

GST Judicial Decisions

INDEX

Particulars	Page No
Order issued without following the principles of natural justice	2
Detention of goods in transit solely on the grounds that the supplier is involved in receiving and passing on fictitious/ bogus input tax credit	2
Blocking of input tax credit leading to negative balance in electronic credit ledger	3
Taxability of Exhibition Services received from abroad	4
Case remanded back for reconsideration as order did not provide cogent reasons for rejecting taxpayer's contentions	4
Challenge to extension of time provided in notification without recommendation of the GST council	5

Order issued without following the principles of natural justice

Shubham Steel Traders versus State of Uttar Pradesh

[Writ Petition No. 199/2024 (Allahabad HC) dated 21 February 2024]

In favour of taxpayer

Relevant facts

The taxpayer received a notice under Section 74 of the Central Goods and Services Tax Act, 2017 (**CGST Act**) which was replied to within the prescribed timelines. Thereafter, the Revenue did not pursue the proceedings further for 4 months after which a reminder notice was issued granting the taxpayer a mere 5 days to submit certain documents. Given the paucity of time to collate the requested documents, on the appointed date, the taxpayer appeared before the officer and requested additional time to submit the documents. 2 weeks later, the officer passed the order. The taxpayer argued that order was passed ex parte without affording them a reasonable opportunity to submit the supporting documents. Neither was the request for additional time rejected by the Officer nor was any fresh date for the proceedings communicated to the taxpayer. Aggrieved by the hasty manner in which the proceedings were conducted, the taxpayer preferred a Writ before the Hon'ble Allahabad High Court.

Decision of the Hon'ble Allahabad High Court

- Once the authority had fixed the proceeding on a specified date, it was incumbent upon them to pass the order in original on that date or fix another date and communicate the same to the taxpayer;
- By not passing the order on the specified date and not communicating the next date for the proceedings to the taxpayer, the officer forced the ex-parte nature of the order on the petitioner by its own conduct;
- Keeping the matter in abeyance for months and then granting a short time of 5 days to submit supporting documents suggests the unnecessary

haste in which the proceedings were sought to be concluded.

The Hon'ble Allahabad High Court disposed of the writ pet

- The order was set aside and the taxpayer ought to treat the order as the final notice issued to him. The taxpayer should file its reply with all supporting documents within 2 weeks from the date of this order;
- The Revenue authority may fix a hearing date allowing at least 1 week notice to the taxpayer. An appropriate reasoned order should be passed after hearing the taxpayer

CNK comments

One does not often get to see the High Court exercise its writ jurisdiction when the legislation provides for an alternate remedy against an order issued by the Revenue. The Hon'ble Allahabad High Court took cognizance of the hasty manner in which the proceedings were conducted and granted appropriate relief to the taxpayer. More often than not, Revenue authorities conduct the proceedings especially when the time limit for issuing the Notice or Order is close to being time barred under the legislation. This order is a helpful respite in such situations.

Detention of goods in transit solely on the grounds that the supplier is involved in receiving and passing on fictitious/bogus input tax credit

Fairdeal Metals Limited versus Assistant Commissioner of Revenue, State Tax, Bureau of Investigation (NB)

[W.P.A. No. 170 of 2024 (Calcutta High Court) dated 1 February 2024]

In favour of taxpayer

Relevant facts

The vehicle transporting goods purchased by the taxpayer was detained for physical examination of the goods and verification of documents. Show Cause Notice (**SCN**) was issued mentioning that certain discrepancies were noticed in the returns filed by the supplier who sold the said goods to the taxpayer.

After verifying the documents, the officer opined that the said supplier was involved in passing on fictitious / bogus input tax credit (**ITC**). The goods were observed by the officer to be of suspicious origin and that the purchase was merely a 'paper sale' to hide the original supplier with the intention to evade tax. It was also alleged that the GST registration of the supplier has certain irregularities in the documents submitted to obtain the GST registration.

Aggrieved by the vehicle detention solely on the alleged irregularities on part of the supplier, the taxpayer filed a writ petition before the Hon'ble Calcutta High Court seeking release of the detained vehicle.

Decision of the Hon'ble Calcutta High Court

- Had there been any deficiency on part of the supplier company in producing the relevant documents, registration ought not to have been issued;
- After registration is granted to the supplier company and tax has been deposited by the supplier, the allegations by the officer against the supplier company do not stand;
- The taxpayer, who has no connection whatsoever with the allegations levelled against the supplier, cannot be made liable to pay penalty.

