Voice of MTB

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MADRAS TAX BAR
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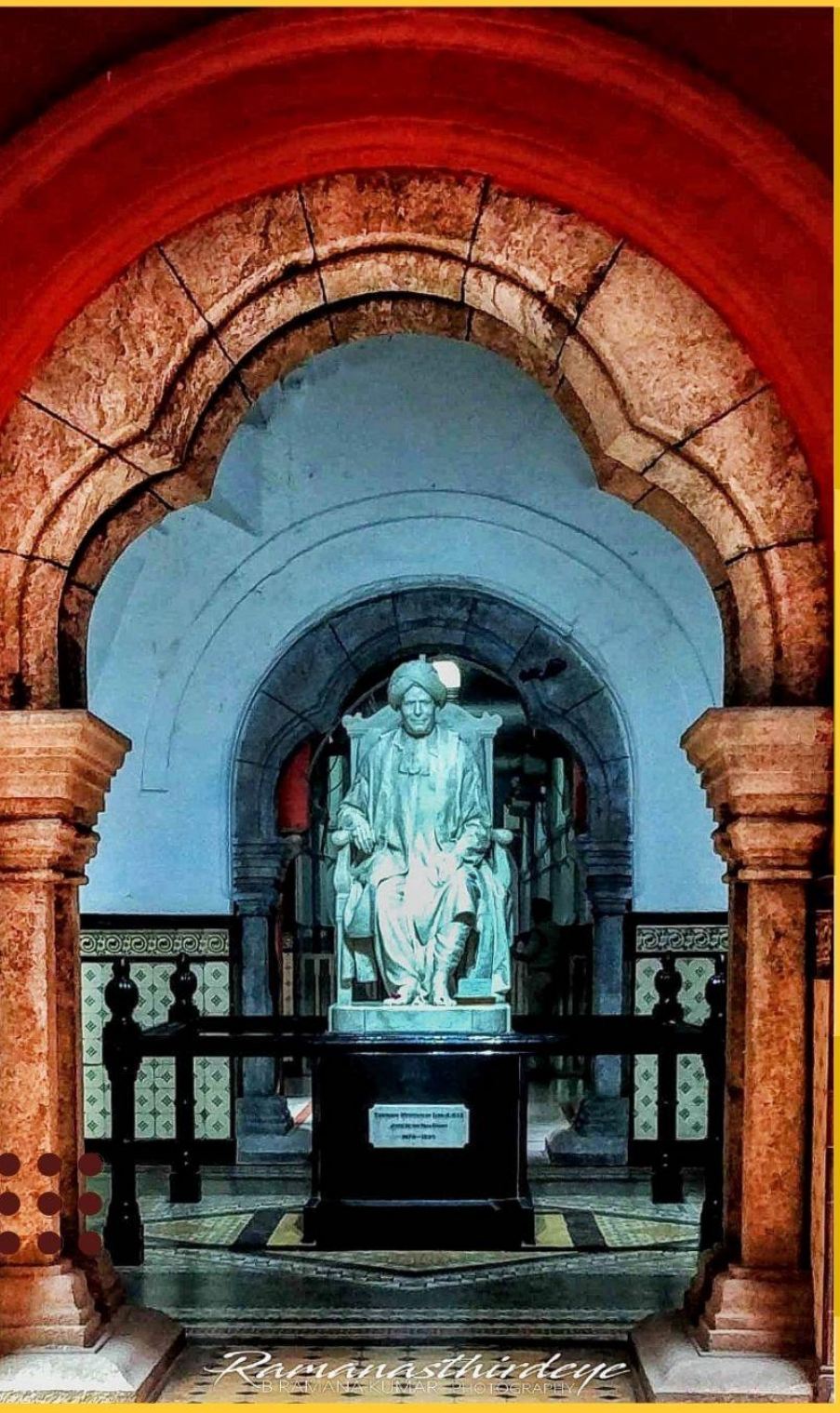

Our Articles

Our Content

குறள் 33:
ஒல்லும் வகையான் அறவினை ஓவாதே
செல்லும்வாய் எல்லாஞ் செயல்

Perform good deeds as much you can
Always and everywhere, O man!

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Message from the President

Dear All,

Happy new year!

The year 2024 bore a whirlwind of changes. The Hon'ble Supreme Court delivered judgments that altered the course of history in the world of taxes, which includes Mineral Area Development Authority, Safari Retreats, Canon India and many others.

The GST Council, bearing in mind the welfare of the State, taxpayers and the economy issued various recommendations for amendments in its meetings which benefitted the stakeholders and also clarified various positions in law.

The legislature was proactive in bringing various amendments to direct tax laws, indirect tax laws and customs laws. This includes the amnesty schemes in direct and indirect taxes which were brought into force and immensely benefited the taxpayers and revenue by reducing litigations which also saved precious time of the Hon'ble Courts.

The last month of the year was also filled with surprises. The GST Council, in its 55th meeting, announced a number of changes to the GST laws which profoundly impacts the implementation of the law.

I am thankful to the army of MTBians who have made this year so fulfilling and wonderful, contributing knowledge in various forums. I am sure that we are looking forward to every adventure that is to come in 2025. Wishing everyone a very happy and a prosperous year ahead.

