

Nangia Andersen LLP

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Indirect Tax

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01

Advance Rulings & Judgements

Madras High Court held that Input tax credit ('ITC') cannot be denied solely on the basis that concerned supplier's registration cancelled with retrospective effect.

Brief Facts

- M/s. Engineering Tools Corporation ('Petitioner') purchased goods from M/s Shikhar Technologies in Financial Year 2017-18 and availed ITC on the same. Respondent directed the petitioner to reverse the ITC on such purchases on the ground that the registration of the Petitioner's supplier was cancelled with retrospective effect and alleged availment of ITC basis the fake invoices in Impugned Order;
- Aggrieved by the Impugned Order, Petitioner filed the present writ petition before the Madras High Court.

Observations

- Hon'ble High court observed that contentions of the Petitioner were rejected entirely on the ground that petitioner should have proved the existence of its supplier. Petitioner, at the highest, may be called upon to produce evidence of existence of supplier at relevant point of time i.e. when goods were purchased;
- Further, High Court noted that Petitioner submitted the relevant documents to prove that transaction was genuine (tax invoices, e-way bills, and proof of payments) but these documents were disregarded while passing the Impugned Order.

Decision

- The Impugned Order passed by the adjudicating authority is quashed and matter remanded for reconsideration.

[Engineering Tools Corporation [(2024) 15 Centax 388 (Mad.) Dated 15 February 2024]

Madras High Court held that receipt of payment by an intermediary for and on behalf of its client to qualifies as payment received by the client for the purpose of Export of services.

Brief Facts

- M/s. Afortune Trading Research Lab LLP ('Petitioner') is engaged in the business of providing online services through its website. Services are provided in the form of information and knowledge on various investment options. Predominantly all the clients/customers of the Petitioner are from the U.S and the neighboring countries;
- Users visiting its website subscribe to plans as given and make payments. Payments are routed through the Paypal, an intermediary, appointed by the petitioner. Subscribers make the payment for availing the Petitioner's service through Paypal platform. Paypal collects the payment in foreign exchange (US Dollars in the instant case). In doing so, Paypal acts as an intermediary/agent of the Petitioner;
- Petitioner treated the services supplied through its website to users located outside India as Export of services and had filed refund claims, partly seeking refund of ITC availed on service used in provision of services;
- Refund claims of the Petitioner were rejected by the adjudicating authority on the ground that Petitioner failed to establish that the amount received in Indian Rupees was through freely convertible Vostro account as stated in the RBI directions. Appellate Authority also confirmed the order passed by Adjudicating Authority;
- Aggrieved by the order of the Appellate Authority and given that there is no Appellate Tribunal to file appeal against the Impugned Order, Petitioner filed the present writ petition before the Madras High Court.

Observations

- Hon'ble High court observed that the routing of the payment by the intermediary viz., Paypal from its account in CITI Bank to the petitioner's own account with HDFC Bank in Indian Rupees is in accordance with the provisions of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016;
- Hon'ble High Court further observed that merely because the receipts are routed through the intermediary and received in Indian currency *ipso facto* would not mean that the Petitioner has not exported services within the meaning of Section 2(6) of the IGST Act, 2017. Receipt of payment by an intermediary for and on behalf of its client like the Petitioner will qualify as payment received by the client.

Decision

- The petitioner is entitled to claim refund of the unutilized ITC used in export of service. Impugned Order is unsustainable and thus set aside.

[Afortune Trading Research Lab LLP [(2024) 15 Centax 520 (Mad.)] Dated 16 February 2024]

CESTAT Delhi ('Tribunal') held that the Data Processing and Collection services do not qualify as OIDAR Services

Brief Facts

- M/s CETAS Healthcare Private Limited ('Appellant'), is engaged in the business *inter alia* of data collection and data processing services. The Appellant entered into a service agreement with CETAS Healthcare Insights Pte Ltd, Singapore ('CETAS Singapore'), to provide Data Collection and Processing Services. Appellant treated the services provided to CETAS Singapore as export of services under the head 'market research agency service';
- Adjudicating authority ruled that data collection and process services provided by Appellant to CETAS Singapore is covered under OIDAR Services. Thus, place of supply of above service would be location of supplier that is in India & accordingly, services cannot qualify as export of services;
- Aggrieved by the order of adjudicating authority, Appellant preferred appeal before the Commissioner (Appeals) who upheld the Order-in-Original, dismissing the appeal filed. Being aggrieved, the present appeal was filed before Tribunal by the Appellant.

