

GST/ IDT Case Law Update – 4

Credit shall be allowed on the stock of coal on which Clean Energy Cess has been paid in the erstwhile law and thus payment of Compensation Cess under GST shall not be required if the assessee has proper documents to claim the credit of such cesses paid – *Delhi High Court.*

The summary is based on the interim order. The matter was posted on 26.10.2017 – however, the status of the case is not known.

I. Background: The Petitioner is a trader of imported as well as Indian coal having its operation in various parts of country. This petition is preferred before the Honourable High Court of Delhi challenging the levy of Compensation Cess under GST. Under the erstwhile laws, Clean Energy Cess was leviable.

II. Disputes involved/Point of dispute: Compensating the States for loss of revenue cannot be done by levy of Compensation Cess as such, levy is not permitted by Section 18 of the Taxation Laws (Amendment) Act, 2017 ('TLA Act')

III. Arguments

1. On behalf of the assessee:

- a. The Petitioner submits that under the erstwhile law, Clean Energy Cess was levied @ Rs. 100/tonne while under GST the same has been introduced in the name of Compensation Cess @ Rs.400/tonne. Therefore, the petitioner is required to pay Compensation Cess on the stock of coal under the GST regime on which Clean Energy Cess has already been paid under erstwhile law. Also, the Petitioner is not entitled to claim transitional credit of such Cess paid earlier under GST laws.
- b. The Petitioner contends that Parliament did not propose or intend to use the GST regime to impose new cesses
- c. The Petitioner submits that Clause 18 of the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 intended levying an additional tax not exceeding 1% on supply of goods in the course of inter-State trade or commerce for a period of two years or for such other period as the GST Council recommended and would be assigned to the States in the manner prescribed thereunder. However, during the presentation of the Bill in the Parliament, Clause 18 was dropped.

- d. The Petitioner further submits that Section 18 of the Constitution 101st Amendment Act does not enable the Parliament to levy any Cess which stood abolished in terms of the Third Schedule of the Taxation Laws Amendment Act even if the purpose was to compensate the States for loss of revenue, that had to be done by some other means as Section 18 does not permit levy of such Cess.
- e. The Petitioner also states that it is a bona fide trader in coal, carrying on business for a long time and the additional levy of Cess according to him is clearly without the authority of law. Moreover, the representations made by them to the GST Council and to the Central Government have not received any response.

IV. Legal Principles:

1. **Clause 4(a) of Article 279A**- states that The Goods and Services Tax Council shall make recommendations to the Union and the States on the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax(GST)
2. **Clause 4(f) of Article 279A**- states that The Goods and Services Tax Council shall make recommendations to the Union and the States on any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster
3. **Section 9 of CGST Act, 2017**- provides the provision for levy and collection of tax for intra state supply of goods or services or both
4. **Section 5 of IGST Act, 2017**- provides the provision for levy and collection of tax for inter-state supply of goods or services or both

- V. Scope of decision:** The Hon'ble High Court admitting the case passed an interim order holding that in the event the Petitioner succeeds in the present, the Petitioner would be entitled for refund of Clean Energy Cess paid under the erstwhile Act. Further, it was also held that the officers of the concerned department to visit the premises of the petitioner and verify the stock on which such cess has been paid by it. Upon verification of proof of payment, the petitioner shall not be required to pay Compensation Cess for effecting sale and clearances. Also, no coercive steps will be taken against the Petitioner for recovery of such Cess. However, on those stocks for which the Petitioner will not be able to produce a satisfactory proof of payment of the Clean Energy Cess under the erstwhile law,

the Petitioner will be required to pay the cess under this Act.

- VI. Conclusion:** Credit shall be allowed on the stock of coal on which Clean Energy Cess has been paid under the erstwhile law and thus payment of Compensation Cess under GST shall not be required if the assessee has proper documents to claim the credit of such cesses paid.

