CNK & Associates LLP
Chartered Accountants

Quarterly Insights
April 2024

GST Judicial Decisions

INDEX

Interest cannot be imposed for delayed filing of GSTR-3B if GST amount is deposited into Electronic Cash Ledger within due date

M/s. Eicher Motors Limited - Writ Petition Nos. 16866 & 22013 of 2023 (Madras High Court) dated 23rd January 2024

In favour of Assessee

Relevant Facts

- The Petitioner, a well-known manufacturer specializing in mid-sized motorcycles (250-750CC) operated under the iconic brand 'Royal Enfield'.
- On the GST introduction date, i.e., 01.07.2017, the petitioner possessed an accumulated balance of Rs.33.87 crores as CENVAT credit, awaiting transition into the GST regime. However, due to system readiness issues and technical glitches in the GST Common Portal the entire credit intended for transition was not promptly made available as Input Tax Credit **(ITC)** upon the submission of Form GST TRAN-1 on 16.10.2017.
- Additionally, as the transitional credit was not reflected in the Electronic Credit Ledger, the petitioner was unable to file the monthly return in Form GSTR-3B for July 2017 and for subsequent months till December 2017, within the due date.
- Despite this filing restriction, the petitioner ensured timely payment of tax dues, diligently discharging the GST liability into the Electronic Cash Ledger **(ECL)** for the period from July 2017 to December 2017.
- Following the filing of revised GST TRAN-1 on 27.12.2017, the transitioned credit amount appeared in the petitioner's Electronic Credit Ledger, enabling the filing of Form GSTR 3B for July 2017 and subsequent months.
- 6 years later, the petitioner received a Recovery notice dated 16.05.2023, demanding an interest payment of Rs.23.76 crores for the alleged belated GST payment from July 2017 to December 2017. Also, the recovery proceedings were initiated without show cause notice **(SCN)**.
- Despite the petitioner's detailed response on 29.05.2023, the Department did not withdraw the recovery proceedings. Aggrieved by the recovery proceedings, the petitioner appealed before the Hon'ble Madras High Court.

Held

The Hon'ble Madras High Court held that -

- Section 39(7) of the Act stated that tax should have been paid to the Government before the last date for filing GSTR 3B returns which means the instance of payment of tax would occur not later than the last date of filing GSTR 3B returns. It was immaterial whether GSTR 3B is filed within the due date or not for remittance of tax to the account of Government.
- Upon payment through the generation of GST PMT-06, the amount would be promptly credited to the Government account, at which point, the tax liability of a registered person will be discharged to the extent of the deposit made to the Government. Subsequently, for accounting purposes only, it would be deemed credited to the ECL, as specified in Explanation (a) to Section 49(11) of the Act.
- As long as the GST collected by a registered person was credited to the Government account by the last date for filing monthly returns, the tax liability of that registered person would be considered discharged from the date of crediting of such amount to the ECL. Any default in GST payment occurring after the due date for filing monthly returns, i.e., on or before the 20th of each subsequent month, would result in the registered person being liable to pay interest solely for the delayed period, by virtue of Section 50(1) of the Act.

CNK Comments

- *The judgment provides relief to taxpayers by not imposing interest on delay in filing Form GSTR-3B, if the amount of tax payable is deposited into the ECL of the GST Common Portal.*
- *However, it is unclear whether such relief would be available even in cases where issue of technical glitches could not be invoked by the assessee.*

Roof-top solar systems installed for power generation of factory constitutes movable property, hence eligible for ITC

M/s. Unique Welding Products Pvt Ltd. – Advance Ruling No. GUJ/GAAR/R/2024/01 (Authority of Advance Ruling, Gujarat) dated 05th January 2024
In favour of Assessee

Relevant Facts

- The Petitioner was engaged in the manufacturing and sales of welding wires in the State of Gujarat.
- The company entered into an interconnection agreement with Madhya Gujarat Vij Company Ltd (MGVCL) for the captive use of power generated by the roof-top solar system. The solar system had a capacity of 440 KW and was solely and captively used for manufacturing welding wires within the factory premises.
- The company asserted its eligibility for ITC under Sections 16 and 17 of the CGST Act, 2017. Sections 2(63), 2(59), 16, and 17 of the CGST Act, 2017 were referenced to support the claim for ITC on inputs, input services, and capital goods used for erection, commissioning, and installation of the roof-top solar power plant.
- In light of the foregoing submissions, the applicant sought advance ruling on the below mentioned question viz.
  i) Whether the company was eligible for ITC on the purchased roof-top solar system with installation & commissioning.
  ii) Whether the roof-top solar system, with installation and commissioning, constituted plant and machinery, making it eligible for ITC under the exception clause of Section 17(5) of the CGST Act.

Held

The Gujarat Authority of Advance Ruling held that –

- The roof solar system, affixed on the roof of the building was not embedded to earth. Accordingly, it was not an immovable property but a plant and machinery, which was utilized to generate electricity which was further solely and captively used in the manufacture of welding wires. Hence, the applicant was eligible to avail ITC.
- The roof top solar system with installation and commissioning constituted plant and machinery of the Applicant and hence it was not blocked under Section 17(5) of the CGST Act.

CNK Comments

The ruling provides clarity on the eligibility of ITC for businesses investing in roof-top solar systems. The distinction between immovable property and plant and machinery, as well as reference to relevant sections and previous rulings, contributes to a comprehensive understanding of the tax implications for such sustainable energy installations.

