



## Indirect Tax Newsletter

# Updates: Indirect tax judgments

We are delighted to share a few important judgments/advance rulings passed under the Goods and Services Tax (GST), Customs, Central Excise, and Service Tax available in public domain from November to December 2021.

### Goods and Services Tax



#### **M/s LGW Industries Ltd. and others vs. Union of India and Others** **2021-TIOL-2308-HC-KOL-GST**

Notices were issued to petitioners denying the benefit of ITC as the vendors were non-existent. Against the said notices, a writ petition was filed before the Calcutta High Court where the petitioners submitted that the transactions in question were genuine and the same could be verified from the documents and records available on the government portal as well. The payment for the purchases and tax was also made through banking channels and that the petitioners could not be penalised unless the department/respondents establish with proof that the transactions due to collusion between petitioners/purchasers and suppliers. The High Court remanded the matter for fresh adjudication with the observation that if the transactions are genuine and were made before the cancellation of registration of vendors, the benefit of ITC should be allowed.



#### **Laxmi Organic Industries Ltd. vs. Union of India and Others** **2021-TIOL-2248-HC-MUM-GST**

The petitioner filed the refund application manually, which was rejected by the authorities on the ground that the refund application must be filed electronically on the GST portal in terms of a circular issued by the Central Board of Indirect Taxes and Customs (CBIC). The Bombay High Court, while allowing the writ petition, observed that there is a separate provision in the GST law regarding manual filing of refund applications, which makes the procedures for processing of electronic applications being applicable on manual refund applications as well. The authorities cannot return the refund applications merely because they are not filed on the GST portal.



**Ganesh Ores Pvt. Ltd. vs. State of Odisha and Others**  
**W.P.(C) No.32488 of 2021**

The petitioner had filed a refund claim, which was granted by the authorities. Subsequently, a notice was issued to the petitioner for recovery of the refund granted erroneously. The petitioner submitted that the department should have filed an appeal against the refund order in terms of the GST law instead of issuing a notice for recovering the refund amount. The Odisha High Court held that the authorities could have issued a notice without filing an appeal against the refund order and dismissed the writ petition.



**M/s Appario Retail Pvt. Ltd. vs. Union of India**  
**2021-TIOL-2142-HC-TELANGANA-GST**

The petitioner approached the Telangana High Court against an order rejecting the refund of excess amount lying in the Electronic Cash Ledger (ECL). The High Court held that tax collected at source by an electronic commerce operator and deposited in the ECL is a payment of tax and if there is an excess balance, refund can be claimed. This is also evident from the frequently asked questions issued by the CBIC, which are binding on the authorities. Further, with respect to maintainability of the writ petition, the High Court held that due to non-functioning of appellate tribunal under GST, the petitioner cannot be compelled to wait for filing an appeal.



**Bhagyanagar Copper Pvt. Ltd. vs. The Central Board of Indirect Taxes & Customs and others**  
**2021-TIOL-2143-HC-TELANGANA-GST**

The petitioner had received inward supplies from certain vendors who were found to be suspicious by the authorities and the refund of input tax credit filed on export of goods was rejected on this ground. The High Court observed that the GST law does not mandate the petitioner to verify the genuineness of the suppliers as enough safeguards / mechanisms are provided under the law to recover the taxes, if not paid or wrong credit is availed by the petitioner's supplier or supplier's supplier. Since no discrepancy was found with regard to the suppliers of the petitioner, the refund claim by the petitioner could not be denied to be processed on the ground that verification of the suppliers of the petitioner's supplier is pending. The Court observed that reluctance on the part of the authorities in granting refund to exporters upon completion of exports would result in taking away the incentive to export and would make the exports from the country unviable due to non-flow of funds in the form of refund assured under the law. The High Court set aside the rejection order and allowed the refund claim of the petitioner.



**M/s Bharat Oman Refineries Ltd.**  
**2021-TIOL-36-AAAR-GST**

The Madhya Pradesh Authority for Advance Ruling (AAR) held that GST is applicable on notice pay, group medical insurance premium, canteen charges, and telephone charges recovered by the appellant from employees. The appellant approached the Madhya Pradesh Appellate Authority for Advance Ruling (AAAR), which held that notice pay recovery is not chargeable to GST and the judgment of the Madras High Court on the similar issue is applicable to the instant case. The AAAR also held that GST is not applicable on group medical insurance premium, canteen charges, and telephone charges recovered. While the appellant is entitled to avail input tax credit on GST charged by canteen services provider (being obligatory for the appellant), ITC on GST paid on telephone usage charges and insurance premium would not be available.



**M/s Premier Sales Promotion Pvt. Ltd.**  
**2021-TIOL-37-AAAR-GST**

The Karnataka AAR held that supply of vouchers (gift vouchers, cashback vouchers, e-vouchers) are taxable as "goods" and chargeable to GST at 18 percent. The appellant filed an appeal against this order where the Karnataka AAAR observed that vouchers have a definitive value and are traded for a consideration and the value of the voucher is the extent to which a beneficiary can claim possession of goods and/or services from the specified suppliers. Vouchers cannot be equated with lottery tickets as they have no distinctive value. The Karnataka AAAR, accordingly, upheld the ruling of the AAR.



**Dr. Willmar Schwabe (I) Private Limited  
Advance Ruling No. UP ADRG 79/2021**

The applicant entered into an arrangement with a vendor for bus hire services on contract basis, for transportation of its employees. The buses hired by the applicant had a seating capacity of more than 13 persons and were non air-conditioned. The vendor also had a carriage permit from the relevant authorities. The Uttar Pradesh AAR held that the applicant is entitled to avail ITC on GST charged by the service provider on hiring of bus from 1 February 2019. Also, the applicant was not liable to pay GST on amount recovered from employees for usage of transport facility.



