



N.A.SHAH ASSOCIATES LLP
Chartered Accountants

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		
Sinhagad Technical Education Society [TS-448-ITAT-2022 (PUN)]	Whether capitation fee collected by educational institution is ineligible for Section 11 exemption? Will the capitation fee alone be subject to tax or will Section 11 exemption be withdrawn from the institution in respect of total income?	Hon'ble Tribunal held that capitation fee is against law and public policy and not eligible for exemption u/s 11 of the Act. The total income of the society will be ineligible for exemption u/s 11 of the Act if the institution collects capitation fees.
Indirect Tax		
Jar Productions Private Ltd. vs UOI & Ors. [WP-1143-2021]	Whether refund claim can be denied on grounds of unjust enrichment in case where tax component received as refund will be deducted from the consideration of service?	Honorable High Court has allowed a refund claim quashing the orders of GST authorities by holding that GST is not applicable to services rendered outside India and authorities could not establish that incident of tax has been passed on to recipient.

Rajnandini Metal Ltd. vs UOI & Ors. [2022-TIOL-810-HC-P&H-GST]	Whether Input tax credit can be blocked under Rule 86A of CGST Rules based on an intelligence report of another supplier's investigation?	Honorable High court has allowed the writ petition on the basis that there is no reason recorded by the Authority for exercising power under Rule 86A of CGST Rules which would show independent application of mind that can constitute reasons to believe.
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The brief analysis of above referred decisions and rulings are given below.

Case 1 – Sinhagad Technical Education Society [TS-448-ITAT-2022(PUN)]**Facts in brief & Issue Involved**

- ◆ Taxpayer is a Trust established under the Bombay Public Trust Act, 1950 with the objects of imparting education. The taxpayer is also registered u/s 12A of The Income Tax Act, 1961 ("the Act")
- ◆ In accordance with Section 132A of the Act, a search and seizure operation was conducted in 2013 in the premises of the taxpayer.
- ◆ Loose papers having noting were collected from the premise during this search. Additionally, as per Section 132(4) of the Act, statements were also given by three persons of the society, explaining the meaning behind the noting made on loose papers and admitting the same was capitation fees. The statements made in the year 2013 were retracted after seven-month gap vide affidavits in the year 2014.
- ◆ AO based on the statements given and loose papers collected held that the taxpayer had been indulging in the collection of capitation fees for admission of students under management quota. Subsequently, the AO denied exemption u/s 11 of the Act on the entire income of the society and taxed the total income at maximum marginal rate.
- ◆ Taxpayer had filed an appeal with CIT(A). The CIT(A) upheld the AO's decision of withdrawing exemption under section 11.
- ◆ Being aggrieved, the taxpayer filed an appeal before Tribunal.

Contentions of Taxpayer

- ♦ It was contended that loose sheets are merely dumb documents and not substantial evidence for reaching a conclusion that the society is in receipt of capitation fees.
- ♦ The statements made by three persons u/s 132(4) of the Act were later retracted and hence all of them are shifty witnesses. The statements do not hold evidentiary value since they were subsequently retracted. The retraction should be given credence and accordingly the admission cannot be treated as conclusive evidence.
- ♦ It was contended that addition of capitation fees cannot be sustained since no statement was taken from students and their parents u/s 131 of the Act.

Observations & Decision of the ITAT

- ♦ Tribunal dismissed taxpayer's plea that the loose sheets are mere dumb documents by placing reliance on ruling of Hon'ble Madras High Court in the case of M Vivek wherein it was held that the retracted loose sheet picked up during search falls within the definition of "documents".
- ♦ Admission is an important piece of evidence but it is not conclusive, it is decisive. The statement voluntarily made can form basis of assessment.
- ♦ No credence can be given to testimony of students and parents since students and their parents are complementary and supplementary to the appellant society and any adverse testimony against the appellant society would also result in adverse consequences to them under Income Tax.
- ♦ It is clear from statements recorded during search that appellant had indulged in collection of capitation fees from students for admission in management quota in violation of the state law which prohibits collection of capitation fees for various courses. Further, capitation fees were collected outside the books and siphoned off by President of the Society. AO had corroborative evidence and statements which

were retracted only after a gap of seven months and no evidence was provided to prove that statements were recorded under duress.

- ♦ It is clear that appellant was formed for the purposes of personal gain and not for charitable purpose. AO and CIT(A) were justified in denying exemption u/s 11 of the Act to the whole of income of the society

NASA Comments

- ♦ The charging of capitation fee by educational institutions represents the hard realities of the commercialisation of education. The practice of collection of capitation fees is contrary to the law and against the public policy. Accordingly, an educational institution will not be eligible for Income Tax exemption on the collection of capitation fees.

INDIRECT TAX

Case 1 – Jar Productions Private Limited vs UOI & Ors. [WP-1143-2021]

Facts in brief & Issue Involved

- ♦ Petitioner has entered into an agreement with UK based company ('ASCL') for providing production services. Agreement provides that if any refund of tax component is received by petitioner, it shall be deducted from production expenses.
- ♦ Petitioner filed refund claims under the category of export of services. The refund claims were rejected on the ground that incidence of tax has been passed on to ASCL, resulting in unjust enrichment of the petitioner.
- ♦ Being aggrieved by order, petitioner filed appeal before Appellate Authority. Appeal was dismissed on ground of unjust enrichment. Authority placed reliance on judgement of Supreme Court in case of **Mafatlal Industries vs Union of India (1997) 5 SCC 536**. Petitioner has filed writ petition against such rejection order.

Contentions of the Petitioner

- ◆ Petitioner submitted that principle of unjust enrichment does not apply to export services. Being a zero-rated supply, principle of unjust enrichment does not apply to export of services done by the petitioner.
- ◆ Agreement clearly stipulates that if a refund is received, it shall be deducted from expenses of production.

