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JSA Newsletter
Indirect Tax

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Recent Rulings by Courts and Authorities

High Court

Interest is leviable for delayed payment of GST, even when assessee has sufficient balance in electronic cash/credit ledger

In the case of ***India Yamaha Motor Private Limited vs. Commissioner of CGST & Central Excise***[1], the petitioner filed incorrect return in Form GSTR 3B for the month of July 2017, resulting in short disclosure of tax liability. Accordingly, the petitioner filed a grievance petition with the Goods and Services Tax ("**GST**") authorities seeking modification of the aforesaid return, which was not immediately disposed of. In the meantime, the petitioner discontinued filing of returns from August 2017 to October 2017, on the premise that the proper ascertainment of tax liability for the aforesaid months would be dependent upon the adjudication of said grievance petition for July 2017. While the returns for July to August were filed belatedly, the petitioner had always maintained sufficient balance in its Electronic Cash Ledger ("**ECL**"), and Electronic Credit Ledger ("**ECrL**"), to meet the tax liability for such months.

In the year 2019, GST authorities passed an order, whereby the petitioner was directed to pay interest of INR 5,00,00,000 (Indian Rupees five crores) for belated remittance of GST. Being aggrieved by this order, writ petition was filed before the Hon'ble Madras High Court to determine whether the interest is leviable despite availability of Input Tax Credit ("**ITC**") balance in cash/credit ledgers, if no payment of GST was made for the impugned period?

In the facts and circumstances of the case, Hon'ble High Court confirmed the demand of interest, holding as follows:

1. The language used in Section 50 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"), is categoric to the effect that, it is only when a remittance is affected by way of debit, that an assessee would be protected from the levy of interest.
2. Petitioner's argument that it had sufficient balance lying in the ECL/ ECrL and hence there was no loss to the revenue, is not sustainable, considering that mere availability of ITC in ECrL cannot be construed as payment of taxes.
3. Till the time an assessee actually files a return and debits the respective ledgers, the authorities cannot be expected to assume that available credits will be set-off against the tax liability for particular period.

[1] 2022 (9) TMI 118 - Madras High Court

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Industrial Units cannot be kept in limbo by denying promised incentives under State Industrial Policy due to change in law

In the case of ***Emami Agrotech Ltd vs. The State of West Bengal & Ors.***[2], the petitioner filed a writ petition before the Hon'ble Calcutta High Court against an order passed by the Secretary, Department of Industry, Commerce and Enterprises ("**DICE**"), Government of West Bengal, since the incentives available to petitioner under West Bengal State Support for Industries Scheme, 2008 ("**Scheme**") were not being allowed. The Scheme initially granted incentive in the form of refund of specified percentage of Value Added Tax ("**VAT**") paid by the industrial units, there was a provision for continuance of the incentives under the Scheme, in the event VAT was replaced by any other law.

Post introduction of GST with effect from July 1, 2017, DICE was of view that in the absence of a definitive policy regarding adjustment of the Scheme for changed taxation regime (i.e., VAT to GST) incentive cannot be granted. The Hon'ble Calcutta High Court considering the facts of the matter decided the matter in favour of petitioner and held that:

1. The stand of DICE was unreasonable, since disallowance was based on the change of tax regime from VAT to GST, since the Scheme clearly contemplated subsequent changes in the law and provided for continuance of incentives in such cases.
2. Industrial units cannot be kept in a limbo and denied the incentives, which were specifically promised at the time of introduction of the Scheme in 2008.
3. There was a definite case of legitimate expectation, and the petitioner was entitled to be provided with clarity in that regard.
4. State authorities were directed to take expeditious steps to make the Scheme compliant with GST laws for the benefit of industrial units.

CESTAT

Date of amendment of Bill of Entry relevant for reckoning limitation for excess-duty payment

In the case of ***Megamet Steels Pvt Ltd vs. C.C. Jamnagar***[3], the assessee filed Bills of Entry for import of scrap from Reliance Jamnagar Special Economic Zone ("**SEZ**"), however, it was unable to lift the entire quantity of goods mentioned in such bills of entry, leading to excess payment of duty. Thus, an application was filed before the Customs authorities for refund of excess duty and amendment in quantity/duty amount appearing in the bills of entry under section 149 of the Customs Act, 1962.

