



TATTVAM ADVISORS
Tax Consultants

TATTVAM ADVISORS GST **LEGAL ZINE**

Volume 3/ March 2020

This document will cover recent major
Judgements of Indirect Tax.

Case Laws



This month we have seen various case laws impacting interpretation of GST and other indirect tax. This document is an attempt to cover critical judgments in a simplified manner.

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"It is not wisdom but the Authority that makes a law"
— Thomas Hobbes

GST

A. GST: AAR shall be required to determine the place of supply wherever it is necessary for determining the liability of the registered person to pay tax

The petitioner has entered into a contract with its Principal Company located in USA for providing services to the customers located outside India. The principal company shall raise the invoice on the customers and shall reimburse the petitioner for costs incurred by it. The question that arised before the AAR was whether the said services provided by petitioner would qualify to be export or not. AAR held that the for determining the same it would have to delve into the issue of place of supply which is outside its ambit. In this respect, the Hon'ble High Court of Kerala held that entities which come with foreign investment in India would require certainty and precision about the tax liability so that they can plan their functioning as business entities in India and in light of the same, the Parliament has taken a wide vision to mandate such a provision in Section 97(2), whereby applicant is empowered to seek advance ruling on issue of determination of liability to pay tax which shall include issue related to place of supply within its ambit.

[M/s Sutherland Mortgage Services Inc, 2020-VIL-102- KER]

B. GST: Investigation once initiated by DGGI shall be completed by him only unless specifically transferred

Search was carried out at the office premises of writ applicant by DGGI, Ahmedabad Zonal Unit under Section 67 of CGST Act, 2017. The DGGI had seized original books of account and document of the applicant for carrying out the investigation. Thereafter, summons were issued by Deputy Commissioner, State Tax and DGGI, Surat Zonal for conducting enquiry at office premises of the applicant. In the instant case, there was nothing on record to indicate that the Central Tax Authority has transferred the case to any other authority of state. Hon'ble Gujarat High Court held that DGGI, Ahmedabad to reach at logical conclusion and ensure no undue harassment is caused by different authorities on same matter.

[M/s Bhawani Textiles, 2020-VIL-125-GUJ]

C. GST: First occupation shall be said to be taken place after all the requirements of law in respect of the said occupation have been complied with.

The applicant had claimed that since the first occupation has nowhere been defined in the Act, the same shall be construed to be occupying of first unit of building by allottee. Applicant had applied for grant of completion certificate which was rejected by the Municipal Corporation. The AAR held that the first occupation as claimed by applicant without having mandatory completion certificate by jurisdictional authorities is devoid of any merit as under the Chhattisgarh Municipalities Act, 1961, occupation is not valid until permission have been received in respect of the same.

[Shri Aman Agrawal (M/s Bilaspur Infrastructure Pvt. Ltd.), 2020-VIL- 58-AAR]

D. GST: Supply of SCADA System to Metro shall attract GST @ 12%

The applicant was engaged in designing, supply, installation, testing and commissioning of computer based SCADA system for smooth operation and monitoring of auxiliary power supply system on metro corridor. The AAR held that erection and commissioning of SCADA system is done with no intention of removing it in foreseeable future and since it cannot be removed without causing substantial damage, it shall qualify to be immovable property and be treated as works contract under GST. AAR further held that said supply should attract tax @ 12% under Entry 3(v)(a) of Notification 11/2017 – CT(R), as it is a power supply and distribution network installed for smooth operation of metro.

[ABB India Ltd., 2020-VIL-73- AAR]

E. GST: The operation and maintenance part of contract for water supply to Government authority is exempt to the extent of invoice raised after 25 January 2018.

Entry no 3A of Notification. No 12/2017- CT(R), as inserted vide notification No 02/2018-CT(R) dated 25th Jan 2018 exempts the composite supply of goods and services to Government Authority where the value of goods does not exceed 25% of value of said composite supply. Where the contract is entered in

Pre-GST period, the AAR held that the operations and maintenance part of the composite supply to governmental authorities are exempt to the extent of invoices raised after 25th Jan 2018. Whereas for contracts entered in GST period, the exemption applies from the date of contract.

[M/s The Indian Hume Pipe Company Ltd., 2020-VIL- 50-AAR]

F. GST: Unutilized credit of duty/tax paid in earlier tax regime cannot be denied on non-filing of Trans-1.

The revenue challenged the judgment of Punjab and Haryana High Court in case of Adfert Technologies Pvt Ltd where the court had permitted the carry forward of unutilized CENVAT credit which could not be carry forwarded on account of Non-filing or erroneous filing of Trans-1. Apex court held that unutilized credit of duty/tax paid in erstwhile tax regime is a vested right which cannot be taken away on procedural/technical grounds of non-filing of Trans-1

[Union of India & ORS Vs Adfert Technologies Pvt Ltd, 2020-VIL-10-SC]

G. GST: No requirement of obtaining separate registration at the place of port where custom clearance obtained

The AAR held that since the applicant is already registered in Karnataka and uses this GSTIN for paying taxes on import, no separate registration is required to be taken by him at the port even if the goods are sent directly to the customer premises from the said port. AAR further held that, if the goods are sent to state other than Karnataka, then the applicant shall be required to discharge IGST, otherwise it shall be required to levy CGST and SGST.

