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TAX JURISPRUDENCE

CASE LAW ALERT – JULY 2023
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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
Indirect Tax		
Agrawal & Brothers vs. Union of India [W.P. No. 14297 of 2020]	Whether taxpayer should pay taxes along with interest due to supplier's error in GST reporting?	Hon'ble Madhya Pradesh High Court held based on the settled law that taxpayers should not suffer due to a supplier's error in GST reporting.
Mohini Traders [W.P. No. 551 of 2023]	Whether the Revenue can issue an order without offering an opportunity of being heard?	Hon'ble Allahabad High Court had set aside the order and held that the assessee is not required to request an opportunity for personal hearing as it is compulsory.

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

Case 1 – Agrawal & Brothers vs Union of India – Madhya Pradesh High Court - [W.P. No. 14297 of 2020]

Facts in brief & Issue Involved

- ♦ Petitioner claimed an input tax credit ['ITC'] against the purchase made from the supplier. However, the supplier filed GSTR 1, reflecting the supplies under the wrong GSTIN but has correctly deposited the tax.
- ♦ The Department issued a demand notice compelling the petitioner to repay the ITC claimed along with interest as the same was not reflected in GSTR-2A. In order to save the GST registration, the Petitioner deposited the amount of ITC along with interest under protest.
- ♦ Further, the Petitioner filed a writ before the High Court seeking a refund of the amount paid under protest.

Contentions of the Petitioner

- ♦ The petitioner stated that the supplier has certified that the sale was made and full payment in respect of the sale including GST was paid by the petitioner.
- ♦ Petitioner further submits that the supplier has deposited the GST amount. It was also admitted by the supplier that the amount of GST was deposited and inadvertently reflected in the wrong GSTIN instead of the petitioner's GSTIN.

Contentions of the Revenue

- ♦ The department submitted that since the deposit of the GST amount was not reflected in GSTR 2A of the petitioner, a show-cause notice was served as the petitioner wrongfully availed the ITC amount.

Observations & Decision of High Court

- ♦ The Honorable High Court held that the taxpayer paid the tax, but his supplier inadvertently reflected the amount of GST in the wrong GSTIN. The Court further noted that it is a settled law that no one can be made to suffer for the fault of another. Hence, the taxpayer should not suffer due to a supplier's error in GST reporting.
- ♦ Hon'ble Madhya Pradesh High Court allowed the writ petition and held that, the Petitioner may seek refund from the Supplier. Further, the supplier can seek a refund from the revenue department, as it has received the amount of tax twice.

NASA Comments

- ♦ This decision of Hon'ble High Court is a welcoming decision that emphasizes the well-settled law that no one can suffer for the fault of another. It brings relief to the taxpayers at large who have correctly availed ITC.

Case 2 – Mohini Traders - Delhi High Court - [W.P. No. 551 of 2023]

Facts in brief & Issue Involved

- ♦ The notice was issued to the assessee seeking a reply within 30 days. The adverse order demanding liability was passed without giving a suitable opportunity of being heard.
- ♦ The Assessing Authority had not given any opportunity of hearing to the assessee by mentioning "NA" against column description "Date of personal hearing" and other such columns.
- ♦ Thus, the Petitioner contended that it was completely denied the opportunity of an oral hearing before the revenue department, and the impugned order was passed.



Contentions of the Petitioner

- ♦ The Petitioner relied upon a case of Bharat **Mint & Allied Chemicals v. Commissioner Commercial Tax & 2 Ors. [2022] 48 VLJ 325**, and on Section 75(4) of the Central Goods and Services Tax Act (“the CGST Act”) and contended that the revenue department was bound to provide an opportunity of personal hearing to the Petitioner before he may have passed an adverse assessment order.

Contention of the respondent


- ♦ The revenue department contended that the Petitioner was denied the opportunity of hearing because he had tick marked the option ‘No’ against the option for a personal hearing in the online reply to the SCN and thus the Petitioner cannot turn around to claim any error in the Impugned order passed consequently.

Observations & Decision of High Court

- ♦ The Hon’ble High Court observed that the opportunity of being heard is a must and not only such opportunity would ensure observance of rules of natural justice, but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the appeal stage.
- ♦ It directed the department to issue a fresh notice to the petitioner within a period of two weeks and give the opportunity of being heard before passing the order.

NASA Comments

This decision of the Hon’ble High Court would establish that the opportunity of being heard is a mandatory element for passing an order.



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