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PANIPAT BRANCH OF NIRC OF ICAI

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THE ICAI MOTTO

The Institute of Chartered Accountants of India

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah | Tadeva sukram tad brahma tadevamrtamucyate | Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat | |	य एष सुप्तेषु जागर्ति कामं कामं पुरूषो निर्मिमाण :। तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते । तस्मिंल्लोका: श्रिता: सर्वे तदु नात्येति कश्चन । एतद् वै तत् ।।

That Person who is awake in those that sleep, shaping desire after desire, that, indeed is pure.

That is Brahman, that, indeed, is called the immortal. In it, all the worlds rest and no one ever goes beyond it.

This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person.

Even dream consciousness is proof of the existence of the self.

No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends.'

Source: Kathopanishad

PANIPAT BRANCH OF NIRC OF ICAI

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EVENTS

(JANUARY-2025)

HELD IN

PANIPAT BRANCH OF NIRC OF ICAI

CAREER COUNSELLING
@ DIVYAKULAM PUBLIC SCHOOL
BY **CA ROHIT MALIK**

JANUARY 21st 2025

Panipat Branch Chartered Accountants Student's Association of ICAI Organized Industrial Visit to Sugar Mill Panipat

JANUARY 28th 2025

GST CASE LAW COMPENDIUM – JANUARY 2025 EDITION

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1. **Whether the limitation to file anappeal commence from the date of the rectification order?**

Yes, the Honorable Madras High Court (Madurai Bench) in the case of ***M/s. SPK and Co v. State Tax Officer [W.P. (MD) No. 27787 of 2024 dated November 22, 2024]*** disposed ofthe writ petition thereby holding that the date of limitation for filing of appeal would start from the date of passing of the rectification order. The Honorable Court noted that the petitioner filed a writ petition stating the vagueness of SCN which is not tenable since adetailed reply has been submitted to the SCN and the application for rectification had also disposed of. The application for rectification was disposed of holding that the grounds raised in the rectification application are in nature of challenging the order of assessment. However, the Petitioner further stated that the appellate authority would press upon calculating the period of limitation from the date when the original assessment order was passed and, in such case, the appeal would be beyond the period of limitation and thus, there is an apprehension that the appeal would not be entertained due to limitation issue. The Honorable High Court noted that since the rectification application filed was rejected on 12.11.2024, the period of limitation would only start from the date on which the rectification order has been passed and disposed of the petition.

Author's Comments

Section 107 and Section 161 are two independent provisions and remedies available to the taxpayer post-decision/order by the adjudicating authority. Section 107 remedy is a statutory right and the time limit to file anappeal before theFAA operates asa "prescription" where the right itself will be lost, if the appeal is not filed within the time limit prescribed.
Section 161 has a very limited scope and it allows for the rectification of any error or mistake that is apparent from the record. It is important to note that 'apparent on the face of record' is not one that involves (i) a conclusion that cannot be reached without taking new facts on record during rectification

proceedings or (ii) requiring application of mind to existing facts or interpretation already adopted in reaching the conclusion already reached.
The appeal before the FAA is based on DRC-07 issued along with the Order-in-Original. When the rectification application is rejected (for whatever reasons), the DRC-07 remains unaltered and limitation is to be calculated from the date of the original order. But if any changes are made to DRC-07 pursuant to the rectification application being allowed, then limitation commences from such date of modified DRC-07.
Taxpayers have to be extremely cautious that they do not lose the sight of 3+1-month time limit provided under section 107 to prefer an appeal before FAA, when a rectification application is filed before the PO.

Link to download judgment

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2. Whetheran Order can be passed beyond the allegations mentioned in the SCN?

No, the Honorable Madras High Court in the case of ***Tvl. Senthil Hardwares v. State Tax Officer, Pattukottai [W.P. (MD) No. 17626/2024 dated July 30, 2024]*** quashed the impugned order as it suffers from the gross violation of principles of natural justice. The Honorable Court noted that a Show Cause Notice was issued to the Assessee vide FORM DRC-01 and the reply filed by the Assessee was accepted by the Department, but a certain part of the demand was confirmed vide the Order in respect ofthe defect, which was not part of the notice. The Honorable Madras High Court observed that the Impugned Order suffers from a gross violation of the principles of natural justice as the Petitioner was not put to notice of such defects. Therefore, the reasoning, produced in the conclusion of the Impugned Order, is also unsustainable. The Honorable Court held that the Impugned Order, which stands quashed, shall be treated as acorrigendum to the Impugned Notice. The Respondent was also directed to issue afresh additional addendum to the Impugned SCN within a period of 45 days. The Petitioner shall, thereafter, file a reply to the same within a period of 30 days. The Respondent shall thereafter pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of two months.

Author's Comments

Section 75(7) of the CGST Act clearly specifies that the "grounds" on which SCN is issued, an Adjudication order has to be passed on the same very "grounds". Where any notice is issued on certain grounds, those grounds are exhaustive terms of the *list* that can neither be expanded in case of deficiencies nor cured in case of defects, in adjudication.
This principle has been decided by the Apex Court in case (a) **CCE v. Brindavan Beverages (P) Ltd (213)ELT 487(S) and (b) Oryx Fisheries (P) Ltd v. UOI 2011 (266) ELT 422(SC).**
The Honorable Supreme Court has ruled in cases like ***Commissioner of Customs, Mumbai v. Toyo Engineering Ltd., [(2006) 7 SCC 592], Commissioner of Central Excise, Bhubaneshwar v. Champdany Industries Ltd., [(2009) 9 SCC 466], Commissioner of Central Excise,***

Chandigarh v. Shital International (2011) 1 SCC 109 and Jitendra Kumar v. State of Uttar Pradesh and Anr. [2023 SCC Online All 2837] wherein it was established that the authorities cannot raise new grounds or arguments that were not part of the SCN.

