



INDIRECT TAX WEEKLY DIGEST

15 August 2023

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GOODS & SERVICES TAX

JUDICIAL UPDATES

DIRECTS REASSESSING BILL OF ENTRY CONSIDERING 'BONAFIDE' MISTAKE OF CLAIMING DUTY EXEMPTION UNDER ADVANCE AUTHORISATION SCHEME

Facts of the case

- M/s Esquire Multiplast Pvt. Ltd. (Taxpayer), inter alia engaged in the manufacture, export, and trade of various products, procures materials from both domestic and international markets. In respect of imported goods, the Taxpayer claims benefits under various schemes under the Foreign Trade Policy (FTP) including Advance Authorisation (AA).
- The Taxpayer had imported 99 metric tons of Homo Polypropylene HP2106N from China, in respect of which, the Taxpayer had inadvertently claimed the benefit of duty exemption under the AA Scheme as per Notification no.:18/2015-Customs dated 01 April 2015.
- Based on the aforesaid exemption claimed, the imported goods were assessed by the Tax Authorities without noticing the inadvertent error committed by the Taxpayer.
- Subsequently, upon discovering the aforesaid error, the Taxpayer filed a letter for cancellation of Out of Charge (OoC) and the subsequent reassessment of the Bill of Entry (BoE). However, the aforesaid request was declined by the Tax Authorities and the Taxpayer was directed to make a manual payment of IGST along with interest.
- Basis the aforesaid direction of the Tax Authorities, on making manual payment of IGST, the said amount would not be reflected in the Customs EDI system and the GST portal. Consequently, the Taxpayer would not be entitled to avail Input Tax Credit (ITC) of IGST paid on such imports.
- Aggrieved by the actions of the Tax Authorities for not responding to the Taxpayer's plea for re-assessment, the Taxpayer filed a Writ Petition before the Hon'ble Kerala High Court.

Contentions by the Taxpayer

- The Taxpayer has committed a bonafide mistake while filing the BoE wherein the Taxpayer had inadvertently applied for duty exemption available in respect of goods imported under the AA Scheme. While the Taxpayer had requested the Tax Authorities to reassess the BoE, the same was not addressed by the Tax Authorities.
- Reliance was placed on *Dimension Data India Pvt. Ltd Vs. Commissioner of Customs [2021 (1) TMI 1042 - Bombay High Court]* to contend that the Tax Authorities are duty bound to examine if there exists any misclassification wrong classification of tariff on the head of imported goods resulting in short-payment/excess-payment of Customs duty.
- Tax Authorities are empowered to reassess the duty leviable on imported goods under Section 17 of the Customs Act, 1962 (Customs Act) and correct errors under Section 149 of the Customs Act.
- Reliance was also placed on the CBIC Circular no.:16/2023-Customs dated 07 June 2023 (CBIC Circular) which inter alia laid down the procedure to be followed by the Tax Authorities in an identical scenario like the one involved in the present case.
- Notwithstanding the statutory remedy of appeal, the Hon'ble High Court can entertain the present Writ Petition to reconsider the matter afresh.

Contentions by the Tax Authorities

- The reassessment of the BoE cannot be done until the assessment order is modified under Section 128 of the Customs Act. In the present case, the Taxpayer had not submitted any order directing the Tax Authorities to modify the assessment.

- The CBIC Circular relied upon by the Taxpayer is inapplicable to the present case. Further, the Writ Petition filed by the Taxpayer is devoid of any merits and deserves to be dismissed.
- The Taxpayer has an alternative statutory remedy of appeal and hence, the Hon'ble High Court may not entertain the Writ Petition under Article 226 of the Constitution of India.
- Instead, the Taxpayer may be relegated to exhaust its alternative statutory remedy.

