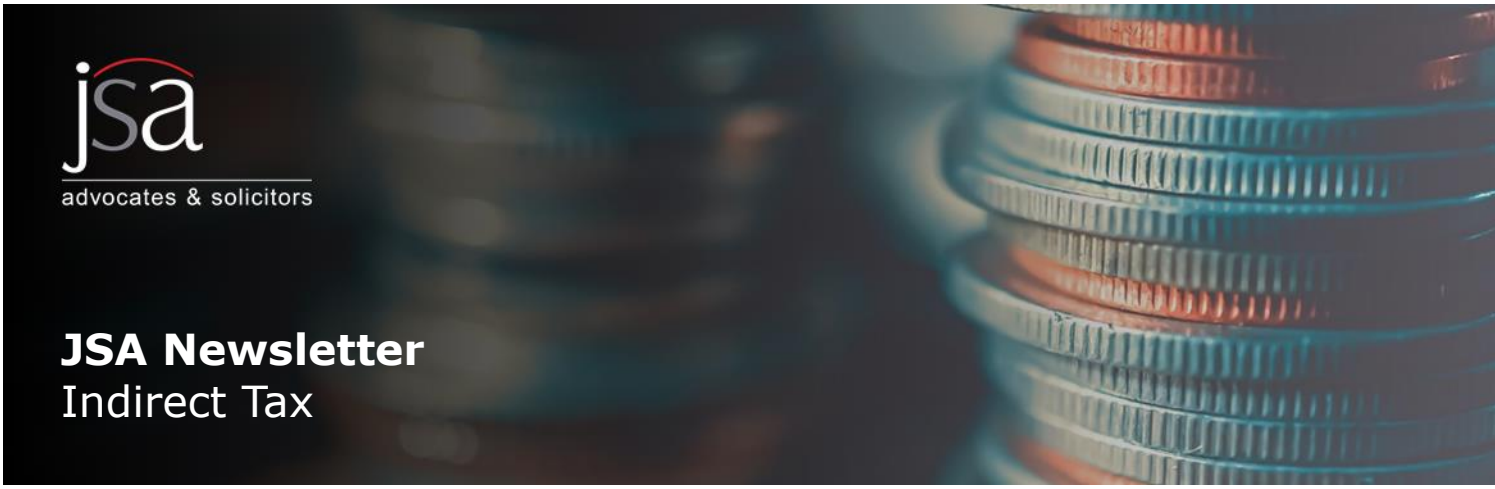

April 2022 Edition

Recent Rulings by Courts and Authorities

Supreme Court

Service tax not applicable on revenue sharing arrangement between cinema distributors and exhibitors

In the case of ***Commissioner of Service Tax vs. Inox Leisure Ltd.***[1], the Hon'ble Supreme Court upheld the order passed by the CESTAT. The facts of case are that the assessee (Inox) is engaged in the business of exhibiting cinematographic films at multiplex theatres across India. In this regard, Inox entered into license agreements with film distributors for acquiring the rights/ license to exhibit the films at the designated theatres. The consideration towards such license was paid as an agreed percentage of box office collections of a movie.

The revenue authorities initiated proceedings for recovery of service tax for the period May 2009 to June 2012, on the grounds that infrastructure support services are being provided by Inox to distributors/ producers, under the taxable category of 'business support services'. Inox filed an appeal before the CESTAT, Hyderabad and contended that service tax was not payable in the absence of provision of services by Inox to the distributor/ producer. The CESTAT set aside the order demanding Service tax, based on the following observations:

1. The distributor had granted non-exclusive license to the assessee to exploit theatrical rights, and the assessee was free to conduct business in its absolute and sole discretion in terms of the arrangement. It was clear from the agreement that parties will not interfere or influence the decision of the other party in respect of conduct of business. Such an exhibition is not a support or assistance activity but an activity on its own accord, which was not liable to service tax.

