

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Extension of the due date for filing FORM GSTR-1 for November 2022 for registered persons situated in certain districts of Tamil Nadu

CBIC has extended the due date for furnishing FORM GSTR-1 for November 2022 for registered persons whose principal place of business is in Chennai, Tiruvallur, Chengalpattu, Kancheepuram, Tiruvannamalai, Ranipet, Vellore, Villupuram, Cuddalore, Thiruvarur, Nagapattinam, Mayiladuthurai and Thanjavur districts of Tamil Nadu.

[Notification no:25/2022-Central Tax dated 13 December 2022]

JUDICIAL UPDATES

WRIT PETITION

Taxpayer is entitled to claim refund of GST paid on Notice Pay recovery in light of the Circulars issued by Central Board of Indirect Taxes and Customs ('CBIC)

Facts of the case

- M/s. Manappuram Finance Ltd. ('Taxpayer') is a non-banking finance company and is registered under the GST laws;
- In view of the clarification issued by CBIC on non-applicability of GST on notice pay recovery, the Taxpayer had filed an application for claiming refund of

tax paid on such notice pay recovery. The refund claim was rejected by the Tax authorities and was also rejected by the Appellate Authority;

- Aggrieved by the decision of the Appellate Authority, the Taxpayer filed a Writ petition challenging the Impugned order before the Hon'ble High Court of Kerala ("High Court").

Contention by the Taxpayer

- Taxpayer submitted that there is no other remedy available other than to approach the Hon'ble High Court due to non-constitution of GST Appellate Tribunal;
- Taxpayer relied on Circular no:178/10/2022-GST dated 03 August 2022 ('Circular') wherein it was stipulated that the amount recovered by the employer is not a consideration against tolerating an act but instead, the same represents penalty charged to the employees for discouraging such practices. Therefore, such amount recovered is not taxable;
- Further, Taxpayer has relied upon various judicial pronouncements regarding retrospective applicability of the circular.

Submissions made by Tax authority

- The Tax Authority contended that the Writ petition is not maintainable before the Hon'ble High Court and the Taxpayer ought to have waited for the constitution of GST Appellate Tribunal for adjudication as there is no demand against the Taxpayer.

Observations of the Hon'ble High Court

- The Hon'ble High Court held that the amount recovered by the taxpayer is not a taxable transaction, basis the

Circular dated 03 August 2022;

- The Hon'ble High Court also relied upon the decision of Hon'ble Supreme Court wherein it was held that the circulars are binding on the Tax authority and the taxpayer is entitled to the benefits of the Circular;
- The Hon'ble High Court allowed the Writ petition and quashed the Impugned Orders rejecting the refund claim of the Taxpayer.

[High Court of Kerala, M/s. Manappuram Finance Ltd, WP(C) NO. 27373 of 2022, dated 7 December 2022]

Blocking of input tax credit ('ITC') available in the Taxpayer's Electronic Credit Ledger ('ECL') for a period beyond one year is without the authority of law

Facts of the case

- Mr. Sunny Jain ('Taxpayer') is engaged in the business and supply of mobiles and mobile parts under the name 'Mahavir Impex';
- The allegation against the Taxpayer is that he had not paid the consideration for the supplies received from D.G. Impex within the period of 180 days, and therefore, was liable to pay interest under Section 16(2)(d) of the CGST Act;
- The Tax Authority, without informing the Taxpayer had blocked the ITC available in the Taxpayer's ECL under Rule 86A of the CGST Rules.

Contention of the Taxpayer

- The Taxpayer stated that his ECL had been blocked for a period of eighteen months without any intimation or enquiry. As per Rule 86A of the CGST Rules, it is impermissible in law to block the ECL for a period exceeding one year;
- Accordingly, the Taxpayer requested the Hon'ble High Court to direct the Tax authority to unblock the ECL.

Submissions by the Tax Authority

- The ECL of the Taxpayer was blocked pursuant to an e-mail dated 11 February 2020, received from Directorate General of Analysis and Risk Management (DGARM);
- The said email enclosed a list of taxpayers who had allegedly availed inadmissible ITC during FY 2017-18 and 2018-19, and the Taxpayer's name was included in the said list.

