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# **TAX JURISPRUDENCE**

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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
<a href="#">M/s Alex Tour and Travel Pvt Ltd Vs Assistant Commissioner, CGST, Division – Janakpuri 2023-VIL-284-DEL.</a>	GST Refund application in respect of unutilized ITC accumulated on account of export of services without payment of tax was rejected on the grounds that the decision of Appellant Authority is erroneous, and the Assistant commissioner proposes to file appeal against the said decision when the appellant tribunal is constituted.	Hon'ble Delhi High court held that fresh application filed post issuance of Order in Appeal (O-I-A) and the deficiency memo issued thereafter shall be treated as non est in the view that the proceeding has been already concluded in O-I-A. It cannot be accepted that the Assistant commissioner can ignore the order passed by the Appellate Authority mainly on the ground that it proposes to file an appeal in the Appellate Tribunal.
<a href="#">Ashish Garg Proprietor Shri Radhey Traders v/s Assistant Commissioner of State Goods and Service Tax Delhi</a>	Cancellation of GST registration with retrospective effect from 02.07.2017 resulting in a cascading effect inasmuch as the concerned authorities would also deny Input Tax Credit to other Taxpayers who have received the supply from the petitioner.	Hon'ble Delhi High court held that there was no material on record to justify such retrospective cancellation of GST registration by the Adjudicating authority. Further, the reason for proposing cancellation of petitioner's GST registration is non filing of returns, in absence of any other reason, cannot extend to include the period for which returns were filed by the petitioner.

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

**Case 1 – M/S Alex Tour and Travel Private Limited v/s Assistant Commissioner, CGST, Division – Janakpuri 2023-VIL-284-DEL.**

**Facts in brief & Issue Involved**

- ♦ Petitioner had filed various refund applications/claims under Section 54 of CGST Act ('Central Goods and Services Tax') seeking refund of unutilized input tax credit ('ITC') under the category of export of services without payment of tax.
- ♦ The department rejected the above referred refund claims on the ground that the Petitioner instead of furnishing the transaction wise FIRC co-relating to each export invoice, had furnished the consolidated FIRCs and also the department treated the said services as intermediary services.
- ♦ Against the said order, the Petitioner preferred an appeal before the forum of Appellate Authority ('AA'). The Appellate Authority allowed the said appeal and allowed the refund.
- ♦ The petitioner **again** filed refund applications for grant of refund along with interest. However, the department did not process the petitioner's claims for refund and issued deficiency memos and show cause notices to which Petitioner didn't respond.
- ♦ Being aggrieved by the impugned order, the Petitioner had filed the present Writ petition before the Hon'ble Delhi High Court.

**Contention of the Appellant**

- ♦ The O-I-As passed by the Appellate Authority allowing the refund claims of the Petitioner shall be implemented and the Respondent shall be directed to grant the refund of tax along with the interest.

**Contention of the Respondent**

- ♦ The decision of the Appellate Authority is erroneous and the Respondent proposes to file an appeal against the said decision as and when an appellate tribunal is constituted.
- ♦ It is not necessary to file the fresh refund applications for refund, considering that the present proceedings emanated from the petitioner filing applications for refund which was concluded in O-I-As passed by the Appellate Authority.

### **Observations & Decision of High Court**

- ♦ The Hon'ble Delhi High court held that even if the respondent is within its right to appeal, the order passed by the Appellate Authority cannot be ignored on the ground that it proposes to file an appeal before Appellate Tribunal. In the absence of any order passed by the Court, staying the effect of the O-I-As passed by the appellate authority the Petitioner would be entitled for refund of tax along with interest in accordance with the law.

### **NASA Comments**

- ♦ This decision will pave a way forward for jurisprudence in cases where the Revenue department fails to take any action (in terms of stay or remedy available in terms of filing of an appeal, special leave petition etc.) against the orders issued by the Appellate Authority, Appellate Tribunal or High Courts which are not in favor of the revenue Department.
- ♦ At times Revenue department issues show cause notices in the matters which have been settled by the Appellate Tribunal or High Courts by merely stating that the Revenue department is proposing to file an appeal before High Courts or Supreme Court respectively, in such times, the above judgement can come to the rescue of the taxpayer.

## **Case 2 – Ashish Garg Proprietor Shri Radhey Traders v/s Assistant Commissioner of State Goods and Service Tax Delhi**

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

- ♦ Petitioner had filed for cancellation of his GST registration in June 2019 which was rejected by the concerned authority.
- ♦ Moreover, a show cause notice was issued on 30.06.2021 as to why his registration should not be cancelled since he had not filed returns for a continuous period of 6 months and thus, cancelled the petitioner's GST registration by an order with retrospective effect from 02.07.2017.
- ♦ Being aggrieved by the impugned order, the Petitioner had filed for revocation of the cancellation of his registration.

### **Contention of the Petitioner**

- ♦ The petitioner had applied for cancellation of GST registration as he discontinued his business due to various medical issues.
- ♦ The petitioner had regularly filed his returns and thus the grounds do not justify retrospective cancellation in any manner.
- ♦ The effect of cancellation of GST registration from a retrospective date had a cascading effect inasmuch as the concerned authorities would also deny the Input Tax Credit to other taxpayers, who had received the supplies.

### **Contention of the Respondent**


- ♦ The additional information sought from the petitioner was not readily available and no reply to the said notice was made within the time provided.
- ♦ The petitioner had also not filed the returns for a continuous period of six months and thus, in terms of Section 29 of the Central Goods and Services Tax Act, 2017, the concerned authority has a discretion to cancel the registration from a retrospective date.

### **Observations & Decision of High Court**

- ♦ The Hon'ble Delhi High court observed that the petitioner had regularly filed his returns before filing for cancellation of his registration. Although the concerned authority has the discretion to cancel the registration from a retrospective date, however, the said power cannot be exercised arbitrarily.
- ♦ The fact that the petitioner had not filed the returns for a continuous period of six months (the ground on which cancellation was proposed in terms of the Show Cause Notice) does not, in any manner, justify retrospective cancellation from the date that the registration was granted.
- ♦ It is apparent that the orders passed by the Adjudicating Authority have been passed belatedly and in a mechanical manner.
- ♦ Based on the above observation, it is held that the petitioner's application for cancellation of his registration would be w.ef. 30.06.2019.

### **NASA Comments**

- ♦ This is a welcome move for the GST taxpayers as it would lead to a cascading effect on other taxpayers, who had received supplies from the petitioner as they will be able to claim Input Tax Credit.



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