E-Journal

Taxation Latest Case Law
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Summary: Goods and Services Tax Case Laws

1. **Can a Single SCN under Section 73/74 Cover Multiple Tax Periods and Multiple Assessees?**
   Case: SA Aromatics Pvt. Ltd. vs. Union of India
   Court: Allahabad High Court

- The Allahabad High Court held that a show cause notice under Sections 73/74 of the CGST/UPGST Acts may validly cover more than one tax period, even spanning multiple financial years, and may also involve more than one noticee. The Court clarified that the statutory scheme does not restrict adjudication proceedings to a single tax period or a single financial year.

- The Court observed that adjudication under Sections 73/74 is distinct from return-based assessment and is dispute-centric rather than tax-period centric. Further, Section 74(12) specifically permits inclusion of multiple noticees in a single notice, and in absence of any challenge to its validity, such composite SCNs cannot be held without jurisdiction.

- On parallel proceedings, the Court held that though multiple authorities cannot pass separate adjudication orders on the same SCN, a taxable person has no vested right to choose which authority should proceed. Once a notice is issued, only one adjudication order can culminate from it, and the authority issuing the notice becomes functus officio after passing the order, except for limited statutory powers like rectification.

- On limitation, the Court ruled that where a composite SCN covers multiple financial years, limitation for passing order would run from the due date of annual return of the earliest relevant FY for that portion of demand. Proceedings for a particular FY may lapse if time-barred, but the entire notice would not fail unless limitation for the last FY also expires. The limitation under Sections 73(10) and 74(10) was held to be mandatory and incapable of relaxation.

2. **Can An Adjudication Order Stand When Notice Is Only Uploaded on the GST Portal and No Other Mode of Service Is Attempted?**
   Case: Tvl. Rajathi Silks vs. Commissioner of Commercial Taxes
   Court: Madras High Court

- The Madras High Court held that although uploading a notice on the GST portal constitutes valid service under Section 169 of the CGST/TNGST Acts, the tax authorities must ensure effective service of notice so that the taxpayer gets a real opportunity to respond.

- In the present case, the show cause notice was uploaded on the GST portal, but the petitioner contended that it was unaware of the notice and no physical copy or alternative mode of service was adopted by the department.

- The Court observed that when repeated reminders sent through the same mode receive no response from the taxpayer, the officer must apply his mind and explore other modes of service prescribed under Section 169(1), such as sending notices through Registered Post with Acknowledgement Due (RPAD).

- Holding that mere portal upload without attempting other available modes amounted to ineffective service and denial of reasonable opportunity, the Court set aside the adjudication order and remanded the matter to the competent authority for fresh consideration.s

3. **Can Retrospective GST Cancellation Be Sustained When the SCN Contains No Reasons**?
   Case: **Radha Rani Metal vs**. **Principal Commissioner of Goods and Service Tax**
   Court: **Delhi High Court**

- The Delhi High Court held that retrospective cancellation of GST registration cannot be sustained where the show cause notice does not contain any reasons or indication that such retrospective cancellation was proposed, as the assessee must be placed on clear notice of the grounds for the proposed action.

- In the present case, the High Court had earlier set aside the retrospective cancellation of registration on the ground that the show cause notice lacked any reasoning and failed to inform the assessee of the intent to cancel registration retrospectively.

- The department thereafter filed a review petition contending that setting aside the cancellation would affect the chain of transactions and recovery proceedings against parties who had dealt with the assessee under the same GST registration.

- The Court rejected the review petition holding that review jurisdiction cannot be used to reopen concluded issues or re-argue the matter, and since no manifest error or miscarriage of justice was shown in the earlier order, there was no ground to review the judgment.

4. **Can Assignment of Leasehold Rights in Industrial Land With Factory Building Attract GST**?
   Case: **Hindustan Equipment Craft vs**. **Assistant Commissioner of State Tax**
   Court: **Bombay High Court**

- The Bombay High Court held that assignment of leasehold rights in an MIDC industrial plot along with a factory building, with prior consent of MIDC, amounts to transfer of benefits arising from immovable property and not a lease or letting of building under Schedule II of the CGST Act.

- In the present case, the petitioner held MIDC land on a 95-year lease and constructed a factory building thereon. With MIDC's prior approval, the petitioner assigned the

leasehold rights together with the building to a third-party assignee for consideration, upon which MIDC also charged a premium.

- The tax authorities treated the transaction as supply of services under Section 7 read with Schedule II and proposed GST at 18% under the category of "other miscellaneous services." However, the Court noted that the transaction was neither a lease nor sub-lease and the petitioner's rights in the property stood completely extinguished upon assignment.

- The Court further held that such assignment had no nexus with the petitioner's business and therefore did not qualify as a supply made in the course or furtherance of business. Consequently, the assignment of leasehold rights with the factory building was held to be outside the scope of GST and the impugned demand notice was quashed.

5. **Can GSTAT Grant Interim Stay of Recovery During Pendency of Appeal or Must Assessee Approach High Court?**
   Case: Hongkong and Shanghai Banking Corporation Ltd. vs. State of Maharashtra
   Court: Bombay High Court

- The Bombay High Court held that the GST Appellate Tribunal (GSTAT) possesses inherent and incidental powers to grant interim relief, including stay of recovery during the pendency of an appeal, even though the GST law does not expressly provide for such power.

- In the present case, the assessee had already filed an appeal before the GSTAT against the Order-in-Appeal confirming tax liability. During the pendency of the appeal, the department issued recovery notices, prompting the assessee to approach the High Court seeking quashing of recovery proceedings and interim protection.

- The Court observed that Sections 111 and 113 of the CGST Act confer wide appellate powers and procedural autonomy on the Tribunal, including powers similar to that of a civil court. Therefore, the authority to grant interim relief or stay of recovery is inherent and necessary to ensure that the appellate remedy remains effective and meaningful.

- Accordingly, the Court held that the assessee must seek interim relief before the GSTAT itself, and filing a writ petition before the High Court was not warranted. The petitioner was directed to move an appropriate interim application before the Tribunal in the pending appeal.

6. **Can Renting of Residential Premises to an Educational Institution for Student/Staff Accommodation Be Liable to GST?**
   Case: Bhandary Gas Agency vs. Joint Commissioner of Commercial Taxes, DGSTO, Shivamogga
   Court: Karnataka High Court

- The Karnataka High Court held that renting of a residential dwelling used for accommodation of students, staff and teachers of an educational institution qualifies as "use as residence" and is exempt from GST under Entry 13 of Notification No. 9/2017-Integrated Tax (Rate).

- In the present case, the petitioner had leased a residential property to an educational foundation for providing accommodation to students, staff and teachers. Though GST on rent was initially paid and refund was claimed under the exemption notification, the tax authorities later denied the refund despite the audit initially accepting the exemption.

- The Court relied on the decision in Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling (Karnataka), which clarified that "residential dwelling" refers to premises used for residential accommodation and is distinct from commercial establishments such as hotels.

- Applying the said principle, the Court held that hostel accommodation for students and staff amounts to residential use and the identity or nature of the lessee is irrelevant. Accordingly, GST was not leviable on such rent and the authorities were directed to reconsider the petitioner's refund claim within the prescribed timeframe.

7. **Can Penalty under Section 122(1A) of GST Be Imposed Retrospectively on Company Directors for Periods Prior to Its Insertion?**
   Case: Amit Manilal Haria vs. Joint Commissioner, CGST & Central Excise
   Court: Bombay High Court

- The Bombay High Court held that penalty under Section 122(1A) of the CGST Act cannot be imposed retrospectively for acts committed prior to its insertion on 1 January 2021, as such retrospective penal action is barred by Article 20(1) of the Constitution which prohibits ex post facto punishment.

