

Recent Rulings by Courts and Authorities

Supreme Court Rulings

Supreme Court restores the extension of limitation period

In light of surge in the number of COVID cases, Supreme Court¹ has restored its earlier order issued vide *Suo Moto Writ Petition*, thereby extending the limitation period till further orders.

The limitation period for filing of any suit, appeal, application or proceeding for the period from March 15, 2020 till date of further order, will be excluded for computing the period of limitation under the general or specific legislations.

Dealers registered under CST Act² eligible for issuance of Form C

In the case of *Commissioner of Commercial Taxes vs. Ramco Cements Limited, Special Leave to Appeal (C) No(s). 15785-15788/2020*, the revenue authorities filed an appeal against the ruling of Hon'ble Madras High Court which allowed the issuance of Form "C" to the dealers/ assessee for inter-state purchases of goods³ not covered under GST⁴, at concessional rate of tax.

The Madras High Court in its order observed that the restrictive definition of goods under CST Act does not mean that the entire scope of operations of CST Act has been amended. The purchasing dealer's right to purchase goods at concessional rate by using Form "C" for goods covered under CST Act continues even after the introduction of GST. The High Court held that mere restriction of operation of CST Act to goods not covered under GST, does not take away the right of such dealers to purchase goods inter-state and their registration cannot be said to be cancelled.

The High Court also observed that if the acid test for issuance of Form "C" was resale or manufacturing of goods, CST Act would not have permitted issuance of Form "C" for power generation, mining or even telenetwork communication operations. Therefore, the High Court held that such a right equally applies to a cement industry and the benefit of concessional rate by way of Form "C" cannot be denied.

¹ Miscellaneous application no. 665/2021

² Central Sales Tax Act, 1956

³ Petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption

⁴ Goods and Services Tax

The Hon'ble Supreme Court upheld the judgement of the Madras High Court and saw no reason to reopen the entire matter.

JSA Comments: This ruling settles the dispute regarding concessional rate of tax for goods covered under CST Act, being used by businesses engaged in supply of goods or services taxable under GST. However, the Finance Act, 2021 has amended the CST Act to restrict the issuance of Form "C" for the purchase of goods for resale or for use in manufacturing/processing for sale of only those goods which are covered under CST Act (effective from March 2, 2021), thereby, putting to rest the controversy under this ruling.

Provisional attachment must conform to the statutory pre-conditions for exercising such power

In the case of *Radha Krishnan Industries vs. State of Himachal Pradesh, TS- 168-SC-2021-GST*, the Supreme Court evaluated the validity of an order passed for provisional attachment⁵ of trade receivables. An order for provisional attachment was issued by the joint commissioner before finalization of proceedings initiated under Section 74 of CGST Act, which deals with proceedings for non-payment/ short-payment of taxes. The order for provisional attachment was challenged by the petitioner before the High Court of Himachal Pradesh. The High Court dismissed the petition on the grounds of availability of alternate remedy of appeal available to the petitioner.

The Supreme Court overturned the ruling of the High Court and held that the alternate remedy of appeal was not available to the petitioner in this matter as, the parameters for issuance of an order for provisional attachment were not satisfied by the joint commissioner. The Supreme Court elaborately explained the parameters/ circumstances under which an order for provisional attachment can be issued (the parameters have been discussed below).

- Commissioner must form an opinion based on some 'tangible material' that it is necessary to do so for protecting the interest of government revenue;
- Provisional attachment can be ordered by a Commissioner, in conformity with the rules prescribed in the law;
- Provisional attachment can be ordered during the pendency of proceedings under Section 62, 63, 64, 67, 73 or 74 of the CGST Act.
- The Supreme Court observed that there must be proximate link between the need for attachment and the purpose it is intended to secure.
- It was also noted that provisional attachment can only be done after providing an opportunity to the file objections against such attachment and an opportunity of personal hearing. In view of the above, it was held that power to provisionally attach a property is a draconian power and must be exercised only with strict adherence to the statutory requirements.

In the case of the petitioner, no proceedings were pending against the petitioner at the time of issuance of the order of provisional attachment. The mere fact that proceedings under Section 74 of the CGST Act had concluded against the petitioner would not satisfy the requirement for issuance of order of provisional attachment.