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3. **Whether negative blocking of ECL is within the scope of provisions of Rule 86A?**

Yes, the Honorable Madras High Court in the case of ***Tvl. Shanthaguru Innovations Private Limited v. Commercial Tax Officer & Ors. [Writ Petition No. 29872 of 2024 dated November 28, 2024]*** held that the negative blocking is well within the scope of provisions of Rule 86A of the CGST Rules, 2017. The Honourable Court noted that ECL had been blocked without the availability of any credit after issuing the intimation for the same. Subsequently, notice in form ASMT-10 is issued by the State Authority on September 26, 2024 alleging wrongful availment of ITC to the extent of a sum of Rs.13,10,44,864/.

The Central Authorities had already conducted the investigation at the Petitioner's premises and found that till March 2024, the Petitioners had wrongfully availed a sum of Rs.6.3 Crores as ITC. Accordingly, the Central Authorities had issued a summon with regard to the wrongful availment of ITC to the extent of Rs.6.3 Crores and subsequently, **froze** the bank accounts of the Petitioners. Thereafter, the Central Authorities issued FORM DRC-01A on October 08, 2024, with regard to the wrongful availment of a sum of Rs.13.10 Crores. The Honorable Madras High Court observed that the issue raised by the Central and State Authorities is similar, although, the quantum of the amount demanded by them is entirely different and the period of demand also differs. Thus, the question of cross-empowerment would not arise. Therefore, to the extent of difference in amount and period, the State Authorities will have the power to issue the notice. However, in the absence of any further orders, subsequent to the issuance of the Impugned Notice by the State Authorities, it is pre-mature to decide as to whether the State Authorities are barred by cross empowerment or not. Further, noted that Rule 86A of the CGST Rules would show that if the Commissioner or an Officer, not below the rank of Assistant Commissioner, having reason to believe that the credit of ITC available in ECL has been fraudulently availed or ineligible under the circumstances mentioned in Clauses (a) to (d) of Rule 86A(1) of GST Rules, for the reasons to be recorded in writing, not allow the debit of amount equivalent to such credit in ECL for discharge of any liability under Section 49 of the CGST Act. In the case on hand, the Rule was incorporated to stop debiting the ITC from ECL, which was availed fraudulently by virtue ofa bogus invoice and other situations mentioned in Clauses (a) to (d) of Rule 86A(1) of CGST Rules. Thus, the object of Rule 86A of the CGST Rules is to prohibit the debiting of ITC from the ECL to the extent of fraudulently availed credit. Therefore, by no stretch of the imagination, one could have construed that no blocking orders can be passed at the time of zero balance of ITC in the ECL. Since the negative

blocking can continue up to the stage of accumulation of ITC to the extent of wrongful availment of credit in the ECL, the blocking orders can be issued even at the time of zero balance of ITC in the ECL. The Honorable Court held that the State Authorities are empowered to pass blocking orders to the extent of credit, which was fraudulently availed and available in ECL for discharge of output tax liabilities either at the time of blocking or subsequently, in the event if the same was already utilized. Though the issues raised by the Central and State Authorities are similar in nature, if the period, for which the notice was issued, is different, both the Authorities are empowered to initiate the proceedings for the respective period. Hence, the writ petition was dismissed.

Author's Comments

Cross-Empowerment-In this case, ASMT-10 is issued by the State Authorities on 26.09.2024 whereas DRC-01A is issued by Central Authorities on 08.10.2024. ASMT-10 is a pre-adjudication exercise to address the discrepancies noted by the PO, where no demand can be confirmed. Whereas DRC-01A is pre-notice consultations issued to give a chance to the taxpayer to pay taxes and bring litigation to anend (Rule 142(1)(A)).Section 6(2)(b) of the Act comes into play only when overlapping 'Notice' is issued for the same subject matter for the same period. It was certainly pre-mature to challenge ASMT-10 for 'jurisdiction' and rightly the Honorable Court has dismissed the petition.

Negative Blocking of ECL- The controversy for this issue has surfaced due to divergent views of different courts on this particular issue. Recently, the Honorable High Court of Gujarat in the case of ***HC-PMW Metal and Alloys (P.) Ltd. V. Union of India [R/SPECIAL CIVIL APPLICATION NO.5541 of 2024] dated 20.09.2024*** held that Rule 86A of the CGST Rules empowers the proper officer to disallow debit from the ECL for an amount equivalent to the amount claimed to have been fraudulently availed, and if no ITC was available in the credit ledger, the rules does not provide for insertion of a negative balance in the ledger. Relying on the decision in the case of ***Samay Alloys India Pvt. Ltd. v. State of Gujarat [2022 (61) GSTL 421 (Guj.)]***, where the division bench of the Gujarat High Court held that the power conferred under Rule 86A to block the credit cannot be invoked by the State Authorities in the case, where credit of ITC is not available in ECL or such credit has already been utilised.

Link to download judgment
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4. Whether the assessment proceedings without giving an opportunity to reply is valid?

No, the Honourable High Court of Madras in the case of ***Sundarapandian v. State Tax Officer-1 [W.P. (MD) 17429/2024 dated July 29, 2024]*** held that an order issued without giving proper opportunity to reply to the SCNis contrary to principles of natural justice. The Honourable Court noted that

the petitioner was served notices vide FORM DRC-01A dated October 26, 2023, and FORM DRC-01 dated November 15, 2023, for the assessment year 2018-19. Subsequently, the Impugned Order dated February 12, 2024,was issued. The Petitioner contended that the Impugned Order was passed without the issuance of the aforementioned notices, hence, it is a gross violation of the principles of natural justice. The Respondent submitted that the notices that preceded Impugned Orders were posted on the GST common portal and the Petitioner ought to have participated in the said proceedings. The Honourable Madras High Court observed that the Petitioner may have a case on merits as the dispute pertains to the difference of turnover reported in FORM GSTR-7 and FORM GSTR-3B. Considering the same, the Impugned Order was set aside and remitted the case to the Respondent to passa fresh order on merits. The Impugned Order passed for the Assessment Year 2018-19 which stands quashed hereby, shall be treated as anaddendum to the SCN. The Petitioner shall file a consolidated reply within a period of 30 days from the date of receipt of a copy of the order and also deposit 20% of the disputed tax from the electronic cash ledger.

