Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Articles

Powers of DRI u/s 28AAA - High Court of Madras delivers key verdict

Brief facts and Question of law

In the case of Jeena & Company [2024-TIOL-172-HC-MAD-CUS], the key issues revolved around the jurisdiction of Directorate of Revenue Intelligence to issue notice for the recovery of customs duties under Section 28AAA of the Customs Act, considering the issuance and subsequent withdrawal of show cause notices by the DGFT and the absence of steps by the DGFT to cancel the license.

The petitioner had obtained SEIS Scrips (Service Exports from India Scheme) from the Director General of Foreign Trade (DGFT) and sold them to third parties.

The petitioner argued that the DGFT had issued the SEIS Scrips under the Foreign Trade Development and Regulation Act, and until the DGFT initiated any steps to cancel the license, the Customs Act could not assume jurisdiction for recovery of customs duties.

Reference was drawn to Circular No.334/1/2012-TRU dated 01.06.2012, which stated that recovery proceedings could be initiated by Customs authorities only after the DGFT initiated action for cancellation of the instrument, and the matter could be decided after the instrument had been cancelled by DGFT. In the facts of the present case, the show cause notice dated 24.11.2020, issued by the DRI, was challenged on the grounds that it lacked jurisdiction and was not in line with the circular.

Discussion relating to precedents of the SC

In the case, the court also highlighted the applicability of the decisions in Titan Medical Systems (P) Ltd. v. Collector of Customs [2003-TIOL-42-SC-EXIM] And Pennar Industries Limited [2015-TIOL-162-SC-CUS].

In Titan medical systems, the brief facts where that an importer obtained an advance license on 27-12-1988 to import components for manufacturing Ultrasound Scanners, to be exported later, with M/s. Titan Medical Systems Pvt. Ltd (the Appellant) declared as the supporting manufacturer. The components were under exemption Notification 116/1988 and exported the scanners. However, a show cause notice was issued on 6th November 1990 for allegedly not complying with the exemption conditions.

The SC in this case held that once the license was issued without challenge, Customs authorities cannot deny exemption based on alleged misrepresentation. Any misrepresentation would fall under the jurisdiction of the licensing authority to address. The relevant para from the decision is as under:

"Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the Customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf."

In Pennar Industries, the SC was dealing with the scenario where the importer had imported the goods against an advance authorization which was coupled with the actual user condition. The importer used the imported raw materials for manufacture of goods and cleared the manufactured goods in the DTA instead of exporting the goods. The importer subsequently fulfilled the EO on the basis of third-party exports, after seeking approval from the DGFT. The customs authorities issued a demand stating that the conditions for import of the goods were specified in the license and they had not been fulfilled.

The Hon'ble Court held that since the conditions of the exemption notification are not fulfilled and the law requires strict compliance of the exemption notification, the assessee becomes liable to pay the import duty which was payable, but for the benefit of exemption Notification No. 30/1997, which was obtained by the assessee. The Court also noted that aforesaid Order-in-Original of DGFT was under the provisions of EXIM Policy. The Court held that the orders passed under the Exim policy would not be binding on the customs authorities and as far as action taken under the Customs Act is concerned, the same is to be covered by the provisions of the Customs Act.

The Court also distinguished the application of the decision of M/s Titan Industries on the ground that the facts were different.

Decision of Madras High Court

The Hon'ble Madras High Court in this case highlighted that the Titan case was relevant, emphasizing that the Customs Authorities couldn't interfere if an advance license issued by the DGFT was not questioned or canceled. Unlike Pennar Industries Limited, where non-compliance with import conditions led to Customs jurisdiction, the present case involved withdrawn show cause notices by the DGFT.

As the DGFT hadn't initiated license cancellation, the court held the Customs Act's Section 28AAA couldn't be invoked by the DRI, declaring the show cause notice of 24th November 2020 as lacking jurisdiction. The court stressed that unless the DGFT acts, Customs authorities cannot assume such jurisdiction.

The court noted that the DGFT had issued show cause notices but subsequently withdrew them entirely. As of the judgment date, the DGFT had not taken steps to cancel the license issued to the petitioner.