The refund application of assessee was rejected on the ground that it was not filed within time limit of 1 (one) year prescribed under section 27 of the Customs Act, 1962, which was upheld by the Commissioner (Appeals).

Being aggrieved, the assessee approached the Hon'ble CESTAT, Ahmedabad, which ruled in favour of assessee observing that there is no dispute to the fact that the assessee had paid the excess duty on goods not lifted from SEZ. Subsequently, the Customs authorities amended the bills of entry as per assesses application. The refund of duty would arise only after the amendment of bills of entry, and therefore, the relevant period of 1 (one) year should be reckoned from such date of amendment of bills of entry and not from the date of actual payment of duty.

[2] TS-402-HC-2022(CAL)

[3] TS-390-CESTAT-2022(Ahmd)

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Authority for Advance Ruling ("AAR")

ITC is not available on the vouchers and subscription packages procured from third party vendors under the loyalty programs

The applicant, ***Myntra Designs Private Limited***[4] is a major Indian fashion e-commerce company and engaged in the business of selling fashion and lifestyle products through its portal, The suppliers of such products list their products on the portal for sale to customers who place their orders using the applicant's portal. In order to incentivise the customers, the applicant proposes to run a loyalty program, by way of issuing points to the customers on the basis of purchases effected from various sellers on the said platform.

In the above backdrop, the applicant approached the AAR of Karnataka to determine whether the applicant would be eligible to avail the ITC , in terms of Section 16 of the CGST Act 2017, on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers?

The AAR observed that:

1. ITC cannot be availed in respect of goods lost, stolen, destroyed, written off or given off as gift or free sample, under Section 17(5) of CGST Act, and therefore, the core issue to be decided was whether the inward supply, i.e., vouchers merit classification as 'goods' or 'service', and if they are goods, whether they were disposed of by way of gift or otherwise.
2. Vouchers are in the nature of intangible property and qualify as goods.
3. It can be seen from the loyalty program that the applicant, on the basis purchases by the customer allows them to earn loyalty points. The applicant in the said gives the loyalty points free of cost. Further, the said loyalty points neither have any monetary value nor are transferable and cannot be converted to cash. The redemption of loyalty points, admittedly involves no flow of consideration from the customer.
4. Thus, redemption of loyalty points by the customer for receiving vouchers from the applicant implies that the vouchers are issued free of cost to the customer. Thus, this transaction is covered under restriction imposed under Section 17(5)(h) of the CGST Act, and the applicant is not eligible to avail the ITC on the said vouchers and subscription packages procured from third party vendors.

Notifications and Circulars

Extension of time period for claiming ITC, issuing credit notes and amendment in returns

Notification No. 18/2022 – Central Tax, dated September 28, 2022

The Central Board of Indirect Taxes and Customs ("**CBIC**") has recently issued a notification to give effect to some of the amendments proposed in CGST Act vide the Finance Act, 2022 with effect from October 1, 2022. These amendments are summarized hereinbelow:

1. Time limit to avail ITC: As per Section 16(4) of the CGST Act, time limit to avail ITC (in respect of any invoice/ debit note) was prescribed to be the due date of furnishing the returns under Section 39 (Form GSTR 3B) for the month of September, following the end of financial year to which such invoice/ debit note pertains. However, the Finance Act, 2022 substituted the words 'due date of furnishing the returns under Section 39 for the month of September' with '30th day of November' and therefore, ITC in respect of any invoice/ debit note pertaining to a given financial year may be availed on or before 30th November of the subsequent financial year.
2. Time limit for issuance of credit note: As per Section 34 of the CGST Act, details of the credit note issued in relation to supplies made in a financial year were to be declared in the return for the month during which such credit note

[4] 2022 (9) TMI 842 - AUTHORITY FOR ADVANCE RULINGS, KARNATAKA

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was issued but not later than September, of the following financial year. However, as per the amendment, the word 'September' has been substituted with the '30th day of November'. Accordingly, a credit note for a financial year can now be issued and reported upto 30th November, of the following financial year.