No reversal of ITC on ground that supplier was non-existent if documentary evidence was duly produced

M/s. Cleon Optobiz Pvt Ltd - Writ Petition No. 495/2024 (Madras High Court) dated 19th January 2024
In favour of Assessee

Relevant Facts

- The petitioner company was a registered entity under GST laws and regularly filed requisite returns.
- The petitioner was issued with a SCN stating that the ITC availed by the petitioner in respect of purchases made from M/s. Prince Sales Agency was to be reversed on the ground that the said entity is non-existent and is not conducting business.
- The petitioner submitted that they cannot be penalized because the GST registration of M/s. Prince Sales Agency was cancelled subsequent to their transaction with retrospective effect.
- The petitioner also submitted the relevant invoice copies, e-way bills and bank statements with regard

to proof of payment against the relevant invoices to substantiate their claims.

- However, the revenue department, without considering the claims of the petitioner passed an assessment order confirming the discrepancies identified in the SCN.
- The assessment order also mentioned that the products dealt by the assessee are entirely different from those dealt by M/s. Prince Sales Agency, an issue which was not indicated in the intimation or SCN that preceded the assessment order.
- Impugned by the order, the petitioner filed a writ petition before the High Court of Madras.

Held

The Hon'ble Madras High Court held that –

- The Respondents – GST Authorities had failed to consider the submissions made by the petitioner i.e. invoices, e-way bills and bank statements.
- With respect to contention made in the impugned order that the petitioner was not dealing in goods which the supplier dealt with, would not sustain since the said ground was not covered in the impugned SCN. Hence, at the stage of issuance of the order this new ground cannot be considered.
- Considering the above, the High Court quashed the impugned order. Also, the matter was remanded for reconsideration by the assessing officer for passing a fresh assessment order.

CNK Comments

- *This decision can be relied upon by a taxpayer in case there are sufficient documents available to substantiate the claim of ITC and authority fails to consider the same at the time of issuing a SCN or passing an Order.*
- *With respect to list of details/documents to be maintained or produced before authorities, in quite a few cases HC continues to rely upon the judgement of Apex Court in case of Ecom Gill Coffee Trading Private Ltd wherein Apex Court has prescribed exhaustive list of documents.*
- *Hence, it has to be seen in each case as to what would qualify as sufficient details/documents for proving the genuineness of transaction. Consequently, whether the claim of ITC in cases such as where vendor's registration is cancelled or vendor is found to be non-existent, would be accepted.*

Goods transport with ancillary services of handling not taxable as cargo handling

M/s. Arkay Logistics Ltd – Civil Appeal arising out of Diary No. 9104 of 2024 (Supreme Court of India) dated 22nd March 2024

In favour of Assessee

Relevant Facts

- M/s. Arkay Logistics Ltd. ("the Respondent") provided various services such as loading /unloading/stacking of goods at respective rail or port yard, road transportation from plant to rail/port head, transportation of goods by rail or sea and from destination to M/s. Essar Steel Ltd. ("the Client"), various depots/stock-point/job-workers premises and accordingly charged composite rate as per multi transportation basis depending on various destinations.
- The Revenue Department ("the Appellant") alleged that the aforesaid services appeared to be classified under the category of "Cargo Handling Services", as defined under Section 65(23) of the Finance Act, 1994, and accordingly passed the Order-in-Original imposing Service Tax on the said handling and transportation of goods by multi-modes along with interest and penalties.
- Aggrieved by the above Order, the Respondent filed an appeal before the CESTAT, Ahmedabad.
- The CESTAT, Ahmedabad, vide order dated 03.04.2023 ("the Impugned Order") allowed the appeal filed by the Respondent, thereby stating that, as per the definition of cargo handling service enumerated in Section 65(105)(zr) of the Finance Act, 1994, the loading, unloading, handling of cargo for all modes of transport and any other service incidental to freight would be covered within the definition of "cargo handling". The definition also stated that, mere transportation of goods would not be considered as Cargo Handling Service.

- Aggrieved by the Impugned Order passed by the Tribunal, the Appellant filed an appeal before the Hon'ble Supreme Court.

Held

The Hon'ble Supreme Court of India concurred with the view taken by the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad wherein it was held that -

- Loading, unloading, handling of cargo for all modes of transport and any other service incidental to freight would be covered by the definition of "cargo handling". The definition also very clearly specified that mere transportation of goods will not be considered as cargo handling service. The definition itself clarified that if the activity is only of transportation, then the said activity cannot be called cargo handling service.
- The CESTAT, Ahmedabad, relying upon the judgment of CESTAT Delhi in the case of Hira Industries Ltd. v. Commissioner of Central Excise, Raipur and judgment of CESTAT Kolkata in the case of Commissioner of Service Tax v. HEC Ltd. also stated that, the primary activity carried out by the company involved transportation of goods via road/rail/sea. The activities incidentally, even if it involved some loading and unloading of goods while carrying out principal activities under the contract, such incidental activities would not give the entire activity the character of cargo handling services.

CNK Comments

The Supreme Court's judgement provides lucidity on the taxation of ancillary services in goods transportation. By dismissing the appeal and affirming the Tribunal's decision, it establishes that mere transportation of goods, along with related ancillary services, does not constitute Cargo Handling Service liable for taxation. This ruling sets a precedent for similar cases, providing guidance on the taxation of ancillary services in the logistics sector.

.

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