

Landmark Judgements under GST

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Landmark judgements under GST - Constitution

- Colourable legislation- Constitution (101 Amendment) Act, 2016 expressly provides that the Parliament shall, "by law" on the recommendation of the GST Council, provide for compensation to the states for loss of revenue arising on account of implementation of the GST
- These two levies were different and there was no overlapping between them
- Parliament's residuary power under Article 248 of Constitution of India read with Articles 246 and 246A ibid - It was immaterial that no entry in List II or List III of Seventh Schedule refers to GST Compensation Cess
- Clean Energy Cess - Set off against Compensation to States Cess - It was not permissible in absence of legislative policy
- ***(SC) - UOI Vs Mohit Minerals Pvt Ltd [2018-TIOL-05-SC-GST]***

Landmark judgements under GST - Constitution

- Legislature has vested the government with final power for levying and exempting any supply from tax, only limitation is to act on recommendations of council.
- State does not have to tax everything in order to tax something and it is entitled to pick and choose, if it does so reasonably.
- Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser; the wisdom and advisability of the policies are ordinarily not amenable to judicial review
- ***(Delhi HC) - M/s Del Small Ice Cream Manufacturers Welfare's Association (REG) Vs UOI [2021-TIOL-349-HC-DEL-GST]***

Landmark judgements under GST - Constitution

- Split judgment rendered on the Constitutional validity of levying GST on Cross border. Intermediary services - Difference in opinion, matter to be placed before CJI.
- Whether a law or a provision is unconstitutional or not, has to be decided by the Court on the touch-stone of the Constitution.
- Courts should proceed to construe a statute with a view to uphold its constitutionality.
- Fundamental concern of the Court should be to inspect firstly the **existence of enacting power** and once such power is found to be present, then next is to ascertain whether the **enacted provision impinges upon any right enshrined** in Part-III of the Constitution.
- Intermediary Services are specifically dealt with in section 13(8)(b), the question of application of general provision of Section 2(6) of export of services would not arise
- *(Mumbai HC) - DHARMENDRA M JANI Vs UNION OF INDIA AND OTHERS [2021-TIOL-1297-HC-MUM-GST] and [2021-TIOL-1326-HC-MUM-GST]*

Landmark judgements under GST - Constitution

- Thus the Constitution does not empower imposition of tax on export of services out of the territory of India by treating the same as a local supply.
- express bar under clause (1) of Article 286 that no law of a state shall impose or authorize imposition of a tax on the supply of goods or services or both where such supply takes place in the course of import into or export out of the territory of India.
- However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides being beyond the charging sections of both the Acts
- It is a settled legal proposition that decision of one High Court is not binding on another High Court though it deserves due consideration and certainly has a high persuasive value.
- In other states or outside the territorial jurisdiction of that High Court it may at best have only persuasive effect.
- ***[2021-TIOL-1326-HC-MUM-GST]***

Landmark judgements under GST - Constitution

- Parliament has exclusive power under Article 246A to frame laws for inter State supply of goods or services.
- contention of the petitioner that it would amount to double taxation is also not tenable in eyes of law because the services provided by the petitioner as intermediary would not be taxable in the hands of recipient of such service, but on the contrary a commission paid by the recipient of service outside India would be entitled to get deduction of such payment of commission by way of expenses and, therefore, it would not be a case of double taxation

(Gujarat HC) - Material Recycling Association of India Vs UOI [2020-TIOL-1274-HC-AHM-GST]

Landmark judgements under GST - Constitution

- IGST paid on Ocean freight under RCM can be claimed as refund even beyond 2 years provided u/s 54 as the said amount is collected by Revenue without authority of law.
- Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law.
- Since the amount of IGST collected by the Central Government is without authority of law, the Revenue is obliged to refund the amount erroneously collected.
- The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable.
- ***(Gujarat HC) - Comsol Energy Pvt. Ltd. Vs. State of Gujarat [2021-TIOL-1334-HC-AHM-GST]***

Landmark judgements under GST - Levy

- Article 366(12) of the constitution allows the legislature to classify lottery as goods and come within definition of actionable claims
- lottery is an 'actionable claim' and constitutes goods or moveable property
- Definition of 'goods' under Article 366(12) permits State Govts to classify lottery & 'goods' & tax it
- As lotteries generally classify as 'goods' & have been kept outside purview of 'actionable claims' which do not attract GST, lotteries consequently are taxable under CGST Act
- *(Kolkata HC) - Teesta distributors v union of India [2018-TIOL-2882-HC-KOL-GST]*

