

GST/ IDT Case Law Update – 3

Applicability of GST

Clarification on applicable GST rate shall be provided by the appropriate authority - Madras High Court

- I. Background:** The Petitioner being an association registered under the provisions of the Tamil Nadu Societies Act has preferred this writ petition on behalf of the members who carries works for the National Highways and Highways department and other Governmental organisations. The issue in the present writ petition relates to the applicable rate of tax on the works contract services supplied *by the members to the Government* on the contract executed in the earlier regime. The rate of tax applicable on the works contract in the earlier regime was 2% whereas, under the GST regime the rate is notified to be at 12%. The Petitioner-Association filed representations before the Respondent stating that in respect of the agreements entered prior to 01.07.2017 (pre-GST regime), GST cannot be imposed. In the event GST is applicable on supplies under such contract, the Respondent would be liable to bear the additional amount of tax. The Respondent did not respond to the multiple representations filed by the Petitioner-Association. Therefore, the Petitioner-Assessee has preferred this writ petition.
- II. Disputes involved/Point of dispute:** Whether, GST is applicable on the contract executed under the earlier regime or VAT is applicable? In the event the GST is applicable who shall bear the additional amount of tax on the contract executed in the earlier regime?
- III. Arguments on behalf of the assessee:**

 - a. The Petitioner-Association states that the agreement for the contract works were executed prior to 01.07.2017 (in the pre-GST regime), and thus, GST cannot be imposed on such contracts. Therefore, the contract would be liable to VAT and not GST;
 - b. In case, the petitioners are compelled to pay GST over and above 2%, the Respondent shall remit the GST in addition to the value of the work done, since the representations submitted by the Petitioner-Association have not been considered and no orders were passed.
- IV. Legal Principles: Government Order MS No. 264, Finance [Salaries] Department dated 15.09.2017** – The rate of tax applicable on the works contract at the time GST implementation was 18% which was subsequently reduced to 12%. The reduced rate of GST more or less balances the taxes on works contract in pre-GST regime and post-GST regime. In the absence of guidelines, it was

clarified that the payment may be processed to the contractors 'on account'. Such 'on account' payment may be finalised after issuance of the notification / guidelines.

V. Scope of decision: The Hon'ble High Court issued directions to the Commissioner of Commercial Taxes being the Respondents to consider the representation given by the petitioner/ association and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order after giving an opportunity of personal hearing to the authorised representative of the Petitioner-Association.

VI. Conclusion: The tax authorities shall issue the necessary clarifications in terms of the provisions of the law where the issues have been represented by the registered persons.

[Coimbatore Road Contractors Welfare Association vs. State of Tamil Nadu, The Chief Engineer National Highways, The Chief Engineer Highways Construction and Maintenance, The Regional Officer National Highways and The Commissioner of Commercial Taxes - 2018(3) TMI 900- Madras High Court]

Registration

Granting incorrect registration – to be rectified by the department as department itself is responsible for providing the same status to the assessee as was existing before the migration - Allahabad High Court

The summary is based on the interim order. The matter is posted for hearing on 20.09.2018.

I. Background: The Respondent-Department issued the registration certificate indicating the Petitioner-Assessee as proprietor firm instead of partnership firm at the time of migration of registration. The password and ID is also issued as sole proprietorship. Therefore, the Petitioner-Assessee has preferred a petition before the Hon'ble High Court.

II. Disputes involved / Point of disputes: Incorrect registration migration as proprietorship instead of partnership.

III. Scope of the judgment: Department may take the necessary steps and rectify the mistake within 10 days. The Department is free to allot a new ID and password to the petitioner as a partnership firm as was existing prior to the migration or implementation of the GST.

IV. Conclusion: The incorrect migration of registration or any error / mistake on the part of the

department shall be diligently rectified by the department.

