Legal Updates

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Summary of Major Legal Updates

Key Highlights:

- The State is not liable to indicate HSN Code for GST Rate in public tender but the bidder i.e., supplier
- Service Tax is not leviable in the Anti-virus software sold in CD/DVD
- The statutory interest on refund under Section 56 of the CGST Act cannot be withheld on account of the Hon'ble Supreme Court Order of Extension of Limitation
- The interest shall be levied on late GST remittance even if credit is lying in electronic cash or credit ledgers
- The investigation post-filing application would debar the applicant from seeking an Advance Ruling
- The Additional evidence can be produced at the Appellate stage if sufficient cause is being shown
- The Annuity paid by the NHAI or State Highways Authorities to the Concessionaire/contractor is exempt from GST
- There is no statutory requirement for the Import Export Code (IEC) number during the rendering of services exported from India
- Assessee entitled to refund of unutilized CENVAT credit on account of export of legal services.
- Exporter cannot be deprived of MEIS benefits due to technical error in electronic system
- Hon'ble Gujarat High Court directs CBIC to refund IGST on ocean freight

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[Union of India & Others vs. Bharat Forge Limited and Another SLP No. 4960 of 2021 dated 16 August 2022- Hon'ble Supreme Court of India]

A global tender inviting e-tenders for procurement of turbo wheel impeller balance assembly was floated by Diesel Locomotive Work on 11.04.2019 under the "Make in India" scheme. Bharat Forge Ltd., one of the tenderers had approached the Hon'ble Allahabad High Court, inter alia, assailing that neither the notice inviting tender, nor the bid document mentioned the relevant HSN Code applicable to the product. It was highlighted by the Bharat Forge that the correct rate of GST is 18%, whereas the top three tenderers have shown the GST at the rate of 5% and accordingly overall prices have gone down in comparison to Bharat Forge and lost to the Bharat Forge.

It has subrogated the preservation of a level playing field. The Hon'ble High Court was of opinion that if the GST value is to be added to the base price, to arrive at the total price, and it is used to determine the inter-se ranking in the selection process., it was the duty of the state to clarify the HSN Code. Further, it was held that non-mentioning of the HSN Code in the tender document itself will not resolve all the disputes relating to fairness and transparency, by providing a level playing field in the true spirit of Article 19(1)(g) of the Indian Constitution.

In the light of the above the Hon'ble Supreme Court has held that on the perusal of the terms of the contract and bearing in mind that the GST regime puts liability on the supplier to pay the tax, the court was of the view that liability was on Bharat Forge. It was the responsibility of the bidders to quote the HSN number and GST rate. Since the liability to pay the tax is on the successful tenderer to file a return, self-assess and pay the taxes. The State would stand in the shoes of the purchaser. The Railway Board had indicated that the purchaser (Diesel Locomotive Work) "may" incorporate the HSN Code in the tender document. The word "may" not cast a mandatory duty/public duty on the purchaser to indicate the HSN Code.

H&A Comments: -

In view thereof, the obligation of tax does not transcend to the commercial realm. This is a clear dictum flowing from an above-referred decision of the Hon'ble Supreme Court of India.

It is apposite to note that the Hon'ble Supreme Court of India has given a clear message that neither the inter-tax obligation of parties can be brought within the confined of contractual disputes nor will the court entertain such disputes which are a matter of commercial expediency of parties. This decision has given a clear understanding that in public procurement, the tax burden puts on a supplier to determine the correct HSN code and pay them accordingly.

2. Service Tax is not leviable in the Anti-virus software sold in CD/DVD

[Commissioner of Service Tax Delhi vs. Quick Heal Technologies Limited - 2022 Live Law (SC) 660 - Hon'ble Supreme Court of India]

The Respondent Company is registered with the Service Tax under the category of Information Technology Software Services and has engaged in the development of Quick Heal brand antivirus software which is supplied along with the license code either online or the replicated CDs to the end consumer in India.

