TATTVAM

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A weekly digest of important rulings and latest GST updates

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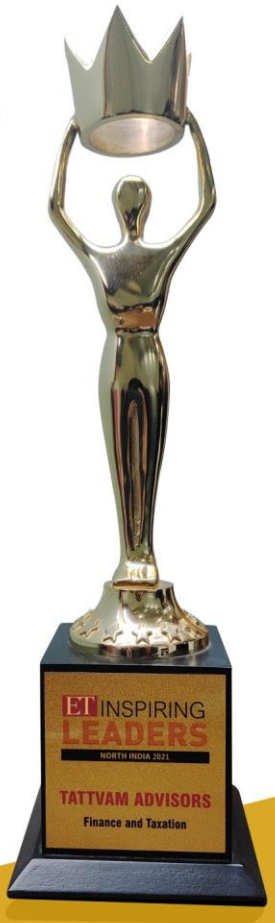

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JUDICIAL PRONOUNCEMENTS

a) Refund allowed to the taxpayers on account of inverted duty structure in case of trading of goods

(M/s Malabar Fuel Corporation v. The Assistant Commissioner, Central Tax and Central Excise, Kannur Division, WP (c) No. 26112 of 2024- Kerala High Court)

Facts:

- Petitioner was engaged in bottling of LPG in cylinders for both domestic and commercial use.
- The applicable rate of GST on LPG purchases from refineries was 18%. However, the GST Liability on outward supplies i.e., bottled LPG was only 5%.
- The 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 as invalid.
- The Kerala High Court following the precedents from other High Courts allowed the Petitioner's refund claim.

TATTVAM COMMENTS:

- A similar view has been taken by Delhi HC in *Indian Oil Corporation Ltd. vs. Commissioner of Central Goods and Service Tax, W.P. (C) 10222/23 & CM No. 39561/2023*.

b) Gift vouchers are in nature of actionable claim. GST is payable at the time of issuance only if gift vouchers are issued for identified goods ad for specified value

(M/s TVL Kalyan Jewellers India Ltd v. Union of India, WP No. 5130 of 2022 and W.M.P. 5227 & 5228 of 2022- 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 to 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:

- The Hon'ble Court held that Gift Voucher/card is a document within the meaning of **Section 3(8) 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.
- 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, 1881.
- 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 III of the CGST Act.
- As per Clause 1(a) to Schedule II read with Section 7(1A) of the CGST Act, any transfer of title in goods is a supply of goods. Thus, the gift voucher/card that are issued for a specified and identified goods are taxable.

TATTVAM COMMENTS:

- This Decision will rescue the taxpayers in cases where supply of goods/services is not clearly known at the time of issuance of voucher or if it does not indicate the goods/services against which the voucher can be redeemed, since it will result in double tax collection**.**

c) DGGI officers, designated as Central Tax Officers, are proper officers

(M/s RC INFRA DIGITAL SOLUTIONS v. Union of India, Writ Tax No- 229 of 2023- Allahabad High Court)

Facts:

- Petitioner invoked extraordinary writ jurisdiction of the Hon'ble Allahabad High Court Challenging **Notification No. 14/2017-Central Tax dated 01.07.2017** on the ground that it was ultra vires to the power of the Central Govt.
- Further, Petitioner challenged the jurisdiction of Assistant Director, DGGI in authorizing other Intelligence Officer 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.
- CBIC is an extension of the Central Govt, and it was constituted under Central Boards of Revenue Act, 1963. CBIC is subservient to the Govt and thereby the Govt can exercise the power as the CBIC is an alter ego of the Central Govt.
- Section 5 entails that the Board is empowered to confer such power on the Officer of the Central Tax.
- **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. Cojoint 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 valid.

Tattvam comments:

- This decision reaffirms the legality of Notification No. 14/2017- Central Tax dated 01.07.2017 thereby reaffirming the powers of the Central Tax Officers.
- Further, Hon'ble High Court, Bombay in ***Fomento Resorts & Hotels Ltd. Vs. Union of India [(2024) 159 taxmann.com 577 (Bom.)]*** held that Deputy Commissioner of CGST (Audit) was the "proper officer" to communicate the audit report under Section 65(6) of the CGST Act.
- Further Hon'ble High Court, Telangana in ***Nektar Therapeutics India (P.) Ltd. v. Union of India [(2024) 159 taxmann.com 757]*** observed that Assistant Commissioner, was not the proper officer as clarified by circular no. 31/05/2018-GST dated 09.02.2018 and the proper officer would be Additional or Joint Commissioner of Central Tax and set aside the SCN.
- Similarly, Hon'ble High Court Allahabad in Mansoori Enterprises v. Union of India [(2024) 160 taxmann.com 261 (All.)] set aside the order as it was not passed by proper officer as per the monetary limit stated in Circular No. 31/05/2018-GST dated 09.02.2018 thus, without jurisdiction.

d) Presence of mens rea is sine qua non for imposing penalty.

(M/s Hindustan Herbal Cosmetics v. State of U.P., Writ Tax No. 1400 of 2019- Allahabad High Court)

Facts:

- The petitioner was supplying cosmetics to a registered dealer with correctly generated tax invoice, bilty and e-way bill.
- The e-way bill had a typographical error in the vehicle number (DL1 AA 3552 instead of DL1 AA 5332).

- The GST Authorities intercepted the vehicle in transit. The seizure order was passed, and penalty was imposed solely due to a typographical error.

Held:

- A minor error without intent to evade tax cannot attract a penalty under the GST Act.
- The Court established the need for "mens rea" (guilty mind) in the form of tax evasion intent for penalty imposition.
- Decision reinforces the well-settled principle that mere technical errors are not sufficient to impose penalty under the CGST Act.
- It emphasizes the importance of considering intent and surrounding circumstances before imposing penalties under CGST Act i.e., the presence of mens rea is a sine qua non for imposing penalty.

Tattvam Comments:

- This decision reinforces the well-settled principle that mere technical errors are not sufficient to impose penalty under the CGST Act.
- It emphasizes the importance of considering intent and surrounding circumstances before imposing penalties under CGST Act i.e., the presence of mens rea is a sine qua non for imposing penalty.
- Further, Hon'ble High Court, Allahabad in Rawal Wasia Yarn Dying (P.) Ltd. v. Commissioner Commercial Tax [2024] 158 taxmann.com 609 (All.) held that penalty cannot be levied on the allegation that Part-B of the e-way bill was not filled as there was no tension to evade tax.

e) Reply submitted by the Assessee must be considered before finalizing the Audit Report

(M/s. PBL Transport Corporation (P.) Ltd v. Assistant Commissioner State Tax, Writ Petition No. 33477 of 2023- High Court of Andhra Pradesh)

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 it.

Held:

- The Court ruled in favor of the petitioner, declaring the final audit report invalid.
- The Court cited Rule 101(4) of the CGST Rules 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.

TATTVAM COMMENTS:

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

f) No interest payable on late filing of GSTR-3B if tax payable amount available in electronic cash ledger

(M/s Eicher Motors Ltd. V. Superintendent of GST and Central Excise, W.P. Nos 16866 & 22013 of 2023- Madras High Court)

Facts:

- The petitioner faced challenges transitioning CENVAT credit into the GST regime.
- Despite filing FORM GST TRAN-01 on October 16, 2017, due to technical glitches and system readiness issues, the accumulated credit did not reflect in the Electronic Credit Ledger.
- Consequently, the petitioner couldn't file **GSTR-3B** for subsequent months from August to December 2017.
- Subsequently, after six years, a recovery notice was issued for alleged belated payment of GST from July to December 2017, demanding interest under **Section 50(1) of the CGST Act** due to the delay in filing **GSTR-3B** returns.
- The Petitioner discharged GST Liability for relevant period by depositing the tax amounts in the Electronic Cash Ledger under the appropriate heads as

CGST, SGST, IGST through the treasury challans in **Form PMT-06** into the Government account within due date for each month.