2. It was also clear that the assessee had to pay revenue share to the distributor in lieu of agreeing to grant license to the assessee. If the assessee was providing services to the distributor, payment should have been made by the producers or distributors and not by the assessee unlike in the instant case. Hence, a revenue sharing arrangement does not imply provision of services, unless a service provider and service recipient relationship is established.

High Court

Tax paid under Service tax regime permitted to be carried forward as credit in the goods and services tax ("GST") regime, in the absence of provisions in the statute book

In the case of ***Ganges International Private Ltd. vs. The Assistant Commissioner of GST & Central Excise***[2], the assessee was engaged in providing construction services to Government/private parties. During the Service tax audit, it was pointed out that the assessee is liable to pay Service tax under reverse charge mechanism on the royalty paid to

[1] 2022 (3) TMI 1206 - SC Order
[2] 2022 (3) TMI 544 – Madras High Court

the government in respect of services rendered at quarries. In response to this allegation, the assessee paid service tax along with interest on December 30, 2017, for the period April 2016 to July 2017. Further, the assessee tried to claim CENVAT credit of the said Service tax, however, could not avail the same on account of introduction of GST.

Due to this peculiar situation, the assessee filed a refund claim as, the amount was paid on December 30, 2017, which was after the lapse of time prescribed for filing of GST TRAN -1. However, the refund application was rejected by the Commissioner stating that there was no provision in the new regime to allow input tax credit or refund of the Service tax paid in the GST regime. Being aggrieved by the said order, assessee filed a Writ Petition before the Hon'ble Madras High Court.

Owing to the unique set of facts, the Hon'ble High Court remitted the matter back to the respondents, with the following observations and directions:

1. If GST regime was not introduced the eligibility to claim CENVAT credit would not be in dispute, and the assessee would have been eligible to claim the credit of the amounts paid. The High Court invoked the "Doctrine of Necessity" and observed that this kind of situation necessarily needs to be met with, by the Legislation as, the transitional provisions that have been inserted in the statute book, cannot be an impediment for invoking Section 142(3) of the CGST Act.

2. While the question of cash refund under Section 142 (3) of the CGST Act does not arise, the application made by the assessee could have been considered by the respondents for the purpose of allowing the credit, by way of carrying forward of the said credit in the electronic credit ledger.

Assessee reserves the right to claim refund of the amount deposited under coercion and threat of arrest by the revenue authorities

In the case of ***Union of India vs. Bundl Technologies Pvt Ltd***[3]***,*** the respondent operates an e-commerce platform under the brand name of 'Swiggy', through which customers place orders for food delivery from restaurants. The deliveries are made by 'pick-up and delivery partners' ("**PDP**"), who are directly engaged by Swiggy as well as temporary delivery executives ("**Temp DE**"), whose services are procured through third party service providers. For PDPs, GST is not applicable as they are below the threshold limit. However, the third-party service providers charge GST on the amount paid to Temp DEs.

In 2017, Swiggy entered into an agreement with a third-party service provider, 'Green Finch Team Management Pvt. Ltd.', ('**Green Finch**'), which provided Temp DEs to Swiggy on a cost-plus mark-up basis and charged GST on the entire sale consideration. An investigation was initiated by the Directorate General of Goods and Services Tax Intelligence, Hyderabad Zonal Unit (**"DGGI"**) with regard to the services provided by Green Finch, on the grounds that Green Finch was a non-existent entity, and therefore, the input tax credit ("**ITC**") availed by Swiggy and the GST paid to Green Finch were fraudulent.

On November 28, 2019, a similar investigation was conducted at the premises of Swiggy. DGGI Officers issued summons to the directors and employees (on the spot), and their statements were recorded. Further, Swiggy was made to deposit a sum of ₹15 crores. Thereafter, the directors of Swiggy were again summoned, and at the time of appearance before the DGGI, they were locked in the office and threatened to be arrested. Further, Swiggy was forced to deposit more money to secure release of its directors. Accordingly, in totality, a sum of approx. INR 27 crores was collected during the investigation under threat and coercion, without following the procedure prescribed under the CGST Act.