- In the present case, the petitioners were directors and officers of a company accused of wrongful availment and passing of ineligible ITC. Show cause notices dated 2 August 2024 proposed massive penalties under Section 122(1A) and the adjudicating authority-imposed penalties of about Rs. 133.60 crore each through order dated 1 February 2025.

- The Court observed that Section 122(1) applies only to a taxable person, while Section 122(1A) can apply to any person only if two conditions are satisfied — that such person retained the benefit of the fraudulent transaction and that the transaction was conducted at his instance. In the present case, there was no material

or finding showing that the petitioners were taxable persons, had retained any benefit, or had caused the alleged transactions.

- Accordingly, the Court held that invocation of Section 122(1A) against the petitioners for the period July 2017 to January 2021 was without jurisdiction and unconstitutional. The show cause notices and adjudication orders imposing penalties were therefore quashed.

8. **Can A Consolidated SCN For Multiple Years Be Issued Under Section 74 On Allegations of Fraud and Suppression**?
Case: **Rainbow Greeners Nagpur vs**. **State of Maharashtra**
Court: **Bombay High Court**

- The Bombay High Court held that issuance of a consolidated show cause notice covering multiple financial years under Section 74 on allegations of fraud and suppression is impermissible in law, as each financial year constitutes a separate cause of action with independent limitation.

- In the present case, the department issued a single SCN for the period 2018-19 to 2022-23 alleging suppression and short payment of tax under fraud provisions, which was challenged by the assessee as being contrary to the statutory framework of GST.

- The Court observed that the GST regime is structured on year-wise compliance and limitation, and clubbing multiple years in one notice disrupts the statutory scheme and prejudices the assessee's right to respond distinctly for each tax period.

- Accordingly, the consolidated SCN was quashed and set aside, with liberty granted to the department to issue fresh, separate notices for each financial year strictly in accordance with law.

9. **Can ITC Be Denied Under Section 17 Where No Construction Activity Is Undertaken**?
Case: **Niket Bipinbhai Patel vs**. **Assistant Commissioner** (**A**.**E**.), **CGST**-**Central Excise Vadodara**
Court: **Gujarat High Court**

- The Gujarat High Court held that restriction on input tax credit under Section 17(5)(d) applies only where goods or services are used for construction of immovable property, and in absence of any construction activity, such ITC cannot be denied.

- In the present case, the petitioner, an NRI registered under GST, was engaged only in transferring leasehold rights of GIDC sub-plots and had discharged GST on such transactions while availing ITC on GIDC charges, without undertaking any construction activity.

- The department issued notice in Form DRC-01A alleging wrongful availment of blocked credit and demanded Rs. 98.11 lakh along with interest and penalty, invoking Section 74 despite there being no allegation of fraud, suppression, or misstatement.

- The Court quashed the impugned notice and directed unblocking of ITC, holding that Section 17(5)(d) was inapplicable, especially when no construction was carried out and the petitioner had already reversed the utilized ITC.

10. C**an the Same Officer Who Authorised Search Also Decide the Appeal under GST Law**?
Case: **Ramjilal Mohanlal vs**. **Union of India**
Court: **Rajasthan High Court**

- The Rajasthan High Court held that where the same officer who authorised inspection and search subsequently acts as the Appellate Authority, it violates the fundamental principle of natural justice—nemo judex in causa sua (no one can be a judge in his own cause), thereby vitiating the appellate proceedings.

- In the present case, inspection and search were authorised by the Additional Commissioner, and after adjudication, the statutory appeal filed by the assessee was also decided and dismissed by the very same officer acting as the Appellate Authority.

- The Court observed that such a dual role creates a reasonable apprehension of bias, irrespective of the merits of the case, and therefore warrants judicial interference to uphold fairness in adjudication.

- Accordingly, the appellate order was quashed and the matter was remanded with a direction that the appeal be heard afresh by a different competent Appellate Authority, strictly in accordance with law and without being influenced by earlier findings.