The Court held that, in line with the circular, the Customs Act could assume jurisdiction for recovery only after the DGFT initiated action for cancellation, and the matter could be decided post-cancellation. Since the DGFT had not taken any steps to cancel the license and had withdrawn the show cause notices, the court concluded that the show cause notice issued by the DRI lacked jurisdiction. Therefore, the court set aside the notice, allowing the writ petition.

Our comments

In our view, this decision, though conclusive to the extent of defining the jurisdiction of Customs authorities to issue a Notice invoking Section 28AAA ibid, still falls short of defining the scope this Section.
A Notice issued under Section 28AAA of the Customs Act, is on the ground that the duty credit scrips were obtained in the first place by collusion, willful misstatement or suppression of facts. A conclusion in this regard lies with the DGFT who issues the scrips and not with the Customs authorities. Cancellation of the scrips is a corollary to this conclusion.

Therefore, without a conclusion by the DGFT that scrips in question were obtained by the exporter by collusion, willful misstatement or suppression of facts, any action by the Customs authorities to issue a Notice invoking Section 28AAA ibid will be without jurisdiction.

Can the customs authorities issue a Notice invoking Section 28AAA ibid on a mere cancellation of the scrips by the DGFT, without a clear finding by the DGFT on collusion, willful misstatement or suppression off acts? The jury is still out on this question.

By Mr. P Sridharan, Advocate and Senior Advisor & S Rahul Jain, Partner, M2K, Chartered Accountants

To be or not to be - Moratorium on Customs Duty on Electronic Transmissions

THE 13th Ministerial Conference of the World Trade Organization (WTO) in Abu Dhabi will be held at a critical juncture in global trade negotiations. One of the pivotal issues discussed will be the extension of the moratorium on customs duty on electronic transmissions.

Background:

Since 1998, WTO member countries have agreed not to impose customs duties on electronic transmissions. The Moratorium is not set in stone. Every few years, governments agree to temporarily extend it at the WTO Ministerial Conference.

The last extension occurred in June 2022, at MC12, when WTO Members agreed to extend the Moratorium and to intensify discussions on scope, definition and impact. The moratorium is due to lapse at the 13th WTO Ministerial Conference in February 2024, unless WTO members decide to make it permanent or temporarily extend it again until the next Ministerial Conference.

Recently, however, opposition from less developed countries (LDCs) to extension has hardened. In this vein, India and Indonesia are engaged in expansive outreach efforts to convince other LDCs that are WTO members, to allow the moratorium to expire.

They argue that as more and more products are traded internationally in digital form, the moratorium has led to growing revenue losses to national treasuries.

What exactly is the Moratorium?

The Moratorium ensures that WTO members will not impose customs duties on electronic transmissions. It clearly applies only to tariffs on cross-border transactions and not to domestic or internal taxes.

Generally, electronic transmissions are understood as trade delivered electronically. But does the Moratorium apply solely to the transmission (i.e., the delivery of a digital good or service) or also to its content (i.e., the good or service delivered digitally)?

In concrete terms, this covers a range of products that are used daily by consumers, such as online shopping and banking applications. It also covers basic tools and communications used by businesses of all sizes and across all industries, for example, engineering designs sent by email or customer service support tools.

Valuation under Customs law

Customs duty is levied on the transaction value. Way back in 1984, the Chairman of the GATT Valuation Committee on Customs Valuation while examining a question of the transaction value for purpose of levy of customs duty on data/ software carried in a carrier media, stated as under:

"In the case of imported carrier media bearing data or instructions for use in data processing equipment (software), it is essentially the carrier media itself, e.g. the tape or the magnetic disk, which is liable to duty under the Customs tariff. However, the importer is, in fact, interested in using the instructions or data; the carrier medium is incidental. Indeed, if the technical facilities are available to the parties to the transaction, the software can be transmitted by wire or satellite, in which case the question of Customs duties does not arise."

On the basis of the above reasoning the GATT Committee on Customs Valuation adopted the following Decision on 24th September 1984:

In determining the Customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The Customs values hall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.

This ratio is followed by several Customs jurisdictions across the world, including India.

Demands for Extension:

There have been fervent calls from various stakeholders, from both developed and developing nations, for the extension of the moratorium. Their claim is that status quo is essential to sustain the momentum of digital innovation and the continued expansion of e-commerce.

