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TAX JURISPRUDENCE

CASE LAW ALERT – OCT 2024 VOL.3

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		
Hindustan Unilever Ltd. Vs. DCIT [Bombay HC] (WP No. 4325 of 2024) (23.09.2024)	Whether HC can entertain writ petition against order passed by AO raising demand of Rs. 962.75 crores for non-deduction of TDS?	The HC held that once a substantive statutory remedy is provided and available to the taxpayer, then the Court cannot exercise its extraordinary jurisdiction and entertain petition
Indirect Tax		
Best Crop Science Pvt Ltd – Delhi High Court [2024-TIOL-1625-HC-DEL-GST]	Whether an order passed under Rule 86A block the ITC in the Electronic Credit Ledgers ['ECL'] beyond the credit available resulting in a negative balance in the ECL?	The Hon'ble Delhi High Court held that Rule 86A only applies to ITC balance currently available in the ECL and cannot be invoked for ITC already utilized.
Uno Minda Limited – Madras High Court [2024-TIOL-1652-HC-MAD-GST]	Whether a combined SCN for multiple years can be issued separately for availing the benefit of the amnesty scheme u/s 128A?	The Hon'ble Madras High Court of Madras set-aside the SCN issued for multiple assessment years and directed that separate notices may be issued for each assessment year separately to avail the benefit of the amnesty scheme u/s 128A.

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

DIRECT TAX

Hindustan Unilever Ltd. Vs. DCIT [Bombay HC] (WP No. 4325 of 2024) (23.09.2024)

Facts in brief & issues involved:

- The taxpayer had acquired trademark named "Horlicks", which is registered in India from foreign group entities of GlaxoSmithKline Plc. vide Assignment Deed, without deducting TDS.
- The taxpayer contended that the issue is covered based on the decision of Delhi HC of CUB PTY Ltd. and hence, TDS is not applicable.
- The AO in his order of 179 pages held that purchase of intellectual property represent sale of intellectual property situated in India and liable to be taxed as capital gains and hence treated taxpayer as an assessee in default for not deducting TDS and raised demand of Rs. 962.75 crores.

Contention of the Assessee:

- The taxpayer contended that although trademark is an intellectual property registered in India, the owner of the same being a foreign entity, such acquisition does not involve transfer of a capital asset in India, so as to attract any capital gains. Hence, there was no obligation on taxpayer to deduct TDS. Reliance was placed on the decision of Delhi HC of CUB PTY Ltd.

Contentions of the Respondent:

- The AO contended that the entire interest of taxpayer is to bypass statutory remedy with sole intent to seek a stay on TDS order.
- The issues raised by taxpayer would require determination of several aspects involving adjudication on facts and law and such enquiry can be effectively done through appellate proceedings.
- The AO has taken into consideration well settled territoriality principle as laid down by the Supreme Court based on which he held that trademark was situated in India and TDS was required to be deducted.

Observation and Decision of the High Court:

- The HC held that once a substantive statutory remedy as prescribed by law is provided, the taxpayer needs to take recourse to such statutory remedy.

- The principle of situs of trademark being, ownership of the foreign entity and more particularly on examining different clauses / terms and conditions of the agreement, so as to be considered that the situs fell outside India are the issues which can be effectively taken up by the Appellate Authority to take an appropriate view in the matter.
- Hence, it would not be appropriate for the Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution and entertain this writ petition.

NASA Comments:

The ruling underscores the importance principle that if the issue under reference is reasonably dealt by the AO, then the taxpayer would have to opt for filing appeal before the appellate authority and application for stay of demand being substantive statutory remedy as prescribed by law, the High Court will not exercise its extraordinary jurisdiction to entertain writ petition even if there is large demand involved.

INDIRECT TAX

Case 1 – Best Crop Science Private Limited [Delhi High Court - 2024-TIOL-1625-HC-DEL-GST]

Facts in brief & issues involved:

- Best Crop Science Private Limited ['Petitioner'] is engaged in the business of manufacturing and supplying crop protection products.
- Tax Authorities passed an order to block petitioner's Input Tax Credit ['ITC'] under Rule 86A of the CGST Rules in excess of the credit availed in the Electronic Credit Ledger ['ECL'].
- This created an artificial negative balance in the ECL restricting the petitioner from utilizing the ITC availed by them for payment of their dues until the negative balance was not extinguished by further ITC credits. Thus, creating cash flow issues for petitioners as they may not be able to access their full credit for timely payments.
- Petitioner has filed the present writ against implunged order before the Hon'ble Delhi High Court on the grounds that whether Rule 86A of the CGST Rules permits blocking of ITC in a taxpayer's ECL in excess of the credit balance available at the time of the order.