Subsequently, the Directorate General of Central Excise Intelligence found that the Respondent Company had not been paying service tax prior to 01st July 2012, on the services covered in the category of Information Technology Software Services falling under Item No. (iv) of clause (zzzze) of sub-section (105) of Section 65 of the Finance Act, 1944. Accordingly, a show cause notice was issued proposing a demand for service tax of Rs. 5.30 Cr. (approx.) Further, the show cause notice was adjudicated by the Department and passed an Order. Being aggrieved by the Order, Respondent filed an appeal before CESTAT.

The Hon'ble CESTAT was favoured in Respondent Company and had set aside the Impugned Order. Being aggrieved by the Hon'ble CESTAT Order, the Department had preferred an appeal before the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India has confirmed the Order of Hon'ble CESTAT in the favor of Respondent Company on the following grounds:

- The sale of software on CD/DVD is a sale of goods, and once sales tax is paid on the purchase price, service tax is not levied on the same transaction on the ground that updates are being provided to the customer.

- According to Article 366(29A) (d) of the Constitution, the End User License Agreement that grants the end user the license to use the software is a transfer of the right to use goods and a "deemed sale".
- The transfer of the right to use any goods for any purpose for valuable consideration is considered a sale under Article 366(29A) of the Constitution.
- The bench affirmed the findings of the Hon'ble CESTAT that service tax is not applicable to the retail sale of packaged software.
- Further, the analysis of the definition of "service" as given in Section 65B (44) of the Finance Act, 1944 makes it clear that Service will not include those activities which transfer, delivery or supply any goods which are deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution of India.
- Reliance is placed on the case of Tata Consultancy Services wherein the Constitutional Bench has held that the sale of packaged software in a medium such as CD/DVD to the end customer is a sale of goods. Further, it was held that in India, the test for determining whether a property is "goods" for the purposes of sales tax is not limited to whether the goods are tangible, intangible, or incorporeal.

H&A Comments

Under the erstwhile tax regime, VAT was leviable on sale of canned software and service tax was leviable on customised software. Under GST, the principle is the same that in case of sale of canned software, it would be considered as a supply of goods and in case of sale of customised software, it would be considered as a supply of service. Hence, the above principle would be applicable under GST as well.

3. The statutory interest on refund under Section 56 of the CGST Act cannot be withheld on account of the Hon'ble Supreme Court Order of Extension of Limitation.

[M/s Ankush Auto deals vs. Commissioner of DGST and Anr 2022-TIOL-1098-HC-DEL-GST-Hon'ble Delhi High Court]

The GST refund application was filed by the Petitioner on 20.07.2021 and thereafter, albeit, in tranches, the refund was remitted to the Petitioner. The only reason that the respondents/revenue have denied a grant of the statutory interest to the petitioner, is

because Covid-19 was raging and there was a delay in processing the Petitioner's refund. It is thus contended, that when the respondents/revenue were doing so, they should have also granted a statutory interest in accordance with provisions of Section 56 of the Central Goods and Services Tax Act, 2017

In the light of the above the Hon'ble Delhi, High Court has granted the interest in a refund to the Petitioner on the grounds that the Judgment referred by the respondent in the Hon'ble Supreme Court in Suo Moto W.P. (c) No. 3/2020 & Hon'ble Madras High Court Judgment in the case of *M/s GNC Infra LLP vs. Assistant*, found that these judgments are applicable to the present case. The statutory interest provided under Section 56 of the CGST Act is compensation for use of money and the respondent could not have retained the money beyond the period stipulated under Section 56 of the CGST Act.

H&A Comments: -

In view thereof, the Order passed by the Hon'ble Supreme Court only provides for the extension of the limitation period for completion of judicial proceedings and filing of applications & appeals. The 60-days' time period stipulated in Section 56 of the CGST Act is not the time limit for deciding the refund application, but a threshold to decide the taxpayer's entitlement to compensation in form of interest for the period during which the money due is not available for use. It cannot be in any manner compared with 2 years limitation period for filing a refund application, upon the lapse of which the application cannot be filed only. Simply put, all thresholds need not be within the nature of limits. This is a welcome decision and a correct one. In fact, the recent Notification No. 13/2022-Central Tax dated 5th July 2022, extending the time limit only applies to refund applications under Sections 54 and 55 and does not apply to interest under Section 56 of the CGST Act, 2017.