Held:

- The Court analyzed **Section 39(1) of the CGST Act**, emphasizing that in **GSTR-3B**, it is mandatory to provide details about tax paid. It was clarified that tax payment precedes **GSTR-3B** filing.
- The payment through **GST PMT-06** leads to immediate crediting to the government's account, discharging the tax liability.
- The Court highlighted that this credit occurs not later than the last date for filing monthly returns, as specified in **Section 39(7)**.
- Once the amount is paid by generating **GST PMT-06**, the said amount will be initially credited to the account of the Government immediately upon deposit, at which point, the tax liability of a registered person will be discharged to the extent of the deposit made to the Government. Thereafter, for the purpose of accounting only, it will be deemed to be credited to the ECL as stated in the **Explanation (a) to Section 49(11) of the Act**.
- The Court refuted the notion that tax payment to the government occurs only upon filing **GSTR-3B -** as long as the GST collected is credited to the government's account by the last date for filing monthly returns, tax liability is considered discharged from that date.

TATTVAM COMMENTS:

- The Hon'ble Court placed its reliance on the findings by the Gujarat High Court in the case of **Vishnu Aroma Pouching Pvt Ltd v. Union of India, R/Special Civil Application No. 5629 of 2019,** wherein it was clearly held that if the tax amount has been credited to the Government before the stipulated due date, such payment eliminates the necessity for interest payments.
- 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 interest as compensation does not arise.

- It is crucial to emphasize that if the tax payment through **GST Form PMT-06** is not acknowledged as constituting tax, the corresponding refund cannot be sanctioned under **Section 54(8) of the CGST Act, 2017**.
- The decision does not extend to situations where the tax payable amount is not deposited to the **ECL**, and **GSTR-3B** is also not filed

g) Section 171 of the CGST Act falls within the legislative competence of Parliament under Article 246A of the Constitution

(M/s Reckitt Benckiser India Pvt Ltd v. Union of India, W.P. (C) 7743/ 2019- Delhi High Court)

Facts:

- The Petitioners were directed to pass on the benefit of reduction in tax rate or ITC to its recipients by way of commensurate reduction in prices along with interest.
- The Petitioners challenged the constitutionality of **Section 171 of the CGST Act** on the ground that it exceeded Parliament's legislative competence under **Article 246A of the Constitution of India**.
- Petitioners also challenged the legality of notices proposing penalties on the ground that the penalties cannot be imposed in absence of corresponding specific substantive provisions under the CGST Act.

Held:

- There is a presumption in favor of the constitutionality of a statue, however the same can be rebutted if it exceeds legislative competence, violates fundamental rights, and is arbitrary, unreasonable or vague.
- Section **171 of the CGST Act** falls within the legislative competence of Parliament under **Article 246A of the Constitution** as it deals with the ancillary and necessary aspects of GST.
- Section **171** pertains solely to the indirect tax component of goods and services prices, allowing the suppliers some discretion to set prices based on commercial factors.

- Compliance with **Section 171** lacks a universal methodology. The Act and Rules provide adequate guidance, granting the NAA flexibility in methodology. However, methodology must be fair and reasonable.

TATTVAM COMMENTS:

- Certain 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.

h) Personal hearing is mandatory before passing adverse order as per Section 75 of the CGST Act

(Patanjali Ayurvedic Limited v. State of Madhya Pradesh, Writ Petition No. 8123 of 2023- High Court of Madhya Pradesh)

Facts:

- The Petitioner challenged an order demanding excess ITC without considering submissions of Petitioner and without providing an opportunity of hearing.
- The Authorities argued that hearing was only required if explicitly requested.

Held:

- Personal hearing is mandatory before passing any adverse order under Section 75 of CGST Act, regardless of whether it was requested.
- The word "or" in Section 75(4) indicates that an opportunity of hearing is required to be given even in those cases where no such request is made but adverse decision is contemplated against such person.

TATTVAM COMMENTS:

- This decision is an important precedent with respect to principles of Natural Justice enshrined in Section 75(4) itself.

i) Absence of authenticated documents alone not sufficient to reject GST refund

(Mittal Footcare v. Commissioner of Central Goods and Service Tax, W.P. (C) No. 15518 of 2023)

Facts:

- The Department rejected the application for refund filed by the petitioner for seeking refund of accumulated ITC on the ground that, there was a mismatch of turnover, excess availment, misdeclaration of invoice value, and no supporting documents to disprove the said grounds.
- Aggrieved by the Order, the Petitioner filed an appeal before the Respondent Appellate Authority which was dismissed by the Respondent vide Appellate Order.
- The Petitioner contended that though Petitioner has uploaded the relevant documents, however, the Order states that, the required documents have not been submitted.
- The main issue involved was whether the application for refund should be rejected merely on the ground that the required documents are not supplied?

Held:

- The Hon'ble Court held that the refund cannot be rejected by the Respondent merely on the grounds of non-supply of authenticated documents. The Respondent has the option to call for further clarification or documents as required to satisfy itself that refund is due and payable.

j) SCN cannot be clubbed for different financial years. Limitation period to run independently for each financial year

(M/s Titan Co. Ltd v. Joint Commissioner of GST & Central Excise, Salem, W.P. No. 33164 of 2023 and W.M.P. No. 32855 of 2023- Madras High Court)

Facts:

- The Respondent issued a bunch of SCNs dt. 28.09.2023 for five AYs starting from 2017-18 to 2021-22.

- The Petitioner contended that bunching of SCNs was not allowed under Section 73 of the Act
- The Respondent contended that there is no provision under Section 73 of the Act prohibiting the respondents from issuing bunching of SCN.

Held:

- The limitation period of three years as prescribed under Section 73(10) of the CGST Act would be applicable.
- 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.
- 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.

TATTVAM 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.

k) Limitation period prescribed for filing return within 30 days of assessment order for deemed withdrawal of said order is directory in nature

(M/s Comfort Shoe Components v. Assistant Commissioner, Ambur, Vellore, W.P. No. 34770, 34774 & 34777 of 2023- Madras High Court)

Facts:

- The petitioner was not able to file their returns for the month of December 2022, January 2023, and February 2023 within the prescribed time limit.
- Consequently, the Respondent had passed assessment orders under Section 62 of the CGST Act.
- Subsequently, Petitioner filed monthly returns with delay beyond 30-day time limit provided under Section 62(2).
- The Petitioner filed a writ petition for condonation of delay on the ground of financial difficulties.

Held:

- The idea of implementation of Section 62(2) is to afford an opportunity to the registered person to furnish and file the returns within a period of 30 days from the date of service of assessment order.
- If the registered person was not able to file the returns within a period of 30 days for reasons which are beyond his control, the delay may be condoned upon providing of sufficient reasons by the taxpayer.
- Section 62 permits the person to file their returns within 30 days of passing of assessment order. However, if an assessment order has been made by the respondent at the earliest point of time, this would curtail the legal right of the Petitioner to file returns.
- The limitation of 30 days period prescribed under Section 62(2) of the Act appears to be directory in nature.

TATTVAM COMMENTS:

- The time limit under section 62(2) is directory. If the return is filed even after that date, it will be considered, and the proceedings will be dropped. The right to file returns can't be taken from the taxpayer.

l) Quashed the order wherein demand was confirmed on the basis of company's financials without considering state-specific submissions made by the assessee

(Ingram Micro India Pvt. Ltd v. State Tax Officer, Guindy Assessment Circle, Nandanam, Chennai, Writ Petition No. 594 of 2024- Madras High Court)

Facts:

- The petitioner claimed ITC under Section 16 of the CGST Act. However, a SCN was issued for non-payment to the suppliers for a period exceeding 180 days.
- Despite the Petitioner filing a reply and providing all supporting documents, including the Chartered Accountant's certificate, the order came to be issued based on the total trade payables of the petitioner.
- The Respondent argued that the total trade payables of the company were taken into consideration because the petitioner did not provide a proper break up of net trade payable relating to the State of Tamil Nadu.

