

Recent Rulings by Courts and Authorities

Supreme Court

In absence of final assessment of legal liability to pay tax, a pre-deposit cannot be insisted as a pre-condition for bail

The Hon'ble Supreme Court of India ("Supreme Court") in the case of *Subhash Chouhan vs. Union of India and Anr.*¹ ruled upon the validity of the conditions imposed by the High Court of Chhattisgarh ("Chhattisgarh HC") for grant of bail. Subhash Chouhan ("Appellant") had approached the Chhattisgarh HC seeking bail in relation to an ongoing matter on wrongful utilisation of ITC² and supply of goods without payment of tax or issuance of invoices. The Chhattisgarh HC granted bail on the condition that the Appellant deposits an amount of INR 70,00,000 (Indian Rupees seventy lakh) under protest, within a period of 45 (forty five) days from the date of release.

Aggrieved by the decision of Chhattisgarh HC, the Appellant challenged the aforesaid condition before the Hon'ble Supreme Court. The Supreme Court observed that in absence of final assessment, it cannot be presumed that the Appellant is under a legal liability to pay the said amount. Therefore, the Supreme Court set aside the condition of payment of pre-deposit for grant of bail.

High Court

Writ petition is maintainable in absence of formation of GSTAT³

The Hon'ble High Court of Bombay ("Bombay HC") in the case of *Palo Alto Networks (India) Private Limited vs. Add. Comm., Office of Comm. CGST and C.Ex. Appeals and Ors.*⁴ and *Rochem India Pvt. Ltd. vs. Union of India*⁵, has ruled upon the maintainability of writ petition(s) under Article 226 of the Constitution of India, in absence of formation of GSTAT.

For the purpose of adjudication of writ petitions filed challenging the orders passed by the Appellate Authority, the Bombay HC clubbed various writ petitions filed before it, in 2 (two) groups viz. (a) writ petitions challenging demand of GST; and (b) writ petitions challenging rejection of refund claims. The writ petitions pertaining to GST demand, with the affirmation of the CBIC⁶, were disposed off, with the direction that stay has to be granted for such matter, till such

¹ 2023 (1) TMI 1168

² Input tax credit

³ Goods and Services Tax Appellate Tribunal

⁴ Writ Petition No. 2453 of 2022

⁵ Writ Petition No. 10883 of 2019

⁶ Central Board of Indirect Taxes and Customs

period GSTAT is constituted and appeals are filed by such assesseees. Further, the Bombay HC also directed that the GST Authorities are not to take any coercive action till such time.

For writ petitions challenging the rejection of refund claims, the Bombay HC observed that due to non-formation of GSTAT, the taxpayers are left without a remedy and such matters should be heard on merits for disposal. The CBIC has also affirmed that, in absence of formation of GSTAT, CBIC does not have an objection in admission of such writ petitions.

The Petitioner was represented before the High Court of Bombay by Counsel Rohan Shah along with Ms. Shareen Gupta, Partner – Indirect Tax at JSA.

Vouchers neither qualify as goods nor services

The Hon'ble High Court of Karnataka ("Karnataka HC") in the case of **Premier Sales Promotion Pvt. Ltd vs. Union of India and Ors.**⁷ ruled upon the taxability of vouchers/ pre-paid payment instruments (PPI) as per the provisions of the GST law. The Petitioner was engaged in trading of PPIs/ vouchers, which were ultimately used by the employees of the Petitioner's customers.

The Petitioner approached the AAR⁸ in the State of Karnataka for determining the taxability of vouchers/ PPIs. The AAR ruled that supply of vouchers is taxable as goods and the time of supply would be determined in terms of Section 12 of the CGST Act⁹. The said view was affirmed by the AAAR¹⁰ in the State of Karnataka, aggrieved by which the Petitioner approached the Karnataka HC.

