



GST BULLETIN

SEPTEMBER 2023

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JUDICIAL UPDATES

1. No ITC can be claimed if supplier fails to pay tax to the government.

Case of : M/s Aastha Enterprises

Decision by : Patna High Court

Date of Judgement : 18th Aug 2023



- M/s. Aastha Enterprises purchased goods from the supplier and paid the taxable value along with the tax amount to the supplier. However, the supplier did not deposit the tax amount. The assessee claimed the ITC of the said tax amount and was of the view that since, the tax has been paid to the supplier thus, he is eligible to avail ITC.
- A Show Cause Notice (SCN) was issued to the assessee seeking reversal of the aforesaid ITC. Since the assessee failed to respond to the SCN, an ex-parte order was passed by the Tax Authorities.
- Assessee filed a writ petition before the Hon'ble Patna High Court after the assessee failed to file an appeal within time period prescribed under Section 107 of the CGST Act.

- Assessee submitted evidence showing payment made to the supplier and also movement of the goods purchased. Thus, assessee had claimed ITC after making payments to the supplier through bank account.
- Assessee contended that the object of the ITC regime is to avoid the cascading effect of taxes which would be frustrated if the Tax Authorities attempt recovery of ITC from the Taxpayer, who being a recipient had fulfilled its obligation for making payment of consideration (along with tax) to the supplier. However, the supplier failed to pay the same to the Government.
- Denial of credit in respect of tax already paid by the Taxpayer to the supplier would result in double taxation. Accordingly, the Tax Authorities should proceed to recover the tax from the supplier itself.
- Whereas, revenue contended that as per Section 16 of the CGST Act, ITC is subject to specific conditions, non-fulfilment of these conditions would result in denial of ITC. As per Hon'ble Supreme court in ALD Automotive Pvt. Ltd, tax credits are in the nature of a benefit/concession and not a right extended to the assessee under the statutory scheme and the said benefit can accrue to the assessee only as per that.
- Court stated that as per Section 16(2) of the CGST Act, following conditions are to be cumulatively satisfied to enable the benefit of ITC:
 - Existence of a tax invoice or debit note issued by the supplier;
 - Proof of receipt of goods or services or both;
 - The tax charged in respect of such supply is paid to the Government either through cash or through utilization of ITC.
- Court further added that assessee's contention that denial of ITC would result in double taxation is not correct, as the denial of ITC would arise only when the supplier who has collected tax and fails to remit the same to the Government and the conditions for availment of ITC must be scrupulously followed otherwise no benefit would be available to the Taxpayer.
- When the supplier fails to comply with the statutory requirement, the recipient i.e., Taxpayer cannot claim ITC and the remedy available to such recipient is only to proceed for recovery against the supplier. Further, recipient can seek refund from Government if tax is subsequently recovered from the supplier. Unless such tax is paid to the Government, a recipient would not be entitled to claim ITC.

Full Judgement : [M/S Aastha Enterprises](#)



SNR's Take

This is a contrary ruling from Hon'ble Patna High Court on burning issue of reversal of ITC from purchaser on account of default in deposition by supplier invoking Section 16(2)(c) of GST Act. Earlier, we had rulings from Hon'ble Madras HC in D.Y. Beathel (supra) and Hon'ble Calcutta HC in the case of M/s Suncraft Energy Private Limited wherein it has been ruled that department need to first proceed against erring supplier provided the purchaser & supplier are not in collusion with each other.

CBIC also in Press release dated 4th May 2018 has clarified that there shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller, however, reversal of credit from buyer shall also be an option available with revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

It appears that above-mentioned CBIC circular and differentiation in treatment between bona-fide purchaser and cases of collusion between purchaser & supplier as ruled by Hon'ble Delhi HC in Arise India Limited have not been put forward in this particular matter.

