



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



Akash Garg vs. State of MP **2020-TIOL-2013-HC-MP-GST**

The petitioner challenged the demand of tax on the ground that the show cause notice (SCN) / demand order was not communicated. The revenue submitted that the same was sent to the petitioner on his email ID, and since no response was provided, demands were raised. The Madhya Pradesh High Court observed that the only mode prescribed under the Goods and Services Tax (GST) law for communicating the show-cause notice/order is by way of uploading the same on website. Accordingly, the SCN / demand order was struck down with a liberty to revenue to follow / initiate the proceedings afresh per the prescribed procedure under the GST law.



M/s Sun Dye Chem vs. The Assistant Commissioner (ST) and Others **2020-TIOL-1858-HC-MAD-GST**

The petitioner had made an inadvertent error in reporting sales transaction as inter-state supply instead of intra-state supply in Form GSTR-1. The petitioner approached the Madras High Court for correction in Form GSTR-1 after the time limit provided under the GST law had expired. The Court held that the inadvertent error caused by the petitioner should be allowed to be rectified for recipients to avail the benefit of input tax credit (ITC).



**P.V. Rao vs. Senior Intelligence Officer
Directorate General of GST Intelligence and
Others**
2020-TIOL-1984-HC-DEL-GST

The Delhi High Court dismissed the writ petition seeking the recording of evidence over video conferencing. The Court observed that the petitioner had not appeared before the authorities on several occasions. Further, no documents were submitted to substantiate that the petitioner had serious health issues, which would prevent him to travel from Bangalore to Delhi. It was therefore held that a mere apprehension of contracting COVID-19 cannot be a ground for allowing the request.



M/s Bajaj Finance Ltd.
2020-TIOL-64-AAAR-GST

The Karnataka Appellate Authority for Advance Rulings (AAAR) modified its order dated 14 March 2019 where it was held that penal interest recovered by the appellant on account of default by debtors would be subject to GST. After issuance of CBIC Circular no. 102/21/2019-GST dated 28 March 2019, it was clarified that such interest would not be subject to GST. Since beneficial circulars are to be applied retrospectively (in view of judgment of Supreme Court in the case of Suchitra Components), the order was modified and it was held that GST would not be applicable on the penal interest recovered by the appellant.



M/s NCS Pearson Inc.
2020-TIOL-68-AAAR-GST

The Karnataka AAAR, in an appeal filed by the revenue, observed that where scoring of online tests are done by human scorers as well as a computer program, it would be considered as having minimal human intervention to qualify the services under Online Information Database Access and Retrieval (OIDAR) services. The AAAR further observed that the Company considers the score of the computer program reliable if it is similar to the score given by the human scorer. Accordingly, the AAAR reversed the decision of the Karnataka AAR and held that such services would be considered as OIDAR services.

Customs

M/s Srinivas Clearing and Shipping India Pvt. Ltd. vs. Commissioner of Customs
2020-TIOL-1631-CESTAT-MUM

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Mumbai held that though an appeal was filed against its order before the High Court, no stay was granted in the matter. It was therefore held that the order of the tribunal should be implemented if a stay is not granted against the order.

M/s Cisco Systems India Pvt. Ltd. vs. Commissioner of Customs, (Appeals)
2020-TIOL-1597-CESTAT-DEL

The CESTAT Delhi held that if an appeal is filed against an assessment order, then the duty paid has to be treated as duty paid under protest and in such cases, limitation of six months for filing refund claim from the date of payment of duty would not apply.

Central Excise

Parle International Ltd. vs. Union of India and Others
2020-TIOL-2032-HC-MUM-CX

The Bombay High Court set aside adjudication of show cause notice (SCN) after an inordinate delay of 13 years from the date of issuance of such SCN merely because there is no period of limitation prescribed in the statute to complete such proceedings. It was further held that such delayed adjudication is in contravention of procedural fairness and violative of the principles of natural justice.