[Mohit Minerals Private Limited versus Union of India & Another [2017 (8) TMI 1194 – Delhi High Court]

The GST portal issues faced by the assesseees should be resolved by the respondent department as the same is the responsibility of the authorities to work on the mechanism and put it in place – Bombay High Court (The summary is based on the interim order)

I. Background: The Petitioner-Assessee is engaged in manufacturing of robotic and automation equipment. The Petitioner-Assessee was unable to access the GST portal and accordingly, was unable to file the returns, pay the taxes, generate the e-way bills etc., Therefore, the Petitioner-Assessee has preferred this writ petition.

II. Disputes involved/Point of dispute: Petitioner-Assessee is unable to file the GST returns, pay the taxes, generate the e-way bills etc., Therefore, the Petitioner-Assessee has preferred this writ petition.

III. Arguments

1. On behalf of the assessee:

- a. Even after getting the provisional registration number, access to GST portal was not provided and as a result Petitioner-Assessee was unable to file the GST returns. Consequentially, the Petitioner-Assessee was liable to pay late fee and remit taxes with interest.
- b. The petitioner was unable to generate e-way bills which affected his business as in the absence of e-way bill the Petitioner-Assessee could not effect the movement of goods.
- c. The Petitioner-Assessee further, submitted that after filing of writ petition before this Court, the final registration number was allotted to them and GST portal access was given. However, the access was not complete and it does not accept the return without payment of late fee from October 2017 onwards

IV. Scope of decision: The Hon'ble High Court relied on the judgement passed by the Hon'ble High Court of Allahabad in Writ (Tax) No. 67 of 2018 and the order of the Division Bench of that Court

dated 24th January 2018 which said that - “the respondents before it to reopen the portal and in the event it is not done, there is further direction to entertain the application of the petitioner before the Allahabad High Court manually and pass orders on it after due verification of the credits as claimed by the petitioner before the Allahabad High Court “. Further, it directed that the said order would not be restricted to the petitioner in this case alone.

- V. Conclusion: The directions were issued to the Respondent-Department to grant the access to the GST portal to the Petitioner-Assessee and also to all other assessees. The same is the responsibility of the authorities to work on the mechanism and put it in place.**

[M/s Abicor and Binzel Technoweld Pvt. Ltd. Versus The Union of India and Anr. [2018 (2) TMI 766 – Bombay High Court]

The adjudication proceedings on the goods detained / seized should be completed expeditiously as the GST Law and Rules made thereunder itself provides mechanism for adjudication of such cases as well as for provisional release of goods– Kerala High Court

- I. Background:** The Petitioner preferred this petition before the Honorable High Court in order to seek directions for releasing the seized goods by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017
- II. Disputes involved/Point of dispute:** The Petitioner-Assessee seek expeditious release of the goods detained by the Respondent-Department.
- III. Legal Principles:**
- Section 129 of the CGST / SGST Act, 2017** – Provides for detention, seizure of goods or conveyances carrying goods in transit for contravening the provisions of CGST / SGST Act, 2017 or Rules made therein. It also specifies that the goods seized / detained shall be released on payment of applicable tax, penalty or upon furnishing the security by way of bond in the Form GST INS – 04
 - Rule 140 of CGST / SGST Rules, 2017** – Prescribes execution of a Bond in FORM GST INS-04 for the value of goods and Bank Guarantee equivalent to the amount of applicable tax, interest and penalty payable for provisional release of seized goods apart from imposing an obligation on the assessee-dealer to produce the goods as and when demanded

- IV. Interpretations:** The GST law and Rules made thereunder provide for a mechanism for adjudicating the issue involving detention and seizure of goods. The relevant provisions also permit provisional release of goods on furnishing of the bond in Form GST INS – 04.
- V. Scope of decision:** The Hon’ble High Court considering the relevant provisions of the law directed the Respondent-Department to complete the adjudication proceedings within a week.
- VI. Conclusion:** In case of detention and seizure of the goods or conveyances, the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously.