Developing countries view the extension of the moratorium as vital for levelling the playing field and enhancing their participation in the digital economy. They argue that eliminating tariffs on electronic transmissions helps bridge the digital divide by reducing barriers to entry and fostering greater integration into global value chains.

Two Indian industry association, the India Electronics & Semiconductor Association (IESA) and the India SME Forum- have supported the continuation of the moratorium, citing inter-alia supply chain resilience as the reason.

The US Senate Finance Committee has already issued a letter to the United States Trade Representative(USTR) to ensure the continuation of the moratorium. The G-7 trade ministers have also called for a permanent moratorium.

In June 2022, India tilted the scales in favour of the extension, when it informed other countries that it had agreed for the extension of the moratorium for another two years.

Counter-arguments

Moratorium on electronic transmissions has benefitted a handful of digital giants, such as Apple and Amazon, to increase their profits exponentially.

Making binding commitments for not regulating imports of electronic transmissions in future may have adverse consequences for digital transformation of countries, including in many developed member states.

Exempting electronic transmissions, from customs duties could worsen existing fiscal deficits and undermine the ability of governments to fund essential services and infrastructure development.

In 2000, the United Nations Conference on Trade and Development's (UNCTAD) trade division in their paper titled 'Tariffs, taxes and electronic commerce: revenue implications for developing countries', concluded that “the fiscal impact of international e-commerce is likely to be felt more strongly in the developing countries; they will face higher losses from customs duties, which make up higher shares in their national budgets compared with the developed countries. .....In the short to medium term, developing countries will be net importers of e-commerce and hence will run a greater risk of losing tariff and tax revenues if traditional imports are replaced by online delivery. Therefore, the development of efficient tax collection systems for e-commerce should be a priority for all developing countries.”

Critics also decry the double standards of the US and its G-7 allies.

While US has maintained that "tariffs are a legitimate tool in the trade toolbox," when it comes to tariffs on e-commerce, USA and G-7 want countries to surrender that policy tool.

Path Forward:

The debate surrounding the extension of the moratorium reflects the complex interplay of economic, technological, and regulatory factors shaping the digital landscape. Finding a consensus on the extension of the moratorium requires a nuanced approach that takes into account the diverse needs and priorities of WTO members. What is certain is that the negotiations will be intense.

To sum up:

As negotiations unfold, it is imperative for WTO members to demonstrate flexibility, pragmatism, and a shared commitment to harnessing the benefits of digitalization while addressing legitimate concerns and ensuring a fair and inclusive global trading system.

All eyes will be on India, as it is widely believed, that India could have changed the narrative, had it not decided to support the continuation of the moratorium two years ago.

By Mr. P Sridharan, Advocate and Senior Advisor, M2K, Chartered Accountants

Demystifying the decision of Hon'ble HC on JDA transfers

The applicability of Goods and Services Tax (GST) on the transfer of development rights under Joint Development Agreements (JDAs) has been a contentious issue in recent legal discourse. This article aims to dissect the key legal principles and implications involved on the taxability of the Development rights in light of the decision of Prahitha Constructions Private Limited v. Union of India -2024-VIL-152-TEL

Background:

The petitioner Inter alia challenged the validity of an impugned notification that subjected the transfer of development rights to GST, contending that it violates various provisions of the Constitution.

Arguments by the Petitioner

Constitutional Challenge:
The primary fulcrum of the argument from the petitioner was that Notification No.4/2018 as amended by Notification No.23/2019 lacked a prescribed methodology to tax development rights, rendering it arbitrary and unconstitutional under Article 14, 246A and 265 of the Constitution.

Sale of Land:

It was next contended that JDAs essentially result in the sale of land, which is not a supply under Schedule III Entry 5 of the GST Act, as the land owners transfer part of their property to developers in exchange for residential or commercial units.

Lack of Specific Provision:

It was also buttressed that the impugned notification levied GST to transactions beyond the scope of land sale, without a specific provision determining the tax liability or rate for such transactions under the GST law.

Arguments by the Department

No Outright Sale of Land: Department emphasized that JDAs do not entail an outright sale of land, as ownership and title rights remain with the land owners, and developers are merely engaged to execute the JDA for development.

Authority of Notification

The impugned notification, issued under Article279A of the Constitution, fell within the powers conferred and aims to tax transactions beyond land sale, such as the transfer of development rights.

