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Legal Updates

Summary of Major Legal Updates

Key Highlights:

1. Show cause notice cannot be a mere formality, it's a vital checkpoint
2. Opportunity of being heard is 'mandatory' to be provided even if not specifically requested
3. In absence of mens rea, penalty cannot be imposed on non-production of e-way bill.
4. Demand in ignorance of circular/documents on performance incentives is unsustainable.
5. Refund claim of zero-rated supplies does not disentitle claim of ITC on inverted duty structure
6. Payment of balance in cash ledger amounts to payment of tax to the Government.

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Contents

A. Some Relevant Judgements

1. Show Cause Notice is a vital checkpoint in any administrative proceedings, cannot be a mere formality

Associated Switch Gears and Projects Ltd. vs. State of U.P.[1]

The petitioner M/s. Associated Switch Gears and Projects Ltd. (hereinafter referred to as 'ASG&PL') aggrieved by the order levying penalty passed by the appellate authority on a ground that was not mentioned in the Show Cause Notice issued at the time of detention of the vehicle. In the Show Cause Notice, the plea taken by the concerned proper officer was that the vehicle was travelling to a destination that was not mentioned in the invoice. However, order was passed with levy of penalty on the ground that E-way bill had expired. Therefore, the Hon'ble High court quashed both the orders passed by the Appellate Authority levying penalty and the order passed by the Learned Proper officer.

The Hon'ble High Court observed the following in the above case:

- It was observed that the authorities travelled beyond the show cause notice to impose penalty on a ground that was never provided to the assessee. Therefore, denying the opportunity to provide its response to the alleged violation of law before levying penalty.
- That in absence of any opportunity of being heard the Show Cause Notice is against the principle of audi alteram partem or 'hear the other side' i.e., against the principle of natural justice.
- That the appellate authority has confirmed levy of penalty on a ground that is different from the ground accepted by the revenue authorities at the time of detention. The High Court citing a host of decisions held that the authorities cannot transgress beyond the boundaries set by the Show Cause Notice.
- That the appellate authority cannot through arbitrary exercise of powers take a stand different from the one alleged in the show cause notice.
- That the show cause notice imposes a duty on the part of the authority to meticulously outline the specific allegations or concerns. The said requirement is to ensure transparency and accountability. It also ensures that the assessee is given due and sufficient opportunity to provide clarifications.
- That any overreach beyond the Show Cause Notice not only compromises the rights of the individuals or entities involved but also leads to potential erosion of public trust on the authorities.

HNA Comments: -

Time and again various High Courts and Hon'ble Supreme Court has held that the show cause notice is the vital checkpoint basis which the proceedings are initiated. The SCN has to be meticulously drafted and shall provide the individual/entity with sufficient and reasonable opportunity to provide clarifications against the allegations framed in the SCN. Any deviation

[1] TS-27-HC(ALL)-2024-GST

in the reasons mentioned in the SCN or any addition in the scope of the SCN is violative of the principle of audi alteram partem i.e., principles of natural justice.

2. Opportunity of being heard is 'mandatory' to be provided even if not specifically requested

IJM Concrete Products Pvt. Ltd. vs. State of Madhya Pradesh[2]

The petitioner IJM Concrete Products filed a Writ challenging the summary order passed by the Assistant Commercial Tax Officer in Form GST DRC-07 consequent to an assessment raising demand for excess availment of ITC. The order passed was ex-parte proceeding without giving an opportunity of personal hearing to the petitioner which was considered as utter disregard to the settled principles of natural justice and fair hearing. Also, this was in violation to section 75 (4) of the Act. Further, the officer also failed to follow the principles laid down in Rule 142(1A) of the CGST Rules, 2017 which prescribes issuance of Form DRC-01A prior to issuance of show cause notice in form DRC 01.

The Hon'ble High Court in the above case observed that:

- That whether or not the petitioners have specifically asked for personal hearing it was obligatory and mandatory on the part of respondents to provide the petitioners opportunity of personal hearing.
- That the decision-making process adopted by the respondents is vitiated and runs contrary to the principles of natural justice and statutory requirement of Section 75 (4) of CGST Act.

HNA Comments:-

Interpretation of the words "opportunity of hearing" as contained in Section 75(4) of the CGST Act, 2017 cannot be made in a restricted manner. Further it is amply clear from the said provision that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, *OR where any adverse decision is contemplated against such person*. Therefore, whenever there is adverse decision being considered, opportunity of hearing should be provided irrespective of the fact that hearing has been opted / not opted.