[M/S Anappuram Steels Private Limited vs. The Commissioner State Goods And Service Tax Department ,Thiruvananthapuram and the Secretary Government of Kerala, Taxes Department, Thiruvananthapuram 2018 (2) TMI 1622 – Kerala High Court]

Goods / services can be exported without payment of IGST by filing LUT even though bond is not furnished as the requirement for filing bond for export of goods/services is done away by way of rescinding the circular which specified such requirement– Delhi High Court

- I. Background:** The Petitioner preferred this petition in order to export of goods/services without payment of Integrated Tax through Bond.
- II. Disputes involved/Point of dispute:** Whether for the purpose of export of goods/services without payment of Integrated Tax, furnishing of Bond with bank guarantee is required or LUT
- III. Legal Principles:**
- 1. Notification No. 37/2017-Central Tax dated 04.10.2017** specifies that LUT shall be required for supply goods or services for export without payment of integrated tax in place of a bond for all taxable person except for the person specified in the notification . Moreover, procedures for submission of the LUT are also specified in the said notification.
 - 2. Circular No. 8/8/2017-GST dated 04.10.2017** wherein it is clarified that the facility to furnish the LUT is extended all the taxable persons effecting exports of goods. This Circular was issued by rescinding the Circular No. 4/4/2017-GST dated 07.07.2017.
- IV. Interpretations:** The provision of furnishing Bond with bank guarantee is replaced with the provision of Letter of Undertaking

V. Scope of decision: The Honourable High Court dismissed the petition on the ground that the conditions no longer exists since, the requirement for filing bond for export of goods / services is done away by way of rescinding the Circular which specified such requirements.

VI. Conclusion: Goods / services can be exported without payment of IGST by filing LUT even though Bond is not furnished.

[Aphro Ecommerce Solutions Pvt. Ltd. Versus Union of India & Others [2017 (11) TMI 731 – Delhi High Court]

The order passed for seizure of goods under U.P.GST Act, 2017 instead of IGST Act, 2017 during interstate movement of such goods is impugned - Allahabad High Court

I. Background: The Petitioner preferred this petition before the Honourable High Court in order to seek directions for releasing the seized goods by the Respondent-Department under Section 129 of the CGST / SGST Act, 2017

II. Disputes involved/Point of dispute: Whether the seizure of goods under Section 129 of U.P.GST Act, 2017 during interstate movement of such goods is proper in the absence of the provision of E-way Bill.

III. Arguments

1. On behalf of the assessee:

- a. With respect to supplies of goods and service made within U.P, the provisions of U.P.GST Act, 2017 shall be applicable while for all the interstate supplies, the provisions of IGST Act, 2017 shall be applicable.
- b. The said goods were transported from another State to U.P, thus seizure of goods under Section 129 of U.P.GST ACT, 2017 is not sustainable as the seizure can only be done under Section 129 of IGST Act, 2017

2. On behalf of the Revenue: Merely, on the ground that wrong provision has been mentioned in the order, the said order cannot be considered as invalid

IV. Legal Principles:

1. Section 129 of U.P.GST and CGST Act, 2017 -provides for detention or seizure of goods in

transit along with conveyance and documents in case a person transport any goods or stores such goods in contravention of the provision of the GST Act, 2017 or Rules thereunder, and can be only released after payment of the tax amount and penalty as prescribed. However, no such tax ,interest and penalty can be imposed without issuing a notice and providing an opportunity of being heard to the concerned person further proceedings can be initiated in case of failure of payment of the amount

2. **Section 20 of IGST Act, 2017-** provides that the provisions of CGST Act, 2017 shall apply mutatis mutandis to IGST Act, 2017 in case of specified areas

V. Scope of decision: The Hon'ble High Court directed to release the goods along with vehicle seized due to the perishable nature of goods subject to the petitioner furnishing indemnity bond and security (other than cash and bank guarantee) in respect of the proposed tax and penalty on the value of the goods as disclosed in documents accompanying the vehicle.

VI. Conclusion: In case of detention and seizure of the goods or conveyances, the adjudication of the tax, interest and penalty payable thereon should be completed expeditiously.