Held:

- Under the Companies Act 2013, every company is required to file financial statements in respect of its entire operations and there is no provision for filing State-specific financial statements.
- The petitioner submitted a certificate from a Chartered Accountant stating that the trade payables attributable to the State of Tamil Nadu are Rs.1816.48 million. Further, the Petitioner provided all the invoices issued by the suppliers.
- It was held that the assessing authority has not applied its mind before drawing the conclusions. Therefore, the impugned order was quashed.

TATTVAM COMMENTS:

- This decision will safeguard the taxpayers where GST Authorities arbitrarily press for state specific financial statements when there is no legislative mandate for preparing state specific financial statements under the Companies Act.

m) Opportunity of hearing is a statutory mandate which cannot be violated by the proper officer

(Goutam Bhowmick v. State of West Bengal, MAT 205 of 2023- High Court of Calcutta)

Facts:

- The Petitioner filed a writ petition to quash the order passed under Section 73 of CGST Act on the ground that there is some mismatch between FORM GSTR-7 and GSTR-3B. Subsequently, an SCN was issued.
- The Petitioner was issued a Show Cause Notice however, it failed to specify the date, time, or venue for the personal hearing.
- The Petitioner contended that the assessment order was flawed and it was issued without providing any opportunity of hearing as contemplated under Section 75(4) of the CGST Act.

Held:

- As per Section 75(4) of the CGST Act when the proper officer contemplated an adverse decision against the petitioner, then it was mandatory for the proper officer to afford an opportunity of hearing.
- From the perusal of SCN, it is evident that the proper officer has not afforded an opportunity of hearing to the petitioner as the SCN does not contain any date, time and venue of hearing.
- To afford the opportunity of hearing is a statutory mandate which cannot be violated by proper officer and in the event of violation the order passed by the proper officer cannot be sustained.

TATTVAM COMMENTS:

- This decision provides a relief to the taxpayer and makes it mandatory for the department to provide an opportunity of hearing before passing any adverse order.
- Similar stand has been taken in various cases:
    - ***Alok Steel Industries (P.) Ltd. v. State of Jharkhand [2024] 158 taxmann.com 604 (Jhar.)***
    - ***IJM Concrete Products (P.) Ltd. v. State of M.P. [2024] 158 taxmann.com 695 (M.P.)***

- ***MakeMyTrip (India) (P.) Ltd. v. State Tax Officer [2024] 158 taxmann.com 492 (Mad.)***
- ***A.H. Enterprises v. Deputy Commercial Tax Officer [2024] 158 taxmann.com 220 (Mad.)***
- ***Tata Steel Ltd v. State of Chhattisgarh [2024] 158 taxmann.com 256 (Chhattisgarh)***
- ***K. J. Enterprises v. State of U.P. [2024] 159 taxmann.com 56 (All.)***
- ***Kabita Rath v. Chief Commissioner, C.T. & G.S.T. [2024] 159 taxmann.com 101 (Orissa)***
- ***Joshikaa Enterprises v. Assistant Commissioner (ST) [2024] 159 taxmann.com 187 (Mad.)***

n) Genuine reasons and the Limitation Act to be considered while condoning the delay

(Arvind Gupta v. Assistant Commissioner of Revenue State Taxes, WPA 2904 of 2023- Calcutta High Court)

Facts:

- The Petitioner challenged the order of the Senior Joint Commissioner of Revenue, Jalpaiguri Circle, rejecting the appeal on the grounds of delay.
- The Petitioner contested the rejection of the order wherein the order cited a delay in filing the appeal beyond the statutory four-month limit (Section 107(4) provides for a period of three and six months for filing the appeal along with an additional period of one month). The Petitioner was suffering from carcinoma maxilla and presented sufficient medical reasons for the delay. The Petitioner could not file the appeal within the time frame of 4 months due to medical conditions.
- Appellate authority held that there is no scope under the provisions of CGST Act for condoning the delay beyond four months.

Held:

- Section 107 of the CGST Act does not expressly exclude the applicability of the Limitation Act, 1963.
- Accordingly, discretion provided in Section 5 of the Limitation Act is applicable. This allows the appellate authority to permit an appeal within one month after expiration of limitation period provided sufficient cause of delay is established.
- Accordingly, an impugned order claiming no scope for condoning delay beyond four months is deemed to be flawed.

TATTVAM COMMENTS.

- This decision is in the interest of the taxpayers as it allows consideration of genuine reasons for condonation of delay in filing appeals and applicability of Limitation Act in such cases.
- In the case of **M/s Yadav Steels, Writ Tax No 975 of 2023-Allahabad High Court**, the Hon'ble Court took a contrary view and the Hon'ble Court did not condone the delay of 66 days after the expiry of one month that was condonable under Section 107(4) of the Act. The Hon'ble Court placed reliance in the case of ***Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and others, Civil Appeal No. 5949 of 2019 along with Commissioner of Customs and Central Excise v. Hongo India Private Limited and others, Civil Appeal No. 14467/2007*** wherein it was categorically held that the "***CGST Act is a special statute and a self-contained code by itself". "Section 107 of the Act has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act."***
- The Judgment rendered by the Calcutta High Court in the matter of S.K. Chakraborty & Sons was rendered as having no precedential value as it did not consider the authoritative pronouncements of Singh Enterprises (Supra) and Hongo India (Supra)
- There have been contrary views on the inclusion and exclusion of Limitation Act within the scope of CGST Act. The views rendered by the Hon'ble Court's in the case of Arvind Gupta (Supra) and Yadav Steels (Supra) are testament to the same.

o) Section 161 of the CGST Act only allows rectification of errors on the face of it without extensive reasoning

(Sajal Kumar Das v. State of West Bengal, MAT 2475 of 2023- High Court of Calcutta)

Facts:

- The Petitioner filed a writ petition against the order passed by the Revenue Department after rectification of errors w.r.t. scope of powers enumerated under Section 161 of the CGST Act for rectification of errors.

Held:

- As per Section 161 of the CGST Act, the Department should be able to point out the error which is apparent on the face of record for rectification.
- The language of Section 161 is in line with Order 47 Rule 1 of the Code of Civil Procedure, providing for the review of an order based on a mistake or error apparent on the face of the record.
- Review jurisdiction is limited, and the reviewing authority must point out an error apparent on the face of the record without engaging in lengthy reasoning.
- The Appellate authority cannot rewrite its earlier order pursuant to rectification application filed under Section 161.

TATTVAM COMMENTS:

- This judgment underscores the scope and limitations of Section 161 which only allows rectification of errors that are apparent on the face without extensive reasoning.
- Hon'ble High Court, Kerela ***in Sakkeena.C v. State Tax Officer [2024] 158 taxmann.com 361 (Ker.)*** held that rectification cannot result in review and is permissible only when there are errors apparent on the face of the record, in a situation where SCN was contested. When SCN was not contested, resultant order passed assumes the nature of an agreed order and rectification application will not lie to correct a factual mistake therein.

p) Notice issued for in SLP challenging constitutional validity of anti-profiteering provisions

(M/s Excel Rasayan (P.) Ltd. V. Union of India, SLP (c) No. 003112 of 2024- Supreme Court)

Facts:

- Petitioner filed the present SLP, challenging the judgment of Delhi High Court wherein constitutionality of anti-profiteering provisions has been upheld.
- The High Court ruled that Section 171, CGST Act as well as Rules 122, 124, 126, 127, 129, 133 and 134 of CGST Rules are constitutionally valid.
- However, HC clarified that in case of arbitrary enlargement of scope of anti-profiteering proceedings on account of non-consideration of genuine basis of variations, remedy is to set aside such orders on merits.