3. Authorities need to establish tax-evasion intent in not producing E-Way Bill

M/S. Falguni Steels vs State of U.P. and others[3] *[Hon'ble Allahabad High Court]*

The petitioner is an authorized dealer of the Steel Authority of India Ltd (hereinafter referred to as 'SAIL'), purchased a consignment of TMT Bar based on 2 tax invoices dated 17th February 2019. Thereafter, the petitioner obtained the service of a private road carrier for the transportation of its goods through vehicle. The tax invoices issued contained the number of the said vehicles along with other details of goods, taxes paid etc. Due to some technical glitches in the e-way bill portal, the e-way bill could not be generated on time of the onset of the transportation of the goods. The e-Way bills were generated subsequently on 20th and 21st February 2019. These e-way bills were presented

[2] TS-30-HC(MP)-2024-GST
[3] [TS-25-HC(ALL)-2024-GST - ALLAHBAD HIGH COURT

at the time of interception but same were not considered and instead SCN was issued on ground that transportation was in contravention of the UPGST Act. The goods were released after the petitioner had deposited the tax amount and penalty.

The Hon'ble High Court in the above case observed that:

- The goods were accompanied by the tax invoices. Furthermore, the tax invoices contained the details of the vehicle that was transporting the goods. It is further to be noted that one e-Way Bill was generated before the detention and one subsequent to the detention, but before passing of the order under Section 129(3) of the UPGST Act, 2017/CGST Act, 2017 which indicates that there was no intention for evasion of tax.
- The HC also gave consideration for the reason in regard to the delay in generation of the e-Way Bill which was due to the barrier imposed by the local administration on the occasion of 'Maghi Purnima, Kumbh Mela 2019' has also not been taken into consideration by the authorities.
- The authorities have failed to indicate any specific reason that would indicate an intention for evasion of tax.
- Nowhere in the said impugned order, it has been recorded that there was any definite intention to evade tax. The order stands vulnerable to challenge on the grounds of disproportionate punitive measures meted out in the absence of concrete evidence substantiating an intent to evade tax liabilities.
- Before the order imposing penalty was passed, the petitioner in the instant case had generated both the e-Way bills which were not taken into account.
- If penalty is imposed, in the presence of all the valid documents, even if e-Way bill has not been generated, and in the absence of any determination to evade tax, it cannot be sustained.
- Mere technical errors, without having any potential financial implications, should not be the grounds for imposition of penalties.
- Penalties should be reserved for cases where an intentional act to defraud the tax system is evident, rather than for inadvertent technical errors. The legal foundation for this principle lies in the recognition that taxation statutes are not designed to punish inadvertent mistakes but rather deliberate acts of non-compliance.
- The burden of proof rests on tax authorities to establish the actual intent to evade tax before imposing penalties on taxpayers. This safeguards individuals and entities from punitive measures arising from honest mistakes, administrative errors, or technical discrepancies that lack any malicious intent.

HNA Comments: -

Any penal action which is devoid of mens rea (guilty mind) not just lacks legal foundation but is also indicative of disproportional imposition of penalty. It also signifies arbitrary exercise of authority completely ignoring the principles of natural justice as held in many recent high court decisions in e-way bill matters. Though there is has been many favourable decisions, the taxpayers should take due care in documentation to avoid any litigations related to e-way bills with the authorities.

4. GST demand under RCM on performance incentive to directors without considering circular/ documents unsustainable.

M/S. Global Calcium Pvt Ltd vs Assistant Commissioner (ST)4 [Hon'ble Madras High Court]

The petitioner is engaged in the business of supply of bulk drugs and pharmaceutical intermediaries. The petitioner is aggrieved by the assessment order issued in relation to the demand of GST under reverse charge mechanism on performance linked incentives paid to whole time directors. The petitioner argued that the incentives were paid to the directors in their capacity as employees on which TDS was deducted u/s 192 of the Income Tax Act, and therefore, same cannot be brought under GST as per Circular No. 140/10/2020-GST dated June 10, 2020. A chartered accountant certificate was also produced with details of payments made to such directors. However, the respondent did not agree to such certificate as there was no demarcation of amount paid towards salary and incentives to the whole-time directors.