CNK comments

This is a classic case of being accused of misconduct committed by someone else. The detention of the vehicle was based on mere surmises on the conduct of the supplier. The SCN, without recording any misconduct on part of the taxpayer, imposed a penalty for the antecedents of the supplier. The Hon'ble Calcutta High Court rightly set aside the penalty and released the vehicle as even the allegation against the supplier was not substantiated by the Revenue authority

Blocking of ITC leading to negative balance in electronic credit ledger

Laxmi Fine Chem versus Assistant Commissioner

[Writ Petition No. 5256 of 2024 (Telangana High Court) dated 18 March 2024]

In favour of taxpayer

Relevant facts

The taxpayer's electronic credit ledger (**ECL**) was debited by an amount in excess of the balance available in the ECL leading to a negative balance in the ECL. The taxpayer firstly contended that the ITC was blocked without issuing any SCN, thereby violating the principles of natural justice. Secondly, the action taken by the Revenue authority contravened Rule 86(A) of the Central Goods and Services Tax Rules, 2017 (**CGST Rules**), which stipulates that ITC may be blocked only to the extent of ITC available in the ECL.

Decision of the Hon'ble Telangana High Court

- What is permissible is blocking the availment of ITC only to the extent of whatever is available to the credit of the taxpayer;
- The action of the Revenue authorities in passing an order of negative credit is contrary to Rule 86A of the CGST Rules;
- If there is a credit balance available, then the Revenue authorities may, for reasons to be recorded in writing, bar the said credit from being availed by the taxpayer. There is no power conferred upon the Revenue authorities to block the credit to be availed by the petitioner in future;
- The Revenue authorities always have the remedy of issuing an SCN under Sections 73 or 74 of the CGST Act.

CNK comments

This is a good case to be relied upon in cases where the Revenue authorities debit the ECL in excess of the balance available especially where the reasons for blocking ITC are not recorded and communicated to the taxpayer.

Taxability of Exhibition Services received from abroad

Savio Jewellery versus Commissioner, Central Goods and Services Tax [Writ petition No. 1910/2024 (High court of Rajasthan) dated 2 May 2024] *In favour of revenue*

Relevant facts

The taxpayer is a dealer in jewellery and had participated in an exhibition outside India. The Revenue authorities issued an SCN alleging that the taxpayer has availed exhibition services outside India and is liable to GST under the reverse charge mechanism (**RCM**). The taxpayer approached the Hon'ble Rajasthan High Court by way of a writ petition seeking to quash the SCN. The taxpayer contended that the services were received outside India and hence, should not be taxable in India. In support of its contention the taxpayer quoted Section 1 of the CGST Act which states that the CGST Act applies only within the Indian territory.

The Revenue authorities relied on the provisions of entry 1 of Notification 10/ 2017 – Integrated Tax (Rate) dated 28 June 2017 (**RCM Notification**) which states that if services are received by a taxable person in India from a supplier of service located outside India, the same is liable to GST under RCM.

Decision of the Hon'ble Rajasthan High Court

- The taxpayer has not challenged the RCM Notification relied upon by the Revenue authorities;
- In the present case, the supply of services has taken place outside India and as per the RCM notification, the receiver of the services is a person registered in India;
- No reason to entertain the writ petition as the services received outside India is already taxable at the hand of the receiver of services who is a registered person in India.

CNK comments

This is a decision in favour of the Revenue setting an incorrect precedent for taxing services where the place of supply of service is outside India. It appears that the decision of the Hon'ble Rajasthan High Court was based merely on the fact that the taxpayer had not challenged the RCM Notification. The Hon'ble Rajasthan High Court was of the view that there was no illegality committed by the Revenue authorities and accordingly, the same could not be challenged in the writ jurisdiction especially when the taxpayer has an alternate remedy for filing an appeal. The judgment may act as an incorrect precedent based on which the Revenue authorities may issue notices seeking to tax all such services where the recipient is located in India but the place of supply is outside India.

Case remanded back for reconsideration as order did not provide cogent reasons for rejecting taxpayer's contentions

Resulticks Digital India Private Limited versus Additional Commissioner, CGST and Central Excise, Chennai [Writ petition No.7182 of 2024 (High court of Madras) dated 16 April 2024] *In favour of taxpayer*

Relevant facts

The taxpayer received an SCN in which 3 issues were cited by the Revenue authorities. For each of these issues, the taxpayer submitted their contentions before the Revenue authorities. However, while passing the order, the Revenue authorities failed to consider these contentions or record any reason for rejecting the contentions/ supporting documents submitted by the taxpayer. Aggrieved by the order, the taxpayer filed a writ petition before the Hon'ble Madras High Court.

