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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

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Editor’s note

On the indirect tax front, the Supreme Court has held that the benefit of tax exemption should be read as a whole, in accordance with the legislative intent without any addition or subtraction. The government is empowered to withdraw the exemption at any time. Therefore, the exemption benefits cannot continue indefinitely, and the grant of tax exemption must be traceable from the relevant laws.

Besides the Gujarat HC has held that circular issued to impose new restriction under the Export Promotion Capital Goods (EPCG) Scheme is ultra vires. The ruling reiterates that the benefit which has accrued to the exporter at a particular point of time is their fundamental right and cannot be taken away by subsequent retrospective amendment.

On the direct tax front, the SC in a recent ruling has tried to strike a balance between the rights of the tax department as well as the taxpayers, thereby protecting the interest of the exchequer. This could have a bearing on thousands of reassessment notices and writ petitions across the country.

Hope, you will find this edition to be an interesting read.

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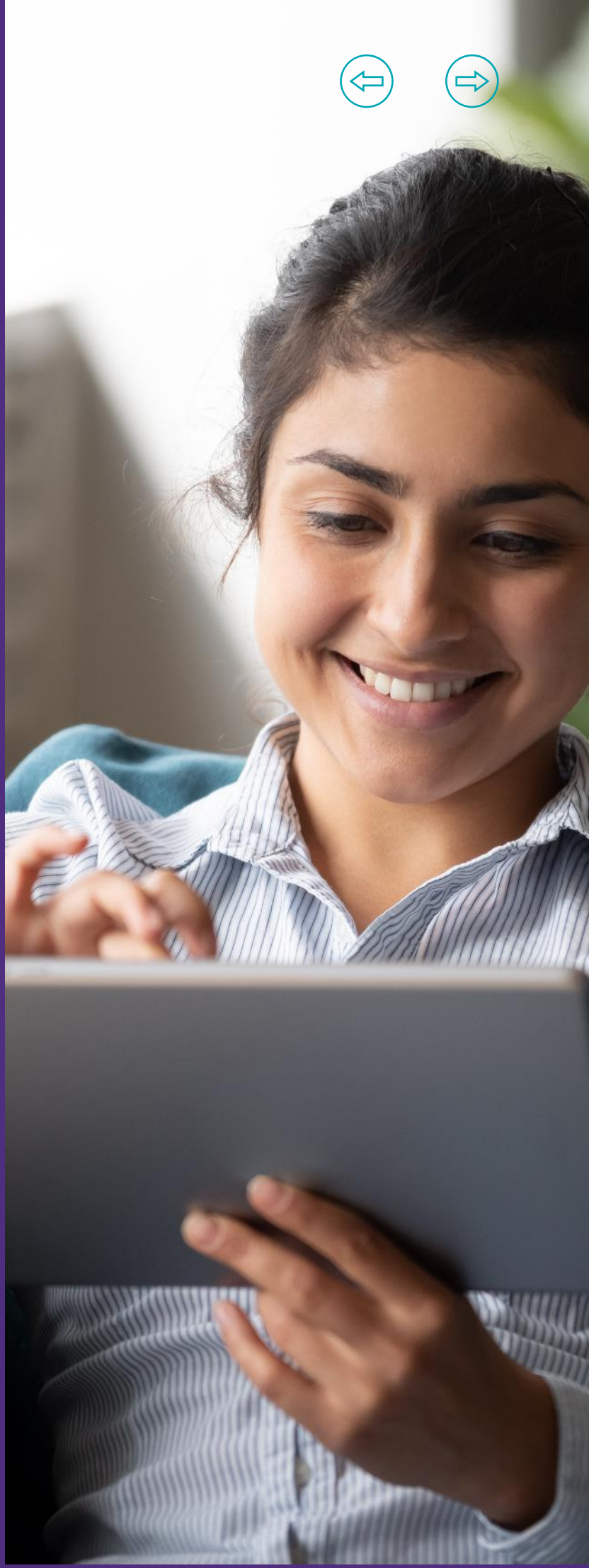

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01 Important amendments/updates

Director General of Foreign Trade (DGFT) makes amendment[1] in the handbook of procedures related to Export Promotion Capital Goods (EPCG) scheme[2]

The DGFT has issued amendments in order to reduce compliance burden and enhance ease of doing business, which are as below:

a. A request for extension of block-wise fulfilment of Export Obligation (EO) may be considered if application is made after six months but within six years[3] with a late fee[4]. In case such application is made beyond six years, an additional late fee[5] shall be payable.

b. The EPCG authorisation holders shall submit online annual report[6] by 30 June every year. In case of any delay in filing such annual report, a late fee[7] shall be payable.

c. EPCG authorisation shall be deemed to be proportionately enhanced in excess of duty saved amount not more than 10%. The customs shall automatically allow clearance of goods and need not require any DGFT Regional Authority (RA) endorsement on the same. The additional fees to cover excess imports shall be paid by EPCG authorisation holder at the time of EODC[8] application.

d. A request for extension in EO period shall be made within six months. Such application may be considered if received after six months[9] but within eight years[10] with a late fee[11]. In case such application is made beyond eight years for extension of EO period from six to eight years[12], an additional late fee[13] shall be payable.

e. The excess exports done towards average EO during a year can be used to offset any shortfall in average EO done in other year(s) of the EO period or block period. The average EO must be maintained on an overall basis within the EO period.

1. in Chapter 5 of the Handbook of Procedure 2015-20
2. vide public notice 03/2015-20 dated 13 April 2022
3. from date of issue of authorisation
4. Rs. 10,000/- per authorisation
5. Rs. 5,000/- for each year
6. containing details such as shipping bill/GST invoice, date of supply, description of products, FOB/FOR value as well as average export obligation
7. Rs. 5000/- for each financial year per authorisation.
8. Export Obligation Discharge Certificate
9. from the date of expiry of original EO period
10. from date of issue of authorization
11. Rs. 10,000/-
12. for regularization purpose
13. Rs. 5,000/- for each year per authorisation

e. The authorisation holder shall apply for EODC[14] along with proof of EO fulfilment. Such EODC shall be issued by RA to the EPCG holder. A copy shall be forwarded online to ICEGATE for further action by jurisdictional custom authorities.

Kerala GST department issues instructions[15] regarding detention of goods

The Kerala GST department has directed[16] all concerned to not to detain or issue any Show Cause Notice (SCNs) to the goods under transport or stored in parcel agencies, raising the sole reason for undervaluation of the goods compared to the Maximum Retail Price (MRP).

If any undervaluation cases are suspected, the officers are directed to upload the details of such invoices using the option provided in the mobile app and send a report to the jurisdictional officer, marking a copy to the jurisdictional district Joint Commissioner.

Further, the intelligence squads shall gather evidence to establish the case by collecting documents about the actual value of the supply. The jurisdictional officer concerned shall verify the same with the help of the report and the uploaded details. Thereafter, the jurisdictional officer of the taxpayer vertical or the intelligence formation can take further action as provided in the law.

Maharashtra GST department issues clarification[17] regarding issuance of orders of provisional attachment and restoration thereof on back office (BO) system

The department has reiterated that the action of provisional attachment[18] is a protective measure to safeguard revenue during pendency of proceedings. Earlier, a circular[19] was issued wherein guidelines on the procedure of provisional attachment have been laid down. The circular[20] clearly stated that the provisional attachment orders shall be passed on BO system only. However, despite of said instructions the field officers are not issuing the orders on BO system due to certain system glitches. These system issues have been resolved now.

Passing of the orders and decisions on BO system will ensure accuracy in MIS reports[21] and enable proper and effective monitoring of this function.

Therefore, it has been instructed that from 1 April 2022, the provisional attachment orders[22] and restoration order[23] shall only be issued on BO system by the officers.

Rajasthan GST department issues clarification[24] regarding the correct submission of details of ineligible ITC under returns

The transfer of funds from the centre to state or vice versa as prescribed under the Goods and Services Tax (GST) laws depends upon the correct disclosure of Input Tax Credit (ITC) of Integrated Goods and Services Tax (IGST) on the account of interstate inward supplies or import supplies of goods or services. The incorrect disclosure of the same may result in short settlement of transfer of funds to the state.

The fund transfer and apportionment are mainly based on the information provided by the taxpayer in GSTR-3B returns on the GSTN portal. However, it has been noticed that in few cases, the taxpayers have not disclosed details of ineligible ITC in GSTR-3B on account of IGST paid on inward interstate supply and import supplies.

In this respect, the taxpayers have been advised to do reporting as below:

Particular	Period	Reporting
Details of ineligible ITC not furnished/ partially furnished, or reversal of ITC not reported/partially reported in the returns filed	FY 2021-22	Reporting to be done in the annual return, i.e., GSTR-9
	From FY 2022-23 onwards	Reporting in the subsequent GSTR-3B to be done by giving net effect in that return

DGFT invites[25] online applications for allocation of Tariff Rate Quota (TRQ) under India-Mauritius CECPA for financial year (FY) 2022-23

The DGFT has issued amendment[26] in conditions w.r.t. allocation of TRQ under India-Mauritius CECPA. The online applications for allocation of TRQ under India-Mauritius CECPA for the financial year 2022-23 will be considered by the DGFT on first come, first served basis. There will be no end date for submission of online applications, with other modalities remaining the same.

14. In ANF 5B
15. vide Circular No. 6/2022 dated 6 April 2022
16. In reference to decision passed by the Kerala High Court in WP(C). No. 30798 of 2019(Y) dated 18 November 2019
17. Circular No. 7 A of 2022 dated 29/03/2022
18. as laid down under section 83 of the GST Act
19. Internal circular 12A of 2021
20. Para 7.1
21. ASMT 5.1 and ASMT 5.2
22. in DRC -22
23. in DRC-23
24. Circular No. 1/2022 dated 05.04.2022
25. Public notice 04/2015-20 dated 20 April 2022
26. condition (ii) (f) of Annexure -III to Appendix-2A of FTP-2015-20, in exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy (FTP), 2015-20 and in continuation of Public Notice No. 23/2015-20 dated 7 September 2021 and 31/2015-20 dated 28 October 2021

DGFT expands electronic platform for Preferential Certificate of Origin (CoO) under India-UAE CEPA[27]

The DGFT has issued notice for electronic filing and issuance of preferential CoO for India's exports to UAE under the India-UAE CEPA w.e.f. 1 May 2022.

The applications shall be submitted on eCoO website. The eCoO generated shall contain the image signature of officer, stamp of issuing agency and QR code for electronic verification. The authenticity of e-CoO may be verified using the certificate number.

The Indian exporters shall consider the following points in regard to notified process:

- Digital Signature Certificate (DSC) would be required for the purpose of electronic submission. The digital signature would be the same as used in other DGFT applications.
- Any new applicant exporter would be required to initially register at the portal. The password would be sent on the email and mobile number of the IEC holder.
- Post completion of registration, the IEC branch details would be auto-populated as per the DGFT-IEC database, which shall be ensured by the applicant.

