Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Clearing the Air: Airtel's SC Decision provides clarity on test of Agency

- **ONE** of the litigious issues relating to the applicability of Section 194H of the Income Tax Act was decided recently by the Hon'ble SC in the case of *M/s Bharti Airtel (referred to as Appellant)* - [2024-TIOL-38-SC-IT]. Though the decision has been rendered on the specific facts of the case, the rationale of the decision would apply to various facets of law as the tests of agency and when a person acts on behalf of (GST definition of intermediary) has been dealt with in this case.
- The Appellant was operating under a license granted by the Department of Telecommunications (DoT) in India to provide both post-paid and prepaid connections to users. The facts in the case revolved around provision of services under the prepaid business model.
- The Appellant entered into franchise or distribution agreements with various parties, through which the Appellant distributed prepaid start-up kits and recharge vouchers. These agreements outlined the roles and responsibilities of both the Appellants and the franchisees/distributors.
- The main contention raised by on behalf of the Appellant was that the discounts provided to franchisees/distributors should not be considered "commission or brokerage" under Section 194-H. It was argued that the relationship between the Appellants and the franchisees/distributors is that of independent contractors, not principal and agent.
- The crucial fact pattern which emerged from the agreement was that the franchisees/ distributors bore responsibilities such as marketing prepaid services, appointing retailers, complying with rules and regulations, indemnifying the company, maintaining suitable establishments, and adhering to company policies. They were also tasked with hiring employees and managing payments and expenses.
- Additionally, franchisees/ distributors were required to maintain sufficient stock of prepaid products, ensuring their safety and storage while insuring them against loss or damage. In the event of agreement termination, franchisees/ distributors had the obligation to return materials, and the company bears no liability for any losses incurred.

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- Franchisees/ distributors were further obligated to meet subscription targets, employ trained staff, collect necessary forms from customers for verification, and adhere to pricing and payment terms set by the company, while assuming tax liabilities related to the agreement.
- Regarding the use of trademarks, franchisees/ distributors were permitted to use company logos within specified guidelines but were prohibited from incorporating trademarks into their business names. The franchisees could display logos at their outlets.
- In terms of the financial model, franchisees/ distributors pay upfront for welcome kits and determine their profits by selling products at their discretion. While SIM cards remain the property of the company, they were distributed to end-users by franchisees/distributors as per licensing requirements.
- Ultimately, franchisees/distributors generated income by selling prepaid products, earning profits based on the difference between the sale price and acquisition cost.
- In this factual background, the court distinguished between the roles of agents and independent contractors, emphasizing that franchisees/ distributors operate independently and were not subject to direct control by the Appellants.
- In this fact pattern, the Hon'ble Court held that Section 194-H of the Income Tax Act is not applicable to the transactions between the Appellants and the franchisees/distributors in this case.
- The court rejected the Revenue's argument that the Appellants ought to periodically gather information on transactions between franchisees/distributors and third parties for tax deduction purposes, deeming it impractical and unfair to the Appellants.
- The court further distinguished the applicability of the Singapore Airlines case as that involved a different contractual arrangement between airlines and travel agents, governed by specific rules and agreements set up by the International Air Transport Association (IATA).

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- Unlike in the Singapore Airlines case, the relationship between the Appellants and the franchisees/distributors did not involve the use of a central mechanism (like the BSP in the airline industry) for computing and facilitating payments.

Important principles laid out by SC for determination of agency

- The Court laid out various principles to outline when a party would be construed to be an agent of the other. The same are discussed briefly.
- Legal Relationship: The expression 'acting on behalf of another person' indicates the existence of a principal-agent relationship, defined by Section 182 of the Indian Contract Act, 1872. This relationship entails the principal employing the agent to act or represent them in dealings with third parties.
- Agency Definition: An agent is someone employed by a principal to perform acts on their behalf or to represent them in dealings with third parties. The agent acts for the principal, not themselves, in transactions, with contracts being between the principal and third party.

Key Factors in Agency Relationship:

- The agent has legal power to alter the principal's legal relationship with third parties. The principal exercises a degree of control over the agent's activities.
- There exists a fiduciary relationship, where the agent acts subject to the principal's control. The agent is accountable to the principal and entitled to remuneration.
- Distinction from Other Relationships: The distinction between agency and other relationships like employer-employee or principal-principal is that agency involves the agent acting on behalf of the principal, not as the owner of the goods or services. Similarly, the agent differs from an independent contractor in the level of control exerted over them by the principal. An independent contractor has more discretion in performing tasks and typically intends to make profits for themselves, rather than solely representing the principal.

