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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		
<u>G4S Secure Solutions (India) Pvt. Ltd.</u> <u>[TS-1020-HC-2022(DEL)]</u>	Whether an Order passed u/s. 148A(d) of the Act and Notice issued u/s. 148 by the AO merely based on the information supplied by CGST authorities without conducting an independent enquiry is sustainable in law?	Hon'ble High Court quashed the Order passed by the AO u/s. 148A(d) of the Act as well as consequential Notice issued u/s. 148 holding that the action on the part of the AO of merely relying on the information supplied by CGST authorities without conducting an independent enquiry to form a belief is not sustainable in law.
Indirect Tax		
<u>Builders Association of Navi Mumbai vs Union of India & Ors.</u> <u>[SLP (C) No. 23068/2018]</u>	Whether GST is leviable on one-time lease premium charged by CIDCO for granting of lease of land?	Hon'ble Supreme Court dismissed the SLP stating that no good reason exists to take a different view than the one expressed by Bombay HC that GST is leviable on one-time lease premium charged by CIDCO for granting lease of land. However, Supreme Court did not examine the exemption and classification aspects.
<u>M/s. Skylark Infra Engineering Pvt. Ltd.</u> <u>[Writ Petition No. 60/2023]</u>	Whether the petitioner can be compelled to pay CGST and SGST on transactions where IGST has already been paid?	Hon'ble Rajasthan High Court held that the petitioner cannot be compelled to pay GST twice on the same services.

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

DIRECT TAX

Case 1 - G4S Secure Solutions (India) Pvt. Ltd. – Delhi High Court - [TS-1020-HC-2022(DEL)]

Facts in brief & Issue Involved:

- ♦ The notice was issued u/s 148A(b) of the Act in case of appellant, based on the information received by AO from CGST authorities, regarding entities involved in issuing bogus invoices for passing of fraudulent input tax credit without actual supply of goods and the appellant was found as one of the beneficiaries in respect of such transactions amounting to INR 37,33,626/- with M/s. Flash Forge Pvt. Ltd. (FFPL), being one of the such entities.
- ♦ In response to the same, the appellant furnished its reply specifically submitting that it had not entered into any transactions with said entity rather, it had rendered services to its customers for the like amount and the income earned therefrom is offered to income tax.
- ♦ The AO passed an Order dated 26 March 2022 u/s. 148A(d) of the Act disregarding above submission and consequently, notice u/s. 148 was issued for initiation of re-assessment proceedings.

Contentions of Taxpayer:

- ♦ The appellant submitted that it had not entered into any transactions with FFPL during the assessment year under reference, rather, it had rendered services to its customers.
- ♦ The "Case related information details" which formed the ultimate basis for issuance of Notice u/s. 148A(b) of the Act contained names of certain public limited companies other than the appellant which appeared to have obtained accommodation entries from FFPL. However, there was no material to suggest that accommodation entries were provided by FFPL to these companies.

Contentions of Revenue:

- ♦ The invoices raised by the appellant towards rendering of services was make-believe and therefore, the impugned Order u/s. 148A(d) of the Act requires no interference.

Observations & Decision of the Hon'ble High Court:

- ♦ The Hon'ble High Court observed that the "Case related information details" which formed the ultimate basis for issuance of Notice u/s. 148A(b) of the Act contained names of certain public limited companies other than the appellant which appeared to have obtained accommodation entries from FFPL. However, there was no material to suggest that accommodation entries were provided by FFPL to these companies.
- ♦ It was also observed that the Notice u/s. 148A(b) of the Act was issued without conducting an independent enquiry as required u/s. 148A(a) of the Act and the same was issued merely relying on the information supplied by CGST authorities.
- ♦ In view of the same, the impugned Order passed u/s. 148A(d) of the Act as well as consequential Notice issued u/s. 148 has been quashed. However, the revenue is given the liberty to take next steps in accordance with law.

NASA Comments:

- ♦ This decision is useful to challenge the validity of initiation of re-assessment proceedings in cases where re-assessment proceedings are initiated without conducting an independent enquiry by the AO.

