

Recent Rulings by Courts and Authorities

Supreme Court

'Public duty' is an essential component for a Writ of mandamus

In the case of *Union of India and others vs. Bharat Forge Ltd. and another*¹, Diesel Locomotive Work, a public authority (one of the appellants), invited tenders from private parties for supply of certain goods of which 50% were to be manufactured domestically, in line with 'Make in India' policy. The notice inviting tender required the tenderers to specify the applicable tariff heading and rate of GST² in the bid. The tender was awarded to the supplier who quoted the GST at the rate of 5%.

Bharat Forge Ltd. (the respondent) who had quoted GST at the rate of 18% in their bid, challenged the action of awarding the tender by filing a writ of mandamus before the Allahabad High Court ("**High Court**"). The High Court directed Diesel Locomotive Work to clarify the HSN and applicable rate of GST with the GST authorities and mention the same on the notice inviting tender, to ensure uniform bidding.

Aggrieved by the High Court's direction, the appellants approached the Hon'ble Supreme Court of India ("**Supreme Court**") by way of a SLP³. The Supreme Court observed that a writ of mandamus can be issued where there is failure to perform a public duty. The Supreme Court also observed that it is the responsibility of the supplier to determine HSN, applicable rate of GST and payment of GST for a given contract and a mechanism of advance ruling is available to the supplier if any doubts arise in this regard.

Based on the above, the Supreme Court held that in the current situation, there is no public duty which the appellants have failed to perform and thereby, set aside the direction of the High Court.

JSA Comment: The ruling clarifies that there has to be a failure to perform a public duty for an assessee to file a petition for writ of mandamus and a commercial arrangement does not dissuade a supplier from its duty of self-assessment of GST. It is therefore, of utmost importance that tax clauses are thoroughly evaluated while negotiating contract and proper indemnification framework is put in place.

High Court

IEC⁴ not required at the time of rendering services for availing SEIS⁵ benefits

In the case of *Smarte Solutions Private Ltd. vs. Union of India*⁶, the petitioner was engaged in the business of providing market research services, which were eligible for benefits under SEIS. The petitioner did not have a

¹ Union of India and others vs. Bharat Forge Limited and another, 2022 (8) TMI 690 – Supreme Court

² Goods and Services Tax

³ Special Leave Petition

⁴ Importer Exporter Code

⁵ Services Exports from India Scheme

⁶ Smarte Solutions Private Ltd. vs. Union of India, 2022 (8) TMI 186 - Bombay High Court

valid IEC at the time of rendering services, however, it obtained the IEC before filing the SEIS application. The DGFT⁷ rejected the SEIS application on the grounds that the petitioner failed to comply with the eligibility conditions prescribed in para 3.08(f) of the FTP⁸ (i.e., the petitioner did not hold a valid IEC at the time of rendition of services). Aggrieved by the above, the petitioner approached the Bombay High Court (“**High Court**”).

The High Court observed that Section 7 of the FTDR Act⁹ mandates the requirement of a valid IEC for import and export of goods. However, for import and export of services or technology, IEC is mandated only if the service provider is availing the benefits under FTP. Therefore, the High Court observed that the eligibility criteria incorporated in para 3.08(f) of the FTP¹⁰ is inconsistent with Section 7 of the FTDR Act and that additional rights or obligations cannot be imposed by way of a delegated legislation (i.e., the FTP). Accordingly, the High Court held that IEC is not essential at the time of rendering such services.

Authority for Advance Ruling (“AAR”)

Application for advance ruling inadmissible where transaction does not amount to supply

In the case of *Mercara Downs Golf Club*¹¹, the applicant, a society involved in golf activities, received a donation of INR 1,00,00,000 (Indian Rupees one crore) from a donor who was not a member of the club. The application was filed to seek a ruling on whether donation received by the club is taxable under GST. The applicant contended that donation was given by the donor, without a *quid pro quo*, without any favour and in the form of a financial help which was not aimed at giving publicity to the donor in such a manner that it would be an advertising or promotion of business of the donor. Therefore, the applicant contended that donation should not be construed to be consideration towards supply, thereby, not being taxable under GST.

On examining the admissibility of the application, AAR observed that an advance ruling under Section 97(1) read with Section 95(a) of the CGST Act can be sought only for matters or on questions in relation to supply of goods and/ or services undertaken or proposed to be undertaken by the applicant. As per Section 7 of the CGST Act, supply includes all forms of supply of goods and/ or services, made or agreed to be made for a consideration by the applicant in the course or furtherance of business.

