ACUPRO CONSULTING

WEEK 4, FEBRUARY 2023

THE GST PULSE

ONE PLACE FOR ALL THE UPDATES



Recent Judgement and Rulings

TAKE-AWAY/PARCEL FOOD SALE BY RESTAURANTS IS NOT LEVIABLE FOR SERVICE CHARGE.

CESTAT, NEW DELHI

Haldiram Marketing Pvt. Ltd. ("the Appellant") is engaged in running food outlets where customers can either purchase the packaged foods like sweets, namkeen or avail restaurant dining and take away facilities. An audit of the Appellant was conducted, and it was noticed that the Appellant had failed to pay Service Tax on the activity of takeaway of food items as well as on rent received for the share of space from the associated enterprise. Consequently, a SCN was issued proposing Service Tax demand of INR 23,09,45,317/- with interests and penalties.

The Appellant contended that the transaction involving supply of goods on take-away basis is a pure sale transaction. It does not contain any service element rendered to customers. Further, rent received from associate enterprise is consideration for sharing of spaces it doesn't have any sub-letting element. Hence both the transaction would be outside the purview of Service Tax.

The CESTAT, New Delhi observed that the food and drink to be taken-away in parcels by customer results in sale of food and drink and does not attract any Service Tax. It doesn't involve any services such as dining facility, washing area, clearing of the tables after the food has been eaten. Also, the Appellant permitting an associated enterprise to use a part of the premises for the sale of the product would not amount to sub-letting and would be considered as sharing of expenditure. Held that, no service tax shall be leviable on take away of food items and sharing of spaces with associated enterprises.



REVENUE DEPARTMENT CANNOT CREATE NEW GROUND AND GO BEYOND THE SCOPE OF SCN AT THE STAGE OF ADJUDICATION

HON'BLE JHARKHAND HIGH COURT

M/s. CJ Darcl Logistics Limited ("the Petitioner") is a public ltd co. engaged in the business of providing Goods Transportation Agency ("GTA") services. It has taken two registration, one is for the transactions for which the tax payable under RCM and another for the transactions covered under Forward Charge Mechanism ("FCM") as certain customers of Petitioner were not so willing to discharge the liability under RCM. The Petitioner mistakenly deposited the amount of GST totaling to INR 1,70,12,325/- in its Electronic Cash Ledger ("ECL") of RCM registration instead of depositing it in the ECL of the FCM Registration. The Petitioner again deposited the same amount in the ECL of the FCM registration to file GSTR-3B return. The petitioner filed an application for refund in Form GST RFD-01 on registration taken for RCM transactions as the amount was lying as excess balance in the ECL.

Further, a SCN was issued in respect of the refund application. The Petitioner furnished its reply but the claim was rejected by Order-in-Original on the grounds that, the Petitioner had taken two GST Registrations in the same state. The Petitioner is of the view that the proceedings were vitiated in violation of natural justice due to the lack of a proper SCN.

The Hon'ble Jharkhand High Court held that, the SCN mentioned a different allegation and that to only after submissions of Petitioner's reply, the Order-in-Original was passed on the grounds of maintaining of two GSTIN number by the Petitioner, which were not the part of the SCN. Held that, the Impugned SCN is vague and cryptic in nature as it has been passed beyond the scope of the Impugned SCN.



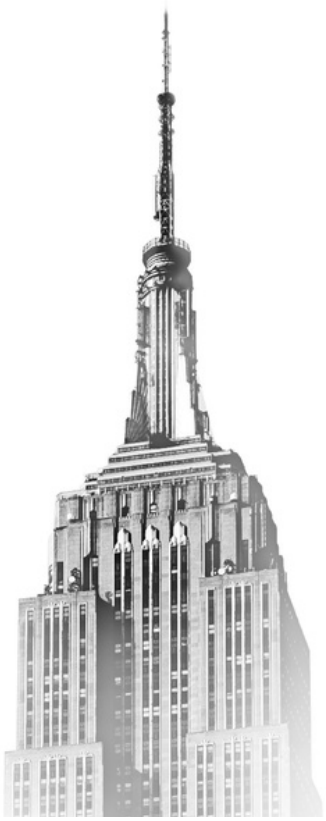
FORECLOSURE CHARGES COLLECTED BY BANKS AND NBFCS ON PREMATURE TERMINATION OF LOANS IS NOT LEVIABLE FOR SERVICE CHARGE.

