Key Judicial Pronouncements under GST in 2024

TATTVAM

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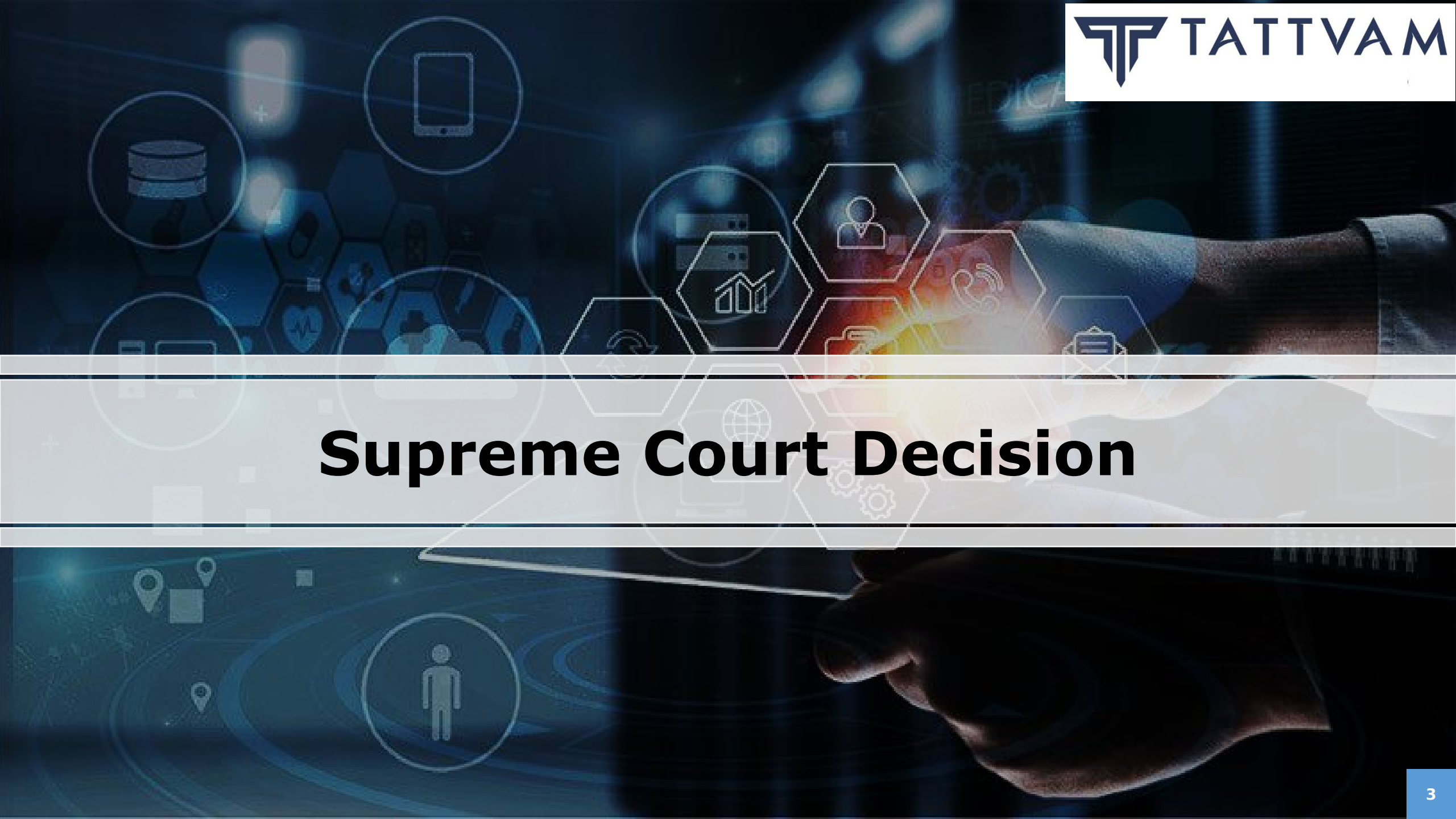

Supreme Court Decision

Chief Commissioner Of Central Goods And Service Tax & Ors. v. M/s Safari Retreats Private Ltd. & Ors 2024 (10) TMI 286 - SC

Facts:

- The respondents constructed a shopping mall intended for leasing purposes. The Department denied the credit availed on construction basis the restriction posed in Section 17(5)(d).
- The Supreme Court examined as to whether the definition of "plant and machinery" under Explanation to Section 17 will be applicable for construing the expression "plant or machinery" under Section 17(5)(d). Further, if the same was not applicable, then what would be the scope of term "plant" used in Section 17(5)(d)?

Held:

- Section 17(5)(d) provide for two exceptions – (i) where construction of "plant or machinery" is involved; and (ii) where construction is on his own account.
- Construction of immovable property is not "on his own account" where it is intended for leasing or renting purpose.
- The expression "plant or machinery" in Section 17(5)(d) is distinct from "plant and machinery," and thus, the definition of latter does not apply to the expression "plant or machinery".

Chief Commissioner Of Central Goods And Service Tax & Ors. v. M/s Safari Retreats Private Ltd. & Ors 2024 (10) TMI 286 - SC

- Functionality Test to be applied to determine whether a building is a 'plant'.
- Constitutional validity of Section 17(5)(c) and 17(5)(d) was also upheld.

Comments:

- In terms of the judgment, a factual exercise is to be conducted on case-by-case basis to ascertain as to whether a particular immovable property qualifies as a "plant". However, a retrospective amendment has been proposed in 55th GST Council Meeting to replace the phrase "plant or machinery" with "plant and machinery". After, this amendment, the definition in the Explanation to Section 17 has also been made applicable to Section 17(5)(d).
- This retrospective amendment will not have any impact on the findings given by the Supreme Court regarding the phrase "on its own account" used in Section 17(5)(d). These findings were part of the observations made by the SC in the judgment but the benefit was not allowed on the basis of such findings.
- It has to be seen whether the ITC will be allowed to the assessees based on the findings of the SC regarding the expression 'on its own account'.

Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune 2024 (11) TMI 1042 - SC

Facts:

- The CENVAT Credit Rules provide for the availability of credit of excise duty paid on the "capital goods" or "inputs" used for the purpose of providing taxable service.
- The issue was whether the mobile tower, its parts thereof and prefabricated buildings (PFBs), fall under the purview of "capital goods" or "inputs" under the CENVAT Credit Rules.

Held:

- Various tests were laid down for determining whether a structure is classifiable as immovable property or moveable property – functionality test, permanency test, marketability test.
- SC observed that Mobile towers, delivered in CKD or SKD form, are erected on-site using nuts and bolts and may be disassembled without causing any damage to such structures. These towers may be relocated or resold with no damage being caused to the structures, which implies their movability and marketability.

Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune 2024 (11) TMI 1042 - SC

- On the basis of the functionality, permanency, and marketability test, the Court opined that the mobile towers, its parts thereof and PFBs, constitute as 'movable property'.
- It was held that the tower and PFBs would qualify as "capital goods" as well as "inputs" under the CENVAT Rules, allowing Mobile Service Providers (MSPs) to claim credit.

Comments:

- The said judgment would also be applicable in the GST regime in context of Section 17(5)(c) and Section 17(5)(d).
- As the mobile towers and PFBs will be regarded as movable, the ITC on goods and services used for erection of the same can be availed by MSPs.
- This decision will have broader implications for other sectors using PFBs/shelters for providing outward supplies, as these can now be regarded as movable goods (subject to fulfilment of the tests laid down in the judgment).

Commissioner Of Central Excise, Salem v. M/S. Madhan Agro Industries (India) Private Ltd. 2024 (12) TMI 1022 - Supreme Court (LB)

Facts:

- The Apex court examined whether pure coconut oil, sold in small quantities (5 ml to 2 litres), should be classified as ‘edible oil’ under Heading 1513 or as ‘hair oil’ under Heading 3305 of the Central Excise Tariff Act, 1985.
- Prior to 28.02.2005, i.e., before amendment of the First Schedule to the Central Excise Tariff Act, 1985, vide the Central Excise Tariff (Amendment) Act, 2004, coconut oil was classified as "vegetable oil under Heading 15.03.

Held:

- The court reiterated that the "Common Parlance Test" has to be applied while interpreting taxing statutes, based on the commonly accepted meaning of words in trade.
- Pure coconut oil, despite its multiple uses, remains classified under Heading 1513 as "coconut oil" unless it satisfies the criteria for classification as a cosmetic product under Heading 3305.
- The mere possibility of coconut oil being used as a cosmetic or toilet preparation does not exclude it from being classified as "edible oil" under Heading 1513, as the term "coconut oil" is name-specific.

Commissioner Of Central Excise, Salem v. M/S. Madhan Agro Industries (India) Private Ltd. 2024 (12) TMI 1022 - Supreme Court (LB)

- Coconut oil sold in the cases examined met the requirements for "edible oil," including packaging in edible-grade containers, compliance with the Food Safety and Standards Act, and conformity with the Edible Oils Packaging Regulations.
- Small-sized containers are a feature common to both ‘edible oils’ as well as ‘hair oils’. Merely due to the fact that coconut oil is sold in small containers, it will not be regarded as ‘hair oil’.
- It was held that pure coconut oil sold in small quantities as ‘edible oil’ would be classifiable under Heading 1513.