Contention of the Petitioner:

- Rule 86A only permits blocking of ITC to the extent of credit available at the material time in the taxpayer's ECL. It does not authorize blocking future ITC (i.e. ITC that is not yet available in the ECL).
- Further, the rule must be interpreted literally, and any action that blocks ITC beyond what is currently available in the ECL is unauthorized.
- The petitioners emphasize that the ITC in the ECL is a property of the taxpayer under Article 300A of the Constitution and cannot be restricted without explicit statutory authority.

Contention of Respondent:

- The intent behind Rule 86A is to prevent the utilization of ITC that is fraudulently availed or ineligible. Hence, the rule authorizes to block an amount equivalent to the ITC in question, irrespective of whether that ITC is currently available in the ECL.
- Rule 86A should be interpreted purposively, considering the objective of preventing fraudulent claims.

- Further, the Revenue contended that ITC is a privilege, not an absolute right, and must be viewed as an exemption / concession. Therefore, the principle governing exemption notifications would necessarily apply.
- Restricting the power to block only available credit would require continuous monitoring of a taxpayer's ECL, adding an administrative burden leading to a situation where multiple blocking orders are required, potentially extending the effective duration of the freeze beyond a year.

Observation and Decision of the High Court:

- Rule 86A of does not impose a condition, which the taxpayer must satisfy for availing the ITC as the same stands credited in the taxpayer's ECL. At the stage of issuing an order under Rule 86A, there is no determination that the ITC availed by the taxpayer's is fraudulent or ineligible.
- The Honourable Court also held that there is no ambiguity in the plain language of Rule 86A of the Rules. The literal construction of the said Rule also does not lead to any absurdity. Hence, it is not necessary to resort to the rule of purposive interpretation. The Court also found that the aforesaid interpretation is also in conformity with the legislative scheme of the CGST Act and the Rules.
- The Court held that Rule 86A only applies to ITC currently available in the ECL and cannot be invoked for ITC already utilized. Hence blocking must be confined to the amount of ITC currently available in the ECL, which the officer has reasons to believe is fraudulently availed or ineligible.
- In light of the above observations, the impugned orders in the present petitions that blocked an amount exceeding the available ITC in the ECL have been set aside by the Hon'ble High Court.

NASA Comments:

- It's important to note that Rule 86A is not intended as a recovery mechanism for taxes or dues; rather, it serves as a temporary measure to protect revenue interests.
- The High Court's decision is a positive step toward addressing the cash flow challenges faced by the taxpayers. By allowing them to access their full credit for timely payments, it not only improves their financial stability but also encourages responsible financial practices.
- Clear guidelines for invoking Rule 86A of the Rules should be established to avoid risk of misuse, which could have irreversible and harmful effects on businesses.

Case 2 - Uno Minda Limited [Madras High Court - 2024-TIOL-1652-HC-MAD-GST]

Facts in brief & issues involved:

- Uno Minda Limited [hereinafter referred to as 'Petitioner'] had received show cause notice ('SCN') issued on 25 July 2024 under section 74 of the CGST Act for differential amount on account of misclassified two-wheeler seats under Customs Tariff Heading ('CTH') 9401 instead of CTH 8714, leading to a short payment of GST at 18% instead of the applicable 28% for the period between July 2017 and October 2023.
- Since the SCN was issued demanding tax in respect of six assessment years, the petitioner was not able to avail opportunity of amnesty scheme u/s 128A which is scheduled to be come into force enabling it to get waiver of interest as well as penalty on its tax liability.
- Aggrieved by the Impugned SCN, the petitioner has preferred the present writ petition.

Contention of the Petitioner:

- The petitioner contends that due to a nuanced interpretation of the Customs Tariff Act, there was industry-wide confusion regarding the appropriate classification for two-wheeler seats, leading them to believe that CTH 9401 was correct.
- To address the disputed classification, the petitioner voluntarily deposited 10% of differential GST under protest, believing that the classification under CTH 9401 was valid.
- Further, there is no willful misstatement made by the petitioner and hence the impugned show cause notice is without jurisdiction.
- The petitioner argues that the combined show cause notice for multiple assessment years prevents them from utilizing Amnesty scheme u/s 128A scheduled to start on 1st November 2024. If separate notices were issued, they would be eligible to avail of the scheme, allowing waivers of interest and penalties.

Observation and Decision of the High Court:

- Since the petitioner intends to avail of the upcoming amnesty scheme u/s 128A starting in November 2024, which would offer waivers of interest and penalties, the High Court disposed set aside the impugned SCN, directing the issuance of separate notices for each assessment year within two weeks from receipt of the order.

NASA Comments:

- Hon'ble High Court has allowed the taxpayer to avail the benefit from the amnesty scheme by directing the Tax Authorities to issue separate notices for each year.
- With the rules for the amnesty scheme u/s 128A being notified, the impact of the above decision will have to be explored.

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