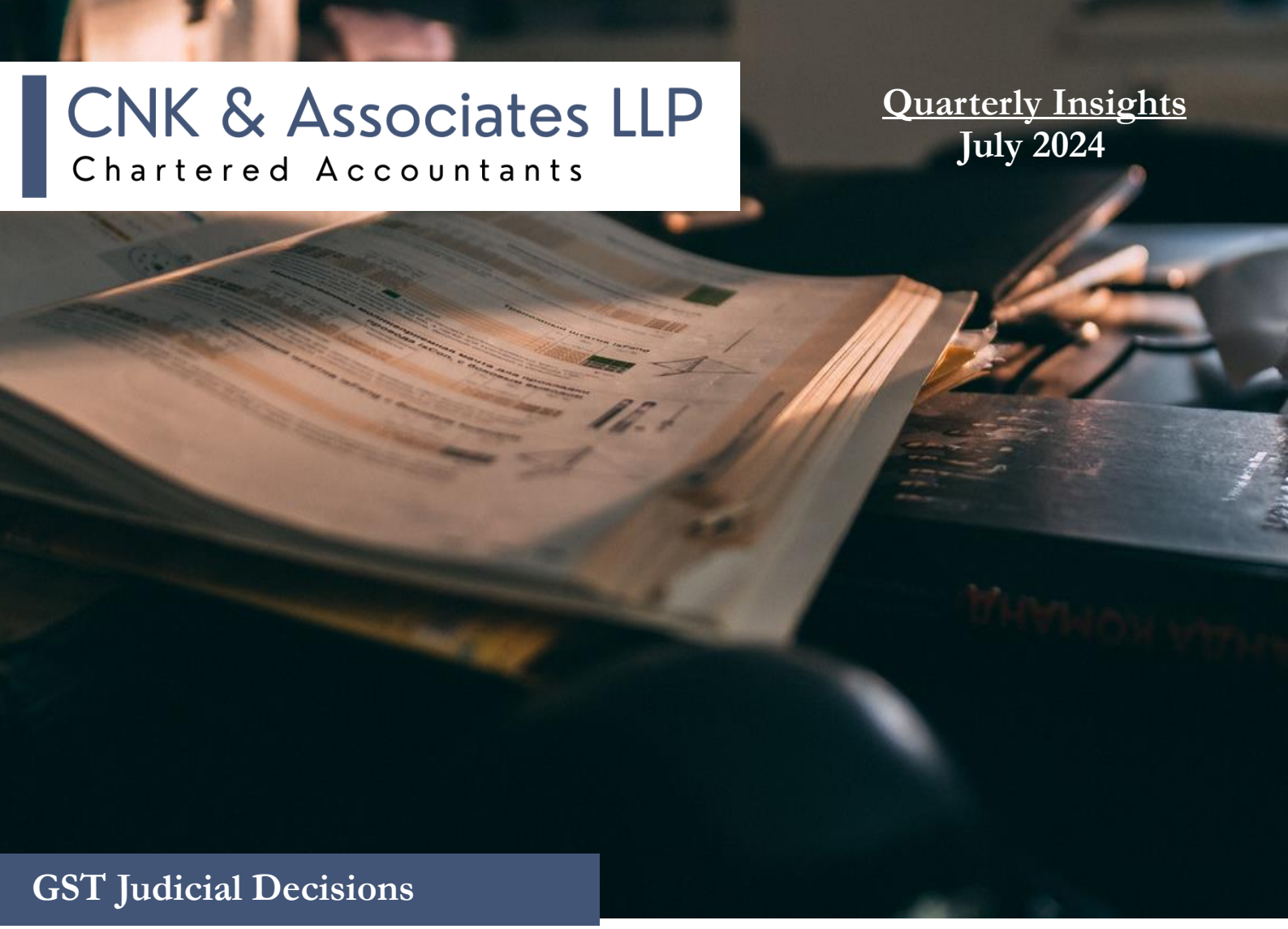

CNK & Associates LLP
Chartered Accountants

Quarterly Insights
July 2024

GST Judicial Decisions

INDEX

Order traversing beyond the allegations in the show cause notice (SCN)

Suchita Millenium Projects Pvt. Ltd. v/s Assistant Commissioner of CGST & Central Excise [M.A.T. No. 1891 of 2023 dated 2nd January 2024 (Calcutta High Court)]

In favour of taxpayer

Relevant facts

The taxpayer applied for a refund of unutilized input tax credit **(ITC)**, beyond the permissible timelines. The tax authority issued an SCN to show cause as to how the application can be considered as being filed within prescribed timelines. The taxpayer submitted its reply referring to certain cases of the Supreme Court and High Court in which the period of limitation under the various statues stood extended.