Author's Comments

For every adverse outcome of departmental proceedings, taxpayers can express disappointment or displeasure but rushing to file a Writ petition does not help merely because it is statutorily permitted. Choosing an appropriate forum must be a well-thought and strategic decision. Whether to celebrate such an order that remands back the case to the Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. In the Author's considered opinion, such orders are unable to fetch the desired relief because SCN is not vacated; only a short-term relief (at a cost) is provided.

Alternatively, preferring an appeal against such an adverse order to the First Appellate Authority could have been a strategic decision because any demand fastened on the assumptions without proving with evidence (i) turnover reported in GSTR-7 belongs to the Registered person (ii) the taxability of the same (iii) the HSN code (iv)the time of supply, and (v) the place of supply for output tax is arbitrary and illegal. Any order based on assumptions not only violates principles of fairness in adjudication but also imposes an enormous burden on the Appellate Authority to enter into 'fact-finding'. The adverse order is at 'large' before the Appellate Authority and anything short of well-reasoned and speaking order; FAA is in no position to reject the pleadings by the appellants.

Link to download judgment

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5. Whether demand can be confirmed on the basis of requirements not mentioned in the SCN?

No, the Honorable Delhi High Court in the case of ***APN Sales and Marketing v. Union of India [W.P. (C) No. 9536 of 2024 dated August 09, 2024]*** held that an order which does not provide sufficient reasons is not legally sustainable as it is in violation of principles of natural justice and the demand confirmed on the allegations not mentioned in the Show Cause

Notice is not sustainable. The Honorable Court noted that the petitioner was served SCN alleging that ITC availed by the Petitioner was not correct as the supplier's GST registration was cancelled.
Pursuant to the Impugned SCN, an Impugned Order dated December 29, 2023 was passed. The Impugned SCN referred to Section 16(2)(c) of the CGST Act, which posits that registered persons are entitled to avail ITC on supply of goods or services subject to the condition that the tax charged on such supply has been paid to the Government either in cash or through the utilization of admissible ITC. The Honorable High Court observed that the Impugned SCN did not allege that the Petitioner had not received the goods from the dealer in question. The Impugned SCN is premised on Section 16(2)(c) of the CGST Act. However, the Impugned Order does not indicate that the Adjudicating Officer had finally concluded that the dealer in question i.e. Modern Traders had not paid the taxes due on the supplies made to the Petitioner. The Honorable Court held that the Impugned order be set aside and the matter remanded back to decide afresh.

Author's Comments

This is one of the most important safeguards allowed in the legislature in Section 75(7) of the CGST Act, which states that the terms of the *lis* cannot be expanded, modified, or altered. The taxpayers faced this issue in earlier legislations, where there was no such express safeguard to bar the Proper officers from trespassing the boundaries of SCN and confirming demands on the issue, to which the taxpayer was never put at notice. The Honorable Apex Court in the case of ***Commissioner of Customs, Mumbai v. Toyo Engineering India Limited [Writ No.2532 of 2001 dated August 31, 2006]*** held that the Department cannot travel beyond the SCN.
Whether to celebrate such an order that remands back the case to the Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. Alternatively, preferring an appeal against such an adverse order to the First Appellate Authority could have been a strategic decision because the allegation of Section 16(2)(b) has all the ingredients of fraud and this particular allegation is incompatible with the SCN issued under Section 73. The PO cannot 'approbate and reprobate' on the same issue. If the allegation of fraud is correct, then by the doctrine of election, SCN under Sec 73 is not sustainable. And if the allegation is incorrect, then SCN remains hollow to bring home the allegation.
Link to download judgment
https://drive.google.com/file/d/1b_rv96N6OYlEuPeX81HIw0jLBTkIjAw9/view?usp=sharing

6. Whether penalty u/s 129(1)(b) can be imposed if goods are transported by a person whose registration is cancelled?

No, The Hon'ble Allahabad High Court in the case of ***M/s Lakhdatar Traders v. State of Uttar Pradesh [Writ Tax No. 1852 of 2024 dated December 11, 2024]*** dismissed the writ petition where goods in transit detained were accompanied with a proper tax invoice and e-way bills and penalty imposed on account of suspension of registration of the owner of

goods. The Honorable Court observed that the statement of the driver was obtained in Form GST MOV-01 and physical verification was made in which, it is claimed that no discrepancy was found. However, the goods were detained by indicating the movement of goods without proper documents. A notice dated October 08, 2024, was issued in Form GST-MOV-07 inter alia indicating that the registration of the Petitioner was suspended. Further, several indications were made pertaining to the validity of the registration of the Petitioner.The Hon'ble Allahabad High Court Relied on, a coordinate Bench of this Court in the case of ***Halder Enterprises v. State of Uttar Pradesh [Writ Tax No.1297 of 2023 dated December 11, 2023],*** came to the conclusion that once the goods were found with proper tax invoice and E-way bill belonging to the Petitioner, the circular dated December 31, 2018 would apply and the Petitioner would be deemed to be owner of the goods and the same was to be released in terms of Section 129(1)(*a*) of the CGST Act. The Honorable Court noted that the facts are not in dispute that the documents in question were accompanied with the goods, were dated October 01, 2024, and at the time of interception of the vehicle, the requisites were found. The notice issued by the Respondents indicated the fact the registration being suspended by the jurisdictional authorities at Bihar on October 03, 2024, based on which, the penalty has been imposed under provisions of Section 129(1)(*b*) of the CGST Act. Hence, the writ petition was allowed and directed authorities to carry out proceedings in terms of section 129(1)(a) of the CGST Act.

