

# RECENT LANDMARK JUDGEMENTS UNDER INDIRECT TAX

Vikram S. Nankani (Sr. Adv.)  
Bombay Chartered Accountants'  
Society

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## Recent Decisions under GST

# JCB India Ltd (Bom HC)

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- Issue
  - Challenge to restriction of one year provided under Section 140(3)(iv) of the CGST Act only for dealers / importers/ depot for transitioning of credit into GST regime and not for manufacturers / service providers
- Held
  - CENVAT credit is a mere concession and it cannot be claimed as a matter of right
  - If the CENVAT Credit Rules under the existing legislation themselves stipulate and provide for conditions for availment of that credit, then, that credit on inputs under the existing law itself is not a absolute but a restricted or conditional right
  - If right to availment of CENVAT credit itself is conditional and not restricted or absolute, then, the right to pass on that credit cannot be claimed in absolute terms
  - Thus, one cannot pick and choose a condition for challenge by alleging that the availment is undisputedly conditional but one of the conditions, though having nexus with the availment, is unconstitutional or arbitrary and excessive.

# Builders Association of Navi Mumbai (BOM HC)

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- Issue
  - Levy of GST on one time lease premium collected by CIDCO
- Held
  - Any lease or letting out of a building, including commercial, industrial or residential complex for business, either wholly or partly is a supply of service.
  - In terms of Section 7(2) of CGST Act
    - *activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*
  - No such notification has been issued under Section 7(2)
    - Absent that notification, merely going by the status of the CIDCO, it cannot be held that the lease premium would not attract or invite the liability to pay tax in terms of the GST Act.

# Carpo Power Ltd (P&H HC)

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- Issue

- Whether post introduction of GST and with amendment to Sales Tax laws where ‘goods’ cover only 6 specified products, can C-Forms be issued to purchaser of such goods under CST Act who is now registered under GST with respect to its output liability

- Held

- Registration can be granted where output liability is under CST Act or ‘any other sales tax law’ of the state
- Definition of ‘sales tax law’ wide enough to include State GST Law
- Even with amendment to CST Act, there is no provision for automatic / deemed cancellation of registration
- Purchaser will continue to be a ‘registered dealer’ under CST Act
  - Accordingly, C Forms can be issued to purchaser

# Abicor (Bombay HC)

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- Issue
  - Petition challenging denial of Credit on account of inability to upload TRAN-1 form due to System Error
- Circular No. 39/13/2018 – GST dated -03.04.2018
  - Only such registered person who could not upload TRAN-1 due to issues with digital signature can approach designated Nodal Agency
- HC Held (Decision on 24.04.2018)
  - Not just issues of digital signature
  - Benefit to be extended to all 'Technical Glitches' subject to proof
  - Last date of application to Nodal Agency extended to 10<sup>th</sup> May, 2018

# Authority for Advance Rulings

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- Krishi Kalyan Cess
  - Negative AAR Ruling [Decided on 05.04.2018], Mumbai Bench
  - Cannot be transitioned into GST under Section 140(1) as eligible credit
- Sale from Duty Free Shop
  - Negative AAR Ruling [Decided on 21.04.2018], Delhi Bench
  - Sale from duty free shops liable to GST

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## Recent Decisions under other Indirect Tax Laws



# Maharashtra Industrial Development Corporation (BOM HC)

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- Issue

- Service Tax on service charges collected from plot owners for providing various services such as management, maintenance and repair services

- Held

- Relied on Board Circular dated dated 18th December, 2006 bearing No.89/7/2006
  - Activities performed by sovereign / public authorities in public interest does not qualify as service provided in return for consideration
- Establishing and Managing Industrial Estates is one of the functions of MIDC under MID Act
- Relied on *Ramtanu Co-operative Housing Ltd* (SC decision)
  - MIDC is a wing of State Government
- No Service Tax on amounts collected for discharging sovereign functions

# Cellular Operators Decision (Delhi HC)...

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- Finance Act 2015 – Education Cess (EC) and Secondary and Higher Education Cess (SHEC)
  - EC and SHEC abolished
  - Rate of Excise Duty increased from 12 to 12.5%
  - Rate of Service Tax increased from 12.36% to 14%
  - Budget Speech
    - Both EC and SHEC are subsumed and accordingly consolidated increased rate of Excise Duty and Service Tax provided
- Issue
  - Whether accumulated EC and SHEC can now be used to set off against output Excise Duty and Service Tax liability, which includes the subsumed cesses?
    - Previously EC and SHEC was only permitted to be set off against EC and SHEC on final products or services

# ... Cellular Operators Decision (Delhi HC)

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- Findings

- Amendments omitted provisions relating to levy of EC and SHEC
  - Omission signifies deletion and accordingly, cannot be said that even after deletion it forms part of Excise Duty or Service Tax
- Budget Speech
  - Cannot be relied upon as they are prepared in different context
  - It is an economic, political and policy statement justifying levy of taxes
  - Cannot be relied to hold that EC and SHEC Continued where amendments specifically provide for omission / deletion
  - No such promise of continuation was there in Budget Speech
- No Vested Right
  - Relied on *Osram Surya (P) Ltd. Versus Commissioner of Central Excise, Indore, 2002 (142) ELT 5 (SC)*

# Bhayana Builders (SC)...

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- Issue
  - Inclusion of Free Supplies in Gross Amount Charged for providing taxable construction services
- Held - value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount'
  - The word “gross” means total amount charged under the contract without deducting expenses
    - Department cannot go beyond contract value
  - “Charged” would mean actually billed
    - Unless an amount is charged, cannot be included in value under Section 67
  - By using the words “for such service provided” the Act has provided for a nexus between the amount charged and the service provided

# ...Bhayana Builders (SC)

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- The cost of free supply goods provided by the service recipient to the service provider is neither an amount “charged” by the service provider nor can it be regarded as a consideration for the service provided by the service provider.
- The definition of “gross amount charged” [Explanation (c) to Section 67] only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient
  - It does not expand the meaning of the term “gross amount charged” to enable the Department to ignore the contract value or the amount actually charged by the service provid
- Relevance under GST – Section 15(2)(b) of CGST Act
  - (2) The value of supply shall include-
    - (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

# Intercontinental Consultants (SC)...

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- Issue
  - Validity of Rule 5(1) of Service Tax (Determination of Value) Rules 2006
- Held
  - Rules are framed for achieving the purpose behind the provisions of the Act
  - the value of taxable service shall be the gross amount charged by the service provider 'for such service'
  - This position did not change even in the amended Section 67 which was inserted on May 01, 2006
  - Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of subsection (1).

# ...Intercontinental Consultants (SC)

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- Mandate of sub-section (1) of Section 67 is manifest, viz., the service tax is to be paid only on the services actually provided by the service provider.
  - Realising that Section 67 does not include reimbursable expenses for providing such service, the Legislature amended Section 67 by Finance Act, 2015
    - Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure
  - reimbursable expenditure or cost would also form part of valuation of taxable services w.e.f. 14.05.2015
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- Relevance under GST – Section 15(2)(c) of CGST Act
    - (2) The value of supply shall include-
      - (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

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# THANK YOU

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