4. The interest shall be levied on late GST remittance even if credit is lying in electronic cash or credit ledgers.

[India Yahama Motor Private Limited vs. Assistant Commissioner of CGST - Writ Petition No. 19044 of 2019 - Hon'ble Madras High Court]

The Petitioner is an assessee under the provisions of the Tamil Nadu Goods and Services Tax Act 2017. The petitioner filed a monthly return in FORM GSTR 3B for July 2017 but noticed

that there was an inadvertent error whereby the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant.

Thereafter, the Petitioner had filed a grievance petition before the GST authority for redressal and pending the same not filed monthly returns for the months from August to October 2017, on the premise that the proper ascertainment of tax liability for the aforesaid months would be dependent upon the adjudication of its grievance petition. Subsequently, the Petitioner has filed the defaulted returns and remitted tax belatedly or at a later stage. This resulted in passing an order whereby the Petitioner was directed to remit interest of a sum of Rs.5,00,00,000.00(approx.) for belated remittance of GST. However, according to the petitioner, they had sufficient input tax credit in both the electronic cash ledger as well as the electronic credit register during the period.

The Hon'ble Madras High Court has held that interest on late GST remittance is levied even if credit in electronic cash or credit ledgers is available on the following grounds:

[1] There is a distinction between qua cash credits and credits available in electronic cash or credit ledgers While payment in cash denotes the actual availability of cash to the credit of Petitioner, credit standing to the electronic ledgers do not imply that the resources to back such credit up, are within the reach of the department. This is all the more in a cash such as the present where the Petitioner has not actually filed the returns and affects a debit to the electronic credit ledger and cash ledger to the extent of the tax payable.

[2] Section 50 provides that only remittances affected by way of debit would be protected from the levy of interest. Credit cannot be equated with cash remittance.

[3] Unless an assessee actually files a return and debits the respective register, the authorities cannot be expected to assume that available credits will be set off against tax liability. Thus, the demand has been confirmed.

H&A Comments-

Section 50 of the CGST act provides the levy of interest on the delayed payment of output tax liability. It is pertinent to mention here that the GST law does not contain the provisions in

relation to the rectification of GSTR-3b that would exonerate it from non-filing of return as well as tax liability. This decision will impact the numerous taxpayers who delayed filing of returns. The Hon'ble Madras High Court has used strict interpretation while dealing with Section 50 of the CGST Act. Whereas it is settled in the law that the nature of interest is compensatory, not penal. The said decision aids the department to demand interest on the component of input tax credit whilst the judgment of *Refex Industries vs. Assistant Commissioner of CGST and Central Excise, Madras High Court*. Hence, the disputes of levy of interest on ITC components still survives and needs to be settled by the Hon'ble Supreme Court.

5. The investigation post-filing application would debar the applicant from seeking an Advance Ruling

[M/s. Sirico Projects Limited vs. Telangana State Authority for Advance Ruling - Writ Petition No. 26145 of 2022 - Hon'ble Telangana High Court]

The Petitioner is a company registered with the GST Act. The Petitioner company is engaged in the business of works contract mostly with the Central and State Govt. According to the Petitioner Company, the rate of GST for works contracts undertaken with the Central Govt. Employees Welfare Housing Organization would be 18%. But according to Central Govt. Employees Housing Organization ("Organization"), the rate of GST would be 12%. Accordingly, the Organization paid GST at the rate of 12% to the Petitioner Company.

This caused a loss to the Petitioner Company besides being susceptible to the charge of underpaying GST. Therefore, the Petitioner made an application on 11.05.2019 seeking an advance ruling on the question that what would be the rate of tax on the works contract provided by the Petitioner Company to the Organization. In meantime, the DGGI issued a notice dated 15.12.2021 and alleged the short payment of tax i.e., 12% instead of 18%.

After three years, the advance ruling was rejected by the authority vide Order dated 03.06.2022 by holding that the authority shall not be competent to entertain the such application under Section 98(2) of the CSGT Act as the question raised in this application is already pending in the "proceedings" of DGGI.

