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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		
Wabtec Locomotive Private Limited [TS-421-HC-2022(DEL)]	Whether assessee is eligible for interest on refund upto the date of granting of refund in case where refund was kept on hold u/s 241A?	Honorable Delhi High Court held that where CPC is unable to grant interest on refund u/s 244A, then AO should pass order manually and grant interest on refund upto the date of credit of refund.
Indirect Tax		
M/s ABI Technologies [2022-TIOL-746-HC-MAD-GST]	Can department deny refund of GST in respect of exports with payment of IGST where the details were correctly declared in GSTR-1 but while filing GSTR-3B, same was declared under the supply type "Outward taxable supplies (other than zero rated, nil rated and exempted)" instead of "Outward taxable supplies (zero rated)"?	Honorable Madras High Court disposed of the Writ petition stating that the procedures under Rule 96 of CGST Rules, 2017 cannot be applied strictly to deny legitimate export incentives and if there was an export and exporter is in possession of valid documents, the refund shall be granted.
M/s Adani Green Energy Limited [GUJ/GAAR/R/2022/30]	Whether GST is payable under RCM in respect of the services for arranging of subscription supplied by the managers (agents) located in the non-taxable territory to	AAR ruled that services provided by managers are covered under Intermediary services and therefore place of supply as per Section 13(8)(b) is outside India and hence not



	the Applicant located in India?	covered under import of services. Therefore, applicant is not required to discharge GST under RCM.
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The brief analysis of above referred decisions and rulings are given below.

Case 1 – Wabtec Locomotive Private Limited [TS-421-HC-2022(DEL)]

Facts in brief & Issue Involved

- ◆ Assessee had received the refund mentioned in intimation dated 31st March 2021 in the month of April 2022.
- ◆ It received interest on refund only upto the date of intimation i.e. 31st March 2021 and not upto the date of receipt of refund [i.e. almost for a period of 13 months (April 2021 to April 2022)].
- ◆ Being aggrieved by this, the assessee filed a writ before the Honorable Delhi High Court.

Contentions of Petitioner

- ◆ Assessee emphasised that as per the order of the Honorable High Court dated 16th March 2022, the assessee is entitled to interest on refund upto the date of credit of refund to the bank account of the assessee i.e. for a period of 13 months (April 2021 to April 2022).
- ◆ Hence, the assessee should be granted interest on refund from April 2021 to April 2022.

Observations & Decision of the High Court

- ◆ Honorable High Court observed that the Ld. Counsel of the revenue has received the instruction from the CPC as follows:

The functionality to grant interest on refund in cases where refund is kept on hold under section 241A of the Act, is under development at CPC. In such circumstances, CPC issues refund mentioned in intimation passed u/s 143(1) of the Act. Further as the functionality

to issue refund is under development, it is unable to grant interest on refund u/s 244A of the Act from the date of passing of intimation u/s 143(1) upto the date grant of refund. The Assessing Officer can grant said interest u/s. 244A of the Act by passing manual order and on uploading the said order on ITBA portal, refund due will be issued by CPC.

- ◆ In view of the said instruction, the Honorable High Court directed the Assessing Officer to pass order manually and grant interest on refund u/s 244A of the Act upto the date of credit of refund and directed CPC to issue refund within six months.

NASA Comments

- ◆ The present ruling clarifies that even where the refund is kept on hold u/s 241A of the Act and where CPC is unable to issue interest on refund u/s 244A of the Act upto the date of issue of refund, the Assessing officer should pass order manually and grant interest on refund u/s 244A upto the date of issue of refund.

INDIRECT TAX

Case 1 – M/s ABI Technologies [2022-TIOL-746-HC-MAD-GST]

Facts in brief & Issue Involved

- ◆ Petitioner had made an export of Goods with payment of IGST.
- ◆ For the period July 2017, September 2017 and October 2017, petitioner had reported the export details correctly in the GSTR-1. However, the same were inadvertently reported in table 3.1(a) of GSTR-3B as outward taxable supply instead of table 3.1(b) zero-rated supplies.
- ◆ Due to above referred mistake in filing GSTR-3B, GST Authorities expressed its inability to process and grant the refund.
- ◆ Petitioner has filed a writ petition requesting court to direct the respondent to sanction a sum of INR 24,72,018/- as refund on the exports made by the petitioner during relevant period.

Contentions of Petitioner

- ◆ Reliance is placed on Circular No.45/19/2018/GST dated 30th May 2018 which states that the registered persons who have committed errors in declaring export of services on payment of IGST to SEZ developer or unit in form GSTR 3B from 1st July 2017 to 31st March 2018 shall be allowed to file refund application in form GST RFD-01A.
- ◆ Though the aforesaid circular has been issued in the context of supplies made to the SEZ and the supplies by SEZ, the clarification made therein would apply even for direct exports by a Unit in the domestic tariff area, like the petitioner.

