



W.P.No.14080 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	16.08.2024
Pronounced On	24.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.14080 of 2021
and
W.M.P.No.14955 of 2021

M/s.United Breweries Limited,
Represented by its Unit Accountant
S.Sridhar

... Petitioner

Vs.

1.The Joint Commissioner of GST and
Central Excise (Appeals II),
Newry Towers, 2054, I Block,
12th Main Road,
2nd Avenue, Anna Nagar,
Chennai – 600 040.

2.The Assistant Commissioner of GST
and Central Excise,
Poonamallee, C 48 TNHB,
2nd Avenue, Anna Nagar,
Chennai – 600 040.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the Impugned Order-in-Appeal No.03/2021 dated 21.01.2021, passed by the 1st respondent, upholding the rejection of refund by the 2nd respondent, vide Refund Rejection Order GST-RFD-06 dated 20.08.2020 as being clearly arbitrary, beyond the



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jurisdiction vested upon the respondents and contrary to Section 9(3) of the CGST Act and the Notification issued thereunder and also in violation of Articles 14, 19(1) (g) and 265 of the Constitution.

For Petitioner : Mr.G.Natarajan

For Respondents : Ms.Anu Ganesan
Junior Standing Counsel
and Mr.B.Ramanakumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the Impugned Order-in-Appeal No.03/2021 dated 21.01.2020 passed by the 1st respondent Joint Commissioner of GST & CE (Appeals II).

2. By the said Impugned Order-in-Appeal dated 21.01.2021, the 1st respondent has rejected the Appeal No.114/2020/GSTA-II/ADC/CO filed by the petitioner against Order-in-Original Notification No.13/2017 Central Tax (Rate) dated 20.08.2020 bearing reference: RFD-06 passed by the second respondent.



3. The 2nd respondent as the Original Authority had earlier rejected the

refund claims of the petitioner with the following observations:-

“4.3 In the instant case, the excise labels supplied by the state prohibition department appeared to be in the nature of composite supply as the labels are supplied by the state excise department for affixing on the liquor bottles manufactured by the tax payer as per the relevant instructions / procedures prescribed by the State Government to indicate compliance and the labels are not for sale as such by the taxpayer. It, therefore, appears that the supply of labels by the Department of Prohibition and Excise, Government of Tamil Nadu is naturally bundled and supplied in conjunction with the service provided by the said department to the taxpayer to comply with the requirement to indicate the duty paid nature of the ultimate goods supplied by the taxpayer.

*4.4 Further, on verification of the demand report ID No.DI2018041200004 and e-acknowledgement reference details of the Department of Prohibition and Excise, Government of Tamil Nadu furnished by the taxpayer, it appeared that the demand is in the form of "**Fee Type**" and the activity is also mentioned as a service I.e. "**Service Name: Label cost**". It, therefore, appeared that the supply of labels by the State Excise Department is 'not' goods as contended by the tax payer but only part of a composite supply where 'service' is the principal supply and the consideration is collected in the form of "**Fee**".*

13. It could be seen from the aforementioned reference that the Department of Prohibition have classified the supply of Polyester Excise Hologram labels under SAC code "999119-Other Administrative services of the Government nowhere else classified" and mentioned the rate of tax as 18% (CGST-9% SGST-9%) payable under RCM by the tax payer. Hence, It is apparent that the supply of Polyester Excise Hologram labels for a fee is not



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an independent activity and is supplied in the course of provisions related to affixing of the same on the Beer bottles before being supplied to Tasmac. It is, therefore, established beyond doubt that the supply of holograms by the Department of Prohibition & Excise, Govt. of Tamil Nadu to the taxpayer is predominantly only as service and not supply of goods.

14. Having determined the nature of activity involved in the supply of labels based on the factual position corroborated by the letter dated 26.09.2017 of the Department of Prohibition & Excise, Govt. of Tamil Nadu, I hold that the taxpayer is liable to pay GST on the subject activity, as clearly indicated in the letter dated 26.09.2017 of the Department of Prohibition & Excise, Govt. of Tamil Nadu.