Held:

- Notice was issued. However, it was provided that the same shall not affect the disposal of the main petition before the High Court.
- There has been a call for the National Anti-Profiteering Authority to outline a methodological framework, aligning with the CGST Act, while addressing potential legislative misuse and providing clarifications to rectify exploitable loopholes in the anti-profiteering provisions in GST.

TATTVAM COMMENTS:

- There has been a call for the National Anti-Profiteering Authority to outline a methodological framework, aligning with the CGST Act, while addressing potential legislative misuse and providing clarifications to rectify exploitable loopholes in the anti-profiteering provisions in GST.
- Issuance of notice by SC is a significant step in the context of the final determination of the issue before the highest judicial forum.

q) Taxability of expatriate's salaries may be relied upon by use of Northern Operating Systems Judgment and CBIC Instruction No. 5/2023- GST

(M/s Mercedes Benz India Private Ltd v. Union of India, Writ Petition No. 1679 of 2024- Bombay High Court)

Facts:

- Petitioner contested the imposition of GST on the salaries paid to expatriates seconded to it from its foreign group entity.
- Petitioner argued that **CBIC Instruction No. 5/2023 – GST dated 13.12.2023** was not considered when the authorities passed the impugned order.
- Comparative analysis presented by the petitioner to distinguish its position from the Supreme Court decision **in C.C., C.E. & S.T. Bangalore vs. M/s. Northern Operating Systems Pvt. Ltd., Civil Appeal No. 2289-2293 of 2021**, Judgment dt. 19.05.2022).

Held:

- The Bombay High Court has granted a stay on the impugned order.
- The stay order part of ongoing disputes on taxability of expatriates' salaries, may be relied upon in cases of revenue's broad use of the Northern Operating Systems judgment, and further emphasizing the necessity of examining unique facts in each case per CBIC Instruction No. 5/2023-GST.

TATTVAM COMMENTS:

- The stay order, part of ongoing disputes on taxability of expatriate's salaries may be relied upon in cases of revenue's broad use of the Northern Operating Systems judgment, and further emphasizing the necessity of examining unique facts in each case as per CBIC Instruction No. 5/2023- GST.

r) No penalty is imposable for technical breaches like incorrect address of consignee's location in E-way bill

(M/s Hawkins Cookers Ltd. V. State of U.P., Writ Tax No. 739 of 2020- Allahabad High Court)

Facts:

- Hawkins Cookers Limited, a pressure cooker manufacturer, filed for a writ to annul penalty and appeal orders related to discrepancies in E-Way bills.
- The company faced issues when raw materials were incorrectly documented with the wrong address of the consignee's location, stating the petitioner's business location in Kanpur instead of its manufacturing facility in Satharia, Jaunpur.

Held:

- The Allahabad High Court emphasized that tax collection should be done seamlessly, likening it to honeybees collecting honey without disturbing petals.
- The Court noted that the incorrect address in the E-Way bills was a technical breach, and the petitioner's explanation regarding the supplier's mistake was reasonable.
- The Court found the penalty imposed to be without any legal basis, as the invoices and bilties were compliant with law, and the error in the E-Way bills did not indicate tax evasion.

TATTVAM COMMENTS:

- The decision emphasizes a balanced approach to tax enforcement, aligning with contemporary needs for efficient revenue management.
- The Court has held that no penalty is imposable for technical breaches, like E-Way bill discrepancies, acknowledging the evolving nature of digital transactions, and demonstrating a pragmatic approach in such cases without implying tax evasion.

s) Transfer of development rights amounts to supply of service and is leviable to GST

(M/s Prahitha Construction (P) Ltd v. Union of India, Writ Petition No. 5493 of 2020- Telangana High Court)

Facts:

- The petitioner is a commercial real-estate developer who filed a writ petition for a direction to classify the transfer of development rights under a JDA as sale of land, not leviable to GST.
- The petitioner challenged the constitutionality of N.N. 4/2018 – C.T. (R.) dt. 25.01.2018, amended by N.N. 23/2019 – C.T. (R.) dt. 30.09.2019.

Held:

- Petitioner's claim rejected on the ground that a JDA comprises two distinct parts, involving an agreement between the landowner and the Petitioner and the supply of construction services.
- The Court highlighted that ownership does not get transferred to the Petitioner under the JDA but to the purchaser post-project completion with a completion certificate.
- The Court clarified that neither the JDA nor the transfer of development rights implies an immediate transfer of ownership in land, affirming that services provided under JDA by the landowner to the petitioner will be chargeable to GST.
- The Court dismissed the challenge to the validity of the Notification, considering it without merit.

TATTVAM COMMENTS:

- The Judgment is a significant precedent and reaffirms the taxability of transfer of development rights.

t) Provisional attachment of bank accounts by GST Department without insufficient evidence of tax evasion not sustainable

(M/s. Kaleidoscope v. State of West Bengal, MAT 90 of 2024 with IA No. CAN 1 of 2024- Calcutta High Court)

Facts:

- The appellant filed an intra-court appeal against the dismissal of the writ petition (WPA 29214 of 2023) on disputed factual questions.

- SCN under Section 74(1) of WBGST Act was pending adjudication. The Appellant responded timely but 13 provisional orders were issued, thereby attaching all bank accounts causing a halt in business activities of the appellant.

Held:

- The Court found the provisional attachment of all bank accounts to be harsh, especially considering that the SCN was yet to be adjudicated. There was no evidence of an attempt by the appellant to evade tax.
- Further, the appeal was allowed and all provisional attachment orders in FORM GST DRC 22 were directed to be revoked, allowing the appellant to resume business activities and operate bank accounts.
- Respondent was directed to conclude the adjudication of the SCN within three weeks.

TATTVAM COMMENTS:

- The judgment is an important precedent in cases where bank accounts are provisionally attached by GST Department even with insufficient evidence of tax evasion and during the pendency of SCN adjudication.

u) Directed to reinstated registration and reopened the portal for settling dues within a stipulated time frame

(M/s Sumanta Ghosh v. State of West Bengal, WPA 2158 of 2024- Calcutta High Court)

Facts:

- The petitioner's GST registration was cancelled due to non-filing of returns.
- The petitioner asserted that post registration cancellation, all outstanding liability has been paid and they are willing to clear any remaining dues for restoration of registration.

Held:

- The Respondent was directed to reinstate the petitioner's registration and reopen the portal for a specified 30-day period.
- The Petitioner was additionally given seven working days to settle any indicated outstanding revenue and the failure to do the same empowered the respondent to block the portal again and cancel the registration.

TATTVAM COMMENTS:

- The Court recognized the petitioner's commitment to settling outstanding revenue while granting relief.
- The directive to reinstate registration and reopen the portal, with a provision for settling dues within a stipulated timeframe, indicates a positive judicial approach to protect the rights of the taxpayers.

v) Cancellation of registration with non-application of mind not sustainable

(M/s Ansal Hi-Tech Town Ships Limited v. State of UP, Writ Tax No. 153 of 2024- Allahabad High Court)

Facts:

- The Petitioner challenged the order for the cancellation of their registration and the subsequently, the said cancellation was confirmed vide order.
- The Petitioner contended that the cancellation order lacked proper application of mind, citing discrepancies in the notice and an apparent absence of reasons for cancellation.

Held:

- The Court identified discrepancies in the cancellation of order, specifically noting a contradiction in recording the petitioner's reply in the show cause notice.
- The Court set aside the cancellation of order, emphasizing lack of application of mind and instructed the adjudicating authority to proceed afresh.

