Legal Updates

April 2023

Summary of Major Legal Updates

Key Highlights:

- Notice under Section 61(3) is not necessary to initiate action under Section 74.
- Wide Scope of Section 70 of the CGST Act enables the proper officer to summon any person for evidence or production of documents in any inquiry.
- The provisions of sections 13(8)(b) and 8(2) of the IGST Act are legally valid and constitutional, limited to the IGST Act alone and cannot be applied to tax services under the CGST and MGST Acts.
- GST Refund Application re-filed after issuance of Deficiency Memo against original application will not be treated as a fresh application for the purpose of determining time limitation of 2 years
- No Service Tax payable on Corporate Guarantee provided by foreign entity on behalf of Indian Entity

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1. Notice under Section 61(3) is not necessary to initiate action under Section 74.

[M/S Nagarjuna Agro Chemicals Pvt.Ltd. vs. State of U.P. and Another WRIT TAX No. - 343 of 2023]

Facts of the Case:

1. The proceedings under Section 74 were initiated by the department against the petitioner on certain grounds with regard to classification and consequential tax payable of certain goods and ultimately order passed whereby the tax previously paid was found short and hence demand raised for deposit of appropriate shortfall in the deposit of tax as also interest and penalty.

Contentions of Petitioner:

1. Petitioner contented that that since returns had been submitted by the petitioner for the period in question, therefore, the appropriate course open for the department was to have pointed out deficiency in the returns under Section 61 which regulates Scrutiny of returns so as to give it an opportunity to rectify the return before proceeding under Section 74 of the Act.

Decision by Allahabad High Court:

1. The argument of petitioner that merely because no notices were issued under Section 61 of the Act, it would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 is misconceived and thus repelled, as exercise of such power is not dependent upon issuance of notice under Section 61.
2. The scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.
3. The petitioner has the option to file an appeal, which has not been utilized, citing various reasons for not doing so earlier. The Court allows the petitioner to file an appeal within two weeks, and the appeal will be accepted without any limitation objections.

H N A Remarks:

- This ruling is legally correct and hence, Section 61 cannot be construed as a condition precedent for initiation of action under Section 74 of the Act. However, in light of the Legal Maxim "Interest Reipublicae Ut Sit Finis Litium" which means means it is in the interest of the state that there should be an end to litigation, it would serve better both the Revenue and the Taxpayer if proceedings under Section 61 are initiated first instead of beginning with Section 73 or 74 of the CGST Act, 2017.

2. Petitioner was not to be denied the statutory benefit of stay under Section 112(9) due to the non-constitution of the GST Tribunal.

[Kumar Ram Ranjan Singh vs The State of Bihar 2023 TAXSCAN (HC) 711]

Facts of the Case:

1. The writ petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking multiple reliefs, including quashing of an ex-parte appellate order and an ex-parte order imposing tax, penalty, and interest under Section 74 of the Bihar Goods and Services Tax Act 2017. The petitioner also seeks to restrain the respondents from recovering the imposed amount and any other reliefs as deemed fit.

Contentions of Petitioner

1. The petitioner wishes to appeal against the impugned order before the Appellate Tribunal, but the Tribunal is not yet constituted, depriving the petitioner of their statutory remedy. Consequently, the petitioner could not avail the benefit of stay of recovery of the balance amount of tax in terms of Section 112 (8) and (9) of the B.G.S.T Act upon depositing the amount as contemplated under Sub-section (8) of Section 112.

Decision by Orrisa High Court:

1. If the petitioner makes a deposit of a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

H N A Remarks:

- This is a welcome judgment in the right narrative and perspective to stop the recovery proceedings which would cause undue harassment and be violative of principles of natural Justice as the legal remedy to seek justice has not expired for the Assessee. The Assessee should not be penalised for the absence of GSTAT.

3. Wide Scope of Section 70 of the CGST Act enables the proper officer to summon any person for evidence or production of documents in any inquiry.

[Bankipore Club Ltd. v. Union of India [2023] 150 taxmann.com 76 (Patna)[27-03-2023])

Facts of the Case:

1. The petitioner claims to be a Members Club established in 1865, operating on the principles of agency and mutuality while providing its members with all the usual privileges, advantages, and conveniences of a club.

