



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.

Goods and Services Tax



Shree Ambica Auto Sales and Service and 1 Other(s) vs. Union of India and Others 2021-TIOL-165-HC-AHM- GST

The petitioner was served summons under the Central Goods and Services Tax Act, 2017. The GST authorities compelled the petitioner to voluntarily deposit tax in Form GST DRC-03. The petitioner approached the Gujarat High Court on the recoveries being made by the authorities through threats, duress, and pressure. The Court observed that where any tax is due from a taxpayer, the authorities are required to follow the process laid down in the GST law and cannot compel taxpayers to voluntarily discharge tax liabilities. It was directed that no coercive steps should be taken against the petitioner. The Court also sought a response from the authorities.



Sahibabad Printers vs. Additional Commissioner CGST (Appeals) and Others 2020-TIOL-2164-HC-ALL-GST

GST refund filed by the petitioner was rejected on non-filing of reply to the Show Cause Notice (SCN). The rejection was also upheld by the first appellate authority. The Allahabad High Court observed that the SCN issued by the adjudicating authority merely mentioned the reason as “others” for the rejection of refund. Further, the reasons for rejection of refund should be specifically contained and communicated to the taxpayer. The Court, therefore, held that there was a violation of principles of natural justice and remanded the matter to the lower authority for fresh adjudication.



Suraj Freight Carrier Pvt. Ltd. vs. State of UP and Others
2020-TIOL-2252-HC-ALL-GST

The goods being transported by the petitioner were detained and a notice of the same was served on the vehicle's driver. The petitioner became aware of the demand raised by the authorities on a later date and the appeal filed against the same was dismissed on the grounds of limitation. The petitioner approached the Allahabad High Court, which observed that serving a detention notice on the vehicle's driver was not per the manner prescribed in the GST law. Hence, the demand order was quashed, and the matter was remitted back to the appellate authority for a fresh hearing.



M/s SPX Flow Technology India Pvt. Ltd.
2021-TIOL-08-AAR-GST

The applicant had filed an advance ruling before the Gujarat Authority for Advance Ruling (Gujarat AAR) on various issues. During the course of hearing, the applicant relied on orders of Kerala AAR and Maharashtra AAR in support of its contentions. The Gujarat AAR inter-alia held that per the GST law, advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought the same. Therefore, the ruling pronounced by other AARs cannot be relied upon by the applicant.



M/s Page Industries Ltd.
2020-TIOL-300-AAR-GST

The applicant approached the Gujarat AAR on the question as to whether it is eligible to claim Input Tax Credit (ITC) on GST paid on promotional products/materials and marketing items (such as display items, display boards for retailers, uniforms for sales personnel, posters, and gifts for retailers) used in promoting their brand and marketing their products. The Gujarat AAR held that ITC on goods distributed to distributors and franchisees is allowed as this amounts to supply to the related parties that is eligible to GST. However, if the same are provided as gifts, ITC would not be allowed. Promotional items that are delivered to distributors, franchisees, and retailers but owned by the applicant would be treated as capital goods; ITC can be claimed on such goods.

Customs

Dimension Data India Pvt. Ltd. vs. Commissioner of Customs and Another
2021-TIOL-224-HC-MUM-CUS

The petitioner had imported goods into India and inadvertently mentioned incorrect Customs Tariff Heading (CTH) in the bills of entry. As the correct CTH attracted nil customs duty, there was an excess payment of customs duty by the petitioner at the time of import. The authorities denied a request to correct the error on the ground that the petitioner had not obtained an order of re-assessment or appealed against the self-assessment done on the bills of entry. The Bombay High Court observed that per the provisions of the Customs law, the customs authorities have power and jurisdiction to make corrections of any clerical or arithmetical mistakes or errors arising in any decision or order due to any accidental slip or omission at any time that would include an order of self-assessment post out of charge. As the petitioner had sought re-assessment of bills of entry on correction of CTH, the Court directed the authorities to consider the petitioner's request and pass a fresh order.

Central Excise

Commissioner of Central Excise and Service Tax vs. S.K. Samanta and Company Pvt. Ltd.
2021-TIOL-88-SC-CX-LB

An appeal was filed by the revenue department beyond the limitation period as the same was previously filed before the Calcutta High Court that ought to have been filed before the Supreme Court. The Court observed that depending on the nature of controversy, the jurisdiction for an appeal was before the Supreme Court. Further, the Union of India, which has competent legal advice at its command, cannot contend that they were under a misapprehension that the appeals would lie before the High Court. The Court dismissed the appeal on the ground of delay.

Central Excise

[Commissioner of Central Excise vs. Bombay Paints Ltd.](#) [2020-TIOL-1660-CESTAT-MUM](#)

The revenue department had filed an appeal against the order of the Commissioner (Appeals) where the judgements relied upon by the respondent were not accepted on merit by the GST department. The CESTAT Mumbai, while dismissing the appeal, held that decisions passed by competent appellate authorities or constitutional courts would be binding upon adjudicating authorities even if the executive authority has chosen not to accept the decisions.

Service Tax

[M/s Kiran Gems Pvt. Ltd. vs. Union of India and Others](#) [2021-TIOL-237-HC-MUM-ST](#)

The office of Comptroller and Auditor General of India (CAG) issued a notice/intimation to conduct a GST audit for the period from January 2019 to March 2019 and submit information/records for the period from 2015-16 to 2017-18. The petitioner approached the Bombay High Court for quashing of the notice as there are no enabling provisions for seeking information pertaining to the pre and post GST periods for audit from a private entity. The Court observed that the statutory responsibility of the CAG is to audit receipts of the Union and states to see that sums due to the Government are properly assessed, realised, and credited to the government account. The powers to conduct such audit cannot be extended to private entities and hence, the notice issued to the petitioner was quashed.

Value Added Tax

[Nipun A Bhagat vs. State of Gujarat](#) [2021-TIOL-147-HC-AHM-GST](#)

The petitioner was earlier a director of a public limited company that had an outstanding VAT demand for period from 2006-07 to 2013-14. To recover the VAT demand, the VAT authorities invoked the powers granted under Rule 86A of Central Goods and Services Tax Rules, 2017 (CGST Rules) and blocked ITC of the petitioner. The Gujarat High Court observed that Rule 86A of the CGST Rules can be invoked on fulfilment of the conditions specified therein. In the instant case, the VAT authorities have no jurisdiction to invoke such powers and hence, the petitioner's ITC was unblocked.

[M/s Sri Ganesh Lubricants vs. Commercial Tax Officer and Another](#) [2020-TIOL-2163-HC-MAD-VAT](#)

The Madras High Court observed that the enforcement wing constituted under the Tamil Nadu Value Added Tax Act, 2006 had collected an amount from the petitioner at the time of inspection of business premises, without issuing an assessment order. The Court held that officials of the enforcement wing cannot recover tax dues in advance at the time of inspection.

For more information, please connect with:

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