TATTVAM Comments:

- The decision is an important precedent for cases where registration is cancelled without application of mind.
- Similar stand has been taken in various cases wherein the notice/ SCN/ order for cancellation of registration were vague and thus, invalid:
  - ***Sant Ram v. Delhi State GST [2024] 158 taxmann.com 253 (Delhi)***
  - ***Akshar Enterprise v. State of Gujarat [2024] 158 taxmann.com 123 (Guj.)***
  - ***Shree Shyam Metals v. CGST [2024]158 taxmann.com 144 (Delhi)***
  - ***Kundan Impex v. Principal Commissioner of Department of Trade and Taxes [2024] 158 taxmann.com 300 (Delhi)***
  - ***Hello Plastic (P.) Ltd. v. Commissioner, Delhi GST [2024] 158 taxmann.com 587 (Delhi)***
  - ***My Trading Overseas v. Commissioner Delhi Goods & Service Tax [2024] 158 taxmann.com 558 (Delhi)***
  - ***Pankaj Plastic v. Commissioner of Delhi Goods & Service tax [2024] 159 taxmann.com 261 (Delhi)***
  - ***NP Trading Co. v. Commissioner of GST [2024] 159 taxmann.com 417 (Delhi)***
  - ***Sachin Kaushal v. State of U.P. [2024] 159 taxmann.com 658 (All.)***
  - ***Iron Style v. Additional Commissioner (Appeals) [2024] 159 taxmann.com 687 (All.)***

w) Administrative actions cannot be manifestly arbitrary and due consideration should be given to the taxpayers to present their case

(Oswal Agencies (P.) Ltd v. Union of India, W.P. (C) 208/2024 & CM Appls. 977/2024- Delhi High Court)

Facts:

- The Petitioner challenged the adjudication order passed under Section 73 of CGST Act.
- The Adjudication order deemed the Petitioner's reply to the SCN improper, without providing any reasons.

Held:

- The Court noted that the impugned order lacks reasons and fails to consider the petitioner's reply, highlighting its cryptic nature.
- The Court remitted the matter for a fresh speaking order, directing the proper officer to consider the petitioner's reply and grant a personal hearing.

TATTVAM COMMENTS:

- Noting a lack of proper consideration of the petitioner's reply, the Court emphasized the importance of detailed reasons in administrative orders. The decision reaffirms the established principle of law that administrative actions cannot be manifestly arbitrary and due opportunity should be given to the taxpayers to present its case.
- **Similar stand has been taken in various cases:**
  - ***Eden Real Estates (P.) Ltd. v. Senior Joint Commissioner of Revenue [2024] 159 taxmann.com 540 (Cal.)***
  - ***VS Scs Global Freight Solutions Ltd. v. Assistant Commissioner (ST) [2024] 159 taxmann.com 726 (Mad.)***
- Mere recording of conclusion "reply not satisfactory/ acceptable" without any reasoning to support such conclusion not enough:
  - ***A.D. Jeyaveerapandia Nadar & Bros. v. State Tax Officer [2024] 159 taxmann.com 413 (Mad.)***
  - ***Max Healthcare Institute Ltd. v. Union of India [2024] 160 taxmann.com 339 (Delhi)***

x) ITC claim cannot be rejected merely on the ground that said ITC was not availed in GSTR-3B where said ITC was reflecting in GSTR-2A and availed in GSTR-9

(M/s Sri Shanmuga Hardwares Electricals v. State Tax Officer, W.P. Nos. 3804, 3808 & 3813 of 2024- Madras High Court)

Facts:

- The petitioner, dealing in electrical products and hardware, had claimed ITC for FY 2017-2018, 2018-2019, and 2019-2020.
- The petitioner's NIL returns in GSTR-3B filings led to separate assessment orders rejecting the claims solely on this basis even though ITC was reflecting in GSTR 2A and was claimed in GSTR-9 returns.

Held:

- The High Court emphasized that when a registered person asserts eligibility for ITC using GSTR-2A and GSTR-9 returns, the assessing officer should thoroughly examine the claim by considering all relevant documents, rather than solely relying on GSTR-3b returns.
- The rejection of the claim based solely on the absence of ITC claims in GSTR-3B returns was deemed insufficient and warranted interference.
- This pronouncement is landmark as it emphasis significant principles that may be equally applicable to cases of mismatch between ITC as per GSTR 2A and GSTR-3B

TATTVAM COMMENTS:

- Landmark decision which emphasis significant principles that may be usually applicable to cases of mismatch between ITC as per GSTR-2A and GSTR-3b

y) ITC cannot be denied solely on the ground of not proving the existence of supplier

(M/s Engineering Tools Corporation v. Assistant Commissioner, WP No. 3305 of 2024- Madras High Court)

Facts:

- The petitioner challenged the order directing reversal of ITC following the retrospective cancellation of the supplier's GST registration.
- The petitioner's petition was rejected by the impugned order despite presenting evidence such as tax invoices, e-way bills, transport documents, and proof of payment for goods purchased in 2017-2018.

Held:

- The Court deemed the rejection of petitioner's contentions solely on the ground of not proving the existence of the supplier as unsustainable. Consequently, the assessment order was quashed, remanding the matter for reconsideration.

TATTVAM COMMENTS:

- The decision may be relied upon by the taxpayers in cases where the ITC is denied even after establishing the genuineness of all the relevant documents.
- Welcome decision considering the ever-increasing number of investigations alleging wrongful availment of ITC solely based on non-existence of supplier arty where burden of providing the genuineness of transaction is entirely placed on the recipient.
- However, Hon'ble High Court, Kerela in Karumpelil Medicals v. Assistant Commissioner [(2024) 159 taxmann.com 191 (Ker.)] denied ITC holding that the burden of proof casted under the provision of Section 155 was not discharged as petitioner did not produce proper purchase invoices i.e., invoices with GSTIN, seal of supplier etc.
- Further, Hon'ble High Court, Calcutta in ***Laxmi Traders v. Assistant Commissioner of State Tax [(2024) 159 taxmann.com 172 (Cal.)]*** set aside the order holding that the authority before proceeding against the buyer for non-payment of tax by the seller, should first proceed against the seller and only if exceptional circumstances, the buyer can be proceeded against.

z) The tax authorities must adhere to the established principles and precedents

(M/s Samsung India Electronics Private Limited v. State of U.P., Writ Tax no. 777 of 2022 with Writ Tax No. 660 of 2023)

Facts:

- The petitioner had filed a refund claim of unutilized ITC of tax paid on various inputs and input services for the period of April 2019 to June 2019 on account of zero-rated supply of services made by it which was allowed by the Department.
- The Petitioner then filed for refund of unutilized ITC of tax for the period July – Sept. 2019 and Oct. – Dec. 2019 for the zero-rated supplies made by it during the subsequent period, which was rejected on the ground that such goods are 'capital goods' and not 'inputs'.

Held:

- The Court observed that the refund claims arising from precisely similar facts and circumstances for previous and subsequent assessment periods were duly sanctioned. 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.
- The 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.
- The Writ Petition was allowed, and the refund rejection order was set aside.

TATTVAM COMMENTS:

- The Supreme Court has consistently emphasized in ***Birla Corpn. Ltd. v. CCE , Indian Oil Corporation Ltd. v. CCE , Bharat Sanchar Nigam***

Ltd. v. Union Of India 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

aa) Allowed rectification of inadvertent errors made while filing GSTR-1

(Anvita Associates v. Union of India, W.P. 602 of 2024)

Facts:

- The petitioner requested for rectification of inadvertent errors made while filing GSTR-1 as the demand was on account of said inadvertent errors.

Held:

- The Court considered the precedent set in the Star Engineers case, emphasizing the need for recognizing inadvertent errors and permitting rectification when there is no loss of revenue to the government.
- Accordingly, allowed the petitioner to file a rectification application for GSTR-01, either online or manually, within four weeks.

