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GST Judicial Decisions

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Mode of communication adopted by the department must be 'effective' and not merely 'sufficient'

Axiom Gen Nxt India Pvt. Ltd. v. Commercial State Tax Officer ((2025) 29 Centax 368 (Mad.))

In favour of taxpayer

Relevant facts

A batch of writ petitions were filed by taxpayers against whom adjudication orders were passed *ex-parte* as the ASMT-10, DRC-01A, DRC-01 (SCN) and DRC-07 were merely uploaded on the common portal under the tab 'Additional Notices and Orders'. It is the contention of the taxpayers that the communication of the notice / order was not effective in terms of Section 169 of the Act.

Further, a question of whether the conscious exclusion of 'uploaded' in Section 169(2) of the Act meant that merely uploading (Section 169(1)(d)) the notice / order or sending an email (169(1)(c)) was not effective / proper service as per Section 169.

Decision of the Madras High Court

- Usage of 'or' in Section 169(1) of the Act indicates the various modes of service are alternatives and following any of the said modes would constitute a 'sufficient' service.
- 'Common portal' is a designated computer resource as the taxpayer is required to use the common portal right from registration to cancellation of GSTIN. Thus, in terms of Section 13(2)(a) of the Information Technology Act 2000, the receipt of notice / order occurs immediately upon the same being uploaded on the portal. Therefore, uploading of notice / order on the common portal constitutes a 'sufficient' service in terms of Section 169(1)(d) of the Act.
- Though sufficient, the Court noted that the mode of service adopted was not 'effective' despite the authorities noting in many cases that the taxpayer has failed to respond. The authorities must have adopted another mode (as all the modes prescribed are alternatives) to bring to notice of the taxpayer.
- The Court noted that usage of Registered Post with Acknowledgement Due **(RPAD)** is a must despite uploading the notice / order on the common portal.
- The service of any notice / order must be sufficient and effective to serve the purposes of the Act and attune to principles of natural justice.

CNK comments

The Court opined that "the act of the respondents in these cases will only be considered as an empty formality, by which no useful purpose was achieved". It is incumbent on the Departmental authorities to meet the ends of natural justice to avail alternative modes of service (preferably RPAD or other mode like email) to effectively communicate the notice / order to the taxpayer to achieve the true spirit of 'serve' and 'communicate' under the law. Caution must be exercised to keep the email ID and address of place of business updated on the common portal to ensure that the mails or post reaches the taxpayer. Taxpayers cannot cry foul of the Department's action in case of wrong email ID or wrong address of place of business on the common portal.

Scope of Entry 5B of RCM notification held to exclude receipt of development rights under Agreement of Development

Shrinivasa Realcon Private Ltd. v. Deputy Commissioner Anti-Evasion Branch, CGST & Central Excise Nagpur & others ((2025) 29 Centax 298 (Bom.))

In favour of taxpayer

Relevant facts

The instant writ was filed before the Bombay High Court challenging the levy of GST under reverse charge mechanism **(RCM)** in the hands of the Developer on the receipt of development rights under Agreement of Development executed with landowners.

Decision of the Bombay High Court

- The Court distinguished between the receipt of development rights under the Agreement of

Development and outright purchase of Transfer of Development Rights **(TDRs)** (i.e., Development rights as contemplated under the town planning / development regulations).

- By conjunctively reading TDR along with floor space index **(FSI)**, the scope of Entry 5B of the RCM Notification has been held to include only outright purchase of Development Rights.
- In other words, Entry 5B is not applicable for receipt of development rights under Agreement for Development.

CNK comments

This ruling of the Court highlights the distinction between 'transfer of' development rights (i.e., receipt of development rights under Agreement for Development) and 'transferrable' development rights. As the question of levy of tax on 'transfer of' development rights was not sought, this question of law remains open for interpretation. The judgment seems to have been issued reading Entry 5B of RCM notification inserted vide Notification 5/2019-CTR in isolation. It appears that the court was not apprised in entirety the scheme of notifications viz., 3/2019-CTR, 4/2019-CTR, 5/2019-CTR and 6/2019-CTR effective from 01.04.2019 which brought about a sea change in taxing real estate transactions under GST. If Entry 5B is not applicable to 'transfer of' development rights, then exemption under Notifications 4/2019-CTR and deferment of tax upon completion under 6/2019-CTR cannot be applied to 'transfer of' development rights under Agreement of Development which may not be the intentions of the Government.

Absence of DIN invalidates the assessment order

Godavari Polymers Private Limited v. CTO, Park Road Circle, Vijayawada (2025-VIL-678-AP)

In favour of taxpayer

Relevant facts

The taxpayer filed the instant writ before the Andhra Pradesh High Court challenging the validity and legal existence of the assessment order which was passed without a Document Identification Number **(DIN)** and without any signature of the incumbent authority.