Conditions of JDA:

Department argued that the clauses of the JDA indicated that the transfer of rights is subject to certain milestones and conditions, refuting petitioner's assertion of an immediate and absolute transfer of ownership.

Findings of the Court

The primary issue in the writ petition is whether the transfer of development rights can be brought within the scope of GST. They key findings of the Court are summarized as under

- The Joint Development Agreement (JDA) between the landowners and the petitioner outlines the arrangement for developing the property.

- The petitioner is engaged to develop the land, but ownership, title, and possession remain with the landowners.

- The JDA does not result in an outright sale of land, as evidenced by clauses outlining conditions for completion, termination, and transfer of ownership.

- The transfer of development rights is a service provided by the land owners to the petitioner in exchange for development services.

- The JDA specifies that transfer of land or share of land happens only after completion of the project and issuance of a completion certificate.

- The GST Council recommended shifting the liability to pay GST on transfer of development rights to the developer, notified under reverse charge mechanism.

- The transfer of development rights and the subsequent sale of constructed property are distinct transactions, both amenable to GST.

- The circular dated 10.02.2012 under service tax regime is not relevant to the current dispute.

- GST is levied under Article 246A of the Constitution, and the government has the authority to impose tax on supplies, including the transfer of development rights.

- The notification in question deals with the timing of GST payment, not the imposition of tax on transfer of development rights.

- The JDA, when read in its entirety, does not indicate an automatic transfer of ownership to the petitioner.

- Without substantial evidence of ownership transfer, the transfer of development rights is subject to GST and cannot be exempted under Entry5 of Schedule III of the GST Act.

- The powers conferred upon the GST Council and the subsequent notification clarifying GST applicability on transfer of development rights support the validity of the notification challenged in the petition.

Conclusion:

- The legal analysis underscores the complexity of the issue and the competing interpretations of JDAs in the context of GST law. With the decision of one High Court directly on the issue, it is a opportune time for the sector to revisit their positions.

By S Rahul Jain, Partner, M2K, Chartered Accountants

Key Rulings and Insights

1. M/s. India Advantage Fund & Others (Kar HC)

Facts of the case

- **In this landmark decision, the following questions of law were raised:**
  - Whether the Appellant, a venture capital trust established under the Indian Trust Act, 1882, can be considered a juridical person for the purpose of charging service tax under the Finance Act, 1994?
  - Whether the Appellant, being a trust, can be treated as a "pass-through" entity, and therefore, not liable to pay service tax for the services provided by the investment manager to the contributors of the trust?
  - Whether the doctrine of mutuality applies to the relationship between the Appellant, as a trust, and its contributors, thereby exempting the Appellant from service tax liability on the basis that any service provided is essentially to itself?
- The Appellant contends that it cannot be considered a juridical person for the purpose of service tax liability under the Finance Act, as trusts are not recognized as such under this statute.
- Additionally, it argues that it operates as a pass-through entity, with funds from contributors being consolidated and invested by the investment manager, making it exempt from service tax.
- The Appellant further asserted that the doctrine of mutuality applies to its relationship with contributors, as the trust merely holds and manages funds on their behalf, and any purported service is essentially to itself.
- The Revenue argues that the Appellant, being registered under the SEBI Act and having a separate legal entity status, qualifies as a juridical person and is therefore liable to pay service tax.
- Additionally, the Revenue contends that the Appellant's activities involve collecting funds from investors, making profits, and distributing returns, which constitutes a taxable service.
- It argues against the applicability of the doctrine of mutuality, citing transactional agreements and the separate legal identities of the trust and its contributors.

(Continued)

1. M/s. India Advantage Fund & Others (Kar HC)

- The Court held that for the purpose of determining service tax liability under the Finance Act, trusts are not recognized as juridical persons, despite their recognition under other statutes such as the SEBI Act. Therefore, the Appellant cannot be considered a juridical person for service tax purposes.
- Regarding the pass-through status of the Appellant, the Court accepted the Appellant's argument that it acts merely as a conduit for funds from contributors, which are then managed by the investment manager.
- Hence, the Appellant's role as a pass-through entity exempts it from service tax liability for services provided by the investment manager to the contributors.
- The Court applied the doctrine of mutuality to the relationship between the Appellant and its contributors, emphasizing that the trust's activities primarily serve the interests of its contributors.
- Therefore, any service provided by the trust is effectively to itself, warranting exemption from service tax liability.

