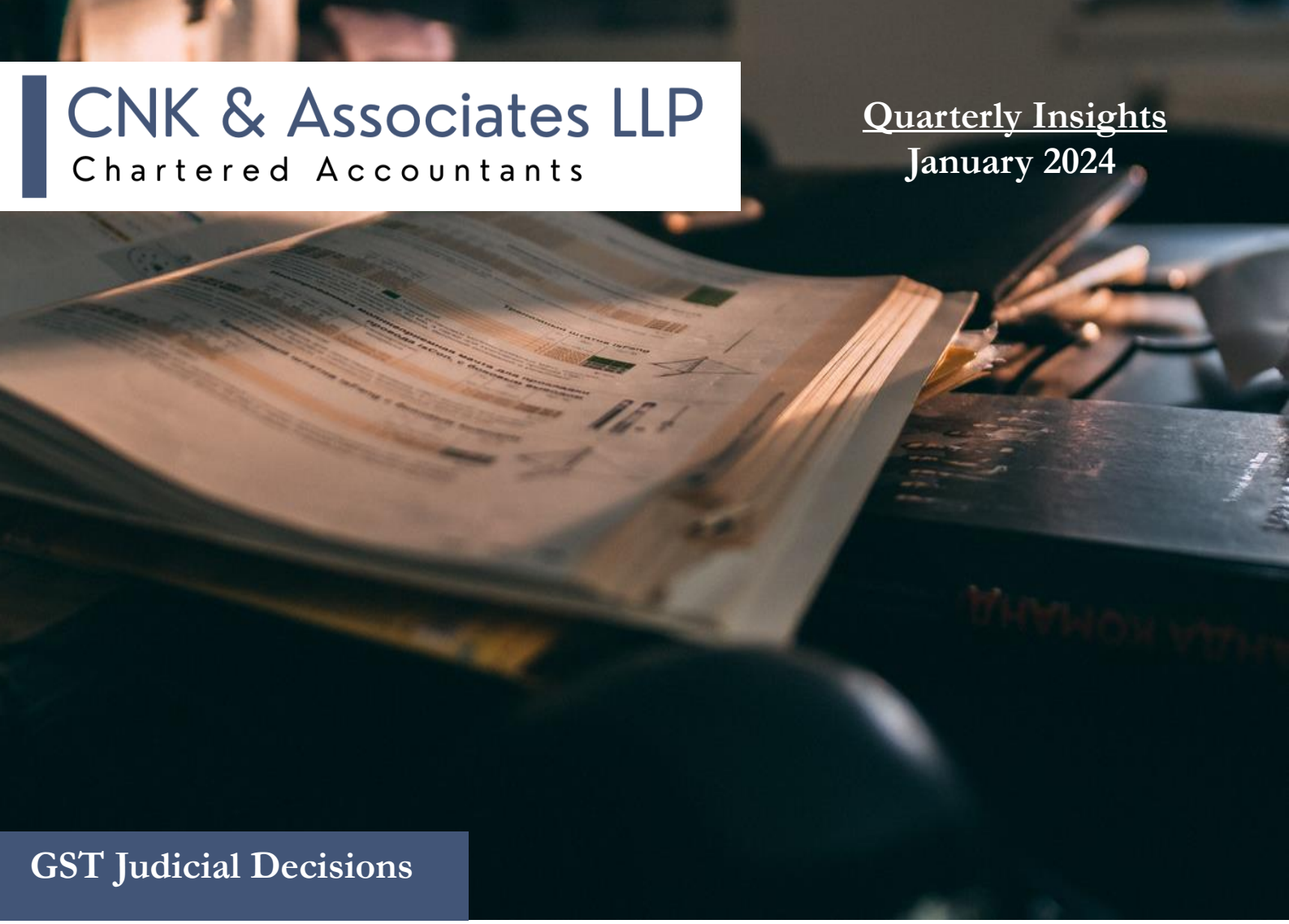

CNK & Associates LLP
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Quarterly Insights
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GST Judicial Decisions

