N. A. SHAH ASSOCIATES LLP
Chartered Accountants

TAX JURISPRUDENCE

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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
Direct Tax		
Munich RE Automation Solutions Limited [TS-1199-ITAT-2025(DEL)]	Whether amounts received on license of standard software, along with bundled services which are ancillary to the use of such software, without transfer of any intellectual property rights in the said software is taxable as royalty under India – Ireland DTAA?	The Hon'ble ITAT, Delhi Bench has held that amounts received by a non-resident software developer on license of standard software and provision of ancillary services connected with the use of such software is not chargeable to tax as royalty under the DTAA
Indirect Tax		
Dawn Express Courier Del Pvt Ltd vs Union of India [2025] 34 Centax 353 (Del.)	Whether issuance of summons/personal hearing notices granting only one day's time to file reply to SCN is valid under GST law?	The Hon'ble Delhi High Court held that giving only one day's notice for personal hearing and filing reply to SCN is violative of principles of natural justice. Assessee must be granted a reasonable period (i.e. 30 days) to file reply and present defense.
Union of India & Others v. SICPA India Private Limited & Another (W.A. No. 02 of 2025 / reported as TS-772-HC(SIK)-2025-GST)	Can unused ITC be refunded on business closure under Section 49(6), or is refund restricted to only two cases namely	The Hon'ble High Court held that Refund is allowed only in the two cases under Section 54(3).

	zero-rated supplies and inverted duty under Section 54(3)?	Closure of business is not a valid ground for ITC refund. Further, the Hon'ble High Court set aside the order of the Single Judge, and restored the orders of the Assistant Commissioner and the Appellate Authority rejecting the refund claim.

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

DIRECT TAX

Munich RE Automation Solutions Ltd. [TS-1199-ITAT-2025(DEL)]

Facts in brief & Issue Involved:

- The taxpayer was an Irish company and a resident of Ireland for the purposes of taxation. It was engaged in the business of software development.

- It had, during the period under consideration, licensed a software to its Indian customer i.e. PNB Metlife and charged a fee of Rs. 3,56,51,494/- towards providing access to the licensed software and incidental services thereto.

- In its return of income, the taxpayer claimed that such receipts were not taxable in India in view of Article 12 of the India–Ireland DTAA, as the payments did not amount to "royalty."

- The Assessing Officer (AO), however, held that the consideration was taxable as royalty under Section 9(1)(vi) of the Income Tax Act as well as Article 12(3)(a) of the DTAA.

- The AO consequently made an addition of Rs. 3,56,51,494/- to the taxpayer's total income, which view was upheld by the Dispute Resolution Panel ("DRP"). Aggrieved by the order of DRP, the taxpayer carried the matter in appeal before the Income Tax Appellate Tribunal ("ITAT").

- The core issue before the ITAT was whether license fees received for supply of standard software along with support services could be regarded as "royalty" chargeable to tax in India.

Contentions of Taxpayer:

- The taxpayer contended that what has been licensed is bundled product/ services in the form of software implementation services for making the sale of software compatible to the requirements of the customer.

- Relying on the provisions of the Master Procurement Agreement ('MPA') entered between the taxpayer and PNB Metlife, the taxpayer contended that the intellectual property rights contained in the software continued to remain the taxpayer's property and that it has only granted a revocable, non-exclusive and non-transferable license to use the software.

- The taxpayer relied on the decision of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence vs. CIT [2021] 432 ITR 471 (SC) to argue that the impugned payment cannot be characterized as royalty under Article 12 of India – Ireland DTAA

Contentions of Revenue:

- On behalf of the Revenue, it was argued that the AO has distinguished and demonstrated as to how the case of the taxpayer does not fall within the law laid by the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (supra).

- It was advanced that taxpayer provides access to customers in India to certain software applications in its website and also provides services to implement the software applications into customer website.

- It was therefore submitted that the services rendered by the taxpayer are much beyond mere licensing for use of software

Observations & Decision of the Hon'ble ITAT:

- The Hon'ble ITAT referred to the various clauses of the MPA providing definition of licensed software, services etc. and defining the scope of work. On perusal of the same, the Hon'ble ITAT observed that only standard software developed by the taxpayer along with related support services have been provided by it.