15. As regards the applicability of unjust enrichment, I find that the taxpayer has not advanced any contentions nor adduced any documentary evidence on this aspect and also in view of the my foregoing observations determining that the taxpayer is liable to pay GST under RCM on the aforesaid activity and are not entitled for refund, I do not find it necessary to examine the applicability of doctrine of unjust enrichment. To sum up, I find that there is no merit on the taxpayer's averments and I hold that the 22 refund claims filed by the taxpayer are liable to be rejected. Hence, I pass the following order.

ORDER

I reject all the 22 claims filed by the taxpayer under the category of "Excess payment of Tax" for the period April 2018 to February 2020 under Rule 92(3) of the CGST Rules, 2017 read with Section 54 of the CGST Act, 2017."



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4. Operative portion of the Impugned Order-in-Appeal dated 21.01.2021

passed by the 1st respondent Joint Commissioner of GST & CE (Appeals II)

reads as under:-

“7. I have carefully considered all the relevant facts of this appeal including the counter points made by the appellants in their grounds of appeal as well as those made during the virtual hearing. The issue that calls for decision in this appeal is whether the appellant has right to claim the refund of the GST paid by them on RCM basis on the amounts paid to the Government of Tamil Nadu for the activity of procuring and affixing holograms on the bottles containing the alcoholic beverages manufactured by them. Admittedly, the appellants herein are engaged in manufacture, bottling and distribution of alcoholic beverages under license and as per conditions stipulated by the Government of Tamil Nadu (Government for short). One of the mandatory conditions that the appellants have to comply is to procure the security holograms from the Government by paying a prescribed amount and affix the same on all the bottles containing the alcoholic beverage. The appellants were paying taxes as per GST Law under RCM basis on such payments made to procure the security holograms. The appellants claim that they were under bonafide belief that such activity amounted to service provided by Government and they were liable to pay tax under RCM. The appellants further claim that there has been a change in their perception about the said activity and accordingly they believe that the activity involved is mere sale of security holograms by the Government to the appellants. It is not the case of the appellant that the change in perception has its root to any new or change in provisions of relevant statuette or any notification, clarification or Order issued there under. It is therefore imperative to examine as to whether this change of perception to treat the supply of security holograms qualifies as sale as per Law.



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8. It is an admitted fact that the appellant has been paying taxes in the instant case in pursuance of entry Sl.No.5 of the Notification No.13/2017 Central Tax (Rate) dated 28/06/2017. As per this Sl.No.5, the 'category of supply of service' has been specified as "Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding.....". Herein, the Central Government, State Government, Union territory or local authority has been categorized as 'supplier of service' and any business entity located in the taxable territory as 'recipient of service'. One of the arguments espoused by the appellant is that in the activity of providing them with the holograms for a fee, no inference of provision of service to the appellant by the Government can be made. However, I find that the right to manufacture, bottle and distribute alcoholic liquor is the service provided by the Government to the appellant. The appellant in this regard, endeavoured to count on the Notification No.25/2012 Central Tax (Rate) dated 30/09/2019 whereby the "Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called" has been treated neither as supply of goods nor as supply of service to drive home their point that since the main activity of grant of licence by the State Government to manufacture alcoholic liquor itself is not a taxable supply, the supply of holograms cannot become either as a composite supply or remain as an Independent activity. I find that this argument of the appellant lacks merit for the reason that the activity of grant of license and providing the holograms are two distinctly different activities with different objectives. The licensing of the manufacture, bottling and supply of alcoholic liquor would have its objective for regulate and garner revenue for the Government from such supply whereas, as per policy note for the year 2012-13 Issued by the Home, Prohibition and Excise Department of Government of Tamil Nadu as per Para 2.16 titled 'STATE EXCISE LABELS' it has been



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observed that:

"In G.O (Ms) No.115, Home, Prohibition and Excise Department dated 05/06/2003, the Government ordered use of polyester hologram excise labels with modern technology to prevent the transportation and sale of spurious liquor. Pursuant to this, polyester holograms that cannot be forged are being manufactured and distributed by a private company selected by the open tender system in March. 2004. These labels are being affixed on the IMFS and Beer bottles."

It is therefore, clear that the objective of use of holograms is to prevent the transportation and sale of spurious liquor. Hence, the payments made for procuring the holograms cannot get covered under the category of payments envisaged in the Notification No.25/2012 ibid. I therefore find that the reliance sought to be placed by the appellant on the Notification 23/2012 ibid is completely misplaced and lacks sanctity of Law.

