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TAX JURISPRUDENCE

CASE LAW ALERT – OCT 2023
VOL -1

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		
Orion Security Solutions Pvt. Ltd. [W.P.(C) 11789/2023] (Delhi HC)	Whether prescribed percentage of recovery (20%) is to be applied on the total demand as computed in the assessment order or the scaled down demand as appearing in notice of demand, after giving credit of TDS & TCS?	The Hon'ble High Court, after having regard to the language of CBDT's Office Memorandum dated 29th February, 2016, as amended by Office Memorandum dated 25th August, 2017, observes and holds that Revenue can recover only 20% of the tax liability crystallized as per the assessment order and not against the scaled down amount mentioned in the demand notice which is arrived at after giving credit of tax deposited by third parties.
Indirect Tax		
M/s Diya Agencies vs State Tax Officer, [WP(C) No. 29769 of 2023 dated 12.09.23].	Whether the Input Tax Credit (ITC) can be denied solely on the ground that invoices were not reflecting in GSTR-2A?	The Hon'ble Kerela High Court observed that if the petitioner has paid GST to the supplier, but supplier failed to deposit the same to the revenue, the petitioner cannot be held responsible and therefore directed to the adjudicating authority to give Petitioner an opportunity to submit evidence in respect of ITC claimed.
M/s Tagros Chemicals India Pvt Ltd [2023-TIOL-873-HC-AHM-GST]	Whether supplier is eligible for refund of excess IGST charged and paid i.e. 18% instead of concessional rate of 0.1% in case of merchant export?	The Hon'ble Gujarat High Court set aside the refund rejection order passed by the adjudicating authority and held that the petitioner is eligible for refund as all the conditions laid down in Notification No.41/2017–Integrated Tax (Rate) were satisfied.

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

DIRECT TAX

Case 1 – Orion Security Solutions Pvt. Ltd. **[W.P.(C) No. 11789/2023] (Delhi HC)**

Facts in brief & Issue Involved:

- The assessee had filed it's return of income for AY 2021-22 on 15.03.2022, declaring a total income at Rs. 1,04,06,610/-.

- The assessment was completed u/s 143(3) r.w.s. 144B of the Act, wherein the total income assessed at Rs. 146,72,96,789/- and the resultant tax liability was computed at Rs. 44,10,05,569/-. Against the said assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

- Out of the above total demand, amounts of Rs. 11,03,97,170/- and Rs. 25,463/- respectively were adjusted against the tax deducted at source ("TDS") and tax collected at source ("TCS"). Accordingly, the net amount payable by the assessee, as mentioned in the notice of demand under section 156 of the Act, stood at Rs. 33,05,82,936/-.

- In addition to the above, refund payable to the assessee for AY 2022-23, amounting to Rs. 14,11,32,594/- was also adjusted against the tax demand. Therefore, the total adjustment against the aggregate tax liability of Rs. 44,10,05,569/- was Rs. 25,15,55,227/- [i.e. Rs. 11,03,97,170 (TDS) + Rs. 25,463 (TCS) + Rs. 14,11,32,594/- (refund for AY 2022-23)].

Contention of the taxpayer:

- The assessee contended that Revenue had recovered by way of taxes, an amount in excess of 20% of disputed demand and accordingly, had acted in contravention to the OM issued by CBDT in this regard.

- Before the Hon'ble HC, the assessee claimed a refund of an amount of Rs. 16,08,25,490/-, by contending that the prescribed rate of 20% ought to be applied on the aggregate demand of Rs. 44,10,05,569/- and not on the scaled down demand of Rs. 33,05,82,936/-.

Contention of the Revenue:

- On behalf of the Revenue, it was argued that if the OM issued by CBDT was applied, the amount that the Revenue could have recovered would be 20% of the balance demand of Rs. 33,05,82,936/-, in addition to the amount recovered as TDS and TCS.

- Referring to para 2 of the OM, it was contended that the expression "demand" would include any tax, interest, penalty, fine or any other sum payable in consequence of any order passed under the Act. In other words, the amount mentioned in the notice of demand issued under section 156 of the Act would form basis for calculating 20% of the sum that can be recovered by the Revenue.

Observation and Decision of High Court:

- The High Court, upholding the contention of the assessee, held that the aggregate tax liability, which got crystallised for the AY in issue was Rs. 44,10,05,569/- and amounts towards tax recoverable, either directly or indirectly, would fall within the stipulation of 20%, as indicated in the OM.

- The High Court held the arguments, advanced on behalf of the Revenue as untenable. In doing so, the High Court observed that the ingredients of the demand are tax, interest, penalty, find or any other sum payable by the assessee, in consequence of any order passed under the Act. In the instant case, as per the assessment order, the crystallised tax liability of the assessee was Rs. 44,10,05,569/- and accordingly, 20% of the said amount can only be adjusted by the Revenue.

- In other words, the High Court held that the amount that an assessee would need to deposit for the purposes of obtaining stay on the demand pending the decision in the appeal, will have to factor in TDS and TCS.

- Accordingly, the High Court directed the Revenue to refund the amount, in excess of 20% of Rs. 44,10,05,569/-, after carrying out requisite verification.