2. Writ application under Article 226 of the Constitution of India filed putting to challenge Summon issued to Secretary of M/s Bankipore Club u/s 70 of CGST Act, 2017 to give evidence & produce certain documents for the F.Y. 2017-18 to 2022-23.

Contentions of Petitioner

1. Petitioner contends that only after insertion of Clause (aa) to Sec 7 of the CGST Act from 01.01.2022, the club has become liable to pay CGST. Hence, petitioner ought not to have been directed to produce any document for the transactions prior to 01.01.2022.

Contentions of Respondent

1. The Union of India, on the other hand submits that it is not apparent from the pleadings that the petitioner is registered under the CGST Act.

Decision by Patna High Court:

1. It can be easily culled out from the plain reading of Section 70 of the CGST Act that it confers upon the proper officer the power to summon any person whose attendance is considered to be necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

2. In view of the wide scope of Section 70 of the CGST Act, we are not inclined to interfere with the impugned summons.

3. It will, however, be open to the petitioner to take a plea before the proper officer under Section 70 of the CGST Act while responding to the summons that the club does not have any tax liability under the CGST Act prior to the amendment introduced in the CGST Act with effect from 01.01.2022 with the insertion of Clause (aa) to Sec 7(1) of the CGST Act.

H N A Remarks:

- This ruling is correct and in line with the provisions of Section 70 of the CGST Act. The ratio of the Judgments given by the Courts have made it axiomatic that

Summons are something which they shouldn't interfere with and the Summoned Person is supposed to attend the same. The only area of concern of the Courts shall be overreach/abuse of Power during the Summon proceedings.

4. The provisions of sections 13(8)(b) and 8(2) of the IGST Act are legally valid and constitutional, limited to the IGST Act alone and cannot be applied to tax services under the CGST and MGST Acts.

[Dharmendra M. Jani Vs. Union of India [2023] 149 taxmann.com 317 (Bombay)]

Facts of the Case:

1. The petitioner, a proprietary firm, offers marketing and promotion services to customers outside India who are involved in manufacturing and/or selling goods, with the possibility of having or not having an establishment in India.

2. The petitioner provides services only to its foreign principal and receives consideration in convertible foreign exchange.

3. The petitioner contended that the nature of the transaction(s) entered by the petitioner with its overseas customers are transactions of "export of services", for which valuable foreign exchange was earned by the country, hence, such transactions were outside the purview of the CGST and the MGST Acts.

4. The petitioner, therefore, addressed a representation dated August 22, 2017, to the Superintendent, CGST, Mumbai Range-I *inter alia* recording that with the advent of the Goods and Services Tax, in terms of section 13(8) of the IGST Act, the place of supply of "intermediary services" has been defined as the place of the supplier of the service. It was stated that by virtue of such provision, the services provided by the petitioner to the overseas clients are being subjected to the Goods and Services Tax in India.

5. The petitioner stated that it has been the policy of the Central Government to promote exports, hence, the inclusion of intermediary services under section 13(8) of the IGST Act would lead to the closure of business of several such agencies, resulting in loss of jobs for several employees. The petitioner recorded that the petitioner intended to challenge the said provision, and hence, the petitioner would pay GST on the said commission under protest, as the petitioner did not accept the liability to pay GST on the said transactions. The petitioner, hence, reserved its right to claim refund of the duties so paid. It is on such premise; the petitioner has assailed the provisions of section 13(8)(b) and section 8(2) of IGST Act.

Contentions of Petitioner

The legislature by the inclusion of an 'intermediary' in Section 13(8)(b) of the Act to which a meaning is attributed as defined under section 2(13) of the IGST Act, an attempt is made to convert the actuality of the place of supply in foreign territory to a place of supply of such service at the location of the supplier, namely, the location of the petitioners, so that it would be deemed to be an intra-State supply [supply within the State of Maharashtra] leviable with the local GST. Neither the provisions of Article 246A read with Article 269-A and Article 286 of the Constitution would permit such inclusion, nor the basic principles, under which GST would levy, would permit such consequences as created by the impugned provisions.

1. Considering the scheme, scope and object of the provisions of section 7 to 13 of the IGST Act, it is evident that the same provides for the levy of IGST on inter-State supplies. Import and Export of services have been treated as inter-State supplies in terms of section 7(1) and section 7(5). However, section 13(8)(b) seeks to run contrary to the scheme of the Act and deem an inter-State supply as an "intra-State" supply. It is submitted that hence, the said provision is ultra vires the charging section and the provisions of the CGST Act and the MGST Act.