9. That leaves another contention of the appellant that the activity of provision of holograms is nothing but sale. The term 'sale' in common parlance is understood as transfer of possession of goods for a consideration. Once the sale has been made, the buyer's possession and right on such goods becomes absolute and inalienable. In other words, the seller has no say on the goods after completion of sale and certainly, the seller cannot dictate any term in the manner of utilisation of the goods sold. In the case on hand however, in the activity of provision of holograms by Government for a consideration to the appellant, the uniqueness of the transaction eliminates every possibility of existence of 'sale'. It can be nobody's case that the holograms were got manufactured by the Government with an objective to 'sell' them to anyone including the appellant for their own use and consumption. Neither it can be the case of the appellant that they have got a mandate to act as an appointed dealer of such holograms.



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That the appellant has no liberty to do anything with the holograms so procured except to use them for affixing on the bottles containing alcoholic liquor as stipulated by the Government by itself discounts any possibility of inferring an element of 'sale' in the transaction. I therefore conclude that there is no merit at all in the contention of the appellant that the procurement of holograms from the Government is in consequence of 'sale' by the Government. Accordingly, the reliance sought to be placed by the appellant on the case Laws cited also proves to be misplaced and bears no relevance to the case on hand as they were rendered in the context of classification of such holograms when they were sold by the manufacturer for a consideration to the Government for its purpose. I also find that the decision of Hon'ble Supreme Court in the case of Har Shankar & Ors Vs Dy.Excise & Taxation Commissioner & Ors [1975 (1) TMI 89 SC] is not helping the cause of the appellants as the facts Involved in the said case are totally different from the case under consideration. I therefore hold that the appellants' appeal fails on the grounds of merit and therefore is liable to be rejected. In view of the above discussion and findings, I proceed to pass the following Order:

ORDER

I reject the appeal filed by the appellant bearing A.No.114/2020/GSTA-II/ADC/CO dated 19/11.2020."

5. The facts of the case are that the petitioner is engaged in the manufacture and sale of "Beer" from its Brewery. As is required under the Excise Policy of the State Government, the petitioner has to affix "holographic stickers" on every bottle of Beer which is sold in the retail market through TASMAL. It is intended to ensure that no spurious liquor is sold in the market.



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It also indicates payment of State Excise on every bottle of Beer sold by the petitioner.

6. In this connection, the petitioner has drawn attention to liquor policy of the Government of Tamil Nadu as also some of the laboratories giving details of the purpose of Holographic Excise Adhesive Label (Heal) which indicates these “holographic stickers” are intended to ensure collection of tax and also to protect consumer and to curb sale of illicit liquor in the market.

7. The case of the petitioner is that the petitioner was under a *bona fide* belief that the petitioner was liable to pay tax on the “holographic stickers” purchased from the Prohibition and Excise Department of the State on Reverse Charge Basis (RCB) in terms of Section 9(3) of the respective GST enactments of 2017 read with Notification No.13/2017 Central Tax (Rate) dated 28.06.2017.

8. In this connection, the petitioner has drawn attention to Sl.No.5 to Notification dated 28.06.2017.



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9. It is submitted that during the period between April 2018 to February 2020, the petitioner had discharged GST on the “holographic stickers” purchased from the Prohibition and Excise Department on Reverse Charge Basis (RCB) in terms of the above notification under a *bona fide* belief that the petitioner was liable to pay tax on Reverse Charge Basis (RCB).

10. The petitioner submits that the petitioner is procuring license from the Prohibition Commissioner for manufacturing alcoholic liquor and license fee is paid to the Prohibition and Excise Department. The GST Council in its 37th GST Meeting held on 28th September 2019 had belatedly issued a clarification at Sl.No.8, pursuant to which Government had also issued Notification No.25/2019 - Central Tax (Rate) dated 30.09.2019, whereby in the exercise of powers under Section 7(2) of the respective GST Enactments of 2017, the Government had notified certain activities / transactions undertaken by the Central Government, State Government, Union Territory and Local Authority in which they are engaged as public authorities to be treated as neither supply of goods nor services for payment of GST. Thus, it is submitted that their actions will not authorize levy of GST under the provisions of respective GST Enactments of 2017.