[Sachdeva Overseas vs. State of U.P 2017 (10) TMI 252 - Allahabad High Court]

Registration

Incorrect migration of registration or any error / mistake therein to be rectified by the department as it is responsible for migrating data correctly from pre-GST regime to GST regime – Allahabad High Court

- I. Background:** The Petitioner-Assessee preferred this writ petition for non-issuance of appropriate user name and password for migration into GST. Consequent to non-issuance of correct user name and passwords on multiple attempts, the Petitioner-Assessee was unable to comply with the statutory provisions viz., filing of returns, remittance of tax etc.
- II. Disputes involved/Point of dispute:** The user name and password issued to the Petitioner-Assessee was not in terms of the Section 139 of the CGST / SGST Act, 2017. Consequently, the Petitioner-Assessee was unable to comply with filing of returns and remittance of taxes. Therefore, Petitioner-Assessee preferred this petition.
- III. Arguments on behalf of the Petitioner:** Petitioner-Assessee has not been given appropriate provisional ID and due to which the Petitioner-Assessee was unable to comply with filing of returns, remittance of tax, generation of e-way bill, unable to avail transitional credit on closing stock.
- IV. Legal principles:**
 - 1. Section 139 of CGST / SGST Act, 2017:** Every person registered under existing laws and having a valid permanent account number, shall be issued a certificate of registration on provisional basis and thereafter, final certificate will be issued. In case, certificate is cancelled on account of any other contraventions prescribed under the law, then such person is not liable to registration under this Act.
 - 2. Rule 24 of CGST / SGST Rules, 2017:** Every person registered under the existing law and having PAN shall enroll himself on the common portal. Subsequent to enrolment, such person should be issued GSTIN.
- V. Scope of the judgment:** The Hon'ble High Court directed the department to issue appropriate password to a Petitioner-Assessee company to complete the migration process and enable the Petitioner-Assessee to upload the returns and deposit tax. Further, it is directed that the commercial

tax department shall allow the petitioner to complete the migration of registration.

VI. Conclusion: The incorrect migration of registration or any error / mistake on the part of the department shall be diligently rectified by the department.

[M/s Metro Institutes of Medical Sciences Pvt. Ltd. vs. State of U.P. & 5 Others 2017 (10) TMI 784 - Allahabad High Court]

Detention of Goods and/or conveyance

The adjudication proceedings on the goods detained / seized should be completed expeditiously as the law itself provides for release of goods on fulfilment of prescribed condition – Allahabad High Court

- I. Background:** The Petitioner preferred this petition before the Hon'ble High Court in order to seek directions for releasing the seized goods by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017
- II. Disputes involved/Point of dispute:** The Petitioner-Assessees seek expeditious release of the goods detained by the Respondent-Department.
- III. Legal Principles:**
- 1. Section 129 of the CGST / SGST Act, 2017** – Provides for detention, seizure of goods or conveyances carrying goods in transit for contravening the provisions of CGST / SGST Act, 2017 or Rules made therein. It also specifies that the goods seized / detained shall be released on payment of applicable tax, penalty or upon furnishing the security by way of bond in the Form GST INS – 04.
 - 2. Section 67(6) of the CGST / SGST Act, 2017** – Stipulates conditions for release or provisional release, as the case may be, of goods seized which amongst others includes execution of a bond along with the security for release or provisional release of goods seized respectively.
 - 3. Rule 140 of CGST / SGST Rules, 2017** – Prescribes execution of a Bond in FORM GST INS-04 for the value of goods and Bank Guarantee equivalent to the amount of applicable tax, interest and penalty payable for provisional release of seized goods apart from imposing an obligation on the assessee-dealer to produce the goods as and when demanded.

- IV. Interpretations:** The GST law and Rules made thereunder provide for a mechanism for adjudicating the issue involving detention and seizure of goods. The relevant provisions also permit provisional release of goods on furnishing of the bond in Form GST INS – 04.
- V. Scope of decision:** The Hon’ble High Court considering the relevant provisions of the law directed the Respondent-Department to complete the adjudication proceedings within two weeks.
- VI. Conclusion:** In case of detention and seizure of the goods or conveyances, the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously.