INDIRECT TAX

Case 1 – Builders Association of Navi Mumbai vs Union of India & Ors. – Supreme Court - [SLP (C) No. 23068/2018]

Facts in brief & Issue Involved

- ♦ Bombay High Court while hearing the petition filed by Builders Association of Navi Mumbai in Mar'18 held that CIDCO had correctly collected GST on the one-time lease premium in respect of land at the rate of 18%.
- ♦ Bombay HC held that demand for payment of GST is in accordance with law and the same cannot be vitiated by any error of law apparent on the face of the record.
- ♦ The Builders Association of Navi Mumbai preferred an SLP against this adverse order of Bombay HC.

Decision of Supreme court

- ♦ Hon'ble Supreme Court has concurred with the Bombay High Court's view on leviability of GST on one-time lease premium charged by CIDCO for allotment of plots of land. However, the Apex Court clarified that they have not examined the issue with respect to exemption of the transaction as provided under Notification no. 12/2017-CT(R) as well as scope and ambit of clause 2(a) of Schedule II to the lease transaction.

NASA Comments

- ♦ There is difference of view in Professional circle as to the binding precedence value of this order of Hon'ble Supreme Court. This might create issue for taxation of big-ticket transactions in respect of Development rights and assignment of leasehold rights etc.

Case 2 – M/s. Skylark Infra Engineering Pvt. Ltd. v. Union of India & Ors. – Rajasthan High Court - [D.B. Civil Writ Petition No. 60/2023]

Facts in brief & Issue Involved

- ♦ M/S Skylark Infra Engineering Private Limited is a company having its registered office in Delhi. The primary business of the Petitioner is to supply manpower to various entities.
- ♦ In the Assessment years 2017-18, 2018-19, and 2019-2020, the Petitioner has supplied manpower services in Rajasthan and deposited 18% IGST, treating the aforesaid supply of manpower as inter-state supply of services.
- ♦ Petitioner was served with a Show Cause Notice demanding CGST and RGST on the aforesaid transaction.
- ♦ Assessing Authority after considering the reply of the Petitioner issued an order confirming the demand of CGST and RGST, interest, and penalty, treating the service of supply of manpower by the Petitioner to be intrastate supply of services. The aforesaid order was affirmed by the Joint Commissioner (Appellate Authority).
- ♦ As the GST Tribunal has not been constituted so far, the Petitioner preferred the writ petition before the Rajasthan High Court challenging the assessment orders and validity of various provisions under the Integrated Goods and Services Tax, 2017 (IGST Act), CGST Act, and RGST Act and the Rules therein.

Contentions of Petitioner

- ♦ The service of supply of manpower to an entity in Rajasthan is an inter-state transaction as the said supply has been undertaken from a place of business outside Rajasthan to a place inside the State of Rajasthan.
- ♦ Petitioner has deposited 18% IGST, and hence, the demand of 18% CGST and RGST is unjustified and will eventually amount to double taxation.


- ♦ The Petitioner pleaded that the Petitioner was compelled to get itself registered in the State of Rajasthan and the registration was in effect from 25 February 2020, which will ultimately not affect the transaction of services rendered in the years 2017-18, 2018-19, and 2019-2020.

Observations & Decisions of High court

- ♦ The Hon'ble Rajasthan High Court opined that the Petitioner admittedly had deposited 18% of IGST.

GST Authority has also recovered 35% of disputed CGST+RGST dues by attaching the Bank accounts of the Petitioner.

- ♦ Though the inter-state and intra-state transaction depends upon a case-to-case basis, it is a legal issue requiring deeper consideration.
- ♦ In view of the validity of the provisions that have been challenged under this petition, the Court considered the petition and directed the State of Rajasthan and the Union of India to submit their responses to the writ petition within a month, so that the matter can be heard finally.
- ♦ In view of interim protection, the Hon'ble Court held that the Petitioner cannot be compelled to pay tax twice and Petitioner may apply for a refund of IGST within two weeks, in a prescribed manner.
- ♦ Petitioner is directed to deposit the balance 65% of CGST+RGST within three months from the date of this Order.



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