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11. Text of the Notification No.25/2019 - Central Tax (Rate) dated

30.09.2019 reads as under:-

“Alcoholic Liquor Licence – Grant thereof not to be treated as supply of goods / services

In exercise of the powers conferred by sub-section (2) of Section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service, namely:-

“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called”.

12. It is the case of the petitioner that the “holographic stickers” purchased by the petitioner from the Prohibition and Excise Department was supply of goods and not service and therefore not liable to tax in terms of Notification No.13/2017 Central Tax (Rate) dated 28.06.2017. It is further submitted that service by way of grant of alcoholic liquor licence, against consideration in the form of license fee or application fee or by whatever name it is called by the State Government in which it is engaged as public authorities shall be treated neither as a supply of goods nor a supply of service in terms of Notification No.25/2019 – Central Tax (Rate) dated 30.09.2019. It is therefore submitted that the petitioner was entitled to refund of the amount paid on tax on Reverse Charge Basis under Notification No.13/2017 Central Tax (Rate) dated



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28.06.2017.

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13. The case of the petitioner is that since the petitioner is purchasing “holographic stickers” from the Prohibition and Excise Department, it is not taxable in the hands of the petitioner as there is no Notification issued under the provisions of the respective GST Enactment of 2017, which mandates payment of tax on Reverse Charge Basis (RCB) for sale of holographic stickers.

14. It is submitted that the tax that was paid on Reverse Charge Basis (RCB) pursuant to Notification No.13/2017 Central Tax (Rate) dated 28.06.2017 was a mistake and therefore the petitioner was entitled to refund under Section 54 of the respective GST enactment of 2017.

15. In this connection, the learned counsel for the petitioner has drawn attention to the definition of “composite supply” in Section 2(30) of CGST Act, 2017 and the definition of “taxable supply” in Section 2(108) of CGST Act, 2017.



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16. Alternatively, the learned counsel for the petitioner would also submit that if the main activity provided by the Government while issuing license to the petitioner was examined in terms of Notification No.25/2019 - Central Tax (Rate) dated 30.09.2019, even if it is construed that purchase of “holographic sticker” is part of the “composite supply” of goods or services, it has to be exempted in terms of Section 8(a) of the respective GST Enactments.

17. On the other hand, the learned Senior Standing Counsel for the respondents submits that the Impugned Order is well reasoned and does not require any interference in the hands of this Court.

18. It is submitted that the fact that “holographic stickers” which sold by the Prohibition and Excise Department to the manufacturers of distillery and brewery items indicates that it is a part of the service provided and it is an independent service and therefore there were no mistake on the part of the petitioner in paying tax on Reverse Charge Basis (RCB) during the period in dispute.

19. By way of rejoinder, the learned counsel for the petitioner on a



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specific query submits that for the period after February 2020 whether the petitioner was paying tax on Reverse Charge Basis (RCB) or whether any notice has been issued to the petitioner for the period thereafter.

20. The learned Senior Standing Counsel for the respondents undertook to confirm the position. The learned counsel for the petitioner was directed to confirm as to how the benefit of Notification No.25/2019 - Central Tax (Rate) dated 30.09.2019 is applicable to the petitioner as supply of “holographic stickers” would neither be supply of goods nor supply of service prior to 30.09.2018.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

22. There are 2 distinct activity carried out by the State Government. The 1st activity is the activity of granting liquor license to the manufacturers for manufacturing alcoholic liquor in the State of Tamil Nadu under the provisions of the Tamil Nadu Prohibition Act, 1937. It is an activity carried by the State of Tamil Nadu as a sovereign authority.

23. As per Section 7(2) of the respective GST enactments, certain



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activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be treated neither as a supply of goods nor supply of services. It has to be notified by the Government on the recommendation of the GST Council.

24. In this connection, Notification No.25/2019-Central Tax (Rate) dated 30.09.2019 has been issued. As per the Notification No.25/2019-Central Tax (Rate) dated 30.09.2019, service by way of grant of alcoholic liquor license, against consideration in the form of license fee and application fee or by whatever name it is called is neither treated as a supply of goods nor a supply of services.

25. Thus, activity of granting of liquor license is neither a supply of service nor supply of goods so as to attract the levy of tax under Section 9(3) of the respective GST enactments. The said activity is not a “taxable supply” of “service” within the meaning of Section 2(108) of the respective GST enactments.