Comments:

- It is pertinent to note that GST rate on edible oil is 5% while hair oil is taxed at 18%. Thus, the SC classifying the small bottles of coconut oil as edible oils, comes as a relief for both manufacturers and consumers, as prices of edible coconut oil could have increased if it was classified as hair oil.
- The ruling provides clarity for FMCG companies while putting an end to the long dispute.

Prahitha Construction Pvt. Ltd. v. UOI 2024 (5) TMI 1254 - SC Order

Facts:

- In March 2024, the issue of taxability of development rights came before the Hon'ble Telangana High Court for adjudication in M/s. Prahitha Constructions v. Union of India, Writ Petition No. 5493 of 2020.
- It was held by the High Court that mere transfer of development rights pursuant to a Joint Development Agreement cannot indicate an automatic transfer of ownership or title rights in the land.
- Accordingly, it was held that GST is leviable on transfer of development rights on reverse charge basis and the same cannot be said to be covered within the purview of Entry 5 of Schedule III of CGST Act.
- An appeal was filed before the Hon'ble Supreme Court against the abovesaid decision.

SC's Order:

- The Hon'ble Supreme Court has accepted the Special Leave Petition, and accordingly has issued notice to the concerned parties. However, no stay order has been passed against the operation of the impugned judgment.

Prahitha Construction Pvt. Ltd. v. UOI 2024 (5) TMI 1254 - SC Order

- Further, the Hon'ble Supreme Court has categorically directed the Petitioner to discharge the GST liability on the transfer of development rights.

Comments:

- GST applicability on transfer of development rights is a burning issue and even after various judicial precedents on the same, there is no definite answer.
- The issue arises from the fact that under Service Tax regime, sale of "immovable property" was not leviable to service tax. As such, any benefits arising out of land were held to be not leviable to service tax. However, in GST regime, merely sale of "land" or "building" has been treated as neither supply of goods or service.
- Binding pronouncement from the Supreme Court will be helpful to lay down proper jurisprudence on the issue from GST perspective.

Excel Rasayan (P.) Ltd. v. UOI 2024 (2) TMI 859 - SC Order

Facts:

- The petitioner filed an SLP challenging the Delhi High Court's decision in Excel Rasayan (P.) Ltd. and Ors v. Union of India, which upheld the constitutionality of anti-profiteering provisions under Section 171 of the CGST Act and related CGST Rules.
- The High Court ruled that the provisions were constitutionally valid but clarified that arbitrary anti-profiteering proceedings ignoring genuine variations could be challenged and set aside on merits.

SC's Order:

- The Supreme Court issued a notice in the matter but clarified that it would not affect the disposal of the main petition pending before the High Court.

Excel Rasayan (P.) Ltd. v. UOI 2024 (2) TMI 859 - SC Order

Comments:

- The Delhi HC has affirmed the constitutional validity of the anti-profiteering provisions, addressing a longstanding concern among taxpayers, but also highlighted the arbitrary exercise of powers by NAA without considering other genuine factors.
- The final decision from the Supreme Court on the constitutional validity of these provisions is still awaited, with arguments from both sides raising important questions about the balance between consumer welfare and business rights in tax regulation.
- Questions arise regarding practical implementation and feasibility concerning varied methodologies for calculating benefits across industries, notably in the real estate sector where a standardized approach may not be feasible.

Commissioner of CGST v. Anshul Jain 2024 (12) TMI 730 – SC Order

Facts:

- SLP filed against the decision of Delhi HC in Anshul Jain v Commissioner of CGST, wherein relying on its previous decision in Deepak Khandelwal Proprietor M/s. Shri Shyam Metal v Commissioner of CGST, Delhi West & Anr, it was held that the authorities don't have the power to seize cash during the search conducted under Section 67(1) of the CGST Act.

SC's Order:

- The short question of law that falls for our consideration is whether the Officers of the G.S.T. are empowered to seize cash at the time of raid of the premises of the assessee in exercise of their powers under Section 67 (2) of the G.S.T. Act.
- Whether the term "things" used under Section 67(2) should be read ejusdem generis with goods, documents or books.
- The SC issued notice in this matter.

Commissioner of CGST v. Anshul Jain 2024 (12) TMI 730 – SC Order

Comments:

- Several conflicting decisions are there on this issue - Gujarat High Court in the case of Bharatkumar Pravinkumar And Co. Versus State Of Gujarat held that cash would not be covered under the expression "goods, which are liable for confiscation, or any documents or books or things", whereas MP High Court in Smt. Kanishka Matta Vs. Union of India opined that the term "thing" would include "money".
- The final decision from the Supreme Court will provide much awaited clarity regarding this issue.

High Court Decision

Bharti Airtel Ltd. v. Commissioner, CGST Appeals-1, Delhi 2024 (12) TMI 998 - Delhi High Court

Facts:

- The petitioners argued that telecommunication towers are movable, essential for telecommunications, and capable of being dismantled and relocated.
- The respondents contended that telecommunication towers qualify as immovable property under Section 17(5) of the CGST Act, making them ineligible for input tax credit.

Held:

- The Supreme Court conclusively held in Bharti Airtel Ltd vs. Commissioner of Central Excise, Pune [2024 (11) TMI 1042 - SUPREME COURT] that telecommunication towers cannot be considered immovable property.
- The court held that telecommunication towers can be dismantled and relocated, and their placement on concrete bases is to withstand vagaries of nature, not to confer permanency.
- The exclusion of telecommunication towers from "plant and machinery" does not classify them as immovable property. To fall under Section 17(5)(d), they must qualify as immovable property, which they do not.

Bharti Airtel Ltd. v. Commissioner, CGST Appeals-1, Delhi 2024 (12) TMI 998 - Delhi High Court

- The denial of ITC was unjustified as telecommunication towers are movable property.

Comments:

- This ruling has come as a big relief for the telecom industry after the SC's decision in Bharti Airtel. However, the Delhi HC decision cannot hold precedential value on other High Courts. It needs to be seen that what other high courts will rule on this issue, especially in light of the SC decision.
- Moreover, the ruling may have broader implications for other industries that rely on similar pre-fabricated infrastructure, such as renewable energy and power distribution. Businesses in these sectors should carefully assess the classification of their assets to optimize the availment of ITC.

Metal One Corporation India (P.) Ltd v. Union of India 2024 (10) TMI 1534 - Delhi High Court

Facts:

- Metal One Corporation, Japan (parent entity) seconded its staff to the Petitioner.
- The department has raised GST demand under RCM on the salaries reimbursed to the parent company based on the Supreme Court's ruling in Northern Operating Systems, which classified similar arrangements as manpower supply services under service tax law.

Held:

- The value of supply related to secondment of employees should be determined in terms of second proviso to Rule 28 of the CGST Rules where full ITC on the service is available, considering that the said supplies are in the nature of import of services.
- The CBIC's Circular No. 210/4/2024-GST clarified that if no invoice was issued by the domestic entity for services provided by a foreign affiliate, the value of such services would be deemed "Nil" and treated as the open market value under the Second Proviso to Rule 28.
- Since no invoices were raised by the petitioners for the services rendered by their foreign affiliates, the value should be considered "Nil," leading to no tax liability.

Metal One Corporation India (P.) Ltd v. Union of India 2024 (10) TMI 1534 - Delhi High Court

Comments:

- The court, while providing a big relief to the taxpayers facing issues relating to GST on secondment arrangements, has reaffirmed the well-settled position that the department cannot take a view contrary to its own clarification.
- This decision when considered with the clarification issued by CBIC has effectively put the issues related to secondment arrangement to rest, which arose in light of the Northern Operating Systems judgment.
- However, the said clarification and this decision will be applicable only in those cases wherein full ITC of the GST payable on the service is available to the recipient (Indian company to which personnel are seconded).
- However, it is pertinent to note that this decision has largely provided relief based on the departmental clarification. If this circular is withdrawn in future, then the matter may have to be revisited.

Eicher Motors Ltd v. Superintendent of GST and Central Excise 2024 (1) TMI 1111 - Madras High Court

Facts:

- Petitioner faced issues transitioning CENVAT Credit to GST due to system glitches, preventing the credit from reflecting in the Electronic Credit Ledger despite filing FORM GST TRAN-01 on October 16, 2017.
- As a result, the petitioner couldn't file GSTR-3B from August to December 2017. After the credit was transitioned, the petitioner filed all the Returns from the month July, 2017 to December, 2017 on 24.01.2018.
- During this period, the petitioner was depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads into the Government account within the due date for each month.
- After around six years, a recovery notice was issued for belated GST payment from July to December 2017, demanding interest under Section 50(1) of the CGST Act.

Held:

- The Court clarified that tax payment through GST PMT-06 (depositing amount in electronic cash ledger) discharges the liability immediately, even before filing GSTR-3B.

Eicher Motors Ltd v. Superintendent of GST and Central Excise 2024 (1) TMI 1111 - Madras High Court

- Once paid to the cash ledger, the amount is credited to the government's account, and the tax liability is discharged, with the corresponding entry in the Electronic Cash Ledger for accounting purposes.
- The court rejected the notion that tax payment occurs only upon filing GSTR-3B, affirming that payment by the last filing date is sufficient to discharge tax liability.

Comments:

- As the levying of interest is inherently compensatory and given that the amount deposited vide Form GST PMT-06 results in a credit to the government's account, therefore question of payment of interest as compensation does not arise.
- After this judgment, a proviso has been added to Rule 88B of the CGST Rules vide Notification No. 12/2024 – Central Tax w.e.f. 10-07-2024 which specifically provides that interest is not payable in similar cases.
- Similar judgment has been rendered by the Gujarat HC in the case of ***Arya Cotton Industries v. Union Of India, 2024 (7) TMI 239 – Gujarat High Court*** in same set of facts.

Sincon Infrastructure (P.) Ltd. V. Union of India 2024 (5) TMI 264 – Patna High Court

Facts:

- The Petitioner received a notice for the recovery of interest on the belated payment of tax for the financial year 2018-19.
- The interest was charged for the tax paid from the Electronic Credit Ledger (ECL).
- Aggrieved by the order, the petitioner approached the High Court of Patna through a writ petition.

Held:

- Payment of tax and furnishing of return are simultaneous activities under the GST framework.
- Availment of Input Tax Credit (ITC) and resultant payment of tax from the Electronic credit Ledger occurs only when a return is furnished.
- Delay in furnishing returns leads to a delay in the availability of ITC in the Electronic Credit Ledger and the corresponding payment of tax to the government.
- The petitioner's claim that interest under Section 50(1) applies only when payment is made from the Electronic Cash Ledger and not the Electronic Credit Ledger was rejected.

Sincon Infrastructure (P.) Ltd. V. Union of India 2024 (5) TMI 264 – Patna High Court

- The Court also held that interest liability under Section 50 (1) arises automatically for the delay in filing returns, regardless of whether the payment is made from the Electronic Credit Ledger or the Electronic Cash Ledger.
- The Court upheld that interest is payable on delayed payment of tax and dismissed the petitioner's claim.

Comments:

- The High Court has interpreted that the benefit of proviso to Section 50(1) will not be available where return has been filed belatedly. Hence, the taxpayer is liable to pay interest on the entire amount of tax in case of delayed returns.
- There are certain contradictory judgments by other High Courts on the same subject matter. Therefore, this matter may be resolved before Supreme Court.

TVL Kalyan Jewelers India Ltd v. Union Of India 2024 (1) TMI 920 - Madras High Court

Facts:

- The Petitioner was engaged in the business of manufacturing and sale of ornaments. As part of its sales promotion scheme, the Petitioner issued gift vouchers/cards for its customers.
- These gift vouchers/cards are sold to customers to allow them to purchase the products on a future date.
- The petitioner argued that these vouchers are "actionable claims" exempt from GST under Section 7(2) read along with Entry 6 of Schedule III of the CGST Act.

Held:

- Gift voucher/card is a document within the meaning of Section 3(18) of the General Clauses Act, 1897 and thus an "instrument" under Section 2(14) of the Stamp Act, 1899 as it creates a right/liability against the issuer.
- The amount specified in the voucher/card is a debt. Thus, it is nothing but a debt instrument.
- Further, if the petitioner commits a breach in allowing redemption or fails to refund the amount after expiry of the validity period, such customer will have the right to enforce the same in a civil court.

TVL Kalyan Jewelers India Ltd v. Union Of India 2024 (1) TMI 920 - Madras High Court

- Accordingly, gift vouchers/cards are actionable claims within the meaning of Section 2(1) of the CGST Act read with Section 3 of the Transfer of Property Act, 1882.
- The transaction involving transfer of gift voucher/card shall not be treated either as supply of goods or services in terms of Section 7(2) read with Entry 6 of Schedule 3 of the CGST Act.

Comments:

- This is an authoritative judgment regarding the taxability of vouchers under GST regime. It has been clearly held that the vouchers are in the nature of actionable claims and no GST is payable on the sale of vouchers.
- CBIC has recently issued Circular No. 243/37/2024-GST to provide clarification on various issues pertaining to GST treatment of vouchers wherein it has been reiterated that transaction in vouchers would be treated neither as a "supply of goods" nor as a "supply of services".

Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors. 2025 (1) TMI 516 – Gujarat High Court

Facts:

- Gujarat Industrial Development Corporation (GIDC) was established under the Gujarat Industrial Development Act, 1962, and serves as a nodal agency for the development of industrial estates in Gujarat.
- GIDC enters into a license agreement with lessees for setting up industrial units, subject to approval and permission from regulatory authorities.
- Upon fulfilling the terms and conditions of the license agreement, a registered lease deed is executed between GIDC and the lessee, allotting plots of land on a long-term lease of 99 years (Original Lease), as per the terms of the allotment letter.
- Under the Original Lease, the lessee is required to pay an upfront premium ('Premium') along with periodic rentals.
- Leasehold rights of the plot of land (‘Assignment Rights’) and the constructed building may be assigned by the lessee (‘Assignor’) to a third party (‘Assignee’) through an Assignment Agreement.
- Execution of the Assignment Agreement requires prior approval from GIDC, which is granted upon receipt of transfer fees from the assignee.

Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors. 2025 (1) TMI 516 – Gujarat High Court

Held:

- It is clear that in a taxing statute, there is no room for any intendment but regard must be had to the clear meaning of the words and the entire matter is governed only by the language of the provision.
- The scope of "supply of services" would not include transfer of leasehold rights as supply of service as it would be transfer of "immovable property" being a benefit arising out of immovable property consisting of land and building.
- When the GIDC allots the plot of land on lease of 99 years and charges premium for such allotment followed by periodical lease rent to be paid, it is to be considered as supply of service in relation to land and building read with clause 5(a) of Schedule-II which specifically provides that renting of immovable property shall be treated as supply of services.
- The entire land and building is transferred along with leasehold rights and interest in land which is a capital asset in the form of an immovable property and the lessee/assignor earned benefits out of land by way of constructing and operating factory building/shed which constitutes a "profit à prendre" which is also an immovable property and therefore, would not be subject to tax under the CGST Act.

Gujarat Chamber of Commerce and Industry & Ors. v. Union of India & Ors. 2025 (1) TMI 516 – Gujarat High Court

Held:

- Assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of a third party-assignee for a consideration shall be assignment/sale/transfer of benefits arising out of "immovable property" by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of the original allottee-lessee.
- Provisions of section 7 (1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and the same would not be subject to levy of GST as provided under section 9 of the GST Act.

Comments:

- The Court distinguished between GST implications on grant of leasehold rights and the GST implications on assignment of leasehold rights.
- It was held that a sub-lease or lease transaction wherein the reversionary rights are retained would be covered by Para 5 of Schedule 2 (supply of service). However, an outright assignment entailing a complete divestment of rights would be covered by Para 5 of Schedule 3 (no supply).

M. Trade Links V. UOI, 2024 (6) TMI 288 – Kerala High Court

Facts:

- Constitutional vires of **S.16(2)(c)** and **S.16(4)** of the CGST Act was challenged in this case.

Held:

- A taxing statute can be struck down in case where the said statute is infringing upon the fundamental rights of the taxpayers. However, the Hon'ble High Court pointed out that the Government should be allowed some leeway in the enactment of a statute which is basically a fiscal legislation.
- The ITC is merely a concession extended to the recipient of goods or services under the GST law. At best, it can be viewed as an entitlement subject to the satisfaction of the conditions laid down under the GST law for the purpose of availment of the ITC.
- The GST law is unlike the VAT laws where there was no need for the ITC to cross the originating state. It was pointed out that, under the VAT law, there was no need for the ITC to cross the originating state as the Central States Tax was applicable on the inter-state supplies which assigned sale of goods to the originating state. Now, under the GST law, it is required to assign the tax to such state where the consumption takes place.

M. Trade Links V. UOI, 2024 (6) TMI 288 – Kerala High Court

- The condition cannot be said to be onerous or in violation of the Constitution, and Section 16(2)(c) is neither unconstitutional nor onerous on the taxpayer.
- The time-limit prescribed under Section 16(4) is not a new condition which has been introduced for the first time in GST law. As such, the time-limit for availing credit of input taxes was also present during the erstwhile regime, and it acts as a reasonable mechanism for availing ITC. It was held that Section 16(4) is constitutionally valid.

Comments:

- This issue is still pending before various other high courts.
- There is necessity for a balanced approach in implementing the GST provisions and making sure that the genuine taxpayers are not unnecessarily burdened and penalised for the default of others.

Anand Steel v. Union of India 2024 (11) TMI 1332 – Madhya Pradesh High Court

Facts:

- The petitioner filed GST returns for the financial year 2018-19 (April 2018 to March 2019) in FORM GSTR-3B, along with GST liability and late fees for outward supplies.
- The petitioner availed input tax credit (ITC) correctly as per their inward supplies for the relevant period.
- A notice was issued by the Assistant Commissioner of CGST, proposing to disallow the ITC claimed for 2018-19 due to late filing of FORM GSTR-3B.
- Aggrieved by the disallowance, the petitioner filed a writ petition before the Madhya Pradesh High Court, challenging the restrictions imposed by Section 16(4) of the CGST Act as arbitrary.

Held:

- The Madhya Pradesh High Court held that Section 16(4) of the CGST Act, which restricts ITC claims solely based on late filing of returns, is arbitrary.
- It emphasized that taxpayers claiming ITC have already paid the tax to suppliers, which includes the cost of goods/services and the applicable tax. Denying ITC on procedural grounds deprives taxpayers of their rightful claim.

Anand Steel v. Union of India 2024 (11) TMI 1332 – Madhya Pradesh High Court

- Section 16(2), a non-obstante clause, should override Section 16(4). The time limit imposed by Section 16(4) undermines the legislative intent behind Section 16(2), making its operation meaningless.
- The Court highlighted that penalties like late fees and interest already exist to ensure compliance, and additional burdens like disallowing ITC result in double taxation, which is arbitrary and capricious.
- The provision of Section 16(4) was deemed inconsistent with the statutory scheme and principles of fairness.

Comments:

- This judgment is beneficial to the taxpayer as it highlights that Section 16(4) is procedural in nature and cannot take away the substantive right of a taxpayer.
- There are certain negative judgements passed in the case of ***M. Trade Links V. UOI, 2024 (6) TMI 288 – Kerala High Court*** *and* ***Aastha Enterprises V State of Bihar 2023 (9) Centax 270 (Pat.)*** wherein the validity of the provision has been upheld***.*** Therefore, the subject matter may be ultimately settled by Supreme Court as there are contradictory judgments on this issue.

Lokenath Construction Pvt v. Government Of West Bengal, 2024 (5) TMI 362 - Calcutta High Court

Facts:

- The GST Department sought reversal of ITC on the ground that the Appellant has failed to prove that the supplier have paid taxes to the government exchequer. Accordingly, SCN was issued stating that the Appellant has wrongfully availed ITC in contravention of **Section 16(2)(c) of CGST Act**.
- The SCN was challenged on the grounds that it has been issued without causing investigation at the end of supplier.
- The Adjudicating Authority passed an order confirming the demand made in the SCN. The said order was challenged in the present case.

Held:

- Adjudicating authority admitted that Appellant produced certificates declaring that the suppliers had discharged the liability. However, the ITC was merely rejected due to mismatch in GSTR-2A and GSTR-3B of the Appellant.
- The Adjudicating Authority should have sought further clarifications from the Appellant. However, the Adjudicating Authority proceeded unilaterally.

Lokenath Construction Pvt v. Government Of West Bengal, 2024 (5) TMI 362 - Calcutta High Court

- Elementary principle to be adopted in these cases is to cause enquiry with the supplier and without doing so to penalizing the appellant would be arbitrary, illegal and without jurisdiction.

Comments:

- This case supports the well settled principle of law that in cases involving non-payment of taxes by the supplier, the liability of recipient is only protective in nature.
- Adjudicating authority, even after admitting that recipient has paid the tax to supplier, still issued SCN without investigating supplier demonstrates unjustified approach to deny ITC.
- In these cases, only in exceptional circumstances proceedings can be initiated against recipient as provided in press release issued by CBIC.

BMW India (P.) Ltd. v. Appellate Authority for Advance Ruling for the State of Haryana 2024 (11) TMI 1403 – Punjab High Court

Facts:

- M/s BMW India Pvt. Ltd. contested the disallowance of ITC on demo vehicles by the AAR and AAAR, Haryana.
- The case focused on whether demo vehicles, used for promotional purposes, qualify as "capital goods" under GST law.
- The petitioner argued that demo vehicles qualify as “capital goods” under Section 2(19) of the CGST Act and are used in the course of business. The AAR and AAAR had denied ITC on the demo vehicles.

Held:

- The High Court referred to CBIC Circular No. 231/25/2024-GST and similar Haryana Government clarifications, which permit ITC on demo vehicles.
- It was held that demo vehicles capitalized in books of accounts qualify as “capital goods” under Section 2(19) of the CGST Act.

BMW India (P.) Ltd. v. Appellate Authority for Advance Ruling for the State of Haryana 2024 (11) TMI 1403 – Punjab High Court

- The Court set aside the AAR and AAAR rulings and held that petitioner is entitled to the benefit of ITC on the demo cars.

Comments:

- The ITC on demo vehicles was a contentious issue and there were contradictory advance rulings on this issue. The CBIC had issued a Circular clarifying that ITC will be available on the demo vehicles, providing clarity on the said issue.
- The High Court has followed the said Circular and allowed the ITC to the petitioner setting aside the adverse advance rulings in this regard.

Rejimon Padickapparambil Alex v. Union of India 2024 (12) TMI 399 – Kerala High Court

Facts:

- The appellant mistakenly reported the IGST credit in GSTR-3B as CGST and SGST credit. Instead of showing the IGST amount separately, the appellant inadvertently showed it as nil and added the bifurcated CGST and SGST components to the existing figures.
- This reporting error caused a mismatch between GSTR-2A and GSTR-3B.

Held:

- The court found that there was no wrong availment of credit, and the appellant's mistake was a technical one, involving the omission to report IGST figures in Form GSTR-3B.
- The error was considered insignificant as there were no outward supplies attracting IGST during the relevant period.

Comments:

- This judgment emphasizes that no demand should be raised in cases where there was no loss to the revenue and the assessee had made an inadvertent technical mistake.

Cable And Wireless Global India Private Limited v. Assistant Commissioner, CGST 2024 (10) TMI 442 – Delhi High Court

Facts:

- The petitioner is engaged in providing Business Support Services to Vodafone Group Services Limited (VGSL).
- The petitioner filed an application for a refund of the unutilized Input Tax Credit (ITC).
- The department rejected the refund application, citing that the payment for services was routed to the Bangalore branch's bank account instead of the Delhi branch's account.
- The department concluded that the 'supplier' of services (Delhi branch) had not received the payments, which led to the rejection of the refund under Section 2(6) of the IGST Act, 2017.

Held:

- The High Court noted that Section 2(6)(iv) of the IGST Act does not specify the particular bank account where payment must be received, but rather states that it should be received by the supplier.
- The Court observed that merely because payment for the service was received in a bank account in Bangalore, it would not alter the location of the supplier, as identified under Section 2(15) of the IGST Act, nor would it affect the determination of the actual supplier of the service.

Cable And Wireless Global India Private Limited v. Assistant Commissioner, CGST 2024 (10) TMI 442 – Delhi High Court

- The Court held that the department's objections based on the bank account remittance were overly technical and unsustainable.
- Therefore, the Court quashed the impugned order rejecting the refund.

Comments:

- This is a beneficial judgment wherein benefit of refund has been allowed to the petitioner.
- Though under the provision of GST law, the units located in different states are deemed to be distinct persons, the Court held that, as the units are part of the same legal entity, the benefit of refund should not be denied merely due to the fact that payment was received in the bank account of unit located in a different state.
- This judgment reinforces the settled legal proposition that substantive benefit should not be denied on account of technical reasons.

Malabar Fuel Corporation v. The Assistant Commissioner, Central Tax and Central Excise, Kannur Division 2024 (1) TMI 1203 – Kerala High Court

Facts:

- Petitioner was engaged in bottling of LPG in cylinders for both domestic and commercial use.
- Applicable rate of GST on LPG purchases from refineries was 18%. However, the GST liability on outward supplies i.e., bottled LPG (to domestic customers) was 5%.
- Petitioner sought refund in terms of Section 54(3)(ii) of CGST Act for accumulated unutilized ITC.
- Refund claim was rejected basis Circular No. 135/05/2020 – GST wherein it was provided that refund of unutilized ITC u/s 54(3)(ii) of the CGST Act would not be allowed where input and output supplies are the same.

Held:

- The Court held that the Circular's restriction on refunds when input and output supplies are the same was invalid.

Malabar Fuel Corporation v. The Assistant Commissioner, Central Tax and Central Excise, Kannur Division 2024 (1) TMI 1203 – Kerala High Court

- Accordingly, the Kerala High Court, following precedents from other High Courts, allowed the Petitioner's refund claim.

Comments:

- Similar view has been taken by various High Courts. This judgment reaffirms the legal position that additional restrictions (which are not prescribed under the Act/Rules) cannot be imposed through a Circular to deny a substantive benefit to the assessees.

Empire Foundation v. Union of India
2024 (11) TMI 39 – Gujarat High Court

Facts:

- Petitioner was providing exempted education services.
- The assessee challenged the constitutional validity of Section 17(2) of the CGST Act, 2017, seeking a refund of accumulated ITC on goods and services used for exempted services.

Held:

- The Court referred to the Supreme Court's decision in Union of India vs. VKC Footsteps India Pvt. Ltd., which upheld the validity of the provisions, emphasizing that the legislature has the discretion to make policy choices and classifications in tax legislation.
- As the petitioner's services are fully exempt, they are not entitled to a refund under the inverted duty structure. The legislative intent was clear in restricting refunds for exempt supplies, aligning with the policy choices upheld by the Supreme Court.
- The court clarified that there is no constitutional entitlement to a refund, as the right to claim ITC is governed by statutory provisions.