Happy reading!

T. Pramodkumar Chopda,
Senior Advocate, Madras High Court
President, Madras Tax Bar

Articles

Classification Disputes in Free Trade Agreements: A burgeoning litigation

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Over the last few decades, Free Trade Agreements (FTAs) have become the backbone of international trade. They play a pivotal role in promoting economic growth by reducing trade barriers between nations through exchange of goods and services without the heavy burden of tariffs, quotas and other non-tariff restrictions. These Agreements enable businesses to expand beyond their own national borders, consumers to enjoy lower prices and a country's economy to become more competitive at the world stage. The FTAs are negotiated between two or more sovereign countries or regional groups, which come to an agreement on various concessions, investments and benefits that each party will be entitled to, in accordance with the terms and conditions outlined in the FTA.

The importance of FTAs in economic development has been duly recognised by the Government of India and this is evident from the fact that over the years the Government has executed multiple FTAs with various countries/ regional groups namely, Japan, South Korea, Mauritius, UAE and Australia, ASEAN and SAARC Counties. Negotiations are still in progress at various stages with other countries such as Oman and United Kingdom.

In the past, the FTAs were limited to grant of exemption from levy of Basic Customs Duty (BCD) on import of certain identified goods originating in the respective member countries. However, the present-day FTAs are more comprehensive and include negotiations not just on customs duties or tariffs, but other areas such as services, investments, technical barriers to trade (TBT), sanitary phytosanitary (SPS) measures, trade remedies etc.

In India, the FTAs are implemented by issuing appropriate tariff and non-tariff notifications. The tariff notifications are issued by the Government in exercise of powers conferred under Section 25 of the Customs Act, 1962 prescribing the effective rate of BCD. The non-tariff notifications are issued by the Government in exercise of

powers under Section 5 of the Customs Tariff Act, 1975 and are generally issued to prescribe the criteria to be satisfied for goods to be considered as originating from the member country. For example: - in pursuance of Preferential Trade Agreement between India and South Korea, the Government of India notified the Rules of Origin under Notification No. 187/2009-CUSTOMS (N.T.) dated 31.12.2009 (Rules of Origin) and Notification No. 152/2009-Customs dated 31.12.2009 (Indo-Korea FTA Exemption Notification) to prescribe the effective rate of BCD.

Under the Rules of Origin, the benefit of exemption under the Indo-Korea FTA Exemption Notification is extended to two categories of goods. The first category includes such goods which are wholly obtained. The second category includes such goods that are not wholly obtained or produced in the member states (portion of the raw material/inputs have been procured from a third country), but satisfy certain terms and conditions prescribed under the Rules of Origin. The terms and conditions set out for non-wholly originating goods under the Rules of Origin are elucidated below::-

1. Value Addition: The Regional Value Content (RVC) must not be less than 35% of the FOB value of goods intended for export. In other words, the work done on the raw materials in the exporting country must at least be 35% of the FOB value of goods intended for export. In this regard, the Rules of Origin prescribe the following formula for determining the value addition:

$$\text{Regional Value Content} = \frac{\text{FOB value - Value of non-originating materials as per sub-rule (2}}{\text{FOB value}} \times 100;$$

2. Tariff Jump: A tariff jumps means that the final product which is manufactured in the originating country must be classified in a different tariff sub-heading (at the six-digit level) than the tariff classification of the non-originating raw materials used in its production. For instance, if the non-originating materials fall under Heading 1501 (crude palm oil) and after processing, if the final product falls under a different Heading, such as Heading 1507, the change from Heading 1501 (non-originating) to Heading1507 (originating) would satisfy the rule of origin requiring a change in tariff classification.

3. Over and above these requirements, the Rules of Origin also require that the final manufacturing process must be carried out in the originating country.

To substantiate the origin criteria, the exporters are required to obtain a Certificate of Origin issued by an authority designated by the Government of the country of export. Once the goods are said to be originating from the country of export, the importer will be eligible to claim exemption from payment of BCD when the goods are being imported into India.

It is interesting to note that not all goods are exempt from payment of BCD. The exemption is granted only to those goods which have been specifically notified for exemption either wholly or partially. For goods originating in South Korea, the Indo-Korea FTA Exemption Notification has notified the goods eligible for exemption. A sample list of entries in the Notification is extracted hereunder:-

S. No. No.	Chapter, Heading, Sub-heading or Tariff Item	Description of goods	Rate (in percentage unless otherwise specified)
(1)	(2)	(3)	(4)
785	848180	All Goods	0.00
953	903289	All Goods	0.00

Thus, an importer will be eligible to claim exemption on import of valves (falling under Tariff Sub-Heading 848180), if the said goods are originating in South Korea.

Over the last 2-3 years, the investigating agencies especially the Directorate of Revenue Intelligence (DRI) has been looking into the exemption benefits being claimed by the importer under the various FTAs. The investigations have revolved around the following two aspects: -

1. Whether the goods are actually originating in the country of export i.e., whether the goods satisfy the regional value content addition.