The Petitioner made the following submissions before the Karnataka HC:

- a) The vouchers, in the instant case, are issued to the clients for use by their employees as incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein. As per Section 12(4)(b) of the CGST Act, the time of supply when the goods are not identifiable at the time of issuance, will be the date of redemption of such voucher;
- b) The voucher would remain only an instrument till such time, it is used for discharging obligation towards the supply of goods/ services. At best, it could be considered as actionable claims till such time the voucher is presented for redemption, thereby, being outside the ambit of the term 'goods' as well as 'services' (in line with the master direction¹¹ of RBI¹²); and,
- c) Reference was made to the Supreme Court ruling in the case of *Sodexo SVC India Private Limited vs. State of Maharashtra*¹³, wherein it was held that transactions of trading in vouchers are not transactions of supply of goods/ services as, vouchers are payment instruments or consideration for sale or supply of underlying goods/ services, to be undertaken at a future date.

The Karnataka HC observed that RBI recognises vouchers as payment instruments, thereby, being consideration/ part-consideration for supply of goods and/ or services, covered under the definition of 'money'. Accordingly, the Karnataka HC emphasised that vouchers could neither be treated as goods nor services for levying GST. The Karnataka HC further observed that the value printed on the vouchers can be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to the Petitioner's customers. Therefore, the issuance of vouchers is similar to pre-deposit and not supply of goods or services, thereby, not being subject to GST.

⁷ 2023 (2) TMI 130

⁸ Authority for Advance Ruling

⁹ Central Goods and Services Tax Act, 2017

¹⁰ Appellate Authority for Advance Ruling

¹¹ DPSS.CO.PD.No.1164/02.14.006/2017-18

¹² Reserve Bank of India

¹³ 2016 (331) ELT 23 (SC) (para 15)

JSA Comment: The observations of the Karnataka HC bring in much needed clarity on the taxability of transactions involving vouchers. Applicability of the principles expounded in the present ruling to vouchers where, the underlying supply is identified at the time of issuance of voucher, needs to be tested.

Refund of GST paid on notice pay recovered from employees allowed

The Hon'ble High Court of Kerala ("**Kerala HC**") in the case of *Manappuram Finance Ltd. vs. Asst. Comm. Central Tax and Excise and Anr.*¹⁴ ruled on the availability of refund of GST paid on notice pay recovered from employees. Manappuram Finance Ltd. ("**Petitioner**") paid GST on notice pay recovered from employees prior to the issuance of the CBIC Circular dated August 3, 2022¹⁵ ("**Circular**"), which clarified that GST is not payable on notice pay recovery. Accordingly, pursuant to the issuance of the Circular, the Petitioner sought refund of such GST paid. The refund claim was rejected by the Adjudicating Authority on the grounds that the Petitioner was liable to pay GST on notice pay recovery, which was subsequently affirmed by the Appellate Authority. Aggrieved by the order of the Appellate Authority and in absence of constitution of GSTAT¹⁶, the Petitioner approached the Kerala HC by invoking its writ jurisdiction.

Relying on the Circular, the Kerala HC agreed with the contentions of the Petitioner and held that GST is not payable on notice pay recovery.

Further, relying on the Supreme Court ruling in the case of *Suchitra Components vs. Commissioner of Central Excise*¹⁷, the Kerala HC observed that a beneficial circular/ clarification must be applied retrospectively, and therefore, the Petitioner is eligible to claim refund of GST paid on notice pay recovered from employees.

Benefit of export of services cannot be denied on account of procedural issues

In the case of *Auroglobal Comtrade vs. Chairman, CBEC and Ors.*¹⁸, Auroglobal Comtrade ("**Appellant**") exported iron ore fines through Liberty Marine Syndicate Pvt. Ltd. ("**Liberty**") and Resources International Pvt. Ltd. ("**RIPL**"). The Appellant had executed contracts with Liberty and RIPL to carry on export of iron ore fines on its behalf. The Appellant filed refund claims for the service tax paid towards export of iron ore fines. Such claims were rejected by the Adjudicating Authority on the grounds that shipping bills and bills of lading were not in the name of the Appellant. Aggrieved by the order, the Appellant preferred an appeal contending that the Appellant had made the exports through Liberty and RIPL. The Commissioner (Appeals) allowed the appeal and held that the Appellant was eligible for the refund as, the foreign buyers had entered into an agreement with the Appellant, basis which the goods were exported.

