Legal Updates

Summary of Major Legal Updates

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A. Some Relevant Judgements

1. RCM demand on secondment of employees - manpower services or not?

Metal One Corporation India Pvt Ltd Vs Union of India & ORS., (Delhi High Court)
[W.P.No.14945 of 2023]

Facts of the Case:

- The petitioner has seconded some employees from its foreign holding company.
- Wherein which the department has contended that the salaries paid to the seconded employees are chargeable to IGST under RCM.
- The department is of the view that the remuneration paid to the seconded employees are against the manpower services procured from the holding company.
- In this regard, the department issued a pre-show cause notice demanding to pay the demand, failing which a SCN would be issued.

Contention of the Petitioner

- Firstly, the expatriate employees are in terms of separate employment contracts with the petitioner. Thereby the remuneration paid does not account for the supply of services by the petitioner's holding company.
- Department reliance in the case of C.C., C.E., & ST., Bangalore [Adjudication] v. **Northern Operating Systems Pvt. Ltd**.: 2022 (61) GSTL 129 (SC) **is not in similar lines of the petitioner's case** for the reason that in the case of Northern Operating Systems Pvt Ltd the remuneration was paid by the foreign company inorder to serve in India and there were no separate contracts between the Indian Company and the employees. The Indian company was merely reimbursing the payments to the foreign company for seconding their employees and the foreign company was still their employer.
- Thereby reliance cannot be placed on the NOS case law as it is not in line with the instant case.
- Further, the cases in similar lines were stayed by the Hon'ble Karnataka High Court and the Hon'ble Punjab and Haryana High Court on the remuneration paid to the seconded employees as service charges on supply of manpower services.

Decision Held:

- Prima facie, salaries paid to employees, even though seconded by a foreign affiliate, in terms of the employment agreements with the respective employees, absent anything more, cannot be considered as payment for manpower services supplied by the foreign affiliate.
- Thereby stayed the order of issuance of SCN.

H N A Comments: This is a welcome judgment in favor of the secondment of employees. However, the same was only in favor due to the fact that there existed a separate employment contract, in the absence of the same shall be treated as manpower services obtained.

There govt. departments are on a drive to collect GST on expat salaries, and many taxpayers are unaware of stay orders granted by various HC's across India on similar

matters. The situation must be seen for the past, and for the future, and appropriate process must be put in place to avoid such surprises in the future.

2. Can GST registration be cancelled for filing only nil returns for more than 6 months?

ATT SYS India Pvt Ltd Estex Tele Pvt Ltd Consortium Vs The Commissioner Goods and Services.,
(Delhi High Court)
[*W.P.No.14494 of 2023*]

Facts of the Case:

- The petitioner is an Association of Persons, constituted by ATT Sys India Pvt. Ltd. and Estex Tele Private Limited.
- The petitioner was constituted in July, 2015 to execute a contract dated 28.10.2014, awarded by the Indian Highway Management Company Limited (hereafter 'IHMCL') for conducting traffic surveys on National Highways in Zone-4 (in the States of Uttar Pradesh, Bihar and Jharkhand).
- Further on enactment of GST the petitioner obtained GST registration having GSTIN 07AAEAA1359D1Z6.
- However, the contract entered with HMCL was terminated which led to disputes.
- The dispute was settled in favor of the petitioner whereby the petitioner was awarded Rs.5,49,97,760 on 24.05.2023 thereby requiring the petitioner to discharge taxes on the same.
- Herein, it was also stated that the petitioner was not engaged in any other business apart from the HMCL contract and hence was filing nil returns.
- However, on examining the portal it was discovered that the petitioner's GST registration was cancelled and, therefore, the petitioner has been unable to file its returns.
- Petitioner claimed that he has paid GST of 14.90L in excess which is lying with the authorities.
- However, the department officers issued SCN on 27.11.2020 stating the petitioner was 'filing nil returns for last six months' thereby proposing to cancel his registration.
- The GST registration was suspended with effect from 27.11.2020.
- Pursuant to the SCN, the order was passed on 26.12.2020 cancelling the registration for the sole reason that no reply was furnished by the petitioner w.r.t the SCN issued.

Contention of the Petitioner:

- At the onset, GST registration cannot be cancelled merely due to filing of nil returns, as the petitioner was only engaged in the HCML contract and not in any other business it had filed nil returns.
- Further, in the SCN issued the space for filling the reasons for cancelling registration was left blank. Thus, SCN did not reflect the reason for cancelling the petitioner's registration.
- According to the petitioner it did not receive the SCN. Assuming the petitioner received the SCN, it would have been of little assistance for the reason that the SCN did not contain any date or time for a personal hearing. Therefore, no opportunity to contest was given to the petitioner.