[M/s Kardex India Storage solutions Pvt Ltd, 2020-VIL-76- AAR]

H. GST: Supply of purified water in unsealed container not entitled to GST exemption.

The question before AAR was whether the supply of purified water to public in unsealed cans is exempt under GST law. The AAR held that all types of purified water is specifically excluded from the Entry No 99 of Notification No 2/2017 - Central Tax (Rate) and therefore supply of purified water whether it is supplied in sealed or unsealed

container is not entitled for GST exemption.

[M/s Water Health India Pvt Ltd., 2020-VIL-77-AAR]

I. GST: AAAR can't go beyond the condonation grace period mentioned under proviso to section 100 of CGST Act,2017.

The time limit of filing of appeal shall be considered from the date of communication of advance ruling. Registered post with acknowledgment due is one of the mode of communication and the period of 60 days of filing appeal shall be counted from the day immediately succeeding the date on which such communication is received. In the instant case, the applicant had filed appeal after the expiry of 60 days. The AAAR held that the appeal cannot be entertained even if the delay is of one day as it is beyond the condonable powers of Appellate Authority. The AAAR further held that where time limits are being governed by specific statutes, Limitation Act shall not be applicable.

[M/s The Deputy Conservator of Forests, 2020-VIL-18-AAAR]

J. GST: SEZ Unit/developer cannot claim Refund of unutilized ITC even if they are engaged in export of goods outside India.

Appellant-SEZ unit claimed refund of unutilized ITC under section 54(3) of CGST Act, 2017 which was rejected by the Adjudicating Authority on the grounds that the refund is only available to the person who is engaged in making supplies to SEZ unit/developer and not to the SEZ/developer itself. The Appellate Authority upheld the decision of Adjudicating Authority and stated that as per Rule 89(2)(f) SEZ unit/developer shall not avail input tax credit on the supplies received by them from non SEZ suppliers and refund would be claimed by supplier to SEZ unit only.

[M/s VAACHI International Pvt Ltd., 2020-VIL-15-GSTAR]

K. GST: GST will be applicable in case of transfer of title in moulds where both supplier and buyer are in Indian territory but the same is not physically imported into India

In the instant case, moulds are being manufactured

by foreign supplier and its title is being transferred to the applicant who further transfer the title in moulds to another Indian buyer by way of declaration and against a consideration. AAR held that, by virtue of Schedule II, transfer of title in goods shall be treated as supply of goods and since it is in the course of business, it constitutes as supply and thus GST will be charged on the same.

[M/S AUTOMATIVE COMPONENTS TECHNOLOGY INDIA PVT. LTD., 2020-VIL-49-AAR]

L. GST: Any ruling from the Authority of Advance Ruling will be void ab initio wherein investigation by DGGI has already been initiated.

The Appellate Advance Ruling Authority held that any ruling from the Authority of Advance Ruling will be void ab initio when obtained by suppression of material facts. In the instant case, the assessee has obtained a ruling from AAR in respect of classification of “Flavoured Milk” under HSN code list without disclosing the fact that investigation is already being undertaken on the same issue by DGGI, thereby contradicting the provisions of section 98(2) of CGST Act. Hence, the ruling given by the AAR has been annulled & appeal of the department is allowed.

[M/S KARNATAKA CO-OPERATIVE MILK PRODUCERS FEDERATION LTD., 2020-VIL-14-AAAR]

M. GST: No GST on mobilization advance received in Pre-GST regime provided that Service Tax have been paid on the same

In the instant case, the assessee has received mobilization advance in Pre-GST period and has paid service tax according to the provisions of the Act but hasn't paid any VAT on it. The Advance Ruling Authority held that adjustment with respect to mobilization advance received in pre-GST regime shall not be allowed under Section 142(11)(c) of CGST Act but under Section 142(11)(b) and no GST is required to be paid on mobilisation advance. This is because, it shall be deemed that services to the extent of mobilization advance received has been provided by the applicant.