2. Goods or Vehicle carrying the goods cannot be confiscated by Tax authorities by questioning consignor's legitimacy.

Case of : M/s. Arhaan Ferrous and Non-Ferrous Solutions Pvt Ltd

Decision by : Andhra Pradesh High Court

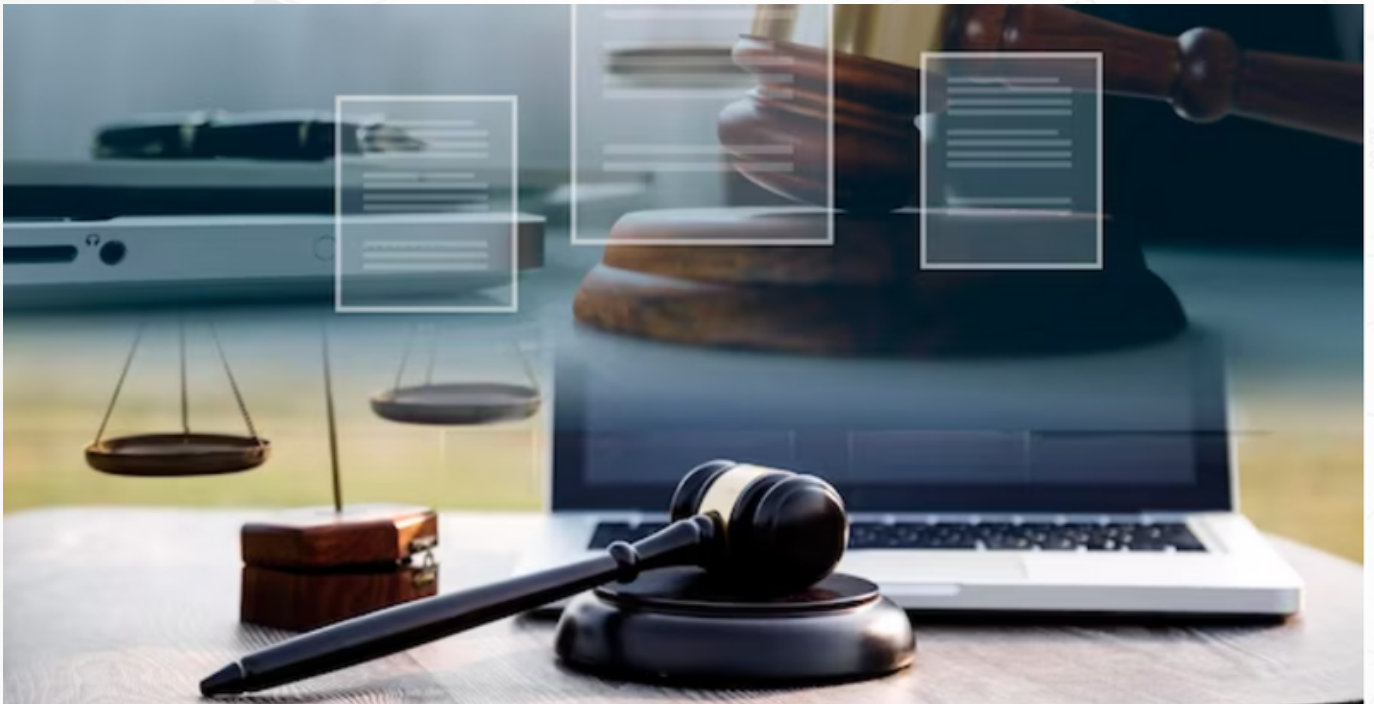
Date of Judgement : 03rd August 2023



- M/s. Arhaan Ferrous and Non-Ferrous Solutions Pvt Ltd. (Assessee) purchased Scrap from M/s. K.S. Enterprises (Supplier) which was transported along with valid documents from Vijayawada to Sankarampet.
- The transportation of goods was initiated from Vijayawada and supplier had no place of business there. The vehicles were intercepted and detained by the Tax Authorities and also issued a notice for confiscation of goods and conveyance alleging the movement of goods in violation of Section 113 of the CGST Act. Aggrieved by the above, the Taxpayer and the Transporter filed a Writ Petition before the Hon'ble Andhra Pradesh High Court.
- Assessee contended that when the goods were intercepted, he was the owner thereof and not the Supplier and all the required documents has been submitted. However, under the guise of initiating proceedings against the Supplier, the Tax Authorities, cannot put the assessee and the Transporter in trouble.

