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TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
Ingenico International India Pvt. Ltd. [TS-269-HC-2022(Del)]	Whether interest on refund u/s 244A of the Act is to be determined upto the date of the order determining the said refund or the date on which the refund is granted?	Delhi HC allows writ petition of taxpayer seeking interest on refund upto the actual date of refund as against the interest paid by the Revenue only upto the date of order determining the refund.
M/s. VST Tillers Tractors Limited Vs. DCIT (ITA No. 650/Bang/2017)	Whether various discounts offered by taxpayer under dealership agreement are in nature of commission and consequently liable for withholding of tax u/s 194H?	Considering various clauses of the agreement, Court observed that relationship between taxpayer and its dealers was in nature of principal to agent and not principal to principal. Hence, discount given under various schemes are in nature of commission and liable to withholding tax u/s 194H.
Indirect Tax		
Algae Labs Pvt. Ltd. [2022-TIOL-503-HC-MAD-GST]	Whether tax and penalty can be demanded u/s 129 on supply on goods to an address which was post facto amended and added to the registration certificate?	Honourable High Court has held that as there was no attempt to evade tax and hence tax and penalty cannot be demanded.



Aggarwal Dyeing and Printing Works [2022-TIOL-504-HC-AHM-GST]	Whether registration can be cancelled without giving proper reason or proper opportunity of being heard?	Honourable High Court has held that the basic Principles of natural justice stand violated and the impugned order needs to be quashed.
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The brief analysis of above referred decisions and rulings are given below.

DIRECT TAX

Case 1 – Ingenico International India Pvt. Ltd. [TS-269-HC-2022(Del)]

Facts in brief & Issue Involved

- ♦ The taxpayer / petitioner received the order determining refund on 2 October 2019. However, the refund was paid on 28 May 2021 which included interest u/s 244A for the period upto October 2019 only.
- ♦ Therefore, the issue involved is whether interest determined u/s 244A of the Act is to be calculated till the actual date of grant of refund or till the date of order determining the said refund.

Contentions of Petitioner

- ♦ Taxpayer/ Petitioner submitted that the coordinate bench had directed the Revenue to remit the amount as determined in order dated 2 October 2019 along with requisite interest as payable in law whereas the Revenue paid refund of INR 5.89 crores on 28 May 2021 that included interest only upto October 2019.

Observations & Decision of High Court

- ♦ It is apparent that petitioner is entitled for interest on refund in accordance with section 244A upto the date of payment i.e. 28 May 2021.
- ♦ Accordingly, Hon'ble High Court directed the Revenue to issue applicable interest u/s 244A of the Act to the Petitioner within six weeks.

NASA Comments

- ♦ The present ruling will help many taxpayers to present their case before authorities and seek compensation in form of interest, wherein refunds are kept on hold by department without any reason or there are delays in issue of refunds.

Case 2 – M/s. VST Tillers Tractors Limited Vs. DCIT (ITA No. 650/Bang/2017)

Facts in brief & Issue Involved

- ♦ The taxpayer entered into a dealership agreement under which the dealers sold the goods of the taxpayer. As per the terms of agreement –
 - dealers can sell goods under the taxpayer's brand name;
 - maximum prices of the products were fixed by the taxpayer; however, the dealers were at liberty to sell goods at discounts;
 - the taxpayer had the power to terminate the agreement and to directly sell the product in dealer's territory.
- ♦ The major sales of taxpayers were made through dealers' network, accordingly, taxpayer extended various discounts schemes such as dealer development, foreign trips, target discounts, market share discounts, dealer infrastructure discounts etc. upon achieving targets by the dealer. Taxpayer had made a provision of INR 10.63 crores towards various discounts offered to the dealers by issuing credit notes.
- ♦ The taxpayer was of the view that there is no requirement to withhold any tax at source under section 194H, as it is discount and not commission. However, the revenue disallowed the same on the ground that transaction is in the nature of commission and liable for withholding tax under section 194H.
- ♦ First appellant authority upheld the disallowance by observing that relationship between the taxpayer and the dealers is that of principal and agent. Aggrieved by the said order the taxpayer preferred an appeal before the tribunal.