The tax authorities preferred an appeal against the order of Commissioner (Appeals), before CESTAT¹⁹ contending that the Appellant could not be considered as an exporter, as defined under the Customs Act²⁰. The contention was accepted by CESTAT, thereby, denying the refund claims.

The Appellant preferred an appeal against the order of the CESTAT before the High Court of Orissa ("**Orissa HC**"), wherein, the Orissa HC observed that the Appellant had borne the cost of exports and Liberty and RIPL were involved for the limited purpose of facilitating the exports. Further, the invoices for the goods were raised and consideration was received by the Appellant for the goods exported. Considering the factual background of the case, the Orissa HC observed that the Appellant was the exporter of goods and accordingly, eligible for refund of service tax paid.

¹⁴ 2022 (12) TMI 411

¹⁵ Circular No. 178/10/2022-GST dated August 3, 2022

¹⁶ Goods and Services Tax Appellate Tribunal

¹⁷ (2006) 12 SCC 452

¹⁸ 2023 (1) TMI 601

¹⁹ Customs, Excise and Service Tax Appellate Tribunal

²⁰ Section 2(20) Customs Act, 1962

No adverse order can be passed without hearing even where taxpayer selected the option 'No' for personal hearing while filing response to SCN²¹

In the case of *Mohan Agencies vs. State of Uttar Pradesh*²², the petitioner was not granted a personal hearing as, the petitioner had chosen the option 'No' for personal hearing in its reply to SCN. The Allahabad High Court ("Allahabad HC") relied on Section 75(4) of the CGST Act, to rule that such opportunity must be given irrespective of fact that the taxpayer selected an option while submitting the reply to the SCN. Irrespective of any provision provided under the legislation, it is a settled principle that granting hearing is necessary to fulfill to principles of natural justice. The Allahabad HC also observed that providing such opportunity would not only ensure observance of rules of natural of justice but also allow the authority to pass appropriate and reasoned order as this serves the interest of justice and allows a better appreciation to arise at the next/appeal stage, if necessary. Accordingly, the Allahabad HC set aside the order and directed the respondent to issue a fresh notice.

ITC can be availed on account of *bona fide* error committed by the supplier under Form GSTR-1

In the case of *Wipro India Limited vs. The Assistant Commissioner of Central Taxes and Ors.*²³, Wipro India Limited ("Petitioner") erroneously mentioned an incorrect GSTIN of the buyer in the invoices for FY 2017-18, FY 2018-19 and FY 2019-20. The Petitioner relied on the Circular dated December 27, 2022²⁴, which provides for rectification of inadvertent errors committed while filing the GST returns.

The Karnataka HC upon analyzing the said circular, observed that the Petitioner had made a *bona fide* and an inadvertent error in reporting the incorrect GSTIN in the invoices and consequently, directed the GST authorities to permit the amendment/ rectification of Form GSTR 1 and take necessary steps for allowing appropriate ITC to the buyer/ recipient.

CESTAT

Business support services provided to overseas company do not qualify as 'intermediary services'

CESTAT Mumbai ("CESTAT"), in the case of *I dex India Pvt. Ltd vs. Comm. Of CGST, Mumbai*²⁵, analyzed the scope of 'intermediary services' under the service tax regime. I dex India Pvt. Ltd ("Appellant") was engaged in providing business support services to its overseas holding company. The Appellant filed refund claim of CENVAT credit accumulated on account of export of services, under Rule 5 of CENVAT Credit Rules, 2004. The said refund claim was rejected by the Adjudicating as well as the Appellate Authority on the grounds that the services rendered by the Appellant qualified as 'intermediary services' and therefore, did not qualify as export of services. Aggrieved by the Order-in-Appeal, the Appellant filed an appeal before CESTAT.