2. Whether the classification of the goods declared in the Country of Origin and BOE is appropriate?

Through this Article, the authors will be discussing a certain critical aspect w.r.t. Point 2 above. Let us take an illustration. An importer imports the goods by classifying the same under Tariff Entry 84818090 from South Korea and claims exemption under S. No. 953 of Indo-Korea FTA Exemption Notification. However, DRI forms a view that the said goods are appropriately classifiable under Tariff Entry 90328900 for which a tariff rate of 7.5% has been prescribed. Now the question which arises for consideration is, assuming that the Department classification is appropriate, and the goods are indeed classifiable under CTI 90328900, whether the importer can claim that the goods are alternatively eligible for exemption under S. No. 953 of Indo-Korea FTA Exemption Notification.

In our view, the Certificate of Origin validates that the subject goods are of exporting country origin and hence should be eligible for the preferential duty exemption. This is evident from the preamble of the Indo-Korea FTA Exemption Notification which provides that in order to avail exemption, the goods must be originating from the member country. Further, the FTAs are comprehensive agreements, and the Rules of

Origin provide for mechanisms to be followed by either nation in case there is any doubt as to the origin of goods. Thus, it is evident that the intent is to ensure that the goods originating from the member country are granted exemption.

Resultantly, so long as the origin of the goods or the factum of achieving the requisite level of value addition or authenticity of Certificates of Origin issued is not disputed, once the classification proposed by the Department is also covered by the FTA Exemption Notification, the benefit of exemption should not be denied.

However, the Department while generally issuing the Show-Cause Notices/ Orders proposing re-classification of goods do not take into account the fact that goods may otherwise be eligible for exemption in a different serial number under the very same FTA Exemption Notification. There are various instances where the benefit in under an alternate entry has been denied on the sole ground that the goods are allegedly classifiable elsewhere.

In our view, the denial of FTA exemption benefit on the sole ground of misclassification without analysing the issue from a holistic standpoint will be in gross violation of the terms of the FTA entered between two countries. Further, such denial also falls foul of the settled principle of law that if an importer is eligible for more than one exemption, he can choose the one which is more beneficial[1] and such alternative exemption can also be claimed at a later stage[2].

In this regard, recently, the Hon'ble CESTAT, Chennai in ***Hyundai Motors India Limited v. Commissioner of Customs***[3] has held that if the Department doubts the authenticity of the document or the accuracy of the information regarding the origin of the goods in question, sufficient mechanism is provided under the FTAs to deny the exemption. However, if such steps as stipulated in the FTAs are not taken by the Department, a unilateral denial of exemption is impermissible as such unilateral denial of benefit would go against India's international treaty obligations.

At this juncture, it is also relevant to note that apart from the value addition criteria, the FTAs also prescribe that the goods must undergo a tariff jump. Therefore, even if the alternate classification proposed by the Department is covered under the FTA, one must ensure that the tariff jump criteria is also fulfilled. In other words, the classification of the raw materials and the final product which is imported (as proposed by the Department) must be in a different tariff sub-heading (at the six-digit level).

The Department must also be sensitised about the sanctity of the FTAs and India's international obligations. In future, steps should be taken through issuance of appropriate Circulars or Instructions by CBIC to ensure that proliferation of litigation is avoided in cases where the goods originate from member country and satisfy the terms set out in the Rules of Origin.

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[1] Share Medical Care v. Union of India [2007 (209) E.L.T. 321 (S.C.)]
[2] Volex Interconnect India Pt. Ltd. v. CC [2019 (370) E.L.T. 642 (Tri. - Chennai)].
[3] 2024-VIL-1345-CESTAT-CHE-CU

A judicial epistemology of 'force majeure' and 'recommendations of the Council' by Patna HC

Ms. P. Varshini, Advocate, Swamy Associates

Judiciary teaches hedonic adaptation with its recent conflicting decisions on the interpretation of Section 168A of CGST Act, 2017. The Revenue travelled a mile in a minute when the due dates under Section 73(10) were extended by Notifications issued under Section 168A, ibid.

The assessees breathed a sigh of relief when the Hon'ble Gauhati High Court, in the case of ***Barkataki Print and Media Services & Anr. [2024 (9) TMI 1398 - GAUHATI HIGH COURT],*** held one of the Notifications issued under Section 168A, viz; 56/2023-CT dated 20.12.2023, as ultra vires the Section, being issued in absence of 'recommendation of the Council' and a situation of 'force majeure'. Before it was too long, in an identical challenge, in the case of ***M/s Barhonia Engicon Private Limited & Ors. [Civil Writ Jurisdiction Case No.4180 of 2024],*** the Hon'ble Patna High Court dropped a bombshell upholding the validity of the aforesaid Notification among two others (Notifications 13/2022 – CT dated 05.07.2022 and 09/2023-CT dated 03.03.2023).

Background:

Section 168A of the GST Act, empowers the Government to extend the time limit specified or prescribed or notified in the Act,

(i) on the recommendation made by the GST Council;
(ii) by issuance of a notification;
(iii) in respect of actions which cannot be completed or complied; and
(iv) due to force majeure.

A batch of Writ Petitions were filed before the Hon'ble Patna High Court Challenging Notifications 13/2022 – CT dated 05.07.2022 and 09/2023-CT dated 03.03.2023 issued under the aforesaid Section for a simple reason that as on the date of the respective Notifications the pandemic situation, a 'force majeure', citing which the Notifications were issued, did not exist. Besides, Notification 56/2023-CT dated 20.12.2023 was also challenged on the twin grounds that there was no

'recommendation of the Council' and/or a 'force majeure' in existence as on the date of its issuance.