NASA Comments: -

- The above decision would come as a respite to the practical difficulties faced by taxpayers in obtaining stay on demand, during pendency of appeal before the CIT(A). These difficulties arise due to automated refund adjustment by CPC, alternate interpretations of the term "disputed demand" etc.

- The interpretation of the term "demand" and the factoring of TDS and TCS in the computation of demand payable for the purpose of obtaining stay, as propounded by the High Court would bring much needed clarity in relation to the issue pertaining to stay on demand.

INDIRECT TAX

Case 1 – Diya Agencies [2023-Hon'ble Kerela High Court-GST]

Facts in brief & issues involved:

- The Petitioner had claimed the ITC of Rs. 44.52 Lakhs during the FY 2017-18 on the basis of the inward supplies made during the year.

- During the GST assessment, adjudicating authority denied the ITC claim of Rs. 1.04 Lakh on account of invoices not reflecting in GSTR-2A and passed the assessment order accordingly.

- Aggrieved by the implunged order, petitioner prefer a writ petition before the Hon'ble Kerala High Court.

Contention of the Petitioner

- The claim of ITC cannot be denied merely on the ground that invoices are not appearing in the GSTR 2A for which the petitioner does not have any control.

- Adjudicating authority is required to independently examine the claim of ITC irrespective of reflection in GSTR 2A.

- All the conditions as stipulated under Sub section 2 of Section 16 and he has paid the tax to the seller dealer.

- The facility to view inward supplies in Form GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the tax payer to avail ITC.

Observations & Decision of Kerela High Court

- If the supplier has not remitted the GST paid by the petitioner, the petitioner cannot be held responsible.

- On the other hand, the petitioner has to discharge the burden of proof regarding the remittance of tax to the supplier by giving evidence as mentioned in the Judgment of the Supreme Court in The State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited.

- Merely, non-reflection of invoices in Form GSTR-2A, should not be a sufficient ground to deny the claim of the ITC.

- The Aassessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for ITC.

- If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be allowed the ITC.

NASA comments

- The Kerala High Court in this case highlighted the unfairness of denying ITC solely on the basis of non-reflection of invoices in GSTR-2A. The court recognizes that taxpayers should not be held liable for a condition which is outside the control, such as the non-payment of taxes by the Supplier.

Case 2 – Tagros Chemicals India Private Limited [2023-TIOL-873-HC-AHM-GST]

Facts in brief & Issue Involved

- The Petitioner had received a purchase order from the registered exporter to supply goods at concessional rate of 0.1% under notification no. 41/2017–Integrated Tax (Rate).

- However, the petitioner had supplied the goods to the buyer on payment of full GST i.e., 18% instead of concessional rate of 0.1%. The effect of the said tax invoice was shown in GSTR-1 and GSTR-3B for the relevant month.

- On the notice of the said error, the petitioner had issued a credit note and the same was reported in GSTR-1 for the subsequent month. However, due to the absence of any IGST outward tax liability, the petitioner could not report the same from GSTR-3B.

- The petitioner filed a refund claim for the excess payment of IGST of 17.99% (18%-0.01%). However, GST authority passed the refund rejection order on the ground that conditions laid down in the Notification No.41/2017–Integrated Tax (Rate) are not fulfilled.

- Aggrieved by the said refund rejection order, petitioner prefer a writ petition before the Hon'ble Gujarat High Court.

Contentions of the petitioner

- Respondents have committed an error by denying the benefit of concessional rate of GST on the inter-State supply of taxable goods, which were ultimately exported on the basis of the conditions prescribed in the said notification.

- In absence of any default on complying with the conditions laid down in the said notification, the respondent has no authority and jurisdiction to deny the benefit of concessional rate of duty for any reason.

- It is settled law that substantial benefit cannot be denied on the ground of technicalities or procedural lapses.

Contentions of the respondent

- The said refund claim has been rejected on the basis of non-submission of the documents by the petitioner which were required as per the Notification No.41/2017.

- On the basis of the aforementioned default, the respondent has rightly rejected the refund claim of the petitioner.

Observations & Decision of the High Court

- Notification no.41/2017 integrated tax (rate) clearly states that all the condition are to be fulfilled by the exporter and not by the supplier.

- Relying on the Apex Court decision in the case of Bonanzo Engineering & Chemical Private Limited [2012-TIOL-25-SC-CX], the Gujarat High Court held that merely because by mistake, the taxpayer paid duties on the goods which are exempted from payment does not mean that goods become liable for the duty under the Act.

- The HC also relied on another judgment of the Apex Court [Share Medical Care v. UOI [2007-TIOL-26-SCCUS] where it has been held the benefit of a notification not taken at the initial stage does not debar/ prohibit the taxpayer from claiming the benefit of the same subsequently.

- In the view of the aforesaid view taken by the Hon'ble Apex Court, the petition is allowed. The refund rejection order passed by the respondents is quashed and set aside and the respondents are directed to release the refund along with interest.

NASA Comments

- The High Court took care of the fact that conditions prescribed in the notifications have been satisfactorily fulfilled before granting the benefit. This upholds the principle that substantial benefit cannot be denied on the ground of technicalities or procedural lapses such as paying incorrect tax.

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