**M/s Kamdhenu Agrochem Industries LLP  
2021-TIOL-248-AAR-GST**

Applicant approached the Maharashtra AAR on the question as to whether registration is required in states (other than Maharashtra where it already holds registration) where goods are imported, sold and delivered directly from CFS (Container Freight Station) / DPD (Direct Port Delivery) which is under the Customs boundaries to customers. The Maharashtra AAR held that since the applicant will be selling the goods before clearing the same for home consumption from the port of import, the 'place of supply' shall be the place from where the applicant makes a taxable supply of goods which, in this case will be the Maharashtra Office. Hence, the applicant can supply the goods based on invoices issued by the Maharashtra Office and, therefore, they need not take separate registration in importing states other than Maharashtra.

## Customs

**M/s Brightpoint India Pvt. Ltd. vs. Commissioner of Customs  
2021-TIOL-743-CESTAT-MUM**

Refund claim was filed by the appellant on re-assessment of bills of entry by way of amendment. The refund was rejected on the ground that no appeal was filed against the said re-assessment by the appellant. The CESTAT, Mumbai observed that once the bills of entry were re-assessed by authorities, if neither side is aggrieved with said re-assessment, it attained finality. If the re-assessment is acceptable to both the sides and if any refund arising out of said re-assessment, the appellant was not required to file an appeal to seek refund. The CESTAT accordingly allowed the appeal.

**M/s Baburam Premchand vs. Commissioner of Customs  
2021-TIOL-692-CESTAT-MAD**

The appellant imported a consignment of goods which was confiscated by the Directorate of Revenue Intelligence (DRI) due to mis-declaration of the nature of goods. The value declared by the appellant was also rejected by the DRI. The details of identical goods were not available with the authorities and the value was determined on the price of similar goods. A Show Cause Notice (SCN) was thereafter issued by the DRI. On appeal, the CESTAT, Madras observed that the revenue authorities have to explain the source of figures obtained by it for re-determination of duty. Since the authorities were unable to provide the information, the SCN was set aside and the order of confiscation of goods, imposition of redemption fine, and penalties was held to be unsustainable. The CESTAT also held that in terms of the Supreme Court decision on the jurisdiction of DRI authorities, the SCN could not be issued.

## Central Excise

**Atul Ltd. vs. Commissioner of Central Excise and Service Tax  
2021-TIOL-755-CESTAT-AHM**

The appellant filed an appeal against rejection of refund claim of Education Cess and Higher Secondary Education Cess carried forward until 30 June 2017. Since the cesses could not be utilised until 30 June 2017, the appellant was of the view that in terms of the GST law, the amount was refundable in cash. The CESTAT allowed the appeal and held that refund of cesses not transitioned to the GST regime is available to the appellant.

## Central Excise

### **M/s Panacea Biotec Ltd. vs. Commissioner of Central Goods and Services Tax (East)** **2021-TIOL-725-CESTAT-DEL**

The appellant sought interest on the amount of pre-deposit, on being successful in appeal before the Tribunal. The authorities rejected the prayer, observing that the pre-deposit was made through debit of CENVAT credit and as such no interest is payable. The CESTAT, while allowing the appeal, held that interest on refund of pre-deposit is permissible even if the pre-deposit amount was not paid in cash.

## Service Tax

### **Commissioner of GST and Central Excise vs. M/s Citi Bank NA** **2021-TIOL-262-SC-ST**

A division bench of the Supreme Court took differing views while deciding the applicability of service tax on interchange fee (collected by a bank providing services against a credit card issued by another bank). As per one view, in the absence of any creditor-debtor relationship between the issuing and acquiring bank, the interchange fee cannot be considered in the nature of interest and chargeable to service tax. Per the other view, the service provided by the respondent as an issuing bank was not to be separated from the service provided by the acquiring bank since it forms a part of a single unified service i.e., of settling transactions. Therefore, the respondent will not be liable to pay the service tax as it would amount to double taxation. Credit card transactions are not transactions in money and hence, they will fall under the definition of service. The matter has been referred to the Chief Justice of India for constituting an appropriate bench in the matter.

### **Lightspeed India Partners Advisors LLP vs. Commissioner Central Tax (Appeals)** **2021-TIOL-850-CESTAT-DEL**

The refund filed by the appellant was rejected by the authorities on the ground that the amount was not reversed in the service tax returns filed by it. The appellant submitted that due to introduction of GST, the service tax returns could not be filed and a reversal was done in the books of accounts prior to filing of refund claim. The CESTAT held that reversal in the books of accounts has to be considered a statutory document as evidence for compliance of the notification relating to refund under service tax and allowed the appeal.

**For more information, please connect with:**

[Mahesh Jaising](#)

Deloitte Touche Tohmatsu India LLP

[Saloni Roy](#)

Deloitte Touche Tohmatsu India LLP

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

This material is prepared by Deloitte Touche Tohmatsu India LLP (DTTILLP). This material (including any information contained in it) is intended to provide general information on a particular subject(s) and is not an exhaustive treatment of such subject(s) or a substitute to obtaining professional services or advice. This material may contain information sourced from publicly available information or other third party sources.

DTTILLP does not independently verify any such sources and is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such sources. None of DTTILLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this material, rendering any kind of investment, legal or other professional advice or services. You should seek specific advice of the relevant professional(s) for these kind of services. This material or information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person or entity by reason of access to, use of or reliance on, this material. By using this material or any information contained in it, the user accepts this entire notice and terms of use.

©2022 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited