April 2025 Edition

Recent Rulings by courts and authorities

Supreme Court

ITC[1] cannot be denied on account of bona fide errors/clerical errors

In the matter of ***Central Board of Indirect Taxes and Customs vs. Aberdare Technologies Private Limited.***[2], the Supreme Court of India ("**SC**") upheld the judgement of the Bombay High Court ("**Bombay HC**") in the case of *Aberdare Technologies Private Limited vs. Central Board of Indirect Taxes and Customs and Ors.*[3], wherein the BHC had directed CBIC[4] to open the GST[5] portal to enable Aberdare Technologies Private Limited ("**Respondent**") to amend/rectify Form GSTR-1 and GSTR-3B. In the facts of the case, the Respondent had filed statutory monthly GST returns within the prescribed time but after some time in December 2023, realised that there were certain errors, which would not harm the interest of the revenue authorities. Against the judgement of the Bombay HC (in favour of the Respondent), the CBIC filed an SLP[6] before the SC.

The SC held that the judgement of the Bombay HC was just and fair as there is no loss of revenue. Further, the SC observed that ITC was sought to be denied to the Respondent on account of clerical error which led to double payment. Human errors and mistakes are normal, and errors are also made by the revenue authorities. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. Therefore, the SC dismissed the SLP and ruled in favour of the Respondent.

High Court

Fruit pulp, juice-based carbonated drinks classifiable under HSN[7] 22029920

In the matter of ***X'SS Beverage Co. vs. The State of Assam***[8], the High Court of Gauhati ("**Gauhati HC**") evaluated the classification fruit pulp or fruit juice-based drinks or carbonated drinks. X'SS Beverage ("**Petitioner**") was *inter alia* engaged in the manufacture and supply of carbonated fruit drinks and ready to serve fruit drinks and classified the same under HSN 2202 9920, which were subject to GST at 12% till September 30, 2021. However, the revenue authorities contended that the drinks should be classified under HSN 2202 1090, leviable to GST at 28% along with

1 Input tax credit.
2 TS-172-SC-2025-GST
3 2024 (8) TMI 142
4 Central Board of Indirect Taxes and Customs
5 Goods and Services Tax
6 Special Leave Petition
7 Harmonized System of Nomenclature.
8 TS-128-HC(GAUH)-2025-GST

compensation cess of 12%, given that it contained carbonated water as an ingredient. Accordingly, the revenue authorities sought to recover GST at a higher rate. Aggrieved by action of the revenue authorities, the Petitioner filed a writ petition before the HC.

Before the Gauhati HC, the Petitioner contended that the products under question were fruit juice-based/ pulp-based drinks, wherein fruit juice/ pulp lends the essential character and accordingly were classifiable under HSN 2202 9920. It was further contended that HSN 2202 contains 2 (two) parts, i.e., 2202 10 meant for waters, including mineral waters and aerated waters containing added sugar or other sweetening matter or flavours; whereas 2202 99 dealt with drinks other than those classifiable under 2202 10. In the present case apple juice concentrate/orange juice concentrate/lemon concentrates were added as base components and not merely as a flavouring agent.

Considering the arguments advanced by the Petitioner, the Gauhati HC observed that Chapter 22 does not specifically define the items manufactured and sold by the Petitioner. Therefore, under the Rules of interpretation provided under the 1st schedule to the Customs Tariff Act, 1975, these items need to be classified under the headings appropriate to the goods to which they are most akin. Further, since GST law does not prescribe the tariff heads and classification, a reference needs to be made to the Customs Tariff Act, 1975 to determine the product classification. A reference to the Tariff schedule makes it clear that Sub-heading 2202 10 is primarily 'Water' and it also includes mineral waters/aerated waters/water containing added sugar or sweetening matter or flavour whereas sub-heading 2202 99 includes 'Others' which are further described under the said subheading. The Tariff heading 2202 9920 is seen to be for fruit pulp or fruit juice-based drinks. Accordingly, these products must necessarily contain water/carbonated or aerated water and should be classified under HSN 22029920.

JSA Comment: It is relevant to highlight here that the decision has been rendered for a period prior to October 1, 2021, wherein there was no specific entry for classifying the abovementioned products. However, w.e.f. October 1, 2021, a specific amendment was made in Notification No. 1/2017-Central Tax (Rate) dated June 28, 2017, whereunder Entry No. 12B was inserted to Schedule IV thereunder to prescribe an effective rate of 40% (including GST rate of 28% along with compensation cess of 12%) on products in the nature of 'Carbonated Beverages of Fruit Drink or Carbonated Beverages with Fruit Juice'.

Mere uploading notices/orders on the common portal not an effective mode of service

The Madras High Court ("**Madras HC**") has dealt with the issue of effective mode of service in the case of ***Tvl. Sri Balaji Traders vs. The Deputy Commercial Tax Officer***[9]. Tvl. Sri Balaji Traders ("**Petitioner**") was issued a notice by way of uploading the same on the common portal under the tab 'View Additional Notices/Order', which went unnoticed by the Petitioner. Following multiple reminders uploaded under the same tab, an order was passed confirming the demand. Recovery proceedings were initiated, and the bank accounts of the Petitioner was attached. The Petitioner challenged the said order before the Madras HC on the grounds that the Petitioner was not granted sufficient opportunity to be heard as the notice/order was not served physically and the order was passed *ex-parte*.