TATTVAM COMMENTS

- This decision of the Hon'ble Bombay High Court sets a precedent for rectifying inadvertent errors in GST filings. Assessees facing similar challenges can seek rectification within the legal framework.
- This judgment emphasizes the importance of recognizing genuine errors and resolving disputes between parties, ensuring a fair and just application of GST regulations.
- Similar stance was taken in the case of ***Akshaya Building Solution v. Assistant Commissioner of CGST & Central Excise, W.P. No. 11526 of 2023*** and ***Railroad Logistics (India) Pvt. Ltd v. Union of India, W.P. (L) No. 2429 of 2021***.

bb) No further action shall be taken if the explanation furnished by the taxpayer to ASMT-10 is found satisfactory

(M/s Radiant Cash Management Services Ltd. v. The Assistant Commissioner, W.P. No. 2981 of 2024 and W.M.P. Nos 3246 & 3247 of 2024)

Facts:

- Petitioner received notice in Form ASMT-10 alleging discrepancies which was replied by the petitioner on 22.09.2023. Thereafter, an order dt. 27.09.2023 was issued in Form ASMT-12 dropping the proceedings upon being satisfied with the petitioner's explanation.
- SCN dated 22.09.2023 was issued prior thereto which petitioner replied on 18.10.2023 and pointed out that the issues were dropped vide Form ASMT-12 dt. 27.09.2023.
- SCN was adjudicated on 29.12.2023 against the assessee.

Held:

- The GST authorities had accepted petitioner's reply dated 22.09.2023 and recorded that no further action was required in the matter.
- Consequently, order dated 29.12.2023 was held to be unsustainable.
- Confirmation of demand relates to same assessment period and the same tax amounts. The only difference is that of interest and penalty.

TATTVAM COMMENTS:

- Section 61 of CGST Act deals with scrutiny of returns for verification. Notice for scrutiny is required to be issued and if the taxpayer's explanation on discrepancies pointed out is found to be satisfactory, no further action "shall" be taken as per Section 61(2). However, SCN was issued a few days before closure of scrutiny.

cc) Parallel Proceedings for the same period under the CGST/SGST Act is not permissible.

(Subhash Agarwalla v. State of Assam, WP(C)/683/2024)

Facts:

- The petitioner was subjected to two demand cum Show Cause Notices, one under the SGST Act and another under the CGST Act for the financial year 2017-2018.
- Both notices questioned the Input Tax Credit (ITC) availed and utilized by the petitioner, alleging it was inadmissible as per Section 16(4) of both Acts. Following these notices, orders-in-original were passed by the respective authorities under the CGST and SGST Acts.
- The petitioner's main contention was based on Section 6 of both the CGST and SGST Acts, which essentially precludes the initiation of parallel proceedings for the same period under both acts.

Held:

- The Guwahati High Court, upon reviewing the matter, highlighted the importance of Section 6 in maintaining procedural coherence between the CGST and SGST Acts.
- The Court observed that as per Section 6(2) of the CGST/SGST Act, once a proceeding is initiated either of the above two acts, another proceeding for the same period under the other Act is not to be initiated, thereby the operation of the Order in Original passed by the department was suspended till the returnable date.

TATTVAM COMMENTS:

- This judgment is a critical reminder of the need for tax authorities to adhere strictly to the legislative provisions, ensuring that taxpayers' rights are protected while maintaining the integrity of the tax system.
- Similar stand was taken by Hon'ble Calcutta High court in **Mahabir Prasad Kedia v. Assistant Commissioner of State Tax [(2024) 159 taxmann.com 752 (Cal.)].**

dd) The taxpayer in order to seek release of the goods must invoke the provisions of the CGST Act to seek release of the goods as per Section 67(6) of CGST Act

(M/s Kanak Timber House & Anr. v. Assistant Commissioner of Sales Tax, WPA 4729 of 2024)

Facts:

- On 25.03.2023, after initiation of search and seizure procedure in terms of first proviso to Section 67(2) of CGST Act, a prohibitory order was issued and on 26.12.2023 a notice under Section 122 of the CGST Act was issued. Subsequently, on 26.12.2023, a notice under Section 122 of the CGST Act was issued.
- The petitioner directly challenged prohibitory order under Section 67(7) (i.e. time limit for issuance of notice) and did not opt for provisional release as per Section 67(6) of CGST Act.

Held:

- The Hon'ble Supreme Court in **State Of Uttar Pradesh v. Kay Pan Fragrance Pvt. Ltd. [2019 (12) TMI 95]** was referred wherein it was held that the assessee to seek release of goods must take recourse the provision 67(6) of CGST Act.
- Assesee did not approach the respondents under Section 67(6) of CGST Act. However, there is no reason for the Court to interfere at this stage. Therefore, if any application is made by the assessee with the respondent in terms of Section 67(6) of the CGST Act, same shall be considered in accordance with law.

TATTVAM COMMENTS:

- In an earlier judgment, the Supreme Court held that the taxpayer should take recourse of Section 67(6) of CGST Act and seek provisional release.
- The Court had gone into the issue as to the effect of not issuing any notice within six months from the date of seizure. As per Section 67(7),

if such notice is not issued within the prescribed period**, the** seized goods shall be returned to the person concerned.

- There is no hierarchical application of sub-Sections of **Section 67 of CGST Act**. Therefore, taxpayer can challenge non-issue of notice within time without seeking provisional release of goods.

ee) The benefits of pre-GST regime schemes shall be allowed in GST regime

(M/s Adani Wilmar Limited & anr. v. The State of West Bengal, WPA No. 8525 of 2023)

Facts:

- The petitioner opted for West Bengal State Support for Industries Scheme, 2008 floated by the respondent authorities and was granted the benefits under the same in Pre-GST regime.
- However, after having disbursed a portion of the dues of the said petitioner under the scheme till September 1, 2017, the respondent authorities refused to disburse the rest of the amount of the scheme on the plea that in the altered GST regime, the scheme cannot be continued, since the scheme did not contemplate of such tax.

Held:

- The doctrine of promissory estoppel is squarely applicable in the present case.
- The concession given by the scheme has been accepted by the petitioners and the petitioners are acting on the said promise of the State and continued commercial production for a considerable time.
- A scrutiny of Clause 19.2 of the subsidy scheme indicates that in the event of the West Bengal Value Added Tax Act, 2003 "being replaced by any other Act", the provision of the Scheme will apply mutatis mutandis even after the new Act comes into force. The GST Law had subsumed all Indirect Taxes including VAT Act. Thus, it was held that the benefit should be extended to the petitioner event after GST came into force.

- The respondents were directed to disburse the balance amount of the claim of Rs.4070 lakhs under the incentive scheme in favour of the petitioners.

TATTVAM COMMENTS:

- The benefits of schemes availed in pre-GST regime should be allowed even in GST regime, generally, subject to any contrary statutory mandate.
- However, considering the contrary decisions on this issue, it is doubtful that the issue will attain finality in favour of the assesses

ff) Taxpayers are entitled to interest on delayed refunds

(M/s. Raghav Ventures v. Commissioner of Delhi GST, W.P.(C) 12209/2023 & CM APPL 47988/2023)

Facts:

- Writ Petition was filed seeking direction to respondent to grant the total IGST refund for December 2022, February 2023, March 2023 and May 2023 with interest in terms of Section 56 of DGST/CGST Act.
- IGST refund was sanctioned without interest. Therefore, the issue before the Court was whether the Petitioner was entitled for interest on the tax amount even though he had not demanded it.

Held:

- No justification has been shown by the respondents for the delay in payments of refunds within the stipulated period.
- Thus, even though the petitioner may not have claimed interest in its refund applications, the claim of interest cannot be denied under Section 56 of the Act as the same is mandatory and payable automatically in terms of the provisions of the Act.
- Petitioner is entitled to statutory interest at the rate of 6% starting from the date immediately after the expiry of 60 days from date of receipt of refund applications till the date on which the refund is credited to bank account of petitioner.