- The Tax Authorities ought to have issued notices to the Assessee under Section 129 of the CGST Act and initiated proceedings if they were suspicious about the GST registration and the business of the Assessee. Without doing so, the Tax Authorities issued a Confiscation Notice to the Supplier and detained the goods owned by the assessee which is illegal and unjust.
- Revenue stated that the invoices which were produced at the interception of vehicles showed that the Supplier was the owner of Scrap which was supplied to the assessee. In addition to this, invoices and e-way bill were raised by the Supplier, the same would imply that he is the owner of the Scrap.
- Since the notices in the present case were issued through the GST portal by generating reference numbers and dates, DIN need not be generated for them.
- Since the Assessee failed to establish the ownership of goods and the genuineness of the purchases allegedly made from a non-existing dealer viz., the Supplier, it is not obligatory on the part of the proper officer to issue notice to the Assessee and the Transporter.
- Court observed that the Tax Authorities can initiate proceedings against the Supplier under Section 130 of the CGST Act on account of his absence at the given address and not holding any business premise from the place of business in Vijayawada, however, they cannot confiscate the goods of the Assessee merely on the ground that the Supplier does not have any place of business at the place from where the transit of goods started.
- Court further added that responsibility of the Assessee and Transporter will be limited to the extent of establishing that the Assessee bonafidely purchased goods from the Supplier for valuable consideration and verified the GST registration of the Supplier and also establish a mode of payment to the Supplier. The Assessee and the Transporter is required to establish their own credentials and not that of the Supplier.
- The Tax Authorities can initiate proceedings under Section 129 of the CGST Act against the Assessee and the Transporter and conduct an enquiry by giving an opportunity to be heard to establish their case.
- High Court held that revenue cannot detain goods and vehicles without initiating proceedings under section 130 of the CGST Act, 2017 against the owner/s of goods and vehicle.

Full Judgement: [M/s. Arhaan Ferrous and Non-Ferrous Solutions Pvt Ltd](#)



SNR's Take

High court has passed a reasonable judgement by stating that one assessee cannot be held responsible or accountable for actions of another assessee. If department has doubt about the existence of supplier then goods owned by recipient cannot be confiscated provided recipient has established that it was a bonafide transaction.

3. Product cannot be hold as a medicament if the product's primary function is "care" and not "cure" even if have subsidiary curative or prophylactic properties

Case of: Indranil Chatterjee

Decision by : Indranil Chatterjee

Date of Judgement : 10th August 2023

- Indranil Chatterjee (applicant) intends to produce JAC OLIVOL BODY OIL classified as Ayurvedic patent & proprietary Medicine and inter alia the applicant is in advanced stages of entering in to contract manufacturing agreement with the trade name owners of the said product.
- Applicant made an application seeking an advance ruling as to whether the product manufactured & sold by the applicant shall be classified as medicament or cosmetic product.
- Applicant claimed that the product is an ayurvedic patent & proprietary medicine primarily used to cure dry skin, relieves body ache, joint & knee pains, minor burns and prevents blisters and also has therapeutic properties and anti- ageing and anti-wrinkling properties which are consequential to the predominant purpose.



- The Applicant stated that as the definition of the term, —medicament, has not been explicitly provided anywhere in the Drugs and Cosmetics Act, 1940, the WBGST Act, 2017, the CGST Act, 2017, the IGST Act, 2017, the Customs Tariff Act, 1975, or Rules framed there under, the word must be construed in its popular sense i.e., how the common man who uses it, comprehends it.
- AAR explained that “a product cannot be classified as a medicament only for the reason that it is manufactured using ingredients regulated under the Drugs and Cosmetics Act. There must be therapeutic or prophylactic uses of the product and the product must be manufactured primarily to control or cure a disease”.
- AAR explicated that any product can be classified as a medicament under Chapter Heading 3004 provided the product has either of the two uses i.e. therapeutic or prophylactic. ‘Therapeutic’ is a treatment designed to help/treat an illness and ‘prophylactic’ is something that is intended to prevent diseases.
- In matters of classification of goods, the common parlance test i.e., how the goods are understood in the market by common people has been recognized at all the judicial forums including the Supreme Court of India. The Hon’ble Apex Court has consistently applied common parlance test as one of the well-recognized tests to find out whether the product falls under Chapter 30 or Chapter 33 like in case of Baidynath Ayurved Bhawan Ltd and also in Puma Ayurvedic Herbal (P) Ltd.
- AAR emphasized that common parlance test is well recognized as one of the twin tests for the purpose of classification of a product as medicament or cosmetic.
- AAR determined that the primary use of the product Jac Olivol Body Oil, as it appears from the label representing the product, is to care for skin as it is described as ‘for soft, smooth, glowing and & healthy skin’. Further added, the product description as declared on the web portals of different marketing companies, and as indicated on the label which states to ‘apply daily before or after bath all over your body’. Thus, primary use of the product is ‘to take care of the skin, and not to cure the skin’.
- AAR ruled that the product ‘Jac Olivol Body Oil’ is covered under Heading 3304 i.e ‘Preparations for the care of Skin’ of the Customs Tariff Act, therefore, is a cosmetic product and its primary function being "care" and not "cure" therefore, it is not a medicament, even if it has subsidiary curative or prophylactic properties.