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- Commercial Complexity: Modern contracts can create complex relationships that may not strictly fit into traditional categories like principal - agent. The true nature of the relationship must be examined based on the parties' conduct and the legal implications.

Relevance of the decision

- The decision would have implications for all transactions involving the applicability of Section 194H. Apart from the TDS implications for agency relationships, the relevance of agency is also triggered in other tax laws.
- Under GST law, transactions between agent and principal are taxable even if they are carried out without a consideration. Similarly, under the definition of intermediary, which is one of the most litigious areas of law, there is pre-requirement of a person to have the character of an 'agent/broker providing service on behalf of another'.

Key Rulings and Insights

1. M/s. Orissa Manganese and Minerals Limited. (Jha HC)

Facts of the case

- **The question of law was whether the petitioner is entitled to the refund of the pre-deposit amount made during Appeals, considering, the extinguishment of claims against them in the approved resolution plan under the Insolvency and Bankruptcy Code, 2016, (IBC) and the subsequent orders passed by the National Company Law Tribunal (NCLT)?**
- Brief facts are that the petitioner had made pre-deposits in Excise Appeals before the CESTAT, Kolkata.
- Insolvency proceedings were initiated against the petitioner, and the resolution professional notified the Revenue respondent to file their claim in accordance with the IBC.
- The Revenue respondent did not file any claim against the petitioner company and subsequently, a resolution plan was approved by the NCLT, Kolkata, which did not include the claims of the revenue department.
- Orders passed by the NCLT and subsequent judicial precedents indicate that claims of the Respondent-Revenue stood extinguished.
- The petitioner's appeals were dismissed as withdrawn by the CESTAT, Kolkata, and the petitioners sought a refund of the pre-deposit amount, which was rejected by the revenue department.
- It was argued by the revenue that the refund of pre-deposit is not akin to refund of duty payment and should not be subjected to the same process.
- Since the appeals were dismissed as withdrawn and not decided in favor of the petitioner, refund of the pre-deposit cannot be entertained.
- The Hon'ble High Court held that the Revenue had misdirected itself in law and misconstrued the orders passed by the NCLT. The essence of the order, passed by the NCLT, was that claims against the Petitioner by any entity, including statutory dues, were extinguished once the resolution plan was approved under the Insolvency and Bankruptcy Code (IBC). The court emphasized that this extinguishment extended to the pre-deposit made by the Petitioner since the very tax liability under appeal had ceased to exist.
- The court deemed the circular cited by the Revenue irrelevant to the case as it was issued before the enactment of the IBC. Therefore, the court quashed the order rejecting the refund application and directs the revenue department to refund the pre-deposit amount along with applicable statutory interest.

Key insights

- The decision of the Hon'ble High Court has set a clear precedent on the position which is to be meted for assessee who have been admitted to insolvency. The Court has categorically held that once the Department, as operational creditors, did not file its claim, it looses its right to subsequently contest the demand and proceeds one step further to sanction refund of pre-deposits which were previously made.
- **Citation** - 2024 (4) TMI 23

2. M/s. Abitha Timber Traders. (Mad HC)

Facts of the case

- **The question of law was whether the petitioner's lack of acquaintance with online portals and technology a valid ground for setting aside the impugned order?**
- The petitioner, a Timber Trader, filed a writ petition against an order passed by the respondent regarding discrepancies found in the petitioner's returns for the Assessment Year 2019-2020. The petitioner argued that the impugned order was passed without providing him an opportunity of hearing, and he was not aware of the show cause notice issued through the online portal.
- The petitioner contended that he was not educated and not acquainted with online portals, making it difficult for him to follow notices uploaded through the portal. He submitted the returns only through his Auditor.
- He also argued that the impugned order was passed as if he had not submitted a reply to the notice.
- The petitioner relied on the previous similar cases dealt by the court and pointed out that courts have issued directions to communicate notice through other modes under section 169(1)(b) of the TNGST Act.
- On the other hand, the Department argued that notices were issued through the online portal, as permitted by Section 169(d) of the Tamil Nadu Goods and Services Tax Act 2017.
- The respondent asserted that the petitioner should have made arrangements to verify the notices and present his case during the enquiry.
- The respondent further argued that the petitioner failed to place any materials during the enquiry and that the petitioner had available an appeal remedy.
- The court considered the provisions of Section 169 of the TNGST Act 2017, which allow various modes of service of notice. Although the Act permits notices to be issued through the common portal, other modes of service are also available.
- The court acknowledged that the petitioner, being a Timber Trader and not well-educated, faced challenges in following notices uploaded through the online portal.
- Referring to previous similar cases, the court emphasized the importance of ensuring proper compliance with notice requirements, especially considering technical challenges with online portals.
- The court set aside the impugned order and remitted the matter back to the respondent for fresh consideration, emphasizing the need to provide the petitioner with an opportunity of hearing. Additionally, the court directed the respondent to explore other modes of issuing notices to avoid similar situations in the future