Contentions of the Respondent

- ◆ Respondent submitted that petitioner has admitted that when refund is obtained, GST collected from ASCL would be paid back to ASCL.
- ◆ It shows that incidence of tax has been passed on to ASCL. The Authorities have rightly rejected the claim of refund as there was unjust enrichment.

Observations & Decision of High Court

- ◆ Honorable High Court observed that ASCL is located outside India and petitioner is located in India. Production services are rendered by petitioner in UK. Thus, services rendered by petitioner fall within expression of 'export of services' as defined u/s 2(6) of IGST Act.
- ◆ Sec 54(3) of CGST Act states that refund of unutilized ITC can be claimed for zero rated supplies made without payment of tax. Zero rated supply includes export of services as defined u/s 16 of IGST Act. Thus, refund of unutilized ITC shall be allowed in case of zero-rated supply.
- ◆ Agreement executed between petitioner and ASCL shows that production budget includes all costs in connection with production services including amount of GST. If GST is refunded, it shall be deducted from total cost of production services. This clearly shows that incident of tax has not been passed on to ASCL.

- ♦ Court placed reliance on following judgements-
 - Motilal Oswal Securities Ltd vs Commissioner of Service Tax 2016 (12) TMI 1527
 - Commissioner of Service Tax, Mumbai II vs SGS India P Ltd. 2014(34) STR 554 (BOM)
 - KSH International P Ltd. Vs Commissioner & B.A Research India Ltd.
- ♦ Court held that petitioner has rendered services to ASCL i.e., in UK. Therefore, GST does not apply to export of services. Also, respondent could not establish that incidence of tax has been passed on to ASCL. Thus, both authorities committed error in rejecting refund of GST of petitioner.

Case 2 – Rajnandini Metal Limited vs UOI & Ors. [2022-TIOL-810-HC-P&H-GST]

Facts in brief & Issue Involved

- ♦ Input Tax Credit amounting to INR 1.9 Crore lying in petitioner's electronic credit ledger was blocked by GST Authorities on 2nd September 2021 based on communication received from Delhi North Commissionerate, as per which one of the suppliers of the petitioner is found to be non-existing.
- ♦ Petitioner filed representations objecting to such action of the respondent which remained undecided. Petitioner filed writ petition which was decided on 6th December 2021 directing the respondent to decide the said representation in accordance with law by passing a speaking order thereon within a period of 7 days.
- ♦ Vide order dated 17th December 2021 respondent rejected the representation of the petitioner seeking unblocking of its Input Tax Credit. Therefore, the present petition has been filed by petitioner.

Contentions of the Petitioner

- ♦ Petitioner submitted that show cause notice (SCN) for cancellation of registration was issued to its supplier. The SCN was dropped vide order dated 23rd February 2021 and the suspension of registration of said supplier was revoked by the said order.
- ♦ The intent and purport of Rule 86A is to secure interest of revenue and it is sort of preventive measure. Petitioner is a running manufacturing unit having turnover running into multiple crores, thus there is no possibility of fly by night. Therefore, the interest of revenue was secured.
- ♦ Misappropriation or fraud, if has been committed by suppliers of the petitioner for which petitioner cannot be deprived from his valuable right of ITC. The denial of ITC is violative of Article 19(1)(g) and Article 21 of the Constitution of India

Contentions of the Respondent

- ♦ Though the proceedings against the petitioner's supplier initiated vide SCN were dropped vide order dated 23rd February 2021, however, on 1st July 2021, the proceedings against the said supplier were again initiated and the GSTIN was thereafter cancelled on 27th July 2021.
- ♦ The reason for initiating proceedings against the petitioner was due to an Intelligence Report received from CIU, CGST-Vadodara Zone which forms the basis of instant investigation against the petitioner as well as blocking of its ITC under Rule 86A of CGST Rules, 2017.
- ♦ As per this intelligence report the petitioner had received ITC from seven different suppliers (based in Delhi & Jaipur), who are part of a chain/racket involved in generation and passing on of fake ITC, without any inward supply at root level.


Observations & Decision of Honorable High Court

- ♦ Honorable High court held that from the bare reading of the provision, it is evident that the power under Rule 86A of the CGST Rules is exercised where the prescribed officer has reason to believe that credit of input tax available in the Electronic Credit Ledger has been fraudulently availed or the assessee is ineligible.
- ♦ Honorable High Court relied on decision given by Gujarat High Court in case of **M/s New Nalbandh Traders [2022-TIOL-360-HC-AHM-GST]** wherein it was held that: *"12. Rule 86A undoubtedly could be said to have conferred drastic powers upon the proper officers if they have reason to believe that the activities or invoices are suspicious. The Rule 86A is based on "reason to believe". "Reason to believe" must have a rational connection with or relevant bearing on the formation of the belief. It is a subjective term and can be interpreted differently by different individuals."*
- ♦ In the given case, the reason to invoke the power conferred under Rule 86A of CGST Rules against the petitioner is an intelligence report received from Principal Chief Commissioner, Central Excise and Central Tax, Vadodara Zone regarding a racket of firms indulging in fake judicial and passing of illicit ITC. Merely by recording that some investigation is going-on a drastic far-reaching action under Rule 86A of the CGST Rules cannot be sustained.

NASA Comments

- ♦ This decision will be of great help where assessee's electronic credit ledger is blocked on the basis of suspicion, conjecture or information as to commencement of investigation against vendor of the assessee.

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



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B 21-25 & B41-45, Paragon Centre,
Pandurang Budhakar Marg, Mumbai – 400013
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090
E-mail Id: info@nashah.com