26. As per Section 9(3) of the respective GST enactments, the



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Government may, on the recommendations of the Council, by notification, specify certain categories of supply of goods or services or both, where tax shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of the respective GST enactments shall apply to such recipient as if the recipient is the person liable to pay tax in relation to the supply of such goods or service or both.

27. As far as the sale and purchase of “holographic stickers” (excise labels) are concerned, they are supplied by the Prohibition and Excise Department of the Government of Tamil Nadu. The “holographic stickers” are to be affixed on the manufactured and bottled alcoholic liquor.

28. If the sale of “holographic sticker” is to be treated as a supply of service, the petitioner would be liable to pay tax on Reverse Charge Basis (RCB) in terms of Sl.No.5 to Notification No.13/2017-Central Tax (Rate) dated 28.06.2017.

29. Sl.No.5 to Notification No.13/2017 Central Tax (Rate) dated 28.06.2017 is extracted below for clarity:-

GSR (E).- In exercise of the powers conferred by sub-section (3)



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of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of “services” mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of such services as specified in column (4) of the said Table:-

Table

Sl.No.	Category of Supply of Services	Supplier of Services	Recipient of Service
(1)	(2)	(3)	4
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding , - (1) Renting of immovable property, and (2) Services specified below- (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority ; (ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) Transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory



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30. On the other hand, if the supply of “holographic sticker” (excise label) is treated as a supply of “goods”, it would be outside the purview of tax payable by Reverse Charge Basis (RCB) at Sl.No.5 to Notification No.13/2017-Central Tax (Rate) dated 28.06.2017.

31. As per Section 2(52) of the Central Goods and Services Tax (CGST) Act, 2017, “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

32. The expression “label” has not defined in the Trade Marks Act, 1999. In P.Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition, the definition of expression “label” under the provisions of various enactments have been given. They read as under:-

“LABEL” means any written, printed or graphic matter on the immediate package and on every other covering in which the package is placed or packed and includes any written, printed or graphic matter accompanying the insecticide. [Insecticides Act (46 of 1968), S. 3(h)]



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“LABEL” means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon, any commodity or package containing any commodity. [Standards of Weights and Measures Act (60 of 1976), S. 2(n)]

“LABEL” means a display of written marked, stamped, printed or graphic matter affixed to, or appearing upon, any packages. [Indecent Representation of Women (Prohibition) Act (60 of 1986), S 2(d)]

“LABEL” means a display of written marked, stamped, printed or graphic matter affixed to, or appearing upon, any container [Infant Milk Substitute, Feedings Bottles and Infant Foods (Regulation of Production, Supply, and Distribution) Act (41 of 1992), S 2(h)]

“LABEL” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package [Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act (34 of 2003), S 3(h)]

“LABEL” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed, graphic, perforated, stamped or impressed on or attached to container, cover, lid or crown of any food package and includes a product insert. [Food Safety and Standards Act (34 of 2006), S 3(1)(z); Prevention of Food Adulteration Rules, 1955, Rule 32, Explan. 1 as inserted by 5th Amendment of the Rules, 2008, R. 3(VI)]

“LABEL” means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any prepackaged commodity. [Legal Metrology Act, 2009 (1 of 2010), S 2(1)]

“LABEL” means any written, printed, marked, stamped, or graphic matter affixed to, or appearing upon, the tubular fluorescent lamp. [Bureau of Energy Efficiency (Particular and Manner of their Display on Labels of Tubular Fluorescent Lamps) Regulations, 2009, Regn. 2(b)]



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“LABEL” means any written, printed, marked, stamped, or graphic matter affixed to, or appearing upon, room air conditioner. [Bureau of Energy Efficiency (Particulars and Manner of their Display on Labels of Room Air Conditioners) Regulations, 2009, Regn. 2(1)(b)]

“LABEL” means any written, printed, marked, stamped, or graphic matter affixed to, or appearing upon, household frost free refrigerator. [Bureau of Energy Efficiency (Particulars and Manner of their Display on Labels of Household Frost Free Refrigerators) Regulation, 2009 2(1)(b)]