Based on the above, the AAR held that the applicant was not involved/ proposed to be involved in undertaking supply of any goods or services and that in absence of a *quid pro quo*, donation cannot be treated to be consideration. Therefore, AAR held that the receipt of donation was not towards any supply and hence, the application was declared to be ‘inadmissible’.

Notifications/Circulars/Trade Notice/Instructions/Guidelines

Threshold for e-invoicing reduced to INR 10,00,00,000 (Indian Rupees ten crores)

Notification No. 17/2022 – Central Tax dated August 1, 2022

E-invoicing is mandatory for every person whose aggregate turnover in any preceding year exceeds INR 10,00,00,000 (Indian Rupees ten crores) (instead of the earlier threshold of INR 20,00,00,000 (Indian Rupees twenty crores), with effect from October 1, 2022.

⁷ Directorate General of Foreign Trade.

⁸ Foreign Trade Policy 2015-2020

⁹ Foreign Trade (Development and Regulation) Act, 1992

¹⁰ Notified based on the powers granted under Section 5 of FTDR Act

¹¹ Mercara Downs Golf Club, 2022 (8) TMI 972 - Authority for Advance Rulings, Karnataka

Guidelines providing SOPs¹² to implement revised WFH¹³ provisions for SEZ¹⁴ units

Instruction No. 110 – SEZ Division dated August 12, 2022

Pursuant to insertion of Rule 43A to the SEZ Rules¹⁵ with respect to WFH benefits to IT/ ITeS units located in SEZs and for employees being temporarily incapacitated, travelling or working offsite, guidelines are issued for implementing the approval mechanism. Some of the key aspects of the mechanism are as under:

1. Units adopting WFH are required to submit an application to the relevant Development Commissioner (“DC”) 15 days in advance through the registered email, with a copy to the specified officer¹⁶.
2. Application should contain a covering note signed by the authorized signatory with information such as date of application, total number of employees, category and number of employees intending to WFH, duration of the permission, etc. along with an excel file with details of each employee.
3. In order to comply with the new rules, for units already allowing WFH to their existing employees, as a one-time exception, 90 (ninety) days from July 14, 2022 is prescribed for furnishing the required information for the continued availment of WFH facility. Units are also required to ensure that removed electronic assets are duly accounted for in appropriate records.
4. In case of new employees, provisional permission for WFH may be availed on immediate basis, to be regularized through an application, within 15 (fifteen) days.
5. Monthly employee data (previous month data) is to be used for calculating the 50% limit. For employees working in shifts, the shift-wise monthly data of the previous month is to be used for such calculation.

CBIC¹⁷ issues instructions on powers to issue summons, launching of prosecution, arrest and access to bail under the Customs and GST Laws

Instruction Nos. 2 & 3/2022-23 (GST-Investigation) dated August 17, 2022 and Circular Nos. 12 & 13/2022-Customs dated August 16, 2022

Summons under Section 70 of the CGST Act

1. Summons can be issued by a Superintendent after obtaining prior written permission from an officer not below the rank of DC/ Assistant Commissioner.
2. Summons should not be issued to the top management of companies, such as to the CMD, MD, CEO, CFO etc. in the first instance. They can be summoned only if there are clear indications of their involvement in decision making that has led to loss to the exchequer.
3. Summons should not be issued for seeking statutory documents such as monthly returns, which are digitally available on the GST portal.
4. The authorities may consider issuing letters instead of summons for seeking information.
5. DIN should be mentioned on each summons to validate its authentication.

Powers of arrest and bail for offences punishable under Section 132 of the CGST Act

1. Approval for arrest should be granted only where the intent to evade tax or fraudulent refund of tax or failure to pay amount of tax collected is evident, and the element of *mens rea* or guilty mind is palpable.
2. There must exist a justification to exercise the power to arrest, keeping in mind the personal liberty of the taxpayer.

¹² Standard Operating Procedures

¹³ Work From Home

¹⁴ Special Economic Zones

¹⁵ Special Economic Zone Rules, 2006

¹⁶ Rule 2(zd) of the SEZ Rules defines specified officer to mean Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone

¹⁷ Central Board of Indirect Taxes and Customs

3. There should be an unambiguous reason to believe, based on credible evidence.
4. Arrest should not be resorted to in cases of technical nature (i.e., where there is on difference of opinion regarding interpretation of the law).

Revision in monetary limits for launching of prosecution, arrest and bail under Customs Act, 1962

Monetary threshold prescribed under the guidelines for prosecution, arrest and bail are revised for cases pertaining to baggage and outright smuggling and commercial frauds.

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Indirect Tax services include services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/ CST/ Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India.

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14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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10 Ranked Practices



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10 Practices and
34 Ranked Partners

Banking & Finance Team
of the Year

13 winning Deals in
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