Observations and Ruling by the High court

- Plain reading of Rule 86A of the CGST Rules indicates that the restriction contemplated under Rule 86A(1) of the CGST Rules can be imposed only where the ITC available in the ECL has been 'fraudulently availed' or is 'ineligible';
- Blocking of an ITC in the ECL of a Taxpayer effectively prevents him from using the ITC for discharge of his liabilities. It is a drastic measure, and therefore, it can be taken only when the conditions for taking such measures are met. It is trite law that statutory provisions empowering harsh measures such as freezing the assets of a person, have to be strictly construed;
- The words 'inasmuch as' as used in Rule 86A(1) of the CGST Rules qualify the word 'ineligible'. The expression 'inasmuch as' is not of a wide import; it is used in a restrictive sense to qualify the subject;
- The use of the expression 'inasmuch as' restricts the scope of ineligibility to the conditions as set out in sub clauses of Rule 86A(1) of the CGST Rules;

- The CGST Act restrain a person from availing the ITC till he has paid the consideration for such supply to the supplier. A recipient of goods/services who receives goods and services on supplier's credit is also entitled to avail the ITC. However, if he fails to discharge his liability within a period of 180 days, he is liable to reverse the benefit of the ITC along with interest;
- The Taxpayer's liability to account for the ITC availed without paying for the same within the period of 180 days, is required to be assessed as a part of his output liability;
- As per the third proviso to Section 16(2) of the CGST Act, the Taxpayer would be entitled to re-avail the ITC pursuant to payment being made to the supplier;
- The restrictions imposed under Rule 86A(3) of the CGST Rules cannot extend beyond the period of one year from the date of imposing such restriction;
- The Hon'ble High Court observed that in the given facts and circumstances of the case, the action of the Tax Authority to continue blocking the ITC available in the ECL of the Taxpayer for such extended period is without the authority of law;
- In the circumstances, the Tax authorities are directed to forthwith unblock the ITC available to the Taxpayer in his ECL;
- It was also noted that nothing stated in this order would preclude the Tax Authority from taking such steps as necessary for recovering any ITC along with interest from the Taxpayer.

[High Court of Delhi, Sunny Jain Vs The Union of India Anr Ors, W.P.(C) 6444/2022, CM Nos. 19502/2022 & 33763/022 dated 05 December 2022]

Summary Show Cause Notice cannot substitute or be deemed as a proper Show Cause Notice as per Section 73 of the CGST Act

Facts of the case

- M/s Thriveni Earthmovers Private Limited ('Taxpayer') is engaged in providing service in relation to mining and registered under GST;
- The Taxpayer procures various goods and services for making outward supplies against valid GST invoices. Under Section 16 of the CGST Act, the Taxpayer avails ITC of the GST paid on the aforesaid supplies within the period prescribed under Section 16(4) of the CGST Act. However, the Taxpayer has taken ITC wherever eligible;
- In FY 2018-19, the Taxpayer had availed less ITC of GST in Form GSTR-3B than what was available to it as per Form GSTR 2A, and vice versa for FY 2019-20;
- During the scrutiny of its returns, the Tax Authority issued a Summary of Show Cause Notice (SCN) dated 03 November 2020 for excess ITC availment during FY 2019-20 for INR 56.04 Mn;
- However, the Summary of SCN was not accompanied by a SCN, and no copy of the SCN to which the said summary pertains was received by the Taxpayer;
- The Taxpayer replied to the Summary of SCN, denying that any excess ITC has been availed by it during the said period;
- Following submission of the reply to the Summary of the SCN, the Tax authority proceeded to pass an order dated 04 August 2021, upholding the allegations and demands raised in the said Summary of the SCN;

- The Impugned Order was thereafter followed by a Form DRC-07 seeking to recover the demand;
- The Taxpayer filed a Writ petition seeking a relief that the Impugned Order dated 4 August 2021 and the Impugned notice of demand issued under Form DRC-07 be quashed and set aside.

Contention of the Taxpayer

- The Taxpayer submitted that no notice under Rule 142(1) of the CGST Act has been issued and only a summary of SCN has been issued to the Taxpayer;
- It was stated that GST ASMT-10 was categorically mentioned that if no explanation is received by the due date mentioned in the notice the Tax authority will proceed in the matter in accordance with law. However, only a summary of SCN was issued and no SCN was issued in terms of Section 73 (1) of the CGST Act;
- It was further submitted that even the right of personal hearing which is mandatory under 75(4) and 75(5) of the CGST Act was not given. Thus, the Impugned Order is liable to be dismissed on this ground alone;
- Taxpayer further relied upon the ruling in the case of *M/s NKAS Service Private Ltd. Vs. State of Jharkhand & others* [2021-VIL-732-JHR] wherein the Hon'ble High Court held that the impugned notice which lacks in fulfilling the ingredients of a proper SCN under Section 73 of the CGST Act deserves to be quashed and set aside;
- The Taxpayer also relied on the order in the case of *M/s. Godavari Commodities Ltd. Vs. The State of Jharkhand & others* [2022-VIL-279-JHR], wherein the Hon'ble High Court has held that personal hearing is mandatory before passing of the final order.

