

Legal Update

considering assessee's reply and without providing reasonable opportunity of being heard; High Court allowed Assessee's writ petition despite availability of alternative remedy and held that the Revenue violated the principles of natural justice; Assessee had challenged the assessment order passed u/s 143(3) r.w.s. 144B which was without considering Assessee's detailed response to the Show Cause notice issued by the Revenue.

LD/70/92; [Bombay High Court: W.P. No. 15811 of 2021] Sulzer Pumps India Private Limited Vs. The Dy. Commissioner of Income Tax 27/10/2021

Writ petition filed by assessee against order passed by AO u/s 143(3) r/w 144C(3) and 144B of the Act allowed by Bombay High Court; Assessee had an option to choose to file objections before the DRP within 30 days from the receipt of Draft Assessment Order and the section required assessee to file a copy of the reference with the AO within the time limit and that section 144C(4) requires AO to pass a final order within one month from the end of the month in which the period of filing of objections before DRP expires; Assessee was under bonafide belief that it was not assessee was not required to communicate the reference to DRP to the AO; The AO, being unaware of objections filed by assessee before DRP, after the expiry of prescribed period of 30 days, proceeded to pass the Assessment Order.



GST

LD/70/93; [TIOL-2248-HC-MUM-GST] Laxmi Organic Industries Ltd Vs Union of India and Ors 2021 30/11-2021

Where there is no doubt that the adjudicating authority is bound by the circulars and orders issued by the Board, at the same time the adjudicating authority cannot ignore the existing provisions of GST laws and the rules thereunder. Thus, where the circular for compulsive online filing of refund application was issued the said circular would not preclude the taxpayer from making a manual

application in accordance with rule 97 of the CGST Rules.

LD/70/94; [TIOL-262-SC-ST (SC)] CGST CCx vs M/S City Bank N/A 2021 9/12/2021

An interchange fee retained by issuing bank is a consideration for the provision of service. The Hon'ble Judges differ in their opinion as to whether the services provided by issuing bank and acquiring bank are different and distinct services and the MDR collected from the merchant which also includes the interchange fees are two separate measures of taxation against two separate services or whether the issuing bank and the acquiring bank are providing one single service of composite nature in a unified manner and jointly. Consequently, the Hon'ble judges differ in their conclusion as to whether the issuing bank, being a person liable to pay tax under section 68 is required to file separate returns and discharge tax separately on the said transaction or not. Hence the matter decided to be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench in the matter. The court however came to a common conclusion that once the acquiring bank has paid service tax on the entire MDR including the said interchange fees, the recovery of service tax again from the issuing bank on the very same fees would be illegal and would amount to double taxation. The interchange fees cannot be said to be a transaction in money or interest.

LD/70/95; [TIOL-2308-HC-KOL-GST] LGW Industries Ltd and Ors vs UOI and Ors 2021 13/12/2021

Where the GST authorities have issued notices disallowing ITC to the assessee on the ground that the suppliers are fake and bogus and in some cases, the registration of the suppliers are canceled with retrospective effect, the court remanded the cases to GST authorities with a direction that if it is found that the transactions are genuine and ITC is otherwise allowed in accordance with the law and that the purchases are effected before the date of cancellation of registration, then the credit shall be allowed.