



## Indirect tax newsletter

# Updates: Indirect tax judgments

We are delighted to share a few important judgments/advance rulings passed under the Goods and Services Tax (GST), Customs, Central Excise, Service Tax and Value Added Tax laws during October 2021.

### Goods and Services Tax



**Platinum Holdings Pvt Ltd vs. Additional Commissioner of GST and Central Excise (Appeals-II) and others**  
2021-TIOL-2016-HC-MAD-GST

Petitioner, a Special Economic Zone unit, filed applications for refund of GST paid on supplies from units in the Domestic Tariff Area. The refund claims were rejected by the adjudicating authority on the ground that SEZ unit is not eligible to claim refund of unutilized Input Tax Credit (ITC). The Madras High Court held that in terms of GST law, “any person” can file a refund application, which includes a SEZ unit. The High Court also held that a word or phrase in a statutory provision or in a Rule must be read and applied, as framed.



**SBI Cards & Payment Services Limited vs. Union of India and Others**  
2021-TIOL-2141-HC-P&H-GST

The petitioner, during the initial stage of implementation of GST, did not have the complete break up of individual transactions and paid GST on intra-state supplies which were later discovered to be inter-state transactions. The petitioner applied for refund of GST paid on intra-state transactions which was rejected by the revenue authorities. The Punjab & Haryana High Court observed that the petitioner had also separately discharged applicable GST liability on inter-state transactions as well and was eligible to refund of the amount paid in excess.



**Godrej and Boyce Mfg Company Ltd vs. Union of India and Others**  
**2021-TIOL-2112-HC-MUM-GST**

The petitioner challenged the show cause notice issued by the revenue authorities for recovery of education cess, secondary and higher education cess transitioned to the GST regime on account of a retrospective amendment in the GST law. The petitioner contended that not only on the date of issuance of SCN but even on the date on which the writ petition was presented, the amendment(s) referred to in the impugned notice had not come into force and, therefore, the SCN has been issued on an untenable legal premise and is without jurisdiction. The Bombay High Court, agreeing with the contentions of the petitioner, held that the SCN suffers from an error going to the root of the jurisdiction of the respondent in the matter and is, accordingly, indefensible and liable to be set aside.



**M/s Jyoti Construction vs. Deputy Commissioner of CT and GST**  
**2021-TIOL-2007-HC-ORISSA-GST**

The petitioner approached the Orissa High Court challenging the orders passed by the Appellate Authority rejecting the appeals filed due to defect in filing of appeals. The petitioner has made the pre-deposit by debiting the electronic credit ledger, while the Appellate Authority was of the view that such payment should have been made through a debit in the electronic cash ledger. The High Court held that though input tax credit can be used for offsetting output tax liability, the same cannot be equated to pre-deposit. The provisions of the Odisha GST Act limits the usage to which the electronic credit ledger could be utilized and this cannot be extended to making pre-deposit for filing appeals under GST. The order of the Appellate Authority was accordingly upheld by the High Court.



**Nethu Varghese vs. The Assistant State Tax Officer and Others**  
**2021-TIOL-2005-HC-KERALA-GST**

The petitioner challenged the orders of detention of goods before the Kerala High Court. Petitioner had furnished bank guarantee and had obtained release of goods, but the adjudication proceedings consequent to said orders had not been completed due to pendency of the writ petition. The High Court held that pendency of a writ petition does not bar adjudication proceedings in case of detention of goods.



**M/s Adama India Pvt. Ltd.**  
**2021-TIOL-228-AAR-GST**

The applicant approached the Gujarat Authority For Advance Ruling (AAR) on the question whether the inputs and input services procured by the applicant, in order to undertake the mandatory corporate social responsibility activities as required under the Companies Act, 2013, qualify as being in the course or furtherance of business and, therefore, will be counted as eligible input tax credit. The Gujarat AAR held that CSR activities, as per Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and, therefore, not eligible for ITC.



**M/s B G Shirke Construction Technology Pvt. Ltd.**  
**2021-TIOL-234-AAR-GST**

The corporate office of the applicant was engaged in providing managerial and leadership services to its group companies and its various branches. For this purpose, it collected fixed monthly charges on lump sum basis. The applicant was of the view that such activity does not amount to "supply" under GST. The Maharashtra AAR held that the GST Law deems site office and group companies as distinct and related entities. Consequently, the services provided within the group is liable to GST and the applicant shall undertake valuation as per the relevant provisions of GST law.



**M/s The Tata Power Company Ltd**  
**2021-TIOL-258-AAR-GST**

The applicant sought an advance ruling on the question as to whether the recovery of an amount towards top-up and parental insurance premium from the employees, amounts to a supply of any service under GST. The Maharashtra AAR held that the activity undertaken by the applicant towards mediclaim policy for the employees and their parents through the insurance company neither satisfies conditions for "supply of service" (insurance service) nor is it covered under the term "business" defined under the GST law. Hence, there is no supply of insurance services in the instant case.

## Customs

### **M/s Agrasha Alloys Trading Pvt Ltd and Another vs. Commissioner of Customs (I)** **2021-TIOL-571-CESTAT-MUM**

The appellant had imported certain goods which were detained and seized by the Directorate of Revenue Intelligence after customs clearance on the ground of misdeclaration of value. The show cause notice was issued on the premise that the appellant had admitted to enhancement of value by the authorities. The CESTAT observed that the entire issue of misdeclaration needs to be reconsidered by the authorities and proper speaking order giving proper reasoning for the enhancement of value needs to be made. Acceptance by the importer of the enhanced value in import of some consignment, solely cannot be ground for establishing the charge of misdeclaration.

## Central Excise

### **Kirloskar Toyota Textile Machinery Pvt. Ltd. vs. Commissioner of Central Tax** **2021-TIOL-518-CESTAT-BANG**

The appellant claimed refund of unutilized credit of Education Cess and Secondary and Higher Education Cess available in their books under the Central Excise law which was rejected by the adjudicating authority. The order was also upheld by the Commissioner (Appeals). The CESTAT, relying on the decision of the division bench in the case of Bharat Heavy Electricals Ltd., held that the appellant is entitled to refund of the unutilized credit of Education Cess and Higher Education Cess after the introduction of GST.

## Service Tax

### **M/s International Travel House Ltd. vs. Commissioner of Service Tax, Delhi** **2021-TIOL-620-CESTAT-DEL**

The appellant is an air travel agent and purchases air tickets from various IATA Agents / Airlines which pay commission to the appellant. The issue involved was whether the appellant was required to discharge service tax liability on the commission received from the airlines. The CESTAT, Delhi, following the decision of the larger bench in the case of Kafila Hospitality, held that the incentives received by service recipient from a service provider cannot be subjected to levy of service tax.

### **M/s Terex India Pvt. Ltd. vs. The Commissioner of GST and Central Excise**

The appellant was issued a memo during service tax audit for payment of service tax under reverse charge mechanism on business support services on foreign remittances. The appellant paid the said amount to the authorities. Since the time to carry forward the CENVAT credit to GST regime had expired, an application for refund of the same was filed. The refund application was rejected by the revenue authorities by invoking provisions of GST law where it was held that the amount was paid in pursuance of an assessment or adjudication proceedings. Such rejection was also upheld by the Commissioner (Appeals). The CESTAT Chennai held that the rejection of refund was unjustified as the payment does not fall under recovery of arrears of tax by an assessment or adjudication proceedings. There is no assessment / adjudication of tax under the provisions of the erstwhile service tax law and accordingly, the order rejecting the refund was set aside.

## Value Added Tax

### **Manharlal Hirjibhai Virdiya vs. Assistant Commissioner of Commercial Tax** **2021-TIOL-2054-HC-AHM-CT**

The petitioner was a director in a private limited company. The revenue authorities had initiated proceedings against the Company in respect of outstanding dues of sales tax and a demand was raised against the Company for outstanding dues of sales tax. Subsequently, the revenue authorities earmarked lien on all properties belonging to petitioner. The petitioner submitted that impugned property was his personal property that could not be attached for outstanding dues of a company, which was a separate legal entity. The Gujarat High Court held that the revenue authorities cannot proceed against personal properties of Directors where such property was never held by the Company. Further, personal liability of Directors to pay sales tax dues of Company was not proved by the revenue authorities. Accordingly, the impugned order passed by the revenue authorities was quashed and set aside.

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