Decision of the Andhra Pradesh High Court

- Referring to its earlier decisions, the Court held that absence of DIN on the assessment order invalidates the assessment order and vitiates the proceedings.
- Circular No. 128/27/2019-GST dt. 23.12.2019 provides that non-mentioning of DIN would vitiate validity of the proceedings underlying the directions of the Supreme Court in the matter of Pradeep Goyal v. UOI (2022 (63) GSTL 286 (SC)).

CNK comments

There have been a spate of decisions of the Andhra Pradesh High Court stating that any notice / order without DIN is invalid and non-est in the eyes of the law and vitiates the entire proceedings. An unsigned order too is invalid and non-est in the eyes of the law. One may refer to the decision of this High Court in the case of AV Bhanoji Row v. Assistant Commissioner ((ST) (2025) 26 Centax 436 (A.P.)) wherein it has been heled that provisions of Section 160(1) of the Act does not cure the defect of no signature despite the appropriate authority issuing / uploading the notice / order.

While this decision provides clarity on the validity of notice / order, the below must be kept in hindsight before questioning the validity of the notice / order:

a. *Advisory dt. 26.09.2024 which clarifies that orders uploaded on the common portal are after logging into the account of the authority by using digital signature. Furthermore, all orders are uploaded after affixing the digital signature. Hence, the orders need not be physically signed and the validity of the order can be verified on the common portal.*
b. *Circular No. 249/06/2025-GST dt. 09.06.2025 which clarifies that wherever the communication of a notice / order occurs on the common portal where a reference number (RFN) gets generated, then the requirement of generating DIN is dispensed to avoid duplication.*

Refund of unutilised ITC upon closure of business

SIPCA India Pvt. Ltd. v. Union of India ((2025) 31 Centax 268 (Sikkim))

In favour of taxpayer

Relevant facts

The taxpayer had filed for refund of unutilised input tax credit **(ITC)** lying as balance in the electronic credit ledger **(ECL)** upon closure of their business. The refund claim was rejected, and appellate authority assailed the refund rejection order by stating that the refund claimed by the taxpayer does not fall under the purview of Section 54(3) of the Act. Challenging the vires of the refund rejection, the taxpayer filed the writ petition.

Decision of the Sikkim High Court

- The Court agreed to the contentions of the taxpayer that Section 49(6) of the Act permits refund of unutilised ITC lying as balance in ECL and Section 54(3) of the Act does not restrict the refund of unutilised ITC upon closure of business.
- The Court opined that "although, Section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, however the statute also does not provide for retention of tax without the authority of law."
- Full thrust was placed on the decision of Union of India v. Slovak India Trading Co. (P.) Ltd. (2006 5 STT 332 Karnataka) which dealt with the issue of balance of CENVAT credit upon closure of business.

CNK comments

This judgement of the Sikkim High Court is championed to bring a ray of hope to all the taxpayers who have balances (especially huge amounts of ITC) in the ECL upon closure of business.

However, many miles need to be treaded before it attains finality. Firstly, refund contemplated under Section 49(6) of the Act 'may' be granted as per provisions of Section 54 of the Act. Secondly, Section 54(3) of the Act does not provide for refund of unutilised ITC on closure of business. Thirdly, Bombay High Court in the case of Gauri Plasticulture P Ltd v. CCE Indore (2019-VIL-280-BOM-CE) has held that the question of law on refund of CENVAT credit balance upon closure of business is open considering that the dismissal of Special Leave Petition (SLP) by the Supreme Court in the matter of Slovak India (supra) does not provide any answer on this question of law.

Any refund application filed based on this decision will surely be questioned and challenged!

General penalty under Section 125 not imposable upon payment of late fee for belated filing of annual return

Jainsons Castors & Industrial Products v. Assistant Commissioner (ST), Ekkatu Thangal Assessment Circle, Chennai ((2025) 28 Centax 181 (Mad.))

In favour of taxpayer

Relevant facts

An adjudication order was passed under Section 73 of the Act imposing late fee and penalty for belated filing of annual returns. Challenging the imposition of both late fee and penalty for delay in filing of annual returns, the taxpayer filed the instant writ petition.

Decision of the Madras High Court

- Show cause notice **(SCN)** can be issued under Section 73 of the Act for the purpose of recovery of late fee under Section 47(2) of the Act.
- Section 47(2) of the Act provides for late fee for delay in filing of annual returns. Whereas Section 125 of the Act provides for general penalty of INR 50,000 for any contravention not specifically covered.
- The Court held that late fee for delay in filing of annual returns is penal in nature and general penalty under Section 125 of the Act is not attracted.

CNK comments

It has become a common thoroughfare for the Department to demand general penalty despite paying late fee. This is a welcome judgement of the Madras High Court wherein it has been categorically held that general penalty of INR 50,000 does not

apply when late fee under Section 47 of the is charged for delay in filing of returns. This judgement underscores the principle of the legal maxim "nemo debet bis vexari" which literally means that a person shall not be vexed twice for the same cause.