- Cancelling registration without informing the reason and providing an opportunity to contest is void and violates the principles of natural justice.
- Thus, the said order cannot be sustained, without any proper grounds.

Decision Held:

It was directed to the department to restore the registration and the petitioner shall comply with the GST provisions and file the returns. Further, any action shall be taken by the department if any non-compliance in part of the petitioner.

H N A Comments: It is clearly understood here that the department cannot vaguely cancel the registration without providing any proper grounds and also filing nil returns cannot be a reason for cancelling registration when the assessee has no other option but to file nil returns.

3. Where goods in transit were found to be different than that mentioned in the accompanying document

Galaxy Enterprises Vs State of U.P. (Allahabad High Court)
[W.P.No.1412 of 2022]

Facts of the Case:

- Petitioner is a proprietorship concern engaged in the business of manufacturing and sale of laminated papers.
- In the normal course of business, the goods were loaded on Truck no. RJ 01 GC 4269 for dispatch from Muzaffarnagar to Rajasthan along with tax invoices, E-way Bills and GR.
- During transit, the goods were intercepted on 25-1-2022 and Form GST MOV-2 was issued by officers after recording the statement of the truck driver and after physical verification Form GST MOV-04 was issued on the ground that the goods were found to be different than mentioned in accompanying documents.
- Thereafter a show cause notice was issued in Form GST MOV-07 on 27-1-2022.
- The petitioner submitted a reply and being not satisfied with the same, penalty was imposed by order dated 27-1-2022. Thereafter the petitioner filed an appeal against the said order, which was also dismissed by the impugned order dated 2-7-2022. Hence the present writ petition.

Contention of the Petitioner:

- It was contended that once the mistake was rectified and a genuine tax invoice along with an e-way bill was produced before the issuance of show cause notice or passing of detention as well as seizure order then no proceedings shall ought to have been initiated further by the authorities.
- Additionally, the reason for the discrepancy was submitted stating it was due to a clerical error of his accountant and in support thereof, also filed an affidavit of the accountant but none of the authorities have considered the same.
- As the petitioner has no intention to evade the payment of tax as the impugned order is not justified in the eyes of the law and the same is liable to the quashed.

- Reliance was placed upon the Division Bench judgment of this Court in **M/s. Axpress Logistics India Pvt. Ltd. v. Union of India and others,** (Writ Tax No. 602 of 2018, decided on 9-4- 2018) and **M/s. Bhumika Enterprises v. State of UP and others** (Writ Tax No. 564 of 2018, decided on 3-4-2018) wherein it was held that if the tax invoice along with the E-way bill are produced before passing the seizure as well as detention order, the further proceedings is not justified.

Decision Held:

- The main reason for the authorities to not accept the newly furnished documents (invoice and e-way bill) was that the same was produced after the movement of goods and if not detained the petitioner would have evaded the payment of the taxes. However, the authorities failed to notice the fact that the discrepancies were cured before the detention or seizure order could be passed.
- Further, reliance was placed on the identical case of M/s. Axpress Logistics India Pvt. Ltd (supra) and M/s Bhumika Enterprises (supra) wherein once the documents were produced before passing of the detention/seizure order, the authorities ought not to have proceeded further imposition of penalty was unjustified.
- In view of the facts as stated above, the writ petition succeeds and is allowed. The impugned orders are set aside. The matter is remanded to the first appellate authority, who shall pass a fresh order in accordance with law, expeditiously, preferably within a period of two months from the date of producing a certified copy of this order.

H N A Comments: It can be inferred that any error or mistake which is rectified before any action is taken by the proper authorities will be considered valid on submission of proper grounds of justification. This helps instill faith in the process and enable bona fide taxpayers to conduct their business with more confidence.

4. Parallel proceedings by Central and State Authorities unacceptable

Shree Cement Ltd Vs Union of India (Rajasthan High Court)
[W.P.No.17725 of 2023]

Facts of the Case:

Parallel show cause notices were issued by Central and State GST Authorities on the same subject matter.