“LABEL” means any written, printed, marked or graphic matter affixed to, or appearing upon, the distribution transformer [Bureau of Energy Efficiency (Particulars and Manner of their Display on Labels of Distribution Transformers) Regulations, 2009, Regn. 2(1)(c)]

“LABEL” includes any band or ticket, [(English) Agricultural Produce (Grading and Marking) Act, 1928, S. 7]

“LABEL” includes any device for conveying information by written characters or other symbols, and any characters or symbols stamped or otherwise placed directly on to any produce or container, and references to the affixing of a label shall be construed accordingly. [(English) Agriculture and Horticulture Act, 1964, S. 24]

A placard or slip attached to an object to denote its contents, destination or ownership; a slip of paper or any other material bearing a name or title, address or the like, affixed to something to indicate its nature, contents, ownership, destination or other particulars a small piece of paper, or other material containing, the name, title or description, and affixed to indicate its nature or contents.

As commonly understood the word denotes a slip of paper or other suitable material attached to goods giving a short description of their character, directions for their use, and other facts of interest to the purchaser.

The most general idea of a label is not of a separate strip of paper or parchment, but a written description of the



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article upon which it is placed or made, as to its ownership, or character, or quality, or extent.

A label is a slip of paper or any other material bearing a name, title, address, or the like affixed to something to indicate its nature, contents, ownership, destination, or other particulars.

A label is only intended to indicate the article contained in the bottle, package, or box to which it is affixed, and not to distinguish it from articles of the same general nature manufactured or sold by others, thus securing to the producer the benefits of any increased sale by reason of any peculiar excellence he may have given to it, as a trade-mark does.

“Label” means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon, any commodity or package containing any commodity. *“Bullarpur Industries Limited Vs. Union of India, AIR 1997 Del 1, 2-3.”*

Labeling / Labelling. 'Labelling' in relation to a container or package of medicinal products, means affixing to or otherwise displaying on it a notice describing or otherwise relating to the contents, and 'label' has a corresponding meaning [(English) Medicines Act, 1968, S. 132(1)]

Requirement, either mandatory or voluntary, to specify whether a product satisfies certain conditions relating to the process by which it was produced or its characteristics.

Labelled or Sealed, Neither the word “labelled” nor the word “sealed” necessarily means that it should contain the name of manufacturer, 106 IC 587 : 29 Cr LJ 75 : 9 PLT 434 : 9 AI Cr R 352 : AIR 1928 Pat 213.”

33. Holographic Sticker (Excise Label) is a “label”. Holographic Sticker

(Excise Label) is therefore 'goods' within the meaning of Section 2(52) of the



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respective GST enactments. In paragraph 4.3 of Order in RFD-06 in C.No.IV/09/51/2020-GST (R) dated 20.08.2020 itself it has been clarified by the 2nd respondent that excise labels i.e., “holographic stickers” were supplied by the Prohibition and Excise Department.

34. As per Section 2(m) of the Trade Marks Act, 1999, the expression “mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof in Section 2(m) of the Trade Marks Act, 1999. Similarly, the expression “package” in Section 2(q) of the Trade Marks Act, 1999 also includes “label”.

35. The expression “mark” and “package” in Section 2(m) and Section 2(q) of the Trade Marks Act, 1999 read as under:-

Section 2(m)	Section 2(q)
“mark” includes a device, brand, heading, label , ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.	“package” includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label , band, ticket, reel, frame, capsule, cap, lid, stopper and cork.

36. Thus, there is no dispute that “label” is “thing” viz., noun. It is a



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thing and therefore “goods” within the meaning of Section 2(52) of the respective GST enactments as “goods” means every kind of movable property.

37. The expression “service” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

38. Thus, the supply of “label” is only supply of “goods” and not a supply of “services” by the Prohibition and Excise Department of the Government of Tamil Nadu.

39. The only contention of the respondents is that there was a “composite supply” as the label was supplied by the Prohibition and Excise Department is for affixing on the liquor bottles manufactured by the petitioner as per the relevant instructions / procedures together with grant of excise license.

40. The question of treating the activity of the Prohibition and Excise Department of the Government of Tamil Nadu in granting excise license to



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manufacturers for manufacturing of alcoholic products and supply of “holographic stickers” (excise labels) is not a “composite supply” within the meaning of Section 2(30) of CGST Act, 2017.