Submissions by the Tax Authority

- Consequent to the scrutiny of the return furnished by the Taxpayer under Section 61 of the CGST Act, a notice of intimation in the form prescribed under Form ASMT-10 was served upon the Taxpayer intimating discrepancies in the return and since the Taxpayer failed to respond to the notice, it was presumed that the Taxpayer has nothing to say in the matter.
- Hence, the proceeding under Section 73 was initiated against the Taxpayer which is in accordance with law as contemplated under Section 61(3) of the CGST Act.

Observations and Ruling by the High Court

- The Hon'ble High Court observed that the SCN under Rule 142(1) of the CGST Rules has not been served to the Taxpayer before issuance of summary of notice in Form DRC-01;
- It was noted that the law is now well settled by the Court in various judgments that summary of SCN cannot substitute or be deemed as proper SCN as per section 73 of the CGST Act;
- Further, in *M/s Godavari Commodities Ltd. (supra)*, it was held that personal hearing has been held to be mandatory, if the Taxpayer disputes the liability;
- The Hon'ble High Court also observed that it is a glaring example of violation of the principles of natural justice and the mandatory procedure prescribed under law. Accordingly, applying the principles law laid down in *Magadh Sugar & Energy Ltd. Vs. State of Bihar & Ors.* [2021 SCC Online 801], the writ application is maintainable;
- Accordingly, the impugned summary of SCN in Form-DRC-01 is quashed and set aside. Consequently, the summary of order issue in Form GST DRC-07 and impugned order

also cannot survive, accordingly the same is also quashed.
[High Court Of Jharkhand, M/s Thriveni Earthmovers Private Limited Vs. The State of Jharkhand, W.P. (T) No. 4626 of 2022 dated 06 December 2022]

CUSTOMS

NOTIFICATION

Bhithamore and Barhni Land Customs Stations (LCS) included in the list of LCSs, export through which are eligible for Duty Drawback

CBIC has included Bhithamore and Barhni in the list of LCSs, export through which eligible to claim Duty Drawback, where the petroleum product exported by M/s. Indian Oil Corporation Ltd., India, through any of these LCS to M/s. Nepal Oil Corporation Ltd., Nepal, for which payment for price is received in Indian currency.

[Notification no:106/2022-Customs (N.T.) dated 12 December 2022]

Kakrawah notified as LCS for clearance of any class of goods imported or exported

CBIC has appointed Kakrawah as LCS for the purpose of clearance of baggage, passenger vehicles and tourist vehicles.

[Notification no:107/2022-Customs (N.T.) 13 December 2022]

NEWS FLASH

1. “Budget 2023: Govt should broaden tax base, rationalize GST and reform tax administration”
<https://timesofindia.indiatimes.com/business/budget/budget-2023-broaden-tax-base-rationalize-gst-rates-and-reform-tax-administration/articleshow/96335982.cms>
[Source: The Times of India, 19 December 2020]
2. “18% GST Payable On Glaze Gels: AAR”
<https://www.livelaw.in/news-updates/18-gst-payable-on-glaze-gels-aar-217183>
[Source: Live Law, 18 December 2020]
3. “Govt to refund GST if purchase of incomplete house called off: Experts”
<https://economictimes.indiatimes.com/industry/services/property/-/cstruction/govt-to-refund-gst-if-purchase-of-incomplete-house-called-off-experts/articleshow/96352225.cms>
[Source: The Economic Times, 20 December 2020]
4. “28% GST on online games only when winning depends on certain outcome, says CBIC Chief”
<https://economictimes.indiatimes.com/news/economy/policy/28-gst-on-online-games-only-when-winning-depends-on-certain-outcome-says-cbic-chief/articleshow/96303925.cms?from=mdr>
[Source: The Economic Times, 17 December 2020]
5. “GST Registration: Cancellation by non-filing of Return and Revocation of Cancellation”
<https://www.taxscan.in/gst-registration-cancellation-by-non-filing-of-return-and-revocation-of-cancellation/236835/>
[Source: Taxscan, 21 December 2020]



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