

INDIRECT TAX WEEKLY DIGEST

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GOODS & SERVICES TAX

JUDICIAL UPDATES

WRIT PETITION

APPELLATE AUTHORITY TO REJECT THE REVENUE'S APPEAL WHERE THE REVIEW TO FILE AN APPEAL WAS BASED ON AN INCORRECT FINDING

Facts of the case

- M/s. Mahajan Fabrics Private Limited (Taxpayer) had filed a refund application under Section 54 of the Central Goods and Services Tax Act, 2017 (CGST Act) which was allowed by the adjudicating authority.
- However, the Commissioner reviewed the aforesaid order and directed the Adjudicating Authority to file an appeal before the Appellate Authority on the ground that the vehicle numbers mentioned in some invoices (for which a refund was sought) were not reflected on the e-vahan portal, and hence, the Taxpayer's refund claim in respect of such invoices is inadmissible.
- The Appellate Authority observed that the vehicles picked up for scrutiny were registered on the e-vahan portal. However, in respect of the remaining invoices, the Taxpayer failed to provide evidence substantiating the receipt of goods. Consequently, it was held that the Taxpayer failed to comply with section 16 of the CGST Act, and hence, the appeal filed by the Tax Authorities was allowed.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Delhi High Court.

Submissions by the Tax Authorities

- The Tax Authorities submitted that the Taxpayer was responsible to substantiate the following to claim a refund under section 54 of the CGST Act:
 - Goods are received by the Taxpayer; and
 - Vehicles used for the transportation of goods are registered on the e-vahan portal.
- The Tax Authority also contended that under section 16 of the CGST Act, receipt of goods is a primary condition that is required to be satisfied to enable the Taxpayer to claim to input tax credit.

Observations & Ruling by the Hon'ble High Court

- The Hon'ble High Court observed that as per explanation to Section 16(2)(b) of the CGST Act, a person would be deemed to have received the goods if the conditions, as stated therein, are satisfied.
- It was also observed that the appeal filed by the Tax Authorities was on the ground that the vehicles mentioned in two invoices were not registered on the e-vahan portal. Based on the above, the Tax Authorities assumed the Taxpayer's refund claims to be dubious. However, the Appellate Authority observed such findings to be incorrect.
- The Hon'ble High Court held that after accepting that the findings of the Tax Authorities were incorrect, the Appellate Authority ought to have rejected the appeal filed by the Tax Authority.

- In view of the above, the Hon'ble High Court held that since the foundation of the Tax Authorities' appeal was flawed, the order passed by the Appellate Authority deserves to be set aside.

[High Court of Delhi - M/s. Mahajan Fabrics Pvt. Ltd., WP(C) No. 6727/2022, dated 6 February 2023]

DENIAL OF THE STATUTORY TIME LIMIT TO FILE A REPLY TO A SHOW CAUSE NOTICE IS A VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

Facts of the case

- M/s. Lenovo India Private Limited (Taxpayer) filed a refund application, in respect of which, a show cause notice (SCN) was issued on 21 November 2022 directing the following:
 - Reply to SCN to be furnished within 15 days from the date of service of SCN; and
 - The Taxpayer was required to appear before the adjudicating authority on 28 November 2022.
- The Taxpayer furnished its response to the SCN on 2 December 2022 wherein a personal hearing opportunity was also sought by the Taxpayer.
- However, without considering the above, the adjudicating authority, vide order dated 13 December 2022 rejected the refund application filed by the Taxpayer.

- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Hon'ble Madras High Court contending that the aforesaid order has been passed in violation of the principles of natural justice.

Contentions by the Taxpayer

- It was submitted that while the SCN allowed the Taxpayer to submit its reply within 15 days from the date of service of SCN, the personal hearing was granted at a prior date (i.e. within 7 days from the date of SCN).
- Further, since no personal opportunity was granted pursuant to the reply filed by the Taxpayer, the order passed by the adjudicating authority was in violation of the principles of natural justice.

Observations and Ruling by the Hon'ble High Court

- The Hon'ble High Court observed that the objection raised by the Taxpayer in its reply to SCN has not been considered. Therefore, the principle of natural justice has been violated by the adjudicating authority in rejecting the Taxpayer's refund application.
- Considering the above, the Hon'ble High Court has quashed the order passed by the adjudicating authority and remanded the matter for fresh consideration on merits and in accordance with the law, in a specified time period, after affording a personal hearing to the petitioner.

[High Court of Madras, M/s. Lenovo India Pvt Limited Writ petition no:1863 OF 2023 and WMP No. 1965 of 2023 dated 01 February 2023]

EXCISE/ SERVICE TAX

JUDICIAL UPDATES

NATURE OF A CLAIM FOR DUTY DRAWBACK IS MATERIALLY DIFFERENT FROM THE NATURE OF THE DEPOSIT REQUIRED TO AVAIL A RIGHT OF APPEAL

Facts of the case

- M/s. Colour Cottex Private Limited (Taxpayer) is engaged in the business of exporting readymade garments. The Taxpayer claimed a duty drawback of approximately INR 101.6mn for nine Shipping Bills. Although the duty drawback was sanctioned, the same has not been received by the Taxpayer.
- A search operation was conducted on the premises of the Taxpayer on the allegation that the Taxpayer had wrongfully claimed the benefit of the 'Focus Market Scheme' in respect of which, the adjudicating authority had passed an order seeking recovery of ineligible Focus Market Scrips and also imposing the penalty.
- Aggrieved by the above, the Taxpayer filed an appeal before CESTAT. As regards pre-deposit payments, the Taxpayer had requested to adjust the duty drawback receivable towards the pre-deposit requirement under Section 129E of the Customs Act, 1962 (Customs Act). However, the said appeal has not been entertained yet for want of the pre-deposit requirement.
- As a result, the Taxpayer filed a Writ Petition before the Hon'ble Delhi High Court seeking appropriate reliefs for allowing adjustment of duty drawback towards the pre-deposit requirement.