[M/S SHAPOORJI PALLONJI AND COMPANY PRIVATE LIMITED, 2020-VIL-53-AAR]

N. GST: Budgetary Support Scheme provided by Government are not in lieu of exemptions but a measure of goodwill

Petitioner were claiming 100% area based exemption under the erstwhile law which was denied in the post GST period. Due to the hardships, Union of India introduced Budgetary support scheme under which area based exemptions were made available for proportionate central tax amount. Petitioner challenged this Budgetary Scheme and contended that 100% exemption shall be available. Hon'ble High Court of Delhi held that rescinding of area based exemption is in accordance with the GST Act and therefore plea of promissory estoppel cannot be enforced. Budgetary Supports scheme is introduced by the Government as a measure of goodwill and cannot be held ultra vires. Petitioner has not challenged the rescission of said Notification or to vires of proviso to Section 174(2)(c), therefore, no comment is being made on the same.

[M/S HERO MOTOCORP LTD Vs UNION OF INDIA & ORS, 2020-VIL-109-DEL]

O. GST: ITC is not available on Construction of breakwater wall.

The Maharashtra AAAR held that breakwater wall constructed on the sea to protect the ship from high waves do not qualify as plant and machinery and hence ITC is not available of input tax paid on good/services received for its construction. Authority ruled that such wall is nothing but a civil structure and not plant and machinery and hence input tax paid for construction is not allowed as per the provisions of section 17(5)(d).

[M/s KONKAN LNG PRIVATE LIMITED 2020-VIL-16-AAAR]

P. GST: Refund of unutilized ITC in case of minor procedural lapses cannot be denied.

The Appellate authority held that refund of unutilized credit can't be denied merely because invoices of supplier does not contain HSN codes. The declaration of claimant is sufficient in this matter as it is not possible to verify whether the supplier was required to mention the HSN or not in each case. Also, the claim of ITC on “motor vehicle” and “Masala Tea Premix & Coffee Premix” was held inadmissible as per the provision of section 17(5) whereas ITC on air tickets for travel of key

managerial personnel for business purpose was allowed.

[M/s BABA SUPER MINERAL PVT LTD Vs THE ASSISTANT COMMISSIONER, CGST, JAIPUR 2020-VIL-12-GSTAA]

Q. GST: The period of limitation for filing an appeal u/s 107 shall be considered from the date of communication of impugned order.

Hon'ble High court held that the period of limitation for filing the appeal shall be considered from the date when the order was communicated to the appellant. In the instant case, the order was sent to an old consultant who did not forward the same to the appellant and which lead to delay in filing appeal against the cancellation order. The matter was remanded back to the appellate authority to decide the question of delay afresh without being influenced by the previous order.

[M/s LAKHAN SINGH CHAUHAN AND COMPANY Vs UNION OF INDIA - 2020-VIL-121-MP]

R. GST: ITC is not available for procurement of goods and/or services for installation of various items in relation to construction of immovable property.

The AAAR held that ITC of goods and services procured for installations of various items in relation to construction of an immovable property meant for leasing /renting out shall be blocked by virtue of Section 17(5)(d) of CGST Act, 2017. In the present case, goods and services are procured for the purpose of making additions to the said immovable property and shall get covered under the definition of "construction" not in the definition of "plant & machinery". Therefore, ITC on the same shall not be available.

[M/s TARUN REALTORS PVT LTD, 2020-VIL-17-AAAR]

S. GST: Activity of design, supply & installation of LED Street Lights and operation & maintenance etc. shall be treated as composite supply and supply of goods is the principal supply.

The AAR held that where the contract involve more than two taxable supplies such as supply of LED Lights Fixtures and other equipment and also their installation, commissioning, repair and maintenance etc, the same shall be considered as composite supply of good and services as defined under 2(30) of CGST Act 2017. Also, in the instant case, the principal supply shall be that of goods i.e. LED lights or fixtures including LED lamps which are classified under heading 9405 and attracts CGST @6% Hence the applicant shall not be entitled to the benefit of exemption under entry 3 or 3A of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, as amended.

[M/s KARNATAKA STATE ELECTRONICS DEVELOPMENT CORPORATION LIMITED, 2020-VIL-72-AAR]

T. GST: LAD Fund collected for development of affected area to be included in the value of rental services

The applicant obtain land on lease from farmers and sub-lease the same to Solar Power Developers for a limited period of time. Under the guidelines of MNRE, the applicant is required to collect certain amount from SPD under Local Are Development Fund for rehabilitation of affected area. The usage of this fund is decided by Committee formed by Government of Karnataka. AAR held that since the amount is collected under two different heads and in case of non-payment of any of the amount the applicant has the right to terminate the contract, the same shall form part of composite supply of rent and tax shall be leviable on both the amount.

[M/s Karnataka Solar Power Development Corporation Limited, 2020-VIL-75-AAR]

U. GST: Without existence of technical difficulties over common portal no direction shall be issued for filling of Trans-1.