11. **Can Limitation for Filing GST Appeal Start Only after Disposal of Rectification Application**?
Case: **New Kailash Suppliers vs**. **State of Gujarat**
Court: **Gujarat High Court**

- The Gujarat High Court held that where a rectification application under Section 161 is filed against an order, the limitation period for filing an appeal under Section 107 commences only from the date of disposal of such rectification application, and not from the date of the original order.

- In the present case, the petitioner filed a rectification application against the order dated 12.08.2024, which was rejected on 19.03.2025, and thereafter filed an appeal on 25.03.2025; however, the appellate authority dismissed the appeal as time-barred by erroneously computing limitation from the original order.

- The Court observed that although the appellate authority lacks power to condone delay beyond the statutory period, it must first correctly determine the starting point of limitation, which in such cases would be the date of rejection of rectification, i.e., 20.03.2025.

- Accordingly, the Court held that the appeal was filed within limitation and that the appellate authority erred in rejecting it without examining the merits of Form GST APL-01; the impugned order was quashed and the matter remanded for fresh adjudication after granting opportunity of hearing.

12. **Can An Appeal Be Rejected as Time-Barred Without Considering Date of DRC-07 Upload?**
Case: Tenet Networks (P.) Ltd. vs. GST Council
Court: Allahabad High Court

- The Allahabad High Court held that rejection of an appeal on limitation without properly considering the assessee's plea regarding the date of uploading of DRC-07 on the GST portal is unsustainable in law, as all grounds raised in the appeal must be duly examined by the appellate authority.

- In the present case, although the penalty order (MOV-09) was passed on 01.08.2022, the DRC-07 summary was uploaded on the portal only on 26.11.2022 upon the petitioner's request, and the assessee contended that the limitation period for filing appeal should be computed from the date of such upload.

- The appellate authority, however, rejected the appeal as time-barred without appreciating or adjudicating upon this specific contention raised in the memo of appeal regarding commencement of limitation.

- The Court set aside the impugned appellate order and remanded the matter, holding that failure to consider a material ground relating to condonation of delay vitiates the order, and the issue of limitation must be re-examined in accordance with law.

Summary: Income Tax Case Laws

1. **Can Contractual Rebate Received from a Builder for Timely Payment Be Taxed as Income u/s 56?**
   Case: Satya Prasan Rajguru vs. Deputy Commissioner of Income-tax
   Court: ITAT Delhi

- The ITAT Delhi held that contractual rebates or discounts granted by a builder for timely payment under an apartment buyer's agreement cannot be treated as taxable income under Section 56, particularly when the actual purchase consideration paid by the buyer is higher than the stamp duty value of the property.

- In the present case, the assessee purchased an apartment at a price lower than the builder's listed price due to contractual rebates for timely payments. The Assessing Officer treated such rebate as income under Section 56(1) on the ground that the flat was purchased at a concessional price.

- The Tribunal noted that Section 56(2)(x) applies only where the purchase consideration of immovable property is lower than the stamp duty value. Since the stamp duty value was ₹14.68 crore while the actual consideration paid by the assessee was ₹23.13 crore, the conditions for invoking deemed income provisions were not satisfied.

- It was further held that rebates granted by builders as part of contractual payment terms are common commercial concessions to encourage timely payments and do not represent income earned by the buyer. Accordingly, the addition made by the Assessing Officer under Section 56 was deleted.

2. **Can Interest on TDS Refund under Section 244A be Denied Due to a System Glitch Not Attributable to the Assessee?**
   Case: Principal Commissioner of Income-tax vs. HCL Infotech (P.) Ltd.
   Court: Delhi High Court

- The Delhi High Court held that interest on refund under Section 244A cannot be denied merely because of a technical glitch in the system when the lapse is not attributable to the assessee and the TDS credit was otherwise reflected in Form 26AS.

- In the present case, the assessee filed a revised return after a court-approved merger and recasting of accounts claiming additional TDS refund. However, due to a system glitch, the TDS credit did not appear in the revised e-return though it was duly reflected in Form 26AS, and the assessee had promptly informed CPC and the Assessing Officer.