INDEX

GST refund cannot be denied merely because of multiple inputs and output supplies

Nahar Industrial Enterprises Limited - Writ Petition No. 8476/2021 (Rajasthan High Court) dated 31st October 2023
In favour of Assessee

Relevant Facts

- Nahar Industrial Enterprises Limited was engaged in the manufacturing of textiles and its operations such as spinning, weaving, and processing.
- In the process of manufacturing, the petitioner used various raw materials. Rate of GST on inputs varied from 5% to 28% (Raw materials used were cotton, manmade fibre, and other inputs). The rate of GST on outputs ranged from 0.1% to 12% (manufactured products are cotton yarn, cotton blended yarn, polyester/viscose yarn, polyester/viscose blended yarn).
- The petitioner company contented that as the rates of GST on inputs were higher than the rates of GST on outputs, this was a case of inverted duty structure and hence it was entitled to claim refund of unutilised credit at the end of relevant tax period, as stated under Section 54(3) of the CGST Act, 2017.
- The refund application was rejected by the Commissioner (Appeals) on the grounds that the petitioner's case did not fall in the category of inverted duty structure.
- Aggrieved by this, the Petitioner filed a writ petition before the High Court of Rajasthan.

Held

The Hon'ble High Court of Rajasthan held that –

- The court emphasised the legislative intent and purpose of Section 54(3) of the CGST Act, 2017, which was to refund accumulated ITC when the rate of tax on inputs was higher than the rate on output supplies.
- The court relied on the principle of strict interpretation of taxing statutes, emphasizing the need to adhere to the clear and unambiguous language used in the law. The use of plural words like "inputs" and "output supplies" in the statute highlighted that the provision applied to scenarios involving multiple inputs and outputs.
- Merely because the present case involved multiple inputs and multiple output supplies, the scheme of refund based on inverted duty structure cannot be held to be inapplicable.
- The court upheld the strict interpretation of the law, emphasizing that the legislative intent was to refund accumulated input tax credit **(ITC)** when the rate of tax on inputs was higher than the rate on output supplies.

CNK Comments

- *The decision reinforces the principle that GST refunds should not be denied solely due to the presence of multiple inputs and outputs with varying GST rates.*
- *The court upholds the strict interpretation of the law, emphasizing that the legislative intent is to refund accumulated ITC when the rate of tax on inputs is higher than the rate on output supplies.*
- *This case sets a precedent for similar situations in the future, ensuring that taxpayers are not unfairly denied their rightful refunds when an inverted duty structure exists.*

Telecom services provided to inbound subscribers of FTOs constituted export of services and eligible for IGST Refund

M/s. Vodafone Idea Ltd - Writ Petition No.2472/2023 (High Court of Delhi) dated 9th October 2023
In favour of Assessee

Relevant Facts

- Petitioner held a telecommunication license from Government of India and was engaged in providing telecommunication services including services in International Inbound Roaming Services **(IIR)** and International Long-Distance Services **(ILD)** to inbound subscribers of Foreign Telecom Operators **(FTOs)**.

- Petitioner had entered into various service agreements (International Roaming Agreements) with FTOs for providing IIR and ILD services and the consideration for providing IIR and ILD services to subscribers of FTOs during their visit to India, was paid by FTOs to petitioner.
- Petitioner filed its applications for refund of IGST claiming that it had exported services and paid integrated tax as provided under Section 16(3) of the IGST Act, 2017.
- The Adjudicating Authority rejected the refund claims on the following grounds:
  (i) the refund application filed by the petitioner was time barred in view of Section 54(1) of the CGST Act.
  (ii) the supply of services was in India and the same could not be treated as 'export of services' as the recipient of service i.e., Inbound Roamers were physically present in India and services were consumed in India by the Inbound Roamers.
- Aggrieved with the Impugned order the Petitioner filed writ petition before the Hon'ble High Court of Delhi.