Full Judgement: [Paragon Polymer](#)



SNR's Take

The West Bengal AAR has reiterated the importance of common parlance test in deciding the classification of any product as repeatedly stated by Supreme court in various cases. Primary factor in deciding product classification is how common public see that product and with what intention it is been purchased by them. Major factor in deciding whether a product is medical product or a cosmetic is whether public is purchasing it for cure or care.

4. ITC cannot be denied to a recipient unless the tax authorities initiate action against the defaulting supplier.

Case of : M/s. Suncraft Energy Pvt. Ltd.

Decision by : Calcutta High Court

Date of Judgement : 2nd Aug 2023



- M/s. Suncraft Energy Pvt. Ltd. (Assessee), in FY 2017-18, made purchase from one of its vendors and paid the consideration along with GST. However, the vendor had not reported the details of the supplies made to the assessee in its periodical GST returns and therefore, the details of such supplies did not appear in Assessee's Form GSTR-2A.
- Subsequently, the Tax Authorities issued a Show Cause Notice (SCN) seeking reversal of ITC availed by the Assessee in respect of the purchase made from the vendor based on the difference in the amount of ITC as per Form GSTR-3B and Form GSTR-2A.
- The Assessee submitted a detailed response highlighting that he has duly paid the consideration along with GST thereon to the vendor and thereafter, the Assessee had claimed ITC in respect of such purchase.
- Order was issued against the assessee; the Assessee filed a Writ Petition before the Calcutta High Court where High Court disposed the Writ Petition directing the Assessee to prefer statutory appeal before the Appellate Authority. Aggrieved by the above, the Assessee filed an intra-court appeal before the Division Bench of the Hon'ble High Court.

- The assessee contended that he has fulfilled all the conditions to avail ITC under Section 16(2) of the CGST Act and has also made payment of consideration including GST thereon to the vendor and despite complying with GST law, the Tax Authorities have erred in passing the Order-in-Original directing to reverse the ITC in respect of the purchase which are not appearing in Form GSTR-2A.
- Assessee further added that in Bharti Airtel Ltd, it was held that Form GSTR- 2A is only a facilitator to take a confirm decision of availing ITC at the time of self-assessment i.e., while filing Form GSTR-3B.
- Press Release dated 4 May 2018 had clarified that there shall not be automatic reversal of ITC from the buyer on non-payment of tax by the supplier. In case of default in payment of tax by the seller, recovery thereof shall be made from the seller. However, reversal of ITC availed by the buyer shall also be an option available with the Tax Authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc.
- Court observed that it is undisputed that the Assessee received the goods or services or both and that the payment for the same has been made to the vendor and despite the clarification provided by the Press Release dated 4 May 2018, the Tax Authorities have not conducted any enquiry on the vendor regarding non-reporting of such supplies in its periodical GST returns.
- The Tax Authorities have arbitrarily ignored the invoices and bank statement produced by the Assessee substantiating that they have made payment of consideration along with GST thereon to the vendor and before directing the Taxpayer to reverse ITC, the Tax Authorities ought to have initiated actions against the supplier and unless and until the Tax Authorities are able to bring out an exceptional case, the Assessee cannot be directed to reverse ITC.
- Court set aside Order-in-Original passed by the Tax Authorities with a direction to the Tax Authorities to first proceed against the vendor and only under the exceptional circumstance proceedings can be initiated against the Assessee (Recipient).

Full Judgement: [M/s. Suncraft Energy Pvt. Ltd.](#)



SNR's Take

In the captioned ruling, the Kerala AAR has considered the specific nature of gold as a product and held that due to the nature of gold, it can never be second-hand. AAR further stated that the value of gold ornaments increases with the passage of time. AAR has neither commented nor taken cognizance of multiple AAR rulings pronounced earlier wherein the benefit of rule 32(5) was extended in similar cases. Further Maharashtra AAR in Safset Agencies has extended the benefit to auctioneer dealing in antique products as well, thus, to say that gold ornaments would become antique and valuable with the passage of time and thus is not second-hand also does not sound logical.