Empire Foundation v. Union of India
2024 (11) TMI 39 – Gujarat High Court

Comments:

- The Court has further reinforced the position that it is not a matter of right for the taxpayers to claim ITC or refund of accumulated ITC.
- The legislative discretion in tax matters includes determining the conditions for availing ITC and refunds, and Article 300A does not guarantee an absolute right to ITC.
- ITC or its refund can be disallowed if the conditions as specified in the GST law are not satisfied.

Samsung India Electronics Private Limited v. State Of U.P. 2024 (3) TMI 631 (Allahabad High Court)

Facts:

- Petitioner had filed a refund claim of unutilized ITC of tax paid on various inputs and input services for the period April 2019 to June 2019, which was allowed by the Department.
- Petitioner then filed for refund of unutilized ITC of tax for the period July – Sept. 2019 and Oct. – Dec. 2019 for same transaction involving export of services, which was rejected on the ground that goods in respect of which refund is claimed are 'capital goods' and not 'inputs'.

Held:

- Refund claims arising from precisely similar facts and circumstances for previous and subsequent assessment periods were duly sanctioned. Court held that the rejection of subsequent refund claims is not only inconsistent but also irrational.
- While res judicata does not apply to taxation matters, it is incumbent upon authorities to take a consistent approach when dealing with similar factual and legal circumstances.

Samsung India Electronics Private Limited v. State Of U.P. 2024 (3) TMI 631 (Allahabad High Court)

- Principle of consistency states that when faced with analogous factual and legal circumstances, treatment should remain uniform.
- Capital goods are intended for long-term use and are typically subject to capitalization whereas inputs are goods used in the day-to-day operations and are not subject to capitalization. The specified goods were not capitalized as they were deemed redundant after the completion of software projects.

Comments:

- The Supreme Court has consistently emphasized in Birla Corpn. Ltd. v. CCE (2005 (7) TMI 104), Indian Oil Corporation Ltd. v. CCE (2006 (8) TMI 8), Bharat Sanchar Nigam Ltd. v. Union Of India (2006 (3) TMI 1) that Revenue cannot take a different stand when facts are almost identical.
- These judgments underscore the significance of consistency in tax administration and the need for tax authorities to adhere to established principles and precedents.

Sance Laboratories (P.) Ltd. v. Union of India 2024 (11) TMI 188 – Kerala High Court

Facts:

- Exporters challenged Rule 96(10) of the CGST Rules, claiming it unfairly restricts their right to claim refund of IGST paid on export of goods or services.
- Rule 96(10) limits refunds for exporters who had availed benefits under certain notifications on inward supplies and then, paid IGST on export of goods or services.
- Exporters argued this rule is not consistent with Section 16 of the IGST Act (allowing export of goods or services as zero-rated suppliers) and creates an unfair classification between suppliers making exports without payment of IGST under LUT and those making exports with payment of IGST.

Held:

- The Kerala High Court declared Rule 96(10) ultra vires to Section 16 of the IGST Act.
- The court found the rule:

    1. Restricts a right established by primary legislation (IGST Act).

Sance Laboratories (P.) Ltd. v. Union of India 2024 (11) TMI 188 – Kerala High Court

2. Creates an unfair differentiation between exporters.

3. Leads to unintended and absurd outcomes.

- The court quashed the orders denying refund of IGST based on this rule.

Comments:

- It highlights that restrictions by subordinate legislation shouldn't curtail benefits granted by primary legislation.
- Exporters outside the Kerala High Court's jurisdiction can potentially use this case to challenge refund rejections or recoveries for the past period.
- The said rule has been omitted vide Notification No. 20/2024 – Central Tax w.e.f 08.10.2024.
- Similar view has also been held in the case of ***Vinayaka Cashew Company v. Union of India [2024] 167 taxmann.com 760 (Kerala).***

Shobikaa Impex Pvt Ltd v. UOI, 2024 (7) TMI 1107 – Madras High Court

Facts:

- The petitioner is a 100% Export Oriented Unit (EOU) and had exported goods out of country and that by mistake, the petitioner had wrongly claimed refund under **Rule 96 of the CGST Rules, 2017** on the IGST paid by the petitioner on capital goods and inputs ITC utilized for export of goods instead of **Rule 89 of the CGST Rules, 2017**.
- Refund of IGST was availed on such inputs against which benefits under the notifications as specified under **Rule 96 of the CGST Rules** was availed and as such, the petitioner was not eligible for the refund under **Rule 96 of the CGST Rules**. Petitioner was willing to reverse the same but pointed out there was no machinery to reverse it.
- SCN was issued for ineligible refund of IGST paid on exports availed by petitioner and impugned order was passed confirming the demand which is under challenge.

Held:

- Petitioner is otherwise entitled to refund under **Rule 89 of the CGST Rules, 2017.** Therefore, it was held that procedural irregularity committed by petitioner should not come in the legitimate way of grant of export incentives as exports were made and the refund claims were itself based on the shipping bills.

Shobikaa Impex Pvt Ltd v. UOI, 2024 (7) TMI 1107 – Madras High Court

Comments:

- The Madras High Court has followed the principle laid down by the Apex Court in Commissioner of Sales Tax, Uttar Pradesh Vs. Auriaya Chamber of Commerce, Allahabad, 1986 (3) SCC 50, wherein it has been held that the rules or procedures are hand-maids of justice not its mistress.
- Court has emphasized on allowing substantive benefit of export incentives over the denial of the same based on a mere procedural irregularity so as to ensure that domestic players should not be deprived of necessary benefits for competing in the international market which is the objective of refund mechanism under GST law.

Venus Jewel v. Union of India 2024 (4) TMI 462- Bombay High Court

Facts:

- Petitioner challenged the refusal of IGST refund for exports between July 2017 and December 2018.
- The refund was withheld due to non-alignment of export data between ICEGATE and GST portals.
- Petitioner argued that shipping bills should be treated as valid refund applications under Rule 96/96A of the CGST Rules.
- Refund application under Section 54 of the CGST Act was rejected as time-barred.

Held:

- The court ruled that shipping bills should be treated as valid refund applications under Rule 96/96A.
- The Circular dated 18 July 2019 was declared inapplicable to the petitioner’s case. The rejection of the refund application on the grounds of limitation was deemed illegal.

Venus Jewel v. Union of India 2024 (4) TMI 462- Bombay High Court

- The court held that the petitioner should not suffer due to technical glitches in data alignment between ICEGATE and GST portals. The petitioner was entitled to 9% per annum interest on the refund amount, to be paid within three weeks.

Comments:

- This provides relief for exporters facing issues with mismatched data between shipping bills and invoices due to technical glitches.
- This decision emphasizes on the right of the taxpayer to seek refund in case where the dispute has arisen in light of a technical glitch.

Greenstar Fertilizers Ltd v. Joint Commissioner (Appeals), 2024 (6) TMI 667 - Madras High Court

Facts:

- Petitioner had wrongly transitioned certain credit under Section 142 of the CGST Act and therefore, the proceedings were initiated under Section 74 of the CGST Act.
- The above credit was reversed after the issuance of SCN.
- Challenge on levy of penalty under S.74(1) and 74(5) of the CGST Act, 2017 for input tax wrongly claimed but not utilized and reversed after the issuance of SCN.

Held:

- Interest and penalty under S.73 or S.74 of the CGST are imposable on the wrong availment of credit.
- However, in case where the credit has merely been availed without any utilization of the same for discharging the tax liability, no interest and penalty can be imposed under S.73 or S.74.

Greenstar Fertilizers Ltd v. Joint Commissioner (Appeals), 2024 (6) TMI 667 - Madras High Court

Comments:

- Reliance was specifically placed on the decision of M/s. Aathi Hotel v. The Assistant Commissioner (ST) (FAC), Nangapattinam District, 2022 (1) TMI 1213 – Madras High Court, wherein it was held that imposition of interest and penalty either under S.73 or S.74 is not justified where such credit was not only availed but also utilised for discharging the tax liability.
- Penalty under S.122 of the CGST Act can be imposed on wrong availment of ITC. In this case, a token penalty of Rs. 10,000/- was imposed by the Court on the petitioner.

KCL Limited v. The Joint Commissioner And Others 2024 (12) TMI 513 [Andhra Pradesh High Court]

Facts:

- The issue was regarding the transition of CENVAT credit under Section 140(1) of the CGST Act.
- The respondent held that credit transition was impermissible due to an ongoing enquiry concerning credit eligibility.

Held:

- The Court analyzed Section 140(1) of the CGST Act, emphasizing the entitlement of a registered person to transition CENVAT credit available as of 30.06.2017 and as on the 01.07.2017, there was no SCN or any doubt raised against the claim of the petitioner for availing of such CENVAT credit.
- The respondent's interpretation of "eligible duties carried forward" was rejected. A show-cause notice alone (issued subsequently) does not bar credit transition.

Comments:

- The Court emphasized on the strict interpretation of the provisions of Section 140(1) of the CGST Act, which allows for the transition of eligible CENVAT credit irrespective of disputes with respect to such credit (raised after 01.07.2017).