Observations

- Tribunal observed that Appellant is not maintaining a data base service for access and retrieval for people in general to assess the date or information from the website. Appellant has conducted data collection, analysis, and research, and subsequently forwarded the report to CETAS Singapore for use and reference only. Further, payment is received by Appellant in convertible foreign currency in India;
- Tribunal further noted that service provided by the Appellant would not get covered under OIDAR service. Accordingly, services qualify as export of services.

Decision

- Impugned Order passed by the Adjudicating Authority is set aside.

[CETAS Healthcare Private Limited [Final Order Number 50578/2023, CESTAT, New Delhi Dated 17 April 2023]

Kerala High Court order to unblock the Electronic Credit Ledger under Rule 86A due to lack of written reasons

Brief Facts

- M/s. Tvl. J.M. Traders ('Petitioner'), is engaged in the business of trading having a GST registration in state of Tamil Nadu;
- Petitioner' contented that Electronic Credit Ledger ('ECL') was blocked by the Deputy Commissioner ('Respondent') through a text message, without providing any written reasons;
- The petitioner argued that the Respondent's actions were in violation of Rule 86A of the Tamil Nadu Goods and Services Tax Rules, 2017 (TNGST Rules) which empowers the person specified in sub-rule (1) thereof to block ITC in ECL if there is reasons to believe that the ITC available in the ECL was fraudulently availed or that the registered person was not eligible for such credit;
- Petitioner filed the present writ petition before the Madras High Court for unblocking of ITC in ECL.

Observations

- Hon'ble High court observed that although Rule 86A does not require a prior notice, the power it grants must be accompanied by a contemporaneous communication of reasons in writing to the petitioner.
- The text of Rule 86A indicates two requirements: the objective satisfaction of the officer concerned and the communication of reasons for so believing in writing to the assessee concerned.

Decision

- Apart from mentioning the name of the supplier in the ECL, no reasons were provided. Therefore, the petitioner is entitled to the unblocking of ITC;
- The Hon'ble High Court directed the Respondent to take necessary actions to remove the block on the petitioner's ITC in ECL.

[Tvl. J.M Traders Vs Deputy Commissioner, W.P No. 1387 dated 8 February 2024]

Madras High Court held that ITC cannot be denied solely on the ground of non-reflection in GSTR-3B

Brief Facts

- M/s. Sri Shanmuga Hardwares Electricals ('Petitioner'), is engaged in the trading of electrical products and hardware.
- Petitioner challenged the assessment orders issued on 30 September 2023, pertaining to the assessment years 2017-2018, 2018-2019, and 2019-2020 (referred as 'Relevant Period') that had rejected the ITC availed in Form GSTR-9 on the sole ground of non-availment of ITC in Form GSTR-3B. They have filed three distinct writ petitions challenging each assessment order separately;
- The petitioner argued that they have inadvertently filed a "NIL" GSTR-3B during the Relevant Period. Post filing Form GSTR-3B, petitioner duly disclosed said ITC availment in Form GSTR-9.
- They also argued that they are entitled to claim ITC for Relevant Period based on the documents and information available in the Form GSTR-2A returns.
- Aggrieved by the order, Petitioner filed the present writ petition before the Hon'ble High Court;

Observations

- The Hon'ble High Court observed that when the registered person asserts that he is eligible for ITC by referring to GSTR-2A and GSTR-9 returns, the assessing officer should examine whether the ITC claim is valid by examining all relevant documents, including by calling upon the registered person to provide such documents.
- The judgment emphasizes that the assessment order passed for rejection of ITC solely based on the absence of ITC claims in GSTR-3B returns;

Decision

- The Hon'ble High Court quashed the assessment orders and remanded the matter for reconsideration.
- The Petitioner was directed to furnish all relevant documents pertaining to ITC claim. The authorities were instructed to issue new assessment orders following a reasonable opportunity for a personal hearing.