Key insights

- In summary, the Court ruled in favor of the Appellant, holding that it is not liable to pay service tax under the Finance Act due to its non-recognition as a juridical person, its pass-through status, and the applicability of the doctrine of mutuality to its relationship with contributors.
- The ruling would have significant all industry impact due to wide observations which have been provided by the Hon'ble Court in respect of Trusts and principles of mutuality.
- **Citation -** 2024 (2) TMI 1086

2. Wind World (India) Infrastructure Pvt Ltd (Kar HC)

Facts of the case

- **The question of law before the Hon'ble High Court was whether it had the authority under Article 226 of the Constitution of India to waive or modulate the requirement of pre-deposit under Section 63(4) of the Karnataka Value Added Tax Act (KVAT Act) based on the specific facts and circumstances of a case?**
- The petitioner contends that due to financial instability and the initiation of corporate insolvency resolution proceedings, it is unable to pay the 30% pre-deposit required under Section 63(4) of the KVAT Act to prosecute its appeal before the Karnataka Appellate Tribunal. The petitioner argued that the High Court has the jurisdiction to waive or reduce the pre-deposit requirement under Article 226 of the Constitution of India, citing various judgments in support of this position.
- The Department argued that the pre-deposit requirement under Section 63(4) of the KVAT Act is mandatory, and failure to comply would result in the dismissal of the appeal. The respondents contend that the High Court lacks the authority to waive or modify the pre-deposit requirement.
- The High Court, after considering the rival submissions and relevant legal precedents, concluded that it has the power under Article 226 of the Constitution of India to waive the requirement of pre-deposit based on the peculiar facts and circumstances of a case.
- The Court relied on previous judgments where it had exercised such authority, particularly in cases involving public sector undertakings facing financial distress.
- In the present case, considering the petitioner's financial instability and inability to pay the pre-deposit, the High Court allows the petition and directs the Appellate Tribunal to entertain the appeal without insisting on the 30% pre-deposit requirement.
- However, the Court clarified that its decision is specific to the facts of this case and does not establish a precedent for future cases.

Key insights

- The decision of the Hon'ble Court is very significant as the Court has held that under Article 226, the Court has the right to waive or modify the legally prescribed pre-deposit prescribed under the Act under exceptional circumstances.
- Under the GST Act also, the assessee is required to pre-deposit of 30% of the tax demand till the time of filing of the appeal before the Court.
- **Citation** - 2024 (1) TMI 1248

3. M/s Railroad Logistics (India) Pvt. Ltd. (Bom HC)

Facts of the case

- **The question of law before the Hon'ble Court was whether the petitioner was eligible to amend GSTR-01 for the financial year 2018-19 to enabling its client to claim Input Tax Credit.**
- Briefly stated, the petitioner erroneously submitted the GST number of Mahindra & Mahindra (Rajasthan) instead of the correct GST number of Mahindra & Mahindra (Orissa) in its form GSTR-1.
- Notices were issued to Mahindra & Mahindra (Orissa) based on the mismatch in GST numbers. The petitioner filed a letter to the GST Authorities to allow amendment of its form GSTR-1, but no action was taken.
- Before the Hon'ble Court, the petitioner contends that Section 37(3) and 38(5) of the CGST Act do not prevent rectification of inadvertent errors, which would not cause any loss of revenue.
- It is argued that the statute does not restrict other states from claiming eligible IGST credit, as the tax is ultimately collected by the Central Government.
- The Hon'ble High Court interpreted Sections 37, 38, and 39 of the CGST Act purposively, allowing rectification of inadvertent errors.
- It is observed that any interpretation preventing rectification would lead to absurdity and go against the intention of the legislature.
- The Court after noting other decisions of the High Court held that the GST regime is based on accurate data in electronic returns.
- In the present case, where the error was inadvertent and there was no loss of revenue, rectification is warranted.
- The Court directed the authorities to permit the petitioner to amend its form GSTR-1 for the relevant period within four weeks.