DGFT[28] incorporates the items mentioned under TRQ under India-UAE CEPA in HBP and FTP

In addition to laying down the procedure for import of the items under TRQ[29], the DGFT revises HBP 2015-2020[30] and FTP 2015-20[31] to incorporate the items mentioned under TRQ under India-UAE CEPA.

Goods and Services Tax Network (GSTN) implements functionality for computation of Annual Aggregate Turnover (AATO) for FY 2021-22

The GSTN has introduced a functionality for computation of AATO for the FY 2021-22 on the taxpayer's dashboard with the following features:

a. The taxpayers can view their exact AATO for the previous financial year as well as the current financial year based on the returns filed till date.

b. A facility for turnover updation has been provided to taxpayers in case it seems that the turnover calculated by the system varies from the turnover as per records.

c. This facility is provided to all the GSTINs registered on common PAN. Any changes made by any GSTIN shall be summed up for computing AATO for each of the GSTINs.

d. The taxpayers can amend the turnover twice in the month of May 2022. Thereafter, the figures shall be sent to Jurisdictional Tax Officer, who can amend the values wherever required.

27. Comprehensive Economic Partnership Agreement
28. Public notice no. 06/20150-2020 dated 1 May 2022
29. as Annexure IV of Appendix 2A in accordance with Notification No. 22/2022-Customs dated 30th April 2022
30. Para 2.107
31. Appendix 2A

02 Key judicial pronouncements

Benefit of tax exemption should be read as a whole and in accordance with the legislative intent without any addition or subtraction - Supreme Court

Summary

The Hon'ble Supreme Court (SC), in the present case held that the exemption provisions should be read as a whole and in accordance with its legislative intent[32]. Further, the exemption benefits cannot continue indefinitely and particularly not beyond the revival of sick unit. The Apex Court observed that the equitable principle of promissory estoppel cannot be invoked for enforcing promises beyond the provisions of law. Accordingly, the tax exemption granted to the appellant was held ultra vires the provisions of the Kerala Sales Tax Act (KST Act).

32. Relying on its recent decision in Arcelor Mittal Nippon Steel India Ltd.
33. Augustan Textile Colours Limited
34. M/s Teak Tex Processing Complex Ltd
35. Board for Industrial and Financial Reconstruction
36. On 20.3.2004
37. W.P.(C) No. 5677 of 2007
38. under Section 19(3) of SICA
39. Section 10(3) of KST Act

Facts of the case

- The appellant[33] took over a sick unit[34] which was engaged in dyeing of clothes. The proceedings were pending before the BIFR[35] in which the authorities were assessing the possibility of revival of the unit.
- In tune with the recommendations of the Empowered Committee, the government order (GO) was issued[36] to completely waive off the past arrears of sales tax/works contract tax and to exempt works contract tax in the State on processing of fabrics, such as, bleaching, dyeing, etc.
- Accordingly, the appellant availed benefit of such waiver. However, subsequently other GO were issued to disallow the exemption benefits and for withdrawal of the waiver/exemption granted to the appellant with immediate effect.
- The appellant filed a writ petition[37] before the Kerala High Court (HC) wherein the HC provided limited relief to the appellant to enable filing a representation and directed the State to pass a speaking order after affording hearing to the appellant. Thereafter, the aggrieved appellant filed present appeal before the Apex Court.
- The appellant contended that the benefit of tax exemption granted by the State was binding on the State[38] and the State must be held accountable for its promise. Further, the tax exemption could not be withdrawn by invoking the powers under KST[39].

Supreme court observations and ruling[40]

- **Timelines for tax exemptions not specified:** The Apex Court observed that though the GO issued in the year 2004 and the scheme enacted in furtherance of the GO issued in the year 1994, both these documents do not specify the timeline for tax exemption prescribed in the GO issued in the year 1994. The SC placed reliance on a judgement[41] and held that in absence of any prescribed timeline, same cannot be imported from GO issued in the year 1994. Further, the exemption benefits cannot continue indefinitely and particularly not beyond the revival of sick unit.
- **Exemption can be granted in law only:** The benefit to grant tax exemption must be traceable from KST Act and such benefits could not be granted in terms of the BIFR scheme. In this case, the tax exemption[42] granted to appellant was ultra vires the provisions[43] of the KST Act, hence it cannot be continued further.
- **Equitable principle of promissory estoppel cannot be invoked:** In the present case, the appellant was the sole beneficiary of tax exemption which is contrary to the KST Act. The government is empowered under KST Act to withdraw the exemption at any time. Thus, the principle of promissory estoppel could not help the appellant to challenge the GO[44].
- **Power to grant exemption:** The exemption granted initially was not premised under KST Act, instead it was under Section 19 of the SICA[45] Act. The exemption granted can be understood as springing from the provisions[46] of SICA. Thus, the exemption is not to be treated as falling under provisions of KST Act.
- **Dismissal of appeal:** The appellant was the only one who enjoyed such advantage in the state for a considerable period and is now in profit. Further, enforcing the promise against the state shall affect public interest, hence the appeal stands dismissed.

Our comments

Earlier, the Apex Court in case of Dilip Kumar and Company and Ors[47] had held that the benefit of ambiguity in the exemption notification cannot be claimed by the taxpayer, and it must be interpreted in favour of the Revenue.

Similarly, the Hon'ble Apex Court recently in case of Krishi Upaj Mandi Samiti[48] has held that the statutory exemption provisions need to be interpreted in the light of words employed in them and there cannot be any addition or subtraction from the statutory provisions.

Even in case of Arcelor Mittal Nippon Steel India Limited[49], the SC had observed that the exemption provisions and the notifications are to be strictly interpreted in accordance with legislative intent. The present ruling is also in line with the above rulings.

An analogy can also be drawn under GST regime while availing exemption benefit to mitigate future litigations.

Gujarat HC erred in awarding interest at the rate exceeding 6% on reasonable delay in grant of refund by proper officer –SC

Summary

The SC has held that the Gujarat HC had erred in awarding interest at the rate exceeding 6% on delay in granting refund under the GST law. The SC stated that wherever a statute specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. In the present case, the delay was in the region of 94 to 290 days and not so inordinate, therefore, the matter must be seen purely in the light of the concerned statutory provisions. Hence, the interest would be awarded at the rate of 6% in terms of the principal part of Section 56 of the Central Goods and Services Tax Act, 2017. Interest at the rate of 9% would be attracted only if the matter was covered by the proviso to the said section.

Facts of the case

- The petitioners[50] had filed writ before the Gujarat HC praying to grant interest on delay in grant of refund on account of export of goods[51].
- The petitioners contended that inordinate delay in granting refund without any explanation is arbitrary and illegal. Therefore, they sought compensation along with interest for the delay in sanctioning refund.

40. Civil Appeal No. 2830 of 2022, order dated 08 April 2022
41. Arcelor Mittal Nippon steel India Ltd.
42. Under GO issued in the year 2004
43. Section 10(1) of the KST Act
44. issued in the year 2006
45. The Sick Industrial Companies Act (SICA)
46. Section 19(3) read with 19(1)
47. Civil Appeal No. 3327 of 2007
48. Civil Appeal No. 1482 of 2018
49. Civil Appeal nos. 7710-7714 of 2021
50. Saraf Natural Stone (Partnership firm) and its Partner; Willowood Chemicals Pvt. Ltd.
51. Section 54 of CGST Act, 2017

Gujarat HC observations and ruling[52]

- **Interest on delayed refund is well settled in law:** The provisions relating to interest of delayed payment of refund, are consistently held as beneficial and non-discriminatory. The Calcutta HC in a similar case[53] had directed the respondents to pay interest on delayed payment. The delay in refund for petitioners is quite evident and hence eligible for interest.
- **Simple interest on delayed payment of refund:** The respondents have not provided an explanation for delay in payment of refund. Thus, they are liable to pay simple interest at the rate of 9% p.a. on delayed payment. The interest shall be calculated on the aggregate amount of refund.

SC observations and ruling[54]

- **Writ petition only for enforcing monetary claim cannot be entertained:** The Apex Court in various similar cases[55] has held that a writ petition[56] in the HC only for the purpose of seeking order of refund or interest cannot be entertained. However, the HC has power to grant relief by ordering payment of money or interest as a consequential relief with the main relief. Thus, writ petition filed by the petitioner before the HC seeking direction to grant interest in the delayed refund was not maintainable.
- **Interest can be granted on equitable grounds only where the statute is silent**: If the statute provides for provision relating to payment of interest, then the interest shall be paid in accordance with that statute. Where the statute is silent and there is no express bar on payment of interest, interest is required to be awarded at a reasonable rate on equitable ground[57].
- **Refund did not arise from any order passed by adjudicating authority:** The GST law[58] specifically provides that where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court and if the same is not refunded within 60 days from the date of receipt of an application filed consequent to such an order, the rate of interest payable would be 9%. The present case was strictly within the scope of the principal provision and not under the aforementioned proviso, hence, the interest would be awarded at the rate of 6%.
- **Error on the part of HC**: The SC stated that in present case the delay was in the region of 94 to 290 days and not so inordinate. Therefore, the rate of interest shall be determined considering the statutory provisions and petitioners are entitled for interest of delay in payment of refund at the rate of 6% p.a. on the amount to be refunded. Hence, the HC erred in awarding interest at the rate exceeding 6%.

Our comments

Earlier, in the case of Modi Industries Limited, the Apex Court had held that there is no right to get interest on refund, except as provided by the statute. Further, interest at reasonable rate on equitable grounds can be awarded only if the law is silent about interest, and payment of interest is expressly barred.

Thus, this is a significant ruling wherein the SC has held that the provisions relating to grant of interest in case of delay in sanctioning refund under the GST law are very clear. Unless the order of refund has arisen from any order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court, interest at the rate exceeding 6% cannot be awarded.

Delhi High Court (HC) admits petition challenging validity of provisions of Finance Act, 2022 overruling SC ruling in Canon India.

On 07 April 2022, the Delhi HC admitted a writ petition[59] challenging the validity of provisions of the Finance Act, 2022, which overruled the landmark SC ruling in Canon India.

The SC had held that the Directorate of Revenue Intelligence (DRI) officers are not empowered to issue SCN. Further, only the proper officer could issue such a notice as the Parliament has employed the article 'the' before the words proper officer not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance.

The Finance Act, 2022 has widened the scope of the term 'proper officer' under Customs law to include officers of DRI, audit and preventive in the class of officers by Customs.

The counsel of the petitioner contended that though it is open to the Legislature to amend the Act retrospectively to make the judgment of Court ineffective, but it cannot directly overrule, revise or override a judicial decision by mere declaration.

The HC found force in the argument of the petitioner and issued a notice to the Union of India. The matter has been listed on **14 November 2022**.