The Petitioner challenged the validity of Rule 117 of CGST Rules 2017 in terms of meaning of phrase "technical glitches" and time limit of availment of input tax credit on the ground that it is being ultra-vires to the Section 140 of CGST Act 2017. The Court held that since the rule is traceable to the power conferred under Section 164(2) to Act and since the petitioner is unable to produce the evidences of technical glitches and also after

examination of system log for ascertaining the technical difficulties for registered person, no such evidence is forthcoming, the petition is dismissed.

[M/s NELCO Limited VS The Union of India, 2020-VIL-143- BOM]

E-way Bill and Detention

A. GST: Detention of goods in transit, in case of bonafide dispute with regard to classification of goods, is valid only to the extent of inspecting officer preparing a report and submitting to the assessing authority.

The inspecting officer detained the goods in transit on account of dispute of classification of goods and was of the view that the goods shall be taxable at 28%, instead of 12% as classified by the petitioner. Held, in case of bonafide dispute with regard to classification of goods, the squad officer may detain the goods for the purpose of preparing the relevant papers for effective transmission to the judicial assessing officer and nothing beyond. The duty to assess the classification lies with relevant assessing authority only. The notice was quashed

[M/s Daily Fresh Fruits India Private Limited, 2020-VIL-115- KER]

B. GST: Penalty imposed on transporter as a consequence of erroneous e-way bill cannot be claimed to be under Section 122(2)(b).

While generating E-way Bill for transportation of Pan Masala, the transporter intentionally classified the vehicle as Over Dimensional Cargo (ODC), so as to get additional days of validity of e-way bill. The vehicle was intercepted and detained. The Adjudicating Authority found that the intentional misclassification of vehicle as ODC was to supplement multiple trips under same E-way bill for evading the tax liability. Hence the Adjudicating Authority imposed 100% penalty classifying the trip as second trip without cover of documents u/s 122(1)(xiv). Appellant claimed the penalty to be u/s 122(2)(b) and requested to set aside the penalty order on lack of evidence supporting the claim of trip to be second trip. Held, the penalty was imposed on transporter and not on the appellant, for defective documentation during the transportation of goods, and therefore, the appellant's submission is not

sustainable.

[M/s Ganesh Enterprises., 2020-VIL-11-GSTAA]

Anti-Profiteering

A. NAA: Where discounts offered are part of business strategy, it shall not be considered as passing of profiteering amount

DGAP observed that the respondent offered discounts time and again by cutting into profit margins and shall not be considered to be passing of anti-profiteering benefit. Authority held that respondent has increased the base price of goods when its GST rate was reduced from 28% to 18% without passing the benefit of reduced tax rates to the customer contravening the Section 171 of CGST Act and the respondent has profited to the extent of Rs.30,153. Since, only handful of recipients were identifiable, Authority has asked the respondent to deposit the profited amount along with interest @18% to consumer welfare fund.

[M/S GARG KITCHEN COLLECTION, 2020-VIL-23-NAA]

B. NAA: DGAP is required to conduct investigation for products on which rate of tax is reduced even if no complaint is received.

The National Anti-profiteering Authority held that there is no such provision in the CGST Act which restrict the power of DGAP to investigate only those matters and products against which complaints has been received. The DGAP is required to conduct enquiry in all the cases where rate of tax has been reduced to check whether benefit of same has been passed to consumers as per the provisions of section 171 of CGST Act'2017. The action of DGAP was held valid by the National Anti-Profiteering Authority.

[M/s McNROE CONSUMER PRODUCTS PVT LTD 2020-VIL-25-NAA]

C. NAA: Any increase in base price before reduction of taxes is not profiteering.

The National Anti-Profiteering Authority held that any increase in the base price of product before the issue of notification of reduction of tax rates does not amount to profiteering. In the instant case, price of product was increased before reduction in tax rate from 28% to 18%. The allegations of violations of

section 171 was dismissed by the authority.

[M/s BAJAJ ELECTRICALS LIMITED 2020-VIL-24-NAA]

Service Tax

A. ST: Notice for Service Tax Audit is valid even if it is served after implementation of GST.

The HC dismissed the writ petition seeking direction for quashing of Notice in relation to service tax audit under Rule 5A of the Service Tax Rules, 1994. There is nothing to show that the Parliament intended to grant blanket immunity to all assesseees whose past acts and omissions may, otherwise, fall foul of the provisions of Chapter V of Finance Act, 1994. The intention of the Parliament was clearly to save not only ongoing investigation, inquiry, verification etc. but also to specifically enable the initiation of fresh investigation, inquiry, verification etc. Hence notice for service tax audit can be served even after coming of GST regime.

[AARGUS GLOBAL LOGISTICS PVT LTD, 2020-VIL-137- DEL]

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