The Hon'ble High Court in the above case observed that:

- The assessing officer examined the balance sheet, Form-16 and Form-26AS. The expenditure incurred by the petitioner towards remuneration and performance-based incentives would have been reflected in the profit and loss account of the petitioner for the relevant financial years.
- The orders impugned were not issued after taking the clarification provided in point 5.1, 5.2 and 5.3 of circular 140/10/2020-GST dated June 10,2020 into consideration.
- The HC also entertained the possibility that the petitioner did not place on record all relevant documents.
- In these circumstances, the impugned orders are not sustainable and are hereby quashed. Further, the matters are remanded for reconsideration by the assessing officer.
- The petitioner was granted 10 days' time to place any additional documents with regard to all issues dealt with in the impugned orders. Upon receipt thereof, the respondent is directed to consider all materials on record, provide a reasonable opportunity to the petitioner and complete the reassessment within four weeks thereafter.

HNA Comments: -

[4] TS-14-HC(MAD)-2024-GST- MADRAS HIGH COURT

The GST circular No. 140/10/2020 has clarified that the part of director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act are not taxable under RCM since it amounts to consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It also clarifies that the part of the Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act shall be treated as consideration for providing services which is outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e., the Company, is liable to discharge the applicable GST on it on reverse charge basis. The readers can also refer to an analytical article written by CA Sudhir VS in this regard on https://taxguru.in/goods-and-service-tax/gst-director-remuneration.html To understand the taxability of payments made to directors under RCM.

5. Refund for zero-rated exports does not disentitle claim of unutilized ITC under IDS

M/S VSM Weavess India Private limited Vs The Assistant Commissioner (ST)5 [Hon'ble Madras High Court]

The Assessee is a textile manufacturing company, which uses viscose yarn as a raw material for the manufacturer of viscose fabrics and since the tax rate on viscose yarn exceeds the tax rate on supplies by the Assessee, there is unutilized ITC as a result of the IDS. The assessee undertook export supplies also and applied, received refund as regards to IGST. The refund on IDS was rejected via the three separate deficiency memos which pertain to different and distinct assessment periods. The Assesse approached to the hon'ble High court in regard to two points.

The petitioner challenged the deficiency memo issued by the Revenue by stating: -

i) The receipt of refund in respect of zero-rated exports does not disentitle the petitioner to claim refund under Section 54.

ii) Debit entries for the claims could not be made until authorization in such regard was given to the petitioner.

[5] TS-20-HC(MAD)-2024-GST- MADRAS HIGH COURT

The revenue contented that the refund claim for zero rated exports does not entitle the petitioner from claiming a refund for unutilized ITC. Consequently, the first reason for rejection is untenable.

The Hon'ble High Court in the above case observed that:

- Under Section 54 of the GST Act, refund may be claimed either for unutilized ITC on account of an inverted duty structure or in respect of zero-rated exports. Therefore, the refund claim for zero rated exports does not disentitle the petitioner from claiming a refund for unutilized ITC
- Debit entries are ordinarily made only upon oral instructions from the authorities. Even otherwise, when the statute provides for a refund subject to fulfilment of conditions, as long as such conditions are fulfilled, a refund claim cannot be rejected on the ground that debit entries were not made.
- The HC also entertained the possibility that ITC may accumulate both in respect of input goods that are not affected by an inverted duty structure and by the purchase of input goods that are so affected. Therefore, it is necessary for the petitioner to submit all necessary documents to establish that its claim for refund is confined to input goods that are affected by an inverted duty structure.
- The impugned deficiency memos were quashed. As a corollary, the matter is remanded for reconsideration. It is open to the petitioner to submit any further supporting documents in respect of its refund claim within two weeks from the date of receipt of a copy of this order.

HNA Comments: -

The judgement provides that section 54 refund may be claimed either for unutilized ITC on account of an inverted duty structure or in respect of zero-rated exports. Therefore, the refund claim for zero rated exports does not disentitle the assessee from claiming a refund for unutilized ITC. This is a useful decision to be considered by the taxpayers under inverted duty structure wherein refund would be possible.

6. GST gets credited to the government upon payment in ECL: Quashes interest demand.

M/S. Eicher Motors Ltd. vs. The Superintendent of GST and Central Excise [6] [Hon'ble Madras High Court]

The petitioner is engaged in manufacturing of mid-sized motorcycles. Revenue issued a recovery notice for alleged belated payment of GST and filing of GSTR-3B from July 2017 to December 2017. The petitioner had accumulated CENVAT credit amounting to about Rs. 33 crores in pre-GST for which they had filed their Fform GST TRAN-01 on October 16,2017 owing to want of system readiness and technical glitches in the GST Common Portal during the initial stages of implementation of GST. However, amount did not reflect in the Electronic Credit Ledger (ECrL) leading to non-filing of GSTR-3B and in turn assessee was unable to file the GSTR-3B for subsequent months from August, 2017 to December, 2017, since Section 39(10) of CGST Act disables an assessee from filing returns for the subsequent period if the returns for the previous tax period are not furnished. Even though the petitioner did not file the returns for the period, they had fully deposited amount equal to liability in electronic cash ledger (ECL) within due date for the months. The payments were done through PMT-06. After a lapse of 6 years, recovery notice was issued to the petitioner for alleged belated payment of GST from July, 2017 to December, 2017 directly even without the issuance of show cause notice.