While the tax authority agreed with the taxpayer's reliance on the judgment of the Hon'ble Supreme Court with regard to extension of limitation period, the refund claim was rejected on a new ground that the taxpayer has not shown the excess payment in either the monthly return in Form GSTR-3B or annual return in Form GSTR-9. This ground was not part of the SCN.

Decision of the Hon'ble Calcutta High Court

- The rejection of the refund application on grounds not mentioned in the SCN is in violation of the principles of natural justice;
- The Order rejecting the refund application was set aside and the matter was remanded back to the authority for fresh consideration;
- The taxpayer was directed to submit a reply on the allegation of the excess payment not being reported in monthly or annual returns, within 15 days from date of receipt of the copy of the order;
- The tax authority was instructed to conduct a fresh personal hearing and pass orders on merits and in accordance with the law;
- The issue of the refund application being time-barred is decided in favor of the taxpayer and cannot be reopened.

CNK comments

This ruling quashed the order which traversed beyond the allegations in the SCN. While the Hon'ble High Court has directed the tax authority to entertain the refund claim on its merits, it has barred them from rejecting the claim on grounds of limitation

Recovery notice issued before expiry of statutory limitation period for filing an appeal

Penna Cement Industries Ltd v/s State of Andhra Pradesh [Writ Petition No.1413/2024 (Andhra Pradesh HC) dated 12th January 2024]

In favour of taxpayer

Relevant facts

The taxpayer received an order in Form GST DRC-07 confirming demand under various heads. The taxpayer intended to file an appeal against one such head and pay the demand on the others. The taxpayer opted to pay the demand under installments under Section 80 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). However, they faced issues with the electronic filing on the GST Portal.

Recovery notice was issued before the expiry of three months from the date of receipt of the order in violation of the provisions of Section 78 of the CGST Act. Aggrieved with the recovery notice, the taxpayer filed a writ petition before the Hon'ble Andhra Pradesh High Court.

Decision of the Hon'ble Andhra Pradesh High Court

- Recovery notice cannot be issued or implemented within the statutory period to make the payment;
- The taxpayer be permitted to file an appeal within the statutory period;

- The taxpayer be granted permission to file a manual application for availing the option to pay tax under installment scheme provided under Section 80 of the CGST Act;
- In case the appeal or the application under Section 80 are not filed within the statutory timelines, the Revenue may proceed to recover the demand.

The Hon'ble High Court also directed the Revenue to resolve the issue regarding inability to electronically file the application under Section 80 of the CGST Act.

CNK comments

There are times when the Revenue oversteps the legal provisions enshrined in the legislation leading to undue harassment to the taxpayer. This is a good judgment to refer to while seeking relief against recovery notices issued prior to expiry of the set statutory timelines.

ITC reversal merely on the ground that supplier's GST registration was cancelled with retrospective effect

Engineering Tools Corporation versus Assistant Commissioner (ST) [Writ Petition No. 3505 of 2024 (Madras High Court) dated 15th February 2024]

In favour of taxpayer

Relevant facts

The tax authority passed an assessment order disallowing ITC availed by the taxpayer solely on the ground that the relevant supplier's GSTIN was cancelled with retrospective effect.