- The Hon'ble ITAT thereafter referred to the decision of the Hon'ble Apex Court in the case of Engineering Analysis Centre of Excellence (supra) and observed that in the said decision, the Hon'ble Apex Court had bifurcated the transaction of sale of

software into four groups and held that transactions falling within each of these four categories are not chargeable to tax in India as royalty under the DTAA

- Applying the above principles to the present case, the Hon'ble ITAT concluded that (i) the present case is not a case of licensing of tailor-made software; (ii) the taxpayer has licensed standard software; and (iii) the taxpayer has allowed its customers to use copyrighted Article and has not transferred copyright in the software to its customer.

- Accordingly, the Hon'ble ITAT held that the present payments do not fall within the definition of royalty within the definition of royalty as per Article 12(3) of India – Ireland DTAA

NASA Comments:

- This decision amplifies the principle laid down in the case of Engineering Analysis Centre of Excellence (supra) that mere right to use any software without any right of making copies of or reproducing the said software cannot be classified as "royalty" under DTAA

- Further, this decision also extends the above principle to bundled services which are ancillary to or connected with use of such software

INDIRECT TAX

Case 1 – Dawn Express Courier Del Pvt Ltd vs Union of India [2025] 34 Centax 353 (Del.)

Facts in brief & Issue Involved

- Dawn Express Courier Del Pvt Ltd (The petitioner) engaged in courier services, was subjected to investigation by Directorate General of Goods and Service Tax Intelligence (DGGI) along with other courier companies in January 2024.

- A summons was issued to the petitioner and pursuant to DGGI's investigation, a letter dated 29th May 2024 was sent to the Additional Commissioner, CGST Delhi South Commissionerate, pointing out discrepancies such as under-reporting of consideration, bifurcation of invoices into separate services, and non-payment of GST on import services.

- Following the DGGI's communication to the GST Department, a summons dated 13th June 2025 requiring appearance on 18th June was communicated only on 20th June, rendering compliance impracticable; the petitioner promptly sought extension till 31st July 2025 to submit a detailed reply.

- A second summons for 25th June 2025 was served on 24th June 2025 via email, leaving only one day's notice to the Petitioner.

- Subsequently, an SCN dated 29th June 2025 was issued; this impugned SCN formed the basis of challenge in the writ petition instituted by the Petitioner.

Contentions of Petitioners

- The petitioner contended that no pre-notice consultation under Rule 142 of CGST Rules, 2017 was provided, thereby depriving the petitioner of the opportunity to deposit the GST with 15% penalty as per Section 74(5) of the CGST Act 2017.

- The petitioner further submitted that a detailed reply to the SCN was not furnished, as it intended to challenge the issuance of the SCN through the present writ petition.

- The Petitioner also contended that issuance of a summons with only one day's notice for appearance was complete non-compliance of the principles of natural justice.

Contentions of Respondents

- The respondent submitted that w.e.f 09/10/201 issuance of pre-notice consultation under Rule 142 is discretionary

- The Respondent further submitted that the petitioner has repeatedly sought adjournments and has not appeared before the GST Department

Observations & Decision of the Delhi High Court

- The Honb'le Delhi High Court held that based on the DGGI investigation itself since petitioner was well aware of the fact that the evasion of GST and could have itself availed option of voluntary payment of GST along with penalty.

- The High court further held that since the Petitioner claimed that it had already paid the entire tax of Rs. 44 Lakhs and had no further liability, any pre-notice consultation under Rule 142 would have been of no purpose. Accordingly, the challenge to the SCN on grounds of Rule 142 and Section 74(5) was held not tenable.

- On the issue of principles natural justice, the Honb'le High Court held that the manner in which the Department has issued on one occasion an email communication after the date of hearing has already passed or given email communication before the date of hearing would not be acceptable as such SCN would obviously require tax payers to prepare a detailed reply in consultation with their GST lawyers/consultants and also collect various documents which are to be presented to the Department. The High court further held that one day's notice for hearing would be completely violative of the principles of natural justice .

- However, considering repeated notices and summons from June 2025 onward, and the absence of any record of the Petitioner's response to the allegations, the Court directed that the Petitioner be granted 30 days to file a detailed reply to the SCN,

with a personal hearing to be provided before passing a reasoned adjudication order.