While upholding the validity of the Notifications 13/2022-CT and 09/2023-CT, the Hon'ble Court made the following significant observations with respect to condition, 'existence of force majeure';

- Section 168A of the GST Act was specifically brought into the statute book by the Taxation & Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020 with effect from 31.03.2020, in view of the spread of Pandemic COVID-19 across the world.
- The power conferred under the said Section cannot be confined to be exercised, only when a force majeure situation is existing.
- A force majeure situation, cannot be anticipated and when it is occasioned; the consequential hazards can only be taken stock-off in the aftermath, when the situation has passed, since till then the priority is in damage control.
- The notifications 13/2022-CT and 09/2023-CT were issued in pursuance to the decision taken by the GST Council at the 47th and 49th meeting in view of the COVID-19 pandemic. Both the Notifications though issued in June, 2022 and March, 2023 have a retrospective effect from 01.03.2020; when the pandemic struck with all force.

Narrowing down the dispute to the absence of the Council's recommendation prior to issuance of Notification 56/2023-CT, the Hon'ble Patna High Court did not agree with the decision of the Hon'ble Gauhati High Court stating the following reasons;

- Section 168A was introduced invoking the power conferred on the Parliament and the State Legislatures under Article 246A of the Constitution of India.
- Section 168A is framed in contradistinction to the power of recommendation conferred on the GST Council under Article 279A(4).
- The decision of the Apex Court in the case of Mohit Minerals is not applicable, inasmuch as in that case the discussion was on recommendations under Article 279A(4) and in the present case, the issue is on the recommendations under Section 168A which finds its root to Article 246A.
- A recommendation definitely is a sine qua non. The Pandemic situation was taken into account by the GST Council at its 47th and 49th meetings itself, which recommended extension of the period to a specific date and the caveat that there should be no further extension, was also not accepted by the GST Council.
- The impugned Notification was ratified by the Council in the 52nd Meeting.

- No excessive extension of time is seen to have been granted, if the period beginning 15.03.2020 to 28.02.2022 is excluded as per the judgment of the Hon'ble Supreme Court in Re: Cognizance for Extension of Limitation (Miscellaneous Application No. 408 of 2022 and connected matter).

As a result, the Hon'ble High Court of Patna upheld of the validity of Notification 56/2023-CT dated 20.12.2023 as well.

Conclusion:

It is very interesting to note how reading between lines a judicial decision has led to dilution of pre-requisites prescribed in a legislative enactment. While the Hon'ble Gauhati High Court adopted the literal meaning of the language used in the said Section, the Hon'ble Patna High Court travelled beyond its plain text without establishing any ambiguity.

The saying goes, interpretation of laws is the proper and peculiar province of the Courts. The above discussed decisions stand quintessential to the saying.

Games Corner

By: Jayalakshmi
Advocate, Founder, JPLawyerly

Sudoku – Upgrade

			GSTR-1A				GSTR-9	GSTR-3B
	GSTR-10						GSTR-1	
	GSTR-1A	GSTR-3B	GSTR-9C	GSTR-1	GSTR-7	GSTR-2B		
GSTR-1A		GSTR-1	GSTR-2A				GSTR-9C	GSTR-2B
		GSTR-9C		GSTR-10				
	GSTR-9		GSTR-7	GSTR-2B	GSTR-9C	GSTR-3B		
	GSTR-2A				GSTR-1	GSTR-7		GSTR-9
			GSTR-10			GSTR-2A	GSTR-2B	
			GSTR-9		GSTR-2A		GSTR-3B	GSTR-9C

In the post budget Scenario, the Player – who is a normal Assessee who has made a few errors in the GSTR -1, who has deducted TDS and is also looking at closing business, must ensure that all the returns are in place before the final adieu to GST. A 9X9 square must be filled in with the various returns that he must encounter GSTR-1, GSTR-1A, GSTR–2A, GSTR-2B, GSTR–3B, GSTR–7, GSTR–9, GSTR – 9C and GSTR-10. He must ensure that each of these returns are placed in each 3x3 box and with no repeated returns in each line, horizontally or vertically.

Updates

Goods and Service Tax – Case Law Updates

Compiled by:

Jayalakshmi.P, Advocate, Founder, JPLawyerly

K.G. Jayasuriya, Advocate, JPLawyerly

1. M/S RAM ENTERPRISES VERSUS STATE OF UP AND 2 OTHERS

Citation: 2024 (11) TMI 1170 - Allahabad High Court

Date of Judgment: November 21, 2024

Summary: The Allahabad High Court quashed the penalty order under Section 129(1)(b) of the CGST Act for unaccounted consignment transport. The court held that neither the invoice nor the e-way bill was disputed, and Circular No. 76/50/2018-GST establishes that ownership lies with either the consignor or consignee named in the invoice. Reliance on the judgment in H/S Halder Enterprises v. State of U.P. supported this view. The authorities were directed to reassess under Section 129(1)(a) and release the goods upon penalty payment.