52. R/Special Civil Application No. 15925 Of 2018; Misc. Civil Application (For Review) No. 1 Of 2019 In R/Special Civil Application No.18591 Of 2018
53. Shiv Kumar Jain Vs. Union of India reported in 2004 (168) E.L.T. 158 (Cal.)
54. R/Special Civil Application No. 13513 Of 2020 order dated 16-03-2022
55. Suganmal [AIR 1965 SC 1740 : 56 ITR 84 : 16 STC 398], U.P. Pollution Control Board v. Kanoria Industrial Ltd. [(2001) 2 SCC 549], ABL International Ltd. v. Export Credit Guarantee Corp. of India Ltd. [(2004) 3 SCC 553]
56. Article 226 of the constitution
57. Modi Industries Ltd.9 and Godavari Sugar Mills Ltd.7
58. Section 56 of CGST.
59. W.P.(C) 5768/2022

Malicious exercise of power resulting in harassment of assessee is illegal and abusive - Allahabad HC

Summary

The Allahabad HC has held that once the confiscation order and order passed by the first appellate authority have been quashed, the confiscation order stands eclipsed from its date of issuance itself. Hence, the detention of trucks despite quashing of the orders is arbitrary and illegal. The HC noted that if the public authorities act oppressively, resulting in harassment of the assessee, then it would not be an exercise of power but its abuse. The HC observed the that illegal detention of trucks after quashing of orders resulted in financial loss to the petitioner. Therefore, the HC directed the authorities to release the truck and compensate him for the financial loss that had occurred. The HC ruled that award of compensation would help in improving work culture and public confidence in rule of law.

Facts of the case

- The petitioner[60] has given a truck on hire for transportation of goods. During the journey from Delhi to Andhra Pradesh, the truck was intercepted while passing through Uttar Pradesh. The authorities found that the truck was loaded with goods over and above what was mentioned in the invoice. Thus, the officer issued a detention order[61].
- The petitioner and the hirer did not come forward for the payment of tax and penalty. Subsequently, the authorities initiated confiscation proceedings and issued a notice. The petitioner submitted the application having the facts and submissions for the release of the truck before the authorities. However, meanwhile, the authorities passed a confiscation order[62] without giving an opportunity of being heard.
- The petitioner filed an appeal against the order, which was dismissed by the appellate authority. Hence, the petitioner filed a writ before this court wherein it was held that the SCN was defective as no opportunity for a personal hearing was granted to the petitioner. Thus, the confiscation order and the order passed by the first appellate authority was were quashed.
- However, despite the court order, the authorities have neither issued fresh notice nor released the truck.

Allahabad HC observations and ruling[63]

- **Detention is arbitrary, illegal and unauthorised:** Once the confiscation order and the order passed by the first appellate authority have been quashed, the confiscation order stands eclipsed from its date of issuance itself. In the present case, without any order or proceeding for confiscation in existence, the truck is being unauthorisedly and illegally detained for the last 18 months. Such detention is arbitrary, illegal and unauthorised, resulting in the harassment of the petitioner.
- **No authority can arrogate arbitrary power**: If the public authorities act maliciously and exercise of power results in harassment of the petitioner, then it is an abuse of power. No authority can arrogate arbitrary power to itself. Thus, the authorities shall compensate the loss suffered by the petitioner for the illegal detention of the truck. It would also help in improving work culture and public confidence in rule of law.

Our comments

The judicial authorities, in many rulings, had imposed exemplary cost on erring officials and directed the department to take action against the erring officials whose actions resulted in the harassment of taxpayers.

Similarly, the Allahabad HC, in the present ruling, emphasises that the authorities cannot arrogate arbitrary power and directed the authorities to compensate the petitioner so that the public can have faith in the rule of law. The ruling shall be relied upon by the taxpayers and shall act as a deterrent against officials from causing undue hardship to taxpayers.

60. Calcutta South Transport Co.
61. In MOV-06
62. In GST MOV-11
63. Writ Tax No. - 406 of 2022; Dated 28.03.2022

A charge created over property by operation of law is distinct from the attachment of the property – Gujarat HC

Summary

The Gujarat HC has held that there is a fine distinction between the attachment of property and charge created over the property by operation of law. The HC observed that the petitioner misconceived the charge over property as an attachment of property. Attachment of property does not confer any title on the government or creditor. Further, a charge creates no interest in or over a specific immovable property, rather it is a security for payment of money. Thus, the HC held that a charge by operation of law is created upon passing of the assessment order in the present case and that is not attachment of property of the petitioner.

Facts of the case

- The petitioner [64] had incurred Value-Added Tax (VAT) liability by virtue of an assessment order passed by the competent authority.
- The appellate authority has stayed the recovery proceedings upon the condition of pre-deposit. Thus, the petitioner contended before the court that the charge created over his property should no longer remain in operation.
- The petitioner submitted that there is no provision in the GVAT Act[65] which permits attachment of a property after passing of the final assessment order and appeal pending before the first appellate authority.

Gujarat HC observation and ruling[66]

- **Misconception on the part of the petitioner :** During the course of submissions, the petitioner was confused between an attachment of property and a charge created over the property. The petitioner misunderstood that the property had been attached.
- **Applicability of provision:** Section 44 of the GVAT Act provides for a special mode of recovery whereas section 45 provides for provisional attachment and Section 46 confers special power to recover tax as land arrears. None of these provisions is applicable in the present case.
- **Effect of attachment of property**: The HC placed reliance on several judgements[67] wherein it was held that attachment of property does not confer any title to the creditors. Attachment creates no charge or lien upon the attached property. It merely prevents and avoids private alienations.
- **Charge over the immovable property:** In a former judgment[68], it was held that a charge[69] is only a security for the payment of money and does not create any interest in or over an immovable property. A charge is a right to receive money. The provision[70] prescribes two types of charges on immovable property, i.e., charges by an act of parties and those by operation of law.
- **'Operation of law' is more extensive:** The words 'by operation of law' are more extensive than the words 'by law'. A charge created by operation of law, includes a charge directly created by the provisions of an act as well as other charges created indirectly as a legal consequence of certain conditions.
- **Creation of charge by operation of law:** A charge by operation of law was created in favour of the state on the day when the assessment order was passed. An entry in revenue records has been made to make everyone aware. Thus, there is no attachment of property in this case.

Our comments

By citing various decisions, the Gujarat HC explained the effect of attachment and charge over property in the present ruling.

Since there is a fine distinction between the attachment and charge over the property, hence there should not be any confusion between both the concepts.

The present ruling shall be helpful for the taxpayers to understand the difference between attachment and charge over the property and shall set precedence in the similar matters.

Further, it is to be noted that provisions of provisional attachment under GST[71] are wider and harsh in comparison to the GVAT[72] laws. Under GVAT laws, any property belonging to the dealer can be provisionally attached, however under GST, it can be done belonging to taxable person as well as any person who retains the benefit of specified transaction mentioned under the laws. Also, under GVAT, provisional attachment of property was allowed however under GST, a bank account has been specifically included under the provisions along with the property.

64. Shree Radhekrushna Ginning And Pressing Pvt. Ltd.
65. The Gujarat Value Added Tax Act, 2003
66. R/Special Civil Application No. 5413 of 2022
67. Privy Council in Moti Lal v. Karrabuldin (1897) I.L.R. 25 Cal. 179, p.c.; Frederick Peacock v. Madan Gopal (1902) I.L.R. 29 Cal. 428
68. Dattatreya Shanker Mote vs. Anand Chintaman Datar and others (1974) 2 SCC 799)
69. Section 48 of GVAT Act, 2003
70. Section 100 of the Transfer of Property Act,1882
71. Section 83 of the CGST Act, 2017
72. Section 45 of GVAT Act, 2003

Circular imposing new restriction is ultra-vires and retrospective operation of such circular is manifestly arbitrary - Gujarat HC

Summary

The Gujarat HC has held that circular issued to impose new restriction under the Export Promotion Capital Goods (EPCG) Scheme[73] is ultra vires. It further stated that transmission and distribution are distinct activities and the impugned circular clarifying that transmission and distribution are one and the same cannot be held as valid and legal. When the EPCG licenses were granted to the petitioner based on their disclosure that the capital goods will be used in distribution of electricity, they cannot now be put to prejudice by issuing retrospective circular. Therefore, the retrospective operation of such circular is manifestly arbitrary and violative of Articles 14 and 19(1) (g) of the Constitution.

Facts of the case

- The petitioner[74] is engaged in generation, transmission and distribution of electricity.
- The petitioner had applied for the EPCG license for import of capital goods which would be used for power distribution. Based on the applications filed, the DGFT granted the EPCG licenses as well as the invalidation letters from time to time.
- One refund was sanctioned, and the petitioner was informed that approval has been withdrawn for future refund application for terminal excise duty in light of a notification.
- Thereafter, the DGFT issued circular[75] clarifying that transmission and distribution of electricity constituted the same process of supply of electricity. Hence, benefit of import of capital good used in distribution of power is not allowed under EPCG scheme.
- Therefore, the petitioner surrendered all its EPCG licences along with one refund received and interest and requested for release of bank guarantees.
- However, a Show Cause Notice (SCN) was issued by the DGFT asking the petitioner to show cause as to why the EPCG authorisations should not be cancelled ab initio and why penalty should not be imposed for submitting false and incorrect declaration/undertaking in their EPCG applications.
- The DGFT rejected the submissions made by the petitioner and passed the order that it had misutilised the EPCG scheme and willfully defaulted and imposed penalty.
- Therefore, the petitioner filed present writ before the HC[76] challenging the impugned circular.

Gujarat HC observations and ruling[77]

- **Transmission and distribution of power are different activity:** The term transmission and distribution of electricity are separately defined as well as governed by different statutory provisions and required separate license. Therefore, HC observed that both transmission and distribution are different activities and hence the impugned circular clarifying that transmission and distribution are one and the same cannot be held as valid and legal.
- **Allegation of misdeclaration not acceptable:** The EPCG licenses were issued to the petitioners in full light of the fact that the capital goods were to be used in distribution of electricity. Thus, the allegation of misdeclaration against the petitioner does not merit acceptance. Thus, the petitioner cannot now be put to prejudice for the past transactions by issuing a retrospective circular. Such retrospective circular apart from being legally fallacious is also manifestly arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution in so far as it operates retrospectively.
- **Retrospective amendment through circular cannot take away vested right:** The policy could not have been retrospectively amended by the government without there being any express power in this regard and that in this case the retrospective amendment of policy cannot take away vested rights of the exporters.
- **Amendment in policy cannot take away the vested rights of exporter:** If some vested rights have accrued in favour of the exporter who achieved the target stipulated in the scheme and thereby became eligible for the benefit cannot be taken away by subsequent retrospective amendment.
- **Retrospective amendment through circular held ultra vires:** The HC observed that distribution of electricity is not included in prohibited list of activities[78] and in public notice[79]. Distribution word was only mentioned in the circular. The HC also placed reliance on a judgement[80] held that retrospective amendment which does not remove the lacuna which it intended to remove, but merely legislates to impose a new burden has also been held to be unconstitutional. Hence the circular was declared ultra vires and the retrospective operation of the circular was held to be manifestly arbitrary.