Key insights

- In today's time, multiple notices are generated through system and no further intimation either by means of SMS/physical copies are provided to the Assessee.
- This case highlights the classic peril faced by hundreds of such litigants who may not be conversant with the process of litigation. Such assessee may also approach the Courts for seeking relief on such issues.
- **Citation** - 2024 (4) TMI 24

3. M/s. Vimal Traders. (Mad HC)

Facts of the case

- **The question of law was whether raising of multiple E-Way bills against the same invoice would lead to levy of GST?**
- The petitioner, a registered person under applicable GST enactments, issued six invoices during the assessment period 2018-2019. It was alleged that an error was committed by entering the same invoice number in multiple e-way bills related to these supplies. A show cause notice was issued to the petitioner on 10.05.2023, to which the petitioner replied on 28.08.2023, explaining the mistake and attaching relevant bill copies. Despite this, the impugned assessment order was issued on 30.09.2023.
- The petitioner argued that their reply and the attached documents were not discussed in the impugned order, and no reasons were provided for rejecting their reply. They requested another opportunity to persuade the assessing officer, emphasizing that there was no suppression of sales.
- On the other hand, the respondent submitted that the petitioner's bills did not contain the GST registration number and suggested that the dispute pertained to factual questions best addressed in appellate proceedings.
- The court observed that the petitioner's reply admitting to an inadvertent error and attaching relevant bill copies was not adequately addressed in the impugned order.
- Although the order acknowledged the receipt of the petitioner's reply, it failed to provide reasons for rejecting the reply and the attached documents.
- Consequently, the court quashed the impugned order and remanded the matter to the assessing officer for reconsideration. The petitioner was granted 15 days to submit a fresh reply along with relevant documents.
- The assessing officer was directed to provide a reasonable opportunity, including a personal hearing, and issue a fresh assessment order within 2 months from the date of receipt of the petitioner's reply.

Key insights

- During the initial implementation of the GST law, various assessee made unforeseen errors under the law. A common mistake which was committed was in generating the proper details in the E-way bills.
- In some cases, it has been observed that multiple e-way bills were raised for the very same issue. In such cases, the burden of proving that there is a sales suppression would be on the Department.
- **Citation** - 2024 (4) TMI 56

4. M/s. Ganesh Engineering (Mad HC)

Facts of the case

- **The question of law was whether the petitioner liable to pay 15% of the disputed tax due to a delay in filing an appeal before the Appellate Authority, and should the Appellate Authority consider the appeal even if it is filed beyond the limitation period?**
- The petitioner sought to quash the respondent's order reducing the interest portion and rectification order related to the generation of duplicate/multiple E-way bills. The respondent demanded tax, penalty, and interest due to discrepancies in E-way bills generated during the period 2018-19. The petitioner, a registered GST assessee, claimed that the duplicate E-way bills were generated inadvertently by a new employee handling E-way bill generation. The petitioner paid GST collected under the invoices mentioned in their returns.
- The petitioner's counsel highlighted that the respondent initiated a "Rectification of Mistake" process and issued an order, adjusting the interest calculation from invoice value to tax due, resulting in a reduced interest amount.
- Due to financial constraints and the termination of their accountant in 2021, the petitioner was unaware of the proceedings initiated by the respondent until they were informed, leading to a delay in addressing the issue.
- The respondent contended that the appeal filed by the petitioner was delayed, and the limitation period had expired.
- They argue that the petitioner is liable to pay 15% of the disputed tax due to the delay in filing the appeal before the Appellate Authority.
- The court acknowledged the technical error in generating duplicate E-way bills and the petitioner's failure to file an appeal within the limitation period. However, considering the circumstances, the court directed the petitioner to pay 15% of the disputed tax and allowed them to file an appeal within two weeks, even though it was beyond the limitation period. The Appellate Authority was instructed not to insist on the limitation period and to entertain the appeal if filed within the specified timeframe.