NASA Comments

- A positive development for taxpayers, the Court's decision to grant sufficient time for response reinforces that the principles of natural justice remain paramount

Case 2 – Union of India & Others v. SICPA India Private Limited & Another (W.A. No. 02 of 2025 / reported as TS-772-HC(SIK)-2025-GST)

Facts in brief & Issue Involved

- M/s SICPA India Private Limited (hereinafter refer as "Respondent") was a manufacturer of security inks. Its Sikkim unit ceased operations and SICPA has filed a refund claim for unutilised ITC standing in its electronic credit ledger .

- The refund application filed by the Respondent was rejected by the Assistant Commissioner and the Appellate Authority on the grounds that the refund under section 54(3) of CGST Act, 2017 can be only claimed in two cases:
  - ITC accumulation due to zero-rated supplies without payment of tax, or
  - ITC accumulation due to inverted duty structure.

  Since Respondent claim is on account of closure of business which is outside the preview of Section 54(3) of CGST Act, 2017 refund is denied.

- Thus, aggrieved by the order the writ petition was filed before Hon'ble Sikkim High Court, where the Single Judge allowed the writ petition by holding that *there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, for claiming a refund on closure of unit referring to the Karnataka High Court Judgment of Union of India vs. Slovak India Trading Company Private Limited* .

- Further, The Union of India (hereinafter refer as "Petitioner") appealed against the Single Judge's order.

Contentions of Petitioners

- The Petitioner referred to the judgment of Hon'ble Supreme Court in *Union of India vs. VKC Footsteps (India) (P) Ltd.*

- The petitioner further relied on *Tripura High Court judgement of M/s Sterlite Power Transmission Limited vs. Additional Commissioner, CGST and CX and others* wherein it was held that that in case of accumulated ITC remaining in the credit ledger of the tax payer, refund is not made out under section 54(3) of the CGST Act as none of the enumerated conditions are fulfilled.

Contentions of Respondents

- The Respondent contended that the refund claim was filed under section 49(6) of the CGST Act but as both the Assistant Commissioner as well as the Appellate Authority rejected the refund on the interpretation of section 54(3) only.

- He further submitted that of Hon'ble Supreme Court judgment of *VKC Footsteps (India) (P) Ltd was dealing with the issue of refund of input services for cases covered under inverted duty scheme of refund under section 54(3)(ii) of the CGST Act and not a case of claim for refund on closure of unit.*

- The respondent further distinguished the *Tripura High Court* judgement of M/ ***Sterlite Power Transmission*** stating that that the said case related to the refund of tax paid through cash ledger as ITC ledger was blocked and on reopening, a claim of refund was made for excess payment of cash with respect to availability of ITC and not due to *closure of unit.*

Observations & Decision of the Honorable Sikkim High Court

- The Hon'ble High Court observed that in *Judgment of Slovak India Trading Company Private Limited* , the Hon'ble *Karnataka High Court was dealing with unsimilar facts and interpreting rule 5 of the Cenvat Rules and not section 49(6) or section 54(3) of the CGST Act*

- The Hon'ble High Court relied on the Hon'ble Supreme Court judgment of *VKC Footsteps (India) (P) Ltd for interpretation and clarification of sections 49 and 54 of the CGST Act stating that the language used in sub-section (6) of section 49, i.e., "may be refunded" gives an indication that it may be permissible to be refunded the words "in accordance with the provisions of section 54", thereafter, is a clear indication that this permissibility to refund must be in accordance with the provisions of section 54 and in no other manner it* further held that an application for refund must necessarily be processed as contemplated under section 54.

- The Hon'ble High Court further confirmed that refund **under Section 54(3)** of CGST Act, 2017 can be claimed either under.
    (i) ITC accumulation due to zero-rated supplies without payment of tax, or
    (ii) ITC accumulation due to inverted duty structure

- The Hon'ble Court allowed the Union of India's appeal and set aside the order of the Single Judge and restored the orders of the Assistant Commissioner and the Appellate Authority rejecting the refund claim.

NASA Comments

- The judgment reaffirms that GST refunds of unutilised ITC cannot be claimed upon business closure, except in the specific scenarios outlined under Section 54(3) of the CGST Act, 2017.

- Taxpayers are therefore advised to carefully evaluate their eligibility and maintain strict compliance with statutory provisions to mitigate the risk of refund denials

B 21-25, Paragon Centre,
Pandurang Budhakar Marg, Mumbai – 400013
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090
E-mail Id: info@nashah.com