2. HCL INFOSYSTEMS LTD. VERSUS COMMISSIONER OF STATE TAX & ANR.

Citation: 2024 (11) TMI 1331 - Delhi High Court

Date of Judgment: November 21, 2024

Summary: The court invalidated an SCN and final order issued against a non-existent entity post-amalgamation. Section 87 of the CGST Act ensures transactions involving amalgamating entities are taxable, transferring liabilities to the amalgamated entity. The order's continuation against a dissolved entity violated procedural norms. The court reiterated that amalgamated entities bear accrued liabilities, negating any revenue loss. Consequently, the impugned orders were held untenable.

3. **M/S ANAND STEEL AND OTHERS VERSUS UNION OF INDIA AND OTHERS**

Citation: 2024 (11) TMI 1332 - Madhya Pradesh High Court

Date of Judgment: November 22, 2024

Summary: Section 16(4) of the CGST Act, restricting ITC claims to a prescribed return-filing deadline, was deemed arbitrary. The court found this provision punitive, as late return filers pay penalties and interest. By removing the time limit in the GST Act (2024 amendment), the government acknowledged the unfairness. Declaring the time-bound ITC restriction invalid without addressing its constitutionality, the court allowed the petition and directed relief under the amended provisions.

4. **M/S. PADIYAR KRISHI SEWA KENDRA VERSUS UNION OF INDIA AND OTHERS**

Citation: 2024 (11) TMI 1334 - Madhya Pradesh High Court

Date of Judgment: November 26, 2024

Summary: Non-consideration of the petitioner's reply to the SCN for GST registration cancellation constituted non-application of mind. Errors in adjudicating amounts owed and time-barred appeals invalidated the impugned orders. The court set aside orders from both adjudicating and appellate authorities, directing a fresh evaluation.

5. **REJIMON PADICKAPPARAMBIL ALEX VERSUS UNION OF INDIA AND OTHERS**

Citation: 2024 (12) TMI 399 - Kerala High Court

Date of Judgment: November 26, 2024

Summary: Proceedings under Section 73 for alleged excess ITC availed were quashed as credit discrepancies stemmed from minor technical omissions. The petitioner's failure to mention IGST in Form GSTR-3A did not indicate wrongful availment. As outward IGST liabilities were undisputedly nil, the court held that Section 73 actions were unjustified and set aside the impugned orders.

6. **NARAYAN SAHU VERSUS UNION OF INDIA AND OTHERS**

Citation: 2024 (12) TMI 870 - ORISSA HIGH COURT

Date of Judgment: November 26, 2024

Summary: The Orissa High Court examined the jurisdiction of GST officers under the IGST Act. It ruled that cross-authorized State Tax officers were properly empowered to act as proper officers under the IGST Act, given no specific limitations in the notifications. Additionally, the Court upheld the revenue's prerogative to deem the owner of a consignment, rejecting the petitioner's challenge to the jurisdiction and powers of the officers. The Court dismissed the writ petition, affirming that the cross-authorization was legally sound.

7. **M/S. ELITE INTERNATIONAL VERSUS COMMISSIONER OF CGST DELHI NORTH AND ORS.**

Citation: 2024 (12) TMI 212 - Delhi High Court

Date of Judgment: November 27, 2024

Summary: Export refund rejection due to realization in Indian Rupees, albeit through a convertible Vostro account, was questioned. Clarifying Circular No. 88/07/2019, the court noted unresolved ambiguities about applicability across exports. It directed respondents to reconsider refund eligibility based on clarified policy interpretations.

8. **TVL. SKANTHAGURU INNOVATIONS PRIVATE LIMITED VERSUS COMMERCIAL TAX OFFICER AND OTHERS**

Citation: 2024 (12) TMI 143 - Madras High Court

Date of Judgment: November 28, 2024

Summary: The court upheld State Authorities' jurisdiction to issue Form GST ASMT-10, asserting actions were within Rule 86A of GST Rules. ITC blocking and associated procedures were deemed lawful, ensuring fraudulent credit prevention. The court clarified that ITC blocking applies regardless of ledger balances during fraudulent availment. On the petitioner's claims, proceedings post-ASMT-10 issuance required substantive evidence before determining cross-empowerment limits.

9. **M/S RAJ INFRA STRUCTURE VERSUS STATE OF U.P. AND ANOTHER**

Citation: 2024 (12) TMI 214 - Allahabad High Court

Date of Judgment: December 2, 2024

Summary: The Allahabad High Court considered a challenge to a demand order where notices were uploaded under "Additional Notices and Orders" instead of the "Due Notices and Orders" tab. The court referenced the OLA Fleet Technologies case, where it was held that the petitioner was entitled to the benefit of doubt. Additionally,

the dispute over whether the replies filed by the petitioner were considered by the assessing officer was noted. The court concluded that no useful purpose would be served by keeping the petition pending, as the disputed amount was already deposited with the State Government.