Thereafter, Swiggy filed an application before the jurisdictional GST officer, which remained un-responded and thus a Writ Petition was filed before the High Court of Karnataka, seeking a writ of mandamus directing the GST authorities to refund the amount collected during the investigation along with interest. The Hon'ble High Court held that payment of the amount made by Swiggy during the investigation was involuntary. While the Court did not place any restrain on the powers of investigation of the revenue authorities, it was held that that the right to seek refund is independent of the process of investigation, and the two cannot be linked together. Accordingly, the Writ Petition was disposed of with directions to revenue to consider the refund application of Swiggy. Being aggrieved by the said order of single-judge Bench, the Appellant filed present appeal before the Division bench of the High Court, wherein it was held that:

[3] 2022 (3) TMI 625 - Karnataka High Court

1. The payment made by Swiggy was involuntary in nature as, the payment made was made under coercion and threat to arrest and the amount deposited shall not be treated as admission of Respondent's liability in terms of section 74(5) of the CGST Act. Thus, Swiggy has the right to claim refund which was deposited under protest during the investigation.

2. The Court also noted that Article 265 of the Constitution of India mandates that collection of tax must be by the authority of law. If tax is collected without any authority of law, it would amount to depriving a person of his property and would infringe his right under Article 300A of the Constitution of India. The only provision which permits deposit of an amount during pendency of an investigation is Section 74(5) of the CGST Act, which is not attracted in the present case, and therefore the amount collected from Swiggy is in violation of the provisions of the Constitution. Accordingly, the revenue authorities were directed to refund the amount to Swiggy paid under protest.

CESTAT

Substantive benefit of CENVAT Credit cannot be denied for want of procedural compliance of registration as 'Input Service Distributor'

In the case of ***CCE vs. Tide Water Oil Co. (India) Ltd (Vice-Versa)***[4], the assessee a manufacturer of lubricants and greases, was duly registered as an Input Service Distributor ('**ISD**') prior to November 22, 2009, however, for subsequent period(s) (i.e., November 23, 2009 to August 23, 2015) ISD registration inadvertently got excluded while seeking amendment in the service tax registration certificate.

The department issued a Show Cause Notice dated March 21, 2016 seeking to deny ITC availed for the period April 2011 to August 2015, by the manufacturing plant on the strength of ISD invoices issued from the Head Office, since ISD registration was not appearing in the registration certificate. Hence the demand of Central Excise duty along with equivalent penalty was confirmed. Further, two appeals were filed against the said order before the CESTAT, Kolkata, first one was by the assessee against the demand and penalty confirmed, and second one was by the authorities since no interest was ordered in the said order by the Ld. Commissioner. Both these appeals were decided together by the CESTAT, and it was held as follows:

1. The demand confirmed by the Commissioner for disallowing the CENVAT Credit on the ground that the head office of the Appellant was not registered with the Service Tax department as ISD and non-registration of ISD is merely a procedural irregularity.

2. Further, nothing has been mentioned in the Rules regarding the availment of CENVAT Credit unless and until such a registration has been applied and granted. Therefore, the Appellant should not have been denied substantial benefit of CENVAT Credit merely for want of registration as ISD. Hence, the impugned order of the Commissioner was set aside.

Authority for Advance Ruling ("AAR")

ITC cannot be availed on cars received under stock transfer and thereafter sold to dealers after using them for a limited period

The applicant ***BMW India Pvt Ltd.***[5] manufactures vehicles in Chennai Plant stock transfers/ supplies it to Gurugram location after charging applicable IGST and compensation cess. Such cars are used at Gurugram location for various purposes like training of dealers/ service center operators, road shows, test drives etc. After using such vehicles for about a year, the same are sold to the authorized dealers as old/ used vehicles. The applicant charges GST on this transaction at concessional rate of 18%, without availing ITC on the said vehicles.

In the above backdrop, the applicant approached the AAR to determine:

"Whether the applicant is entitled to avail ITC of IGST and compensation cess paid on receipt of cars (on stock transfer basis) for use in relation to specified business activities and thereafter onwards supply to dealers after use by the applicant for a limited period of time?"