The Hon'ble Telangana High Court held that the word "proceeding" has neither been defined in this chapter nor defined in the definition clause of the CGST Act. The word "proceeding" should be understood in the context in which it is being applied, namely, any proceedings

pending or decided in the case of an applicant under the provisions of the CGST Act, it would mean proceedings where the question raised in the application for advance ruling, has already been decided or is pending decision. Therefore, inquiry or investigation would not come within the ambit of the word "proceedings". The Hon'ble High Court further has held that such investigation post-filing of application would not debar the applicant from seeking an advance ruling.

H&A Comments: -

In view thereof, this decision is such a welcome step and a positive way forward in the fiscal regime. Disputes between the tax administration and the taxpayer are a perennial phenomenon. An Advance Ruling is one mechanism by which such disputes may be settled in advance so that the taxpayer knows of his tax liability in advance to enable him to assess the transaction he proposes to undertake. In this case, the Applicant approached the Authority for clarification regarding the rate of tax, and subsequently, the DGGI initiated the inquiry and issued a notice and alleged short payment of tax which completely defeats the sole objective of establishing Advance Ruling.

6. The Additional evidence can be produced at the Appellate stage if sufficient cause is being shown.

[M/s. FedEx Express Transportation and Supply Chain Services (India) Pvt. Limited vs. Union of India, Writ Petition No. 2478 of 2022- Hon'ble High Court of Andhra Pradesh]

The Petitioner is primarily engaged in the business of providing Express Courier Services to units situated in SEZ, which are treated as zero rated supply, and therefore Section 16 of the IGST allowed the Petitioner to claim the refund of input tax paid while making such zero-rated supply. The Petitioner has filed the refund claim as per Section 54 r/w Rule 89 of the GST Act. Thereafter, in order to file a refund claim, the Petitioner approached the recipient to obtain endorsement certificates from a specified officer of their respective zone about the receipt of services by these SEZ units for their authorized operations.

But due to the breakdown of the COVID-19 pandemic, the SEZ units were unable to obtain endorsement certificates. Due to the limitation prescribed in Section 54 of the CGST, the Petitioner filed the refund application along with all necessary documents except the endorsement certificate. Afterward, the SCN was issued and passed the Adjudication Order

and rejected the same. Further, the Petitioner filed an appeal and submitted the endorsement certificate at a later stage as additional evidence. But without considering the same, the appeal was rejected.

The Hon'ble High Court allowed the refund to the Petitioner and remanded it back to the authorities to decide it afresh after accepting the endorsement certificate filed by the Petitioner on the following grounds: -

[1] Now onwards the Petitioner placed the endorsement certificate on record, showing the efforts made by the Petitioner to obtain the certificate. Thus, the continued efforts of the Petitioner to obtain the certificate within the time prescribed cannot be brushed aside.

[2] Rule 112 of the CGST Rules makes it clear that the Appellate Authority has the power to accept additional evidence adduced by the Appellate, if "sufficient cause" is shown by the Appellant. Reference was made to the decision of "Avichal Press Pvt. Ltd. vs. Asst. Commissioner of Income Tax".

[3] Rule 112(4) conferred the powers of the Appellate Authority or Appellate Tribunal to direct the production of any document, to enable it to dispose of the appeal, is not affected. Further Section 107 (11) provides that Appellate Authority may make any further inquiry as it thinks fit before disposing of the appeal.

H&A Comments: -

It is apposite to note that the taxing statute itself provides the provision to produce additional evidence before the Appellate Authority. If no opportunity is given by the Appellate Authority or Assessing Authority to the assesses whilst proving the sufficient cause for producing the additional evidence at a later stage that it will lead to both violation of the principle of Natural Justice and contravention of the statutory provisions of the law. It is worthwhile to note that additional facts can be provided only in the specified circumstances. Hence, if the sufficient cause is being shown then additional evidence can be submitted.

7. The Annuity paid by the NHAI or State Highways Authorities to the Concessionaire/contractor is exempt from GST.

[M/s DPJ Bidar-Chincholi (Annuity Road Project) Private Limited Vs. UOI, Writ Petition No. 22250 of 2021– In the High Court of Karnataka at Bengaluru]

The Petitioner is a concessionaire who has been entrusted with the construction of road by the Karnataka Road Development Authority. As consideration for the construction and maintenance of roads for the contract period, the petitioner is paid certain amounts termed as 'Annuity'. In such types of contracts, where construction and maintenance of road have been outsourced to private persons, consideration is paid by permitting the contractor to collect tolls from the vehicles plying on the road. Collection of toll charges is fully exempted under GST by way of Notification No. 12/2017.