Decision of the Hon'ble Madras High Court

- The order failed to address the taxpayer's argument regarding Rule 28 of the CGST Rules. After noticing the contentions of the taxpayer, the Revenue authorities failed to record any reasons for rejecting the contention. It appears that the order is incomplete on this issue;

- The evidence provided by the taxpayer regarding export invoices and foreign currency payments suggests that the conclusion in the order may be incorrect and needs to be reconsidered by the Revenue authorities;
- The taxpayer's approach to cancelling invoices instead of issuing credit notes did not cause revenue loss and hence, ought to have been considered.

The Hon'ble Madras High Court set aside the order and remanded the matter back to the assessing authority for reconsideration. The Hon'ble Madras High Court also recognised that taxpayer approached the High Court instead of approaching the appellate authority by remitting the mandated 10% pre-deposit. Hence, in order to safeguard the revenue interest, the taxpayer was directed to remit Rs. 20,00,000/- as a condition for remand.

CNK comments

The Hon'ble Madras High Court delivered an order in fairness to both the taxpayer and the Revenue authorities. While remanding the matter for reconsideration, in order to safeguard revenue interest, the taxpayer was made to deposit the specified sum as a condition for the remand. An order passed without considering the submissions made in reply to SCN or not providing reasons for rejecting the taxpayer's contentions ought to be set aside and reconsidered afresh.

Challenge to extension of time provided in Notification without recommendation of the GST council

Nitai Kangsa Banik v. Union of India [W.P.(C) No. 3877 of 2024 (High court of Guwahati) dated 2 August 2024]

In favour of taxpayer

Relevant facts

The taxpayer has challenged the vires of Notification No. 56/2023, dated 28 December 2023 (**Notification**) issued by the Central Board of Indirect Tax and Customs (CBIC) which extended the

limitation period for issuing an order under Section 73(9) of the CGST Act as follows:

- FY 2018-19 upto 30 April 2024
- FY 2019-20 upto 31 August 2024

The Notification draws its powers from Section 168(A) of the CGST Act which stipulates that the Government may extend the time limits prescribed under the CGST Act in cases of force majeure situations. What constitutes a force majeure situation is also defined by way of an explanation to Section 168A of the CGST Act.

The taxpayer's challenge to the vires of the Notification was on 2 grounds:

- The Notification was issued without the recommendation of the GST Council
- There was no force majeure circumstance as mandated by Section 168A of the CGST Act. The minutes of the 49th GST Council meeting has recorded the reason for such extension as 'not having adequate staff to complete the assessment and/ or audit'

Decision of the Hon'ble Guwahati High Court

- The materials on record prima facie show that there was no recommendation made by the GST Council before issuance of the Notification and hence, it cannot stand the scrutiny of law. Therefore, all actions taken on the basis thereof also cannot be sustainable
- The matter as to whether there was a force majeure and what were the circumstances, under which the provisions of Section 168A were invoked would require a determination and the same can be done on the basis of an affidavit to be filed by the Revenue authorities

CNK comments

The decision of the Hon'ble Guwahati High Court will be a welcome respite for those taxpayers who are litigating the SCNs or orders issued under Section 73 of the CGST Act for FY 2018-19 and 2019-20. In case the notice/ order is issued on the basis of the extended time limit prescribed under Notification 56/ 2023, the same can be defended basis this order.



Disclaimer and Statutory Notice

This e-publication is published by C N K & Associates, LLP Chartered Accountants, India, solely for the purposes of providing necessary information to employees, clients and other business associates. This publication summarizes the important statutory and regulatory developments. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible. The information given in this publication provides a bird's eye view on the recent important select developments and should not be relied solely for the purpose of economic or financial decision. Each such decision would call for specific reference of the relevant statutes and consultation of an expert. This document is a proprietary material created and compiled by C N K & Associates LLP. All rights reserved. This newsletter or any portion thereof may not be reproduced or sold in any manner whatsoever without the consent of the publisher.

This publication is not intended for advertisement and/or for solicitation of work.

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

GIFT City: +91 79 2630 6530

Pune: +91 20 2998 0865

Vadodara: +91 265 234 3483

Bengaluru: +91 91 4110 7765

Dubai: +971 4355 9533

Ahmedabad: +91 79 2630 6530

Delhi: +91 11 2735 7350

Abu Dhabi: +971 4355 9544