Held

The Hon'ble Delhi High Court held that –

- The date on which petitioner had received payments from FTOs would be the relevant date for the purpose of limitation under Section 54(1) of the CGST Act, 2017.
- In terms of GST Notification 13/2022-Central tax dated 05-07-2022 the period commencing from 01-03-2020 to 28-02-2022 was required to be excluded for computing the period of limitation.
- The place of supply of services under Rule 6A of the Service Tax Rules were similar to Section 2(6) of the IGST Act inasmuch as the services would be treated as export of services when:
  a. the provider of service was located in the taxable territory,
  b. the recipient of the service being FTO's were located outside India, and
  c. the place of provision of the service was outside India.
- Hence, the above services qualified as export of services and thus the appeal preferred by petitioner was allowed.

CNK Comments

The judgement draws reference from the decision in case of Verizon Communication India Pvt Ltd wherein it was held by the Customs Excise and Service Tax Appellate Tribunal that similar services constitute export of services and hence the refund was directed to be allowed.

The GST Notification draws attention to the fact that exclusion for period of limitation is restricted to the period ending 28.02.2022.

Granting short period of time for filing reply violates legal right of the Assessee

M/s. Star Health and Allied Insurance Company Limited - Writ Petition No. 30494/2023 (Madras High Court) dated 20th October 2023
In favour of Assessee

Relevant Facts

- M/s. Star Health and Allied Insurance Company Ltd. (the Petitioner) was issued a Notice by the Revenue Department (the Respondent) to which the Petitioner filed a reply.
- The Respondent, without taking into consideration the reply filed, issued a Show Cause Notice **(SCN)** dated 21.04.2023 (1st Hearing).
- The Petitioner, vide letter dated 05.05.2023 sought time to file reply to the above show cause notice and filed reply on 30.05.2023.
- Thereafter, the Petitioner was issued a notice (2nd Hearing) dated 16.06.2023 for personal hearing on 20.06.2023. Since the said notice dated 16.06.2023 did not speak of anything about the reply filed by the petitioner, the petitioner assumed that the reply filed by the petitioner has not been considered by the respondent and hence, the petitioner reiterated the said reply on 16.06.2023.
- The Petitioner was issued another notice dated 21.06.2023 (3rd Hearing) at 9.52 PM for personal

hearing and further fixed the hearing on 23.06.2023 for the production of documents relied upon by the Petitioner in the reply filed.

- The Petitioner requested some time for furnishing the documents. However, the Respondent rejected the Petitioner's request on the grounds that 3 hearing opportunities have already been granted and lastly, passed Assessment Order dated 29.06.2023 (Impugned Order).
- Aggrieved by the Impugned SCN and Impugned Order, the Petitioner filed a writ petition before the Hon'ble Madras High Court on the ground that Impugned SCN was issued without taking into consideration the reply filed by the Petitioner and the Petitioner was not granted a fair opportunity by the Respondent by granting short period of time for filing reply, thereby violating the principles of natural justice.

Held

The Hon'ble Madras High Court held that –

- The Respondent – Department served the notice for 3rd hearing (dated 21.06.2023) through e-portal and had granted only 36 hours to produce the supportive documents.
- The notice was not served on the petitioner by way of physical mode and the petitioner could not access through the website for the next 2 days, they appeared before the respondent – department on the very next working day – Monday and requested time for submission of documents.
- Though the Respondent - Department has provided 3 opportunities to the petitioner, all those 3 opportunities, by no stretch of imagination can be deemed to be fair opportunities and has not afforded sufficient time enabling the petitioner to file effective reply to defend themselves.
- Therefore, the Writ petition was allowed, the Impugned Order was set aside, and the matter was remanded to the Respondent – Department for fresh consideration.

CNK Comments

This ruling underscores the importance of providing a fair opportunity of hearing to taxpayers during assessment proceedings. Granting insufficient time for filing replies and conducting personal hearings within unreasonable timeframes is contrary to the principles of natural justice and legal rights of the assessee. The court set aside the Impugned Order and directed the matter to be remanded for fresh consideration, with the stipulation of providing the Petitioner with a reasonable opportunity to present their case and documents. This judgment reiterates the significance of adhering to fair practices and upholding the rights of taxpayers in tax assessment procedures.