Key insights

- The decision of the Hon'ble High Court provides relied on an extremely crucial issue. In the given fact pattern, the Hon'ble Court had granted relief to the assessee for filing of the appeal even though the statutory time limit and limitation for filing of the appeal had expired.
- This provides a relief to assessee who have a genuine and bonafide issue on merits but missed the deadline for filing the appeal.
- **Citation:** 2024 (4) TMI 361.

5. Qualcom India Private Limited (Tel HC)

Facts of the case

- **The central issue in these two writ petitions is whether the petitioners are entitled to interest under Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) for the delayed granting of refund of Input Tax Credit (ITC) claimed under Section 54 of the CGST Act, 2017.**
- The petitioners filed refund claims for unutilized ITC with the Department. Consequentially, the respondents issued deficiency memos, to which the petitioners responded promptly.
- Subsequently, show cause notices were issued, and the petitioners replied to those as well. Finally, the refund claims were rejected by the respondents, leading to appeals by the petitioners. The appeals were substantially allowed, and refund amounts were disbursed.
- However, the petitioners then sought interest on the delayed refunded amount, which was not granted by the Department despite persistent efforts by the petitioners. The petitioners challenged the rejection of their interest request in these writ petitions.
- The petitioners argued that from the plain reading of Section 56 of the CGST Act, 2017, interest is automatically payable on any tax ordered to be refunded if it is not refunded within the stipulated period.
- They further argued that the proviso and its explanation don't provide any circumstances under which the delayed refund does not attract interest.
- They contended that there was no justification for the Department's delay in releasing the refund amount and that failure to grant interest would amount to a failure to discharge statutory duty by the refund sanctioning authority. They cited various judicial precedents to support their arguments as well.
- The Department did not provide any substantial explanation for the delay in refund or why interest was not granted.
- The court analyzed Section 56 of the CGST Act, 2017, and concluded that interest on delayed refunds is automatic, as there is no provision in the statute for circumstances where delayed refunds do not attract interest. The court emphasized that the provision for interest should be treated as beneficial legislation and enforced non-discriminately.
- Referring to various decisions of the High Courts and the Supreme Court, the court reiterated that delay in making necessary refunds entitles the applicant to interest. It also clarified that interest accrues from the date immediately after the expiry of the stipulated period for refund, regardless of any subsequent actions by the Department.
- The court held that the issuance of deficiency memos after the expiry of the stipulated period for refund would enable the Department to process the refund application beyond statutory timelines, potentially leading to further delays. It emphasized that the petitioners' right to claim interest should not be impaired due to such delays.

5. Qualcom India Private Limited (Tel HC)

- Based on these findings, the court allowed the writ petitions and directed the respondents to take immediate steps for the payment of interest on the delayed refund of ITC to the petitioners, in accordance with Section 56(1) of the CGST Act, 2017, and its proviso.

Key insights

- The decision of the Hon'ble Court would be applicable in many cases. Practically, the Department in certain takes enormous delays in processing and filing of the returns. The decision of the Court would assist all assessee to claim interest in cases involving such inherent delays.
- **Citation:** 2024 (4) TMI 365.

6. M/s. Mancherial Cement Company Private Limited. (Tel HC)

Facts of the case

- **The question of law was whether the absence of signatures, physical or digital, on notices and orders issued by tax authorities render them unsustainable under Rule 26(3) of the Central Board of Service Tax Rule 2017 and analogous provisions?**
- The Petitioner assessee, relying on precedent judgments from various High Courts and a recent order of this court, argued that the absence of signatures on the notices and order violates statutory mandates.
- It was also contended that the orders lacking signatures cannot withstand judicial scrutiny. The petitioner emphasized that the respondent did not contest the absence of signatures on the notices and order.
- The court affirmed the petitioner's argument based on previous judgments and the recent order.
- Notices dated 10.02.2022, 12.02.2021, and the order dated 15.11.2023 were set aside due to the absence of signatures. Reserved liberty for the department to pursue action against the petitioner in accordance with the law.
- The writ petition was disposed of, with no costs, and any pending interlocutory applications were closed.