JSA Comment: This ruling is an important judicial precedent wherein, the Supreme Court has set out clear guidelines and elaborately explained the circumstances in which orders for provisional attachment can be

⁵ As per Section 83 of the Central Goods and Services Tax Act, 2017 ("CGST Act")

issued by the GST authorities. This is especially appreciated in times where the authorities have displayed oppressive powers through unbridled investigations and attachment proceedings.

High Court Rulings

Amounts collected during investigation proceeding without proper ascertainment of tax liability is not permitted under GST Laws

In the case of *Shri Nandhi Dhall Mills India Private Limited vs. Senior Intelligence Officer, DGGSTI, TS- 157-HC (Mad.)- 2021- GST*, the petitioners during the course of investigation, signed a statement admitting the tax liability and agreed to make payments as per schedule of payment contained therein. This statement was subsequently retracted, and the matter was contested on merits. However, two installments as per the schedule were already paid by the petitioner. A writ petition was filed seeking refund of the installments already paid to the GST authorities during the course of investigation.

The Hon'ble High Court observed that the CGST Act did not sanction collection of tax during the course of investigation unless the liability of tax has been 'ascertained' by the assessee or the authorities. The Hon'ble High Court noted that 'ascertainment' contemplated under Section 74(5) of the CGST Act should be an unconditional determination and not merely acceptance of tax liability under the stress of investigation.

In the present case, there was no record of 'ascertainment' of tax liability by the GST authorities and the statement accepting the tax liability was retracted by the petitioner. Accordingly, the High Court directed the GST authorities to refund the amount collected without ascertaining the tax liability and held that making payment under protest would not qualify as acceptance of liability.

BOE⁶ ordered to be amended manually after clearance of goods since assessee should not be made to suffer due to in-capabilities of IT⁷ infrastructure

In the case of *Hindustan Unilever Limited vs. Union of India, TS-128-HC(Mad.)- Cus.*, the petitioner had obtained GST registration in multiple states. While importing raw materials during the period July 2017 and September 2018, the petitioner inadvertently mentioned the wrong GSTIN⁸ on the BOEs. On account of such error, the units which actually consumed the raw materials, could not avail ITC⁹ of the IGST¹⁰ paid. An application was filed under Section 149 of the Customs Act¹¹ for amendment of BOE to rectify the said error. However, the same was rejected on the grounds that once the goods are cleared for home consumption the Commissioner/ assessing authority does not have the power to rectify the GSTIN on the BOE manually.

The High Court noted that the spirit and intent of Section 149 of the Customs Act is to facilitate rectification of error in cases where the importer can establish with the help of contemporaneous import documents that the error was inadvertent and bona fide. Therefore, the authorities were directed to amend the BOE manually as, the inefficiency in the IT infrastructure cannot be a reason to deny statutory benefit to the assessee.

⁶ Bill of Entry

⁷ Information Technology

⁸ Goods and Services Tax Identification Number

⁹ Input tax credit

¹⁰ Integrated Goods and Services Tax

¹¹ Customs Act, 1962

Authority for Advance Ruling ('AAR')/Appellate Authority for Advance Ruling ('AAAR')

Debit notes are linked to invoices and time limit for availing ITC will apply to debit notes

In the case of *I-tech Plast India Private Limited, TS-153-AAR(Guj.)-2021-GST*, the applicant, engaged in the business of manufacturing and supply of toys made up of plastic and rubber approached the AAR to evaluate the availability of ITC on the debit notes issued for supplies received during financial year 2018-19. The applicant submitted that post amendment of Section 16(4) of CGST Act, the words “invoice relating to” has been deleted and therefore, the correlation of invoice to the debit note is not required for purpose of availing ITC beyond the prescribed time limit.

AAR rejected this submission and held that debit notes are intrinsically linked to the original tax invoice issued by the supplier and the said amendment cannot be interpreted to treat debit note as an independent document under the GST Law. Consequently, the financial year to which a debit note pertains will be the financial year in which original invoice was issued and therefore, in the present case ITC of debit note pertaining to original invoice of financial year 2018-19 would be time barred.