[Sri Shanmuga Hardwares Electricals Vs State Tax Officer, W.P No. 3804, 3808 and 3813 Dated 20 February 2024]



02

**GST & Foreign Trade
Policy Updates**

GST Advisory on delay in GST Registration dated 28 February 2024

- GSTIN has issued an advisory regarding on instances of delay in registration reported by some taxpayers despite successful Aadhar authentication in accordance with Rules 8 and 9 of the Central Goods and Service Tax Rules, 2017.
- Accordingly, where a person has undergone Aadhaar authentication as per sub-rule (4A) of Rule 8 but has been identified in terms of Rule 9(aa) by the common portal for detailed verification based on risk profile, the application for registration would be processed within thirty days of application submission.
- It is also clarified that necessary changes would also be made to reflect the same in the online tracking module vis a vis the processing of registration applications.

Foreign Trade Policy Updates

Notification of 'Indian Trade Classification (Harmonised System) of Export Items, 2023 [Chapter 01-39 of Schedule 2, Export Policy of ITC (HS), 2023]

- The Central Government has notified Chapter 01-39 of Schedule 2 (Export Policy) of 'Indian Trade Classification (Harmonised System) of Export Items, 2023'.
- Chapter 01-39 of Schedule 2 of ITC (HS), 2023 contains current export policy of items indicated along with policy conditions to be fulfilled. This notification shall come into force with immediate effect

[Notification No. 60/2023, dated 13 February 2024]

Relief in Average Export Obligation in terms of para 5.17(a) of HandBook of Procedures (HBP) of Foreign Trade Policy ('FTP'), 2023

- Para 5.17 of the HBP of the FTP, 2023 envisages to provide relief to sectors facing a decline in exports.
- All Regional Authorities are directed to re-fix the Annual Average Export Obligation (EO) for EPCG Authorizations for the year 2022-23 accordingly. Reduction, if any, in the EO should be appropriately endorsed in the licence file of the Office of RA as also in the amendment sheet to be issued to the EPCG Authorisation holder

[Policy Circular No. 10/2023-24 dated 22 February 2024]

Amendment in Para 4.36 'Facility of Clubbing of Authorisations' of the Handbook of Procedures, 2023

Para 4.36 of the Handbook of Procedures, 2023 has been amended, to ease the clubbing of provisions in respect of Advance Authorisation Scheme, for ease of doing of business.

The amended Para 4.36 (vi) will be read as follows:

"Only such authorisations shall be clubbed which have been issued within 24 months from the date of issue of earliest authorisation that is sought to be clubbed, whether such authorisations are valid or not. This is further subject to condition that upon clubbing only imports made within 30 months from the date of issue of earliest authorisation shall be considered. Any imports made beyond 30 months of earliest authorisation shall be regularized under Para 4.49 of the HBP. This is further subject to condition that upon clubbing only exports made within 48 months from the date of issue of earliest authorisation shall be considered. Any exports made beyond 48 months of earliest authorisation shall not be acceptable for clubbing."

[Public Notice no. 40/2023 dated 12 February 2024]



03

Compliance Calendar

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling in March 2024
1	Monthly Return Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11 th day of succeeding month	For Tax Period February 2024-11 th March 2024
2	Monthly Return Form GSTR-3B	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for QRMP Scheme	Monthly	20 th day of succeeding month	For Tax Period February 2024-20 th March 2024
3	Invoice Furnishing Facility ('IFF') (QRMP Scheme)	Optional Facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1 st day to 13 th day of succeeding month	For Tax Period February 2024 - 1 st to 13 th March 2024

4	Form GST PMT-06 (Monthly Payment of Tax)	Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25 th of succeeding month	For Tax Period February 2024-25 th March 2024
5	Form GSTR-6 (Return for Input Service distributor)	Return for input service distributor	Monthly	13 th of the succeeding month	For Tax Period February 2024-13 th March 2024
6	Form GSTR-7 (Return for Tax Deducted at Source)	Return filed by individuals who deduct tax at source under GST	Monthly	10 th of the succeeding month	For Tax Period February 2024-10 th March 2024
7	Form GSTR-8 (Statement of Tax collection at source)	Return to be filed by e-commerce operators who are required to collect tax at source under GST.	Monthly	10 th of the succeeding month	For Tax Period February 2024-10 th March 2024

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