Contention of Respondents

- ◆ Refund would be granted only upon the reporting of correct information in the returns, namely GSTR-1 and GSTR-3B.
- ◆ It is the responsibility of the petitioner to file a valid GSTR-1 and GSTR-3B returns. Upon filing of the valid returns, the GSTN portal will transmit the details of export invoices to the system designated by the customs. Upon receipt of such details only, the designated system of the customs department or the proper officer of the customs would proceed to process the refund claims.
- ◆ Since the respondent is not able to process the petitioner's refund claim as the details itself have not been received from GSTN portal to the designated system of the customs, the question of granting refund to the petitioner does not arise.

Observations & Decision of High Court

- ◆ The export incentives have been given to encourage exports, so that there is inward remittance of foreign currency. The procedure prescribed under the Rule 96 is not intended to defeat such legitimate export incentives.
- ◆ Supreme Court in the case of Commissioner of Sales Tax, U.P. Vs. Auriya Chamber of Commerce, Allahabad held that procedures are nothing but handmaids of justice and not mistress of law.
- ◆ The procedures under Rule 96 of CGST Rules, 2017 cannot be applied strictly to deny legitimate export incentives and if there was an export and possession of valid document, the refund shall be granted.
- ◆ Accordingly, writ petition is disposed of in favour of petitioner.

NASA Comments

- ◆ This decision brings welcome relief for exporters whose refunds are stuck on account of minor procedural lapses.
- ◆ The Court took the position that getting refund is a substantive right of exporters and same cannot be derogated on account of some minor procedural infractions and inconsequential errors.

Case 2 – M/s Adani Green Energy Limited [GUJ/GAAR/R/2022/30]

Facts in brief & Issue Involved

- ◆ Applicant has issued Senior Secured Notes (Notes) worth USD 750 million (carrying interest coupon of 4.375%) for its substantial working capital requirement.
- ◆ Rule 144A of the US Securities Act, 1933 provides that resale of securities to Qualified Institutional Buyers (QIBs), which have been privately placed (managers) in the USA, would be permissible without such security being registered with the U.S. Securities Exchange Commission.
- ◆ To avoid registration of securities, the managers (private placement) technically purchase the Notes and simultaneously resells the same to the actual investors.
- ◆ Manager's role is to solicit and get the requisite subscribers to the issue. All the managers are incorporated outside India and do not have any establishment in India and undertake business from their establishment outside India.
- ◆ In case if managers are unable to arrange for the requisite number of subscribers at the agreed coupon rate, the issuer may choose not to launch the issue for subscription and in that case, managers would not be entitled to any fee whatsoever.

- ◆ Applicant has sought advance ruling on whether it is liable to discharge GST under the reverse charge in respect of the services of arranging for subscription by the managers located in the non-taxable territory.

Contention of the Applicant

- ◆ Managers are engaged to solicit subscribers for the Notes being issued by the applicant.
- ◆ The role of managers is to schedule meetings between the applicant and the investors, arrange roadshows for prospective investors, liaison between investors and the applicant, communicate with investors, collect proceeds of the subscription and transfer the same to the Note Trustee for payment.
- ◆ The services being rendered by managers fall squarely within the definition of “Intermediary” qua the services of arranging subscribers.
- ◆ Services provided by managers satisfy all the conditions laid down in Circular No. 159/15/2021–GST dated 20th September 2021 clarifying the scope of intermediary.
- ◆ The term import of services is defined in section 2(11) of the IGST Act as:
 - the supplier of service is located outside India;
 - the recipient of service is located in India; and
 - the place of supply of service is in India;
- ◆ Section 13 of IGST Act provides place of supply in cases where either the location of supplier or recipient outside India.
- ◆ The managers are incorporated or legally constituted outside India, while the location of the recipient of services i.e. applicant is within India. Therefore, place of supply will be determined as per Section 13 of IGST Act.

- ◆ As per section 13(8)(b) of the IGST Act, the place of supply of intermediary services shall be the location of the supplier. In this case, the supplier, i.e. the managers are located outside India, and therefore the place of supply of services is outside India.
- ◆ As place of supply is outside India, said service does not qualify as an import of services and hence no GST is payable under RCM.

Observations & Decision of AAR

- ◆ The main supply of Notes is between applicant and investors. Manager is supplying ancillary services of arranging the main supply between the principals i.e. applicant and investors.
- ◆ Manager has the characteristics of an agent and a broker, performing subsidiary role in arranging the said main supply. Manager is satisfying the definition of Intermediary as per IGST Act and place of supply of such services is outside India as per Section 13(8)(b) of IGST Act.
- ◆ AAR ruled that GST is not leviable on services provided by manager under RCM as place of supply is outside India.

NASA Comments

- ◆ Ruling by AAAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.

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

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