LEX TAXIENT
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TAXIENT INSIGHTS

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1. WRIT PETITIONS

1.1. Retention of goods without a detention order is illegal

The Petitioner approached the High Court challenging a Show Cause Notice ('SCN') issued in Form GST MOV-10 that proposed the confiscation of its goods (copper scrap) and conveyance under Section 130 of the CGST Act. The Petitioner, having already deposited the proposed fine in lieu of confiscation, sought the provisional release of the goods pending the final adjudication of the proceedings. The primary legal issues were whether Section 130(2) enables authorities to release goods as a provisional measure during adjudication and whether the Department has the power to retain goods proposed for confiscation without a valid detention order issued under Section 129.

The High Court held that in light of the amendments introduced by the Finance Act, 2021, Section 130(2) does not contemplate provisional release. Instead, it refers to the release of goods only after a final order of confiscation has been passed. However, the Court ruled that the mere initiation of confiscation proceedings under Section 130 does not automatically authorize the Department to retain physical possession of the property. Since the authorities failed to pass a valid detention order under Section 129, the Court found the continued retention of the goods to be legally unsustainable and a violation of the Petitioner's right to property under Article 300A of the Constitution. Consequently, while the petition for provisional release under Section 130(2) was denied, the Court directed the immediate release of the goods upon the Petitioner furnishing a simple bond.

[Authentic Metals v. State GST Department & Ors., 2026-VIL-187-KER]

Taxient Comments: This ruling clarifies the significant procedural shifts following the decoupling of Section 129 (Detention / Seizure) and Section 130 (Confiscation) by the Finance Act, 2021. Previously, Section 129(2) made the provisional release provisions of Section 67(6) applicable to transit seizures, but this was deleted subsequently. The Court's application of the principle 'expressio unius est exclusio alteriu' (the express mention of one thing excludes others) is vital, since the legislature explicitly provided for provisional release in Section 67(6) but remained silent in Section 130, the Courts cannot 'read in' such a power.

For businesses, the most critical takeaway is the procedural requirement for retention. Even if the Department intends to confiscate goods for serious tax evasion, they cannot simply hold the goods indefinitely without a formal detention order highlighting specific reasons. If an officer switches from an inspection to a confiscation proceeding without maintaining a valid detention order under Section 129, the possession becomes illegal the moment the statutory inspection timeline expires. This highlights that Section 130 is a proceeding in rem against the goods that does not strictly require physical custody to adjudicate, whereas Section 129 is the sole mechanism for the legal holding of goods in transit.

1.2. Employees and company officials are not liable for penalties under Section 122(1A)

The Petitioners approached the High Court to challenge an Order-in-Original ('OIO') that imposed individual penalties of approximately ₹133.60 crore each under Section 122(1A) of the CGST Act. These penalties were confirmed following allegations that the company had availed and passed on ineligible ITC via fake invoices between July 2017 and July 2023. The Petitioners, acting in their roles as employees, argued that they were not 'taxable persons' in their individual capacities, had not personally retained any financial benefit from the transactions, and that the provision was being applied retrospectively for the period prior to its enforcement on January 1, 2021.

The High Court quashed the penalties, ruling that the jurisdictional prerequisites for Section 122(1A) were not met. The Court observed that the term 'any person' in Section 122(1A) must be read in conjunction with the definition of a 'taxable person,' as the provision explicitly refers back to violations under Section 122(1) which specifically applies to taxable persons. Furthermore, the Court highlighted that liability requires a two-fold finding, the individual must have personally retained the benefit of the transaction, and the transaction must have been conducted at their instance. Finding that the Petitioners were mere employees with no evidence of personal gain, the Court concluded they were outside the scope of the penalty. The Court further held that since Section 122(1A) is a penal provision, its retrospective application to the period before its enactment is barred by Article 20(1) of the Constitution of India.

[Amit Manilal Haria & Ors. v. Joint Comm. of CCE., TS-105-HC(BOM)-2026-GST]

Taxient Comments: The Court has adopted a very restrictive interpretation of the term 'any person' used in Section 122(1A), effectively limiting its reach to those who qualify as taxable persons. While the Court views this as a necessary legal link to the underlying offences in Section 122(1), this perspective appears to be at odds with the broader anti-fraud objectives discussed during the ***38th GST Council Meeting***. The legislative intent was likely to create a mechanism to penalize any beneficiary of a fake invoicing scam regardless of their registration status to deter the masterminds behind such schemes. By shielding non-taxable individuals from these specific penalties, the ruling sets a high bar for the Revenue to prove personal liability in corporate fraud cases.

Furthermore, the Court's decision to strike down the retrospective application of Section 122(1A) based on Article 20(1) of the Constitution of India is an important observation. It treats these GST penalties as quasi-criminal in nature, thereby granting taxpayers constitutional protection against laws not in force at the time of the alleged offence. However, this view may be open to challenge, as noted in established precedents like the Supreme Court's decision in ***Shiv Dutt Rai Fateh Chand vs. UOI, AIR 1984 SC 1194***, tax penalties, though penal in nature, remain civil liabilities, and therefore, Article 20(1) may not be attracted.