Our comments

The Apex Court in the case of J K Lakshmi Cement Limited had held that circular should not be adverse/cause prejudice to the assessee. Further, in the case of Atul Commodities Pvt. Ltd., the Apex Court had held that the power to amend the FTP is exclusively vested in the Central Government and it is not given to the DGFT, whereas the power to clarify is vested in the DGFT.

Even, the Bombay HC[81] had recently held that a clarificatory circular issued by the DGFT cannot, retrospectively, amend or take away the benefits granted. The HC stated that the DGFT has powers to issue clarification but cannot, retrospectively, amend the provisions.

The present ruling is in line with above rulings and thus reiterates that the benefit which has been accrued to the exporter at a particular point of time is their fundamental right and cannot be taken away by subsequent retrospective amendment.

73. Provided under the Foreign Trade Policy (FTP)
74. Torrent Power Ltd
75. Dated 4 January 2019
76. R/Special Civil Application No. 13513 Of 2020
77. R/Special Civil Application No. 13513 Of 2020 order dated 16-03-2022
78. Para 5.01(g) of EPCG scheme w.e.f. 18-04-2013 and amendment thereon dated 29-01-2016
79. No. 47/2015-20 dated 06-12-2017
80. D. Cawasji and Co. v. State of Mysore reported in (1984) 150 ITR 648: (AIR 1984 SC 1780),
81. Essar Shipping Ltd.

Expiry of e-way bill in case of a genuine transaction between registered dealers cannot lead to seizure of goods – Tripura HC

Summary

The Tripura HC has held that detention and seizure of vehicle along with goods is not justified in cases where the transaction entered between registered persons is genuine and e-way bill expires just prior to entry of vehicle into the state. The HC directed that undertaking should be taken from the buyer or the seller and intimation should be provided to the assessing officer of both the parties. The HC noted that hindrance in the movement of goods creates obstacles for the development of the nation. Thus, the HC emphasised that free flow and movement of goods/services throughout the nation should be encouraged.

Facts of the case

- The petitioner[82] is engaged in the business of selling construction machinery. The petitioner had transported goods to a customer from Silchar to Agartala along with the valid documents being carried in the vehicle itself.
- Due to some technical problems, the e-way bill expired before reaching the destination. Thus, the vehicle and the goods both were detained.
- The petitioner submitted that the seizure and detention of vehicles and goods along with denial of entry of vehicles in the state of Tripura has caused an impediment on to the free flow of goods and services within India.

Tripura HC observations and ruling[83]

- **Transaction is between registered persons:** The transaction took place between two dealers registered under the GST laws. Further, the transaction was covered with necessary documents, indicating the genuineness of the transaction. Therefore, the stoppage of the vehicle along with goods is not justified.
- **No stoppage of goods if the e-way bill expires just prior to the date of entry in the state:** If the e-way bill expires just prior to the date of entry, in a case where the transaction is between registered persons and covered by all necessary documents, then goods should not be stopped. An undertaking should be taken from the buyer or seller and intimation to be provided to the assessing officer of both the parties so that necessary compliance can be made.
- **Free flow of goods/services meant for the development of the nation:** Any hindrance in the movement of goods amounts to an obstacle to the development of the nation. Hence, free flow/ smooth movement of goods and services should be encouraged as it is meant to be for the development of the nation.

Our comments

Recently, the Apex Court has pronounced a landmark judgement in the case of Satyam Shivam Papers Private Limited[84] wherein it had been held that the expiry of an e-way bill for reasons beyond the control of assessee could not be considered as an intent to evade tax. Hence, the Apex Court imposed personal cost on errant officials for unnecessary litigation and harassment of assessee.

Similarly, the Tripura HC has emphasised that detention and seizure should be discouraged in case of expiry of e-way bill for genuine transactions having no intention to evade tax. Further, the court stated that such expiry of an e-way bill can be condoned by submitting an undertaking by the buyer/seller with their authorities. This in turn will lead to the overall development of the nation.

Thus, the present ruling is of a welcoming nature as it will provide relief to the taxpayers, curb unnecessary litigations and ensure the free flow of goods across the nation.

82. Podder and Podder Industries Private Limited.
83. WP(C) No.285 of 2022, order dated 29 March 2022
84. Special Leave to Appeal (C) No(s). 21132/2021

Any objection as regards the lack of jurisdiction to be raised at the initial stage of proceedings and not subsequently – Allahabad HC

Summary

The Allahabad HC has held that where the case of an assessee has been assigned to the Central Tax Officer (CTO) and the assessee does not object to the show cause notice and assessment order issued by State Tax Officer (STO), it would not be a case of inherent lack of jurisdiction but a result of contributory error of jurisdiction by STO. The HC opined that if the petitioner had objected to it at the initial stage or during the course of assessment proceedings, the position could have been rectified by informing the central officer to complete the assessment proceedings. The HC compared the contemporaneous provisions of CGST and SGST Act and observed that both are proper officers within their territorial jurisdiction. However, there is a condition that if an order is issued by a proper officer under State or Union territory Act on a subject matter, then the order shall not be passed by a proper officer under CGST Act and vice versa.

Facts of the case

- The petitioner[85] is engaged in the business of lubricants. Under the erstwhile VAT regime, the petitioner was carrying the business in partnership but with the advent of GST, it migrated as a proprietary concern and carried the entire stock.
- The petitioner's jurisdiction was assigned to the central officer, but it was the state officer who had issued SCN[86] to the petitioner. Thereafter, the petitioner had replied and participated in the proceedings without raising any objection.
- The petitioner has challenged the SCN and assessment order passed by the state officer on the ground that such order is without jurisdiction as he was assigned to the central officer.

Allahabad HC observations and ruling[87]:

- **Cross empowerment under both Central and State Act:** The proper officer under the CGST Act and UPGST Act have been conferred with jurisdiction and powers as a proper officer under both the acts. Thus, if an order has been issued by a proper officer under the State Act, then an order on the same subject matter shall not be issued by the proper officer under the Central Act and vice versa.
- **Avoiding the possibility of conflicting orders:** An inbuilt provision[88] has been made in both Central Act and State Act to remove the possibility of conflicting orders. Accordingly, the orders passed by a proper officer under CGST Act shall be intimated to the jurisdictional officer under the state act and vice versa.
- **Case of error of jurisdiction:** The Apex Court in a decision[89] has explained the difference between the existence of jurisdiction and exercise of jurisdiction. In the present case, the state tax officer was competent to exercise the powers but as per the distribution of work, the petitioner was assigned to the central officer. Thus, the case does not lack inherent jurisdiction but is a case of exercise of jurisdiction in absence of any objection.
- **Objection at initial stage:** Initially the petitioner did not object to the jurisdiction of the state officer. If he had raised an objection at the initial stage or during assessment proceedings, then the situation could have been rectified by the state tax officer informing the central officer to complete the assessment proceedings.

Our comments

The Apex Court in case of Kedar Shashikant Deshpandey and Ors[90]. had considered the principle 'submitting to the jurisdiction of the authority' and held that "it is well settled that if a person has submitted to the jurisdiction of the authority, he cannot challenge the proceedings on the ground of lack of jurisdiction of the said authority in further appellate proceedings".

Similarly, the Allahabad HC has held that the present case is not a case of lack of jurisdiction as the state officer is also a proper officer authorised to issue SCNs and conclude proceedings.

It is pertinent to note that before filing a response, the taxpayer must ensure if the notice issued is by its jurisdictional proper officer or not, whether such officer is empowered to do so or not. In case it is not so, then entire proceedings can be nullified on this ground itself.

85. Ajay Verma
86. Under section 73
87. Writ Tax No. - 1169 Of 2021, Order dated 9 Feb 2022
88. Section 6 of CGST Act and UPGST Act
89. Nusli Neville Wadia Vs Ivory Properties & Ors.
90. (2011) 2 SCC 654
91. Appeal No. ST/70563/2016-CU[DB]

DRI officers appointed by the Board as Common Adjudicating Authority are the "Proper Officer"- Allahabad HC

Summary

The Allahabad HC has held that the Commissioner of CGST and Central Excise are the "Proper Officer" to adjudicate SCN issued by the Commissioner of Customs. The Court elucidated that after the legislature amendment, all persons appointed as officers of Customs[92] are deemed and always should be considered as a proper officer[93]. The HC further cited the decision of the Gujarat HC[94] and ruled that both the Commissioner of Customs as well as the Commissioner of CGST and Central Excise have the jurisdiction to issue and adjudicate the SCN, respectively.

Facts of the case

- The petitioner[95] is engaged in the manufacture and export of finished leather. The petitioner had exported four consignments[96] classified as 'Finished Leather of all kinds' to buyers in Italy.
- The DRI officers on the basis of statement of quality inspector for Italian buyers in India, concluded that the shipments were made of semi-finished leather. Hence, the petitioner has availed inadmissible exemption of export duty along with inadmissible export incentive[97].
- Consequently, a SCN was issued by the Commissioner of Customs proposing recovery of duty, confiscation of goods along with penalty. The Commissioner, CGST and Central Excise proceeded to adjudicate the SCN.
- The petitioner relied on Apex Court decision[98] and objected the competence of officers to issue and adjudicate the SCN. The petitioner sought alternative relief also.

Allahabad HC observations and ruling[99]

- **Validity of SCNs issued:** The Board had appointed DRI officers as proper officers to perform functions under the provisions[100]. Subsequently, the SCNs issued by DRI prior to 6 July 2011 stand validated. Such officers should be deemed and always should be considered as proper officers.
- **Jurisdiction of DRI Officer:** It is evident from the perusal of the notifications[101] that DRI officers are appointed as Customs officers. The officers of DRI have been given jurisdiction over whole of India.
- **Authority w.r.t SCN:** Basis the catena of notifications, circulars[102], the HC found that the notification[103] assigns functions of the proper officer to the various officers including DRI officers[104]. It is clear that the Commissioner of Customs had the jurisdiction to issue SCN and the Commissioner of CGST and Central Excise has the jurisdiction to adjudicate the same.
- **Alternate relief not entitled:** The HC relied on one of its decisions[105] wherein similar relief was considered and repealed. Since the proceeding for adjudication are yet to commence, the assessee is not entitled to alternative relief.

Our comments

The powers of DRI officers to issue SCN have been a matter of extensive litigation since their inception.

Earlier, the Apex Court in the case of Canon India had held that the DRI officers are not empowered to issue SCNs and only the proper officer could issue such a notice. However, the Revenue had filed a review petition against this before the SC arguing that the DRI officers have the power to issue SCNs under the Customs Act which is pending.