Author's Comments

Intercepting Officers, fuelled by their experience in the earlier tax regimes, they are able to 'sense' evasion of tax and expand the scope of their own limited powers conferred by the Legislature. It is trite that the 'delegate' - one who has been vested with authority - in the course of exercising authority vested, cannot 'expand' the scope of that authority. To do so would be to attempt **to legislate.** The delegate must act without the scope of authority vested. And no emergency can authorize 'expansion of authority'.
Intercepting officers authorized under section 68 enjoy the authority of verification of documents listed in Rule 138A. Now, either the prescribed documents are available, or they are not. There exists no third possibility that the law admits. Where documents are available, Proper Officer is not enjoyed with any further authority to test the propriety of self-assessment carried out.
The Concept of moulding relief is the authority enjoyed by a Court of Equity such as the Supreme Court or High Court, to travel beyond the statute and invent a solution that redresses grievances. There is no authority given under the law to alter the cause-of-action from section 129(1)(b) to section 129(1)(a) in view of express safeguard given under section 75(7) of the CGST Act, 2017.

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7. Whether thedate of online filing of anappeal is to be considered as the date of filing the GST appeal for considering limitation?

Yes, the Honorable Madras High Court in the case of ***Kasturi& Sons (P.) Ltd. v. Additional Commissioner of GST & Central Excise (Appeals-1), Chennai [W.P. No. 18642 of 2024 dated July 10, 2024]*** considering Rule 108(3) of the CGST Rules held that the date of online filing of appeal must be considered as the date of filing GST appeal for the purpose of limitation. The Honorable Court noted that the petitioner filed a refund application under Section 54 of the CGST Act, however, the application was rejected vide order dated August 30, 2024.Thereafter, the appeal was filed against the order online on October 31, 2022, and a hard copy of the appeal was submitted on August 02, 2023, which was beyond the prescribed time period, based on which the appeal filed was rejected vide order dated March 13, 2024. The Revenue contended that the date of issuance of provisional acknowledgment would be considered as the date of filing of appeal only when the order appealed against was uploaded on the common portal. The Honorable Madras High Court noted that as per rule 108(3) of the CGST Rules, the self-certified copy of the order has to be submitted along with the appeal, only when the order appealed against is not uploaded on the GST portal. And when the order is duly uploaded on the common portal, the date of online filing would be considered as the date of filing of the appeal. The Honorable Court opined that when the appeal is filed online, the filing of a hard copy of the appeal is just a procedural requirement and consequently, the Impugned order is not sustainable. Therefore, the Impugned Order is liable to be set aside and directed the appellate authority to receive the appeal and decide the same on merits.

Author's Comments

The date of actual filing of APL-01 is determined based on the date APL-02 was issued. As per Notification no.26/2022- Central Tax dated 26.12.2022, Rule 108(3) is substituted and now (i) a self-certified copy of the decision or order appealed against is required where such decision or order is not uploaded on the common portal and (ii) certified copy may be 'self-certified' where such order is NOT uploaded online.

A Similar decision was delivered by the Honorable High Court of Madras in the case of **Indian Potash Limited vs. The Deputy Commissioner (ST), Appeal & Ors [WPA Nos.12497, 12498, 12500 & 12501 of 2024 dated June 06, 2024] wherein it was** held that mere non-filing of an order physically within the time limit cannot be a valid ground for rejection of appeal.

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8. Whether an Order passed without considering credit in GSTR-2A is liable to be set aside?

Yes, the Honorable Madras High Court in the case of ***M/s. Oasys Cybernetics Private Limited v. State Tax Officer, Chennai [W.P. No. 16224 OF 2024 dated July 09, 2024]*** disposed of the writ petition by setting aside the order in case where the credit as reflected in GSTR-2A was not taken into consideration at the time of passing of the order. The Honourable Madras High Court noted that the petitioner had challenged the Order in Original on the ground that the impugned order was issued without considering credit of 11 bill of entries reflected in GSTR-2A. Further, the order of adjudication refers to amounts not reflected in the GST Model-2 portal and such information was not made available to the petitioner. After considering the 11 bill of entries reflecting in GSTR-2A, the petitioner agrees to remit a sum of Rs. 8,00,000/- as condition for remand. The Honourable Court opined that credit in GSTR-2A was not taken into consideration at the time of passing of the order and held that the Impugned Order is set aside and the matter is remitted back for reconsideration.

Author's Comments

Whether to celebrate such an order that remands back the case to the same Proper officer for another round of adjudication (re-adjudication) is a matter of choice and strategy. In the Author's considered opinion, such orders are unable to fetch the desired relief because SCN is not vacated; only a short-term relief (that too, at a cost) is provided. The petitioner could have disputed the cause-of-action (2A v 3B is not a cause-of-action) invoked, and the burden to proof would have been on the revenue to prove their case. Important to mention that mismatch/ linear comparison of two data sets (GSTR-2A-whose authorship is not with taxpayer v GSTR-3B) is meaningless in GST. Yes, it could raise suspicion, but without sufficiently putting the taxpayer at notice regarding the exact cause-of-action (16(2)(c) or 16(2)(b) or something else) alleged to be violated and without discharging the burden of proof and adducting evidence in support of allegation, it is impossible to bring home the allegations levelled against the taxpayer's self-assessment.

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9. Whether the refund application for RCM paid on ocean freight is valid if filed after the Notification was struck down?

