



JSA Newsletter Indirect Tax

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Recent Rulings by Courts and Authorities

Supreme Court

Failure to avail benefit under Amnesty Scheme cannot bar restoration of an appeal

In the case of *P.M. Paul vs. The State Tax Officer and Ors.*¹, P.M. Paul (“**Appellant**”), a dealer registered under the KVAT Act², filed an appeal before the Joint Commissioner (Appeals) challenging the assessment order issued by the sales tax officer. During the pendency of the said appeal, the Government of Kerala introduced an Amnesty Scheme to settle disputes under the erstwhile indirect tax laws.

To avail the benefit of the Amnesty Scheme, the Appellant withdrew the appeal filed before the Joint Commissioner (Appeals). However, the Appellant was unable to avail benefits under the Amnesty Scheme. Therefore, the Appellant filed an application for restoration of the appeal (which was withdrawn earlier). The restoration application was dismissed by the Joint Commissioner (Appeals).

The Appellant challenged the rejection order by way of a writ petition before the High Court of Kerala (“**Kerala High Court**”). The Single Judge Bench of the Kerala High Court observed that the Appellant could not seek restoration of the appeal on the grounds of being unable to avail benefits under the Amnesty Scheme. The said decision of the Single Bench was affirmed by the Division Bench of the Kerala High Court. Aggrieved by the decision of the High Court, the Appellant approached the Supreme Court of India.

The Appellant contended that withdrawal of pending appeal(s) was one of the pre-conditions for availing the benefit under the Amnesty Scheme. Therefore, the Appellant was required to withdraw the appeal to avail the benefits available under the Amnesty Scheme. Additionally, the Amnesty Scheme did not bar the restoration of (withdrawn) appeal. The Supreme Court observed that the appeal was neither restored nor heard on merits, resulting in foreclosing of all the remedies available in the law. The Supreme Court therefore set aside the decision of the Kerala High Court and directed the appellate authority to restore the appeal.

¹ 2023 (9) TMI 448

² Kerala Value Added Tax Act, 2003

High Court

State tax officer(s) is not the proper officer(s) for exercising powers of provisional attachment

In the case of *Saket Agarwal vs. Union of India*³, State Tax Officer (C-804), Nodal Division-I, Mumbai had issued a communication to the officer-in-charge of the Central Depository Services (India) Ltd., instructing them to attach the demat account of Saket Agarwal (“**Petitioner**”), under Section 83 of the MGST Act⁴. As per Section 83 of the CGST Act⁵, a Commissioner of State Tax can issue an order for provisional attachment of any property, if it is necessary to do so to protect the interest of the Government of India. Aggrieved by the communication issued by the state tax officer, the Petitioner filed a writ petition before the Bombay High Court, challenging the *vires* of the communication issued by the state tax officer.

The Bombay High Court observed that the state tax officer does not have the jurisdiction under Section 83 of the MGST Act to attach property, as only the Commissioner is authorized to order provisional attachment of any property. Accordingly, the state tax office withdrew the communication, and the Bombay High Court directed the sales tax officer to intimate Central Depository Services (India) Ltd. for withdrawal of attachment of demat account of the Petitioner.

Custom, Excise, and Service Tax Appellate Tribunal (CESTAT)

Independent activity of trading in domestic air tickets not subject to service tax

In the case of *Hi Tours Mamallapuram Pvt. Ltd. vs. Commissioner of Service Tax*⁶, Hi Tours Mamallapuram Pvt. Ltd. (“**Appellant**”) was engaged in providing the services of organizing tours for customers, which were taxable under Section 65(115) of the Service Tax Law⁷. As part of tour services, the Appellant raised 2 (two) separate invoices for:

- 1) booking air tickets (service tax on discharged on margin earned on sale of domestic air tickets), and
- 2) other services such as accommodation, local transportation, sightseeing trips, visa charges, etc. (service tax was discharged).