Contentions of Taxpayer

- ♦ Taxpayer contended that the nature of relationship between the taxpayer and the dealers was that of principal-to-principal.

- ◆ Further, the dealers were granted non-exclusive right to market and distribute goods on own account in the agreed territory and hence, various discounts offered to the dealers for sales promotion were not liable for deduction of tax.

Contentions of Revenue

- ◆ Dealers were fully under the taxpayers' control with respect to territory allotted as also requirement to maintain bills, records and accounts and hence, the said discounts offered to the dealers was in the nature of commission and consequently liable for withholding of tax under section 194H.

Observations & Decision of ITAT

- ◆ The Tribunal, by referring to the provisions of Sale of Goods Act and the Indian Contract Act and the clauses of dealership agreement, held that the relationship between the taxpayer and dealers was in the nature of principal to agent and not principal to principal and hence, discounts enjoyed by the dealers are in the nature of 'commission', which is liable for deduction of tax under Section 194H.
- ◆ Tribunal further observed that under mercantile system of accounting, the accrual of liability of an expenditure is not dependent on the receipt of invoice.
- ◆ Tribunal also rejected taxpayers argument, that there is no liability of withhold tax as no income is accrued in the hands of payee, on the ground that it is not possible at all time to correlate specific amount of TDS with specific amount of income earned and the nexus between deduction of tax and assessable income is not required.
- ◆ Section 194C, 194J and 194H do not use the expression 'chargeable to tax' unlike section 195 and hence, the taxpayer cannot take a plea that payment is not chargeable to tax for avoiding TDS obligation.

NASA Comments

- ◆ The taxpayer should take utmost care while drafting dealership agreement to avoid any non-compliance of TDS.

INDIRECT TAX

Case 1 – Algae Labs Pvt. Ltd. [2022-TIOL-503-HC-MAD-GST]

Facts in brief & Issue Involved

- ♦ Petitioner is engaged in research and development on algae and its utilization. Petitioner placed purchase order for supply of a specialized spray dryer and the parts thereof ('hereinafter referred to as 'goods').
- ♦ The goods were dispatched along with invoice and e-way bill.
- ♦ The vehicle along with the goods were seized by GST authorities on the ground that the address mentioned on the invoice was not a place mentioned in the GST Registration of the petitioner.
- ♦ GST authorities have demanded tax and penalty of INR 12,46,678/- u/s 129 of CGST Act.
- ♦ The petitioner has challenged the impugned order of demand of tax and penalty in this Writ Petition.

Contentions of Petitioner

- ♦ Petitioner submits that there is no violation of Section 129 of the respective GST Acts as the transportation by the supplier from Gujarat not only accompanied tax invoice, but also E-way Bill showing sufferance of tax to the goods transported from Gujarat to the petitioner.
- ♦ Petitioner has also drawn the attention of this Court to Circular No. 10/2019 Q1/17253/2019, dated 31 May 2019, issued by the Commissioner of Commercial Taxes, Chennai.

- ◆ Petitioner has also amended GST Registration by including the address, which was mentioned in the tax invoice raised by the supplier and in the E-way Bill, in the GST registration.

Observations & Decision of High Court

- ◆ Both the petitioner and the respondent admitted that as on date the above address has been included in the petitioner's place of business in the GST Registration. Thus, there is a post facto inclusion of the address, which was mentioned in the tax invoice raised by the supplier and in the E-way Bill.
- ◆ In W.P. (MD) No. 5720 of 2022 [M/s. Smart Roofing Private Limited (2022-TIOL-444-HC-MAD-GST)], an order came to be passed under a somewhat similar circumstance on 30 March 2022. There also, post facto GST Registration was amended, and relief was therefore granted. The facts of the present case and the facts of the above said case are not different.
- ◆ Considering the above fact, Honourable High Court quashed the impugned order, as there was no attempt to evade tax.