Further, this ruling shall also be helpful in cases where the tax has not been deposited by supplier and thus department is applying section 16(2)(c) to seek reversal of ITC from purchaser. This condition of ensuring payment of tax by supplier is impossible to be complied with by purchaser as actions/compliance by supplier is beyond his control. It should have been between the department and concerned supplier itself who is also a registered person. In most of these cases, the department has not been making efforts for recovery of tax or verifying whether tax has been paid by supplier or not. In case, purchaser submits the Tax invoice, proof of receipt of goods/ services and substantiates the payment of consideration to supplier, then the onus should be upon department to proceed against supplier for verification/ recovery of tax as has been directed by Hon'ble Calcutta High Court.

5. GST authorities cannot seize cash even on the suspicion that it is unaccounted cash

Case of : M/s. Goyal Metal Udyog

Decision by : Delhi High Court

Date of Judgement : 22nd Aug 2023



- Assessee's business premises were searched by officers from GST department and cash of Rs. 50,70,000 was seized by the authorities. Assessee filed a petition for quashing of proceedings initiated by the authorities and the release of cash seized.
- The tax authorities issued summons under Section 70 of the CGST Act, 2017, demanding various documents and information and seized cash was deposited in Bank under the name of the Commissioner, CGST, Delhi.
- The Assessee believed that seized cash would be released after he paid the amount towards taxes and penalties. After payment of taxes and penalties, assessee requested for release of seized cash. Despite the deposit and repeated requests, the tax authorities did not release the seized cash.
- The assessee contended that that the seizure of cash was illegal, as authorities had no power to seize it merely on suspicion of being unaccounted money.
- Assessee further added, cash belonged to the family members of the petitioner. It was brought from the residential premises to the business premises as their residential house was under renovation and there were large number of labourers working in the premises.

- The Assessee's case was supported by a recent decision of the Delhi High Court in Deepak Khandelwal Proprietor M/s Shri Shyam Metal. The court held that the seizure of cash without proper legal grows unjustified.
- Court held seizure of cash illegal. It directed the authorities to release the seized currency immediately and time spent during the pendency of the petition, from its initiation until the judgment, should be excluded from the period of limitation for any subsequent proceedings.

Full Judgement: [M/s. Goyal Metal Udyog](#)

SNR's Take

High court held that seizure of cash on suspicion of it to be unaccounted money as illegal. This judgement is very reasonable judgement as plain reading of Section 67(2) of the CGST Act indicates that the seizure is limited to goods liable for confiscation or any documents, books or things, which may be "useful for or relevant to any proceedings under this Act" and cash cannot be termed as 'Things'.

CIRCULARS/NOTIFICATIONS:

1. CBIC clarifies RCM applicability on services provided directors and GST on food supplies in Cinema halls (Circular – 201/13/2023).

Through this circular, CBIC clarifies on the applicability of RCM on services provided by director to body corporate. Any services provided by director in the capacity of director would be subject to reverse charge mechanism (RCM) whereas services provided in personal capacity will not fall RCM.

In case of food and beverages supplied at Cinema Hall, if sale of cinema ticket and supply of food and beverages are clubbed together, such bundled supply satisfies the test of composite supply, and entire supply will attract GST at the rate applicable to principal supply i.e. service of exhibition of cinema. However, if supplied independent of cinema exhibition service then will be taxable as 'restaurant service'.

Read Circular: [Circular No- 201/13/2023](#)

2. Exemption notification for filing of Annual Return (Circular No – 32/2023).

CBIC issues circular exempting registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year.

Read Circular: [Notification No- 32/2023](#)



COMPLIANCE CALENDER:

Date	Particulars
10-08-2023	The due date for filing GSTR 7 for the month of June 2023.
10-08-2023	The due date for furnishing GSTR 8 for the month of June 2023 for registered e-commerce taxpayers in India.
11-08-2023	The last date to file the GSTR-1 for taxpayers having an annual aggregate turnover of more than INR 1.5 crore or the ones who have opted for the monthly return filing.
13-08-2023	The due date for filing GSTR-6 for Input Service Distributor (ISD) of July 2023
20-08-2023	Due date for Form GSTR-3B for the month of July 2023.
24-08-2023	Due date for Form GSTR-3B for the month of July 2023 for quarterly filers of GSTR-1.

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