Yes, the Honorable Gujarat High Court in the case of ***H K Enterprise v. Union of India & Ors [R/Special Civil Application No. 14119 of 2024 dated November 27, 2024]*** quashes the rejection of there fund application of IGST paid on ocean freight, filed subsequent to ***Notification No.10/2017-IT (Rate) dated June 28, 2017*** being struck down by Honorable Supreme Court in case of Mohit Minerals. The Honorable Court noted that the petitioner's refund claim for the unutilized GST paid on Ocean Freight under the RCMfor June 2018 was rejected because it was found to be filed after the statutory two-year period from the relevant date. The Honorable Gujarat High Court noted that the issue of levy of IGST on ocean freight is no longer *res integra* and has been decided by the Honorable Apex Court in the case

of ***Union of India and another v. Mohit Minerals Private Limited through Director [2022 (5) TMI 968]*** and the decision of various High Courts including this Court in case of ***BLA Coke Pvt. Ltd v. Union of India & Ors***. ***[Special Civil Application No. 19481 of 2023]***, wherein, it was categorically held that when the Notification itself is struck down, the Authorities cannot insist on a levy of IGST on the amount of ocean freight. The Honorable Court relied on the decision of ***Mafatlal Industries and others v. Union of India and others [1997 (5) SCC 536]*** where the Apex Court has contemplated three situations where the right to refund may arise. The Apex Court has held that for the cases covering unconstitutional levy, the remedy of writ jurisdiction exists, both under Articles 32 and 226 of the Constitution of India, respectively. The Honorable Court observed that it is but implicit that to obviate the impossible, it must be held that the Petitioner could have filed the application for refund only after the RCM Notification in question was finally struck down and the appeal of the Union of India dismissed in the year 2022. Therefore, it is held that the application for are fund having been filed within a reasonable time thereafter, cannot be held to be time-barred. The writ petition filed by the Petitioner seeking a GST Refund of the IGST is maintainable and must be allowed as the levy has been held to be unconstitutional. The petition, therefore, succeeds and is accordingly allowed. The Impugned Order was hereby quashed and set aside.

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10. Whether demand can be raised solely based on the oral statement of a witness without any further evidence or corroboration?

No, the CESTAT, Ahmedabad in the case of ***Krish Corporation v. Commissioner of C.E. and S.T.-Surat -I [Service Tax Appeal No. 10686 of 2014-DB dated November 26, 2024]*** allowed the appeal wherein the tax demand has been raised solely based on the statements of various witnesses during investigation without any evidence and further corroboration.
The CESTAT, Ahmedabad observed that the primary dispute is related to the calculation of taxable value as the Respondent has calculated the value solely on the basis of a statement recorded of persons as it has been alleged that the persons have admitted that the amount of rent has been collected by the Appellant in cash. Further noted that an admission by a person, cannot be considered to be conclusive evidence to establish the guilt of the assessee. The Burden of proof is on the Revenue and the same is required to be discharged effectively. Without corroborative evidence, only on the basis of the statement of a few tenants, it cannot be concluded that the appellant has collected the part of the rent in cheques and the balance is taken in cash. Further, none of the persons whose statement was recorded and was relied upon for raising the demand was cross-examined by the Respondent Commissioner which was required as per Section 9D of the Central Excise Act, 1944, as applicable in service tax matters, regarding

examination in chief of witness. The CESTAT opined that the oral statement of the service recipient is not admissible as evidence and the demand of service tax on the basis of astatement of persons is not sustainable. Therefore, the demand of tax amount is reduced and the penalty is not payable as the tax amount was paid before the issuance of SCN.

Author's Comments

Statements recorded are often considered substitute for investigative work and notices are issued based entirely on these statements. Statements recorded need to be scrutinized whenever copies are made available to determine whether to accept, alter, or retract. When any statement recorded (first-party or third-party witness) is adduced as evidence in support of allegations in notice, taxpayers must avail their remedy to establish or impeach the reliability of such statements. Cross-examination is considered a reliable tool to establish the reliability of evidence brought on record. Cross-examination is not only of natural persons but also legal persons. And where the opportunity of Cross-examination is not provided to the Notice, then the entire material gathered, discussion based on such material,and conclusion derived based on information from such material or sources is liable to be expunged, eliminated, and excluded from consideration in the notice. The Statements recorded without any corroborating evidence or cogent material taken on record to support those statements, are the weakest form of evidence to bring home the allegations levelled against the taxpayer.

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11. Whether the refund rejection order is valid if the SCN does not provide the required information?

No, the Honorable Madras High Court in the case of ***Tvl. Orange Sorting Machines (India) (P.) Ltd. v. Additional Commissioner [W.P. No. 4211 of 2024 dated February 23, 2024]*** quashed the impugned order as the Revenue failed to provide a breakup of the amount demanded, thereby deciding that the refund rejection order is not proper when the required information for defending the claim made is not provided to the Applicant. The Honorable Court noted that a SCN dated September 22, 2023, was issued for the erroneous refund claimed. Subsequently, the Petitioner in its reply filed, requested for a breakup of the amount so that they can reply to the notice appropriately. The Respondent without providing a breakup of the claimed amount, issuedan order dated December 29, 2023, demanding payment towards the erroneous refund claimed citing CAG para pointed out that the taxpayer was issued an excess refund on account of an inverted duty structure. The Honorable Madras High Court noted that unless the SCN does not provide the particulars of the claimed amount, it would not be possible for the petitioner to reply in a meaningful manner to the SCN.

Therefore, opined that the Impugned Order and Notice are bereft of particulars and need to be interfered with. And held that the Impugned Order is quashed and the matter is remitted back for reconsideration.

