Tax INFORM

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Circulars and Notifications:

- CBIC mandates serving summary of notices and demands electronically.
- CBIC emphasises need for case-specific examination of each secondment arrangement.

DIRECT TAX

A. Recent Case Laws

Pepsico India Holdings Private Limited v. Assessment Unit Income Tax Department National Faceless Assessment Centre & Ors. [WP(C) No. 15322 of 2023]

Revenue cannot pass final order when objections are pending before Dispute Resolution Panel: Delhi HC.

In this case, the Petitioner filed a writ petition before the Delhi High Court challenging an assessment order passed by the Revenue seeking to set aside the order. Before the impugned order was passed, the Petitioner had filed objections against the draft assessment order before the Dispute Resolution Panel (DRP). However, the final assessment order was passed without knowledge that the objections were filed as the Petitioner inadvertently failed to file the objections with the Assessing Officer.

The Court ruled in favour of the Petitioner and held that Revenue could only pass an order after including the view of the DRP as per Section 144C of the Income Tax Act, 1961. The Court added that the Revenue was free to pass a fresh order after taking into consideration the view of the DRP.

Serum Institute of India Private Limited v. Union of India & Ors. [WP No. 3735 of 2021]

Bombay HC upholds constitutional validity of Section 2(24)(xviii) of the Income Tax Act, 1961, which brings subsidies or grants from government within the purview of "income".

In this case, the Petitioner filed a writ petition before the Bombay High Court challenging the validity of Section 2(24)(xviii) of the Income Tax Act, 1961 (the Act). The Petitioner, engaged in the development and production of vaccines, availed of certain benefits including 50% exemption from payment of stamp duty on land acquisition, etc. under the Package Scheme of Incentives, 2013, from the Government of Maharashtra. In 2015, the definition of "income" was amended, and its scope was expanded to encompass subsidies, grants, cash incentives, concessions, etc. received from the Central or State Governments. Aggrieved by this inclusion, the Petitioner challenged the constitutional validity of sub-clause (xviii) of Section 2(24) of the Act.

The Court pointed out that the Parliament had the power to include these benefits and subsidies as "income" and the same was a matter of economic policy. Consequently, the Court upheld the validity of the amendment and dismissed the petition.

Indium IV (Mauritius) Holdings Ltd. v. Deputy Commissioner of Income Tax [ITA No. 2423/MUM/2022]

Assessee can invoke the DTAA or provisions of the Income Tax Act, 1961, whichever is beneficial to it: Mumbai ITAT.

The Appellant, a Mauritius-based company, was engaged in various investment activities in India. For Assessment Year 2017-18, it had certain gains and losses arising with respect to the alienation of shares of Indian companies. The Revenue rejected the exemption claimed by the Appellant on Short-Term Capital Gain under the Double Taxation Avoidance Agreement (DTAA) and carrying forward Long-Term Capital Losses under the Income Tax Act, 1961 (Act). The Appellant submitted before the Tribunal that the benefit could be availed by it.

The Tribunal observed that the Appellant could apply the DTAA or the provisions of the Act, whichever was beneficial to it. It also held that Long-Term Capital Losses and Short-Term Capital Gains were considered to be separate sources of income. Hence, the Appellant could claim under the provisions of the DTAA for Short-Term Capital Gains and under the provisions of the Act for Long-Term Capital Losses.

B. Notifications/Circulars

CBDT notifies exemption for Godavari River Management Board

Central Board of Direct Taxes, vide Notification No. 102/2023 dated 05.12.2023, notified that the following income arising in respect to Godavari River Management Board, Hyderabad has to be excluded while calculating its total income – (i) Grants and Subsidies received from Central Government; (ii) Grants and Subsidies received from the governments of Andhra Pradesh and Telangana and (iii) Interest from bank deposits including savings account.

The same is further subject to three conditions – (i) the Board would not engage in any commercial activity; (ii) activities and their nature would remain unchanged and (iii) income returns would be duly filed. The above would be deemed to be applicable for Assessment Year 2020-21 to 2023-24.

Click here to read the notification.

CBDT relaxes time limit for filing refund claims

The Central Board of Direct Taxes vide Order F. No. 225 /123/2023/ITA-II dated 1.12.2023 relaxed the time limit for filing of refund claims in respect to Assessment Years 2018-19, 2019-20, 2020-21 for non-scrutiny cases to 31.01.2024.

Click here to read the order.

CBDT modifies guidelines for SFT submission for mutual fund transactions

The Central Board of Direct Taxes, vide Corrigendum to Notification No. 4 of 2021 dated 15.11.2023, has modified the guidelines for the submission of Statement of Financial Transactions for Mutual Fund Transactions by Registrar and Share Transfer Agents. Accordingly, with effect from 01.04.2023, the statement of financial transaction data has to be submitted on a half-yearly basis instead of a quarterly basis. The last dates to submit such information would be 31.10.2023 for the first half of the financial year and 31.04.2023 for the second half of the financial year.

Click here to read the notification.

INDIRECT TAX

Goods & Services Tax

Recent Case Laws:

Star Engineers (I) Pvt. Ltd. v. Union of India & Ors. [WP No.15368 of 2023]

Bombay HC acknowledges bona fide error by Assessee, directs revenue authorities to allow amendment or rectification of Form GSTR-1.

In this case, the Petitioner filed a writ petition before the Bombay High Court seeking permission to amend Form GSTR-1 as certain errors were made while filing it. The Assessee delivered goods to various third-party vendors on behalf of Bajaj Auto Ltd. (BAL) using the "Bill-to-Ship-to-Model." While filling the form, there was an error on the part of the Petitioner resulting in BAL not being able to claim Input Tax Credit (ITC); the GSTIN of vendors instead of BAL's was declared in the said form. The Deputy Commissioner of State Tax rejected the petitioner's plea for making the corrections on the ground that the due date had lapsed. Thereafter, the Petitioner approached the Bombay High Court.