Show cause notice was issued to the Appellant seeking to levy service tax on the value of air tickets. The demand was confirmed by the adjudicating authority. Aggrieved by the Order-in-Original, the Appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) held that booking of tickets for outbound tours which was used outside India was exempt from the payment of service tax as, the same constituted export of services. However, the Commissioner (Appeals) partly confirmed the demand (to the extent of mark-up or the margin earned) on sale of tickets for domestic travel. Aggrieved by this, the Appellant approached the CESTAT (Chennai).

The Appellant contended that trading in air tickets, with or without profit, is not within the ambit of tour operator services. The CESTAT observed that a person who is involved in activities like planning, scheduling, organizing or arranging tours by any mode of transport, is considered to be covered under tour operator service. Further, the Appellant was not a member or agent of IATA⁸ and the Appellant also did not earn any commission from IATA or any other airlines when it sold or traded in air tickets. Accordingly, demand of service tax on the consideration for booking of tickets in respect of domestic travel is not taxable and the order of the Appellate Authority was set aside.

³ 2023 (9) TMI 558

⁴ Maharashtra Goods and Services Tax Act, 2017

⁵ Central Goods and Services Tax Act, 2017

⁶ 2023 (9) TMI 78

⁷ Chapter V of the Finance Act, 1994

⁸ International Air Transport Association

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

Independent services provided by auto-driver not a supply through ECO⁹

In *Re: Juspay Technologies Pvt. Ltd.*¹⁰, Juspay Technologies Pvt. Ltd. (“**Applicant**”) is engaged in the business of providing technology services to vendors by connecting them to their preferred payment aggregators and payment gateways. “Namma Yatri”, an online platform launched by the Applicant assists auto-rickshaw drivers to connect with the customers.

Given the above background, the Applicant approached the Karnataka AAR to seek an advance ruling on the following:

- 1) Whether the services provided by the Applicant qualify as a supply?
- 2) Whether the Applicant qualifies as an e-commerce operator?

The Applicant submitted that a person desirous of availing services of the online platform is required to make an online application in the prescribed form, whereafter such person is bound by the terms and conditions prescribed in the agreement. Further, the role of the Applicant was restricted to providing license/ permission to use the online platform by the subscribers. The terms of the agreement stipulate that business transactions (including quality and price) are entered into by the parties on their own and the Applicant did not have a role in that regard nor was the Applicant involved directly or indirectly in such supply and provision of services.

It may be noted as per Section 9(5) of the CGST Act, ECO is deemed to be the supplier of services if the notified services¹¹ are provided ‘through’ him. The AAR observed that the Applicant merely connects the auto driver and passenger, and their role ends on such connection. Additionally, the Applicant is not responsible for collection of consideration and does not have any control over the actual provision of service by the service provider. The Applicant is not aware about the details of the ride and the supply of transportation services happens independently, as the Applicant is involved only in identification of the supplier of services. The responsibility of the operations and completion of the ride is not of the Applicant. Additionally, the AAR relied on the ruling in *Re: Multi-Verse Technologies Private Limited*¹², wherein the AAR (Karnataka) had discussed the services which will be deemed to be provided ‘through’ the ECO. Given the similarity in facts, the AAR placed reliance on the AAR in the case of Multi-Verse to state that merely connecting the supplier of services and recipient of services will not bring the ECO within the ambit of services notified under Section 9(5) of the CGST Act as such services are not provided ‘through’ it. Therefore, while the Applicant qualifies as ECO, it is not required to discharge tax under Section 9(5) of the CGST Act.

ITC¹³ reversal required on input/ finished goods lost in fire accident

In *Re: Geekay Wires Ltd.*¹⁴, Geekay Wires Ltd. (“**Applicant**”) is engaged in the manufacture of steel nails and other steel products. The Applicant purchases inputs such as polypropylene, copper wire, paper tape, etc., and avails ITC on such inputs. During the manufacturing process, steel scrap is generated which is sold by the Applicant in the market and discharges GST¹⁵ liability thereon.