Observations and Ruling of the Hon'ble High Court

- In light of the CBIC Circular as well as the ratio laid down in *Dimension Data India Pvt. Ltd. (supra)*, it was concluded that the Tax Authorities ought to be directed to reassess the BoE, which will not cause any prejudice to the Tax Authorities and, in turn, do complete justice to both sides.
- In view of the above, notwithstanding the plea for alternate remedy, the Writ Petition filed by the Taxpayer was allowed and the following directions were issued to the Tax Authorities:
 - The assessed BoE is to be recalled; and
 - The Tax Authorities to reassess the BoE after affording the Taxpayer an opportunity of being heard.

[M/s Esquire Multiplast Pvt. Ltd. Vs. Assistant Commissioner of Customs, [TS-366-HC(KER)-2023-GST], dated 11 July 2023]

ITC IS NOT AVAILABLE IN CASES WHERE THE SUPPLIER'S GST REGISTRATION WAS CANCELLED BEFORE MAKING SUPPLIES

Facts of the case

- M/s. Jai Balaji Paper Cones (Taxpayer) had inter alia purchased a consignment of goods from various vendors. On 23 November 2018, the Taxpayer procured goods from M/s Raghava Industries (Supplier) against 3 invoices.
- For such procurements, the Taxpayer had discharged the consideration (along with GST thereon) to the Supplier and consequently, had availed ITC in respect of such procurements.
- The aforesaid ITC availed was disputed by the Tax Authorities on the following grounds:
 - The Supplier's GST registration was cancelled on 31 October 2018, prior to the date of supply of goods to the Taxpayer.
 - As a result, the Supplier has not paid applicable GST to the Government exchequer and hence, the Taxpayer's availment of ITC violates the condition provided under Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 (CGST Act).
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Madras High Court.

Contentions by the Taxpayer

- Since the Taxpayer had duly paid the value of supply along with GST thereon to the Supplier, its claim of ITC cannot be denied.
- Consequently, the Taxpayer cannot be directed to reverse ITC availed in respect of such procurements.

Contentions by the Tax Authorities

- Section 16(2)(c) of the CGST Act restricts availment of ITC in cases where the supplier has failed to make payment of GST.
- Since the Supplier's GST registration was cancelled prior to the date of supply of such goods to the Taxpayer, the Taxpayer is not entitled to claim ITC in terms of Section 16(2)(c) of the CGST Act read with Rule 36(4) of the Central Goods and Services Tax Rules, 2017 (CGST Rules).

Observations and Ruling by the Hon'ble High Court

- A perusal of Section 16(2)(c) of the CGST Act clarifies that a registered person is not entitled to avail ITC in respect of any of the supplies if the tax thereon is not paid to the Government.
- In the present case, the GST registration of the Supplier was cancelled before the invoices were raised and the supplies were made i.e., on 23 November 2018. As a result, the Supplier could not have paid GST to the Government exchequer.
- Therefore, the writ of mandamus cannot be issued to the Tax Authorities to act contrary to the provisions of the CGST Act and CGST Rules. Accordingly, there is no merit in the Writ Petition.
- In view of the above, the Writ Petition was dismissed. However, the Taxpayer is entitled to recover the GST amounts from the Supplier in a lawful manner.

[M/s. Jai Balaji Paper Cones Vs. Assistant Commissioner of Sales Tax, Tiruchengode & Anr., [TS-358-HC(MAD)-2023-GST], dated 03 July 2023]

SERVICE TAX

JUDICIAL UPDATES

TRANSPORT SERVICE FOR GOODS WHICH ARE NOT MARKETABLE IS NOT LEVIABLE TO SERVICE TAX

Facts of the case

- M/s. Panoli Enviro Technology Ltd. (Taxpayer) is inter alia engaged in carrying out effluent treatment, post which, the effluent generated during the process was transported for its onward disposal by a Goods Transport Agency (GTA).
- The Tax Authorities, vide the Order-in-Original (Impugned Order), alleged non-payment of Service tax under the reverse charge mechanism (RCM) in respect of GTA services procured for transportation of effluents. Accordingly, sought to recover Service tax along with interest and penalty on GTA services as defined under Section 65(105)(zzp) read with Section 68 of the Finance Act, 1994 (Finance Act).
- Aggrieved by the above, the Taxpayer filed an appeal before the CESTAT, Ahmedabad.

