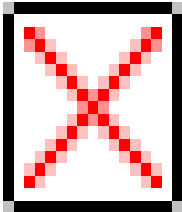


Dissemination of favourable GST orders

JANUARY 17, 2020

By R Sridhar, Consulting Editor, TIOL

Background



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CBIC is proposing to disseminate to the field formations a compilation of judgments favourable to the Tax Department. The [Instruction](#) dated 7th January 2020 requests an update of the judgments favourable so that the same may be posted on the CBIC website and used for defending other connected litigations pending elsewhere.

Views of the Industry and Trade

While updating the knowledge of the field staff and offices is of prime importance, it is equally relevant to understand reasons under which these Writ Petitions are being filed and the whether they can be resolved without the interference of the High Courts. In the last 30 months of GST regime, a proper analysis can be attempted, of the Writ Petitions filed in the High Court and the subjects or issues on which they are being filed. It is no surprise to state that any analysis will bring out the following groups of issues-

- A) Transition Credits Refusal /Issues around eligibility of the credits
- B) Problems associated with Electronic systems (GSTN) and access
- C) Wide range of pro Revenue rulings of AAR and AAAR and subsequent filing of WP at HC
- D) E Way Bill issues and lack of platform for assesseees to discuss these issues

It is true that these issues will disappear once the law settles down, but it is pertinent to understand the field solutions that are being offered to prevent these from reaching the High Courts.

Decisions favourable to the Trade and Industry

Considering that the views of the High Courts on issues favourable to the Industry are also relevant for knowledge update of field staff, it is necessary that adequate efforts are made in this regard to publish select Rulings in favour of the Industry and Trade which have pan India implication. It is important for the field staff to know the Jurisdictional High Court views on legal matters of GST so that new orders are not passed violating the laid down doctrine of Judicial Discipline subject to similarity of factual pattern. Any professional update from a knowledge perspective cannot be made keeping in mind decision passed in favour of the Department alone.

Acceptance of decisions - International Perspective

In Australia under the GST regime the ATO publishes DIS (Decision impact statements) after major rulings concerning GST. The website information is presented below-

"We publish decision impact statements (DIS) on significant court or tribunal decisions to inform the community of our view on the implications of the decision. They set out how the law will be administered because of the decision, noting any implications to existing ATO rulings. They are not public rulings and are not normally expected to contain advice. DIS are published on our [Legal database](#), and are listed by calendar year"

Considering the above example, with the avowed objective of Litigation reduction, measures such as the above, will be a more comprehensive approach and may encourage the Trade and Industry to see the middle ground on litigation.

EU example

In the European Union once a petition is filed before the ECJ, it is also possible that the office of the AG gives a view on the issue and this also helps in minimising future litigation. A case in example is the recent opinion of the AG office in the famous case of Boehringer Ingelheim in which the ECJ accepted the view of the AG and granted VAT set off for rebates paid to third parties. In this case, the AG gave his opinion in July 2017 and opined favourably towards the possibility for taxpayers to adjust their output tax (when granting a rebate to both private and public insurers). The CJEU followed the AG's Opinion and decided that a pharmaceutical company can adjust its output VAT in relation to rebates paid to private health insurance companies. The CJEU decided (December 2017) that Elida Gibbs case law applied, and that Boehringer should not account for VAT on more consideration than it received. What is relevant from the example, is the fact that the actions like the above, by the Revenue are more forward looking and provide for non-adversarial regime to kick off in India which is undisputedly the need of the hour.

CBIC website - Information for Public -ITC

From an enhancement of compliance perspective, the internet site of CBIC should contain information on defaulters of GST, parties against whom Invoice frauds are being investigated etc so that the Trade at large are informed of unscrupulous parties and refrain from buying Goods and Services from them. This information can go a long way in making tax payers aware, before making contracts for purchases.

At this juncture it is important to refer to the current issues surrounding ITC credits and fraudulent invoices. While the Trade and Industry welcome any step to prevent unscrupulous traders taking advantage of the ITC credits in the GST regime, it will be fruitful also to examine the view of the Board as recent as 2018 reported in [Circular](#) given below.

"Decision of the High Court of Hyderabad dated 01.07.2017 for the state of Telangana and the State of Andhra Pradesh in CEA No. 27 of 2004 in the case of M/s Hetero Drugs Ltd., Bonthapally village, Medak District.

43.1 Department has accepted the order of the Hon'ble High Court of Hyderabad where the Hon'ble High Court held that in the absence of any perversity of fact and based on the submissions made by the learned standing counsel for the Department, the impugned Final Order can't be interfered with. It also held that in the present appeal there was no challenge with respect to the aspect of the limitation and that the appeal is devoid of merits.

43.2 In the matter, assesses imported raw materials to manufacture pharmaceutical drugs engaging a CHA. CHA utilised demand drafts issued by different parties to discharge customs duty liability while clearing the goods from the customs bonded warehouse. Party took credit of CVD. The demand of credit availed on basis of forged/fake documents was confirmed. CESTAT set aside the Commissioner's OIO stating that Hetero Drugs is not responsible for the alleged acts of their CHA and company has availed the credit of CVD which it tendered by the demand draft. CESTAT also led that there was no knowledge on the part of Hetero Drugs Ltd that the Bill Of Entry being sent to them was fabricated. Department's appeal was dismissed by High Court."

Circulars issued in the past wherein Department accepted the decisions of Courts in cases under erstwhile regime

It is important to observe that under the erstwhile regime the Board issued Circulars of decisions of HC and Tribunals accepted by it and in this regard one can refer to the 2018 Circular of the Board vide No. [1063/2/2018-CX](#) dated 16 Feb 2018. This Circular addressed important issues, views of the Board in this regard, which is reproduced below-

"Field formations send SLP & CA proposals to the Board. Many of them after examination are not approved and such decisions of High Courts & Tribunals thus attain finality. It has been decided to disseminate such information to the field formations. Attention is invited to sixty-three orders of different High Courts summarized in this Circular which have been accepted by the Department. In fourteen of these orders, Hon'ble High Courts have decided various questions of law. In the rest forty-nine cases the Hon'ble High Courts have delivered judgments based on settled case law or have decided points of facts or have dismissed the appeal on monetary grounds. The said orders have been complied in this Circular so that cases pending in the field can be expeditiously decided, if the questions of law or facts involved are identical.

2. The Circular has two parts, namely Part I and Part II, where Part I comprises of the orders of various High Courts in which points of law have been decided and Part II comprises orders which have been decided on facts or have been dismissed on monetary limits. All the orders have been accepted by the Department and against them no SLP etc has been preferred in the Hon'ble Supreme Court.

3. This exercise has been undertaken as an endeavour to reduce litigations so that cases on similar questions of law or identical case on facts pending in your jurisdictions can be decided."

Under the GST regime, initiatives like the above, will have to be taken at regular intervals of at least 3 to 6 months so that endeavour to reduce litigation is a continuous exercise.

Summary

Considering the future of GST lies in the strengthening of the mutual trust and reduction of litigation, it is imperative that consistent steps are taken in a tax payer friendly manner. The above suggestions, if implemented, will enhance customer and taxpayer satisfaction.

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