Further, legislative changes have been introduced vide the Finance Act, 2022 to widen the scope of the term "proper officer" under the Customs law to include officers of DRI, audit and preventive in the class of officers by Customs.

Recently, the Delhi HC admitted a writ petition challenging the same. Now, it will be interesting to see the verdict of the Delhi HC which will have a wide impact on revenue authorities as well as on the taxpayers.

Interestingly, the CESTAT Kolkata recently in the case of Beriwala Impex Pvt. Ltd. had emphasized that there is no proposal to amend the provisions relating to power for issuance of SCN under the customs law. Therefore, it seems that the SC's verdict in the case of Canon India shall remain valid even after widening the scope of the term proper officer and thus the DRI officers may not be authorised to issue SCNs under the customs law.

92. before 6 July 2011
93. incorporation of Section 28(11)
94. Swati Menthol and Allied Chemical Ltd to support its conclusion
95. Sultan Tanneries And Leather Products
96. During the period 01.04.2006 to 30.11.2009
97. Duty drawback and DFIA scheme
98. Canon India Private Limited versus Commissioner of Customs (2021 SCC Online SC 200); Commissioner of Customs versus Sayed Ali [2011 (3) SCC 537]
99. Writ Tax No.1085 of 2021; order dated 07.04.2022
100. Sections 17 and 28
101. Notifications dated 07.07.1997 and 07.03.2002
102. Notification dated 07.07.1997 and 07.03.2002, 06.07.2011, circulars dated June 9, 2015 and October 17, 2018,
103. for the purpose of Section 2(34) of the Customs Act
104. for the purposes of Sections 17 and 28 of the Customs Act
105. Parmarth Iron Pvt. Ltd, Special Appeal No.741 (D) of 2010

Interest on delayed refund shall be granted from the date of filing of refund application, and not from the date of Commissioner (Appeals) order– CESTAT Ahmedabad

Summary

The CESTAT Ahmedabad has held that the appellant is entitled to interest on the refund claim from the date of refund application. As per the provisions[106], the refund should be disposed of within a period of three months but in case of delay, the appellant is entitled to interest on the refund claim till the date of sanction of refund. The CESTAT ruled that once the Commissioner (Appeals) has allowed the refund, it would be concluded that the appellant was entitled to the refund right from the date of filing of the application. Therefore, for the purpose of interest, the date of filing of refund application shall be considered and not the date of the Commissioner (Appeals) order.

Facts of the case

- The appellant[107] has claimed remission of duty in respect of destroyed goods. Therefore, the appellant reversed the Central Value Added Tax (CENVAT) credit of input on destroyed goods.
- However, the appellant realised that credit was not supposed to be reversed, hence it claimed the refund of such reversal.
- The refund application was initially rejected. However, the Commissioner (Appeals) allowed the refund.
- The appellant approached the department for interest on the refund claim, which was rejected. Then the aggrieved appellant filed an appeal before the Commissioner (Appeals). It placed reliance on decisions[108] and contended that interest on refund is entitled as the refund was granted after a period of three months from the filing of the application.

CESTAT Ahmedabad observations and ruling[109]

- **Interest payable upon delay in granting refund claim:** The provisions provide that refund claim shall be disposed of with a period of three months from the date of filing application. If there is a delay, then the appellant shall be entitled to a refund. In a similar case[110], the Apex Court had also held that the revenue's liability to pay interest commences from the expiry of three months from the date of application of refund till the date of sanction.
- **Petitioner entitled to interest from the date of application:** The refund was not granted within a period of three months from the date of application. Thus, for the purpose of interest, the date of filing of refund application shall be considered and not the date of the Commissioner (Appeals) order.

Our comments

Earlier the Apex Court in the case of Ranbaxy laboratories Limited and Humdard (Waqf) Laboratories had held that in case of delay in sanction of the refund claim, the appellant is entitled for the interest from the date of filing of refund claim till the date of sanction.

Similar decision has also been pronounced by the CESTAT Allahabad in case of M & B Footwear Private Limited.

The present ruling is also in accordance with the provisions under the central excise laws as well as aligns with the decision by the Apex court.

This is a welcome and important decision for taxpayers facing similar issue, which shall bring required relief and set precedent in similar matters. Further, an analogy can also be drawn under the GST regime since similar provisions exists even under the GST laws.

106. Section 11BB of Central Excise Act
107. Atmiya Engineering and Plastics
108. Ranbaxy laboratories Ltd., Humdard (Waqf) Laboratories, M&B Footwear P. Ltd etc
109. Excise Appeal No. 10945 of 2021
110. Ranbaxy Laboratories Ltd. 2011 (273) ELT 3(SC)

Mere registration under the Companies Act does not meet the requirements of a 'Business Entity'- CESTAT Mumbai

Summary

The CESTAT Mumbai has held that the appellant does not qualify as a "business entity' as it has neither undertaken any activity nor earned any profit since its closure. Further, the CESTAT observed that merely because the appellant is still registered under the Companies Act and has not surrendered its registration, it cannot be said that it is carrying out some business activity. The CESTAT noted that the revenue authorities did not mention in the SCN and did not put forward any document to show that the appellant was engaged in any business activity. Therefore, the appellant is not covered under the definition of 'Business Entity' and the service tax paid is liable for a refund.

Facts of the case

- The appellant[111] was engaged in business auxiliary services, management or business consultancy services, etc. The appellant was paying service tax under Reverse Charge Mechanism (RCM) on the legal consultancy service.
- The appellant's holding company had filed a petition for bankruptcy. Thus, for closure and winding up of business, the appellant received legal consultancy services and discharged service tax under protest on RCM basis.
- The appellant contended that the business has been discontinued, thus, liability to pay service tax does not arise. Hence, the appellant had then filed a refund application of service tax paid as it was covered by the exemption notification[112].
- The appellant placed reliance on the decision[113] of the Apex Court wherein it was held that activity undertaken in the course of winding up is not an activity for furtherance of any business. Thus, legal expenses incurred in relation to the winding up of an entity are not for the furtherance of any business.

CESTAT Mumbai observations and ruling[114]

- **Appellant is no more a 'Business Entity':** The definition of 'Business Entity' is applicable on to an entity normally indulged in any activity which is profit motivated. The apprehension of the revenue is groundless as there is no evidence to show that the appellant has indulged in any business activity in past so many years. Neither the SCN nor any other record shows that the appellant has earned any profit in these years. Thus, the appellant cannot be saddled with tax liability on basis of such unfounded apprehension.
- **Submission is without any basis:** There arose a suspicion in the mind of the revenue that even after so many years of closure of business, the appellant is still availing legal consultancy services. However, this submission is without any basis as nothing on record substantiates such contention. Since the appellant is still registered under the Companies Act and has not got the said registration cancelled, it does not mean that the appellant is carrying out business activity. Therefore, the order for rejection of refund application is liable to be set aside.

Our comments

The Apex Court in the case of Vijaya Laxmi Sugar Mills[115] had held that the activity undertaken in the course of winding up is not an activity for furtherance of any business carried on by the company before its winding up.

Similarly, the Karnataka High Court in the case of Mysore Standard Bank Limited[116] had held that the expenditure incurred at the time or for the purpose of closing the business cannot be considered as "expenditure incurred for the purpose of such business".

The present ruling is also in line with the above ruling which clarifies term "Business Entity" and elucidates that mere registration under the Companies Act does not make an entity a business entity. Thus, it is an important decision, which shall bring required relief and set precedent in similar matters.

111. Lehman Brothers Securities Pvt. Ltd.
112. 25/2012-ST dated 20.06.2012
113. Vijaya Laxmi Sugar Mills v/s CIT; AIR 1991 SC 2042
114. Service Tax Appeal No. 89484 of 2018, order dated 6 April 2022
115. AIR 1991 SC 2042
116. 1962(64) ITR278.

CENVAT credit is a vested right and accumulated credit of cess is eligible for refund– CESTAT Delhi

Summary

The CESTAT Delhi has held that the CENVAT credit is a vested right and thus, allowed refund of cess balance after GST introduction. The CESTAT noted that the plea of the appellant is not for adjustment of the credit on cess amount against payment of excise duty or service tax, but it is for a refund of credit accumulated on account of cess. The CESTAT stated that the policy decision taken by CBEC (not to allow utilisation of accumulated credit of cesses) is contrary to the decisions of HC and Tribunal, hence it cannot come to the aid of revenue. The CESTAT observed that the decision of the Karnataka HC in Slovak India was affirmed by the SC and thus, considered appropriate to follow the same view.

Facts of the case

- The appellant[117] was engaged in the business of manufacture of clinker and cement. Before 01 March 2015, the appellant was liable to pay cesses in addition to excise duty. However, from 01 March 2015 onwards, the levy of cesses was exempted. The appellant could not utilise the cesses, hence, carried forward the same in the excise returns.
- Upon introduction of GST, instead of carrying forward such credit, the appellant has filed a refund application. However, the authorities issued SCN and rejected such a claim.
- The petitioner aggrieved by such rejection, filed an appeal before Commissioner (Appeals) which was also rejected by placing reliance on Rajasthan HC judgment[118].

CESTAT Delhi observations and ruling[119]

- **Refund has to be granted on either closure of factory or assessee goes out of MODVAT:** It is clear from the decision rendered in Slovak India Trading[120] that refund has to be granted when either there is a closure of the factory or when an assessee goes out of the MODVAT scheme. The decision of the Karnataka HC in Slovak India was affirmed by the SC. Thus, it would be appropriate to follow the same view.
- **Credits create a vested right:** The Tribunal placed reliance on the decisions of the SC[121] wherein it was held that CENVAT credit is a vested right. Similarly, in the case of BHEL[122], it was examined that credits create a vested right and do not extinguish with the change in the law. Thus, a change of law cannot be a ground for divesting an assessee from this right. Therefore, the assessee is entitled to a refund of unutilised credit of cess even after the introduction of GST.

Our comments

Earlier, the Apex Court in the case of Eicher Motors and Samtel India had held that availing of CENVAT credit is a vested right.