The Appellant contended that the services could not be categorized as 'intermediary services', as it was acting in the capacity of an independent sub-contractor. The Appellant placed reliance on Guidance Note dated June 20, 2012, which clarified the ambit of intermediary services. The Appellant further contended that the services were provided on a principal-to-principal basis and the contract was executed between two parties. Therefore, the Appellant cannot be termed as an intermediary.

CESTAT held that the Appellant did not qualify as an intermediary and thereby, set aside the Order-in-Appeal, allowing the refund to the Appellant, based on the following:

²¹ Show cause notice

²² 2023 (2) TMI 933 - ALLAHABAD HIGH COURT

²³ 2023 (1) TMI 499

²⁴ Circular No.183/15/2022-GST dated December 27, 2022

²⁵ 2023 (2) TMI 482 - CESTAT MUMBAI

- Based on the agreement, the Appellant in no way can be construed as an agent or representative of the overseas entity;
- The Appellant is an independent contractor;
- The services of marketing and market research to the overseas entity are provided by the Appellant on a cost-plus mark-up basis; and,
- There is no tripartite agreement executed by the Appellant for the said transaction.

Instructions/ Circulars etc.

Decisions in the 49th GST Council Meeting dated February 18, 2023

- The GST Council has adopted the report of Group of Ministers (“GoM”) on constitution of GST Appellate Tribunal (“GSTAT”) with certain modifications. The final draft amendments to the GST Laws is to be circulated to its members for comments.
- Acceptance of certain recommendations of the GoM have been accepted with a view to plug tax leakage and improve revenue collection for products such as chewing tobacco, gutkha, pan masala, etc.
- Dispensation on payment of GST under reverse charge to be extended to courts and tribunals in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chambers to lawyers etc. Earlier, such exemption was available only to Central Government, State Governments, Parliament and State Legislatures.
- Extension of time limit and introduction of one-time amnesty scheme in respect of following:
 - Time limit for making an application for revocation of cancellation of registration increased from 30 (thirty) days to 90 (ninety) days, extendable by another 180 (one hundred eighty) days thereof. A one-time amnesty scheme may be provided for past cases where application for revocation of cancellation could not be filed within the specified time limit.
 - Time period for filing returns for deemed withdrawal of best judgment assessment orders increased from 30 (thirty) to 60 (sixty) days, extendable by another 60 (sixty) days thereof. A one-time amnesty would be available for past cases where returns could not be filed within 30 (thirty) days of the assessment order.
 - Revised late fee on delayed filing of annual returns for FY 2022-23 onwards as follows:

S. No.	Aggregate Turnover	Current Late Fee	Revised Late Fee
1.	Up to INR 5,00,00,000 (Indian Rupees five crore)	INR 200 (Indian Rupees two hundred) per day, subject to the maximum of 0.5% of turnover in the State	INR 50 (Indian Rupees fifty) per day, subject to the maximum of 0.04% of turnover in the State
2.	From INR 5,00,00,000 (Indian Rupees five crore) to INR 20,00,00,000 (Indian Rupees twenty crore)		INR 100 (Indian Rupees one hundred) per day, subject to the maximum of 0.04% of turnover in the State
3.	Above INR 20,00,00,000 (Indian Rupees twenty crore)	INR 200 (Indian Rupees two hundred) per day, subject to the maximum of 0.5% of turnover in the State	

- Section 13(9) of the IGST Act²⁶ is proposed to be deleted to provide that the place of supply of services of transportation of goods, in cases where the location of the supplier or the recipient is outside India, to be the location of the recipient of such services.

²⁶ Integrated Goods and Services Tax Act, 2017.

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. 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. Under the Indirect Tax, JSA provides 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.

This Newsletter has been prepared by:



Manish Mishra

Partner & Head of
Practice - Indirect Tax



Shareen Gupta

Partner



Ruchita Modi

Senior Consultant



Tanay Vyas

Junior Associate



17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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