The toll charges already stated above consisted of the entire consideration for construction, operation, and maintenance of the road. Subsequently, it was proposed that annuity, which was being paid by the highways authorities as a consideration to concessionaire instead of permitting them to collect toll charges, be also exempt from GST. In this regard, Entry No. 23A and 24A were inserted and exempted.

The Hon'ble Karnataka High Court has exempted the GST levied on the payment of Annuity paid by the NHAI or State Highway Authorities to the concessionaire and set aside the issued Circular No.150/06/2021-GST dated 17.06.202 for the following reasons: -

[1] earlier, the collection of toll charges was exempt from GST. Subsequently, in the 22nd GST Council Meeting, it was proposed that the annuity which was being paid by the highway authorities be also exempt.

[2] In this regard, Govt. the issued Notification No. 32/33 of 2017 (Entry No. 23A/24A). The above notification makes it clear that the Respondent has treated the annuity being paid to the concessionaires on par with toll charges.

[3] Impugned Circular cannot carry the true intention of the legislature, override the above-issued Notifications.

[4] Nothing prevents respondents from imposing GST on the consideration paid to concessionaires on the payment received by them by way of annuity, but it has been done in the manner known to law.

H&A Comments: -

It's a welcome judgment reiterating the settled principle that the circulars can supplant and not supplement the law. Further, it also enshrines that circular/notification issued cannot diverge from the council discussion following the decision of hon'ble Delhi High Court in the case of *J.K. Mittal & Company vs. Union of India*.

8. There is no statutory requirement for the Import Export Code (IEC) number during the rendering of services exported from India.

[Smarte Solutions Private Limited vs. Union of India - Bombay High Court]

The Petitioner Company is engaged in providing high-quality data services which fall under the category of "market research services". The Service rendered by the Petitioner-Company is eligible for SEIS benefits, as introduced under the Foreign Trade Policy (FTP). After rendering the services, the Petitioner-Company tried filing SEIS applications for the year 2015-2016 & 2016-2017 on 31st March 2019. However, due to technical glitches, Petitioner did not file the same.

The Petitioner-Company has fulfilled the criteria as a service provider to apply for SEIS embodied under FTP. The Petitioner approached the Policy Relaxation Committee of DGFT. The Committee has taken a contrary view and disposed of the application of the Petitioner Company.

The Hon'ble Bombay High Court has allowed the Petition and direct the respondent to consider the Petitioner-Company's Application without insisting on an active IEC No. at the time of rendering the services on the grounds of [1], The delegated legislation cannot be imposed the additional rights or obligation and [2] Section 7 of the FTDR Act, 1992 provides the mandatory requirements of IEC No. for making import and export of general goods. Meaning thereby the IEC No. shall be necessary only when the service provider is taking the benefit under the FTP.

H&A Comments: -

This decision enables the exporters to claim the benefit under SEIS though the IEC was obtained after rendering of services but prior to filing SEIS. As on date, the SEIS Application can be filed for the period of April 20 to December 20. Also, this would aid in entitling the

rights such exporters who are disputing the rejection of their SEIS application due to the reason of not holding active IEC at the time of rendering of services.

9. Assessee entitled to refund of unutilized CENVAT credit on account of export of legal services.

[Commissioner of CGST Delhi West vs. Anand and Anand - SERTA 9/2022 – Hon'ble Delhi High Court]

The assessee renders legal services in India as well as outside India and 75-80% of the receipts are from export of legal services. The assessee, therefore, filed a refund claim of unutilized CENVAT credit on account of export of legal services.

The revenue denied the refund and the Tribunal held that the assessee is eligible for refund. Being aggrieved, the revenue filed the petition.

The Hon'ble High Court held that for the legal services provided to clients located outside India, the service tax is not paid by recipient of service as he is located outside the taxable territory. As per Rule 5 of CENVAT Credit Rules, as long as the service is exported without payment of service tax, refund of CENVAT credit is eligible. Further, the definition of exempted service excludes services which are exported in terms of Rule 6A of CENVAT Credit Rules.