Contentions of Respondent

1. The challenge of the petitioner is premised on a plea that the petitioner is being taxed for services rendered outside India which is unconstitutional, which according to the respondents is an erroneous premise as canvassed by the petitioners, for the reason that Article 245(2) of the Constitution provides that no law made by the Parliament shall be deemed to be invalid on the ground that it would have an extra-territorial operation and by application of such article, a challenge to the validity of the provisions of IGST Act need to fail.

2. The petitioners' contention that there is a conflict between section 13(2) and 13(8) (6) of the IGST Act, resulting in absurdity in law, is not correct, as there is no such conflict. The reason being under section 13(2) of the IGST Act, the place of supply shall be the location of the recipient unless the services fall within the ambit of sub-section (3) to (13) of the IGST Act, however, under section 13(8)(b) of the IGST Act the place of supply in case of intermediary services shall be the location of supplier of services. Hence, on bare reading of these provisions, it is seen that both the sub-sections are clear in their nature and what they provide.

3. Once the Parliament has legislative Competence to enact the provisions of law to determine as to what is the place of supply and in exercise of the said powers, the Parliament has enacted Section 13(8)(b) providing that for "Intermediary" services, the

place of business is location of the supplier, when the recipient is outside India, the same cannot be said to be ultra vires the provisions of the Constitution

Decision by Bombay High court:

1. It is necessary to confine transaction which are clearly transaction in the course of Inter-State trade or commerce and more particularly transactions of export of services as defined under Section 2(6) of the IGST Act and the intermediary services, to be subjected, relevant and confined only to the provisions of the IGST Act, and transaction which are in the course of Intra-State trade or commerce, shall remain confined to the provisions of the CGST/SGST Acts.

2. Necessarily transactions which are intra-State transactions and those which are inter-State transactions (trade or commerce) are required to be compartmentalized, so as to be recognized under the separate regimes.

3. It will be too harsh and not fair to the assessees to suffer any uncertainty in regard to the regimes the assessees would be taxed. Such uncertainty is neither conducive to trade or commerce nor of any real benefit to the interest of the revenue. The intention of the provisions cannot be to generate disputes and litigation but to have a smooth and definite flow under a robust taxing system.

4. The CGST Act and the MGST Act both pertain to intra-state supply of goods and services, these enactments do not define what is export of services. They also do not give any indication as to any express incorporation of any provisions in regard to export of services

5. If the legislature and it ought not be without a reason, has refrained from making any specific reference or incorporation to such provision, it may not be permissible for the respondent to read into the provisions by the CGST and MGST Act, as to what has been omitted and expressly not provided.

6. It clearly appears that the entire concept of “export of services” which has been specifically stipulated and provided only under the provisions of the IGST Act, to be read into the provisions of the CGST and MGST Acts, would not be a correct reading of the provisions of Section 2(86) read with 2(65) of the CGST Act, for the respondents to consider that Section 13(8)(b) stands firmly incorporated in the provisions of the CGST/SGST Acts. This more particularly, when the legislature itself has explicitly avoided having any such express incorporation.

7. There does not appear to be any intention under the constitutional scheme to permit "export of services" to be expressly brought under the regime of the "intra-State" supply.

8. It may thus be observed that the fiction which is created by Section 13(8)(b) would be required to be confined only to the provisions of IGST Act, as there is no scope for the fiction travelling beyond the provisions of IGST Act to the CGST and the MGST Acts, as neither the Constitution would permit taxing of an export of service under the said enactments nor these legislations would accept taxing such transaction.

9. It may be also observed that the incorporation of the limited provisions of IGST Act into the CGST Act and MGST Act, to the extent as noted above, certainly is a piece of legislation by incorporation.

10. In the light of the above discussion, the provisions of section 13(8)(b) and section 8(2) of the IGST Act are legal, valid and constitutional, provided that the provisions of section 13(8)(b) and section 8(2) are confined in their operation to the provisions of IGST Act only and the same cannot be made applicable for levy of tax on services under the CGST and MGST Acts.

H N A Remarks:

- This judgement attempts to settle the long-standing issue of taxability of intermediary service where the service recipient is outside India. The assessees prayed for benefit of export since it was earning foreign exchange for the country. However, this was denied by the Court and Section 13(8)(b) is rendered constitutional.