A fire broke out at the manufacturing facility of the Applicant, destroying finished goods. The Applicant approached Telangana AAR on requirement of reversal of ITC (a) availed on inputs and (b) on finished goods sold as steel scrap in the open market, on which output tax liability was discharged.

The Applicant submitted that Section 17(5)(h) of the CGST Act restricts availment of ITC on goods destroyed/ written off/ disposed. However, in the present case, inputs procured are utilized for manufacture of finished goods and not

⁹ Electronic Commerce Operator

¹⁰ 2023 (9) TMI 1121

¹¹ List of services notified through Notification No. 17/2017-Central Tax (Rate) dated June 28, 2017

¹² 2022 (11) TMI 256

¹³ Input tax credit

¹⁴ 2023 (9) TMI 852

¹⁵ Goods and services tax

per se destroyed. The fire accident led to the destruction of the finished goods, which could be sold only as scrap (on which GST was discharged).

The AAR relied on ***Union of India vs. Elephinstone Spinning and Weaving Company Limited***¹⁶ and observed that intention of the legislature must be found by reading the statute as a whole and such intention cannot be restricted to a specific cause. AAR observed that ITC can be availed only when taxable supplies are made by a taxable person. Given that (due to the fire) taxable supplies were not made, ITC of goods will not be available, as per Section 17(2) and 17(5)(h) of the CGST Act. If such ITC was utilized, the same should be reversed. Therefore, ITC to the extent of manufactured/ finished goods destroyed or inputs destroyed is not available to the Applicant and the same needs to be reversed.

Taxpayer entitled to avail ITC on demo-vehicle, when subsequently sold

In ***Re: Sai Service Pvt. Ltd.***¹⁷, Sai Service Pvt. Ltd. (“**Applicant**”) is an authorized car dealer, engaged in supply of four-wheeler vehicles, spares and servicing of vehicles. As a part of its business, the Applicant procures demo vehicles from manufacturers (against a tax invoice) for demonstration purposes in the showroom (which are retained for a period of 2 (two) year or 40,000 Kms (forty thousand kilometers), whichever is earlier). The demo vehicles are procured at a discounted price. Further such demo vehicles are capitalized in the books of accounts of the Applicant as fixed assets. Presently, the Applicant does not claim ITC of the tax paid on such vehicles and therefore, claims depreciation on the same as per the provisions of the Income Tax Act, 1961.

The Applicant approached Telangana AAR to ascertain whether ITC can be availed of GST paid on procurement of vehicles, which are used for demonstration purpose, in the course of business of supply of motor vehicle.

The Applicant contended that as per Section 16(1) of the CGST Act, ITC can be availed on procurement of demo vehicles, which are eventually sold, as such vehicles are used in the course or furtherance of business. Further, reliance was also placed on Section 17(5) of the CGST Act, which specifically excludes availment of ITC on motor vehicles, except the following cases:

- 1) when used for further supply of such vehicles,
- 2) transportation of passengers,
- 3) imparting training on driving such vehicles.

Accordingly, the AAR observed that the restriction on availment of ITC under Section 17(5) of the CGST Act is not applicable when the demo vehicles are sold after a period stipulated between the parties, thereby, ITC being available.

Notifications and Circulars

Extension of RoDTEP¹⁸ scheme for exports made on or after October 1, 2023

Notification No. 33/2023, dated September 26, 2023

The Government of India has extended the RoDTEP scheme for exports, from October 1, 2023 to June 30, 2024.

¹⁶ (2001) 4 SCC 139

¹⁷ 2023 (8) TMI 392

¹⁸ Remission of Duties and Taxes on Export Products

Time limit for reporting documents on IRP¹⁹

GSTN²⁰ Advisory dated September 13, 2023

As per GSTN Advisory dated April 12, 2023, time limit of 7 (seven) days for reporting invoices, credit notes and debit notes on IRP for taxpayers having aggregate annual turnover of INR 100,00,00,000 (Indian Rupees one hundred crore) is made effective from November 1, 2023 (which was earlier deferred²¹).