The taxpayer contended that they had legitimately purchased goods from the said supplier during FY 2017-18 against valid tax invoices, e-way bills, transport documents and proof of payment through regular banking channels. Despite submitting these documents, ITC was disallowed by the tax authority. The observations recorded by the tax authority is as follows:

"The taxpayer has made purchases from non-existent person whose registration has been cancelled with retrospective effect on 3rd November 2011. If Tvl. SHIKHAR TECHNOLOGIES is a genuine Taxpayer, then Tvl. ENGINEERING TOOLS CORPORATION should have filed the proof for the existence of Tvl. SHIKHAR TECHNOLOGIES. Instead, they have stated that they are purchasing goods from them and claimed ITC based on the purchase bills. Hence, it is proved beyond doubt that Tvl. SHIKHAR TECHNOLOGIES is a Non-Existent dealer and issued fake invoices to the beneficiaries…"

Decision of the Hon'ble Madras High Court

- The taxpayer, at the most, may be called upon to produce evidence of the existence of the supplier at the relevant point of time;
- The taxpayer may be called upon to prove that the transaction was genuine by providing relevant documents such as tax invoice, e-waybill, delivery challan, lorry receipt and proof of payment;
- The tax authority disregarded the aforesaid documents submitted by the taxpayer and rejected the contentions of the taxpayer and therefore, the impugned assessment order is unsustainable and is quashed and the matter is remanded for reconsideration.

CNK comments

This is a welcome ruling against the unreasonable expectations from the taxpayer to ascertain the existence of the supplier even after the period of claiming ITC. The Hon'ble High Court has rightly stated that at the most, the taxpayer may be called upon to prove the existence of the supplier at the time of claiming ITC and not beyond that. Hopefully, this will put to rest the issues with respect to rejection of ITC claims on account of retrospective cancellation of supplier's GSTIN.

Non-speaking Order issued without cogent reasons for rejecting the taxpayer's claims

Nexus Innovatice Solutions Pvt. Ltd. v/s Additional Commissioner of Central Taxes [Writ Petition No. M.A.T. 8845/2024, W.M.P Nos.9841 & 9842 of

2024 (Madras High Court) dated 3rd April 2024]

In favour of taxpayer

Relevant facts

The taxpayer is in the business of managing and implementing reward programs for corporate clients including buying and selling gift vouchers. The taxpayer received a SCN alleging applicability of GST on gift vouchers. The taxpayer submitted a detailed reply on the following points:

- Vouchers are not goods or services but are actionable claims;
- In case of unidentified vouchers, time of supply provisions would not be attracted;
- Taxpayer is acting as a pure agent and therefore, value of voucher should be excluded from the valuation.

The tax authority simply enumerated the taxpayer's contentions and without recording any reasons, summarily concluded by stating:

"I find no validity in the arguments of the assessee … Actionable claims, though included within the definition of goods under Section 2(52) of the CGST Act. Hence, it follows that vouchers are subject to levy of tax under the GST Act."

Decision of the Hon'ble Madras High Court

- The tax authority made a sweeping conclusion that the taxpayer's arguments are not valid without offering any reasons as to why the arguments are not valid. No justification was given as to why the vouchers are actionable claims included within the definition of goods;
- Since the impugned order is unreasoned, such order is not sustainable;
- The matter was remanded back to the tax authority to reconsider the issue of applicability of GST on vouchers;
- The tax authority was directed to issue a fresh, reasoned order, considering all contentions raised by the taxpayer, and providing a reasonable opportunity to the taxpayer to present their case.

CNK comments

There has been a spate of orders confirming the demand alleged in the SCN. In the Order, the tax authority records the submission of the taxpayer and thereafter confirms the demand without recording reasons for refuting the submissions made or the judgments relied upon by the taxpayer. This judgement is useful for such cases where the tax authorities issue a non-speaking order. This is an important ground that can be taken by the taxpayer while filing an appeal against such unreasoned orders.

Section 14 of Limitation Act, 1963 for 'exclusion of time spent in pursuing alternate remedy' would apply to appeals filed under Section 107 of the CGST Act

Anil Agency v/s Assistant Commissioner Commercial Tax [Writ Petition No. 894/ 2023 (Allahabad High Court) dated 8th April 2024]

In favour of taxpayer

Relevant facts

The taxpayer filed a writ petition before the Hon'ble Allahabad High Court against the penalty order dated 15th February 2018, under Section 129(3) of the CGST Act, levying tax and imposing penalty along with seizure of goods.

On submission of the affidavit and indemnity, the Hon'ble High Court passed orders for release of seized goods. The taxpayer also sought permission to pursue the statutory remedy of appeal against the order of tax and penalty, for which the Hon'ble High Court granted leave vide its order dated 13th September 2021.