[Proactive Plast Private Limited Versus State of Uttar Pradesh and 2 Others [2018(2) TMI 663-Allahabad High Court]

Detention of goods merely for infraction of the procedural rules is without jurisdiction as detention and confiscation are the consequences of such movement of goods where there is an intention to evade payment of taxes - Kerala High Court

I. Background: The Petitioner-Assessee preferred this petition before the Honourable High Court in order to seek directions for releasing the seized non -taxable goods by the Respondent-Department

II. Disputes involved/Points of dispute: The Petitioner-Assessees seek expeditious release of the non-taxable goods detained by the Respondent-Department

III. Legal Principles:

1. **Taxable supply:** Section 2(108) of CGST and SGST Act, 2017 defines a taxable supply as a supply of goods or services or both which is leviable to tax under the GST Act, 2017

2. **Taxable person:** Section 2(107) of CGST and SGST Act, 2017, defines a taxable person as a person who is registered or liable to be registered under the GST Act, 2017
3. **Scope of supply:** Section 7 of CGST and SGST Act, 2017 provides the scope of the Supply as:
 - a. all forms of supply of goods/services or both such as sale, transfer, barter ,exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
 - b. import of services for a consideration whether or not in the course or furtherance of business;
 - c. the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - d. the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
4. **Activities to be treated as supply even if made without consideration:** Schedule I of CGST and SGST Act, 2017 specifies the activities to be treated as supply even if made without consideration. Such cases are:
 - a. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets
 - b. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business
Provided that if, in a financial year a employer gives a gift to an employee for a value upto rupees fifty thousand then such gift shall not be treated as supply of goods or services or both.
 - c. Supply of goods by -
 - i. a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - ii. an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
 - d. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business
5. **Detention, seizure and release of goods and conveyances in transit:** Section 129 of CGST and SGST Act, 2017 provides for detention or seizure of goods in transit along with conveyance and documents in case a person transports any goods or stores such goods in contravention of the provision of the GST Act, 2017 or Rules framed thereunder, and can be only released after payment of the tax amount and penalty as prescribed. However, no such tax, interest and penalty can be imposed without issuing a notice and providing an opportunity of being heard to the concerned person further proceedings can be initiated in case of failure of payment of the

amount.

6. **Confiscation of goods or conveyances and levy of penalty:** Section 130 of CGST and SGST Act, 2017 specifies the provision with respect to confiscation of the goods and imposition of penalty, if any person:
- a. Supplies any goods in contravention of the provisions of the GST Act, 2017;
 - b. Non accounting of taxable goods;
 - c. Supply of goods without obtaining registration;
 - d. Contravention of the provisions with intent to evade taxes under GST Act, 2017;
 - e. Use a carriage to transport goods in contravention of the provisions of GST Act, 2017 and Rules framed thereunder unless the owner of the carriage proves that such movement of goods has been done without his knowledge.

Further, the concerned person may be liable to fine, tax, interest and penalty to the extent specified in this section. Moreover, other provisions shall apply accordingly.

7. Rule 138 of CGST / SGST Rules, 2017 specifies the provisions and procedures with respect to E-way to be issued prior to movement of goods exceeding value of rupees fifty thousand.
8. Rule 55 of CGST Rules, 2017 specifies the provisions and manner by which the goods shall be transported without issuance of an invoice. Further, as per Rule 55(3) of CGST Rules, 2017 specifies that in case goods are transported in lieu of delivery challan, the same has to be declared in the E-way bill specified in Rule 138 of CGST Act, 2017.

IV. Interpretations: None

- V. Scope of decision:** The Hon'ble High Court considering the relevant provisions of the law directed the Respondent-Department to release the seized goods after levying penalty for the contravention of the provisions under GST Law if any.

- VI. Conclusion:** The goods during its movement can be detained and confiscated only if the proper officer has reason to believe that such movement is with an intention to evade payment of taxes. Detention of goods on the grounds that the e-way bill is not accompanied without questioning the other documents during the movement would not lawful.

[Ravi Parameswaran Pillai, Proprietor M/s Devi Chemicals vs. The Assistant State Tax Officer, State Goods and Service Tax Department Kerala and Assistant Commissioner (Assessment), Special Circle, Thiruvananthapuram [2018 (2) TMI 1296- Kerala High Court]

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Secretary

Indirect Taxes Committee

The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62,

NOIDA (U.P.) India

Website: www.itdc.icai.org