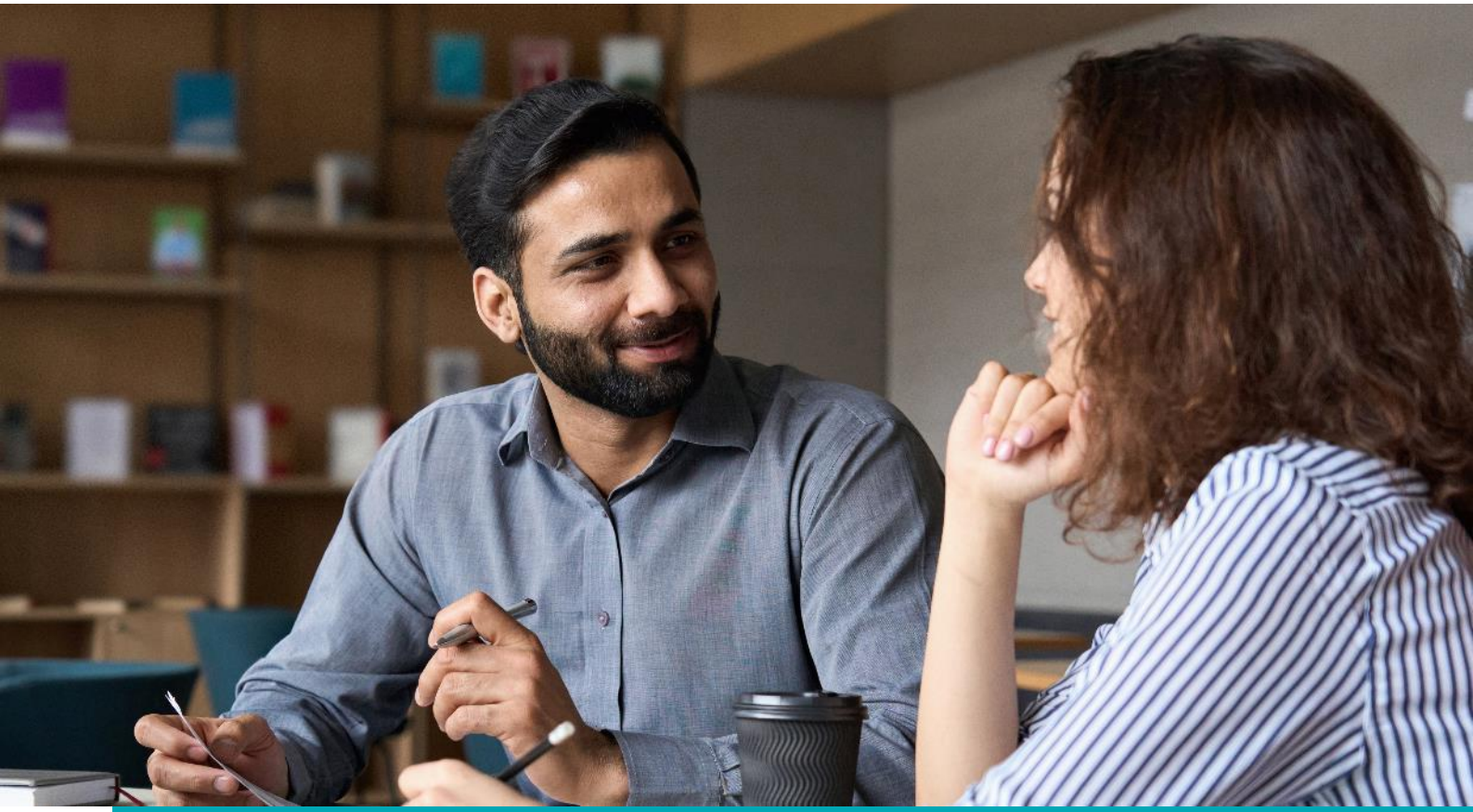
Under the erstwhile regime, in the case of Slovak India Trading Co. Pvt ltd., it had been held that a refund has to be granted when either there is a closure of the factory or when an assessee goes out of the Modified Value Added Tax (MODVAT) scheme. The CESTAT Delhi considered it appropriate to follow the view taken by the Karnataka HC and the Punjab and Haryana HC[123] in the present case.

This is a welcome ruling pronounced by the CESTAT Delhi, which will help provide relief to businesses at large which were earlier unable to claim refunds or carry forward the unutilised credit of cesses levied under the erstwhile indirect tax regime. The judgment is also likely to set precedence in similar matters and help clear the pendency of refund claims.

117. Emami Cement Limited
118. Banswara Syntex Ltd.
119. Excise appeal no. 52318 of 2019, order dated 28 Mar 2022

120. by the Tribunal, the Karnataka HC and the SC
121. in Eicher Motors and Samtel India.
122. Bharat Heavy Electricals Ltd
123. Shree Krishna Paper Mills

03 Decoding advance ruling



No ITC available of GST paid on procurement of goods/services for the promotional scheme – Tamil Nadu AAAR

Summary

The Tamil Nadu Appellate Authority for Advance Ruling (AAAR) has affirmed the observations of Tamil Nadu AAR and held that ITC of GST paid on procurement of goods/services for the promotional scheme is not available as per Section 17(5) of the CGST Act. The AAAR elucidated that since the retailers ultimately consumed the goods/services provided under the reward scheme, such personal consumption by the appellant or by its retailers would disentitle them to avail of ITC. Hence, the contention regarding the applicability of the clause to the stage of procurement use and not on the last use would be of no avail to the appellant. The AAAR has emphasised the non-obstante clauses of Section 17(5) and remarked that these clauses put an embargo on the availability of ITC itself. The AAAR concluded that giving away goods/services under the scheme is not a supply. Therefore, the ITC of the GST paid on the goods/services procured for the scheme is not available to the appellant.

Facts of the case

- The applicant[124] is engaged in the manufacturing and supply of ghee and other products. To enhance the sale of their products, the applicant launched a promotional scheme named Buy N Fly.
- Under the scheme, retailers/distributors /dealers were asked to promote the sale of appellants' products. Upon achieving the targets mentioned, the applicant would hand over the reward articles to the eligible retailers.
- The applicant contended that input/input services procured for giving out rewards have a direct nexus with the furtherance of business. Hence, they cannot be called gifts. Further, the provisions of Section 17(5) do not apply as the usage test is to be applied at the stage of procurement and not at the customer end.

124. GRB Dairy Foods Pvt Ltd

- The applicant submitted that the object of the scheme is purely sales promotion and not to offer any gifts voluntarily without conditions/eligibility criteria.
- The applicant had approached the Tamil Nadu AAR regarding the admissibility of ITC of GST paid on procurement of reward articles.
- Aggrieved by the order of the AAR, the applicant approached the AAAR submitting that ITC is permissible.

Tamil Nadu AAR observations and ruling[125]

- **Credit already availed:** Upon perusal of the invoices, it was evident that the applicant had already availed the input credit of tax paid on goods used for sales promotion as gifts. In this respect, the applicant contended that ITC had been availed to avoid lapsing of a limited period for availment of credit.
- **Promotional scheme is in the furtherance of business:** In the present case, the goods/services procured as a reward are not being supplied by them in the course of their business. However, some are procured with the intention to use in the furtherance of business. Due to the promotional scheme, there was a 24% increase in the supply of targeted products. Thus, the scheme along with the goods/services procured as a reward are in furtherance of business. Therefore, the prima facie condition under the provision[126] seems to be satisfied.
- **Goods used for personal consumption:** The goods distributed to eligible retailers are used by them for personal consumption. Hence, the fact that the claim and cost of such goods/services have been accounted for under the sales promotion account of the applicant is immaterial to the usage of such goods/services.
- **Ineligible ITC:** The rewards being consumable in nature are gifts (meant for personal consumption) extended to retailers, that have been voluntarily given by the applicant without any consideration. Hence, the credit of GST paid on such goods/services is not available as specifically restricted under the provisions[127].

Tamil Nadu AAAR observations and ruling[128]

- **Provisions put an embargo on availability of ITC:** Reference to word "him" in the provision, it denotes the taxpayers. However, the scheme for which goods/services are procured by him is for his buyers. As per the non-obstante clause, a reward scheme doesn't mean furtherance of business. Hence, the clauses put an embargo on the availment of ITC.
- **Costing cannot be validated**: The applicant did not submit a document in relation to the promotional expenses factored. In its absence, the AAAR would not be able to venture into the correctness of the costing. Hence, the claim that the cost of products procured for the scheme are part of MRP pricing could not be validated.
- **Applicability of Circular:** The applicant claimed its case was covered under Para C of the circular[129]. However, in this case, the retailers/stockiest are extended rewards which are definitely not discounts. The present case aptly falls under Para A (free samples and gifts) of the circular.
- **Goods under the scheme do not qualify as "supply":** The giving away of goods under the scheme is not a supply. Thus, the ITC of goods/services procured for the scheme is not available to the applicant.

Our comments

Similar to the present ruling, the Karnataka AAAR in case of Page Industries Limited[130] had held that ITC of GST paid on procurement of promotional items supplied free of charge is not available as the said supply is non-taxable supply.

Even, the Maharashtra AAR in the case of Biostadt India Limited[131] had held that ITC would not be available on goods given as 'gifts' when no GST is paid on their disposal.

However, contrary to these rulings, the Bombay HC in the case of Coca Cola India Private Limited[132] under the erstwhile regime, had allowed the input credit of service tax paid on advertising, sales promotion, etc.

As per the industry practice, many companies offer promotional gifts/ incentives by way of discounts, free gifts etc. to dealers/distributors /retailers to incentivise. However, it seems that the present ruling is not in line with the intention of the law to allow ITC in respect of sales promotion expenses which are incurred in the course or furtherance of business.

Though the advance rulings are applicable to applicants only, however, they do have persuasive value in similar cases. Hence, the present case may negatively impact the businesses due to which the businesses will be skeptical towards implementing such promotional schemes.

125. TN/36/ARA/2021 order dated 30.09.2021
126. Section 16 of the CGST Act, 2017
127. Section 17(5)(g) read with Section 17(5)(h) of the CGST Act 2017.
128. TN/AAAR/04/2022(AR) order dated 23.02.2022
129. Circular No.92/11/2019 dated 7.3.2019
130. KAR/AAAR/05/2021 dated 16 April 2021
131. GST-ARA- 72/2018-19/B-165
132. 2009 (8) TMI 50 - BOMBAY HIGH COURT

GST is not leviable on employee portion of canteen charges and free bus transportation facility – Gujarat AAR

Summary

The Gujarat Authority of Advance Ruling (AAR) has ruled that the canteen facility and bus transportation facility provided by the applicant is not deemed to be a supply. Therefore, the AAR held that the GST is not leviable on the amount representing the employees' portion of canteen charges, which is collected by the applicant and paid to the canteen service provider. The authority took a view that GST is not leviable on free bus transportation facility provided to its employees. The AAR also opined that ITC of GST paid on the hiring of bus having an approved seating capacity of more than 13 persons is not a blocked credit and therefore, is admissible. Further, the advance ruling authority stated that ITC of GST paid on canteen facility is blocked credit and inadmissible to the applicant.

Facts of the case

- The applicant[133] provides canteen and bus transportation facility to its employees, as a part of its employment arrangement and based on Human Resource (HR) policy. The applicant recovers nominal amount for the canteen facility provided to employees whereas bus transportation facility is provided free of cost and no recoveries are made.
- The applicant engaged third-party service providers in order to provide canteen and bus transportation facilities. Such services are provided directly to the employees however invoices are raised to the applicant.
- The applicant submitted that it is mandatory[134] to provide and maintain a canteen in its premises. Thus, the amount charged for the canteen facility does not involve any profit or pecuniary benefit. Accordingly, the said facility lies outside the purview of supply and hence no GST shall be levied. Further, the applicant submitted that transportation services via non-AC carriage is exempt[135] from GST and the applicant is eligible[136] to avail ITC of GST paid on availing such bus services.