Key insights

- In many cases, it is observed that the officers pass system generated orders. In certain orders, there is no authorization which is made by the officers. Lack of authorization would make the order invalid and non-est in law. Rather than going on the merits, it is a sound legal strategy to approach the High Court and seek quashing the orders on jurisdiction.
- **Citation:** 2024 (4) TMI 412

7. M/s. Shri Abbasbhai Teherali Bharmal (CESTAT Ahemdabad)

Facts of the case

- **The question of law here pertains to whether the adjudicating authority is obligated to permit cross-examination when the appellant disputes the statements relied upon for adjudication under section 9D of the Central Excise Act?**
- The Appellant contends that the case holistically was made out on the basis of the printout taken from the computer in the factory premises and the statement of various people.
- The Appellant emphasizes that in case of the printout taken from the computer the statutory provision was not followed under Section 36B of the Central Excise Act and therefore, the printout cannot be used as evidence.
- It was further contended that the denial of the appellant's request for cross-examination of the witnesses, whose statements played a crucial role in the case, undermines the integrity of the adjudication process.
- He referred to Section 9D of the Central Excise Act, highlighting its mandate for allowing cross-examination in such situations.
- By rejecting this request, the appellant argues, the adjudicating authority has violated statutory provisions, thereby rendering its decision unsustainable.
- The respondent contends that the findings of the impugned order, which were reiterated, remain valid.
- Upon careful consideration of both parties' submissions and a thorough examination of the records, the court acknowledged that the case heavily relied on statements from various individuals additionally, on computer printouts.
- The court highlighted the mandatory nature of conducting examination-in-chief and offering witnesses for cross-examination under Section 9D of the Central Excise Act, 1944. Also it has been provided that it is not the whims of the Adjudicating authority to allow or reject the request of cross-examination.
- The court clearly stated that if the appellant dispute the statements which are relied upon for adjudication it is incumbent on the adjudicating authority to allow the cross-examination of the witnesses and thereafter if the outcome of cross-examination is in consistence with the statement given by the witnesses, the same can be admitted as evidence.
- Therefore, the court ruled in favor of the appellant, considering the rejection of their request for cross-examination as a violation of procedural fairness and remanded the case for further proceedings in compliance with the statutory requirements.

Key insights

- The decision of the Hon'ble Court is crucial in matters which have emanated solely based on additional information and statements made by the witnesses. The concept relating to burden of proof is an extremely crucial concept in tax matters and when SCN's are generated solely basis the statements made by witness, it is imperative and crucial that these statements be rebutted if not accurate. The rationale of the decision would squarely apply to GST law also.
- **Citation:** 2024 (4) TMI 427

8. M/s. Southern Engineering Services (Mad HC)

Facts of the case

- **Whether an assessment order passed is valid, where services were supplied to a SEZ unit without charging GST due to it being a zero-rated supply, when the turnover was inadvertently reported under the taxable value column in GSTR-1, while being correctly reported as a zero-rated supply in GSTR-3B?**
- **Whether the assessment order is valid, when the petitioner claims they did not receive notices and orders due to emails being diverted to the spam folder, thus impacting their participation in the proceedings?**
- The petitioner supplied services to a SEZ unit without charging GST as it was a zero-rated supply, dating back to July 2017, the early stages of GST implementation. The petitioner mistakenly reported the turnover under the taxable value column in the GSTR-1 return but correctly reported it as a zero-rated supply in the GSTR-3B return. The petitioner claims they were unaware of the proceedings as notices and orders were diverted to the spam folder.
- The petitioner had highlighted that the invoice clearly indicates a zero-rated supply, as corroborated by the correct reporting in the GSTR-3B return.
- It was also asserted that the petitioner's inadvertent reporting error in the GSTR-1 return should not invalidate the zero-rated supply status. Claimed lack of participation in proceedings due to notices and orders being diverted to the spam folder.
- Argued that since notices and orders were uploaded on the GST portal, it was the obligation of the petitioner, as a registered person to have regularly monitored it.
- Contended that principles of natural justice were complied with since the impugned assessment order followed an intimation and show cause notice.
- The court acknowledged the petitioner's inadvertent reporting error but noted that the supply was correctly reported as zero-rated in the GSTR-3B return. The court also observed that the tax invoice indicated prima facie that the supply was made to a SEZ and consequentially qualifies as a zero-rated supply.
- The assessment order was quashed and the matter was remanded for re-consideration, granting the petitioner an opportunity to submit a reply to the show cause notice and participate in the proceedings.

