning that a person who never intended to discharge duty cannot be presumed to have built it into his price; however, the weight of authority after *Maruti Udyog* and *Amrit Agro* favours extending the benefit wherever the tax was not separately recovered from the buyer. In the composition context, the case for cum-tax treatment is stronger still, because Section 10(4) statutorily forbids separate collection, so that the presumption of inclusive pricing arises from the law itself and not merely from the conduct of the parties.

Input tax credit on transition: The Tribunal left open the Appellant's entitlement to input tax credit upon cessation of the composition option. Section 18(1)(c) of the CGST Act entitles a registered person who ceases to pay tax under Section 10 to take credit of input tax on inputs held in stock, inputs contained in semi-finished or finished goods held in stock, and capital

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goods (reduced by the prescribed percentage points), on the day immediately preceding the date from which he becomes liable to pay tax under Section 9, subject to a declaration in FORM GST ITC-01 within thirty days under Rule 40(1)(b) and to the one-year limitation for invoices under Section 18(2). For the period after the lapse, regular credit under Section 16 is subject to the time limit under Section 16(4). Where a lapse is detected only in audit two or three years later, as in the present case, these windows would ordinarily have closed, and the taxpayer may find that the regular-rate liability is fastened without any corresponding credit. The Tribunal's observation that entitlement to credit is "neither automatic nor unconditional" and that the burden lies on the claimant underscores that composition taxpayers must monitor their aggregate turnover on a real-time basis and file FORM GST CMP-04 and FORM GST ITC-01 within the prescribed timelines, rather than await a departmental determination.

Position of brick manufacturers from April 01, 2022: The composition finding in this ruling is confined to periods up to March 31, 2022. With effect from April 01, 2022, manufacturers of fly ash bricks, building bricks, bricks of fossil meals and earthen or roofing tiles have been excluded from the composition scheme vide Notification No. 04/2022-Central Tax dated March 31, 2022, the registration threshold for such persons has been reduced to Rs. 20 lakh vide Notification No. 03/2022-Central Tax dated March 31, 2022, and such goods attract GST at 6% (3% CGST and 3% SGST) without input tax credit under Notification No. 02/2022-Central Tax (Rate) dated March 31, 2022 or at 12% with input tax credit under Notification No. 01/2022-Central Tax (Rate) dated March 31, 2022. The cum-tax principle laid down by the Tribunal, however, is of general application and will govern every case in which a composition taxpayer – or, for that matter, any supplier who did not charge tax in the belief that the supply was exempt or non-taxable – is subsequently called upon to discharge tax at the regular rate.

Key takeaways: (i) the lapse under Section 10(3) operates from the day of crossing the threshold, and only the post-lapse supplies attract the regular rate, with credit for the composition tax already paid on such supplies; (ii) the differential tax must be computed on a cum-tax basis under Rule 35, and adjudicating and appellate authorities are bound to extend

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the benefit even where it is not claimed; (iii) e-way bill data is a trigger for enquiry and not conclusive evidence of turnover, and taxpayers should reconcile it with their books to exclude non-supply movements; and (iv) credit on transition out of the composition scheme is a time-bound entitlement that must be secured contemporaneously.

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