



Dimensions – 64th Edition

Judgments under Pre-GST era

Commercial Tax Officer v. Bombay Machinery Store¹

Issue

Whether the tax authorities can impose a timeframe within which delivery of the goods has to be taken from a carrier, for claiming benefit of exemption under section 6(2) of Central Sales Tax Act, 1956 (CST Act) available to sale by way of transfer of title whilst the goods are in transit?

Discussion

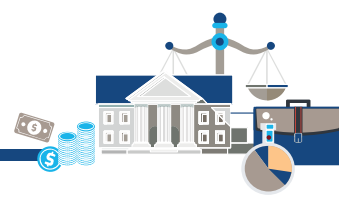
- The Respondent had purchased goods in 1995-96 from outside the State. The Respondent did not take the delivery of the goods from the carrier for more than a month and it remained with the carrier.
- Thereafter, the goods were sold to buyers within Rajasthan and the Respondent obtained the benefit of exemption under section 6(2)² of the Central Sales Tax Act, 1956 (CST Act).

- The claim of exemption was rejected by the revenue, placing reliance on circulars³ (circulars) issued by the Commissioner, Commercial Taxes Department, Rajasthan.
- As per the said circulars, if the consignee asks the transporter expressly or impliedly, to hold the goods until further directions then the carrier ceases to hold the goods as transporter and in the eyes of the law, the goods would be regarded as in possession of the consignee. This would amount to constructive delivery of goods and the benefit of section 6(2) of the CST Act would not be available in such case.
- The circulars imposed a time limit of 10 / 30 days for retention of goods in the carrier's godown, beyond which revenue would treat the goods as having obtained constructive delivery from the carrier to the consignee.
- Accordingly, after the expiry of the said period of 30 days, it was deemed that the Respondents have taken constructive delivery of goods and the sale by the Respondent to the purchasers in the State of

¹ 2020 (4) TMI 769 – The Hon'ble Supreme Court

² Section 6(2) of CST Act provides exemption from tax for any subsequent sale made during sale of goods in inter-state trade by transfer of documents of title of such goods on fulfillment of prescribed conditions

³ CCT Circular F.11(3)/CST/Tax/CCT/1997/1563 dated September 16, 1997 and CCT Circular F.11(3) CST/Tax/CCT/61 dated April 15, 1998



Rajasthan was held to be a local sales subject to sales tax under State laws.

- On appeal against such rejection, both the deputy Commissioner (Appeals) and the Tax Board allowed the exemption to the Respondents.
- On appeal, the Hon'ble Rajasthan High Court in its order⁴ quashed the above-mentioned circulars and sustained the order of the Tax Board allowing exemption to the Respondents.
- The Appellant, accordingly, filed the appeals before the Hon'ble Supreme Court.
- The Respondent contended that they would be eligible for exemption on the following grounds:
 - The present case involves an inter-state sale and the sale took place by way of transfer of documents of title of such goods during their movement from one state to another;
 - The requisite forms and certificates pertaining to such sales were duly furnished;
 - No default of the Respondents was asserted barring the retention of goods in the carrier's godown at the destination point for a long period of time.
- The Hon'ble Supreme Court observed as under:
 - As per the circulars, the deeming provision in explanation 1⁵ to section 3 of the CST Act conceiving the time-point of delivery as the termination of movement shall cease to operate;
 - Explanation 1 of section 3 of the CST Act does not qualify the term 'delivery' with any timeframe within which the delivery should take place. Accordingly, fixing of a timeframe by tax administration would be impermissible;
 - The revenue's reliance on section 51⁶ of Sale of Goods Act, 1930 is not relevant as there is no material to suggest that an acknowledgment

was made by the independent carrier in the present case;

- The principal of constructive delivery as expounded by the High Court in the case of *Arjan Dass Gupta*⁷ does not lay down the correct position of law;
- There is no concept of constructive delivery either express or implied in the section 3 of the CST Act;
- On a plain reading of statute, movement of goods would terminate only when delivery is taken. There is no scope for incorporating any further word to qualify the nature and scope of the expression 'delivery' in the said section;
- The legislature has eschewed from giving the word 'delivery' an expansive meaning;
- There is no place for any intendment in taxing statutes;
- If the authorities felt that any assessee or dealer was taking unintended benefit of aforementioned provision of the CST Act, then the proper course would be legislative amendment;
- The authorities cannot give their own interpretation to legislative provisions on the basis of their own perception of trade practice as it would result in supplying words to legislative provisions, as if to cure omissions of the legislature.