Key insights

- Many assessees are now in receipt of SCN where the department require them to reverse the ITC on the reason that the selling dealer has either not paid tax or has paid tax with the incorrect Place of supply/GSTIN.
- The decision of the Bombay High Court permitting the amendment paves way for closure of such unwarranted litigation. However, the relief would be available only to such assessee who get specific directions from the Courts.
- In the larger public interest, the Board must allow a one time opportunity to all assessee to rectify such errors to ensure that the ITC is not lost.
- **Citation:** WRIT PETITION (L) No. 2429 of 2021

4. M/s. Yonex India Private Limited (Kar HC)

Facts of the case

- **The question of law in this issue was whether issuance of securities to a subsidiary company would be liable to GST in light of the Explanatory Notes to the Scheme of Classification of Services.**
- The petitioner sought striking down of the rate notifications as they provide machinery to tax holding equity of subsidiary companies, which is alleged to be ultra vires the GST Acts.
- The petitioner also sought to strike down the Explanatory Notes to the Scheme of Classification of Services, to the extent that it provides machinery to tax holding securities of companies, as being ultra vires the GST Acts.
- The petitioner contended that the holding of shares in a subsidiary company by a holding company cannot be treated as a supply of service under GST, as clarified by Circulars issued by the Central and State Governments.
- The petitioner submitted that the impugned order, which treats the holding of shares as a supply of service, is without jurisdiction or authority of law.
- The Court noted the Circulars issued by the Central and State Governments, clarifying that holding shares in a subsidiary company does not constitute a supply of service under GST.
- It is observed that the impugned order, which proceeds on the basis that holding shares amounts to a supply of service, is illegal, arbitrary, and without jurisdiction or authority of law. Accordingly, the petition is allowed, and the impugned order is quashed.

Key insights

- The issue of whether holding of shares of a subsidiary company would amount to a supply was a subject matter of great debate when initial audit paras were raised, especially in the State of Karnataka.
- After the issue gained limelight, the Board sought it fit to issue a circular clarifying that the mere holding of shares by a holding company would not ipso facto render the transaction taxable.
- Further, mere reference in the scheme of classification would not render a non-taxable transaction as a supply. The Hon'ble HC has rightly quashed the orders.
- **Citation:** WRIT PETITION No. 2301 of 2023 (T-RES)

5. M/s. Engineering Tools Corporation (Mad HC)

Facts of the case

- **The question before the court pertains to the validity of an assessment order dated 30.12.2023, wherein Input Tax Credit (ITC) availed by the petitioner was reversed due to the retrospective cancellation of the GST registration of the supplier.**
- The petitioner contends that they had legitimately purchased goods from the supplier during the period of 2017-2018, supported by valid tax invoices, e-way bills, transport documents, and proof of payment through banking channels. Despite submitting these documents, the reversal of ITC was solely based on the retrospective cancellation of the supplier's GST registration.
- The Department submitted that bill trading, involving the creation of documents like tax invoices and e-way bills, is a prevalent phenomenon. However, the petitioner's failure to provide evidence of the existence of M/s. Shikhar Technologies led to the rejection of their contentions.
- The court observed that the impugned assessment order primarily rejected the petitioner's contentions on the basis that they failed to prove the existence of M/s. Shikhar Technologies, the supplier. However, the petitioner did provide documents supporting the genuineness of the transactions, which were disregarded.
- The court held that while the petitioner may be required to establish the existence of the supplier at the relevant time and the genuineness of the transactions, such proof can be furnished through various documents like tax invoices, e-way bills, lorry receipts, delivery challans, and payment records. In this case, the petitioner submitted such documents, which were not duly considered.
- The court finds the impugned assessment order unsustainable and directed the Department to thoroughly examine all relevant documents to determine the genuineness of the transaction.

Key insights

- The rejection of ITC solely based on the retrospective cancellation of the supplier's GST registration has been deemed inappropriate by the Hon'ble Courts. Presently, the Department has been flooding the recipient assessee with SCN requiring them to reverse the input tax credit where the Supplier's registration is cancelled retrospectively. The HC decision is a balancing act by directing the Department to establish the proof of genuineness without summarily requiring reversal of the input tax credit.
- **Citation:** Writ Petition No. 3505 of 2024 & W.M.P.Nos. 3758 & 3759 of 2024