Contention by the Tax Authorities

- The Tax Authorities submitted that duty drawback has been withheld because the Taxpayer has not received foreign exchange remittance in respect of four Shipping Bills (out of nine Shipping Bills).
- It was submitted that there is no provision under the Customs Act for adjustment of any amounts due to an exporter against its pre-deposit obligation under section 129E of the Customs Act.

Observations & Ruling by the Hon'ble High Court

- The Hon'ble High Court noted that adjustment of duty drawback against the Taxpayer's pre-deposit obligation under Section 129E of the Customs Act is not permissible because the nature of the duty drawback claim is materially different from the nature of the deposit required to be made for availing the right to file an appeal. The Hon'ble High Court also held that Taxpayer's grievance may be allayed if the directions are issued to the Tax authority to forthwith release duty drawback in respect of the five Shipping Bills (in respect of which, foreign remittance is received). The Taxpayer would be at liberty to utilise the funds received for complying with the pre-deposit requirement.
- Further, the Hon'ble High Court has directed CESTAT to not reject the Taxpayer's appeal for want of pre-deposit for a period of four weeks.

[High Court of Delhi - M/s. Colour Cottex Pvt. Ltd. Vs Commissioner of Customs (Exports) New Delhi and Anr. dated 06 February 2023]

CUSTOMS

CIRCULAR

DETAILS OF EX-BOND BILL OF ENTRY/SHIPPING BILL INCLUDED IN FORM-A

- An amendment has been made in circular no:25/2016-Customs dated 08 June 2016, which prescribes 'Form A' regarding maintenance of records in relation to warehoused goods for capturing details of receipts, handling, storage and removal.

- Since 'Form A' does not explicitly capture details of ex-bond Bill of Entry or Shipping Bill where goods are removed from the warehouse for home consumption/export, the same has been amended by inserting a new field i.e., Column No. 25A titled 'Ex. Bond Bill of Entry No. and date/ Shipping Bill No. and date'.

[Circular no:04/2023 dated 21 February 2023]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

AMENDMENT IN IMPORT POLICY CONDITION OF CASHEW KERNELS (BROKEN/WHOLE)

Minimum Import Price (MIP) on Cashew kernel (broken/whole) will not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZs subject to the condition that the imported Cashew Kernels are not sold into Domestic Tariff Area (DTA).

[Notification no:59/2015-2020 dated 21 February 2023]

CIRCULAR

PROCESSING OF PENDING MEIS/SEIS APPLICATIONS AND PERIOD OF AVAILABILITY OF MEIS/SEIS BENEFITS

- In respect of deficient MEIS/SEIS applications which were filed at the wrong jurisdictions (under Para 3.06 of the HBP 2015-20), it has been decided that the said applications may be re-opened and examined again on merits/additional documents submitted by the applicant as per the relevant policy and procedural conditions.
- The Regional Authorities are also advised to provide an opportunity of being heard before rejecting the applications.
- Further, the requests for transfer of application which is presently pending at DGFT headquarters shall stand remanded back to the Regional Authorities for necessary action.
- The policy circular has mentioned that the MEIS and SEIS schemes have been discontinued with effect from 1 January 2021 and 1 April 2020 respectively.

BDO COMMENTS

There was an ambiguity about the availability of SEIS benefits for the period after March 2020. The circular has mentioned that the SEIS scheme has been discontinued with effect from 1 April 2020. The circular has also clarified about the processing of MEIS/SEIS applications filed at the wrong jurisdictions.

[Policy circular no:46/2015-20 dated 20 February 2023]

NEWS FLASH

“GST revenues grew 12.7% in January.”

<https://www.thehindu.com/business/Economy/gst-revenues-grew-127-in-january/article66544198.ece>

[Source: *The Hindu*, 23 February 2023]

“Furnace Industry unhappy over GST snub in Punjab”

<https://timesofindia.indiatimes.com/city/ludhiana/furnace-ind-unhappy-over-gst-snub/articleshow/98165348.cms>

[Source: *Times of India*, 23 February 2023]

“Merchandise exporters to pay 18% GST on shipping costs.”

economictimes.indiatimes.com/news/economy/foreign-trade/merchandise-exporters-to-pay-18-gst-on-shipping-costs/articleshow/98103956.cms

[Source: *The Economic Times*, 21 February 2023]

“GST on online gaming: Industry awaits clarity.”

<https://www.financialexpress.com/brandwagon/b-stylefont-size-x-large-color-revertgst-on-online-gaming-industry-awaits-clarityb/2987399/>

[Source: *Financial Express*, 21 February 2023]

“Bogus invoices row: GST authorities summon insurance intermediaries.”

www.business-standard.com/article/economy-policy/bogus-invoices-row-gst-sleuths-summons-insurance-intermediaries-123022101135_1.html

[Source: *Business Standard*, 21 February 2023]

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