Landmark judgements under GST - Levy

- Levy governed by only those enactments, which have been enlisted in section 174 are abolished, market fee is leviable as it is not mentioned in that section
- 'Timber' has been specifically enumerated at Serial no. 9 of the Schedule appended to the Act and this being the fact situation, the timber of 'Imarti Lakadi' is unquestionably an agricultural produce exigible to Mandi fee under the Act of 1961
- Market fee leviable under the Act of 1961 neither finds mention in any of the repeal and saving provisions nor can it be so done as the market fee is leviable under a separate enactment under the State's power to legislate under Entry 66 of the List-II of the VII Schedule
- ***(Rajasthan HC)- Imarti Lakdi Vyapari Sansthan Jodhpur Vs State of Rajasthan [2019-TIOL-1082-HC-RAJ-GST]***

Landmark judgements under GST - Levy

- Employees working at corporate office providing services to other offices(distinct persons as per GST) have no employer and employee relationship, valuation should be done as per rule 28 (***Karnataka AAAR) - In case of M/s COLUMBIA ASIA HOSPITALS PVT LTD [2018-TIOL-31-AAAR-GST]***)

Landmark judgements under GST - Levy

- IGST Act does not contemplate levy and collection of tax from a person who is neither the supplier nor the recipient of the supply, levying the tax on the supply of ocean freight service and making the importer of goods as the person liable for paying the tax are unconstitutional
- This process makes GST a tax on value addition at each stage. The consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages
- it appears that while issuing the impugned notification, the delegated legislature had in mind the provision of the Finance Act, 1994, rather than keeping in mind the object of bringing the GST
- The obligation to pay consideration is also of the foreign exporter. the shipping line cannot recover the consideration from the writ-applicant.
- location of the recipient of the service, i.e. the foreign exporter, is not in India but outside India
- ***(Gujarat HC) -Mohit Minerals Pvt Ltd Versus Union Of India & 1 Other [2020 (1) TMI 974 - Gujarat High Court]***

- DFS situated after the immigration counter at the arrivals or departure hall of international airport terminals shall be deemed to be the area beyond the customs frontiers of India, the same would not apply to DFS at Domestic Security Hold Area ***(Bombay HC) - A-1 Cuisines Private Limited Vs UOI [2018-TIOL-2916-HC-MUM-GST]***
- The entertainment itself being a different content, will not fit into the act of service provided by the theater and does not amount to double taxation ***(Madras HC) - Balaji Theatres Vs The Commissioner, Oulgaret Municipality [2019-TIOL-2637-HC-MAD-GST]***

Landmark judgements under GST - Levy

- Supply of goods by the charitable trust is a business activity carried out for pecuniary benefits and required to take registration ***(Gujarat HC) - Nagri Eye Research Foundation V/s Union of India [2021-TIOL-1532-HC-AHM-GST]***
- GST is applicable on compensation for alternate accommodation/damages for delayed handover of possession ***(Maharashtra AAR) - In case of ZAVER SHANKARLAL BHANUSHALI [2018-TIOL-84-AAR-GST]***
- Manpower services to Govt. Department related to function entrusted to Panchayat/Municipality exempt and other cases GST @ 18% ***(Karnataka AAR) - In case of Madivalappa Karveerappa Belwadi [TS-402-AAR(KAR)-2021-GST]***

Landmark judgements under GST - Levy

- Renting of commercial property by Tamil Nadu Labour Welfare Board to Govt./Business Entity not 'exempt', holds that Applicant is not covered by the definition of 'Local Authority' (***Tamil Nadu AAR***) - ***In case of M/s TAMIL NADU LABOUR WELFARE BOARD [2021-TIOL-188-AAR-GST]***
- Private Coaching Institute for CA, CS are not considered as 'educational institution' to avail the exemption (***Kerala AAR***) - ***In case of M/s LOGIC MANAGEMENT TRAINING INSTITUTES PVT LTD [2020-TIOL-235-AAR-GST]***

Landmark judgements under GST - Valuation

- Horse race clubs liable to pay GST only on commission and not entire bet amount (***Karnataka HC***) - ***Bangalore Turf Club Limited and Mysore Race Club Limited V/s the State of Karnataka [2021-TIOL1271-HC-KAR-GST]*** –
- Upto 7500 exempted means only excess to be paid (***Madras High Court***) ***GREENWOOD OWNERS ASSOCIATION vs. UOI [2021-TIOL-1505-HC-MAD-GST]***
- The value of construction services should be taken as 2/3rd value of both the agreements when there are two separate agreements entered i.e. 'Sale of undivided share of land' and 'Construction services' with customers (***Tamil Nadu AAR***) – ***In case of M/s KARA PROPERTY VENTURES LLP [2019-TIOL-86-AAR-GST]***