6. M/s John Oakey And Mohan Limited (All HC)

Facts of the case

- **The revision petition concerns the justification of levying entry tax on craft paper purchased by the applicant from outside the local area for the assessment year 2011-12, when the same issue was held in favor of the assessee for the previous year.**
- The Petitioner argued that the Tribunal erred in affirming the levy of entry tax on craft paper, contrary to a previous decision in favor of the assessee for the assessment year 2010-11. They contend that the doctrine of finality applies, barring the department from taking a different stand in the absence of new facts or a material change in the factual position.
- The petitioner also argued that the department has not challenged the High Court's decision favoring the assessee for the assessment year 2010-11. Thus, the petitioner assessee asserted that the issue is no longer res-integra, and the department cannot adopt a different stance unless there is a marked change in circumstances.
- The Tribunal had previously ruled in favor of the assessee for the assessment year 2010-11 on the same issue. This decision was upheld by the High Court, and the department accepted it without appeal.
- Therefore, the Hon'ble Court held that the principle of finality applies, barring the department from taking a contrary position unless there is a significant change in circumstances.
- The court cited the Supreme Court's ruling in Bharat Sanchar Nigam Ltd. v. Union of India, emphasizing that unless new grounds are raised or there is a material change in the factual position, courts generally adhere to earlier pronouncements of law or conclusions of fact. This principle is based on precedent, not res judicata, and ensures consistency in taxation matters.
- As no new facts have emerged in the present case, and there is no material change in circumstances, the questions of law must be decided in favor of the assessee..

Key insights

- The court reaffirms the principle of finality in taxation matters, barring the department from adopting a different stance without sufficient cause or change in circumstances. This principle would apply to various cases where the Department mechanically issues notice to assessee for various years. Once the issue has attained finality in one year, the principle of consistency requires the Department not to peruse subsequent year matters.
- **Citation:** Sales/Trade Tax Revision No. - 206 of 2022

7. M/s. Kalyan Jewellers India Limited (Tri-Bangalore)

Facts of the case

- **The issue at hand revolved around the eligibility of CENVAT credit of service tax paid on services which were procured for by the Appellant for their customers. The relevant facts are as under**
- The appellant acts as an intermediary between M/s Oriental Insurance Co. Ltd. and customers purchasing jewelry. The insurance company issues a master insurance policy to the appellant, who then issues subsidiary policies to customers. The appellant collects amounts from customers for issuing these policies, including premium and administration charges, on which service tax was paid.
- The adjudicating authority disallowed the CENVAT credit, stating that the service provided by the insurance company was not eligible as an input service. Consequently, demands were raised against the appellant.
- The appellant argued that the insurance service is an integral part of its gold care warranty scheme and should qualify as an input service.
- The appellant also contested the authority's finding that the documents provided by the insurance company did not qualify as invoices, bills, or challans under Rule 9 of the CCR 2004, citing relevant provisions of the Reserve Bank of India Act, 1934.
- The revenue contended that the appellant did not receive any service from the insurance company, as it was only providing services to the purchasers of gold, not to the appellant.
- It was also argued that the documents provided did not meet the criteria specified under Rule 9 of the CCR 2004.
- The Tribunal allowed the appeals, noting that the insurance service provided by M/s Oriental Insurance Co., Ltd., should be considered an input service eligible for CENVAT credit.
- The decision is supported by precedents and the interpretation of relevant laws, including the Reserve Bank of India Act, 1934, and the Service Tax Rules, 1994.
- The Tribunal rejected the revenue's contention that the documents provided were insufficient, emphasizing that any document fulfilling the criteria specified by law should be accepted.

Key insights

- Though the decision of the Tribunal was rendered in the context of the Finance Act, the issue relating to availability of input tax credits for procurement of services for the client is going to continue in the GST regime.
- The Department usually takes a stand that when the service is provided for the benefit of a third party, ITC would not be eligible to the person remitting the payment. The Hon'ble Tribunal has rightly gone into the aspect of who the contractual recipient of the service is and has permitted availment of ITC.
- **Citation:** Order No. - Final Order Nos. 20069 / 2024