Contentions by the Taxpayer

- In the present case, effluent is being transported and the same is neither sold nor saleable in the market. Accordingly, effluent would not be treated as 'goods' as defined under the Sale of Goods Act, 1930 (SOGA). As a result, transportation of effluent cannot be leviable to Service tax as GTA service defined under Section 65(105)(zzp) of the Finance Act.
- Reliance was inter alia placed on the following judicial precedents:
 - **Gujarat State Fertilizers and Chemicals Ltd. Vs. CCE [2015 (37) STR 1076 (Tri. Ahmd.)]** wherein it was held that waste effluent material cannot be treated as 'goods' under Section 2(7) of the SOGA. Accordingly, the services for the transportation of such materials cannot be considered as services for the transportation of goods.
 - **Effluent Channel Project Ltd. [Order no: A/12104/2018 dated 09 October 2018]** wherein it was held that industrial effluents are not 'goods' and hence, transportation thereof is not leviable to Service tax under the Finance Act.
 - **Odyssey Organics P. Ltd. Vs. CCE, Raigad [2017 (47) S.T.R. (Tri-Bom.)]** wherein it was inter alia held that treatment of effluent waste cannot be considered as processing of goods.

Observations and Ruling of the CESTAT

- A combined reading of the definition of 'goods' under Section 65(50) of the Finance Act along with the definition of GTA under Section 65(50b) of the Finance Act clarifies that only transportation of 'goods' (as defined under Section 65(50) of the Finance Act) is covered under the ambit of GTA services.
- Relying on the aforesaid judicial precedents, it was observed that the material involved in the present case is 'effluent' which is neither sold nor saleable, and hence, the same would not be covered under the purview of the term 'goods'. Accordingly, transportation of the same would not fall under the four corners of GTA service and hence, not leviable to Service tax.
- In view of the above, the appeal filed by the Taxpayer is allowed, and the Impugned Order is set aside.
[M/s Panoli Enviro Technology Ltd. Vs. CCE & ST, Surat-II, [2023-VIL- 698-CESTAT-AHM-ST], dated 24 July 2023]

CUSTOMS

LEGISLATIVE UPDATES

NOTIFICATIONS

AMENDMENT IN DEFERRED PAYMENT OF IMPORT DUTY RULES, 2016

The following amendments are made in the Deferred Payment of Import Duty Rules, 2016:

- In Rule 4, a new proviso is inserted to empower the Central Government to permit payment on a different due date under exceptional circumstances, for reasons recorded in writing.
- In Rule 6, a new proviso has been inserted to stipulate that the restriction pertaining to the non-availability of deferred payment would not be available to the following class of eligible importers where:
 - The eligible importer has paid the duty for a bill of entry within the due date specified in Rule 4 (viz., 16th of the same month or 1st of the following month, as the case may be¹); and
 - The eligible importer has paid the differential duty for the same Bill of Entry along with interest on account of re-assessment within one day (excluding holidays).

[Notification no:58/2023-Customs (N.T.) dated 3 August 2023]

¹For Bills of Entry returned for payment from 16th March to 31st March, the duty shall be paid by 31st March.

IMPOSITION OF ANTI-DUMPING DUTY (ADD) ON IMPORT OF DISPERSION UNSHIFTED SINGLE-MODE OPTICAL FIBER

- The Designated Authority, Directorate General of Trade Remedies vide Notification case no: A.D (OI)-01/2022 dated 05 May 2023², had recommended imposition of ADD on import of Dispersion Unshifted Single-Mode Optical Fiber (including Dispersion Unshifted Fiber (G.652) and Bend insensitive Single-Mode Fiber (G.657)), classified under HSN code 9001 10 00, when exported or originating from specified countries/producers in order to remove injury to the domestic industry.
- Pursuant to the above, the CBIC has notified the imposition of ADD on the aforesaid products which are exported or originate from the specified countries/ producers and such imposition will be effective for a period of five years from the date of this Notification i.e., 03 August 2023.