The taxpayer subsequently filed an appeal under Section 107 of the CGST Act before the appellate authority on 12th October 2021, within a month of the High Court's dismissal order.

Since the taxpayer was granted interim relief on 12th March 2018 and the final order was issued on 13th September 2021, the taxpayer argued that the benefit of Section 14 of the Limitation Act, 1963 should apply i.e. the period from 12th March 2018 to 13th September 2021, should be excluded.

Decision of the Hon'ble Allahabad High Court

- Relying on the decision of the coordinate bench of the same Court in the case of Murli Packers v/s State of U.P. [(2024) 161 taxmann.com 665 (Allahabad)], Section 14 of the Limitation Act shall apply to appeals filed under Section 107 of the CGST Act;
- The order rejecting the appeal on grounds of limitation was quashed and set aside;
- The appellate authority was directed to hear and decide the taxpayer's appeal on merits expeditiously, preferably within 3 months from the date of receipt of a certified copy of this order.

CNK comments

This Order is a relief to the taxpayers who face the issue of limitation especially when appeal filing is delayed on account of delay in issuance of orders by the Courts. The intervening period from the date of interim relief till the date of final order stands excluded while computing the statutory period permitted for filing of appeals.

Refund of IGST paid on goods exported on approval/ consignment basis

Venus Jewel v/s Union of India [Writ Petition No.5072/2022 (Bombay High Court) dated 8th April 2024]

In favour of taxpayer

Relevant facts

The taxpayer is a four-Star Export House and has exported goods on consignment basis in accordance with the procedure laid down in the Foreign Trade Policy 2015-2020. Post exports, once the sales are confirmed, the taxpayer pays IGST on such confirmed sales. The taxpayer is entitled to claim a refund of IGST paid on goods exported i.e. zero-rated supply under Rule 96 of the Central Goods and Services Tax Rules, 2017 (CGST Rules).

In terms of the clarification in Circular CBEC-20/06/03/2019-GST dated 18th July 2019 (the Circular), since there is no consideration at the time of export of goods on consignment basis, the same cannot be termed as supply and therefore, cannot be considered as zero-rated supply.

The taxpayer filed a writ petition before the Hon'ble Bombay High Court for *inter-alia* declaring the Circular as *ultra-vires* the Constitution of India. The taxpayer also sought the issuance of a writ of mandamus directing the tax authority to issue a refund of IGST paid on export of confirmed sales.

Decision of the Hon'ble Bombay High Court

- The Circular is not applicable to the taxpayer's refund application/ claim since it was not in existence at the time of export of goods. Additionally, the Circular cannot override the substantive provisions enshrined in the CGST Act and the CGST Rules;
- Shipping bills filed by taxpayer are the application for refund of IGST paid on goods exported out of India and there is no issue of limitation;
- Taxpayer is entitled to seek a refund of IGST paid as prescribed under Rules 96 and 96A of the CGST Rules as the taxpayer has appropriately complied with all relevant provisions of the Customs Act, 1962 and the CGST Act;
- Merely because of non-compatibility of data between two authorities, namely, Customs Department and GST Department, as also for reason of non-compatibility with electronic portals as prevalent under GST regime, the taxpayer cannot be denied refund.

CNK comments

The Hon'ble Bombay High Court has taken into consideration the facts of the case and rightly granted relief to the taxpayer stating that the inability of the Revenue to reconcile the data available on the Customs Portal with that on the GST Portal is no reason to deny refund of ITC legitimately due to the taxpayer. The Ruling has once again driven home the point that Circulars can in no way override the substantial provisions of the Act and the Rules.

Disclaimer and Statutory Notice

www.cnkindia.com

CNK & Associates LLP
Chartered Accountants

Mumbai
3rd Floor, Mistry Bhavan, Dinshaw Vachha Road, Churchgate, Mumbai 400 020.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G Road, Vile Parle (East), Mumbai 400 057.
Tel: +91 22 6250 7600

Chennai: +91 44 4384 9695
Vadodara: +91 265 234 3483
Ahmedabad: +91 79 2630 6530
GIFT City: +91 79 2630 6530
Bengaluru: +91 91 4110 7765
Delhi: +91 11 2735 7350
Pune: +91 20 2998 0865
Dubai: +971 4355 9533
Abu Dhabi: +971 4355 9544