Contention of the Petitioner:

- It was claimed that the action of the officials of the CGST/SGST of issuing simultaneous show cause notices on the same subject matter is contrary to Section 6(2)(b) of the CGST/SGST.
- It is also submitted that in terms of the guidelines issued by the GST Council dated 20-9-2017, the Central Government and State Government have decided to assign the taxpayers registered in the State of Rajasthan to one Authority and as per the same, the Administrative Authority in the case of petitioner is the Central Government. However, in violation of the guidelines, the officials of the State GST Council have also issued a show cause notice to the petitioner.

Decision Held:

The High Court granted an interim stay against adjudicating aforesaid SCNs and issued notice to both, Central and State GST authorities to respond.

H N A Comments: As it is explicitly stated in law under section 6(2)(b) of CGST Act where a proper officer under SGST or UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this same act on the same subject matter, thereby parallel proceedings by different authorities for the same financial year is contravention of the law. This brings clarity that judiciary will step in where the department does not follow the law.

5. Search and Seizure of Cash unlawful

Gunjan Bindal Vs Commissioner of CGST , (Delhi High Court)
[W.P.No.8713 of 2023]

Facts of the Case:

- Search was conducted at the residential premises of the petitioners under section 67 of the CGST Act, wherein cash amounting to a total of Rs.1,15,00,000/- was seized by the officers on the basis that the petitioners were unable to provide a satisfactory explanation or any documentary evidence to support the source of cash.
- The officers presumed the cash was obtained by unlawful means and thereby not release the cash on their request.

Contention of the Petitioner:

It was contended that the concerned officers had no power to seize cash under section 67 of the CGST Act on the ground that the same was not satisfactorily explained. Concededly, the issue is covered by the earlier decisions of this Court **in Deepak Khandelwal Proprietor M/s Shri Shyam Metal v. Commissioner of CGST, Delhi West & Anr**.: 2023: DHC: 5823-DB and **Rajeev Chhatwal v. Commissioner of Goods and Services Tax (East):** 2023: DHC: 6060-DB.

Decision Held:

The Court directed to remit the amount along with the applicable interest, however, that would not preclude the Income-tax Department or any other authority from taking necessary steps in regard to the petitioners possessing such cash.

H N A Comments: Seizure under section 67 of the CGST Act is limited to goods liable for confiscation or any documents, books or things which may be useful or relevant to any proceedings under this act and "cash" does not fall within the definition of "goods". Therefore, confiscation of cash without any authority of law is illicit.

6. Failure to obtain endorsement within 45 days for the goods supplied to SEZ due to the default of the AO

Lenovo(India) Pvt Ltd Vs Joint Commissioner of GST (Appeals-1) (Madras High Court)
[W.P.No.23604, 23605 and 23607of 2022]

Facts of the Case:

- The petitioner is engaged in the manufacture/import of Computers (Desktops/Laptops etc.) and supplying the said goods and related services to units in Special Economic Zones.
- As per Section 16 of the IGST Act, supply to SEZ is considered as a zero-rated supply. Thereby the petitioner filed applications under section 16 of the IGST Act read with section 54 of the CGST Act read with Rule 89 of CGST Rules, claiming a refund of IGST paid by them in the months of December 2019, January 2020, and February 2020.
- However, the petitioner's applications have been rejected in part due to various reasons for each month Dec, Jan & Feb.

Issue 1: Inordinate delay in obtaining endorsement and submitting the supporting documents.

Issue 2: Endorsement does not that the goods were supplied for authorized operations.

Issue 3: Mismatch of details, as the endorsement date mentioned in the invoices differs from the endorsement date mentioned in Statement-4.

Contention of the Petitioner:

Issue 1:

- Nowhere do the provisions of the GST Act require the petitioner to obtain endorsement within period of 45 days from the Authorized Officer (AO) from the date of invoice, even though Rule 30(4) of SEZ rules mandates the same, in the instant case, the said Rule 30 (4) will not come into the picture since the mode of payment of tax was made as per Section 16 (3) (b) of IGST Act, which enables the petitioner to seek for a refund of IGST paid with respect to supply made to SEZ units and the petitioner has not opted to supply the goods to SEZ units without payment of tax under Section 16 (3) (a) of IGST Act. Hence rejecting the claim on the basis of Rule 30 of SEZ Rules is not sustainable.
- Further, rejecting the claim based on delay in obtaining the endorsement from the AO **is beyond the control of the petitioner** and **cannot deprive the petitioner's right to claim benefit.**
- In addition, it was submitted that the disputed period in obtaining the endorsement was due to Covid-19 which is again out of the petitioner's control.
- The time limit fixed under section 54 (1) is a directory in nature and it is not mandatory; it is not mandatory that application has to be made within two years and in appropriate cases, a refund application can be made even beyond two years -When assessee had filed application, which is within a period of limitation, viz. 2 years as stipulated under section 54(1), delay in filing supporting document at time of filing of reply/personal herein would only extend time limit to pass an order under section 54(7) and non-submission of documents at time of filing application for refund cannot be deemed to have filed with a delay.