H&A Comments: -

The Hon'ble High Court allowed the refund of unutilized CENVAT Credit to the petitioner. The view was also given that the definition of exempted service excludes services which are exported in terms of Rule 6A of CENVAT Credit Rules.

10. Exporter cannot be deprived of MEIS benefits due to technical error in electronic system

[M/s Gupta Hair Products (P) Ltd. Versus The Deputy Director General of Foreign Trade Case No: W.P.No. 25860 of 2021 – Hon'ble Madras High Court]

The petitioner is an exporter of human hair. Although the petitioner was entitled to the benefits of the export incentive scheme called the Merchandise Export from India Scheme, however, in the shipping bill for the subject exports, the petitioner has inadvertently stated

"No" with regard to their intention to claim rewards and merchandise exports from India scheme and subsequently, amended the same manually to "Yes".

The respondent has not processed the application as the petitioner has declared their intention as "No". The petitioner being aggrieved, filed the writ petition.

The Hon'ble High Court held that the petitioner cannot be deprived of his rights to avail the benefit under MEIS Scheme only on the ground that subsequent amendment was done manually and not electronically. The clear intention of the petitioner was revealed in the shipping bill that they intend to claim benefit under MEIS scheme.

H&A Comments: -

The Hon'ble High Court give the judgement on the basis of substance over form and held that a minor mistake cannot be the sole reason for the assessee being deprived of the benefits eligible to him when substantially all the conditions for claiming benefits are fulfilled.

11. Hon'ble Gujarat High Court directs CBIC to refund IGST on ocean freight

[M/s Louis Dreyfus Company India Private Limited Versus Union Of India - R/SCA No. 11540 of 2021- Hon'ble Gujarat High Court]

The petitioner is a private limited company engaged in the business of processing edible oils and coffee, etc. The petitioner sought directions to the department/respondents to refund the IGST calculated on the amount of ocean freight charges with interest. The petitioner further sought the directions to prohibit the respondent authorities from collecting the IGST in terms of Notification No. 10 of 2017 —Integrated Tax (Rate) dated 28.6.2017 and Notification No. 8 of 2017—Integrated Tax (Rate) of even date read with a corrigendum dated 30.6.2017.

The Gujarat High Court has directed the Central Board of Indirect Taxes and Customs (CBIC) to refund the Integrated Goods and Service Tax (IGST) on ocean freight within six weeks along with the statutory rate of interest. The division bench of Justice N.V. Anjaria and Justice Bhargav D. Karia has relied on the decision of the Supreme Court in the case of ***Mohit Minerals Pvt. Ltd. vs. Union of India*** in which GST on ocean freight was struck down.

H&A Comments: -

The Hon'ble Supreme Court in the case of Mohit Minerals Pvt. Ltd. held that the tax is not leviable on ocean freight as the supply constitute the composite supply and therefore, the

tax on ocean freight component has already been discharged. Relying on the said judgement, the Hon'ble High Court ordered refund of IGST paid by the taxpayer on ocean freight.

12. Liability of interest under Section 50 of the JGST Act cannot be raised without initiating any adjudication proceeding either under Section 73 or 74 of the JGST Act in the event assessee has raised a dispute towards the liability of interest"

[M/s Bluestar Malleable Private Limited vs. Union of India, Writ Petition No. (T) 2043 of 2022 – Hon'ble Jharkhand High Court]

Earlier the Petitioner was registered with the JVAT Act and was duly migrated into the GST regime. The Petitioner found itself entitled to claim transitional credit of ITC under the provisions of JVAT Act 2005 and accordingly submitted a declaration in form TRAN-1 as per Section 140 of the CGST Act with a claim of credit for a sum of Rs. 3,11,43,255/-.

When the Petitioner filed the form electronically on the common portal of the GST, then due to human error, the Petitioner company repeated the said amount and claim the amount in GSTR-3B for the month of July 2017 (i.e., double time the same amount of credit has been availed). After unearthing the mistake, the Petitioner Company immediately took a step to credit and rectify the said entry. In GSTR-3B of July 2018, the ineligible amount has been reversed towards Input Tax Credit of SGST.