Dealing with the said contentions, the Madras HC referred to Section 169 of the CGST Act[10] and observed that service of notice should be first by way of initial modes, viz., by giving/tendering it directly or by a messenger including a courier; by registered post or speed post or courier; and by sending a communication to assessee's e-mail address and thereafter, by making it available on the common portal. Though Clause (d) of Section 169 of CGST Act prescribes mode of service *via* common portal, the very same Section under the CGST Act also prescribes many other modes of service. Thus, when revenue authorities realises that notices/orders effected *via* common portal do not fetch any reply, instead of sticking on to the similar mode of service by sending notices/reminders incessantly, they should change mode of service and it was suggested that notice through post would be the best mode of service. The Department firstly should ensure as to whether mode of service adopted by them would be an effective service in reaping the expected result, since it is ultimate goal of the revenue authorities to prevent any revenue loss being caused to the Government's exchequer. For the aforesaid reasons, the matter was remanded back to the adjudicating authority for reconsideration.

[9] W.P. No. 5539 of 2025
[10] Central Goods and Services Tax Act, 2017

JSA Comment: It is relevant to state here that while the Madras HC has held that the valid mode of service through the GST portal is not an effective mode, conflicting views have been rendered by the Madhya Pradesh High Court which has held that service through the GST portal is the effective mode of service. Given that there are conflicting views on the subject, the dispute is likely to continue until the Supreme Court rules on the same.

Appellate Tribunal

Promotional and marketing support services provided by Airbnb not in nature of intermediary services

The CESTAT[11], Chandigarh, in the case of ***Airbnb India Private Limited vs. Commissioner of CGST, Gurugram***[12] ruled on the nature of services provided by Airbnb India Private Limited ("**Appellant**") to Airbnb Ireland ("**Airbnb**") under an agreement. The Appellant was engaged in providing promotional and marketing support services to Airbnb. For the period April 2017 to June 2017, the Appellant filed a refund claim of unutilised CENVAT credit, which was rejected by the adjudicating authority on the allegation that services rendered by the appellants were in the nature of intermediary services as the Appellant interacted with the customers of Airbnb. Accordingly, the services provided by the Appellant did not qualify as an export of service. Aggrieved by the rejection of refund claim, the Appellant filed an appeal before CESTAT, Chandigarh.

The Appellant contended that the agreement executed between the Appellant and Airbnb shows that there are only 2 (two) parties to the agreement and the Appellant was providing services to its overseas entity on its own account. Further, the services were provided on a principal to principal basis. Further, the conditions stipulated under Rule 6A of the Service Tax Rules, 1994, evidences that the services provided by the Appellant qualify as an export of service. Accordingly, the Appellant was entitled to receive refund of unutilised CENVAT credit. Further, it was contended that the Appellant had received refund claims in the GST regime on account of the same services provided to Airbnb.

Considering the contentions of the Appellant and relaying on the judgement of the Hon'ble Punjab and Haryana High Court in the case of *Genpact India (P.) Ltd. vs. Union of India*[13], the CESTAT, Chandigarh held that the revenue authorities cannot take a different stand for the FY 2017-18, especially when there is no change the definition of intermediary in the service tax regime and the GST regime. Further, if the services under question did not qualify as export of service, the revenue authorities ought to have initiated proceedings against the Appellant for demand service tax in respect of the services. However, by not initiating proceedings, the revenue authorities have allowed the services to qualify as export of services. Therefore, the Appellant be allowed refund of unutilised CENVAT credit claimed by it.

Courtroom updates

Supreme Court issues notice in SLP(s) challenging validity of West Bengal Entry Tax Act[14]

In the matter of ***State of West Bengal vs. PepsiCo India Holdings Private Limited***[15], the High Court at Calcutta ("**Calcutta HC**") had upheld the validity of West Bengal Entry Tax Act. Aggrieved by the decision, Emami Agrotech and others have approached the SC, challenging the judgement of Calcutta HC and the *vires* of the West Bengal Entry Tax Act. It has been contended that the State has no power to levy tax on entry of goods meant for export to territories outside India as also on the ground that post the 101st Constitutional Amendment, the States are devoid of powers to make law relating to Entry Tax and accordingly, the State of West Bengal lacked legislative competence to amend the West Bengal Entry Tax Act, 2012, which was held ultra-vires Article 304(b) of the Constitution of India by the Single Judge of the Calcutta HC.

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[11] Customs, Excise and Service Tax Appellate Tribunal.
[12] 2025 (3) TMI 200
[13] 2023 (68) GS.T.L. 3 (P&H)
[14] West Bengal Tax on Entry of Goods into Local Area Act, 2012
[15] TS-51-HC-2025(CAL)-VAT

The SC has issued notice in the SLP(s) filed and have restrained revenue authorities from taking any coercive actions.

Notifications, circulars and instructions

Clarifications for availing benefits under Section 128A of the CGST Act

The CBIC *vide* Circular No. 248/05/2025-GST, dated March 27, 2025, has provided the following clarifications for taxpayers intending to avail benefits under Section 128A of the CGST Act.

1. Taxpayer, who has made the payment through Form GSTR-3B before the effective date of Section 128A of the CGST Act (November 1, 2024), will be eligible to avail benefits thereunder. However, pursuant to Section 128A of the CGST Act being effective, payment can only be made through Form DRC-03, as prescribed under Rule 164 of the CGST Rules.
2. Where a notice/statement/order has been issued for period partially covered under Section 128A and partially beyond the said period, the taxpayer can avail benefits for the period which is covered under Section 128A of the CGST Act (FY 2017-18 to 2019-20), based on the amendment made to Rule 164(4) and proviso clause of Rule 164(7) of the CGST Rules.

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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