- This case law might cause a hinderance to intermediary assessees who have filed similar appeals in various High Courts and other fora. However, it is important to note that the extent and scope of the term "intermediary" was not discussed in this case law since the petitioner deemed itself to be an intermediary.

5. Provision mandates the physical copy and production of invoices/relevant documents by the person in charge of a conveyance, as specified.

[M/s JK Jain Buildtech India Pvt. Ltd. Vs Assistant Commissioner, Revenue and Ors. 2023-VIL-213-CAL]

Facts of the Case:

1. The Appellant's vehicle and goods were seized during transportation, and the person in charge could only provide the relevant invoice in digital form but not in physical form. The impugned order was subsequently passed without granting the Appellant a chance to be heard.

Contention of Petitioner:

1. Sub-Rule (1)(a) to the said Rule 138A of the said 2017 Rules does not provide for production of the relevant invoice in physical form and whenever a person-in-charge of the conveyance carries the same, even in an electronic/digital form or in his mobile or

in such devices carried by him, the same would suffice and the authority could not have claimed for production of the invoice in physical form.

Contention of Revenue:

1. Reading of the provision laid down under sub-Rule 138A, it would be evident that, the person-in charge of the conveyance/vehicle should carry the invoice also in physical form for verification by the respondent authority, if required. Since in the instant case, the person-in-charge of the concerned conveyance was not carrying the invoice in physical form, the appeal was rightly rejected.;

Decision by Calcutta High Court:

1. The heading of the Rule 138A is clear that "documents and devices to be carried by a person-in-charge of the conveyance" which included under sub-Rule (1)(a), the invoice.

2. It is trite that the provision in a taxing statute has to be construed strictly and no benevolent interpretation is available while construing taxing statute.

3. When the said provision specifically provides for documents and devices to be carried by the person-in-charge of a conveyance including the invoice, this clearly means that the invoice has to be carried in physical form and if required shall be produced in its physical form.

4. The Appellate Authority will reconsider the matter if the petitioner provides the required physical documents and/or invoices, following the legal procedures. The petitioner will be given a seven-day notice to present their case, and the authority will review the existing records before making a reasoned decision after hearing the petitioner. However, the petitioner must submit the relevant physical documents, limited to the scope of the current appeal, within two weeks from the specified date.

H N A Remarks:

- This judgment should serve as a guide in further movements of goods that the Invoices and other relevant documents should be carried by the person-in-charge of a conveyance in physical form, following the principle of Legal Maxim – *"abundans cautela non nacet"* meaning - There is no harm in being cautious.
- In this regard, it may also be noted that in case of e-invoice, physical copy of the invoice cannot be mandated as per Rule 138A(2), which was also clarified by the CBIC in Circular No. 160/16/2021-GST, dated 20th September, 2021. However, these e-invoice aspects were not discussed in this judgement.
- Further, mandating such requirements of physical copy of invoice could prove to be a hardship for the industry, especially in the case of bill-to ship-to transactions.

6. GST Refund Application re-filed after issuance of Deficiency Memo against original application will not be treated as a fresh application for the purpose of determining time limitation of 2 years

[M/s Bharat Sanchar Nigam Limited Vs. Union of India & Ors., 2023-VIL-229-DEL]

Facts of the Case:

1. Petitioner erroneously deposited excess tax in its returns (GSTR-1 and GSTR- 3B) filed for the month of December 2017 on 22.01.2018.

2. Petitioner filed a refund application for excess tax paid on 17.01.2020 along with all necessary documents. The deficiency memo was issued on 31.01.2020 seeking certain other documents.

3. In pursuance of said deficiency memo, the petitioner uploaded the documents online on 10.02.2020 in the prescribed format. However, it was acknowledged as a fresh refund application (in Form GST RFD 01).

4. Thereafter, by an order dated 29.04.2020, the petitioner's application was rejected on the ground that the same was beyond the period of limitation.

5. The petitioner appealed the said order before the Appellate Authority, which was rejected by the impugned order on 25.11.2021. The Appellate Authority upheld the order passed by the Adjudicating Authority.

Contention of Revenue:

1. Although it has not been expressly stated, it appears that the Appellate Authority had proceeded on the basis that it was appellant's case that it had filed the Form GST RFD-01 physically on 17.01.2020.