The said amount of transitional credit mistakenly mentioned in GSTR-3B for July 2017 was never utilized by the Petitioner company against the output tax liabilities arising out of daily business transactions. Thereafter reversal of the said amount, the letter was issued by the department pertains to direction for payment of interest for Rs.72,49,126/- in respect of irregularly taken credit. In the meanwhile, the petitioner filed a refund application seeking a refund of the excess amount lying in the electronic cash ledger of the petitioner for a sum of Rs.26,45,301/-.

Pursuant thereto; the refund was sanctioned by the competent authority vide the refund sanction order dated 09.11.2018. But the said refund was allowed with an adjustment towards a sum of Rs.72,49,126/- in light of the impugned letter. Petitioner challenged the part of refund order in appeal. The petitioner was requested to pay the balance of

Rs.40,71,403/- towards interest payment after adjustment of the refund amount sanctioned in favour of the petitioner. However, the appeal was dismissed by the Authority.

The Hon'ble Madras High Court has relied upon the judgment of Mahadeo Construction and held that if any assessee disputes the liability of interest under Section 50 of the JGST Act then the revenue will have to follow the specific procedure as stipulated under Section 73 or 74 of the JGST Act. However, the department through a letter directed the Petitioner to pay the balance amount of Rs.40,71,403/- towards interest payment after adjustment of the refund amount sanctioned in favour of the petitioner was not legally valid. Thus, it clearly transpires that the respondents have not followed the procedure as enshrined in Section 73 or 74 of the JGST Act and quashed the Order and remanded back to authorities for reconsideration.

H&A Comments

It is settled in law that Section 50 of the CGST Act is compensatory in nature. In this case, the department has dubiously realized the amount of interest by the way of deducting the amount from the refund as claimed by the Petitioner which totally negate or is biased and unlawful. The GST law has provided the proper recovery mechanism for unpaid tax from the taxpayer. But in this way, the department shall not recover the taxes from the taxpayer and retain the money in the revenue pocket. One more aspect, the Hon'ble Supreme of India has evaluated that the department cannot retain the money from illegal recovery.

13. No distinction between working days and holidays in the proceedings of detention of goods.

The vehicle was intercepted on 13.08.2022 and immediately upon interception, the statements of the driver were recorded in Form GST MOV-01. The reason of interception was the presumption of the officer that the goods were proposed to be unloaded at an unregistered place. On the same date, Form GST MOV-04 (Physical verification report) was also issued. Thereafter no show cause notice has been issued by the respondent under Section 129(3) of the CGST Act which is required to be issued within 7 days from the date of detention/seizure.

In the meantime, on 17.08.2022, the Petitioner made a representation requesting that the conveyance be permitted to proceed on its way and setting out an explanation for the alleged discrepancy that has been noted by the officer. No order of detention has been passed

without which the consignment ought not to have been retained by the authorities, upon interception. Section 129(3) requires a notice to be issued within 7 days, stipulating the penalty payable for the alleged discrepancy, and in this case, no notice was issued till 24.08.2022, when notice ostensibly dated 22.08.2022, has been sent, produced in the course of the hearing.

The Hon'ble Madras High Court held that the respondent-department did not recognize the concept of "working days" and "holidays". The roving squad of the GST department knows no distinction between working and non-working days and the wing works 24*7, the year though. In such circumstances, neither the Petitioner nor Respondent can have the luxury of reference to a holiday to delay or protract the proceedings. This is made explicitly clear from the circular and the amendment brought on 21.06.2018. Thus, the detention is a pre-condition for the issuance of the SCN, the order of detention is necessary to be issued prior to the 7th day from the detention/seizure of the conveyance.

H&A Comments

In this judgment, the Hon'ble Madras High Court has strictly interpreted the Circular No. 49/23/2018-GST dated 21st June 2018 wherein the CBIC has made an amendment is that the expression "three working days" may be replaced by the expression "three days". Meaning thereby the expression "working days" means a day on which the department usually works, and the expression "days" means a day that includes holiday also. But then in the working day there is no scope of the holiday. Moreover, it is a settled position in law that the provisions of the law should be read as it is i.e., literal interpretation, unless there is ambiguity.