Gujarat AAR observations and ruling[137]

- **Canteen and transportation facility not in course or furtherance of business:** The employer provides canteen facility at subsidised rates to the employees. A part of the canteen charges is borne by the employer whereas other part by employees which is paid directly to the service provider and no profit is retained by the applicant. Further, the applicant provides free of cost transportation facility to its employees which is a part of its HR policy. Hence, the facilities provided are not the activities made in the course or furtherance of business. Accordingly, these cannot be deemed to be as a supply to its employees.
- **ITC inadmissible on canteen facility:** The proviso to the first subclause[138] ending with a semicolon shall be read independent of third subclause[139] and its respective proviso. This is because the legislature intends that the subclauses should be distinct and separate with different qualifying factors and conditionalities. Thus, both the provisos are not connected. Accordingly, ITC of GST paid on canteen facility is blocked and is inadmissible to the applicant.
- **Eligibility of ITC on hiring of bus:** As per the provisions[140], ITC shall be available in respect of motor vehicles having a seating capacity of more than 13 persons. In the instant case, the bus hired for transportation of employees had a capacity of more than 13 persons and do not fall under the blocked credit. Thus, ITC is admissible to the applicant.

Our comments

This issue has been a matter of exhaustive litigation since the inception of GST.

This is a welcome ruling wherein the Gujarat AAR has held that GST cannot be levied on a transaction only because charges have been recovered.

Corresponding to the present ruling, the Gujarat AAR in the case of Cadila Healthcare Limited[141] has held that the canteen service facility provided to employees is not an activity in the course or furtherance of business and not leviable to GST.

On the contrary, the Kerala AAR in the case of Caltech Polymers Private Limited[142] had taken a different view and held that recovery of food expenses for canteen services will be termed as outward supply which is taxable under GST.

Such divergent views create ambiguity and unwarranted litigations. Therefore, it is the need of the hour that the government should provide more clarity in this regard.

133. SM/s. Emcure Pharmaceuticals Limited
134. As per section 46 of the Factories Act, 1948
135. Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017
136. As per Section 16 of CGST Act, 2017
137. GUJ/GAAR/R/2022/22 dated 12 April 2022
138. Section 17(5)(b)(i)
139. Section 17(5)(b)(iii)
140. Section 17(5) of the CGST Act, 2017
141. GUJ/GAAR/R/2022/19 dated 12 April 2022
142. Order No. CT/531/18-C3 dated 26 March 2018

04 Experts' column

From this edition, we are starting a new series where we will interview senior tax professionals and take their views on significant tax developments and crucial issues. In this edition, Riaz Thingna, Chartered Accountant, Mumbai responds to the recent controversies related to the applicability of the Most Favoured Nation (MFN) clause in India's tax treaties.

MFN clause: The recent controversy

1. What is the significance of the MFN clause in India's double taxation avoidance agreements (tax treaty)?

The MFN clause in a tax treaty with a country enables an eligible taxpayer to avail of the beneficial provisions of India's tax treaty with another country. This is most widely present in tax treaties with the Organisation for Economic Co-operation and Development (OECD) member countries.

The benefit under MFN could be in the nature of a restricted scope of taxation or a reduced tax rate. In general, this clause is applicable to certain items of income such as dividends, interest, royalty and fees for technical services (FTS).

2. To what extent can one bank on the provisions contained in the protocol to a tax treaty? Is it an integral part of a tax treaty?

Various courts, including the Delhi High Court in the landmark cases of **Steria (India) Ltd**[143] and **Concentrix Services Netherlands B.V.**[144], have held that protocol is an integral part of a tax treaty. It has equal effect or force as any other provision of a tax treaty.

143. (2016) (72 taxmann.com 1) (Delhi)
144. (2021) (434 ITR 516) (Delhi)

3. What types of MFN clauses can one find in tax treaties that India has entered with various countries?

The MFN clause in various tax treaties that India has with various countries, may be broadly categorised into:

- **Automatic**: In these cases, the clause applies automatically, i.e., without the need for a separate notification by the governments. For instance, the MFN clause in the protocol of the India-Belgium tax treaty is automatic.
- **Other than automatic:** For such treaties, a separate notification by the governments of the respective treaty partner countries is required to activate the clause or, in some cases, requires the countries to enter into separate negotiations to extend the desired benefits. For instance, the MFN clause of the India-Switzerland tax treaty requires India and Switzerland to enter into separate negotiations for applying the restricted scope for income taxable under Articles 12 (Royalties and fees for technical services), if such benefit has been extended to other OECD member countries.

4. What is the recent controversy regarding the applicability of the MFN clause?

Dividend Distribution Tax was abolished from FY 2020-21 and dividends became taxable in the hands of the shareholders thereafter. A consequential impact of the change was the applicability of withholding tax on dividend payouts by the payers.

A non-resident taxpayer has an option to claim the benefit of a tax treaty, if the provisions are more beneficial[145] than the provisions of the Income-tax Act, 1961 (the Act).

The tax rate applicable to dividend income as per India's tax treaty with several countries such as the Netherlands, is 10%, but some of these treaties (including the Netherlands) contain an MFN clause in the protocol which provides that the benefit can be availed of the restricted scope or beneficial rate provided in India's tax treaty with any other OECD member country if such tax treaty it is entered into subsequently. Based on this MFN clause, assessees started claiming a lower rate of 5% based on India's tax treaties with Slovenia, Lithuania and Colombia. The issue that arose was that Slovenia, Lithuania, and Colombia were not members of the OECD at the time of signing their respective tax treaties with India, and therefore, the tax authorities rejected the claims.

The Delhi HC resolved the controversy in the case of **Concentrix Services Netherlands B.V.** The HC granted the benefit, by holding that the requirement of Slovenia to be a member of OECD must be met at the point of time when the benefit of the MFN clause is invoked and not at the time when the tax treaty with Slovenia was entered into. Further, it also relied on the judgment in the case of **Steria (India) Ltd.** and held that there is no requirement for a separate notification to trigger the MFN clause in the Netherlands tax treaty.

Post this, the CBDT issued a circular proposing a contrary view. Naturally, this has led to confusion for taxpayers on the position to be adopted, not only for dividends but also for other payments such as royalty and FTS.

5. What are the conditions prescribed by CBDT Circular No. 3 for availing of the MFN benefits?

As per CBDT Circular no. 3 of 2022, the conditions specified to avail of the benefit of the MFN clause for any tax treaty are:

- India subsequently enters into a tax treaty with a third state, i.e., after the effective date of the relevant tax treaty (i.e., treaty containing MFN clause);
- The third state is a member of the OECD at the time of signing its tax treaty with India;
- The third state's tax treaty provides for a lower rate or restricted scope of taxation; and
- India has issued a notification permitting invocation of the MFN clause on account of beneficial treatment accorded in the relevant tax treaty.

It is important to note that the circular does not differentiate between treaties where the language of the MFN clause explicitly lays down that a separate notification or action is required and those where such requirement is not provided for.

The circular also clarifies that in case there is a favourable HC decision in the taxpayers' case on this matter, the aforesaid circular would not be applicable. Stakeholders have highlighted that this equates an HC decision to a ruling by the erstwhile Authority for Advance Rulings.

6. Is the aforesaid CBDT circular binding on taxpayers? If not, what is the way forward?

In the past, courts have held that a CBDT circular is not binding on taxpayers, tribunals or courts. Recently, the Pune Tribunal in the case of **GRI Renewable Industries S.L.**[146] has held that protocol to the India-Spain tax treaty is an integral part of the India-Spain tax treaty and there is no need for any separate notification for importing the MFN clause.

The tribunal also considered the aforesaid circular while arriving at its decision and has concluded that the circular which imposes a new obligation, cannot be applied retrospectively unless the legislative intent was clearly to give it a retrospective effect. Further, the tribunal has also reiterated that the circular is not binding on the taxpayer, tribunal or other appellate authorities.

Currently, the department's appeal against the Delhi HC's decision in the case of Steria India Limited *(supra)* is pending before the Supreme Court and this issue might attain finality once the same is decided.

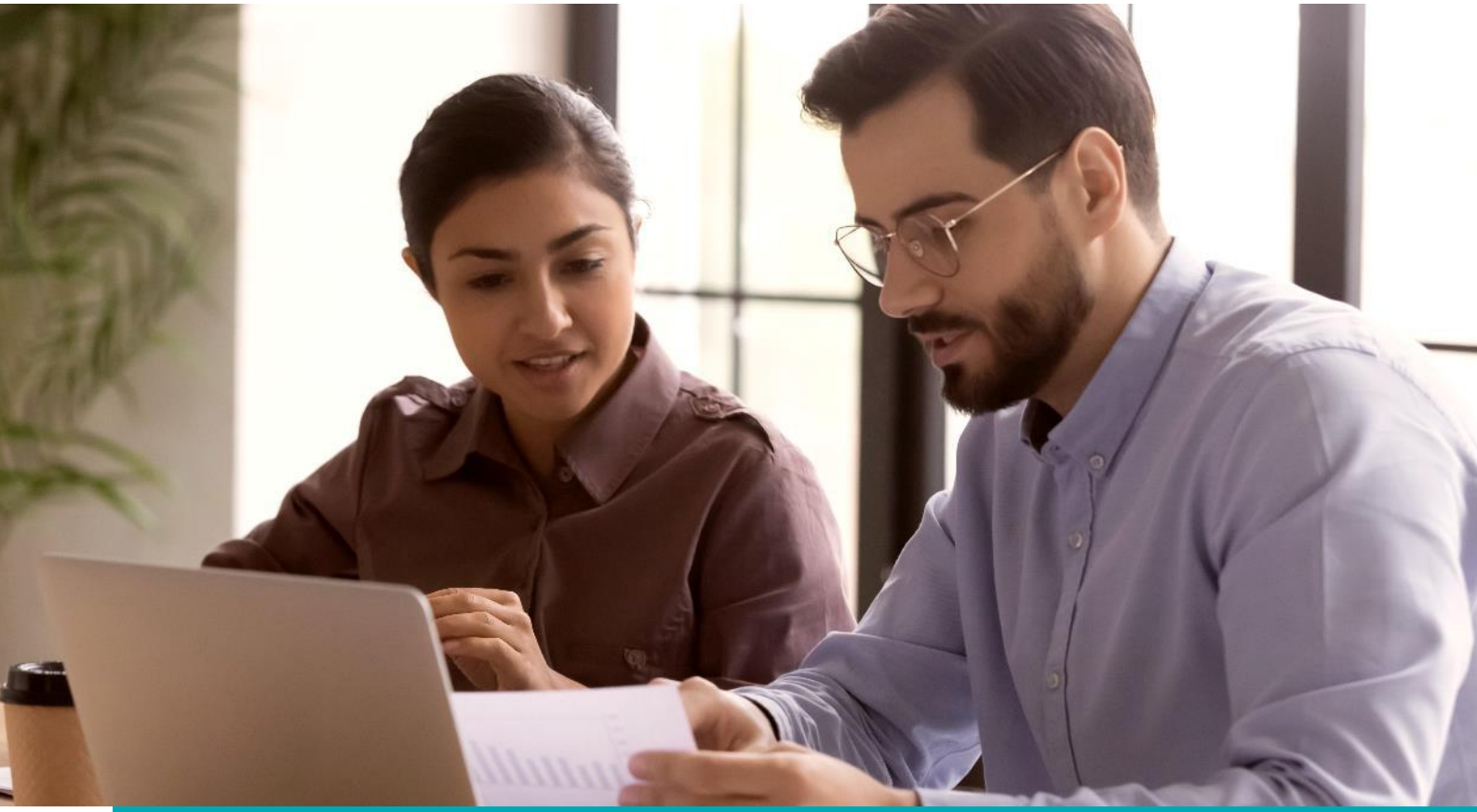
7. What does this mean for taxpayers at the ground level?