2. The Appellate Authority reasoned that an application could only be filed online and this same appears to be the sole reason why the petitioner's appeal was rejected.

3. It is stated in the counter affidavit by the respondent that the petitioner's first application for refund dated 17.01.2020 was incomplete and therefore, could not be processed.

4. It was also stated that the petitioner's claim for refund was for excess tax paid on an erroneous assumption, the documents, as mentioned in Clause (k), (l) and (m) of Rule 89(2), are relevant. And the application filed by the petitioner was not accompanied by a statement showing the details of the amount of claim on account of excess payment of tax as required under Rule 89(2)(k) of the Rules.

Contention of Petitioner:

1. Petitioner claims that it responded to the said Deficiency Memo by submitting the clarifications online.
2. It was open for the respondents to seek any documents required for clarification relating to the refund claim made by a taxpayer, however, the taxpayer's application cannot be

considered as deficient if it was duly accompanied by the documents prescribed under Rule 89(2).

3. It was further contended that the said contention does not arise in the facts of the present case as the Appellate Authority has not rejected the petitioner's appeal on the ground that its application filed on 17.01.2020 was deficient; it has done so on an erroneous assumption that it was filed physically and not online.

Decision by Delhi High Court:

1. It was held that Rule 90(3) cannot be applied in the manner sought to be done by the Adjudicating Authority. Merely because certain other documents or clarifications are sought by way of issuing a Deficiency Memo, the same will not render the application filed by a taxpayer as *non-est.*

2. If the application filed is not deficient in material particulars, it cannot be treated as *non-est*. If it is accompanied by the "documentary evidences" as mentioned in Rule 89(2) of the Rules, it cannot be ignored for the purposes of limitation.

3. It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued.

4. The impugned order passed by the Appellate Authority as well as the order passed by the Adjudicating Authority, is set aside, and the matter is remanded to the Adjudicating Authority to consider afresh in the light of the observations made by this Court.

H N A Remarks:

- This judgment has clearly provided that once the statute provides certain documentary requirements in order to file any refund application, thereafter the refund application cannot be rejected for the want of additional data requirements.
- The judgement was issued prior to the introduction of amendment vide Notification No. 15/2021–Central Tax dated 18-05-2021 which asserted to exclude the time period between the date of filing of refund application till the issuance of deficiency memo for the purpose of calculation of two years for the purpose of Section 54 of CGST Act, 2017.

7. Cash retained for 6 months without issuing SCN is a clear overstepping of Section 67 of CGST Act.

[Shabu George vs State Tax Officer - 2023-TIOL-382-HC-KERALA-GST]

Facts of the Case:

1. The inspection of the premises of the appellant was conducted on 9.6.2022. However, nothing was heard from the authorities till November 2022. The appellant filed an appeal to release the cash that was seized from his premises in connection with an investigation being done under the GST Act.

2. During the pendency of this writ appeal, the Intelligence Officer passed an order dated 21.3.2023, disposing of the representation preferred by the appellants as per the directions of the learned single Judge.

3. The learned single Judge did not accept the contention of the appellant that the seizure of cash was unwarranted especially when the investigation itself was for alleged evasion of tax due from the appellants under the GST Act.

Contention of Petitioner:

1. while it may be a fact that the statutory provisions (Sect 67(2) of The CGST Act, 2017) authorize the seizure of 'things' from the premises of an assessee who is proceeded against under the GST Act, and the word 'things' would include cash in appropriate cases.

2. The instant is a case where the seizure of cash was wholly unwarranted, more so, when the cash did not form part of the stock in trade of any business stated to have been carried on by the appellant.

3. An Appellant also stated that he has still not been served with any show cause notice pursuant to the seizure of the cash from his premises.

Decision by Kerala High Court:

1. While it may be a fact that Section 67(2) of the CGST Act authorizes the seizure of things, including cash in appropriate cases, we do not think that the present is a case that called for a seizure of the cash found in the premises of the appellants at the time of the search.

2. The power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided and informed in its exercise by the object of the statute concerned.

3. In an investigation aimed at detecting tax evasion under the GST Act, we fail to see how cash can be seized especially when it is the admitted case that the cash did not form part of the stock in trade of the appellant's business.