Author's comments

Where self-assessment is challenged, the burden rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. The allegation is not suspicion. The allegation is not the actionable cause. The allegation is the interpretation of acts (or omissions) by taxpayers that affect the correctness of the self-assessment made. Allegations of severe wrong–doing require proportionately substantial evidence. Evidence is not extracted from books of accounts or statements taken on-oath**.** Evidence is that proves something. The Construct of clear allegation and evidence used to support the demand is the *sine qua non* to make the 'due process' lawful, proper, and complete. Anything short of this will not satisfy the statutory requirement of a 'valid notice'. Without a 'valid notice', no demand can be fastened.

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12. Whether proceedings against an Amalgamating Company Post Merger are valid?

No, the Honorable Delhi High Court in the case of ***HCL Infosystems Ltd. v. Commissioner of State Tax & anr***[***W.P.(C) 7391/2024 dated November 21, 2024]*** quashed the show cause notice and the final order issued in the name of Amalgamating Company post-merger because they were against Section 87 of the CGST Act and Section 160 of the CGST Act. The Honorable Delhi High Court relied on the decision in the case of ***International Hospital Limited v. DCIT Circle [2024 SCC OnLine Del 6730]*** wherein the court had an occasion to deal with the similar view canvassed and noted distinction between the principles which had been enunciated by the ***Honorable Supreme Court in Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki (India) Limited [(2020) 18 SCC 331]*** and the stand of the Respondents there that the dictum in *Maruti Suzuki* stood diluted by virtue of the subsequent judgment by the Supreme Court in ***Principal Commissioner of Income Tax (Central)-2 v. Mahagun Realtors (P) Ltd. [2022 SCC OnLine SC 407]***. The Honorable Court observed that the law would have to necessarily be recognisedas enunciated by the Supreme Court in Maruti Suzuki, where, all proceedings taken against a company which had come to merge with another are rendered void and a nullity and on a due consideration of the factual position which had obtained in ***Mahagun Realtors*** found that the same turned on its own peculiar facts

and where the Assessee had deliberately misled the authorities. It was in those peculiar facts that the Supreme Court had ultimately held against the assessee in Mahagun Realtors. The conclusion rendered by the Honorable Supreme Court in the case of Maruti Suzuki which had on a construction of Section 292B of the Income Tax Act held that a notice or order framed in respect of a non-existent entity would not be rectifiable in terms of that provision which the CGST Act incorporates a provision which is *pari-materia* to Section 292B and which is Section 160 of the CGST Act. The Honorable Court opined that even the powers conferred by Section 160 of the CGST Act upon the Respondents under the CGST Act would not come to their rescue or enable them to salvage the notice as well as the final order which has come to be passed. When a company is merged with another company upon the approval of NCLT, the company ceases to exist and is no longer a legal entity. Hence the proceedings, including the issuance of the Impugned SCN and the Impugned Order issued in the name of the Amalgamating Company is void ab initio. The court observed such defects not as procedural inaccuracies and hence are not curable under Section 160 of the CGST Act. Further, noted that Section 87 of the CGST Act essentially seeks to preserve and identify the transactions that may have occurred between two or more companies that ultimately amalgamate and merge. In order to fix the liabilities that would accrue under the CGST Act and to avoid a contention being raised that the Amalgamating Company and transactions undertaken with it would no longer be subject to tax, the Legislature, *ex abundanticautela*, has come to place Section 87 on the statute book and which bids us to bear in mind that notwithstanding an order of amalgamation or a scheme of merger coming to be approved, for the purposes of the CGST Act, the two entities would be treated as adistinct companies for the period up to the date of the order of the competent court or tribunal approving the scheme and the registration certificate of the companies being cancelled. The Honorable Court held that the Court is unable to read Section 87 of the CGST Act as enabling the Respondents to either continue to place a non-existent entity on notice or for that matter to pass an order of assessment referable to Section 73 of the CGST Act against such an entity. In fact, in terms of Section 87 of the CGST Act, the liabilities of the non-existent company would in any case stand transposed to be borne by the amalgamated entity. This is, therefore, not a case where the revenue would stand to lose or be deprived of their right to subject transactions to tax. Hence, the writ petition was allowed, and the Impugned Order and the Impugned SCN were quashed.

Author's Comments

We have settled legal principles and jurisprudence (cases referred toabove) to state,thatany proceedings against the merged entity that ceases to exist, is not just a procedural inaccuracy rather a substantive defect. And any proceedings against a non-existent company (post-merger)are void abintio.
The relevance of valid notice is traceable to jurisprudence to date in the case of ***Menaka Gandhi v. UOI AIR 1978 SC 597*** which illuminates our understanding of the role of a valid notice in any proceedings. As per section 169 of the CGST Act 2017, service of any notice, order, or communication against such person/entity that ceases to exist is neither validly served nor

it must be accepted on account of such entity/person by another entity/person. Notice is the first step to 'set the law in motion' declaring the *lis* or dispute between the two- taxpayer and Revenue. And question **of putting** 'whom' at notice is so elementary that any lapses in identifying the right 'Noticee' will fail the entire 'due process' of law. Section 87 of the Act specifically catersto the situation of amalgamation to state that the liabilities of the non-existent company would in any case stand transposed to be borne by the amalgamated entity. In such a situation putting a non-existent entity at notice is gross misapplication of law.

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13. Whether an order can be passed before the expiry of thetime limit to furnish areply to SCN?