Titan Co. Ltd. v. Joint Commissioner of GST & Central Excise, Salem, 2024 (1) TMI 619 – Madras High Court

Facts:

- Respondent issued SCN dt. 28.09.2023 for five AYs starting from 2017-18 to 2021-22.
- Petitioner contended that bunching of SCNs was not allowed under Section 73 of the Act.
- Respondent contended that there is no provision under Section 73 of the Act prohibiting the respondents from bunching of show cause notices pertaining to multiple years.

Held:

- The limitation period of three years as prescribed under Section 73(10) of the CGST Act would be applicable.
- If the law states that a particular action must be completed within a particular year, the same must be carried out accordingly.
- The limitation period of three years would be separately applicable for every assessment year, and it would differ from one assessment year to another. It is not that it would be carried over or that the limitation would be continuing in nature and the same can be clubbed.

Titan Co. Ltd. v. Joint Commissioner of GST & Central Excise, Salem, 2024 (1) TMI 619 – Madras High Court

Comments:

- This decision will safeguard the taxpayers from the clubbing of SCNs which would have paved way for issuance of SCNs even for the cases where limitation is not available.
- This decision follows the principle laid down by the Hon'ble Supreme Court in State of Jammu & Kashmir v. Caltex (India) Ltd., wherein it was held that each AY will have separate period of limitation and limitation starts independently.
- Similar findings have been given by Karnataka High Court in the case of ***Chimney Hills Education Society v. Additional Commissioner of Central Tax [2024] 168 taxmann.com 12 (Karnataka) and M/S. Bangalore Golf Club vs. Assistant Commercial of Commercial Taxes Koramangala, Bengaluru [2024 (10) TMI 116 - KARNATAKA HIGH COURT].***
- The said judgments can be relied upon by the taxpayer but the matter would be contentious as there are negative judgments as well on the same subject matter.

K.T. Saidalavi v. State Tax Officer 2024 (10) TMI 1119 – Kerala High Court

Facts:

- The SGST department initiated an enquiry regarding non-payment of GST and directed the petitioner to produce certain records.
- Summons were issued under Section 70 of the CGST Act, leading to the recording of statements.
- The petitioner challenged the action through a writ petition, contending that the Central Authority had already initiated proceedings under Section 74 read with Section 122(1) of the CGST/SGST Acts.

Held:

- The High Court noted that the term "initiation of any proceedings" refers to the issuance of a notice under the CGST/SGST Acts and does not include the initiation of an enquiry or issuance of summons under Section 70 of the CGST/SGST Acts.
- In the present case, the State Authority had only initiated an enquiry, whereas the Central Authority had initiated proceedings through the issuance of a notice under Section 74 of the CGST/SGST Acts.

K.T. Saidalavi v. State Tax Officer 2024 (10) TMI 1119 – Kerala High Court

- Therefore, the petitioner was not entitled to any relief, and the writ petition was dismissed.

Comments:

- This issue is highly interpretative issue as various High Courts have given different views on parallel proceedings initiated by different departments.
- This is a significant judgment as the High Court has conclusively held that the term 'initiation of any proceedings' used in Section 6 does not include initiation of an enquiry or issuance of summons under Section 70 of the CGST Act.

Stalwart Alloys India Private Limited v. Union of India 2024 (8) TMI 1458 – Punjab and Haryana High Court

Facts:

- The petitioner was a manufacturer of lead alloys and other lead products.
- An enquiry was initiated by the State Tax Department regarding the wrongful availment of Input Tax Credit (ITC) by the petitioner.
- The Directorate General of GST Intelligence (DGGI), Headquarters, permitted the Meerut Zonal Unit of DGGI to conduct a centralized investigation against the petitioner for the period after 2019.
- The petitioner filed a writ petition challenging the transfer of proceedings to the DGGI, arguing that the action violated the provisions of Section 6(2)(b) of the CGST Act, 2017.

Held:

- The High Court noted that both the State and Central Governments have the same powers under the CGST Act, and if one officer has already initiated proceedings, they cannot be transferred to another officer.
- In this case, the State authorities had initiated proceedings for the period from 01.07.2017 to 22.07.2019. The DGGI sought to conduct investigations for the period from July 2019 to March 2022.

Stalwart Alloys India Private Limited v. Union of India 2024 (8) TMI 1458 – Punjab and Haryana High Court

- The Court interpreted the term "subject matter" used in Section 6 as referring to the "nature of proceedings," which in this case was wrongful availment of ITC by fraudulent means.
- Since the State had already initiated proceedings for the same subject matter by issuing a notice under Section 74, the Court held that the DGGI could not initiate proceedings for the same issue for the period between 28.07.2019 and 20.01.2022.
- The Court ruled that the transfer of proceedings to the DGGI was not sustainable in law.

Comments:

- This is beneficial judgment as it does not allow cross empowerment where the subject matter involved in the dispute is same. There are certain contradictory judgments of other High Courts on the same issue. Therefore, the issue may be finally decided by Apex Court only.

ATR Malleable Casting (P.) Ltd. v. Inspector of Central Taxes 2024 (6) TMI 1258 – Calcutta High Court

Facts:

- During a search, the assessee was compelled to pay Rs. 30,00,000/- under alleged threat of arrest, coercion, and undue influence.
- The payment was made despite no prior intimation of non-payment or short payment of taxes.
- The writ petition for a refund was dismissed by the Hight Court on the grounds of no proper authorization in INS-01.
- The assessee filed an appeal against the dismissal order.

Held:

- The High Court referred to instructions from the Commissioner (GST-Inv.), CBIC, which state that recovery of tax dues during a search or inspection should not occur unless the taxpayer voluntarily ascertains their liability.
- In the present case, there was no ascertainment of liability or intimation regarding non-payment or short payment of taxes.

ATR Malleable Casting (P.) Ltd. v. Inspector of Central Taxes 2024 (6) TMI 1258 – Calcutta High Court

- The Court concluded that the payment of Rs. 30,00,000/- could not be considered voluntary and directed that the amount be refunded, as retaining it without proper acknowledgment was impermissible.

Comments:

- This decision reaffirms that any payment of tax made during the search or seizure proceedings without proper documentation will be deemed as involuntary.
- The benefit has been extended to the Noticee, as this judgment can be relied upon in cases where the assessee is coerced into making a payment during the course of search, seizure, or investigation proceedings, without determination of any tax liability or allegations of short-payment or non-payment of tax on their part.
- Similar judgment was also rendered in the case of ***Sushil Kumar v. Delhi State GST Govt. NCT of Delhi [2024] 163 taxmann.com 419 (Delhi).***

M/S. Barkataki Print and Media Services, Dhrubajyoti Barkotoky and Others v Union of India and 4 Ors. 2024 (9) TMI 1398 – Gauhati High Court

Facts:

- The Petitioners challenged the validity of Notification No. 9/2023-CT and Notification No. 56/2023-CT on the grounds that the conditions precedent for issuance of the notifications under Section 168A were not fulfilled.
- Notification No. 9/2023-CT was challenged due to the absence of force majeure, and Notification No. 56/2023-CT was challenged for lack of GST Council recommendation and force majeure.

Held:

- The recommendation of the GST Council is a sine qua non for exercising power under Section 168A. The court referred to the Supreme Court's judgment in V.M. Kurian Vs. State of Kerala, which held that recommendations are essential for granting exemptions. Similarly, the GST Council's recommendation is necessary for extending timelines under Section 168A.

M/S. Barkataki Print and Media Services, Dhrubajyoti Barkotoky and Others v Union of India and 4 Ors. 2024 (9) TMI 1398 – Gauhati High Court

- The definition of force majeure in Section 168A includes natural calamities, war, and epidemics. The GST Council had previously recommended an extension due to COVID-19 but had decided against further extensions. The absence of force majeure consideration by the GST Council before issuing Notification No. 56/2023-CT invalidated the notification.

Comments:

- This issue is pending before other High Courts, with divergent views already emerging.
- The judgment provides relief to taxpayers but contrasts with separate judgments by the Allahabad High Court (Graziano Trasmissioni vs. Union of India reported in [2024] (6) TMI 233) and Kerala High Court,(Faizal Traders v. Deputy commissioner reported in [2024] (5) TMI 1183) which upheld similar notifications (e.g., Notification No. 09/2023-CT).
- Due to such contrasting views, the issue is expected to be raised before the Supreme Court.

Indian Medical Association v. UOI
2024 (7) TMI 1448 - Kerala High Court

Facts:

- Parliament introduced Section 7(1)(aa) vide the Finance Act, 2021, with retrospective effect from 01.07.2017, inserting a legal fiction and artificially deeming a club/association and its members to be two separate persons, thereby bringing transactions between the two within the scope of "supply".
- Petitioner argued that Section 2(17)(e) and Section 7(1)(aa) of the CGST Act are ultra vires to Article 246A read with Article 366(12A) and violative of Articles 14, 19(1)(g), 265, and 300A of the Constitution of India

Held:

- Article 246A grants plenary power to Parliament and State Legislatures to enact laws on GST without any limitation.
- The Parliament and State Legislature have the power to define "person" and levy tax on transactions between such persons, including clubs and their members.
- The amendment is within legislative competence and does not violate any fundamental rights.