4. The suspicious finding by the Intelligent Officer reveals the extent to which authorities under the Act are misinformed of their powers and the limits of their jurisdiction. The findings of the Intelligence Officer could perhaps have been justified had he been an officer attached to the Income Tax department. In the context of the GST Act, the findings are wholly irrelevant

5. Moreover, as the respondent has retained the seized cash for more than six months and is yet to issue a show cause notice to the appellants in connection with the investigation, there can be no justification for a continued retention of the said amount with the respondent.

6. The respondent to forthwith release to the appellant the cash seized from the premises, against a receipt to be obtained from him. The amount shall be released to the appellant within a week

H N A Remarks:

- This is a welcome judgement rendered by the Hon'ble High Court which has slammed the delay made by the department in issuance of show cause notice to the taxpayer in connection with the investigation.
- However, it is also imperative to analyse whether the department is authorized to seize the cash during any investigation under Section 67(2) of CGST Act.
- High Courts have repeatedly held that the seizure u/s 67(2) of the Act is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act".
- In this regard, Hon'ble High Court in the case of Arvind Goyal vs Union of India & ors. - 2023 (1) TMI 1028 held that, cash does not fall within the definition of goods and, prima facie, it is difficult to accept that cash could be termed as a 'thing' useful or relevant for proceedings under the CGST Act.
- However, a contrary view has been taken by the Hon'ble Madhya Pradesh High Court in Smt. Kanishka Matta versus Union of India and others - 2020 (9) TMI 42 in a matter challenging seizure of cash amounting to INR 66,43,130/- by the GST officials during search. The Court observed that, the word "things" appearing in Section 67(2) of the CGST Act is to be given wide meaning and any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of "thing". Thus, it would cover cash also.
- Moreover, the CBIC had also issued Instruction No. 1/2022-23 [GST- Investigation] dated May 25, 2022, w.r.t. deposit of tax during the course of search, inspection or investigation wherein, it has been clarified that, there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings, to specifically state that, no recovery of tax is to be made by the GST Authorities during search, inspection or investigation under any circumstances, unless it is voluntary.
- The above Instructions were issued due to alleged use of force and coercion by the GST officers for making 'recovery' and for getting the amount deposited during search or inspection or investigation

8. No Service Tax payable on Corporate Guarantee provided by foreign entity on behalf of Indian Entity

[Edelweiss Financial Services Limited vs Commissioner - 2023-TIOL-26-SC-ST]

Facts of the Case:

1. In this case, the Assessee provided a corporate guarantee to banks or financial institutions lending to their subsidiary or related companies without consideration. The revenue issued an SCN to the assessee and imposed the demand of tax on service along with interest and penalty to allege that he had provided a Banking and financial service as a

'corporate guarantee' on behalf of its subsidiary company located within or outside India similar to a 'Bank guarantee'.

2. As on 1st July 2012, such a transaction of giving a Corporate guarantee is considered to be a 'Service' under section 65B (44) of the Finance Act 1994. Hence, such service was subject to be charged with appropriate service tax as may be prescribed by the government.

3. In this regard, the Commissioner (Appeals) and Hon'ble CESTAT gave a decision in favor of the taxpayer.

4. Aggrieved by the order of the Hon'ble CESTAT, the department filed an appeal before Hon'ble Supreme Court.

Decision by Supreme Court:

1. The Hon'ble Supreme Court held that in this case, the assessee in this case had not received any consideration while providing the service of a corporate guarantee to its Subsidiary company. The present appeal filed by the revenue department was dismissed.

2. The assessee contended and argued via the way of an appeal by stating that there is no reason to admit this case basis on the pending Appeal as it has not been proved beyond reasonable doubt that the facts of the pending case filed by the revenue are identical or similar to the present case.

H N A Remarks:

- The above judgment is rendered in relation to the Service Tax regime. Therefore, it is important to assess its applicability in the GST regime. Hence examination of the supply & taxability of corporate guarantee transactions under GST is most relevant for companies engaged in such transactions.
- Under GST, Section 7(1) (c) read with Schedule I requires a transaction between related parties to be taxable even when done without consideration.
- Basis the above, a corporate Guarantee provided by the sister concern or even the directors of the company (related persons) would be covered under the scope of supply even made without consideration and GST may get attracted.
- Having said the same, it is important that the company should structure the transactions of levy of the GST on the corporate guarantee considering the fact that compliance has to be done under the CGST Act, 2017 for the purpose of charging GST from the recipient of corporate guarantee without actual payment of the consideration. Further, any transaction which should be done in the current date will have implications on the point of taxation.