Issue 2:

- As it is stated, in provision U/S 16 of the IGST Act, do not contemplate that the use of goods should be for authorized operations and submission of such endorsement as proof.
- It is also to be noted that Section 16 stipulating the rules for the use of goods for authorized operations was made prospectively w.e.f 1.10.2023 therefore rejection of the application on the reason that ''the endorsement does not specifically state that the goods have been admitted in full is for authorized operations is not sustainable as the endorsement only states that the goods were received in full and that is not sufficient.

Issue 3:

The defect pointed out by the Department with regard to mismatch is procedural and curable and the same has been rectified, hence, the claim cannot be denied on this technical ground as barred by limitation.

Decision Held:

Issue 1: Failure to obtain endorsement within 45 days is not due to fault on the part of the petitioner and it is for the AO to make endorsement in time, for which, the petitioner cannot be found fault and hence refund shall not be rejected on such grounds.

Issue 2: As the provisions do not contemplate the same the department cannot insist that endorsement must state that goods supplied were for authorized operations thereby setting aside the department's contention for the denial of refund on such grounds.

Issue 3: It was held that as the mismatch was rectified by the petitioner and submitted the revised Statement which is accepted by the learned Senior Standing Counsel for the Department, findings rendered by the Department on the ground of mismatch are also liable to be eschewed.

H N A Comments: This is a welcome order passed by the High Court clearly pointing out the flaw in decision-making and impugned orders passed by the authorities which cannot deny the petitioner's rightful claim of credit on submission of proper documents and on compliance of the relevant provisions.

7. ITC Refund Sanction order signed and cleared by unauthorized officer

Vaishnodevi Advisory Pvt Ltd Vs Deputy Commissioner CGST &CE , (Calcutta High Court)
[*W.P.No.2370 of 2023*]

Facts of the Case:

- The petitioner a company registered under the GST Act had applied for a refund of accumulated ITC on the export of goods without payment.
- The said accumulated was sanctioned vide RFD-06 by the adjudicating authority and the same was reflected in the GST portal.
- However, on the final review by the Department, the refund was rejected on the basis that a few of the invoices were:

- Cleared by the Inspector of Customs who is not an authorized "Proper Officer" for the purpose of allowing exportation of goods.
- Cleared by the Superintendent of Customs, without obtaining any approval from the AC/DC of Customs having jurisdiction over the Inspector of Customs.

Contention of the Petitioner:

- One of the important contentions was that the procedural errors were not cooked by the Petitioner.
- The Petitioner has no control over the actions of the Customs Departmental Officer and cannot be penalized for the fault of the officers.
- The Petitioner cannot be asked to do the impossible i.e., ask the officers to sign certain Government documents or seek approval on behalf of the Superintendent before the AC/DC of Customs having jurisdiction over the Inspector of Customs and hence **cannot be penalized for the fault of others.**
- It was further submitted that Section 51 only requires getting clearance of goods for exportation and the shipping bills have to be countersigned by the customs officials. Whereas Notification No. 40/2022-Customs (NT) dated May 02, 2012, Superintendent of Customs and Central Excise and/or Appraiser can counter-sign such Shipping Bill for the strict purpose of Section 51 of the Customs Act in order to clearance for export and is not relevant for any other purposes.
- Further nowhere in Circular No. 125/44/2019-GST dated November 18, 2019, under the GST Regime specifies that the shipping bills produced by the reference claim under the relevant GST Act have to be in accordance with the Notification bearing no. 40/2012-Customs (NT) dated May 2, 2012 under the Customs Act, 1962.

Decision Held:

Signing by officials of Customs was mere irregularity from the side of the customs department but for such irregularity, the petitioner should not be penalized when he had produced documents through an online portal as well as a physical mode for clearance of goods exported under Section 51 of Customs Act, 1962.

H N A Comments: It can be inferred from the above decision that if the goods are transported to the destination, the shipping bills are genuine and signed by the Customs officer the refund shall be sanctioned and cannot straightaway deny the righty eligible ITC without proper cross verification by the officers.