TATTVAM COMMENTS:

- By upholding taxpayers' entitlement to interest on delayed GST refunds, the Court underscores the importance of the fundamental principle of fairness in tax administration.

gg) The Court cannot interfere in the domain of the legislature

(Tenet Networks Private Ltd. v. GST Council, Writ Tax No. 361 of 2024)

Facts:

- Notification No. 53/2023-Central Tax was issued in which time to file appeal under Section 107(1) was extended to 31.01.24 but for the order passed under Section 73 and 74 only.
- Writ was filed with a plea that Section 129 and 130 should also be included under the above notification.

Held:

- The Court cannot direct Central Government to add Section 129 and 130 in subject notification. However, Government can independently consider adding these provisions.
- Therefore, CBIC and GST council was directed to look into the matter.

TATTVAM COMMENTS

- The decision is in line with the previous jurisprudence on the subject wherein Court has refused to interfere in legislatures domain.

hh) Appropriate opportunity of hearing must be provided to the taxpayer along with effective acknowledgement of their replies in the proceedings

(M/s Suresh Kumar Jain v. Sales Tax Officer Class II Avato, W.P. (C) 3558/2024)

Facts:

- The petitioner was served with SCN dt. 26.09.2023
- A Detailed reply dt. 22.10.2023 was filed with respect to the SCN dt. 26.09.2023.
- However, Impugned order dated 29.12.2023 was passed without taking into consideration the reply submitted by the petitioner and was challenged.

Held:

- The Proper officer had to at least consider the reply on merits and then form an opinion whether the reply was not satisfactory.
- Even if reply was not satisfactory, further details could have been demanded.
- Therefore, the impugned order dt. 29.12.2023 was not sustainable.

ii) Personal hearing under Section 73(9) of the CGST Act is a necessity

(M/s Devlok Distributors v. Union of India, Writ Tax No. 54 of 2024)

Facts:

- The Petitioner challenged a tax determination order dated 29.12.2023 issued under Section 73(9) of the CGST/SGST Act.
- The Petitioner argued that the order was passed solely based on their representation without granting them an opportunity for oral hearing, alleging a violation of the principles of natural justice.
- The Petitioner sought relief from the Court, emphasizing the discretionary power of the High Court under Article 226 of the Constitution of India to issue writs, especially in cases where there is a complete lack of jurisdiction, violation of principles of natural justice, or where fundamental rights are at stake.

Held:

- The Court acknowledged the necessity of a personal hearing even under Section 73(9) of the CGST/SGST Act.
- The impugned order was set aside, and the matter remanded to appropriate authority for fresh order after providing the petitioner with an opportunity for personal hearing.

TATTVAM COMMENTS:

- The Court in the said judgment has followed the principle that while determining the tax opportunity of personal hearing is required.
- The Court has also referred to various judgments such as ***Himmatlal Harilal Mehta v. State of Madhya Pradesh, AIR 1954 SC 03, Collector of Customs v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506, Collector of Customs & Excise, Cochin & Ors. vs A. S. Bava, AIR 1968 SC 13 wherein*** the said principle has been repeatedly confirmed.

jj) Retrospective cancellation of GST registration must be based on reasonable grounds and should not be based on mechanical or irrelevant reasons

(Krishan Mohan v. Commissioner of GST, W.P. (C) No. 3597/2024)

Facts:

- The Petitioner's GST registration was cancelled retrospectively without specifying any reason.
- The Petitioner, being the legal heir of the registered person challenged the retrospective cancellation of the GST registration.
- A show cause notice was issued prior to the impugned order which made no reference to retrospective cancellation wherein it was indicated that returns were not filed for a continuous period of six months.

Held:

- The Hon'ble High Court noted that neither the Show Cause Notice nor the Impugned Order contained reasons for the retrospective cancellation.
- It was observed that while Section 29(2) of the Act empowered the proper officer to cancel GST registration with retrospective effect, the same could not be done on a mechanical basis.

- The Court further held that merely because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

TATTVAM COMMENTS:

- The decision highlights that retrospective cancellation of GST registration must be based on reasonable grounds and should not be based on mechanical or irrelevant reasons.
- Further, Hon'ble High court, Delhi in ***Hari Om Metals v. C.C. GST [(2024) 158 taxmann.com 605 (Delhi)]*** held that retrospective cancellation results in denial of ITC to recipients of tax payer, therefore, registration should be cancelled with retrospective effect only where such consequences are intended and are warranted.
- Failure to furnish return for 6 months not a reason for retrospective cancellation of registration:
  - ***Shree Balaji Transport v. Commissioner of Central Tax [(2024) 159 taxmann.com 41 (Delhi)]***
  - ***Deepali Kapoor v. Avato Ward-63, State Goods & Services Tax [2024] 159 taxmann.com 157 (Delhi)***
  - ***Pankaj Plastic v. Commissioner of Delhi Goods & Service tax [2024] 159 taxmann.com 261 (Delhi)***
- GST registration cannot be cancelled retrospectively without providing proper reasons for the same:
  - ***Sri Krishan Traders v. Principal Commissioner of Goods and Service Tax [2024] 159 taxmann.com 380 (Delhi)***
  - ***Kwatra Auto Industries v. Commissioner of Delhi Goods and Services Tax [2024] 159 taxmann.com 751 (Delhi)***
  - ***Green Work Metal v. Principal Commissioner of GST [2024] 159 taxmann.com 578 (Delhi)***
  - ***Deepak Trading Co. v. Government of NCT of Delhi [2024] 159 taxmann.com 416 (Delhi)***

- ***Friends Media Add Company v. Principal Commissioner of Goods and Service Tax [2024] 159 taxmann.com 781 (Delhi)***
- ***RR Balaji Ad v. Commissioner of SGST Delhi [2024] 160 taxmann.com 701 (Delhi)***
- ***Manisha Gupta v. Union of India [2024] 160 taxmann.com 609 (Delhi)***
- ***Manish Anand v. Avato Ward-45 State Goods and Services Tax [2024] 160 taxmann.com 429 (Delhi)***
- ***Ganesh Sales Corporation v. Union of India [2024] 160 taxmann.com 425 (Delhi)***

kk) Intension to evade tax mandatory for invoke proceedings u/s 129(3) of the CGST Act

(M/s Tiwari Furniture's v. State of West Bengal & Ors, W.P.A. 365 of 2024)

Facts:

- Writ petition was filed challenging physical inspection, detention, penalty orders, and related proceedings.
- The Petitioner purchased M.S. scrap wherein the tax was paid by seller.
- The Goods were transported to petitioner's office in West Bengal by third-party transportation agency with all required documents.
- The Goods were intercepted by respondent despite valid documentation.

Held:

- It was held that in order to invoke proceedings u/s 129(3) of the CGST Act, intention to evade tax is mandatory.
- As per Rule 138A of the CGST Rules, the person in charge of the conveyance shall carry (a) the invoice or bill of supply or delivery challan and (b) a copy of the e-way bill or the e-way bill number.
- In this case, the transporter was carrying all the requisite documents as required in law at the time of carrying the goods.

- The seller had already made payment towards his tax liability. Thereby, there is no question of any evasion of tax liability.

TATTVAM COMMENTS:

- Recognizing the petitioner's adherence to documentation requirements set out in the CGST Act, the Court underscores the importance of procedural compliance in tax matters.
- This analysis highlights the role of proper record-keeping and adherence to statutory obligations in safeguarding taxpayers' rights and preventing unwarranted penalties.

II) A taxpayer's claim cannot be rejected without proper consideration of their response to the notice

(M/s Ethos Limited v. Assistant Commissioner Department of Trade and Taxes, W.P.(C) 3797/2024 & CM. APPLS 15591/2024, 15592/2022)

Facts:

- There was a Violation of principles of natural justice due to the impugned order disregarding the petitioner's reply and being cryptic.
- The SCN categorized various issues regarding declaration of output tax, ITC, and ineligible ITC.
- The Petitioner submitted a detailed reply addressing each issue raised in SCN.
- Impugned failed to consider petitioner's reply adequately, merely stating it as unsatisfactory without proper examination or request for further clarification.