10. UNION OF INDIA THROUGH PR. ADDITIONAL DIRECTOR GENERAL OF GST INTELLIGENCE JAIPUR. VERSUS GAUTAM GARG

Citation: **2024 (12) TMI 400 - RAJASTHAN HIGH COURT**

Date of Judgment: December 3, 2024

Summary: The Rajasthan High Court addressed a cancellation of bail under Section 439(2) of Cr.P.C. for a GST evasion case involving fake bills from non-existent firms. The Court highlighted that the absence of evidence linking the accused to fraudulent invoices was irrelevant under Section 132 of the CGST Act, which allows prosecution of those enabling tax fraud. The Court found that the lower court had erred in granting bail, ignoring the gravity of the offense and legal provisions, and cancelled the bail, underscoring the significance of prosecuting offenders behind such schemes.

11. M/S. SRI VIJAYA VISAKHA MILK PRODUCERS COMPANY LTD., VERSUS ASST. COMMISSIONER OF CENTRAL TAX AND OTHERS

Citation: 2024 (12) TMI 784 - Andhra Pradesh High Court

Date of Judgment: December 10, 2024

Summary: The Andhra Pradesh High Court dealt with the classification of flavoured milk under GST and the applicability of penalties. It found that flavoured milk should be classified under GST Tariff Heading 0402 rather than 2202, rejecting the notion that the addition of a flavour alters its classification. The Court ruled that penalties under Section 122(2)(b) and Section 74 of the CGST Act were not applicable. The Court set aside the impugned order, asserting that the incorrect classification of goods did not warrant penalties, affirming that flavoured milk falls under a special entry for milk products.

12. SMT ANGOORI DEVI EDUCATIONAL AND CULTURAL SOCIETY (REGD.) VERSUS UNION OF INDIA AND 4 OTHERS

Citation: 2024 (12) TMI 830 - Allahabad High Court

Date of Judgment: December 12, 2024

Summary: The Court noted that the demand was non-speaking and violated the principles of natural justice. The order was set aside, with the Court directing the

authorities to issue a detailed speaking order, considering the relevant notifications, advance rulings, and previous judgments. The petitioner was granted relief, with the direction to the authorities to pass a fresh demand order in accordance with applicable legal provisions.

13. RAJENDRA KUMAR KOTHARI & ANR. VERSUS VARUN KOTHARI & ANR.

Citation: 2024 (12) TMI 832 - Calcutta High Court

Date of Judgment: December 13, 2024

Summary: The Calcutta High Court addressed an application for securing an amount of Rs. 1,14,88,833/- pending a civil suit, in relation to allegations of GST fraud involving Form-3B uploads. The plaintiffs claimed that the defendants were attempting to remove or encumber their assets, but no concrete evidence was provided. The Court dismissed the application, finding that the plaintiffs had failed to establish a prima facie case of asset disposal, and no urgent action was warranted to secure the amount at this stage of the dispute.

14. M/S. MAG FILTERS AND EQUIPMENTS PRIVATE LIMITED VERSUS COMMISSIONER OF CGST AUDIT GURUGRAM AND OTHERS

Citation: 2024 (12) TMI 871 - Punjab and Haryana High Court

Date of Judgment: December 11, 2024

Summary: The Punjab and Haryana High Court addressed a challenge to audit proceedings under Section 65 of the CGST Act. The Court emphasized that there is no prescribed time limit for conducting audits, and such audits are akin to preliminary inquiries. It found that no prejudice had been caused to the petitioner by the ongoing audit, rejecting claims of improper delay. The Court held that the Department was entitled to continue with the audit, and the petition was dismissed, allowing the investigation to proceed.

15. CHETAK LOGISTICS LTD. VERSUS UNION OF INDIA & ORS.

Citation: 2024 (12) TMI 874 - Delhi High Court

Date of Judgment: December 13, 2024

Summary: The Delhi High Court reviewed a challenge against the rejection of a show-cause reply in a GST dispute, finding the order devoid of reasoning and failing to consider the petitioner's submissions. The Court held that show-cause notices must be decided on merits, with proper application of mind. It quashed the impugned order,

highlighting the need for a speaking order, and directed that the petitioner be given a fair opportunity to address the deficiencies before a fresh decision was made.

16. HDFC BANK LTD. VERSUS UNION OF INDIA & ORS.

Citation: 2024 (12) TMI 930 - Bombay High Court

Date of Judgment: December 14, 2024

Summary: The Bombay High Court dealt with the dismissal of an appeal by the Commissioner (Appeals-II) without giving a hearing to the petitioner, violating natural justice principles. The Court ruled that procedural fairness requires that the petitioner be given an opportunity to respond to the grounds for dismissal. It directed the Commissioner to provide a personal hearing to the petitioner, allowing them to address the deficiencies in the appeal before passing a fresh, reasoned order. The appeal was disposed of with this direction.

17. **CHAMPIONS STEEL INDUSTRIES PRIVATE LIMITED VERSUS UNION OF INDIA, DIRECTORATE GENERAL OF GST INTELLIGENCE MUMBAI, DEPUTY COMMISSIONER OF CGST & CENTRAL EXCISE GST MUMBAI, DEPUTY/ASSISTANT COMMISSIONER OF CGST & CENTRAL EXCISE DIVISION- I, MUMBAI**

Citation: 2024 (12) TMI 1005 - Bombay High Court

Date of Judgment: December 16, 2024

Summary: The Bombay High Court considered a challenge to a show-cause notice and order-in-original (O-I-O) served to an incorrect address. The Court observed that the respondents failed to demonstrate proper service of the notice at the correct address of the petitioner. Given the failure to prove valid service, the Court set aside the impugned order, citing violations of natural justice and ordered that the authorities must serve a valid notice before proceeding with any further action. The petition was disposed of in favour of the petitioner.