[4] 2022 (2) TMI 1069 - CESTAT Kolkata
[5] 2022 (3) TMI 487 - Appellate Authority for Advance Ruling, Haryana

The AAR ruled that in the motor vehicle industry, demonstration vehicles are indispensable for promotion of sales, however, considering that the purpose for which the vehicles are being used by the applicant does not fall under the specific uses prescribed in Section 17(5)[6] of CGST Act, the applicant is not entitled to ITC.

Being aggrieved by the order of the AAR, the applicant filed an appeal before the Appellate Authority for Advance Ruling (**"AAAR"**), wherein the view of AAR was affirmed, and it was held as follows:

1. ITC on motor vehicles is restricted under the provisions of Section 17(5)(a) of the CGST Act, unless the same is used for purposes specified therein. In the present case, the vehicles are first used for demo purpose (for twelve months) and then disposed-off. Thus, the same are not being used for any of the specified purpose.
2. The demo cars lose character of a new motor vehicle and shall be treated as secondhand goods being different from new vehicles. Hence, the demo car is not an input.
3. The cars received by the applicant under the stock transfer are never received with an intent to 'further supply such motor vehicles or sell as such', and thus ITC on these vehicles cannot be allowed.

Notifications and Circulars

Finance Act, 2022 enactment on March 30, 2022

Finance Bill, 2022, has been enacted after receiving the assent of the President of India on March 30, 2022, to give effect to the financial proposals of central government for financial year 2022-23.

Foreign Trade Policy ("FTP") 2015-20 extended till September 30, 2022

NOTIFICATION NO.64/2015-2020 dated March 31, 2022

The validity of existing FTP 2015-2020 is extended from March 31, 2022 to September 30, 2022.

Exemption under Export Promotion Capital Goods ("EPCG") and Advance Authorization ("AA"), EOU ("Export Oriented Units") schemes extended

NOTIFICATION NO. 18 and 19 of 2022-Customs dated March 31, 2022

Exemption from IGST and compensation cess for goods procured/ imported by EOUs/software technology parks etc. and imported under EPCG/ AA scheme of FTP, is extended upon June 30, 2022.

Standard Operating Procedure ("SOP") issued for scrutiny of GST returns for FY 2017-18 and 2018-19

Instruction No. 02/2022-GST dated March 22, 2022

CBIC has issued an SOP as an interim measure (till scrutiny module is made available) to ensure uniformity in selection and methodology of scrutiny of GST returns. The SOP, *inter-alia*, details the process of scrutiny, timelines to followed for various actions by the revenue authorities and the indicative list of parameters for scrutiny.

Maharashtra Amnesty Scheme, 2022

Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022

The Maharashtra Government has announced an 'Amnesty Scheme' for arrears under pre-GST and VAT laws. Under this scheme, the period for payment of the requisite amount for settlement of cases will be from April 1, 2022 to September 30, 2022. To avail the benefit of this scheme, the appeal filed by the dealers will have to be withdrawn unconditionally.

[6] Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: -
(A) further supply of such motor vehicles; or
(B) transportation of passengers; or
(C) imparting training on driving such motor vehicles;

This Amnesty Scheme is applicable to all the pending dues for the past periods up to June 30, 2017, i.e., before the introduction of GST. The amount to be paid as settlement under the scheme are as follows:

Amount of arrears as on April 1, 2022	Settlement amount to be paid	Remarks
Upto INR 10,000 per year	Nil	Full waiver
INR 10,000 to INR 10,00,000 per year	20% of total arrears to be paid in lumpsum	
Above INR 10,00,000 OR Upto INR 10,00,000 but not willing to opt for above lumpsum option	For the periods up to March 31, 2005 • 100% of the undisputed tax • 30% of the disputed tax, • 10% of the interest • 5% of the penalty	Balance arrears waived
	For the periods from April 1, 2005 to June 30, 2017 • 100% of the undisputed tax • 50% of the disputed tax, • 15% of the interest • 5% of the penalty	

For more details, please contact km@jsalaw.com

Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