Rectification in return to be allowed when ITC in GSTR-3B erroneously accounted as IGST credit instead of CGST and SGST credit

Mr. Chukkath Krishnan Praveen – Writ Petition No. 41219/2023 (Kerala High Court) dated 8th December 2023

In favour of Assessee

Relevant Facts

- Mr. Chukkath Krishnan Praveen (the Petitioner) committed the error in filing GSTR-3B returns based on which the Assessment Order dated 21.08.2023 (the Impugned Order) was passed.
- The Petitioner made a representation before the Respondent Authorities vide Representation dated 21.10.2023 (the Representation) for rectifying the mistake/error in the returns filed.
- Thereafter, the Petitioner filed a writ petition directing the Revenue Department to permit the Petitioner to rectify the mistake in Form GSTR-3B by accounting the ITC as IGST instead of CGST and SGST ITC. The Petitioner also prayed for refund of IGST ITC and thereafter, adjusting the IGST credit towards SGST and CGST liability.
- The Petitioner also prayed that the Representation filed by the Petitioner be treated as a Rectification Application.

Held

The Hon'ble Kerala High Court disposed the writ petition and directed that the Representation filed by the Petitioner be treated as rectification application and pass the necessary order in accordance with law after

granting a proper hearing to the Petitioner within a period of 2 months.

CNK Comments

This case highlights the significance of rectifying errors in GSTR-3B filings. This decision serves as a guide for taxpayers seeking rectification and emphasizes the importance of due process. Businesses are advised to stay informed about such legal developments to navigate tax compliance effectively.

No automatic reversal of ITC from the buyer upon non-payment of tax by the supplier

M/s. Suncraft Energy Private Limited - Special Leave Petition (C) No. 27827-27828 of 2023 (Supreme Court of India) dated 14th December 2023
In favour of Assessee

Relevant Facts

- M/s. Suncraft Energy Private Limited (the Respondent) had availed GST ITC on inward supplies. The ITC was later reversed by the revenue authority due to non-payment of taxes by the supplier, as some of the invoices of the said suppliers were not reflected in GSTR-2A of the Appellant for FY 2017-18.
- The Respondent submitted that all the conditions as stipulated under Section 16 of the CGST Act, 2017 for availment of ITC had been fulfilled.
- Further, to substantiate the possession of a valid tax invoice and payment details to the supplier, the tax invoice and the bank statement had been produced during verification.
- However, the submissions of the Respondent were disregarded by the revenue on the grounds that the said taxes were eventually not paid to the government.
- Aggrieved by the Order, the Respondent filed an appeal before the Hon'ble Calcutta High Court.
- The Hon'ble Calcutta High Court set aside the order of the Adjudicating Authority and held that the demand notice issued to the assessee for reversing the ITC could not be sustained without proper inquiry into the supplier's actions.
- Aggrieved by the Impugned Order, the Petitioner – Revenue Department filed a Special Leave Petition before the Hon'ble Supreme Court of India.

Held

The Hon'ble Calcutta High Court had held that –

- The department without resorting to any action against the supplier of goods and/ or services has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable thereon. Such an action is arbitrary in nature.
- Further, there shall not be any automatic reversal of ITC from buyer on non-payment of tax by seller. In case of a default in payment of tax by the seller, recovery shall be made from the seller.
- Also, the Court directed the respondents to proceed against the supplier first and only in exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc., the reversal of GST ITC from the buyer shall also be an option available with them.
- The Hon'ble Supreme Court of India dismissed the Special Leave Petition of the Revenue Department stating that there is no inclination to interfere in these matters considering the facts and circumstances of the case and the extent of demand being on the lower side.

CNK Comments

In all the genuine cases, the Hon'ble Calcutta High court judgment backed by Hon'ble Supreme Court's settled principle, reading together with Hon'ble Madras High court judgment, has strengthened the issue in favour of the assessee. One more judgment which reiterates that recovery of tax shall first be done from the seller and only in exceptional circumstances can be done from the buyer.

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