Held:

- The Proper Officer's observation regarding the petitioner's reply unsustainable, as it lacked proper consideration.
- The Lack of opportunity for the petitioner to clarify or provide additional documents further undermined the fairness of the adjudication process.

- The matter was remitted back to the Proper Officer for re-adjudication, with a direction to consider petitioner's response, seek clarification if necessary, and provide a fresh order within prescribed time under Section 75(3) of the Act.

TATTVAM COMMENTS:

- The Court observed that rejecting a taxpayer's claim without proper consideration of their response violates procedural fairness.
- This ruling is in line with other similar rulings of various courts.

mm) Right to fair hearing must be provided before demanding payment of tax/interest/ penalty

(M/s SL Lumax Limited v. Deputy Commissioner of State Taxes-II, W.P.Nos 5066,5067, 5070 & 5071 of 2024)

Facts:

- The taxpayer, a member of the automobile industry, received a SCN regarding the classification of the products. The SCN alleged that the goods manufactured by the petitioner were classifiable under Chapter Heading 8708 and not under **Chapter Heading 8512.**
- The taxpayer did produce material in support of the classification adopted but, in the writ petition it urged that the impugned show cause notices are a demand for payment and hence it could not hope for a fair adjudication.

Held:

- The High Court considered the SCN indicative of pre-judgment because the taxpayer was not given an opportunity to show cause why the amounts were not payable but was directly asked to pay.
- The Court also opined that while ordinarily it would not interfere at the stage of SCN, the same was warranted in this case and directed the officer to adjudicate the issue after taking into consideration the submissions of the taxpayer.

nn)Limitation Act is applicable on GST as well

(M/s Rana Engineering v. Union of India & Ors, Writ Tax No. 6387 of 2023)

Facts:

- In this case, the Petitioner didn't file the returns for a continuous period of more than six months.
- Consequently, an SCN was issued, and after finding that the justifications provided by the Petitioner to be unsatisfactory, the Petitioner's GST registration was cancelled.
- The Petitioner filed an appeal which was rejected on the grounds of limitation.

Held:

- A bare perusal of Section 107 would reveal that in the conditions mentioned under sub-sections 3 and 4, the appellate authority may extend the period of three months by another three months and also by another one month.
- It is quite apparent that in appropriate cases an appeal under section 107 can be filed within a period of seven months.
- The appellate authority could have alternatively granted opportunity to the petitioner-firm to approach the appropriate authority under Section 30 for revocation of cancellation of registration.
- In this regard, it was observed that Section 14 of the Limitation Act, 1963 provides exclusion of time spent in prosecuting the matter in wrong forum. This is admitted at the bar that the application of the Limitation Act is not excluded in the GST Act and, therefore, the benefit under section 14 shall be available to the petitioner-firm, if necessary.

TATTVAM COMMENTS:

- The Writ Petition was allowed.
- This decision of Hon'ble Jharkhand High Court cements the position of law that the Limitation Act is applicable in the GST Act as well.
- In categorical terms, this decision has provided for the limitation period for filing an appeal under section 107 of the CGST Act.

- This decision is likely to be challenged as the Hon'ble Court has acted beyond the scope of Law.

oo) Issue of levy of GST on residential accommodation should be viewed from the perspective of recipient of service and not from the perspective of the service provider

(Thai Mookambikaa Ladies Hostel v. Union of India & Ors, W.P.No.28486 of 2023)

Facts:

- The Petitioner was running women hostels by providing hostel accommodation services. It applied the advance ruling to determine the taxability of hostel accommodation services.
- The Authority for Advance Ruling (AAR) held that services by way of providing hostel accommodation supplied by the petitioner would be taxable at the rate of 18%.
- Being aggrieved, the petitioner filed an appeal against the ruling and contended that the services provided by leasing out residential premises as hostels to students and working professionals would be exempted from GST, however the Appellate Authority for Advance Ruling (AAAR) upheld the order of AAR.
- Being aggrieved, the petitioner filed writ petition against the order of AAAR.

Held:

- The Hon'ble Madras High Court noted that the students would use the hostel for the purposes of residence, and the imposition of GST on hostel accommodation should be viewed from the perspective of the recipient of service.
- Further, it was held that since renting out hostel rooms to girl students and working women by petitioners is exclusively for residential purposes, the condition prescribed in the Notification in order to claim exemption, viz., 'residential dwelling for use as a residence' has been fulfilled by petitioners and, thus, said services are covered under Entry Nos.12 and 14 of Notification **No. 12/2017-Central Tax (Rate) dated June 28, 2017.**

- The Hon'ble Court affirmed that the services provided by the petitioner by leasing out residential premises as hostel to students and working professionals would be covered under Entry 13 of Notification No.9/2017 dated 28.09.2017 and exempted from GST.

TATTVAM COMMENTS:

- This is an important judgment with respect to the taxability of hostel accommodation services.
- The Court has clearly laid down the guidelines on which the imposition of GST on hostel accommodation is to be viewed.

pp) Another opportunity of hearing to be provided to the assesee who wasn't aware of the proceedings

(Mrs. Preetha v. Deputy Commercial Tax Officer, W.P. No. 8052 of 2024)

Facts:

- The petitioner was engaged in the trading of electrical and hardware goods. It received a notice in Form GST ASMT-10, and proceedings were initiated against the petitioner.
- The petitioner filed a writ petition against the demand order and contended that it was unable to respond to the intimation and show cause notice because such notices were only uploaded on the GST portal and not communicated by any other mode.

Held:

- The Hon'ble High Court noted that the impugned order was passed because the petitioner was not heard before the impugned order was issued and could not contest the tax demand.
- Further, it was noted that the petitioner did not fulfil the obligation to continually monitor the GST Portal despite being a registered person.

- The Court held that the impugned order was liable to be quashed, and the petitioner was directed to remit 10% of the disputed tax demand. The Court also directed the department to provide a reasonable opportunity to the petitioner, including a personal hearing and thereafter issue a fresh order within two months from the date of receipt of the petitioner's reply.

TATTVAM COMMENTS:

- This judgment embarks in providing a reasonable opportunity of hearing by the department before passing a demand order.

qq) Mechanism of receiving export proceeds through intermediaries like PayPal does not disqualify exporters from claiming GST refunds

(Afortune Trading Research Lab LLP v. Additional Commissioner (Appeals I), W.P. No. 2849 of 2021)

Facts:

- The taxpayer was engaged in undertaking export of services during various tax periods. The taxpayer filed refund application for separate tax periods. The refund applications were pertaining to the refund of IGST paid on export of goods and Refund of accumulated ITC in respect of input services used for undertaking export of services.
- The Taxpayer is struck with the question of whether they are entitled to claim refunds in respect of services exported to overseas customers in cases where the payment for the outward supply is received through an intermediary in terms of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 (FEMA Regulations)

Held:

- The Hon'ble Madras High Court noted that it is undisputed that the taxpayer has supplied services to its customers through its online portal for which payments are routed through an intermediary (i.e. PayPal).

- The functioning of the intermediary was discussed wherein firstly, the payments made by the customer are received in convertible foreign exchange and are credited to PayPal's Account with Citi Bank. Secondly, PayPal transfers funds to the taxpayer's account with HDFC Bank in Indian Rupees in accordance with FEMA Regulations.
- The Hon'ble Court further noted that PayPal merely acts as an intermediary that receives remittances in freely convertible foreign exchange and is required to comply with FEMA regulations.
- Furthermore, it was held that merely because the receipts are rooted through the intermediary and received in Indian currency ipso facto would not mean that the Taxpayer has not exported services within the meaning of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act).
- The Hon'ble Court held that the Receipt of payment by an intermediary for and on behalf of its client like the taxpayer will qualify as payment received by the client.


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