No, the Honorable Andhra Pradesh High Court in the case of ***Avexa Corporation (P.) Ltd. Vs State of Andhra Pradesh [W.P. 10094/2024 dated August 19, 2024]*** held that Impugned Order passed is not valid when no proper time is granted to the petitioner to prepare his defense. The Honorable High Court observed that the requirement of administrative authorities to follow the principles of natural justice is founded on the simple principle that the person on whom action is proposed, should be given the opportunity to set out his case against such proposed action. This would require that the person against whom action is proposed is informed of the entire case against him and the material that is proposed to be used against him is also furnished to him. Thereafter, the affected person should be given adequate opportunity to make out his case against the proposed action. This would mean that the affected person should be given an opportunity to gather all the material that he proposes to use against the proposed action. Any variation or violation of this requirement would amount toa violation ofthe principles of natural justice, which would render the proposed proceedings invalid. The Honorable Court noted that the Impugned Order was passed before the expiry of the time period of filinga reply. Further, the Petitioner was entitled to gather the material required in his defence, for the Petitioner required access to the website which would have been possible only after the revocation of registration. Further noted, no such opportunity was granted to the Petitioner as the appellate order passed the order of revocation of registration on January 22, 2024 and the Impugned Order was passed on January 24, 2024. The Honorable Court opined that there was a violation of principles of natural justice making the Impugned Order invalid and allowed the writ petition.

Author's Comments

This is a welcome decision by the Honorable High Court and it comes to the rescue of the taxpayer and once again the Rule of Land stands tall against the over-passionate administration. The Revenue Department has to understand that this kind of approach renders the "due process" laid down

in the statute “Superfluous, unnecessary and nugatory”, which is impermissible in the law. Approaching a writ court under Article 226 or Article 32 of the Constitution of India must be a strategic and well-thought decision. If the Honorable Court remands back the case for thesecond round of adjudication and the notice is not vacated, then it turns out to be a fruitless exercise unable to fetch the desired relief.
It is not always that suffering an *ex-parte* order will be disastrous. Most of the times, *ex parte* orders without a reply by taxpayers, are not sustainable on facts and law.

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14. Whether ITC is available on inward supply of motor vehicles used for demonstration purpose?

Yes, the Kerala AAR, in the case of ***Sai Service (P.) Ltd., In re [Advance Ruling No. KER/09/2024 dated January 10, 2024]*** held that the demo cars are crucial for sales promotion, since, prospective customers prefer to test drive cars before they make a decision, therefore, demo cars are put to use for the furtherance of business as envisaged under Section 16 of the CGST Act, 2017**.** Hence, the petitioner is entitled to avail ITC on inward supply of motor vehicles which are used for demonstration purpose. The Kerala AAR noted that the Demo cars are indispensable for sales promotion and there is no dispute that the demo cars are put to use for the furtherance of business and clears stipulations envisaged under section 16(1) of the CGST Act for availing ITC. However, Section 17(5) of the CGST Act is an overriding provision and is applicable *'Notwithstanding anything contained in sub-section (1) of section 16*'. Therefore, complying with the conditions under section 16(1) of the CGST Act alone does not make the applicant eligible for ITC on the demo cars. The AAR observed that the argument that demo cars are not used for transportation of persons doesn't make them eligible for ITC. However, the applicant intends to make a further supply of such cars after the demo period. The fact that the cars were used for demo purpose doesn't alienate the cars from **their** eligibility for ITC, if they are used for making further supply of the same, even if **at** a later date. Thus, it is held that the applicant can claim ITC on cars used for demonstration purposes, provided they are subsequently used for making **supplies**.

Author’s Comments
After the divergent views from different authorities, the CBIC has provided clarification on the availability of input tax credit in respect of demo cars vide ***circular no.231/25/2024-GST dated 10 September 2024***. The clarification is provided that ITC is not blocked under clause(a) of section 17(5) of CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause as the demo vehicles promote the sale of similar

type of motor vehicles, therefore they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. However, if demo vehicles are used for any other purpose like transportation of its staff employees/management etc., then ITC shall be restricted. And where authorized dealer merely acts as an agent or service provider to vehicle manufacturer for providing marketing service and is not involved directly in the sale and purchase of vehicles, in such cases also ITC is not available.

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15. Whether differential dealer margin provider by the petroleum companies to its retail dealers are taxable under GST?

Yes, the AAR, Kerala in the case of ***M/s. P Achuthan Nair & Company [Advance Ruling No. KER/01/2024 dated January 10, 2024]*** held that the amount paid as differential dealer margin is in nature of a consideration received for agreeing an obligation to refrain from an act. Therefore, it squarely falls under clause (e) of SI No. 5 of Schedule and hence taxable to GST.

The AAR, Kerala noted that, S.No. 5(e) of Schedule II of the CGST Act which states activities or transactions to be treated as asupply of goods or supply of services which further provide that agreeing to the obligation to refrain from an act, or to tolerate an act or situation or to do an act is the supply of service. In the current case, the differential dealer margin is provided by the HPCL to the Applicant when the volume decreases below a mutually agreed level so that the Applicant does not close down his petrol pump due to such loss. Thus, the amount paid as adifferential dealer margin is in the nature of a consideration in return for the Applicant agreeing to run the dealership despite low sales volume. This amount is therefore in the nature of a consideration received for agreeing to the obligation to refrain from an act, and squarely falls under clause (e) of SI. No. 5 of Schedule II of the CGST Act and hence taxable to GST. Hence, Circular 29/2019 (F 17(134) AACT/GST/2017/4596 dated June 28, 2019, cannot be cited as a reason for non-payment of tax by the Applicant. Further noted that as per CBIC circular no. 178/10/2022-GST dated August 03, 2022, vide Para No. 6, clarified that there must be a necessary and sufficient nexus between the supply i.e. agreement to do or to abstain from doing something, and the consideration. In the instant case, HPCL provides the differential margin based on the agreement, and the consideration is related to the decrease in sale volume. The Differential dealer margin is given only to a dealer and not the general public. The amount will not be paid if the Applicant's sales volume touches the agreed limit or if the Applicant winds up his business. The AAR opined that there is no dispute the Applicant's supply of petrol/diesel to the end customer is not taxable to GST. However, the supply in the present case is that of the service of agreeing to refrain from doing an

act is classified under SI. No. 35, Chapter 99, Section 9, Heading 9997 of the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, and the same is taxable @18%.