The Hon'ble High Court in the above case observed that:

- GST collections made by the registered person, have been made on behalf of Government and once the said collections were deposited to the Government account and the same is made available to the Government for its use at once, otherwise the rights of the exchequers in utilising the GST collections in time for welfare measures of public will be deprived, which is not permissible under the Act
- As per section 39 (1) of the CGST Act, in GSTR-3B it is mandatory to provide the details about the tax paid, which means that prior to filing Form GSTR-3B, the tax should have been paid by the registered person.

[6] TS-19-HC(MAD)-2024-GST - MADRAS HIGH COURT

- Tax should have been paid by using GST PMT-06 and that is the reason why the details of the payment of tax is required to be furnished in the said form irrespective of time of filing the GSTR-3B, whether it is before or after the due date for filing the returns.
- When GST is paid by using Form GST PMT-06, the tax gets credited to the government's accounts and it is immaterial whether GSTR-3B is filed within due date or not for remittance of tax to the account of Government.
- HC rejected the submission of Revenue that as long as the amount is available to the credit of Electronic Cash Ledger, the tax amount would be retained until the suitable debit entries are made by filing GSTR-3B.
- HC explained how payment challan in GST PMT-06 works that immediately on receipt of challan identification number from the collecting bank, the said amount shall be credited to the Electronic Cash Ledger of the person, on whose behalf the deposit has been made, which means, as stated in Explanation (a) to Section 49(11), initially the amount is credited to the Government and thereafter, it will deemed to be credited to the Electronic Cash Ledger, which is an automatic process, i.e., once GSTR-3B is filed, automatically, it will appear in the electronic cash ledger, which is only for the accounting purpose and nothing more than that.
- HC quashed and set aside the recovery notice as well as order.

HNA Comments: -

The judgment emphasized that the Madras HC holds that no interest is payable where the tax amount has already been credited to the Government via ECL within the prescribed time limit, i.e., before due-date of filing the return. It also distinguished the adverse high court rulings in case of Jharkhand HC in *RSB Transmission [TS-589-HC(JHAR)-2022-GST]* and the judgement rendered by Telangana HC in *Megha Engineering [MANU/TL/41/2019]*. Readers may note that this decision may be appealed further and till such time benefit of this ruling may be claimed wherever interest liability arose.

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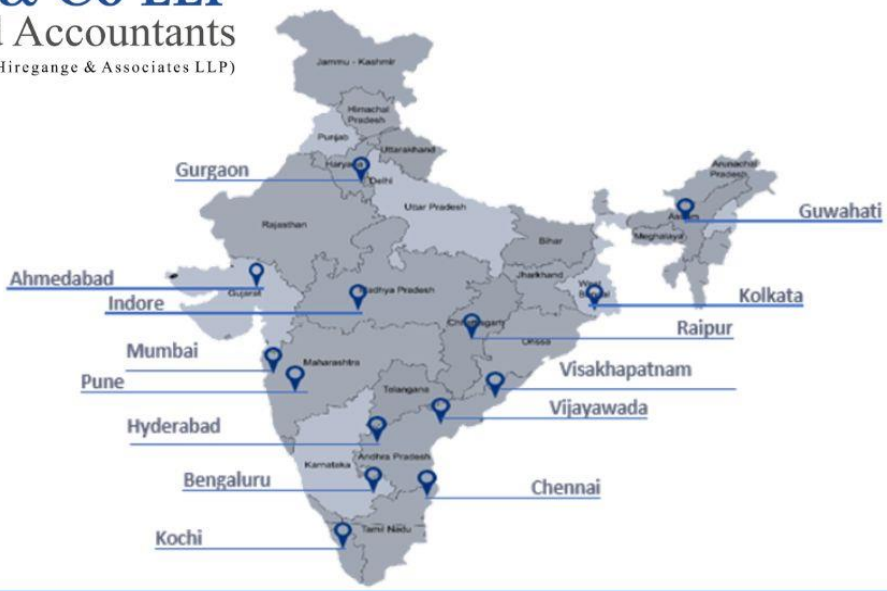

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