18. DELTATECH GAMING LIMITED VERSUS UNION OF INDIA & ORS.

Citation: 2024 (12) TMI 1288 - Calcutta High Court

Date of Judgment: December 20, 2024

Summary: The Court considered the issue of non-disclosure of relied-upon documents to the petitioner by the respondent authorities, and the delay in addressing the representation submitted by the petitioner. The Court held that withholding sensitive information collected by the Intelligence Department, based on national

security and third-party commercial interests, was justified. The Court cited the **Supreme Court's decision in T. Takano v. SEBI**, which emphasized that the principles of natural justice do not mandate indiscriminate disclosure when sensitive interests are involved. The petition was disposed of in favor of the authorities.

19. M/S. ARJUN ENTERPRISE VERSUS UNION OF INDIA AND OTHERS

Citation: 2024 (12) TMI 1289 - Calcutta High Court

Date of Judgment: December 20, 2024

Summary: In this case, the petitioner challenged the dismissal of an appeal on the grounds of it being time-barred. The Court allowed the writ petition, interpreting the statutory provisions on limitation liberally, especially in cases of genuine hardship. The Court referred to **S.K. Chakraborty & Sons v. Union of India**, which stated that Section 5 of the Limitation Act applies even when the limitation period is exceeded if the circumstances justify an extension. The appellate order of 30.08.2024 was quashed due to procedural irregularities, and the writ petition was allowed.

Customs Laws – Case Law Updates

Compiled By: Manikanda Prabhu- Advocate,
Karthik Law Chambers

1. In ***M/S VOS Technologies India Pvt. Ltd. v. The Principal Additional Director General & Anr.*, (2024) 25 Centax 199 (Del.)**, the Delhi High Court held that show cause notices and adjudication proceedings must be concluded within reasonable timeframes and cannot remain unresolved for years. The Court observed that statutory provisions allowing authorities to conclude proceedings within a stipulated period "where it is possible to do so" should not be misconstrued as a license for indefinite delays. It noted instances where proceedings initiated as far back as 2006 were unjustifiably kept pending.

   The Department was found to have failed in adhering to the procedure outlined in the First Proviso to Section 28(9) of the Customs Act, which permits the proper officer to seek extensions based on whether the proceedings fall under clause (a) or (b) of Section 28(9). The Court further clarified that for cases under Sections 28(1) and 28(4), the proper officer is empowered to seek further extensions. In cases relying on Section 28(9-A), the respondents are statutorily obliged to inform the importer of the reasons for not concluding the adjudication within the prescribed timeframe. Once such notice is provided, the provisions of Section 28(9) cease to apply, and proceedings may remain suspended until the circumstances necessitating abeyance are resolved.

   The Court found, based on disclosures in the batch petitions, that the Department had engaged in a repetitive, mechanical process of placing matters in the call book, retrieving them, and transferring them back without applying their minds to the specific facts of each case. These actions, dictated solely by Board directions, lacked the requisite opinion as mandated under Section 28(9-A). The Court relied on the decision in *Nanu Ram Goyal v. CCE (GST)* (2023), which held that assessees must be informed and given due notice when matters are placed in the call book.

   The Delhi High Court concluded that the Department is legally bound to conclude adjudication promptly, particularly in cases involving financial or penal implications, as prolonged delays are unacceptable. The flexibility afforded by statute to extend timeframes does not justify inaction, and authorities must demonstrate genuine impediments to timely resolution.

Consequently, the Court quashed the show cause notices and pending proceedings on the principal ground of inordinate delays.

2. In ***Designco v. Union of India & Ors.*, MANU/DE/8177/2024**, the issue before the Delhi High Court was that the goods were classified by the Petitioners under CTH 6815 (articles of stone or of other mineral substances not elsewhere specified or included) and specifically under CTH 6815 9990 (residual clause), which was entitled to certain exemptions under the Merchandise Exports from India Scheme (MEIS). The Department took a view that Petitioners had deliberately misclassified the goods in order to claim benefits under MEIS and contented that the correct classification ought to have been CTH 6802.

   The Court held that:

   (a) Customs authorities do not have the power to question or invalidate a MEIS (Merchandise Exports from India Scheme) certificate issued under the Foreign Trade (Development and Regulation) Act (FTDR Act). It is only the Director General of Foreign Trade (DGFT), who has the authority to suspend or cancel such certificates.

   (b) If the Customs authorities have doubts about the validity of an instrument, these must be addressed/ determined by the DGFT & not the customs authorities.

   (c) The *sine qua non* for Section 28AAA getting attracted is collusion, suppression and wilful misstatement. In this case, the Petitioners had consistently classified goods as handicraft articles under 6815 9990. The Court also noted there lacked evidence of collusion, wilful misstatement, or suppression, rendering the proceedings procedurally flawed. The Court also held that even if it were assumed that the Petitioners had wrongly classified or placed articles under 6815 9990, the same would clearly not amount to it being ipso facto assumed that the same amounted to an act of suppression or wilful misstatement.