The Court, while ruling in favour of the Petitioner, acknowledged that the errors made by the Petitioner were inadvertent and bona fide without any attempt to derive illegal gains. The revenue authorities were directed to permit the Petitioner to rectify or amend Form GSTR-1, either through online or manual means, within a period of four weeks.

Sulender Shah & Anr. v. Additional Commissioner/ Joint Commissioner CGST & Anr. [WP(C) No.15766 of 2023]

Notice issued under Section 74 of the CGST Act has to be accompanied by a summary in electronic form: Delhi HC.

The Petitioners approached the Delhi High Court contending that the summary of the show cause notice was not shared with them electronically in Form GST DRC-01 and Form GST DRC-02 as mandated by provisions of the Central Goods and Services Tax Rules, 2017 (the CGST Rules). The said show cause notice was issued under Section 74(1) of the Central Goods and Services Tax Act, 2017 (the Act), and Rule 142(1) requires such notices to be accompanied by a summary thereof, electronically in Form GST DRC-01 and Form GST DRC-02.

Accordingly, the Court, ruling in favour of the Petitioners, held that an electronic summary of notice had to be issued to the Petitioners under the CGST Rules. The Revenue was directed to issue the summary of the notice and demands electronically within a period of one week.

M/s. Halder Enterprises v. State of U.P & Ors. [Writ Tax No.1297 of 2023]

Allahabad HC holds that if goods are found with a proper tax invoice and an E-way bill belonging to the Assessee, he will be deemed to be the owner of the goods.

In this case, the Petitioner's goods were intercepted during transit. A physical verification revealed no discrepancy in the consignment, however, the goods were detained citing that both the consignor and consignee were non-existent. The Petitioner, as the owner of the goods, sought their release under the Central Goods and Services Tax Act, 2017 (the Act). The Petitioner's plea was rejected, and a penalty was imposed.

The Petitioner referred to Circular No. 76/50/2018-GST dated December 31, 2018, which clarified that if any invoice or any specified document accompanied the goods, either the consignor or consignee should be considered the owner. The Court ruled in favour of the Petitioner and held that since the goods were accompanied by a proper tax invoice and E-way bill in the Petitioner's name, the said Circular was applicable in the present case. The Petitioner was deemed to be the owner of the goods which were then ordered to be released.

Chukkath Krishnan Praveen v. State of Kerala & Ors. [WP(C) No.41219 of 2023]

When Assessee seeks rectification of mistake in Form GSTR-3B, revenue authorities should consider it as a rectification application: Kerala HC.

The Petitioner, a registered dealer, was issued an assessment order based on discrepancies in return filings. The Petitioner made a representation seeking to rectify these discrepancies and a directive was sought to acknowledge this representation as a rectification application. Upon rejection by Revenue, a writ petition was filed before the Kerala High Court.

The Court, deciding in favour of the petitioner, held that the Revenue should treat the current representation as a formal rectification application and proceed accordingly.

Bhagat Ram Om Prakash Agro Private Limited & Anr. v. Commissioner Central Tax GST Delhi- East [WP(C) No.12304 of 2023]

Search erroneous if none of the grounds set out in authorization for the search are made out from the material on record: Delhi HC.

In this case, a third party used the consideration received from the Petitioner on transfer of a property, to secure a bail for an individual in another legal matter. The Special Judge issued an order directing the Revenue to investigate the origins of these funds. In response to this order, the revenue authority issued an authorization to search the petitioner's premises under the Central Goods and Services Act, 2017 (the Act). The authorization had no reasons mentioned and the Petitioner filed a writ petition against this before the Delhi High Court.

The Court found that the grounds for the Revenue to initiate a search against the Petitioners were not sufficient under the Act, and hence, the issued authorization was deemed to be flawed. The Court further directed the return of documents gathered during the search.

B. Notifications/Circulars

CBIC mandates serving summary of notices and demands electronically

In its Instruction No.4/2023-GST, issued on 23.11.2023, the Central Board of Indirect Taxes and Customs emphasised the necessity of electronically serving a summary of notices and uploading the summaries of orders on the GST portal, as mandated by the Central Goods and Service Tax Rules, 2017.

The Board called upon the Principal Chief Commissioners or Chief Commissioners of CGST Zones and the Principal Director General of DGGI to oversee and ensure strict adherence to these rules by officers within their respective Zones or Directorate.

Click here to read the instruction.

CBIC emphasises need for case-specific examination of each secondment arrangement

The Commercial Tax Department, Government of Rajasthan, vide its GST Circular No. R-1/2023 dated November 1, 2023, clarifies the procedures for manual appeal filing under the Rajasthan Goods and Services Tax Rules, 2017. The Rajasthan GST Department quotes Rules 108 and 109 of the Central Goods and Services Tax Rules, which allow taxpayers to file manual appeals in cases where Orders to be appealed against are not accessible online.

The Board, in its Instruction No.5/2023-GST, issued on 13.12.2023, cautioned against uniformly applying the judgement of the Supreme Court in CC, CE & ST, Bangalore (Adj.) etc. v. M/s. Northern Operating Systems Pvt Ltd., to all cases. It cited the need for a case-specific examination considering the distinct nature of each secondment arrangement.

It also clarified that Section 74(1) of the Central Goods and Services Tax Act, 2017, couldn't be invoked merely on non-payment of GST and the same required concrete evidence of fraud, wilful misstatement, or fact suppression to evade tax.

Click here to read the instruction.

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