- The Assessing Officer granted the refund through rectification under Section 154 but denied interest under Section 244A alleging that the delay was attributable to the assessee. The Court observed that if delay is alleged to be attributable to the

assessee under Section 244A(2), only the competent higher authority (PCIT/CIT) can decide exclusion of such period.

- Since the appellate authorities had already accepted that the delay occurred due to a system glitch and not because of any lapse on the part of the assessee, the Court held that denial of interest was unjustified and no substantial question of law arose.

3. **Can Period of Holding of Previous Owner Through a Family Trust Be Counted for LTCG Computation**?
   Case: **Deputy Commissioner of Income-tax vs. Bharat Lakhaji Nandwana**
   Court: **ITAT, Ahmedabad Bench**

- The ITAT held that where an assessee acquires property through a family trust created under a will, the period of holding of the previous owner/trust must be included under Sections 2(42A) and 49(1)(iii) for determining the nature of the capital asset. Accordingly, the gain on sale was rightly treated as long-term capital gain.

- In the present case, the property originally belonged to the assessee's father, was transferred to a family trust under his will, and upon dissolution of the trust, devolved upon the assessee. The Assessing Officer disputed the claim of long-term capital gain.

- The Tribunal upheld that the provisions of Section 49 applied, and the holding period of the father as well as the trust had to be clubbed with that of the assessee, thereby qualifying the asset as a long-term capital asset.

- Further, the ITAT allowed exemption under Section 54EC, holding that since the assessee had invested the capital gains in specified bonds within the prescribed time and the Revenue failed to prove otherwise, denial of exemption was unjustified.

4. **Can AO Reject DCF Valuation and Apply NAV Method for Share Premium u/s 56(2)(viib) Without Evidence**?
   Case: **Asirvad Micro Finance Ltd. vs. Deputy Commissioner of Income-tax**
   Court: **Chennai ITAT**

- The ITAT held that once an assessee opts for valuation of unquoted shares under the DCF method as per Rule 11UA, the Assessing Officer cannot reject the same and substitute it with NAV method in the absence of cogent material establishing perversity or incorrectness in the valuation.

- In the present case, the assessee, a microfinance company, issued rights shares at a premium to an NBFC based on a CA-certified DCF valuation supported by business projections, and the transaction was also approved by RBI, with no allegation of unaccounted money.

- The Assessing Officer rejected the DCF method merely on the ground that projections were based on management inputs and adopted NAV method to make

addition under Section 56(2)(viib), without demonstrating any defects in projections or excess actual performance vis-à-vis estimates.

- The Tribunal held that such rejection was unsustainable, and further clarified that even if the valuation report was obtained subsequent to issuance of shares, the same would not invalidate the claim when the valuation is otherwise substantiated; accordingly, the addition was deleted.

5. **Can Addition u/s 69C Be Sustained Without Providing Cross-Examination and Relied-Upon Material?**
   Case: S. Sagar Enterprise vs. Deputy Commissioner of Income-tax
   Court: ITAT, Mumbai Bench

- The ITAT held that addition under Section 69C cannot be sustained where it is made solely on the basis of third-party material without furnishing such material to the assessee and without granting an opportunity of cross-examination, as it violates principles of natural justice.

- In the present case, the AO alleged unexplained cash purchases of Rs. 6.65 lakh based on software found during a search at M/s REPL, while the assessee demonstrated that all purchases were made through proper banking channels and duly recorded in books along with supporting invoices and stock records.

- The assessee specifically requested copies of the alleged incriminating material and statements of the third party, along with an opportunity to cross-examine, however, the same were not provided and the addition was made purely on unverified third-party data.

- The Tribunal held that in absence of corroborative evidence and denial of cross-examination, such addition is unsustainable in law, and accordingly deleted the addition made under Section 69C in favour of the assessee.