Export of service: Refund cannot be rejected merely because the receipt of consideration was routed through an intermediary (PayPal)

Afortune Trading Research Lab LLP v. Additional Commissioner, GST & Central Excise (Appeals-I), Chennai ((2024) 15 Centax 520 (Mad.))

In favour of taxpayer

Relevant facts

In the instant case, the taxpayer was exporting services in relation to stock market to subscribers outside India and realising the consideration through a payment gateway (an intermediary) viz. PayPal. PayPal received the subscription charges in USD and credited the taxpayers bank in INR after deducting their service charges. As the consideration was routed through PayPal, the taxpayer was unable to produce a Foreign Inward Remittance Certificate **(FIRC)** to demonstrate the receipt of convertible foreign exchange to establish the export of service.

Typically, monies were received by PayPal in USD into their CITI Bank account. From this account, INR was credited into the HDFC Bank account of the taxpayer.

The refunds filed by the taxpayer were rejected and assailed by the Appellate authorities on (a) non-production of FIRC and failure to demonstrate receipt of convertible foreign exchange and (b) failure to provide export invoices to identify the location of recipient.

Decision of the Madras High Court

- The Court relied on the Regulation 3(3) of Foreign Exchange Management (Manner of Receipt and Payment) Regulations 2016 which permit the taxpayer to realise receipts through a third party (viz. PayPal).
- While holding that the taxpayer is eligible for the refund, it has been held that realisation can be routed through an intermediary and receipt of payment in USD by the intermediary would qualify as receipt of convertible foreign exchange by the taxpayer.

CNK comments

Usage of payment gateway / intermediary (like PayPal) for receipt of convertible foreign exchange is a common practice for their lower service charges. While Section 2(6)(iv) of IGST Act 2017 clearly mandates the receipt of convertible foreign exchange for qualifying as export of service, realisation through an intermediary satisfies this requirement. This crucial decision giving the much-needed breathing space to exporters, highlights: (a) the importance of understanding the provisions of FEMA in relation to realisation of convertible foreign exchange against the exports and (b) need to bridge the gap between FEMA regulations and requirements under GST Law.

Export of service: Refund rejected merely because copies of FIRC were not produced

Nokia Solutions and Networks India Pvt. Ltd. v. Principal Commissioner of Central Tax, Bengaluru ((2025) 26 Centax 46 (Kar.))

In favour of taxpayer

Relevant facts

The taxpayer was engaged in the business of providing information and technology and filed for refund claim on account of export of services. Refund was sanctioned. Upon departmental appeal, the refund sanctioning order was set aside on the grounds that (a) copies of FIRC were not provided, (b) location of the beneficiary was different than that of the taxpayer, (c) the receipt of convertible foreign exchange was into a different account than that mentioned on the export invoice and (d) services provided by the taxpayer is intermediary service.

During the pendency of the appeal, a SCN was issued for recovery of refund erroneously granted. Immediately after the issuance of Order in Appeal **(OIA)**, another SCN was issued for recovery of refund erroneously granted. Challenging the OIA and both the SCNs', the taxpayer filed the instant writ petition.

Decision of the Karnataka High Court

- Vide the RBI Circular No. 74 dt. 26.05.2016, the practice of issuance of FIRC has been discontinued. As the taxpayer had provided the copies of Foreign Inward Remittance Advice **(FIRA)**, the receipt of convertible foreign exchange was clearly demonstrated.
- Non-submission of FIRC is merely a procedural averment which cannot take away the eligible refund claim of the taxpayer.
- Difference in location of taxpayer in FIRA and difference in bank account (as both the bank accounts belonged to the taxpayer) is inconsequential for sanctioning refund under GST Law.
- Referring to Circular 159/15/2021-GST dt. 21.09.2021, an intermediary service involves (i) minimum of three parties, (ii) two distinct supplies, (iii) character of agent / broker, and (iv) does not include supplying goods or services on own account. As none of these were present in the taxpayer's case, the possibility of intermediary service was ruled out.

CNK comments

Section 2(6)(iv) of the IGST Act 2017 only stipulates that the convertible foreign exchange must be realised. Any document which demonstrates the receipt of convertible foreign exchange suffices this condition. The references to FIRC in Rule 89(2)(c) of the Rules and Circular 125/44/2019-GST dt. 18.11.2019 are not only onerous but also restrictive and discriminatory. This decision of the Karnataka High Court aligns the requirements under GST Law and practical challenges in obtaining FIRC especially in the light of RBI Circular discontinuing the issuance of FIRC. Furthermore, Instruction No. 03/2022-GST dt. 14.06.2022 issued on post audit of refund claims also permits 'other relevant document' to establish the receipt of convertible foreign exchange. This judgement provides a much-needed relief to the exporters who are caught in the teeth of refund rejection for want of FIRC especially when the receipt of convertible foreign exchange is not in dispute.

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