Central Excise

[Ganesh Enterprises vs. Commissioner of Central Excise](#) 2020-TIOL-1604-CESTAT-AHM

The CESTAT Ahmedabad set aside the order of the Commissioner (Appeals) denying interest on refund. The appellant in this case had paid certain amount under protest, and after obtaining a favourable order, applied for refund of such amount paid. The Commissioner (Appeals) had held that interest would be due after three months of passing of the appellate order. The CESTAT, relying on the decision of the Apex Court in case of Ranbaxy Laboratories [2011-TIOL-105-SC-CX], held that interest would be due from the date of payment by the appellant. Further, such interest is to be granted *suo-moto* and no separate application is required to be made.

[AIA Engineering Ltd. vs. Commissioner of Central Excise](#) 2020-TIOL-1559-CESTAT-AHM

The CESTAT Ahmedabad observed that the matter pertaining to refund of accumulated unutilised CENVAT credit of Krishi Kalyan Cess lying in the petitioner's CENVAT account as on 30 June 2017 due to implementation of GST has been challenged before the Supreme Court in the case of Bombay Dyeing & Manufacturing Co Ltd vs CCE [SLP(C) No. 7390/2020]. Accordingly, the matter has been remanded to the adjudicating authority for passing order after the decision of the Supreme Court.

Service Tax

[R. Ramadas vs. The Joint Commissioner of Central Excise and Another](#) 2020-TIOL-1867-HC-MAD-ST

The Madras High Court quashed the demand order which travelled beyond the SCN. The Court also observed that the SCN was vague as it did not indicate the exact amount of service tax demanded under the respective services. The Court held that it is a settled position that SCN should be specific and details of proposed demand should be mentioned in the SCN. The demand raised should be in conformity to the proposals made in the SCN.

[Vianaar Homes Pvt. Ltd. vs. Assistant Commissioner \(Circle-12\) and Others](#) 2020-TIOL-1847-HC-DEL-ST

The Delhi High Court dismissed the challenge to audit under service tax conducted by GST authorities. The Court observed that though Central Goods and Services Tax Rules, 2017 were brought into force from 1 July 2017, the provisions of Service Tax Rules, 1994 are still applicable in terms of the General Clauses Act. The Court, following the judgment in the case of Aargus Global [2020-TIOL-593-HC-DEL-ST], dismissed the writ petition.

[M/s Bengal Beverages Pvt. Ltd. vs. CGST and Central Excise](#) 2020-TIOL-1626-CESTAT-KOL

The CESTAT Kolkata observed that a whole-time director is essentially an employee of the company and the remuneration being paid is pursuant to employer-employee relationship. Accordingly, the demand of service tax under reverse charge mechanism on the remuneration paid to the whole-time directors was set aside.

[M/s Sentini Technologies Pvt. Ltd. vs. Commissioner of Central Excise and Service Tax \(Appeals-II\)](#) 2020-TIOL-1618-CESTAT-HYD

The CESTAT Hyderabad held that where CENVAT credit was declared in the service tax returns filed by the appellant and there was no objection against it by the Department, such CENVAT credit cannot be denied at the time of refund proceedings. Further, interest would be due on refund per the judgment of the Gujarat High Court Reliance Industries Limited [2010-TIOL-928-HC-AHM-CX].

Value Added Tax

[M/s Kurlon Enterprises Ltd. vs. State Tax Officer](#) [2020-TIOL-1965-HC-MAD-VAT](#)

The Madras High Court observed that the revenue is required to compile information submitted by the assessee and then determine whether it is in compliance with the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The revenue cannot pass an order merely on the ground the relevant documents were not submitted. The matter was accordingly remanded back to the assessing authority for fresh adjudication.

[M/s Sri Ranganathar Valves Pvt. Ltd. vs. Assistant Commissioner \(CT\) \(FAC\)](#) [2020-TIOL-1611-HC-MAD-VAT](#)

The Madras High Court observed that ITC under TNVAT Act cannot be denied to the petitioner due to default of the seller. It was that that solely because the dealers (from whom the purchases were made) had not paid taxes, ITC cannot be disallowed when the purchaser is able to prove that the seller had collected tax and issued invoices to the purchaser.

For more information, please connect with:

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