CESTAT, CHENNAI

M/s Sundaram Finance Ltd. ("the Appellant") is a NBFC, engaged in the business activity of financing the purchase of commercial vehicles, cars, houses, Hire Purchase services. The Appellant has permitted the customer to pay the scheduled EMI, part of or the entire outstanding principal, i.e. "Preclosure /Foreclosure" of the loan. On which Appellant collects penal charges @ 3% on the outstanding amount as Foreclosure penalty

The Revenue Department ("the Respondent") opinioned that the Appellant is liable to pay Service Tax on the Foreclosure Charges penalty as the same would fall under the Banking and other Financial Services. The Respondent has subsequently issued a SCN proposing to demand Service Tax on such Foreclosure Charges along with interest and penalties. Being aggrieved by this the Appellant has filed an appeal.

The CESTAT, Chennai held that Foreclosure Charges collected by banks and NBFCs are not chargeable to Service Tax and the demand imposed by the Respondent cannot be sustained.



DUE TO NON-CONSTITUTION OF GST TRIBUNAL, ASSESSEE SHOULD NOT BE LEFT WITHOUT REMEDY.

HON'BLE TELANGANA HIGH COURT

M/s. Southern Enterprises ("the Petitioner") is a proprietorship firm engaged in the business of sale and offering service of AC. The Petitioner was issued a SCN by the Revenue Department ("the Respondent") due to the non-filing of GST Returns for the continuous period of 6 months.

A reply was submitted by the Petitioner however it was not considered satisfactory by the Respondent. Therefore, the GST Registration of the Petitioner was cancelled. Subsequently, an appeal was filed by the Petitioner, which was rejected by the Appellate Authority on the grounds that it was filed beyond the period of limitation. Being aggrieved the Petitioner has filed an appeal in High Court.

The Hon'ble Telangana High Court, has set aside the order of cancelling GST Registration of the assessee due to non-filing of GST Returns and noted that since no GST Tribunal has been constituted in the State of Telangana, the Petitioner should not be left without remedy. The entire matter would be remanded back to Respondent to reconsider and give a fresh decision after providing reasonable opportunity of hearing to the Petitioner and thereafter to pass appropriate order in accordance with law. Further, permitted the Petitioner to submit the GST Returns as per the statute.



Recent Updates

- ***CBIC EXEMPTS CUSTOMS DUTY AND IGST LEVIABLE ON 'VESSELS AND OTHER FLOATING STRUCTURES FOR BREAKING UP'.(NOTIFICATION NO. 13/2023-CUSTOMS DATED FEBRUARY 23, 2023)***

The CBIC vide Notification No. 13/2023- Customs dated February 23, 2023 exempt the Basic Customs Duty ("BCD") and IGST leviable on 'vessels and other floating structures for breaking up' falling under Tariff Item 8908 00 00, w.e.f. February 24, 2023 till March 31, 2025.

- ***GSTN ALLOWS NEGATIVE VALUES IN TABLE 4 (ITC) OF GSTR-3B.***

The Goods and Services Tax Network (GSTN) has issued an Advisory dated February 17, 2023regarding the Introduction of Negative Values in Table 4 of Form GSTR-3B. The changes include auto-populating the impact of credit notes in Table 4(A) instead of Table 4(B) and allowing taxpayers to report negative values in Table-4A. Consequently, taxpayers are advised to go through instructions/help text carefully in GSTR-2B & System Generated GSTR-3B pdf before filing GSTR-3B.



- ***GSTN ISSUED ADVISORY ON OPTING FOR PAYMENT OF GST UNDER THE FORWARD CHARGE MECHANISM BY A GOODS TRANSPORT AGENCY.***

The GSTN has enabled the option to file a declaration in Annexure-V to opt for payment under the Forward Charge Mechanism ("FCM") by the Goods Transport Agency ("GTA") on the GST Portal.

The functionality can be accessed at: **Dashboard > Services > User Services > Opting Forward Charge payment by GTA (Annexure V) > Select FY & apply**

Note : Last date for submission of declaration for the Financial Year 2023-2024 is March 15, 2023.

- ***GSTN ALLOWS NEGATIVE VALUES IN TABLE 4 (ITC) OF GSTR-3B.MERCHANDISE EXPORTERS TO PAY 18% GST ON SHIPPING COSTS: GOVT.***

Merchandise exporters will have to pay 18% GST on the services of transportation of goods. This follows a recommendation of the GST Council that the place of supply of transportation of goods must be determined on the location of the service receiver, rather than based on destination of goods.



Thank You!

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