Indian Medical Association v. UOI
2024 (7) TMI 1448 - Kerala High Court

- The legislative amendment in Section 7(1)(aa) effectively removed the basis of principle of mutuality by deeming clubs and their members as separate entities for GST purposes.
- Section 7(1)(aa) should have prospective operation from 01.01.2022, not retrospectively from 01.07.2017.

Comments:

- The Court held that the Parliament and State Legislature are competent enough to bring any transaction under the purview of GST law considering how widely the terms supply, goods and services have been defined under the GST law.
- Court has disregarded the principle of mutuality as recognized in the erstwhile service tax regime by various courts, including the Supreme Court, and held that the legislature is well-within its legislative competence to levy tax on a transaction between clubs and its members.
- The Court noted that the amendment should not impact the past transactions as the petitioner was not collecting taxes from its members in line with the earlier judgment of the Supreme Court in case of Calcutta Club.

RC Infra Digital Solutions v. Union Of India 2024 (1) TMI 287- Allahabad High Court

Facts:

- Petitioner challenged Notification No. 14/2017 – Central Tax on the ground of it being ultra-vires to the power of the Central Government.
- Further, Petitioner challenged jurisdiction of Assistant Director, DGGI in authorizing other Intelligence Officers to carry out inspection/search proceedings at the premises of the Petitioner u/s 67 of the CGST Act.

Held:

- Section 5 of the CGST Act provides that any officer who has been so appointed must be assigned / entrusted / invested with specified powers under CGST Act to enable him to perform those functions.
- DGGI officers were merely appointed by Government pursuant to Section 3 of CGST Act.
- Section 5 entails that the Board is empowered to confer such power on the Officer of Central Tax.
- The Board is subject to the control of Central Government. It could be well argued that when the power has been invested with the Board to do certain things, how can the Government not exercise such power.

RC Infra Digital Solutions v. Union Of India 2024 (1) TMI 287- Allahabad High Court

- Circular No. 3/3/2017 – GST issued by the Commissioner in Board relates to assignment of various functions under CGST Act to different class of officers. Conjoint reading of the Circular and the Notification sufficiently contemplates the assigning of powers to DGGI officers by the Board.
- The jurisprudence on the implications of invocation of a wrong provision suggests that as long as an authority has power, which is traceable to a source, the mere fact that source of power is not indicated or wrongly indicated in an instrument does not render the instrument invalid.
- The Notification was not held to be ultra vires to the powers provided to the Central Government under CGST Act.
- Further, the court noted that the officers of DGGI were appointed as Central Tax Officers and were assigned the functions of proper officers by the Board. The court held that the summons issued were within the legal authority of the officers.

Matri Stone Crusher v. Union of India 2024 (11) TMI 375 – Himachal Pradesh High Court

Facts:

- The petition challenged GST on royalty paid by mineral concession holders for mining concessions.
- The petitioner sought various reliefs including quashing GST related notifications, refund of GST/service tax paid and a stay on further GST demands and proceedings.
- The petitioner relied on the Supreme Court's decision in India Cement Ltd. wherein royalty was held to be a tax. Whereas the respondent relied on the Supreme Court's decision in Mineral Area Development Authority which held royalty is not a tax.

Held:

- The Division Bench of the High Court initially stayed the demand of GST on royalty in light of SC's decision in India Cement Ltd.
- The above decision has been overruled by the Supreme Court in Mineral Area Development Authority, wherein it was held that royalty is not a tax.
- In view of the same, it was held that the department is well within their rights to levy GST on the royalty.

Matri Stone Crusher v. Union of India 2024 (11) TMI 375 – Himachal Pradesh High Court

Comments:

- This decision is solely based on the decision of the SC in Mineral Area Development Authority wherein it has been held that royalty is not in the nature of tax.

GMR Pochanpalli Expressways Ltd. v. Additional Director 2024 (11) TMI 371 – Telangana High Court

Facts:

- The Government of India entrusted certain portions of National Highway-7 to the National Highway Authority of India (NHAI) for development. NHAI contracted with a private JV company under a Build-Operate-Transfer (BOT) model on an annuity basis for 20 years.
- As per the agreement, the petitioner was not permitted to collect tolls, and NHAI paid fixed annuities as consideration.
- Sl. No. 23 and 23A of Notification No. 12/2017 provides exemption on services falling under SAC 9967, by way of access to a road or a bridge on payment of tolls or annuities.
- Circular No. 150/06/2021 – GST clarified that services falling under SAC 9954 (construction of roads) do not fall under Sl. No. 23 and 23A of exemption Notification.
- Petitioner sought declaration of Circular No. 150/6/2021 GST as ultra vires, arguing that it contradicted the exemption notifications and the 22nd GST Council Meeting's recommendations.

GMR Pochanpalli Expressways Ltd. v. Additional Director 2024 (11) TMI 371 – Telangana High Court

Held:

- The circular did not contradict the GST Council's resolutions or the notifications, as it merely clarified that the exemption under Entry No. 23A applies only to services under SAC 9967 and not to construction services under SAC 9954.
- Ordinarily, a writ petition should not be entertained against a show cause notice, as it does not constitute an adverse order affecting rights unless it is issued without jurisdiction or is otherwise illegal.

Comments:

- The Court distinguished the decision of Karnataka High Court in M/s. DPJ Bidar Chincholi (Annuity), Road v Union of India 2022 (7) TMI 1314 – Karnataka High Court, wherein it was held that impugned circular is overriding the notifications and bad in law.

Schulke India (P.) Ltd. v. Union of India 2024 (11) TMI 522 – Bombay High Court

Facts:

- The issue pertained to the classification of alcohol-based hand sanitisers for GST purposes.
- The dispute centered around whether they should be classified as "medicaments" (lower GST rate) or "disinfectants" (18% GST rate).
- The Ministry of Finance issued a Press Release on 15.07.2020 classifying the products as "disinfectants," which the Petitioner argued was beyond the executive's authority.
- The Court was asked to address the validity of the said Press Release and the separation of powers between the executive and judiciary.

Held:

- The Court refrained from deciding the classification issue and stated it should be resolved by the appropriate adjudicatory authorities.
- The Court quashed the Press Release dated 15.07.2020, ruling that executive instructions cannot dictate judicial or quasi-judicial determinations.

Schulke India (P.) Ltd. v. Union of India 2024 (11) TMI 522 – Bombay High Court

- The Court found the Press Release exceeded the authority of the executive and did not comply with constitutional provisions relating to executive power (Article 73 and Article 77).
- The Court emphasized the need for independent adjudication by judicial authorities on product classification, reinforcing the separation of powers.

Comments:

- The ruling affirms that executive instructions cannot preempt or direct judicial decisions, ensuring the independence of the judiciary. It highlights the role of judicial and quasi-judicial bodies in interpreting laws and classifying goods for GST purposes.
- The decision reinforces the constitutional principle of separation of powers, preventing executive overreach in judicial matters.

Sanjay Sales India v. Principal Commissioner of Department of Trade and Taxes 2024 (8) TMI 1443 – Delhi High Court

Facts:

- The petitioner was registered with the GST authorities and had discontinued its business.
- The petitioner filed an application for cancellation of its GST registration with effect from 13.06.2024.
- However, the Proper Officer issued a notice proposing to reject the petitioner's application, stating that the petitioner was required to pay due tax and penalties.
- The petitioner filed a writ petition challenging the rejection of its application for cancellation of registration.

Held:

- The Honorable High Court observed that the cancellation of GST registration would not affect the petitioner's liability to pay any outstanding tax and penalties.
- The Court further noted that the scrutiny of the petitioner's tax liability for prior periods could not be a valid reason for refusing to cancel the GST registration.
- Therefore, the Court held that the impugned notice was liable to be quashed and directed the department to process the application for cancellation of the GST registration.

Sanjay Sales India v. Principal Commissioner of Department of Trade and Taxes 2024 (8) TMI 1443 – Delhi High Court

Comments:

- In similar cases where cancellation of registration is being denied, the assessee may place reliance on the said judgment as it reinforces correct position of law that the cancellation of GST registration should not be denied merely on account of pending scrutiny or investigation.

Ashoka Fabricast (P.) Ltd. v. Union of India 2024 (7) TMI 1023 – Rajasthan High Court

Facts:

- The petitioner was issued a notice for conducting an audit under Section 65 of the CGST Act, 2017, even after their GST registration was canceled.
- The petitioner challenged the audit notice and subsequent assessment order, arguing that Section 65 applies only to registered persons, and the cancellation of registration invalidated the notice.
- The petitioner contended that any proceedings stemming from such notice were contrary to the mandate of the CGST Act and should be quashed.

Held:

- The Court held that Section 29(3) of the CGST Act ensures that cancellation of registration does not absolve liability for tax dues for the period of registration.
- Section 65 allows audit of registered persons for such periods even after cancellation of registration.
- The audit notice and assessment order were valid since they pertained to the period during which the petitioner was registered.

Ashoka Fabricast (P.) Ltd. v. Union of India 2024 (7) TMI 1023 – Rajasthan High Court

- The petitioner was not entitled to relief, having fraudulently availed ITC and subsequently canceled their registration.