JSA Comment: The purpose of introducing the said amendment in the Finance Act, 2020 was to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. This ruling disregards the objective of introduction of the amendment and therefore, does not set out good law.

Pre-developed/ designed software supplied along with encryption keys are “Application Software” and taxable as goods under GST

In the case of *SPSS South Asia Private Limited, TS-129-AAR(KAR)-2021-GST*, the applicant is an authorized seller of IBM SPSS software in India, supplying license for internet downloadable software to various publicly funded research entities. The applicant filed an application to determine whether the supplies made by them to a public funded research institute are eligible for concessional rate of tax prescribed for ‘goods’¹². The said notification specifically lists computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches as ‘goods’ for the purpose of concessional rate of tax.

The AAR observed that the software supplied by the applicant is a supply of ‘goods’ based on the following:

- Software supplied is a pre-developed, pre-designed software, made available by way of encryption keys and therefore, covered under the definition of goods.
- Given that the goods supplied are “computer software” and required to be loaded on a computer and becomes usable only after activation, the goods are covered under “application software”.
- The explanatory notes to the scheme of classification of services stipulates that the services of limited end-user license as part of packaged software are excluded from the SAC¹³ 997331, which covers licensing services for the right to use computer software and databases.

¹² Notification no. 45/2017-Central Tax (Rate) dated November 14, 2017

¹³ Services Accounting Code

The AAR observed that the applicant was supplying the said software to a public funded institution under the administrative control of Department of Atomic Energy, and the applicant satisfied the condition laid down under the notification, and therefore the benefit of concessional rate was allowed.

Notifications

Exemption of customs duty and health cess on oxygen, ventilators, Covid-19 vaccine, etc.

Notification no. 28/ 2021- Customs dated April 24, 2021

Given the adverse situation on account of the pandemic, the Government of India has exempted customs duty and health cess, on import of goods such as medical oxygen, oxygen filling system, oxygen storage tanks, oxygen generator, ISO containers for shipping oxygen, ventilators, COVID-19 vaccine, etc.

Remdesivir injections, API¹⁴ and other raw material exempted from customs duty till October 31, 2021

Notification no. 27/ 2021- Customs dated April 20, 2021

The Government has exempted Remdesivir injections, Remdesivir APIs and Beta cyclodextrin used in manufacture of Remdesivir from levy of customs duty till October 31, 2021.

Exemption of IGST and compensation cess on imports under EPCG¹⁵ and AA¹⁶ extended till March 31, 2022

Notification No. 23/2021 – Customs dated March 31, 2021

Benefit of exemption of IGST and compensation cess on imports made under EPCG authorization, AA licenses, AA for annual requirement with actual user condition, AA for export of prohibited goods and special AA have been extended till March 31, 2022 by making suitable amendment to respective notifications under Customs Act.

Ordinance/Government Order

Karasamadhan Scheme, 2021

Order No. FD 49 CSL 2021. Bengaluru dated March 29, 2021

Karnataka State Government has approved Karasamadhana Scheme, 2021 which allows 100% waiver of penalty and interest in respect of any proceedings completed by July 31, 2021, upon payment of disputed tax amount. The last date for submission of application under the Scheme is October 31, 2021.

The benefit under the said scheme can be claimed in relation to proceedings under following State legislations:

- Karnataka General Sales Tax Act, 1957;
- Central Sales Tax Act, 1956;
- Karnataka Value Added Tax Act, 2003;

¹⁴ Active Pharmaceutical Ingredient

¹⁵ Export Promotion Capital Goods

¹⁶ Advance Authorization

- Karnataka Tax on Entry of Goods Act, 1979;
- Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976;
- Karnataka Tax on Luxuries Act, 1979;
- Karnataka Agricultural Income Tax Act, 1957; and
- Karnataka Entertainments Tax Act, 1958.

The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021

April 04, 2021

The Ordinance outlines the following amendments to the Customs Act, 1962:

- Appellate Authority for Advance Ruling under the Customs Act, 1962 has been done away with; and
- Any appeal from the decision of Authority for Advance Ruling to lie before the Jurisdictional High Court.

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