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TAX JURISPRUDENCE

CASE LAW ALERT – NOV 2024 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		
Granules CZRO Private Limited Vs. Income Tax Officer, Ward 2(1) [Hyderabad Tribunal] (ITA No. 706/HYD/2024) (15.10.2024)	Whether claim of lower rate under section 115BAB can be available in subsequent AY on the basis of form 10ID filed in earlier AY ?	The Hon'ble Hyderabad ITAT holds that although the Assessee has failed to fulfil the condition laid down u/s 115BAB for the AY 2023-24, the Revenue is obligated to give benefit u/s 115BAB in the subsequent AY if taxpayer demonstrate commencement of manufacturing activities and should not act upon the earlier Form 10ID.
Indirect Tax		
M/s. Sance Laboratories Pvt Ltd vs Union of India & Ors (Kerala High Court WP(C) No.17447/2023 along with WP(C)24230/2022, 20442/2023 and others decided on 10.10.2024	To examine whether Rule 96(10) of the CGST Rules, 2017 is legally sustainable or is liable to be struck down on the grounds that it is ultra vires the provisions of Section 16 of the IGST Act, 2017	• Hon'ble High court has declared Rule 96(10) as ultra vires the provisions of Section 16 of the IGST Act due to its "manifestly arbitrary" nature. • The Court also quashed the recovery of refunded IGST between the period October 23, 2017 to October 08, 2024.

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

DIRECT TAX

Granules CZRO Private Limited Vs. Income Tax Officer, Ward 2(1) [Hyderabad Tribunal] (ITA No. 706/HYD/2024) (15.10.2024)

Facts in brief & issues involved:

- The taxpayer or company was set up on 16.01.2023 i.e. AY 2023-24 for which, the assessee filed its return of income in accordance with law and had filed Form 10ID on 21.10.2023.
- Return was processed u/s. 143(1) of the Act on 26.11.2023 wherein Central Processing Centre ("CPC") while processing return denied the benefit of lower tax rate u/s 115BAB on the basis that the taxpayer had not commenced its production before 31.03.2023.
- The taxpayer preferred an appeal before Hon'ble Commissioner of Income Tax ("CIT(A)") against the intimation as well as rectification application wherein before the CPC which was also rejected by the CPC.
- Ld. CIT(A) held that it was evident from the ITR filed by the assessee that no manufacturing had taken place during the year, and thus even though the assessee had complied with conditions of filing return of income u/s 139(1) and filing of Form 10ID, the claim for lower tax u/s 115BAB cannot be allowed.

Contention of the taxpayer before Tribunal:

- The contention of the taxpayer was that as per the provision of section 115BAB of the Act, Ld. CIT(A)/ Assessing Officer was required to be satisfied that the taxpayer / company has been set up on or after 01/10/2019 and has commenced the manufacturing or production of article /thing on or before 31/03/2024.
- Ld. AR submitted that taxpayer had commenced manufacturing activities before 31.03.2024 and drew attention of the ITAT to all the documents showing the consent letter from the Pollution Control Board as well as invoices for sale of goods along with supporting documents.

Contentions of the Respondent:

- The Ld. Departmental Representative (D.R.) argued that section 115BAB is clear and unambiguous, and as the taxpayer had failed to fulfil the requisite condition as contemplated u/s 115BAB (2) of the Act, therefore, the Ld. CIT(A) has rightly denied the benefit of lower tax regime specified u/s 115BAB of the Act. Ld. DR relied on the order passed by the Ld. CIT(A).

Observation and Decision of the Hon'ble ITAT :

- Hon'ble ITAT observed that the language of Section 115BAB is clear that the company should have been set up on or after 01/10/2019 and the said company had to commence manufacturing or production of article or thing on or before 31/03/2024. Also, Form 10ID was required to be filed along with the return of income for the first assessment year, and it was highly improbable to file Form 10ID after setting up of the manufacturing unit and immediately before the commencement of production for the first assessment year.
- Hon'ble ITAT also observed the contrary position whereby as per FAQs provided by Income Tax authority clearly state that the assessee is not required to file fresh Form 10ID after filing it along with the first return of income for the first assessment year. They also mentioned that the contradiction is clear that even if the assessee had not commenced its activities, the assessee was required to file the certificate showing the commencement of business activities and manufacturing activities, however, the assessee was prohibited to file the Form 10ID in the subsequent year, when it had actually started manufacturing activities
- Hon'ble ITAT held that, if the taxpayer is able to prove that it has commenced activities before 31/03/2024 and that it would be sufficient compliance of the Act and a subsequent commencement of activity after filing the return of income and Form 10ID should factor in and take into account the subsequent commencement of the manufacturing activity albeit prior to 31/03/2024.