8. M/s. International Flavours & Fragrances India Pvt. Ltd. (Tri - Chennai)

Facts of the case

- **The Question of law pertains to the liability of service tax on the TDS portion of foreign currency remittances made by the Appellant for services received.**
- The Appellant imported services like testing, auditing, consultancy, etc., from outside India against a consideration.
- A Show Cause Notice was issued demanding differential service tax on the TDS paid by them to the Income Tax Department over and above the bill amount.
- The demand was confirmed by the adjudicating authority, and on appeal, Commissioner (Appeals) upheld the same.
- The learned counsel for the Appellant submits that as per Rule 7(1) of the Service Tax (Determination of Value) Rules, 2006, the TDS paid would not be part of the consideration payable for the services rendered under Section 66A.
- The TDS was paid to comply with the provisions of the Income Tax Act, and the grossing up of the amount under Section 195A is only for the purpose of payment under the Income Tax Act and not for computing the service tax.
- The issue has already been decided by the Tribunal in favor of the Appellant in the case of Adani Bunkering Pvt. Ltd. Vs. CCE, Ahmedabad – II.
- The Hon'ble Tribunal held that the Appellant imported services from a foreign service provider and paid the consideration as indicated in the invoice, without deducting TDS from the invoice value. The Tribunal agreed with the contention of the Appellant that the TDS amount would not be part of the consideration for the taxable services received by them. It was observed that service tax is not payable on the TDS paid by the Appellant on behalf of the foreign service provider.

Key insights

- In our view, many decisions of the Tribunal have held that service tax would not be payable on the TDS component. It is apposite to note that this view would be proper only till Rule 7 of the Service Tax valuation rules was in force. After the deletion of Rule 7 in 2012, the rationale of the decisions may not be applicable.
- Further, under the GST regime, the position may be different due to the detailed definition of the phrase consideration. GST would be payable on the TDS component also.
- **Citation:** No. 42826 of 2014

Notifications, Circulars and Other Developments

Notification

1. Notification 06/2024 – Central Tax

- GST Network has the right to disclose specific details submitted in the GST registration application, along with data from outward tax returns, monthly and annual tax returns, and invoice preparations, subject to appropriate consent from the supplier/recipient.
- Under this Notification, the "Public Tech Platform for Frictionless Credit", has been designated as the system through which information may be shared by the GST common portal, subject to consent u/s 158A(2) of the CGST Act.
- This platform is established by Reserve Bank Innovation Hub (RBIH), a subsidiary of the Reserve Bank of India (RBI).
- The integration of the Public Tech Platform with the common GST portal is expected to streamline the process of claiming ITC, by enabling access to verified data from various sources.

PORTAL UPDATES

1. Enhanced E-Invoice Initiatives & Launch of Revamped Portal

- The e-invoice master information portal https://einvoice.gst.gov.in. have been enhanced with new features. The new features include PAN based search, automatic E-invoice exemption list, Revamped Advisory and FAQ Section, etc.,.
- This enhancement is part of ongoing effort to further improve taxpayer services.

2. Delays in GST registration despite successful aadhaar authentication

- The advisory relates to instances in delay of GST Registration despite successful Aadhaar Authentication.
- It is clarified that where a person has undergone Aadhar Authentication and is identified for detailed verification, application would be processed within 30 days of application submission.
- The application will be considered for extra verification based on the risk on the profile.

Indirect Tax Compliance Calendar for March 2024

March 2024

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Important Due Dates under Indirect Tax

Due Date	Description
10 March 2024	⊦ Filing of GSTR-7 - By Tax Deductor for the month of February 2024 ⊦ Filing of GSTR-8 - By E-Commerce Operator for the month of February 2024
11 March 2024	⊦ Monthly filing of GSTR-1 for the month of February 2024 (Regular taxpayers)
13 March 2024	⊦ IFF by Taxpayers under QRMP Scheme for the month of February 2024 ⊦ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of February 2024 ⊦ Filing of GSTR-6 - By Input Service Distributor for the month of February 2024
20 March 2024	⊦ Filing of GSTR-3B (Regular Taxpayers) for the month of February 2024 ⊦ Filing of GSTR-5A by OIDAR Service Providers for the month of February 2024
25 March 2024	⊦ GST PMT-06 - Challan for depositing GST for the month of February by taxpayers who have opted for QRMP Scheme for the quarter Jan – Mar 2024.
28 March 2024	⊦ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.
31 March 2024	⊦ Filing of RFD – 11: Application for Letter of Undertaking (LUT) for FY 2024-2025

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