Comments:

- This decision confirms that the Department is entitled to initiate proceedings to recover tax due from the assessee for the period preceding the cancellation of GST registration.
- This is in accordance with Section 29(3), which stipulates that the cancellation of registration does not discharge the liability of the person to pay tax under the Act for the prior period.

Venew Decors v. Deputy State Tax Officer
2024 (9) TMI 818 – Madras High Court

Facts:

- The petitioner was a registered taxable person whose GST registration was cancelled by the department.
- The petitioner filed a writ petition against the demand order, contending that it did not monitor the GST portal after the cancellation of its registration.
- **Held:**
- The High Court noted that GST registration was cancelled on 25.09.2019 and it was reasonable for the petitioner to not continually monitor the GST portal.
- The Court observed that the notice and order were communicated via email and text message. However, it deemed to be just and appropriate to provide the petitioner an opportunity to contest the tax demand on merits.
- The Court remanded the matter for fresh consideration, directing the petitioner to remit 10% of the disputed tax demand. The department was instructed to provide a reasonable opportunity for the petitioner to present its case.

Venew Decors v. Deputy State Tax Officer
2024 (9) TMI 818 – Madras High Court

Comments:

- In this case, the assessee was unable to furnish its reply in response to the notice uploaded on the GST portal as he was not monitoring the portal due to *suo-moto* cancellation of GST registration.
- This is fact specific judgment in favour of the assessee wherein considering the circumstances, High Court has allowed to remand back the subject matter and to provide a fair opportunity to the assessee to present its case on merits in line of the principle of natural justice.

Aatral Associates v. State Tax Officer 2024 (9) TMI 47 – Madras High Court

Facts:

- The department issued a show cause notice (SCN) to the petitioner, followed by the passing of the impugned assessment order which imposed tax and penalty.
- The petitioner paid the tax but filed an appeal challenging only the imposition of penalty.
- The Appellate Authority rejected the appeal on the ground that penalty alone could not be challenged.
- The petitioner filed a writ petition against the rejection of the appeal.

Held:

- The Honorable High Court noted that the petitioner had already paid the entire tax amount and filed the appeal only against the penalty imposed.
- The Court observed that it was not proper for the Appellate Authority to reject the appeal merely because the tax was not challenged.
- The Court directed the Appellate Authority to accept the appeal on record and pass appropriate orders on merits and in accordance with the law.

Aatral Associates v. State Tax Officer 2024 (9) TMI 47 – Madras High Court

Comments:

- This judgment is beneficial for assessee.
- This judgment can be relied upon in cases where an appeal is sought to be dismissed on the grounds that the penalty demand cannot be challenged when the tax demand has been admitted.

Vishal Steel Supplier v. State of U.P.
2024 (7) TMI 1037 – Allahabad High Court

Facts:

- The petitioner, engaged in the trading of steel goods, was transporting goods from Muzaffarnagar to Ghaziabad.
- The goods were intercepted at Hapur by the department, which detained them on the grounds that the route was not the normal one and the truck driver had the mobile number of a dealer in Hapur.
- The department inferred that the goods would be unloaded at Hapur without proper documentation.
- The petitioner filed a writ petition, contending that the detention was based on surmises and conjectures.

Held:

- The Court observed that no discrepancy was found during the detention or seizure regarding the quality or quantity of goods.
- The authorities did not record any finding of mens rea to avoid tax payment.
- Under the GST Act, dealers are not required to disclose specific routes for the movement of goods.

Vishal Steel Supplier v. State of U.P.
2024 (7) TMI 1037 – Allahabad High Court

- The impugned order was set aside, and the Court directed that any amount deposited by the petitioner during the proceedings be refunded.

Comments:

- This is beneficial judgment for the assessee as the courts have taken stand that in order to impose penalty under Section 129, the element of fraud, suppression or intention to evade tax on the part of the assessee is required to be proved by the Revenue.

APN Sales and Marketing v. Union of India
2024 (7) TMI 1346 – Delhi High Court

Facts:

- The petitioner received a notice from the department proposing a demand of Rs. 17,43,356/- along with interest and penalty for availing excess Input Tax Credit (ITC).
- The petitioner responded to the notice by submitting the invoices from the supplier in question.
- The Adjudicating Authority passed an order raising the demand to Rs. 18,30,522/-.
- The petitioner filed a writ petition against the demand, arguing that the order was passed merely on the ground that the supplier's registration was cancelled retrospectively.

Held:

- The Honorable High Court noted that the petitioner had submitted the invoices from the supplier along with the response to the notice.
- The Court emphasized that the Authority was required to examine the documents submitted by the petitioner and provide an opportunity for a hearing before passing the order.

APN Sales and Marketing v. Union of India
2024 (7) TMI 1346 – Delhi High Court

- The impugned order was passed without providing any reasoned findings and was deemed liable to be set aside.
- The Court directed the Authority to decide the matter afresh after giving the petitioner an opportunity of being heard.

Comments:

- This judgment set aside the unreasoned order, emphasizing the need to adhere to the principles of natural justice.

PBL Transport Corporation (P.) Ltd. v. Assistant Commissioner (ST), 2024 (1) TMI 1140 – Andhra Pradesh High Court

Facts:

- The petitioner received a discrepancy notice from the authorities and submitted a reply within the stipulated time.
- Despite the reply, the final audit report was finalized without considering the same.

Held:

- The Court ruled in favor of the petitioner, declaring the final audit report invalid.
- The Court cited **Rule 101(4) of the APGST/CGST Rules, 2017**, which mandates considering the taxpayer's reply to a discrepancy notice before finalizing the audit report.
- The final audit report was held to be in violation of principle of natural justice as also the statutory provisions

Comments:

- This decision enforces the clear legislative mandate of considering reply of the assessee before finalizing the audit report.

Mandarina Apartment Owners Welfare Association (MAOWA) v. CTO, 2024 (7) TMI 1158 – Madras High Court

Facts:

- The Petitioner challenged the adjudication proceedings initiated through the SCNs issued to it on the ground that the non-issuance of Form GST ASMT-10 notice vitiated the adjudication process.

Held:

- At the outset, it was noted that under sub-section (1) of Section 61, the word "may" is used. As such, it was observed that the word "may" is indicative of and raises the presumption that the scrutiny of monthly returns is not mandatory.
- The text of sub-section (1) of Section 61 indicates clearly that the obligation to issue notice to the registered person is not triggered merely by the selection of the returns of such person for scrutiny, but by the discovery of discrepancies in such returns on scrutiny.
- Upon fulfilment of two conditions, namely, selection of returns for scrutiny and the discovery of discrepancies on such scrutiny, there is an obligation to issue notice. Rule 99(1) uses the language "and in case of any discrepancy, he shall issue a notice to the said person in Form GST ASMT-10", thereby raising the presumption that the obligation is mandatory.

Mandarina Apartment Owners Welfare Association (MAOWA) v. CTO, 2024 (7) TMI 1158 – Madras High Court

- The consequence of not issuing the ASMT-10 notice, in spite of noticing discrepancies after selecting and scrutinizing returns, would be that it vitiates the scrutiny process, including the discrepancies noticed thereby and the quantification, if any, done in course thereof.
- As regards adjudication, the limited impact would be that the findings in the scrutiny under Section 61 cannot be relied upon for adjudication where ASMT-10 notice is not issued prior to issuance of SCN under Section 73.

Comments:

- The High Court has concluded that issuance of ASMT-10 under Section 61 of the CGST Act is not a mandatory pre-requisite for adjudication under Section 73 of the CGST Act.

Mandarina Apartment Owners Welfare Association (MAOWA) v. CTO, 2024 (7) TMI 1158 – Madras High Court

- However, where the discrepancies are noticed during the scrutiny of returns, notice in Form ASMT – 10 is required to be issued.
- Where ASMT-10 notice is not issued, the same vitiates the scrutiny process but does not necessarily invalidate the show cause proceedings initiated under Section 73 or 74 of the CGST Act. However, the scrutiny under Section 61 cannot be relied upon during the adjudication proceedings.
- Procedural defects that do not cause prejudice to the taxpayer are saved by Section 160 of applicable GST statutes.

Sunder Synthetics Pvt Ltd v. Union Of India, 2024 (6) TMI 833 Telangana High Court

Facts:

- The Petitioner filed an appeal which was admitted by the Appellate Authority on the same day. However, the appeal was dismissed on the grounds that the physically certified copy of the impugned Order was not filed on the same day and was filed at a later point in time.

Held:

- The Appellate Authority had already admitted the appeal and as such, it should have been decided on the merits.
- Instead, the Authority dismissed the appeal on some technicality related to the filing of a certified copy of the impugned Order, which was unjustified on the part of the Appellate Authority.

Sunder Synthetics Pvt Ltd v. Union Of India, 2024 (6) TMI 833 Telangana High Court

Comments:

- The court relied on similar judgments from various High Courts to support its decision that an admitted appeal should have been decided on the merits of the case and should not have been dismissed on the basis of hyper-technical grounds.
- The Court's decision to have the appeal heard on merits rather than dismissing it on technical grounds ensures that the petitioner's right to be heard is protected.
- The decisions clarified the meaning of "admission" as admitted for final hearing.

TATTVAM

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Thank You