3. Time limit for rectification/ amendments in Forms GSTR-3B: Time limit to rectify details furnished in the returns prescribed under Section 39 of the CGST Act for any financial year was prescribed to be the due date of furnishing of such returns for the month of September, of the succeeding financial year. As per the amendment, time limit for such rectification is extended till thirtieth day of November of the subsequent financial year.

JSA comments: While the above provisions are a welcome move for the businesses, doubts have arisen in respect of claims for ITC pertaining to the financial year 2021-22 as to whether the last date for the same should be the 'due date for filing Form GSTR-3B for the month of September 2022 (i.e., October 20, 2022)' or 'November 30, 2022'. Given that the amendment has been made effective from October 1, 2022 (i.e., before expiry of the time period for availing ITC for financial year 2021-22), a view can be adopted that ITC for Financial Year 2021-22, can be availed upto November 30, 2022.

It would be helpful if CBIC clarifies these aspects by way of issuance of appropriate clarification in this regard.

Guidelines for launching of Prosecution under the CGST Act.

Instruction No. 04/2022-23 (GST-Investigation) dated September 1, 2022

GST Investigation Wing (IW) has issued guidelines to officers on initiation of prosecution, important ones being as follows:

1. Prosecution should not be launched in cases of offences, involving difference of opinion in interpretation of law. The evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or mens-rea for committing the offence.

2. In case of public limited companies, prosecution should not be launched indiscriminately against all the directors, but proceedings should be restricted to persons involved in day-to-day operations who have actively played a role in commission of the offence leading to tax evasion.

3. Monetary Limit: Prosecution should normally be initiated where the (i) quantum of tax evaded; or (ii) ITC misused; or (iii) refund fraudulently obtained, is more than INR 5,00,00,000 (Indian Rupees five crores). However, this threshold shall not apply in case of habitual offenders and cases requiring arrest.

4. Sanctioning Authority: The prosecution complaint needs to be filed only after obtaining the sanction of the Principal Commissioner/ Commissioner of CGST or Principal Additional Director General (ADG)/ ADG, Directorate General of GST Intelligence ("**DGGI**"), in respect of cases investigated by DGGI.

5. Withdrawal of Prosecution: In light of Supreme Court's decision in Radheshyam Kejriwal, officers are instructed that an application for withdrawal of prosecution must be filed in cases where a contravention of the provisions of the GST laws is not found in the adjudication proceedings and such order has attained finality.

6. Compounding of offence: The provisions regarding compounding of offence (i.e., Section 138 of the CGST Act) on payment of compounding amount, should be brought to the notice of person being prosecuted, and such person should be given an opportunity to avail of compounding of offences.

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Guidelines issued for revising TRAN-1 and TRAN-2 in terms of Hon'ble Supreme Court's order

Circular No.180/12/2022-GST dated September 9, 2022

CBIC has issued a circular to ensure uniformity in implementation of the directions of Hon'ble Supreme Court in Filco Trade Centre relating to re-opening of Common portal for filing transitional forms. This would guide the assessees and officers in filing of TRAN-1 and TRAN-2 during October 1, 2022, to November 30, 2022. Key points to be noted from the circular are as follows:

1. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the earlier forms will be made available on the common portal.

2. This is a one-time opportunity, and the applicant is required to take utmost care and precaution while filing or revising TRAN-1/TRAN-2. The applicant can edit the details only before clicking the Submit button on the portal. Once the form is filed/ revised, no further opportunity would be provided, either during extended period, or subsequently.

3. The assessees who had successfully filed TRAN-1/TRAN-2 earlier, and who do not need to make any revision are not required to again file/ revise the said forms.

4. In cases where the ITC availed on the basis of TRAN-1/ TRAN-2 filed earlier was wholly/ partly rejected, the appropriate remedy is to prefer an appeal against the said order or to pursue alternative remedies available as per law.

5. Declaration in TRAN-1/TRAN-2 will be subjected to necessary verification by the concerned tax officers and the assessees may be required to produce the requisite documents/ records/ returns/ invoices in support of their claims. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the ECrL.

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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15 Practices and
18 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

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10 Ranked Practices

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