8. GST Council can recommend rate but can't determine classification

M/s. Parle Agro Private Limited vs. Union of India & ORS.,(Hon'ble Madras High Court) [W.P. No. 16608 & 16613 of 2020]

Facts of the Case:

- The petitioner has filed a writ petition before the Hon'ble Madras High Court praying for issuance of a Writ of Certiorarified Mandamus for calling the record of the 31st GST Council relating to the minutes of meeting held on December 22, 2018.
- The case involves a dispute over the classification of 'flavoured milk' under the HSN code for the purpose of GST.

- The petitioner also filed another writ petition [W.P. No. 16613 of 2020] praying for the issuance of Writ of Mandamus directing the respondent to classify the goods under Chapter 0402 and levy GST accordingly.

Contention of the Petitioner:

- The petitioner contested the decision of the GST council to classify the flavoured milk under HS code No. 2202 instead of 0402.
- Petitioner submitted its license under FSS Act in the state of Tamil Nadu wherein the 'flavoured milk' was classified as a 'Dairy Product' based on which it was contended that the flavoured milk should be classified under Heading 0402.
- The petition argued that this classification is contrary to the decision of the Hon'ble Supreme Court in *COMMISSIONER OF CENTRAL EXCISE VERSUS M/S. AMRIT FOOD.*

Decision Held:

- Relying upon the judgment of **Union of India v. Mohit Mineral Private Limited** the court observed that the recommendations of the GST council are not binding in nature.
- Further, the court stated that the GST council does not have the power to determine the classification of goods.
- Court relied upon the principle of 'Noscitur-a Sociis' which states that a word is known by its company it keeps. Therefore, meaning of 'Beverage Containing Milk' has to be ascertained from similar products under the heading 2202 90 of Customs Tariff Act, 1975.
- GST council cannot impose a wrong classification of flavoured milk as a 'Beverage Containing Milk' under the residuary item as 'Non-Alcoholic Beverage'.
- It is held that in absence of any any enactment under GST, for rates and classification of the goods and services, the parliament and state legislatures have left it to the wisdom of respective Governments to fix rate of tax on recommendations of GST council.

H N A Comments: The GST council does not have authority to determine the classification of goods or services, rather they can recommend. Recommendations of the GST Council are merely recommendatory in nature, and not binding on the Government as evident from a reading of Article 279-A(4) of the Constitution of India. This position was also affirmed by the SC in UoI v. Mohit Mineral (Supra). Importantly, The judgment reinforces the principle that classification must strictly adhere to the Customs Tariff Act, of 1975. The court highlighted that the government has the authority to fix appropriate rates for goods classified under this act, irrespective of concessions given under earlier regimes.

9. Inverted Duty Structure: HC allows ITC Refund in case of multiple inputs and output supplies

Nahar Industrial Enterprises Limited Vs. Union of India., *(Rajasthan High Court) [W.P.No.8476of 2021]*

Facts of the Case:

- The petitioner is engaged in the manufacturing of textiles and its operation ranges from spinning, weaving, and processing.
- The petitioner uses various raw materials and packing materials for the manufacturing process and the GST rates on them vary from 5% to 28% while the GST rate on output supply ranges from 0.10% to 12%.
- The petitioner filed an application seeking a refund of accumulated ITC which was rejected by the adjudicating authority, and the petitioner's appeal was also rejected by the First Appellate Authority contending that both inputs and outputs are taxable at the same rate and hence the GST rate being "more and less the same", this does not qualify under Inverted duty structure.

Contention of the Petitioner:

- Firstly, the rate of input supplies is more than output supplies, petitioner's case squarely falls under the Inverted Duty Structure as provided under Section 54(3)(ii) of the CGST Act, 2017.
- Secondly, the refund application has to be filed GSTIN-wise and not product-wise. Further, the GST portal also does not permit the filing of multiple refund applications based on various products.
- Petitioner also contended that the denominator "Adjusted Total Turnover" as contained under rule 89 of the CGST Rules, 2017, expressly provides for the inclusion of all products quantified under the expression "the sum total of the value of". Thus, the law provides for refund calculation GSTN-wise and not product-wise.
- Further, the petitioner contented that the determining factor for applicability of Section 54 (3) of the CGST Act, 2017 is the rate of tax and quantum of ITC content and not the value/quantum of individual inputs and outputs.