NASA Comments:

- The contrary position of the Income Tax Department has lead to concern of processing difficulties at the CPC resulting in unwarranted litigations. This decision clarified the views of the department that a Taxpayer should also ensure appropriate compliances with necessary documentation to ensure no such genuine claims are rejected by ITD. The harmonious interpretation by the Hon. ITAT corroborates that procedural aspects may be secondary while holding the intent of the law at the highest place.

INDIRECT TAX

M/s. Sance Laboratories Pvt Ltd vs Union of India & Ors (Kerala High Court WP(C) No.17447/2023 along with WP(C)24230/2022, 20442/2023 and others decided on 10.10.2024)

Facts in brief & issues involved:

- Petitioners in these cases were exporters who were entitled to claim a refund of GST paid on inputs and input services or the IGST paid on exports.
- Section 16 of the IGST Act, 2017 provides exporter an option to either export the goods/services without payment of IGST and claim the refund of accumulated input tax credit or export the goods/services with payment of IGST and claim the refund of IGST paid. Conditions and procedures for claiming refund under the latter option are specified under Rule 96 of the CGST Rules 2017.
- Rule 96(10) place restriction w.r.t. claim of refund of IGST paid for three classes of exporters, such as advance authorization license holders, export-oriented units, and merchant exporters.
- Due to the above restriction, the entire claim of refund was being questioned or denied in cases where only a part of inputs had been procured after availing the benefit of any notification mentioned in Rule 96(10).
- Aggrieved by said issues, the Petitioners had filed the writ petitions before the High Court by challenging the validity of Rule 96(10) primarily on the ground that the said rule is ultra vires the provisions of Section 16 of IGST Act, 2017.

Contention of the Petitioner:

- The Petitioners argued that the provision of Rule 96(10) of the CGST Rules effectively takes away the right of an exporter to claim refund of IGST which is a right granted by the substantive provisions of the IGST Act.
- Petitioners relied on Supreme Court judgment in the case of Shayara Bano v. Union of India to contend that subordinate rules must align with the intent of the primary legislation. Thus, Rule 96(10) conflicting with Section 16 of the IGST Act is ultra vires and invalid.
- They further argued that provision of Rule 96(10) is arbitrary in nature as it seeks to deny the benefit of refund completely even if only a part inputs have been procured after availing the benefits of the notifications referred to in Rule 96(10).

- The Petitioners also argued that the phrase "subject to such conditions, safeguards, and procedure as may be prescribed" in Section 16 of the IGST Act, 2017 is not meant to regulate the right to a refund but to ensure that there is no leakage of revenue to the government.

Contention of the Respondent:

- The Respondent cited the Supreme Court judgement in the case of VKC Footsteps to contend that the right to refund is not absolute and the State may, in contemplation of its fiscal objectives, seek to impose a restriction on the right to refund.
- The Respondent also counter argued that a rule must be interpreted in the manner that a court interprets an exemption notification. This argument was based on the Supreme court judgement where the court held that in case of any doubt, the interpretation of an exemption notification must be in favour of the Revenue.
- The Respondent submitted that it is at the option of the exporter to adopt either of the options contemplated by the provisions of Section 16 and it is for them to decide which is the method more beneficial to them.

Observation and Decision of High Court:

- The Hon'ble High Court held that Rule 96(10) of the CGST Rules creates a restriction on right to refund not contemplated by Section 16 of the IGST Act. Therefore, Rule 96(10) of the CGST Rules is ultra vires the provisions of Section 16 of the IGST Act.
- Hon'ble High Court justified that in case of VKC Footsteps, the Supreme Court was dealing with a restriction imposed by primary legislation. However, in the present case it is evident that the subordinate legislation has travelled beyond the scope to restrict the benefit provided by the primary legislation.
- Hon'ble High Court noted that as on the date, Rule 96(10) was omitted. However, it was omitted prospectively and does not deal with cases where the refund of IGST has either been denied or is proposed to be denied on account of the provisions contained therein. Therefore, the Court has declared Rule 96(10) ultra vires retrospectively.

NASA Comments:

- The judgement substantiates the judiciary position that restrictions imposed by subordinate legislations cannot override the benefit intended by the primary legislation.
- This judgement would provide great relief to the exporters where the tax authority has passed the adverse orders for refund claims or initiated the recovery proceedings of refund granted

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