[M/s Reliance Industries Limited vs. State of Uttar Pradesh – 2018 (3) TMI 678 - Allahabad High Court]

Detention of Goods and/or conveyance

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- IV. Interpretations:** The GST law and Rules made thereunder provide for a mechanism for adjudicating the issue involving detention and seizure of goods. The relevant provisions also permit provisional release of goods on furnishing of the bond in Form GST INS – 04.
- V. Scope of decision:** The Hon’ble High Court considering the relevant provisions of the law directed the Respondent-Department to complete the adjudication proceedings within two weeks.

VI. Conclusion: In case of detention and seizure of the goods or conveyances, the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously.

[M/S Special Ashoka Beedi Works vs. The Goods and Service Tax Officer, Madanapalle And Two Others 2018 (3) TMI 739 – Allahabad High Court]

Detention of Goods and/or conveyance

Seized goods along with the vehicle shall be released upon furnishing of bank guarantee as the law itself provides for provisional release of goods on fulfilment of prescribed condition – Kerala High Court

- I. Background:** The Petitioner-Assessee preferred this petition before the Hon'ble High Court in order to seek relief from the demand of security deposit by the respondents in order to release the seized goods.
- II. Disputes involved/Point of dispute:** The Petitioner-Assessee has preferred this Writ Petition aggrieved by the insistence of the respondent that the Petitioner-Assessee must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.
- III. Scope of decision:** The Hon'ble High Court directed the Respondent-Department to release the goods after the Petitioner-Assessee furnishes the bank guarantee for the amount demanded and transfer the files to adjudicating authority so that order can be passed by him upon completion of adjudication within two weeks.
- IV. Conclusion:** In case of detention and seizure of the goods or conveyances, for not accompanying the proper documents shall be released provisionally after furnishing the bank guarantee for the amount demanded by the officer.

[Mariyam Steel vs. State Tax Officer, (Intelligence Inspector) - 2018(3) TMI-969–Kerala High Court]

Integrated Goods and Services Tax

Notification which specifies that IGST shall be levied on ocean freight during import of goods is ultra vires as the value for levy of customs duty includes the ocean freight – Gujarat High Court

This is only an interim order of the Honorable Court and the final arguments are yet to be concluded.

I. Background: The Petitioner-Assessee being an importer of non-cooking coal preferred this petition before the Hon'ble High Court challenging the levy of IGST on the ocean freight separately in terms of the Notification No. 10/2017 – Integrated Tax (Rate) dated 28.06.2017 even though the value for the levy of customs duty includes the ocean freight.

II. Disputes involved/Point of dispute: Whether the IGST is leviable on ocean freight even after the customs duty is levied on the value including the ocean freight?

III. Arguments on behalf of the assessee:

- a. The Petitioner contends that the tax levied under IGST Act is on the entire value of imports which includes ocean freight, thus IGST cannot be levied on the ocean freight all over again through a different notification;
- b. In case of CIF contracts, as the service provider and the service recipient both are outside the territory of India, taxes on such service cannot be collected even under reverse charge mechanism;
- c. In the given case, the recipient of service is the seller of the goods who has received services from the exporter/ transporter and since it is a high sea sales where the burden of payment of tax lies on the recipient of service, the petitioner is not liable to pay tax

IV. Legal Principles:

1. **Notification No. 8/2017 –IGST dated 28.06.2017** specifies the rate of tax for supply of services under the IGST Act, 2017
2. **Notification No.10/2017- IGST dated 28.06.2017** – Specifies that Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the importer is liable to pay IGST under reverse charge mechanism.

V. Conclusion: The Hon'ble High Court considering the submissions of the Petitioner-Assessee granted the interim relief and adjourned the matter to 09.03.2018.

[Mohit Minerals Private Limited vs. Union of India - 2018(2) TMI-770–Gujarat High Court]

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