

Legal Update

LD/71/120 [2023-TIOL-380-HC-KAR-GST -16-02-2023] M/s TONBO IMAGING INDIA PVT LTD vs UOI and OTHERS

Hon'ble High Court held the amendment to Rule 89(4) (c) of the CGST Rules, by Notification No.16/2020-CT dated.20-03-2020 incorporating the words. "or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier" as ultra vires the provisions of the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 as also violative of Articles 14 and 19 of the Constitution of India and resultantly, the same is hereby quashed; The impugned amendment was also held to be unreasonable and arbitrary as adequate reasoning is not present and that it bears no rational nexus with the objective sought to be achieved by Section 16 of the IGST Act.

CGST Rules, the High Court directed the department to take care of the software with the intervention of the Highest Authority and enable the Petitioner to file a return as regular assessee from 16th March 2022 holding that limitation in the software cannot be the ground for not implementing the provisions of the law.

LD/71/122 [2023-TIOL-304-HC-MAD-GST - 27-02-2023] M/s ADITHYA FORCE vs THE ASSISTANT COMMISSIONER (ST)

Where the notice of attachment is served only based on the issuance of summary order and no detailed reasoned order is served on the Petitioner, the summary order, as well as notice of attachment, were quashed by the Hon'ble Court and the matter was remanded back to the jurisdiction officer for consideration afresh.

LD/71/121 [2023-TIOL-302-HC-AHM-GST -07-01-2023] SKP PHARMACHEM vs UOI

Where the petitioner violated the conditions of section 10 of the CGST Act by exporting the goods on 16th March 2022 and made an application for withdrawal of the composition option in April 2022, pursuant to which the composition permission was canceled only prospectively from the date of cancellation application and not from the date when he exported the goods, and ceased to become a composition dealer in terms of rule 6 of the

LD/71/123[2023-TIOL-333-HC-DEL-GST-10-03-2023] M/s BALAJI EXIM vs COMMISSIONER CGST AND OTHERS

The Hon'ble Court held that it is not required to examine the affairs of its supplying dealers and hence the allegations of any fake credit availed by the concerned vendor cannot be a ground for rejecting the petitioner's refund applications unless it is established that the petitioner has not received the goods or paid for them.

Disciplinary Case

Wrong reporting in respect of Section 185 of the Companies, Act, 2013 - Obligation lies on Respondent being the statutory auditor to report compliance of the provisions of Section 185 which he failed to do so-- Held, Respondent is GUILTY of professional misconduct falling within the meaning Clause (5) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Held:

In the instant case, the charge against the Respondent was that being statutory auditor of lending Company he had wrongly reported that the Company did not violate the provisions of Section 185 of Companies Act, 2013 while the Company had granted loans to Borrower Company in whom directors were interested. The Committee observed that it is an admitted fact that loan was given by the lender Company to Borrower Company and these companies were having Common directors. As per clause (c) to the Explanation to section 185 (1) which states that "For the purposes of this section, the expression "to any other person in whom director is interested" means—

(c) "any private company of which any such director is a director or member" and borrower Company being a Private Limited Company has two of its Directors which are also Directors of lending Company. Therefore, there is an obligation on the part of auditor as per the requirement of clause 3(iv) of Companies Audit Report Order, 2016 (CARO 2016) to report as to whether the provisions of Section 185 and 186 were complied with or not. Further, it is observed by the Committee that the intent of the legislature by incorporating a rigid Section 185 of the Companies Act, 2013 or Section 295 of the earlier Companies Act, 1956 was to ensure that Directors do not surpass their fiduciary duty towards the Company for their personal benefits. The Committee noted that the Respondent was required to give a qualified opinion whereas he has given incorrect statement by mentioning that "In respect of loans, investments, guarantees and security, the provision of section 185 & 186 has been complied with". In view of the noted facts, the Committee held that the Respondent is GUILTY of professional misconduct falling within the meaning Clause (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.