The taxpayers may need to evaluate the next steps on a case-to-case basis. Several aspects need to be considered. These include "what is the current status of assessment or appeal?", "if there is any favourable jurisdictional HC ruling?", "should they rely on the Delhi HC ruling considering there is no contrary high court decision?", "should writ remedy be explored?", "what position to take at the tax withholding stage?"

In a nutshell, a detailed deliberation may be required to determine the course of action.

145. Section 90(2) of the Income-tax Act, 1961
146. TS-79-ITAT-2022 (PUN)(2021) (434 ITR 516) (Delhi)

05 Issues on your mind



How to register for two-factor authentication for the e-way bill and e-invoice system introduced by National Informatics Centre (NIC)?

- On logging into the e-way bill system, go to the Main Menu and then select two-factor authentication and confirm the registration.
- Once confirmed, the system will ask for a one-time password (OTP) along with username and password.
- The OTP authentication is based on individual user accounts. The sub-users of GSTIN will have separate authentication depending on their registered mobile number in the e-way bill/e-invoice system.
- Once you have registered for two-factor authentication, then the same is applicable for both the e-way bill and the e-invoice system.

What are the ways to receive OTP for two-factor authentication of e-way bill and e-invoice system?

1. **SMS:** OTP will be sent to the registered mobile number as SMS.
2. **On Sandes app:** Sandes is a messaging app that can be installed on registered mobile number to receive the OTP in it.
3. **Using the NIC-GST-Shield app:** NIC-GST-Shield is a mobile app provided by the e-way bill /e-invoice system. This app can be downloaded only from the e-way bill /e-invoice portal[147]. The app can be installed on the registered mobile number in which OTP shall be displayed. The OTP shall get refreshed after every 30 seconds. Internet or any dependency on the mobile network is not required for generating the OTP on this app.
4. From the link 'Main Menu → 2-Factor Authentication → Install NIC-GST-Shield'.

147. from the link 'Main Menu → 2-Factor Authentication → Install NIC-GST-Shield'.

What additional features/limitations have been introduced by DGFT in the re-operationalisation of the Scrip Transfer Recording Module?

1. Introduction of time-lag for transfer of scrip from the original scrip owner to the next transferee, i.e., transfer of the scrip to another entity (B) after ‘ n’ number of days from the scrip issue date.
2. Introduction of time-lag for scrip transfer from one entity to another, i.e., next scrip transfer can take place after ‘ x’ number of hours of the last transfer.
3. Introduction of time-lag for transfer of scrip subsequent to IEC Modification, i.e., IEC holder will be able to transfer scrips only after ‘x’ number of hours of IEC modification date/time.
4. Introduction of limit on the number of scrip transfers which can be initiated for transfer or accepted by each IEC per day, i.e., ‘ y’ number of scrips can only be initiated.
5. Email and SMS notifications to IEC holders and directors/partners on the following trigger points:
    - Transfer of scrips
    - Modification of IEC- change in email/ mobile for correspondence and changes in director/partner section
    - Linking of users to IEC
6. Automatic de-linking of users from IEC every six months.
7. Automatic de-linking of digital signature and Aadhaar registration every 90 days.

06 Important developments in direct taxes

A. Important amendments/updates

CBDT prescribes a fee for delay in linking PAN and Aadhaar

CBDT has extended the date for linking Aadhaar with PAN to 31 March 2023[148]. It has also notified[149] that, with effect from 1 April 2022, a taxpayer can link his/her PAN and Aadhaar subject to payment of the following fee[150] :

- INR 500, in a case where intimation[151] is made within three months from 1 April 2022
- INR 1,000, in any other case

If the linking is not done by 31 March 2023[152], PAN will become inoperative and all the consequences under the Act for not furnishing, intimating or quoting the PAN shall apply, like inability to file tax returns, non-processing/non-issuance of pending tax returns/refunds, higher rate of TDS, etc.

CBDT extends the last date for electronic filing of forms for obtaining approval and registration of certain institutions[153]

In view of the difficulties faced by taxpayers in the electronic filing of an application[154] for:

- Approval of a fund, trust, university, medical/educational institution, or hospital
- Registration of a charitable or religious trust or institution
- Approval of institutions

CBDT has extended[155] the last date for filing the aforesaid application to 30 September 2022 (in case the last date falls on or before 29 September 2022).

148.Earlier the notified date was 31 March 2022
149.Notification no. 17 of 2022
150.Under section 234H of the Income tax Act, 1961 ("the Act")
151.Section 139AA(2) of the Act
152.Circular no. 7 of 2022 dated 29 March 2022
153.Under section 10(23C), 12A and 80G of the Act
154.Form 10AB
155.Circular no. 8 of 2022 dated 31 March 2022

TCS provisions are not applicable in certain cases

TCS at the rate of 5% is required to be collected on the sum received by an authorised dealer or seller of an overseas tour package[156]. The government has now notified[157] that these TCS provisions will not apply in the case of a non-resident[158] individual, who is visiting India.

CBDT allows Infrastructure Debt Fund to issue Zero Coupon Bonds

CBDT has now allowed Infrastructure Debt Fund[159] (IDF) to issue Zero Coupon Bonds (ZCBs) by amending the existing rules[160] which provide that:

- An application is to be filed[161] for notifying a ZCB proposed to be issued. Such application will be disposed of within six months from the date of receipt
- Application should be accompanied by an undertaking that a sinking fund shall be maintained for the interest which will accrue on ZCBs subscribed and such interest shall be invested in specified government security
- Further, a certificate from an accountant[162] will be required to be submitted[163] by every company within two months from the end of each financial year, specifying the amount invested in each year

SC provides guidance on the monetary limit for department appeals

The SC has held[164] that in case of a reduction in penalty in view of a subsequent order, the reduced amount would not be considered for the purpose of testing the threshold limit prescribed in the CBDT circular[165]. One needs to consider the penalty amount against which the appeal has been filed by the department and not the penalty amount as reduced by the CIT(A)[166].

156. Under section 206C(1G) of the Act
157. Notification no. 20 of 2022 dated 30 March 2022
158. As per provisions of section 6(1) and 6(1A) of the Act
159. An Infrastructure Debt Fund means an Infrastructure Debt Fund that is notified under section 10(47) of the Act.
160. Rule 2F and Rule 8B of the Income-tax Rules, 1962 (the Rules)
161. In Form 5B
162. Form 5BA
163. To be furnished electronically either under digital signature or electronic verification code
164. Late Shri Gyan Chand Jain through LR vs CIT [TS-294-SC-2022]
165. Circular no. 21 of 2015 dated 10 December 2015
166. Commissioner of Income Tax (Appeals)

B. Key judicial pronouncements

Reassessment notices issued on or after 1 April 2021 deemed to be issued under the new reassessment regime - SC

Summary

The SC in a recent case, has settled the controversy around validity of reassessment notices issued on or after 1 April 2021, under the erstwhile reassessment regime (old regime). The SC held that all such notices would be deemed to have been issued under the new reassessment regime (new regime), which was introduced by the Finance Act, 2021 with effect from 1 April 2021. This is subject to compliance with all the procedural and other requirements under the new regime.

Facts of the case

- Because of the pandemic, the government had extended various due dates under the Income-tax Act, 1961 (the Act). The last date for issuing reassessment notice[167] was also extended[168] from 31 March 2020 to 30 June 2021.
- The new regime introduced by Finance Act, 2021 with effect from 1 April 2021 mandated different procedures[169] and timelines.
- However, even after 1 April 2021, the tax department issued reassessment notices following procedures and timelines provided in the old regime, by relying on the due-date extension notifications.
- Around 9,000 writ petitions were filed before various HCs across the country, challenging the validity of such reassessment notices and various HCs had quashed such reassessment notices.

SC ruling

- The SC has modified verdicts[170] of various High Courts (HCs)[171] and has given some time to the tax department to comply with procedural requirements for initiating reassessment under the new regime. Further, this ruling will have pan India ramifications.
- The next steps in the respective matters would be as follows:
  - The respective notices will be deemed to have been issued under the new regime[172] and treated as show cause notice (SCN)[173] under such provisions.
  - The tax officers will, within 30 days from 4 May 2022, provide the taxpayers, all the information and material relied upon by them to issue these deemed SCNs. Taxpayers can reply to the notices within two weeks.
  - The requirement of conducting any enquiry with the prior approval of the specified authority[174] before issuing such notices has been dispensed with, as a one-time measure.
  - Thereafter, the tax officers will pass the orders[175] after following the due procedure[176]
  - All the defences which may be available to the taxpayer under the new regime and the related rights of the tax department will continue to be available.

Our comments

In this ruling, the SC has not only tried to strike a balance between the rights of the tax department and taxpayers but also tried to protect the interest of the exchequer.

Taxpayers in such cases will have to deal with the restored proceedings. Further, they will have to evaluate if some respite is available under the realms of the new reassessment regime.

167. Section 148 of the Act
168. Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, dated 31 March 2020 (Ordinance) and 29 September 2020 (Act), Notification No. 35 of 2020 dated 24 June 2020, Notification No. 20 of 2021 dated 31 March 2021 and Notification No. 38 of 2021 dated 27 April 2021
169. Section 148A of the Act
170. whether or not they have been challenged before the SC
171. Allahabad HC, Delhi HC; Rajasthan HC; Calcutta HC; Madras HC; Bombay HC etc.
172. Section 148A of the Act
173. In terms of Section 148A(b) of the Act
174. Under section 148A(a) of the Act
175. In terms of section 148A(d) of the Act
176. As required under section 148A(b) of the Act

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