Amendment to the IGST Act²²

Notification Nos. 11/2023, 12/2023 and 13/2023 dated September 26, 2023

To implement the recommendations of the GST Council in the 50th GST Council Meeting and the ruling of the Supreme Court of India in *Union of India & Anr. vs. Mohit Minerals Pvt. Ltd.*²³, the Government of India has amended the IGST Act to clarify the taxability of ocean freight in case of CIF²⁴ imports, through the aforementioned notifications to give the following effect:

- 1) Services received from a provider of services located in a non-taxable territory have been exempted.
- 2) To give effect to the above, Entry No. 10 of Notification No. 10/2017 – Integrated Tax (Rate) dated June 28, 2017, and Entry No. 9 of Notification No. 8/2017 – Integrated Tax (Rate) dated June 28, 2017 have been deleted.

The aforementioned amendments have come into effect from October 1, 2023.

Government of India notifies State-Benches of GSTAT²⁵

Notification No. S.O.4073(E) dated September 14, 2023

The Ministry of Finance has notified 31 (thirty one) State Benches of the GSTAT, with effect from September 14, 2023.

Other Updates

Supreme Court to decide on availability of ITC on goods/ services used for construction of immovable property

The Hon'ble Supreme Court in the case of *Commissioner of Central Goods and Services Tax and Others vs. Safari Retreats Private Limited and Ors*²⁶ will be deciding on the issue of availability of ITC of GST paid on procurements made for construction of immovable properties. The Orissa High Court earlier read down Section 17(5)(d) of the CGST Act and extended availability of ITC on inputs /input services used in the construction of shopping malls intended for letting out to tenants for commercial purposes. The GST authorities filed an SLP²⁷ against this decision before the Supreme Court and challenged the said order. Extensive arguments have been made before the Supreme Court of India.

Key contentions of the GST authorities/ Petitioner

1. ITC is a concession/ benefit provided to a taxpayer and it is not a vested statutory right.
2. Constructed building becomes immovable property and accordingly covered under Article 49, List 2, instead of Article 246A of the Constitution of India, thereby, not being covered under the purview of GST Law.

¹⁹ Invoice Reporting Portal

²⁰ Goods and Services Tax Network

²¹ GSTN Advisory dated May 06, 2023

²² Integrated Goods and Services Tax Act, 2017

²³ 2022 (5) TMI 968

²⁴ Cost Insurance Freight

²⁵ Goods and Services Tax Tribunal

²⁶ Civil Appeal No. 2948/2023

²⁷ Special Leave Petition

3. Availment of ITC is subject to conditions prescribed under Sections 16 and 17 of the CGST Act.

Key contentions of the Taxpayers/ Respondent

1. Warehouses/ structures qualify as plant and machinery.
2. Immovability is not a deterrent test for availment of ITC.
3. Words 'on his own account' used in Section 17(5)(d) of the CGST Act must be read to mean 'personal consumption'.
4. Section 17(5) of the CGST Act must be accorded a purposive interpretation as against the literal interpretation to uphold the intent of the law.

Madras Tax Bar challenges constitutional validity of amended provisions of constitution of GSTAT

Madras Tax Bar in the case of *Madras Tax Bar vs. Union of India*²⁸ has challenged the constitutional validity of Sections 110(1)(c) and 110(10)(d) of the CGST Act pertaining to appointment and condition of service of GSTAT members on the ground that the said sections exclude advocates from being appointed as judicial members. The Supreme Court has issued notice in the matter.

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.

²⁸ Writ Petition (Civil) No. 900/2023

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17 Practices and
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16 Practices and
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7 Practices and
2 Ranked Lawyers



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