41. The definition of “composite supply” in Section 2(30) of CGST Act, 2017 and the definition of “taxable supply” in Section 2(108) of CGST Act, 2017 have to be read together. They read as under:-

CGST Act 2017	
Section 2(30)	Section 2(108)
"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.	“taxable supply” means a supply of goods or services or both which is leviable to tax under this Act.

42. As far as the manufacturing license under the provisions of the Tamil Nadu Prohibition Act, 1937 and the rules made thereunder are concerned, it is



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one time annual license fee paid by a manufacturer of alcoholic beverage to the

Prohibition and Excise Department of the Government of Tamil Nadu. As far as the supply of “holographic stickers” (excise labels) are concerned, they are to be procured and affixed by such manufacturers viz., breweries / distilleries as and when manufactured (brewed / distilled) alcoholic beverages are bottled and sealed and are to be removed for sale either in the wholesale or retail market.

43. That apart, under Section 2(30) of the respective GST enactments, supply should consist of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

44. Supply of “holographic sticker” is not a “taxable supply” within the meaning of the definition in Section 2(108) of the respective GST enactments, as grant of excise license is exempted under Notification No.25/2019-Central Tax (Rate) dated 30.09.2019.

45. The illustration in section 2(30) of the respective GST enactments



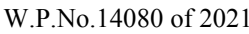
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also make it clear that there was no composite supply within the meaning of the definition of “composite supply”.

46. Therefore, supply of “holographic stickers” viz., excise labels is not naturally bundled in conjunction with grant of excise license by the Prohibition and Excise Department of the Government of Tamil Nadu in the ordinary course of business where one of which is principal supply. Grant of excise license by the Prohibition and Excise Department of the Government of Tamil Nadu is not supply of service. That apart, the supply of “holographic stickers” (excise labels) is an independent activity and is not a composite supply.

47. Even if the grant of license by the Prohibition and Excise Department of the Government of Tamil Nadu was liable to tax under Section 9 of the respective GST enactments, the respondents still would not have been justified in treating the activity of supply of “holographic stickers” viz., excise labels as a “composite supply” as it was not naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principle supply.

48. The activity of grant of excise license for consideration in the form of



51. Therefore, the procurement of “holographic stickers” (excise labels) will not attract payment of GST on Reverse Charge Basis (RCB) in terms of Sl.No.5 to Notification No.13/2017-Central Tax (Rate) dated 28.06.2017.



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Payment of GST on Reverse Charge Basis (RCB) would apply only for supply of services.

52. The principles of estoppel equity are alien to tax jurisprudence. Merely because the petitioner had unwittingly paid tax on Reverse Charge Basis (RCB) in terms of Notification No.13/2017-Central Tax (Rate) dated 28.06.2017 in the past *ipso facto* would not mean that the petitioner was bound by its past practices. There is no contract with the respondents for invoking promissory estoppel against the petitioner.

53. If the petitioner has paid tax on Reverse Charge Basis (RCB) by mistake, it is entitled to claim refund under Section 54 of the respective GST enactments.

54. In view of the above discussion, the Impugned Order dated 21.01.2021 passed by the 1st respondent upholding the Order dated 20.08.2020 of the 2nd respondent are liable to be quashed and are accordingly quashed with consequential relief to the petitioner. The 2nd respondent is therefore directed to process the refund claims of the petitioner and refund the amounts paid by the



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petitioner, strictly in accordance with Section 54 of the respective GST Acts read with Rule 89 of the respective GST rules in the light of the above observations, within a period of 3 months from the date of receipt of a copy of this order.

55. This Writ Petition, is thus, allowed. No costs. Connected Writ Miscellaneous Petition is closed.

24.01.2025

Neutral Citation: Yes / No

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To:

- 1.The Joint Commissioner of GST and
Central Excise (Appeals II),
Newry Towers, 2054, I Block,
12th Main Road,
2nd Avenue, Anna Nagar,
Chennai – 600 040.
- 2.The Assistant Commissioner of GST
and Central Excise,
Poonamallee, C 48 TNHB,
2nd Avenue, Anna Nagar,
Chennai – 600 040.

C.SARAVANAN, J.



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Pre-delivery Order in
W.P.No.14080 of 2021

24.01.2025