9. Any communication from State & Central authorities without Document Identification Number (DIN) are invalid

Facts of the Case:

1. The petitioner is a Telecommunications Solutions provider and a manufacturer of telecom equipment engaged in rendering services to Telecom Operators. The petitioner, for this purpose imported hardware including Blade Server Platforms (BSP). While so, in January 2019, the Directorate of Revenue Intelligence (DRI) initiated an investigation into the imports of BSP from its related overseas party, Ericson AB, Sweden (EAB).

2. Later on, taxpayer received a letter to pay differential duty on which no Document Identification Number (DIN) was received.

3. Thus, the issue here is whether the non-generation of DIN would render the impugned communication invalid.

Decision by Madras High Court:

1. The purpose of the DIN was to ensure that every paper that emanated from the system of an officer for transmission to an assessee would be authenticated with a digital print. The objective is to create a digital directory, and to maintain a proper audit trail for all official communications issued. This is further substantiated vide Circular No. 37/2019-Customs which mandates use of DIN in all communications.

2. The standing orders were issued for the smooth functioning of the department and merely prescribe a pattern of assessment. They are not intended to interfere with the discretion of the assessing/appellate authority in the conduct of assessment

3. Court is of the view that non-generation of a DIN is fatal to the communication itself

4. Further, the following exception provided under Section 151A of the Customs Act cannot be used to wriggle out of the requirements of Circular No. 37/2019-Customs which mandates the use of DIN in all communications.
    a. No order, instruction or direction will require any officer of Customs to make a particular assessment or dispose a particular case in a specified manner
    b. No instructions shall be issued so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of appellate functions

5. Thus, generation of DIN is necessary in all cases.

H N A Remarks:

- This is a welcome judgment rendered by the Hon'ble High Court in which the importance of DIN is reiterated by the Court. It was stated that the thrust of the exercise is to ensure that every communication issued by the State, including e-mails, must contain an authorization.

- In the case of Pradeep Goyal v. Union of India [2022 (63) G.S.T.L. 286 (S.C.)], a direction to the respective States and the GST Council was sought, to implement a system for electronic generation of DIN for all communications sent by the State Tax Officers to taxpayers. The prayer was well taken, and the Court reiterated the necessity for the

Council and States to take remedial action in relation to transparency and accountability in all proceedings.

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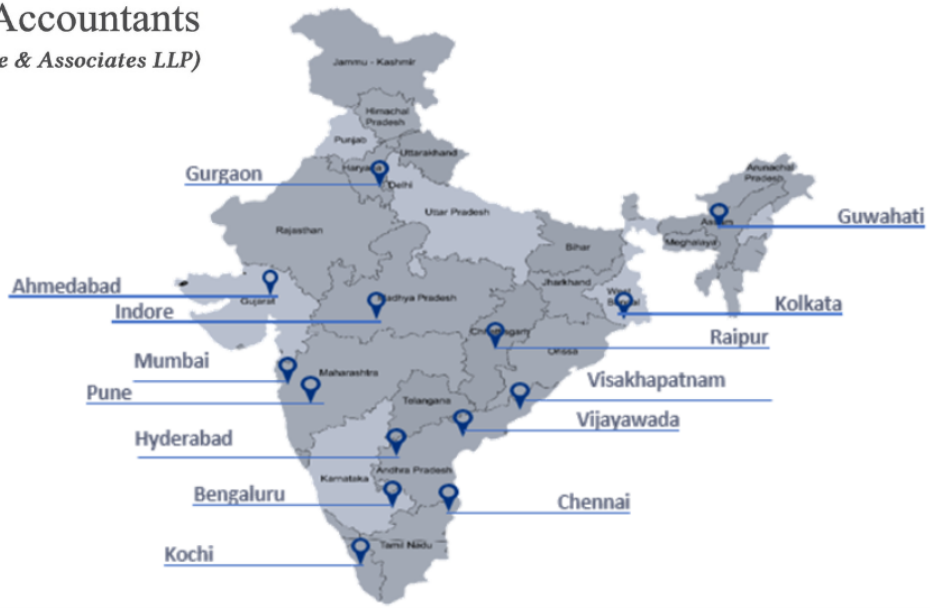

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