[Notification no:07/2023-Customs (ADD) dated 03 August 2023]

FOREIGN TRADE POLICY (FTP)

LEGISLATIVE UPDATES

NOTIFICATIONS

REGULARISATION OF RODTEP FOR 18 HS CODES UNDER HEADING 5208 W.E.F. 1 JANUARY 2021

- RoDTEP benefit relating to 18 HS Codes under heading 5208, notified vide Notification no: 63/2015-20 dated 25 March 2023 has been regularised w.e.f. 01 January 2021.

[Notification no:24/2023 dated 03 August 2023]

AMENDMENT IN EXPORT POLICY OF RED SANDERS WOOD

Tamil Nadu has been allowed an annual export quota (April to March) of 900 MT for artificially propagated red sanders and a zero-export quota for wild specimens of red sanders. However, the export quotas are subject to the condition that, the State Government must develop a digital platform with geo-referenced sites and a Management Information System (MIS) providing information about the number of trees, their age, and diameter at breast height. Further, working plan guidelines should contain the management/harvest plans with approved rotation periods for sustainable harvest of red sanders wood from plantations in both forest and non-forest areas.

[Notification no:25/2023 dated 03 August 2023]

PUBLIC NOTICE

EXTENSION OF IMPLEMENTATION OF THE TRACK AND TRACE SYSTEM FOR EXPORT OF PHARMACEUTICALS AND DRUG CONSIGNMENTS

Public Notice no:03/2023 dated 03 April 2023³ has been amended to extend the date for implementation of the Track and Trace System for the export of drug formulations with respect to maintaining the Parent-Child relationship in packaging levels and its uploading on the Central Portal to 01 February 2024 for both SSI and non-SSI manufactured drugs.

[Public Notice no:26/2023 dated 4 August 2023]

² Our summary of the final findings can be accessed [here](#).

³ Our summary of this public notice can be accessed [here](#).

NEWS FLASH

“Government should propose to GST Council to cut tax rates on fertilisers from current 5 per cent: Parliamentary panel”

<https://economictimes.indiatimes.com/news/economy/policy/government-should-propose-to-gst-council-to-cut-tax-rates-on-fertilisers-from-current-5-per-cent-parliamentary-panel/articleshow/102579675.cms?from=mdr>

[Source: Economic Times, 09 August 2023]

“Claiming fake deductions, and rent receipts while filing your ITR can lead to heavy penalties”

<https://economictimes.indiatimes.com/wealth/tax/claiming-fake-deductions-rent-receipts-while-filing-your-itr-can-lead-to-heavy-penalties/articleshow/102559598.cms?from=mdr>

[Source: Economic Times, 09 August 2023]

“GST on e-gaming: Cabinet clears amendments to the law”

<https://www.financialexpress.com/business/brandwagon-gst-on-e-gaming-cabinet-clears-amendments-to-law-3205708/>

[Source: Financial Express, 10 August 2023]

“Layoffs and shutdowns as GST chars real-money gaming companies”

<https://economictimes.indiatimes.com/tech/technology/layoffs-and-shutdowns-as-gst-chars-real-money-gaming-companies/articleshow/102619584.cms?from=mdr>

[Source: Economic Times, 11 August 2023]

“Parliament okays legal changes to GST on e-gaming, casinos”

<https://timesofindia.indiatimes.com/business/india-business/parliament-okays-legal-changes-to-gst-on-e-gaming-casinos/articleshow/102664331.cms?from=mdr>

[Source: The Times of India, 12 August 2023]

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