2. APPELLATE AUTHORITY RULINGS

2.1. No interest payable on Debit Notes

The Appellant approached the Appellate Authority challenging an OIO that demanded interest and penalties on Debit Notes issued due to price escalation clauses in their contracts. The Adjudicating Authority had contended that interest should be calculated from the date of the original supply, viewing the differential value in the debit notes as a 'short payment' that existed at the time of the initial invoice. The Appellant argued that tax liability on Debit Notes arises only upon their issuance as per Section 34 of the CGST Act, and since they had correctly declared these notes in the returns for the month of issue and paid the tax accordingly, no interest liability under Section 50 should be attracted.

The Appellate Authority allowed the appeal and set aside the demand, ruling that the time of supply for the differential amount cannot be determined retrospectively. The Authority observed that Section 34(4) explicitly requires a registered person to declare the details of a Debit Note in the return for the month in which such note is issued. By harmoniously reading Section 12(5) and Section 39, the Appellate Authority held that the tax liability is discharged within the prescribed period if paid by the due date of the return in which the Debit Note is reported. Since the Appellant had transparently recorded the Debit Notes and paid the tax in the corresponding GSTR-3B, there was no failure to pay tax that would trigger interest under Section 50(1). Furthermore, the Authority quashed the penalties, noting that the use of Debit Notes for price revisions is a standard industry practice and did not constitute fraud or suppression of facts.

[Mitsui Kinzoku Components India Pvt. Ltd. v. JC, TS-100-FAA-2026-GST]

Taxient Comments: While the ruling provides much-needed relief to taxpayers particularly considering that the department has been consistently raising demands of interest on differential tax arising from Debit Notes, another important statutory aspect appears to have remained unaddressed in the order. The Appellate Authority has not examined the Explanation to Section 12(2) of the CGST Act, which provides that a supply shall be deemed to have been made to the extent it is covered by the invoice or the payment. This deeming fiction assumes significance in situations involving subsequent price revisions or escalations.

For instance, where an invoice is initially issued for ₹80 and tax is discharged accordingly, but subsequently due to price escalation an additional ₹20 becomes payable and is recovered through a Debit Note, the Explanation suggests that at the time of the original transaction the supply would be deemed to have been made only to the extent of ₹80, being the value covered by the invoice/payment at that stage. The additional ₹20 represents a subsequent increase in the value of supply which becomes determinable only later, and therefore the corresponding tax liability should logically arise only when such additional consideration is invoiced through the Debit Note, rather than retrospectively at the time of the original supply.

3. ADVANCE RULINGS

3.1. Serving 'Hookah' in restaurants does not qualify as restaurant service

The Applicant approached the West Bengal Authority for Advance Ruling ('AAR') seeking clarification on whether serving herbal (non-tobacco) or tobacco-based hookah to customers within its restaurant qualifies as a 'restaurant service' under Clause 6(b) of Schedule II to the CGST Act. Under its business model, the Applicant serves hookah alongside food and beverages, arguing that the preparation and presentation of hookah by trained staff using specialized apparatus constitutes a composite supply naturally bundled with the dining experience. The Applicant sought a ruling on whether this activity should be termed a supply of goods or services under the relevant clause and requested confirmation that the entire bundle would be taxable at the concessional restaurant service rate of 5%.

The AAR held that the phrase 'any other article for human consumption' in Clause 6(b) must be interpreted as substances that are ingested and digested for nutrients, whereas hookah involves inhaling smoke into the respiratory tract. Consequently, the AAR ruled that serving hookah does not qualify as a restaurant service and must be treated as a separate composite supply of goods, where the principal supply is the tobacco or herbal mixture. Therefore, while food remains taxable at 5%, tobacco-based hookah is taxable at 40 percent (CGST + SGST) plus applicable Compensation Cess, and non-tobacco (herbal) hookah is taxable at 18 percent (CGST + SGST).

[Indian Wire Products Company, TS-126-AAR(WB)-2026-GST]

Taxient Comments: A significant aspect of this ruling is the AAR's strict interpretation of 'human consumption' through the lens of biology and legislative intent. By distinguishing between ingestion/digestion (food) and inhalation (smoke), the AAR has effectively narrowed the scope of 'restaurant services' to exclude any non-edible experimental offerings. This sets a precedent that the 5 percent concessional rate is reserved strictly for palatable, digestible items and cannot be extended to other products simply because they are served within a restaurant environment.

Furthermore, the ruling emphasizes that businesses cannot create a 'natural bundle' through artificial contractual conditions, such as refusing to serve hookah on a standalone basis. The AAR pointedly noted that under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, smoking is generally prohibited in dining areas, reinforcing the conclusion that food service and hookah service are legally and operationally distinct activities that cannot be naturally bundled in the ordinary course of business. For hospitality operators, this highlights the risk of tax under-reporting when high-tax goods (like tobacco at 40% GST) are bundled into low-tax service categories

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