



## Indirect tax newsletter

# Updates: Indirect tax judgments

We are delighted to share a few important judgments passed under the Goods and Services Tax (GST), customs, central excise, service tax, and value-added tax (VAT) laws.

### Goods and Services Tax



#### **Zones Corporate Solutions Pvt. Ltd. versus Commissioner of Central Goods and Services Tax Delhi East and Anr. (2020-TIOL-1168-HC-DEL-GST)**

The Delhi High Court held that merely because the GST Appellate Tribunal is not functioning and the revenue is unable to file an appeal against the order of the Commissioner (Appeals), the refund of the petitioner cannot be withheld. As the petitioner cannot be asked to wait endlessly for the revenue to file an appeal, the refund was directed to be disbursed within four weeks.



#### **Jian International versus Commissioner of Delhi Goods and Services Tax (2020-TIOL-1235-HC-DEL-GST)**

In the present case, neither an acknowledgment nor a deficiency memo was issued by the revenue within a period of 15 days of filing of refund application. The Delhi High Court observed that the GST rules provide for a complete procedure with regard to acknowledgment, scrutiny, and grant of refund.

The petitioner's right to seek refund along with interest would have been affected if the revenue was given an option to issue a deficiency memo beyond the prescribed period. Therefore, the revenue cannot be allowed to issue deficiency memo beyond the stipulated period of 15 days.



**Subhash Joshi and Another versus Director General of GST Intelligence (DGGI) and Others (2020-TIOL-1163-HC-MP-GST)**

The Madhya Pradesh High Court observed that per the GST law, during the course of search and seizure, two or more independent and respectable inhabitants of the locality are necessary as witness to the search. The petitioner did not put forth any statutory provision requiring the presence of an advocate during search and seizure proceedings and held that the petitioner has no legal right to seek presence of an advocate when search and seizure is being carried by the authorities under the GST law.



**Remankhan Belin versus State of Gujarat (2020-TIOL-1036-HC-AHM-GST)**

The Gujarat High Court observed that due to COVID-19 pandemic, the petitioner could not remain present and / or preferred to stay safe and meanwhile, the impugned order was passed. There was a clear violation of principles of natural justice and the order was quashed with a direction for fresh adjudication.



**Apsara Cooperative Housing Society (2020-TIOL-166-AAR-GST)**

The Maharashtra Authority for Advance Ruling held that collections of funds by a cooperative society from its members would be subject to GST.

It was observed that in terms of the GST law, a cooperative society is covered within the scope of definition of “person” and hence, the society and the members are two distinct persons. The membership fee collected from the resident members would be treated as consideration. Thus, the conditions stipulated for “supply”, i.e. receipt of consideration as well as in course of furtherance of business were satisfied.

**Customs**

**M/s Ruchi Soya Industries Ltd. vs. Union of India and Ors. (2020-TIOL-1263-HC-MAD-CUS)**

Relying upon the decision of the Delhi High Court in the matter of MD Overseas Ltd. (2019-TIOL-2779-HC-DEL-CUS) and the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. [MANU/AP/0325/2019], the Madras High Court held that a notification would come into effect from the date and time when it was published in the official gazette and mere uploading of notification on the website would be of no significance. Customs duty paid by the petitioner under protest was also directed to be refunded by the Court.

**Central excise**

**Commissioner of Central Excise and Service Tax, Bengaluru vs. L and T Komatsu Ltd. (2020-TIOL-1156-HC-KAR-CX)**

The Karnataka High Court gave its views on the appellate jurisdiction in relation to central excise appeals.

It was observed that in terms of the central excise law, appeal would lie before High Court if the case involves a substantial question of law. In case of determination of rate of duty or value of goods, etc. the appellant has to directly approach the Supreme Court.

In the instant case, since the issue involved relates to determination of excisability of the goods due to an exemption notification, the appeal would lie before the Supreme Court and the appeal filed by the revenue before the High Court was dismissed.

## Service Tax

### **M/s Lemon Tree Hotel vs. Commissioner, Goods and Service Tax, Central Excise and Custom (2020-TIOL-1114-CESTAT-DEL)**

The CESTAT, Delhi held that retention of amount by the appellant on cancellation of hotel booking would not attract levy of service tax. The contract itself entitled the appellant to retain an amount in case of cancellation of booking. Such retention would not be considered as “tolerating an act” for the purpose of service tax.

The CESTAT, while relying upon a circular, also observed that service tax on food served to its customers in the hotel room does not have an element of service and hence, not leviable to service tax.

### **Rackitt Benckiser India Ltd. vs. Commissioner of Central Excise and Service Tax (2020-TIOL-1006-CESTAT-CHD)**

The CESTAT, Chandigarh observed that the licensor only has a right over the appellant to supervise whether products manufactured by appellant are in conformity with quality since the brand name of the licensor is being used by the appellant.

It was held that the services would not be classifiable as franchise services and are correctly classified by appellant as intellectual property rights services.

## Value Added Tax

### **Calico Industrial Suppliers vs. Assistant Commissioner (CT), Chennai (2020-TIOL-1166-HC-MAD-VAT)**

The adjudicating authority in this case reversed the claim of ITC for several financial years based on the notice issued for one particular financial year.

The Madras High Court remanded the matter as such reversal by for periods exceeding the period mentioned in the notice was made without recording any reasons.

## For more information, contact:

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