Decision Held:

- Firstly, Section 54(3) of the Act and the concept of inverted duty structure were closely analyzed. The language contained under the third proviso to Section 54(3) signifies plurality of both, inputs and outputs. Further, the rate of tax on inputs should be more than the rate of tax on outputs, which in the Petitioner's case were held to be higher, emphasizing upon the rule of strict interpretation of taxing.
- Referring to various important legal precedents, including the case of Union **of India & Others vs. VKC Footsteps India Private Limited,** the Hon'ble Court established that the scheme of refund based on an inverted duty structure applied regardless of the number of inputs and output supplies involved. The central scheme of legislation under Section 54(3) whether the rate of tax on inputs exceeds the rate on output supplies, was held to be true in the Petitioner's case.

H N A Comments: It is clearly understood that the GST refund should not be denied solely due to the presence of multiple inputs and outputs with varying GST rates. **The judgment highlights the importance of statutory provisions and the need to follow the rule of law in GST refund claims. The Court's astute observation emphasized the importance of a meticulous comparative analysis of GST rates on inputs and output supplies. The decision underlines that the mere similarity in GST rates, as per the comparative analysis, does not negate the right to claim a**

refund. Citing Section 54(3) of the CGST Act and Circulars No. 79/53/2018-GST and No. 125/44/2019-GST, the Court held that even with multiple inputs carrying higher GST rates than output supplies, the inverted duty structure refund mechanism is applicable.

10. Amendment to Rule 89(4)(C) of CGST Rules, restricting refund by capping 'export turnover', not applicable retrospectively

M/s. Indian Herbal Store Pvt Ltd vs Union of India (Hon'ble Delhi High Court) [W.P. (C). 9908 of 2021 & W.P. (C) 9912 of 2021]

Facts of the Case:

- The petitioner had filed the refund application for claiming refund of unutilized ITC for the period from 1st October 2018 to 30th September 2019. Thereafter a Show Cause Notice was issued. However, without considering the reply refund rejection order was issued.
- The said refund application was rejected on the grounds: non-submission of Foreign Inwards Remittance certificates (FIRC) and non-fulfillment of conditions laid out in Rule 89 (4)(C) and Rule 96B of the CGST rules.
- The refund was rejected because the export turnover was not in accordance with Rule 89(4)(C) of the CGST Rules.
- The petitioner aggrieved by the impugned order, filed the writ pertaining petition challenging the constitutional vires of Rule 89(4)(C).
- The respondent contented that there is possibility that the exporter might take undue benefit by inflating the value of zero-rated supply of goods. Therefore, ceiling limit was introduced through amendment vide Notification No. 16/2020 dated March 23, 2020.
- The respondent further contended that Rule 89(4)(C) is procedural provision to calculate the refund, and hence the amended clause is applicable retrospectively.

Contention of the Petitioner:

- The petitioner argued that Rule 89(4)(C) can only have prospective application as the Notification clearly states that it would be applicable from the date of publication in the official gazette.
- Further, it is also argued that the amendment in Rule 89(4)(C) restricts the value of zero-rated supply of goods to 1.5 times the value of like goods supplied domestically. However, section 54(1) of the CGST Act imposes restrictions on introducing any new condition. It only mandates for prescription of form and manner.
- Petitioner contended that the rules have to be consonance with the statutory provisions. Therefore, amendment in Rule 89(4)(C) of the CGST Rules, is Ultra Vires to section 54(1) of the CGST Act and violates Article 14 of the Constitution of India.

Decision Held:

- The refund of ITC is restricted by capping the value of the export turnover.

- The HC rejected the respondent's contention that the rule is applicable retrospectively. The right to refund the accumulated ITC is crystalised on the date the subject goods are exported. It is clarified that the term 'turnover' has to be interpreted in relation to the period it relates to.
- Relying upon the ruling in case of **M/s. Tonbo Imaging India Private Limited**, the Karnataka HC has invalidated the amended Rule 89(4)(C) and declared it to be in violation of Article 14 and Article 19(1)(g) of the Constitution.
- It is held that the amended Rule 89(4)(C) of the Central Goods and Services Tax Rules, 2017 (CGST Rules), which restrict refunds by capping export turnover, will not be applicable prior to 23 March 2020.

H N A Comments: This is a favourable judgment for the exporters seeking a refund of accumulated ITC on account of exports. The said restriction is also creating a discrimination between the exporters who export goods under the LUT and claim a refund of accumulated ITC vis-a-vis exporting goods with tax payment. Moreover, the said restriction is provided in the law by way of rules is not correct as the said restriction is not there in the parent act.