

## Part-69-One Pager Snapshot to the Latest Cases

CA Arpit Haldia

S.N.	Section	Case Subject	Case	Held
1.	<b>Section 2(6) of IGST Act, 2017</b>	Export of Service and ratio decidendi of the decisions which were rendered during service tax regime.	<b>Bimal Jhunjunwala v. Assistant Commissioner, CGST &amp; CX, BBD Bag I [2023] 153 taxmann.com 590 (Calcutta)</b>	Appellant had challenged order dated 19.08.2022 by which application for refund was rejected. The order rejecting the refund stated that from application filed, it was observed that importer had sent remittance through an agency (WISE US Inc.) located outside India, who has remitted INR to the appellant and thus remittance was not received in foreign convertible exchange by the appellant. Therefore, considering the definition "Export of Service" it violated condition (iv) of Section 2(6) of IGST Act, 2017. The impugned order while referring to decisions, relied by the appellant, stated that those decisions are relating to erstwhile service tax regime and thus not applicable.  <b>High Court held</b> that since the issues have not been thoroughly adjudicated either by the Adjudicating Authority or by the Appellate Authority, therefore matter was remanded back to consider all the issues in a holistic manner and <b>take note of the ratio decidendi which can be culled out in various decisions which have been relied by the appellant, more particularly the decisions which were rendered during the service tax regime.</b>
2.	<b>Section 5 and Section 6 of CGST Act, 2017</b>	Stay of Scrutiny Proceedings as Audit U/Sec 65 completed	<b>Gopeshwar Iron &amp; Steel Works (P.) Ltd. v. Superintendent, CGST &amp; CX, Range 1 [2023] 153 taxmann.com 589 (Calcutta)</b>	Whether respondent authority can proceed further pursuant to notice issued under Section 61 of the CGST Act, 2017 particularly when Audit under Section 65 has been completed and for the same period the DGGI has already issued summons and appellants have submitted documents and the matter is pending before the DGGI.  <b>High Court allowed</b> the appeal and the <b>notice issued under Section 61 was stayed till the disposal of the writ petition.</b>
3.	<b>Section 6 of CGST Act, 2017</b>	Investigation Proceedings by Multiple Authorities	<b>Hanuman Enterprises (Opc) (P.) Ltd. v. Additional Director General Directorate of GST Intelligence [2023] 153 taxmann.com 565 (Delhi)</b>	In the present matter, DGGI, Zonal Unit, Jaipur conducted an investigation in respect of the petitioner and it was stated by the petitioner that the DGGI, Jaipur cannot conduct any investigation as the petitioner has already been investigated for the same period by Delhi State Authority. It was further stated that petitioner's ITC was also blocked by the Delhi State Authority but the same has since been unblocked on expiry of the stipulated period of one year. Delhi State Authorities who appeared before the Court stated that they have not conducted any investigation and petitioner's ITC was blocked on account of a communication received from DGGI, Jaipur and petitioner's bank account was blocked at the instance of DGGI, Chennai. DGGI Chennai stated that they have not investigated the petitioner but was concerned with an entity named M/s Balaji Enterprises.  <b>High Court held</b> that in the aforesaid view, <b>provisions of Section 6(2)(b) of the CGST Act are not attracted. In the present case, the Delhi State Authority administratively concerned with the petitioner, has clarified that it has not carried out any investigation but had issued orders regarding blocking of the account at the instance of DGGI, Chennai.</b> DGGI, Chennai had also stated that it has not carried out any investigation in respect of the petitioner company. The disclosed principal place of business of the petitioner was the same as that of some other connected entities, which had investigated by DGGI, Chennai. Therefore, no advantage can be drawn by the petitioner on that account. <b>The petitioner had a separate tax registration. If any of the authorities found it necessary to investigate the petitioner based on certain information, said investigation cannot be stopped or interdicted on account of investigation conducted with respect of any other entity.</b>
4.	<b>Section 129 of CGST Act, 2017</b>	Applicability of Amended provisions of Section 129 to proceedings initiated prior to 1/1/2022	<b>Mohin Khan v. State Of C.G [2023] 153 taxmann.com 429 (Chhattisgarh)</b>	In the present matter, petitioner had preferred an application for releasing of vehicle which was detained 04.01.2021, in the light of amended provision of Section 129 of the GST Act, which came into force w.e.f. 1st January, 2022. Revenue contended that the said amended provision are not applicable in the instant case as the, said amendment has been given prospective effect.  <b>High Court accepted</b> the contention that <b>the amended provision of Section 129 of the GST Act, which has come into effect on 1st January, 2022, cannot be made applicable in the case of the petitioner as the proceedings were initiated on 4<sup>th</sup> January 2021.</b> Therefore, the prayer of the petitioner for release of the vehicle was accordingly rejected.