Landmark judgements under GST - Valuation

- Cost of the diesel incurred for running DG Set in the course of providing DG Rental Service is nothing but additional consideration for the renting of DG Set as per Section 15 of the KGST/CGST Act and attracts 18% GST ***(Karnataka AAR) - In case of M/s GOODWILL AUTO'S [2021-TIOL-191-AAR-GST]***
- Amount recovered from the employees towards car parking charges payable would be deemed as "Supply of service". Value of the supply would be nil, subject to the fulfilment of the conditions prescribed for pure agent ***(Uttar Pradesh AAAR) – In case of M/s ION TRADING INDIA PVT LTD [2021-TIOL-11-AAAR-GST]***
- Reimbursement of toll charges incurred is merely a recovery of portion of value of supply and pure agent benefit cannot be availed i.e., to be included in the value of supply. ***(West Bengal AAR) – In case of M/s PREMIER VIGILANCE & SECURITY PVT LTD [2018-TIOL-243-AAR-GST]***

Landmark judgements under GST - ITC

- ITC on goods/services used in the construction of mall can be used against GST payable on rental income ***(Orissa High Court) - Safari Retreats Pvt Ltd vs Chief Commissioner of CGST [2019-TIOL-1088-HC-ORISSA-GST]***
- ITC not to be reversed in relation to loss arising from manufacturing process. ***(Madras HC) - ARS Steels & Alloy International Pvt. Ltd. Vs The STO [2021-TIOL-1393-HC-MAD-GST]***
- Electricity generated by the solar power plant can only be used for captive consumption and, is qualified as an input used in the manufacture of end product. Hence, ITC can be availed on expenditure incurred for installation of solar power plant ***(Tamil Nadu AAR) - In case of M/s KLF NIRMAL INDUSTRIES PVT LTD [2021-TIOL-181-AAR-GST]***

Landmark judgements under GST - ITC

- ITC on purchase of ambulance is not admissible, as it is a motor vehicle. Further only rent a cab, life and health insurance are covered under obligation of employer to be provided to employee. ***(West Bengal AAR) - In case of M/s NIPHA EXPORTS PVT LTD [2019-TIOL-55-AAR-GST]***
- ITC would not be available on building material and services to the extent of capitalization, ITC would be available on supply of wood, mica, etc., and on labour supply for repair of existing furniture and fixtures. ***(Rajasthan AAR) – In case of M/s RAMBAGH PALACE HOTELS PVT LTD [2019-TIOL-155-AAR-GST]***
- ITC would not be available on purchase of such motor vehicles, when the outward supply is renting of motor vehicle. ***(West Bengal AAR) – In case of Mohana Ghosh [2019-TIOL-179-AAR-GST]***

Landmark judgements under GST – E-way bill

- Tax evasion cannot be presumed merely on account of expiry of e-Way bill. ***(Telangana HC) - Satyam Shivam Paper Pvt Ltd, (2021-TIOL-1338-HC-TELANGANA-ST)***
- For the purpose of such inquiry or investigation, the two trucks may not be kept in the custody of the department, trucks shall be released by taking an undertaking in writing on oath ***(Gujarat HC) - M/s. Surya Roadways Vs Senior Intelligence Officer [M/s. Surya Roadways Vs Senior Intelligence Officer]***
- Unloading of goods at a destination does not depend on which destination arrives first. It depends on the nature, quantity and weight of the goods, it is for the transporter to decide which goods have to be unloaded first ***(Telangana HC) - Vijay Metal V/s DCTO [2021-TIOL-1084-HC-TELANGANA-GST]***

Landmark judgements under GST – TRAN credit

- All taxpayers are permitted to file Tran-1 on or before 30.06.2020 (***Delhi High Court***) - ***Brand Equity Treaties Ltd. vs. UOI [2020-TIOL-900-HC-DEL-GST]***
- Accumulated E-cess, SHE-cess and KK-cess can be carried forward under GST as Transitional credit. (***Madras High Court***) - ***Sutherland Global Services Private Limited Vs Assistant Commissioner CGST and Central Excise [2019-TIOL-2516-HC-MAD-GST]***
- Assessee is entitled to file refund of Cenvat Credit of Cesses as on 30-June-2017. (***Chandigarh CESTAT***) - ***SCHLUMBERGER ASIA SERVICES LTD Vs COMMISSIONER OF CE AND ST, GURGAON-I [2021-TIOL-313-CESTAT-CHD]***



Thank You

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