Key insights

- In many cases, based on inaccurate or incorrect reporting of the information, the assessee are faced with consequential demand of tax from the authorities. This is a classic case where the Department had raised a demand only on the basis of reporting of GSTR 1 returns but without considering the proper reporting in GSTR 3B and GSTR 9. The Hon'ble HC has rightly remanded back the matter to the officer for fresh consideration on merits.
- **Citation:** 2024 (4) TMI 653

9. M/s. Vodafone Idea Limited (All HC)

Facts of the case

- **The question of law pertains to whether the Vodafone Idea limited has provided services to Foreign Telecom operators (FTOs) or individual subscribers of the FTOs?**
- The petitioner argues that the appellate authority failed to properly appreciate the judgments of the Supreme Court regarding the condonation of delay. They contend that the appellate authority's decision to dismiss the appeal based on timeliness overlooked relevant legal precedents set by the Supreme Court in similar cases.
- The petitioner regarding the question of to whom the service is being rendered to refers to the case of Vodafone Idea Limited, reported in Bombay and Delhi High Court in 2022 and 2023 respectively, wherein it was held that the consideration was payable to the FTO for the services rendered to it by Vodafone Idea Limited. Further the petitioner's argued that under the agreement with the service recipient Vodafone Idea Limited is contractually obligated only to the FTO's and consideration is payable to them in convertible foreign exchange.
- There is no agreement between Vodafone and the subscriber of the FTO, hence, Section 13(3)(b) of the IGST Act is not applicable as it applicable in case of "services supplied to an individual".
- It was further held in the above-mentioned case that the customer's customer cannot be your customer, in the instant case customer of Vodafone is the FTO and the subscribers of the FTO are the customers of the FTO. Furthermore, in accordance with The Export of Service Rules, 2005, the transaction is regarded as export when it is provided in relation to commerce to a recipient located outside India and provided to a recipient located outside India at the time of the provision of such service.
- Subsequently reliance was place on Circular No. 111/5/2009-S.T., wherein, it was clarified that the phrase 'used outside India' is to be interpreted to mean that the benefit of the service accrues outside India and In the case of the Petitioner the benefit accrued to the FTO who is located outside India.
- Building upon the doctrine of comity, the petitioner argues that the judgment of the Bombay High Court should apply in the State of Uttar Pradesh as well, given the commonality of legal principles and the absence of conflicting judgments from higher courts.
- The court found that the appellate authority did not properly appreciate the judgments of the Supreme Court regarding the condonation of delay. Additionally, the authority's decision to proceed with deciding the matter on its merits despite deeming it time-barred was considered to be without any basis in law.
- The court highlighted the significance of the judgments of the Bombay High Court and the Delhi High Court in similar cases involving Vodafone Idea Limited. It noted that the appellate authority failed to consider these judgments, which were pertinent to the issues at hand.

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- The court emphasized that the judgment of the Bombay High Court, which was not appealed before the Supreme Court and against which no Special Leave Petition (SLP) was filed, held the field. It reasoned that, under the doctrine of comity, this judgment should apply in the State of Uttar Pradesh as well.

Key insights

- The decision of the Hon'ble Court provides relief to assessee on the principle of comity. The issue on who is the customer in case of Foreign Telecom operators (FTOs) is a settled position of law. Though these disputes have been settled under the erstwhile regime, the department still raises these questions under the GST regime as well.
- **Citation:** 2024 (4) TMI 290

10. M/s. Federal Mogul TPR India Limited. (CESTAT Banglore)

Facts of the case

- **The question of law here is whether the appellant is eligible to avail CENVAT credit on input services viz. 'management fee' and 'common sharing of head office services' and whether credit availed based on the documents are found in order and the show cause notices are barred by limitation?**
- The appellants, engaged in manufacturing pistons and rings, availed cenvat credit under Cenvat Credit Rules, 2004 (CCR, 2004).
- During a CERA audit, it was discovered that they had availed inadmissible cenvat credit for service tax paid on management fees and common sharing of Head office services from September 2008 to November 2009.
- Show-cause notices were issued for recovery of cenvat credit for the period mentioned. Subsequent notices were issued for further periods, all of which were confirmed with interest and penalty. Aggrieved by these orders, the appellants filed appeals.
- The appellant contended that they rightfully availed credit on valid and cenvatable documents, falling within the ambit of Rule 9 of the CCR, 2004. They emphasized that the proviso to Rule 9(2) allows credit on documents even if they lack certain prescribed details, as long as they contain essential information like payment of duty, taxable value etc. and the Deputy/Assistant Commissioner is satisfied with the receipt and use of the goods/services.

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- They have submitted that the invoices issued by the service provider FMGL contain all the relevant information as prescribed under Rule 4A (1)of Service Tax Rules, 1994. It is contended that the admissible credit cannot be denied to the appellant alleging minor procedural defects, which are curable in nature since they have fulfilled all the conditions prescribed under the CCR, 2004in availing CENVAT credit.
- The appellant asserted that the payment of service tax by the service provider (FMGL) was not disputed by the jurisdictional Service Tax authorities, thus questioning it in the hands of the service recipient (the appellant) was deemed unjustified, as established in previous judicial precedents.
- The services have been used and the service tax paid on those services by the service provider was availed as cenvat credit by the appellant and thus, mere procedural lapse cannot qualifies it as wrong availment of credit.
- The appellant argued that the services they received, including management fee and common sharing of Head office services, fall under the definition of 'input service' as per Rule 2(l) of the CCR, 2004.
- They emphasized that these services were necessary for their business operations and were used in or in relation to the manufacture of final products. The court ruled in favor of the appellant, stating that the documents on which credit was availed were in order. It emphasized the provisions of Rule 9(2) of the CCR, 2004, and concluded that the appellant fulfilled the conditions for availing credit, despite minor procedural defects in the documents.
- The court found that the demands raised through show-cause notices were barred by limitation. It noted the appellant's consistent filing of ER-1 returns, indicating the availed CENVAT credit, and ruled out any suppression of facts. Therefore, the invocation of the extended period of limitation and imposition of penalties were deemed unsustainable.
- The court reiterated that the payment of service tax by the service provider (FMGL) was not disputed by the jurisdictional Service Tax authorities, strengthening the appellant's position in availing the credit.

Key insights

- The decision, though rendered in the service tax regime, would have an equal binding effect in the GST regime as well. There are many circumstances where the Department rejects the ITC availed by the assessee citing documentary issues. The decision would assist such cases. .
- **Citation** - 2024 (4) TMI 31

11. M/s. Waaree Energies Limited (AAR Guj)

Facts of the case

- **Whether an SEZ unit is liable to pay tax under reverse charge mechanism on specified services as per Notification No. 10/2017-IT(Rate) dated 28.6.2017, considering the provisions of the SEZ Act, 2005, SEZ Rules, 2006, and relevant GST notifications?**
- M/s Waaree Energies Limited, an SEZ unit engaged in solar module manufacturing, avails specified services such as GTA, legal services, security services, and bus hiring for employees from the Domestic Tariff Area (DTA). The applicant contends that as an SEZ unit, they are exempt from GST under reverse charge mechanism (RCM).
- The applicant argues that Section 7 of the SEZ Act, 2005, provides blanket exemption to all services procured from DTA or foreign suppliers.
- They further assert that Section 51 of the SEZ Act, 2005, gives overriding effect to its provisions, reinforcing the exemption from GST under RCM.
- It was argued Rule 5(5)(a) and Rule 30(1) of the SEZ Rules, 2006, facilitate zero-rated supply and exemption from SGST, respectively, supporting their claim.
- Further, it was argued Notification No. 18/2017-IT(Rate) exempts services imported by SEZ units for authorized operations from IGST, providing additional support to their argument.
- Reliance was also placed on the CBIC circular which clarified that SEZ units can procure services liable under RCM without payment of IGST if the actual recipient furnishes a Letter of Undertaking (LUT) in place of a bond as specified in Notification No. 37/2017-CT.
- Considering the SEZ Act, SEZ Rules, and relevant GST notifications, the applicant's contention of exemption from GST under RCM holds merit. The clarification provided by the Tax Research Unit supports this interpretation. Therefore, the SEZ unit is not required to pay GST under RCM on specified services as per Notification No. 10/2017-IT(Rate) dated 28.6.2017, subject to furnishing a LUT or bond as specified in Notification No. 37/2017-CT.

Key insights

- The issue of taxability of transactions under reverse charge mechanism in the hands of SEZ units have been a vexed question of law due to non-availablity of a specific provision or notification prescribing the same.
- The AAR has granted relief to the assessee based on the very specific provisions prescribed under the SEZ laws and the specific circular issued by the Board. This decision would assist any SEZ unit which may face a demand of tax for such transaction. .
- **Citation:** 2024 (4) TMI 845

Notifications, Circulars and Other Developments

PORTAL UPDATES

1. Auto-population of HSN-wise summary from e-Invoices into Table 12 of GSTR-1

- The GSTN has introduced a new feature on the GST portal by which the HSN-wise summary automatically populates from e-Invoices into Table 12 of GSTR-1.

- This feature streamlines the process by automatically transferring HSN data directly from e-Invoices, offering taxpayers a time-saving and efficient solution.

- However, the taxpayers are requested to reconcile the information before final submission as this is only a facility provided to the taxpayers.

- In cases where discrepancies or errors are identified during reconciliation, taxpayers should manually correct or supplement the information in Table 12 before submitting their GSTR 1.

2. Advisory on Reset and Re-filing of GSTR-3B of some taxpayers

- For some taxpayers, discrepancies in GSTR-3B returns were detected between the saved data in the GST system and the data actually filed, specifically in the fields of Input Tax Credit (ITC) availment and tax liabilities payment.

- This matter was examined and deliberated by the Grievance Redressal Committee of the GST Council and as a facilitation measure the Committee decided that these returns shall be reset, in order to give opportunity to such taxpayers to correct the discrepancy.

- Accordingly, only the affected taxpayers have been notified via email, and their respective dashboards now display the affected returns for re-filing with accurate data. Taxpayers are urged to re-file their GSTR-3B within 15 days of receiving the communication.

PORTAL UPDATES

3. Self-Enablement for E-Invoicing

- The taxpayers whose aggregate turnover exceeds INR 5 crore in financial year 2023-24, will be required to start e-Invoicing from 1st April 2024 onwards. The same is applicable if the threshold is crossed in any of the proceeding financial years too.

- The taxpayers who are required to enable, can self-enable for e-Invoicing by visiting https://einvoice.gst.gov.in and start reporting through any of the 4 new Invoice Registration Portals (IRPs) - from e-Invoice IRP 3 to e-Invoice IRP 6:

- https://einvoice3.gst.gov.in https://einvoice4.gst.gov.in

- https://einvoice5.gst.gov.in https://einvoice6.gst.gov.in

- To report e-Invoices through NIC IRP 1 & 2, taxpayers can self-enable at https://einvoice1.gst.gov.in https://einvoice2.gst.gov.in

4. Extension of GSTR-1 due date to 12th April 2024

- On the recommendation of GSTN, the due date for filing GSTR-1 for the monthly taxpayers was extended by a day till 12/4/24.

5. Enhancement in the GST Portal

- An upgraded version of the GST portal has been launched on May 3, 2024, to enhance user experience and ensure easier access to necessary information.

- The key enhancements include a dedicated tab for news and updates with a beta search functionality to facilitate easier access to specific information.

- It also provides for implementation of module-wise drop-down menus for efficient navigation and access to archived advisories dating back to 2017, allowing users to retrieve historical information.

- Minor adjustments were also made to the homepage to enhance usability and aesthetics, prioritizing user convenience.

Notifications

1. Notification No.08/2024- Central Tax

- Notification No. 04/2024 dated 5th January 2024 introduced revised forms for the manufacturers of Pan Masala and Tobacco products to facilitate the submission of details regarding packing machinery employed in the manufacturing and packaging processes.
- The Board has now deferred the implementation of the special procedure for Pan Masala and Tobacco manufacturers to 15th May 2024.

2. Notification No.09/2024- Central Tax

- Deadline for filing of FORM GSTR-1 for the tax period of March 2024 was extended to 12th day of April 2024.

Indirect Tax Compliance Calendar for May 2024

May 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		

Important Due Dates under Indirect Tax

Due Date	Description
10 May 2024	↳ Filing of GSTR-7 - By Tax Deductor for the month of April 2024 ↳ Filing of GSTR-8 - By E-Commerce Operator for the month of April 2024
11 May 2024	↳ Monthly filing of GSTR-1 for the month of April 2024 (Regular taxpayers)
13 May 2024	↳ GSTR 1 - IFF by Taxpayers under QRMP Scheme for the Quarter April – June 2024 ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of April 2024 ↳ Filing of GSTR-6 - By Input Service Distributor for the month of April 2024
20 May 2024	↳ Filing of GSTR-3B (Regular Taxpayers) for the month of April 2024 ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of April 2024
22/24 May 2024	↳ Filing of GSTR-3B under QRMP Scheme for the Quarter April – June 2024
25 May 2024	↳ GST PMT-06 - Challan for depositing GST for the month of April by taxpayers who have opted for QRMP Scheme for the quarter April – June 2024.
28 May 2024	↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.

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