   (d) The self-assessed bills of entry were accepted by the customs authorities and the stage of enquiry contemplated in terms of Section 17 of the Customs Act has clearly passed.

   In conclusion, the Court held that the petitioners could not be penalized for incorrect classification of exports without evidence of collusion, misstatement, or suppression of facts, and since the DGFT had not challenged the validity of the MEIS certificates, the customs action against the petitioners was deemed illegal and arbitrary.

3. In ***Nalin Choksey v. Commissioner of Customs, Kochi*, (2024) 25 Centax 99 (S.C.)**, the Hon'ble Supreme Court held that a subsequent purchaser of an imported vehicle cannot be deemed an "importer" under the Customs Act, 1962 and is not liable to pay customs duty for misdeclaration by the original importer. The case concerned the import of a Porsche Carrera car in 2002, where Customs alleged undervaluation, tampering with the chassis

number, and misdeclaration of the car's model, resulting in an evasion of INR 17,92,847 in customs duty. The appellant, who purchased the car in 2004, was issued a show-cause notice alongside the original importer and a car broker, and the Commissioner of Customs held them all liable jointly and severally. The Court held that the definition of 'importer' under Section 2(26) of the Customs Act, 1962 can include an owner or beneficial owner or any person holding out to be an importer. But the above category of persons will be considered under the definition only during the time between the importation of goods and the time when they are cleared for home consumption and not thereafter.

4. In ***Commissioner of Customs v. Novo Nordisk India Pvt. Ltd.*** **Customs Appeal No. 40367 of 2020**, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Chennai, dismissed the Department's appeal, upholding the exemption claimed by the Novo Nordisk for imported insulin products under Customs Notification No. 12/2012 and No. 50/2017. The primary question was whether the Respondent's imported products, including human insulin and insulin analogues, developed using recombinant DNA (r-DNA) technology, could be classified as "monocomponent insulin" eligible for customs duty exemption under the above stated notifications. The Department alleged that the term "monocomponent insulin" referred specifically to insulin derived from animal sources and purified using chromatographic techniques. It argued that insulin analogues manufactured via r-DNA technology could not qualify as monocomponent insulin and claimed a customs duty shortfall of INR 167.43 crores for the period between November 2014 to September 2017. The Respondent countered that their products met the criteria for "monocomponent" insulin due to their high purity, and were supported by expert opinions and scientific literature. The Tribunal held that the term "monocomponent insulin" refers to the purity of the insulin, irrespective of its source, and is not confined to animal-derived insulin. The classification was observed to be a content-based and not a source-based classification. The Tribunal also took note of various binding decisions of the Hon'ble Supreme Court in *Collector of Customs & Central Ex. v. Lekhraj Jessumal & Sons*, 1996 (82) E.L.T. 162 (S.C.), and *Hewlett Packard India Sales Pvt. Ltd.* Versus *Commissioner of Customs (Import), Nhava Sheva*, (2023) 2 Centax 236 (S.C.) wherein Supreme Court took a view that a static interpretation cannot be given thereby ignoring the advancements in technology.

5. In ***Lalit Kulthia & Anr. v. Commissioner of Customs*****, Order dated 06.12.2024 in Writ Petition No. 476 of 2024**, the Bombay High Court dealt with a case of the Petitioners' prayer for a direction to the Commissioner of Customs (Appeals) to admit their appeal without requiring a pre-deposit as stipulated under Section 129E of the Customs Act, 1962. The Petitioners argued that no penalty could be imposed on gold without foreign marking, noting that out of twelve gold bars, only one had such marking. They contended that the Court could waive the pre-deposit requirement under Article 226 of the Constitution due to their inability to pay. However, the Court found that the relief sought contradicted the mandatory pre-deposit requirement and also

took note of the precedents such as *Kotak Mahindra Bank Pvt. Ltd. v. Ambuj A Kasliwal*, 2021 3 SCC 549 wherein the Supreme Court held that even the High Court cannot direct appellate authorities to hear appeals without the requisite pre-deposit. Ultimately, the Court dismissed the Petition without any orders for costs, reinforcing the necessity of following statutory provisions in customs appeals.

6. In ***Mahle Anand Thermal Systems Pvt. Ltd. v. Commissioner of Customs, Pune*, (2024) 25 Centax 181 (Tri-Bom)**, the CESTAT, Mumbai dealt with the reassessment of imported aluminum strips used in automotive heat exchangers. The appellant challenged the reassessment of duties by the Customs authority, which included anti-dumping duty (ADD) under Notification No. 68/2021-Cus. (ADD), on the grounds of procedural non-compliance under Section 17(5) of the Customs Act, 1962. The Tribunal observed that the proper officer had conducted reassessment without issuing a mandatory "speaking order" or obtaining written consent from the importer, as required by Section 17(5). The reassessment was carried out contrary to the appellant's self-assessment under Section 17(1) and was upheld by the Commissioner (Appeals) without examining the substantive grounds or materials. The Tribunal held that this lack of compliance rendered the reassessment invalid *ab initio* and it set aside the impugned orders and remanded the matter to the original authority for proper disposal in accordance with Section 17 of the Customs Act, 1962.

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