Author's Comments

Special discounts/schemes as per the agreement between manufacturer and dealer are allowed by a supplier to incentivize aggressive marketing of inward supplies on special occasions or in special market conditions. In most cases, such incentives designated as special discounts/schemes are really acknowledgment of services of aggressive marketing and product promotion. In the instant case, dealer margin is provided to maintain product in the market when loss is suffered by the dealer. The direction of flow of consideration is an indicator of the direction of receipt of supplies. In other words, the incentives flow from the manufacturer to the dealer, that are not related to the supply of petrol/diesel. In fact, it indicates an acknowledgment by the manufacturers of the services received from the dealer. The services so identified are from the dealer back to the manufacturers and this is a supply on its own. In fact, the rate of tax of the services supplied by the dealer to the manufacturer needs to be classified independently of the classification applicable to the supplies by the manufacturer to the dealer. Although it is true that between a manufacturer and a dealer all transactions are closely related by the common thread of the dealership agreement, GST travels deeper into this relationship and picks out individual transactions of supply to apply the right rate of tax on each of them.

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16. Whether the delay can be condoned if an appeal is filed beyond the statutory time limit allowed?

Yes, the Honorable Punjab & Haryana High Court in the case of ***Vasudeva Engineering v. Union of India [CWP No. 27468, 18475, 26077, 18591, and 5397 of 2023 (O&M) dated October 24, 2024]*** held that provisions under Section 107 of the CGST Act, 2017are not condemnable to Limitation Act, 1963 and therefore, delay cannot be further condoned. However, theHigh Court under Article 226 of the Constitution of India has the powers to condone delay in filing anappeal. The Honorable Court noted that the appeals had been filed beyond the limitation period even beyond the period which could be condoned under the provisions of Section 107 of the CGST Act while the said provision provides for a period of three months for filing of an appeal with additional period of 30 days for condonation and petitioner had paid the pre-deposit for filing of the appeal. The Honorable Court noted that the condonation being provided under the CGST Act itself, in view thereto, the action of the Appellate Authority in rejecting the appeals cannot be said to be illegal or unjustified. However, Honorable Supreme Court in

the case of ***M/s Tecnimont Pvt Ltd. v. State of Punjab and others [2019 INSC 1054]***, where the Honorable Supreme Court observed that the order was not unjustified in rejecting the appeals but left it open for the High Court to exercise its jurisdiction under Article 226 considering the facts of each case to condone the requirement of pre-deposit. In the case of ***M/s Steel Kart v. State of Haryana and others [CWP-17348-2024]*** before this Court, examined an issue where the order was challenged in appeal, since it was not in the knowledge of the petitioner within the time prescribed and this Court exercised its powers under Article 226 of the Constitution and directed the Appellate Authority to consider the appeal of the petitioner(s) on merits without going into the question of delay/limitation. Hence, it is apparent as to why the concerned Appellate Authority would be bound by the provisions of the CGST Act, the same would not curtail the powers in any manner provided under Article 226 of the Constitution of the Court to exercise its jurisdiction in the facts of the case and condoned the delay.

Author's Comments

The Concept of moulding relief is the authority enjoyed by a Court of Equity such as the Supreme Court or High Court, to travel beyond the statute and invent a solution that redresses grievances.

If the appeal is filed after the period of condonation permitted in Section 107(4) (3+1 months), the Appellate authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has allowed Appellate authority this much authority and not more.The Honorable Supreme Court has decided in **Singh Enterprises v. CCE 2008 (221) ELT 163** that where the period of limitation is specifically provided in the statute, admitting appeals albeit for 'sufficient cause' would render statutory provisions impossible. And Appellate Authority thus being denuded of authority to condone (due to lapse of maximum time permitted) is barred from examining the cause and condone the delays even for a "good and sufficient" reason.

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17. Whether notification extending time limit is not applicable for passing of order under Section 73 for FY 2017-18?

No, the Honorable Allahabad High Court in the case of ***M/s. AV Pharma v. State of UP [Writ Tax No. 264 of 2024 dated November 12, 2024]*** allowed the writ petition and quashed the order issued by the Department for FY 2017-2018 stating that the orders have been issued beyond the prescribed time limit thereby holding that as the time limit for passing of order under Section 73 of the Act for the Impugned Period i.e. February 05, 2023, has expired prior to the date of notification coming into effect i.e. March 31, 2023, thus, the Notification extending the time limit for passing of Impugned Order under Section 73(9) would not be applicable. The Honorable Court noted that the petitioner contended that the Impugned

Orders are barred by sub-section (10) of Section 73 of the Act, as the said Impugned Orders have been passed beyond the prescribed time limit, i.e. three years from the due date of filing of annual return, ending on February 05, 2023. The Honorable Allahabad High Court for the justification of time limit, placed reliance upon the State ***Notification No. 515/XI-2-23-9(47)/17-T.C.215-U.P.Act-1-2017-Order-(273)-2023 dated April 24, 2023*** **("the Notification"),** which has been given retrospective effect only w.e.f. March 31, 2023, which has been adopted from notification issued by Central Government bearing *Notification No. 09/2023 – Central Tax dated March 31, 2023,* thereby extending the time limit for passing of order under Section 73 for the Impugned Period till December 31, 2023. Further Noted that, as the time limit for passing of order under Section 73 of the Act for the Impugned Period i.e. February 05, 2023, has expired prior to the date of notification coming into effect i.e. March 31, 2023, the Notification extending the time limit for passing of Impugned Order under Section 73(9) would not be applicable. And held that the Impugned Orders are quashed and the writ petition is allowed.

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