NASA Comments

- ◆ This is an excellent decision which will be of great help to taxpayers where penalty is levied in an unlawful manner.

Case 2 – Aggarwal Dyeing and Printing Works [2022-TIOL-504-HC-AHM-GST]

Facts in brief & Issue Involved


- ◆ Petitioner is a sole proprietary concern engaged in the business of dyeing and printing fabrics.

- ♦ Petitioner was served with a show cause notice ['SCN'] calling upon to reply as to why the registration should not be cancelled for the reason that the petitioner had not filed his returns for a continuous period of six months.
- ♦ Petitioner was asked to furnish his reply and hearing was fixed on 27 September 2018. Petitioner, however, failed to submit his reply. GST authorities passed an ex-parte order on 30 September 2018 for cancellation of registration with effect from its date of registration.
- ♦ After a delay of almost more than two years, petitioner preferred an appeal on 17 July 2021, before the Appellate Authority by submitting FORM GST APL-01 u/s 107 of the Act, 2017 read with Rule 108(1) of the Rules framed there under.
- ♦ The Appellate Authority, however, vide order dated 12 October 2021, declined to exercise its discretion and thereby dismissed the appeal on the ground of delay of 2 years and 17 days.
- ♦ In such circumstances, the petitioner has filed writ applicant seeking reliefs as sought for.

Observations & Decision of High Court

- ♦ Honorable High Court observed that SCN seeking cancellation of registration is devoid of any specific details / particulars and even more glaring was the impugned orders of cancellation of registration.
- ♦ It is settled legal position of law that reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. The absence of reasons renders an order indefensible / unsustainable particularly when it is subject to appeal / revision.
- ♦ Honorable High Court referred to observations of Andhra Pradesh High Court in the case of **MRF Mazdoor Sangh vs. The Commissioner of Labour & Others, reported in 2014 (3) ALT 265, MANU/AP/1685/2013** where in the matter of cancellation of registration of trade union, it was held that:

- ♦ "The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues."
- ♦ Honorable High Court further noticed that the respondent authority have failed to extend sufficient opportunity of hearing before passing impugned order, in spite of specific request for adjournment sought for. Even the impugned order is not only non-speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Thus, on all counts the respondent authority has failed to adhere to the legal position. Therefore, the Court have no hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.
- ♦ When inquired with the learned Assistant Government Pleader ['AGP'] appearing for the respondents as to why such vague SCN's and vague final orders, bereft of any material particulars therein are being passed, the reply on behalf of the respondents was quite baffling.
- ♦ The learned AGP submitted that on account of technical glitches in the GST portal, the department is finding it very difficult to upload the SCN as well as the final order of cancellation of registration containing all the necessary details and information therein.
- ♦ According to the learned AGP, it is in such circumstances that the SCN and impugned orders without any details are being forwarded to the dealers. This hardly can be a valid explanation for the purpose of issuing such vague SCN and vague final orders cancelling the registration.
- ♦ Honorable High Court direct that till the technical glitches are not cured, the department will henceforth issue SCN in a physical form containing all the material particulars and information therein to enable the dealer to effectively respond to the same. Such SCN in physical form shall be dispatched to the dealer by the RPAD. In the same manner, the final order shall also be passed in physical form containing




all necessary reasons and the same shall be forwarded / communicated to the dealer by way of RPAD. Any lapse in this regard, henceforth shall be viewed very strictly.

NASA Comments

- ♦ Honorable High Court has expressed clear view that right of a taxpayer to get detailed SCN and an opportunity of being heard cannot be jeopardized due to improper / deficient functioning of GST portal.
- ♦ Any order passed without issuing detailed SCN and without granting proper opportunity of being heard is bad in law and needs to be quashed.

We will be glad to provide any elaboration or elucidation you may need in this regard.



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