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# **TAX JURISPRUDENCE**

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CASE LAW ALERT – OCTOBER 2022  
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## EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER 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
Indirect Tax		
<a href="#">Sheetal Dilip Jain Vs. State of Maharashtra [2022-TIOL-1276-HC-MUM-GST]</a>	Can proper officer arbitrarily reduce the time period given under the statute to file a reply to Show Cause Notice ('SCN')?	High Court set aside such SCN treating it as invalid.
<a href="#">Vishnu Chemicals Ltd. [TS-56-AAAR(AP)-2022-GST]</a>	Whether appellant is eligible to claim ITC in respect of invoice dated 1 <sup>st</sup> April 2020 before filing GST Return for September 2021 in terms of section 16(4) of CGST Act which is issued for services received during the period FY 18-19?	Appellant is not eligible to claim ITC on invoice dated 1 <sup>st</sup> April 2020 covering supply of services provided during FY 18-19.

The brief analysis of above referred decisions and rulings are given below.

## INDIRECT TAX

### Case 1 – Sheetal Dilip Jain Vs. State of Maharashtra [2022-TIOL-1276-HC-MUM-GST]

#### Facts in brief & Issue Involved

- ♦ The primary grievance of the petitioner is that the SCN issued by proper officer instructed him to either pay tax or file a reply within 7 days from the date of issue of such SCN.
- ♦ In absence of any action from the petitioner, respondent passed an order on the 8<sup>th</sup> day.
- ♦ Petitioner preferred the present writ petition requesting High Court to set aside the Order in Original passed by proper officer without giving adequate time to petitioner to file a reply against the SCN issued.

#### Observations & Decision of Honorable High Court

- ♦ Section 73(8) of CGST Act allows an assessee to make payment of tax along with interest payable u/s 50 of CGST Act within 30 days from the date of issue of SCN.
- ♦ In case where the assessee does not wish to make payment, then he can file a reply within 30 days from the date of issue of such SCN.
- ♦ Statutory period of 30 days cannot be arbitrarily reduced to 7 days by proper officer.
- ♦ Impugned order is erroneous because only 7 days were granted to the petitioner to file reply to SCN and it was passed on 8<sup>th</sup> day without granting any further opportunity to petitioner to file a reply. Therefore, the question of not paying within 30 days of the issue of the notice will not arise.
- ♦ Such orders, being passed without application of mind, are contrary to the basic provisions of the Act and the Rules framed thereunder. These acts/omissions of

respondent's officers is adding to the already overburdened dockets of the Court. Valuable judicial time is wasted because such unacceptable orders are being passed by respondent's officers. The officers do not seem to understand or appreciate the hardship that is caused to the general public. The officers should be educated in respect of prevailing laws and rules to ensure that otherwise meritorious cases are not defeated on the ground of technicalities.

- ♦ In this case, petitioner could afford to spend on a lawyer and approach this Court but for at least another ten would not be able to afford a lawyer and approach the court. Their registrations might get cancelled by the very same officers who have passed such patently illegal orders.
- ♦ Respondent was directed to pay a sum of INR 10,000 to PM Care Fund as a penalty and the order passed by him was set aside.

### **NASA Comments**

- ♦ It is common experience that state GST officers do not grant adequate time for filing reply to SCN and pass the adjudication order mechanically in hasty manner without giving opportunity of being heard. The principle of natural justice is ignored more often than not. High Court has rightly set aside such adjudication order and also levied penalty of INR 10,000 on erring officer.

### **Case 2 – Vishnu Chemicals Ltd. [TS-56-AAAR(AP)-2022-GST]**

#### **Facts in brief & Issue Involved**

- ♦ Appellant is engaged in manufacture of basic chromium sulphate, sodium sulphate and chromic acid. For storing the raw material as well as finished goods, appellant entered into lease agreements with third party vendors.
- ♦ Appellant received monthly rental bills regularly till March 2018. But for the period April 2018 to March 2019, vendor issued a single tax invoice dated 1<sup>st</sup> April 2020 mentioning the description as rental charges for period April 2018 to March 2019.

- ♦ Appellant approached Authority for Advance Ruling ('AAR') seeking ruling as to whether appellant is eligible to claim ITC in respect of invoice dated 1<sup>st</sup> April 2020 before filing GST Return for September 2021 or Annual return for FY 20-21 in terms of section 16(4) of CGST Act.
- ♦ AAR ruled that the invoice referred to is hit by limitation period for claiming ITC and amounts to violation of condition stipulated u/s 16(4) of CGST Act on following grounds:
  - As per Rule 47 of CGST Rules, tax invoice needs to be issued within a period of 30 days from the date of services. Since, invoice has not been issued within the prescribed time limit, appellant is not eligible for credit; and
  - Invoice does not pertain to the FY 2020-21 but pertains to FY 2018-19 and hence not eligible for credit.
- ♦ Aggrieved by above ruling, appellant preferred an appeal to Appellate Authority.

### **Contentions of Appellant**

- ♦ Supply of service was in FY 2018-19, invoice was raised in FY 2020-21 and hence, the last date for claiming credit is due date for filing 3B for the month of September'21.
- ♦ Delay in issuance of invoice cannot be a ground to deny ITC to buyer.
- ♦ There is no condition u/s 16(4) of CGST Act that only invoices issued within due date as per section 31(2) of CGST Act read with Rule 47 of CGST Rules are eligible for credit.

### **Discussions by and Observation of AAAR**


- ♦ Every invoice contains two principal aspects; (1) period to which supply pertains and (2) period to which the invoice pertains. In general conditions, both of them should

be same. In current situation both are different i.e. period to which supply pertains is FY 18-19 and period to which invoice pertains is FY 2020-21.

- ♦ Section 16(4) of CGST Act reads as under:  
*"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual, whichever is earlier."*
- ♦ In the instant case, as the invoice pertains to FY 2018-19, vide section 16(4) of CGST Act, the recipient is entitled to take ITC of the same on or before furnishing of return u/s 39 of CGST Act for the month of September'19.
- ♦ Availment of ITC is subject to satisfying certain conditions prescribed in the statute. Honorable Supreme Court, in case of Jayam and Company [(2016)15SCC 125] observed that:
  - ITC is a form of concession provided by the legislature; and
  - Concession of ITC is available on certain conditions mentioned in this section.
- ♦ Appellant is not eligible to claim ITC on the disputed invoice dated 1<sup>st</sup> April 2020 that was issued covering the supply of services pertaining to period FY 18-19.


### **NASA Comments**

- ♦ Ruling by AAR is binding only on applicant and its jurisdictional officer. It does not have general binding precedence value.
- ♦ On literal interpretation of Section 16(4) of CGST Act, it appears that time limit is to be seen from the date of issuance of invoice and not from date of supply and thus, recipient should be allowed to claim ITC as it is claimed within prescribed time limit u/s 16(4) of CGST Act. As per section 16(2)(a) of CGST Act, recipient cannot claim ITC



without receipt of invoice. If there is a delay in issuance of invoice by the vendor, the recipient should not be deprived of his right to claim ITC on account of lapse on the part of vendor.

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



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