Judgment

The Hon'ble Supreme Court did not interfere with the judgment of the High Court and dismissed the appeal.

Dhruva Comments:

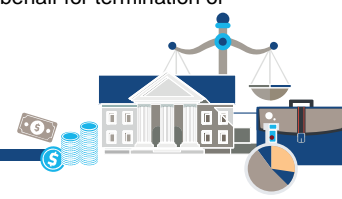
Transactions of in-transit sale have always been a subject of closer scrutiny by the tax department. Goods once handed over to the transporter are deemed to be in movement until the delivery is taken from the transporter. The concept of constructive delivery cannot

⁴ 2007 (9) TMI 708 – The Hon'ble Rajasthan High Court dated September 14, 2007

⁵ Explanation 1 to section 3 of CST Act provides that in case of sale by way of transfer of documents of title to goods during their movement from one state to another where the goods are delivered to a carrier for transmission, the movement would be deemed to commence at the time of such delivery and terminate at the time when delivery taken from the carrier

⁶ Sub-clause (1) of the section 51 of Sale of Goods Act specifies when the goods shall be deemed to be in course of transit and sub-clause (3) thereof lays down the condition of acknowledgment to the buyer or his agent by the carrier that he holds the goods on his behalf for termination of transit

⁷ 1979 (8) TMI 194 - The Hon'ble Delhi High Court dated August 1, 1979



be interjected when the language of section 3 of the CST Act is unambiguous.

M/s Electrosteel Steels Limited v. The State of Jharkhand and others⁸

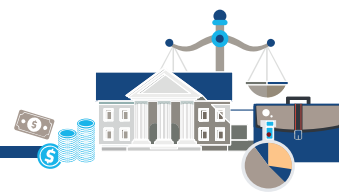
Issue

Whether garnishee proceedings can be initiated to recover the VAT dues post the resolution plan being approved by National Company Law Appellate Tribunal (NCLAT) under the Insolvency and Bankruptcy Code, 2016 (IBC)?

Discussion

- The State Bank of India had filed a Company Petition before the National Company Law Tribunal (NCLT) under the IBC for initiating a corporate insolvency resolution process (CIRP) against the Petitioner. Upon admission of the Petition by NCLT, the Petitioner filed a resolution plan which was approved by NCLT vide order dated April 17, 2018 and was further approved by NCLAT on August 10, 2018. Thereafter, some operational creditors took this matter to the Hon'ble Supreme Court which, vide its order dated November 27, 2019 refused to grant stay for the implementation of the resolution plan.
- Accordingly, the management of the Petitioner was taken over by the bidder.
- Subsequently, garnishee orders dated November 21 and 22, 2019 were issued against the Petitioner towards recovery of tax / penalty due under the Jharkhand Value Added Tax Act, 2005 (JVAT Act) on account of failure to deposit the same for the years between 2011 to 2013.
- Aggrieved by the Garnishee order, the Petitioner filed the present Writ Petition and pleaded as follows:
 - The State Government is an operational creditor under section 5(20) of the IBC;
 - No claim was made by the VAT authorities in respect of the tax liability during insolvency process against the Petitioner;
 - Once the resolution plan was approved, any claim of the State Government was barred under section 31 of IBC;
 - In terms of para 3.6 of resolution plan, all claims of taxes and liabilities, whether admitted or not, due or contingent whether or not set out in the provisional balance sheet, shall stand extinguished by virtue of NCLT order approving the resolution plan;
 - As the claim of the Government is barred, the garnishee order is wholly without jurisdiction and void ab-initio and cannot be sustained in law. The Petitioner placed reliance upon various judgments of the Hon'ble Supreme Court in support of the same.
- The Respondent contended as follows:
 - Petitioner has already availed the alternate remedy by filing a revision petition along with the stay petition before the Commissioner of State Tax, Jharkhand. Accordingly, the writ applications are not maintainable under the eyes of law;
 - Petitioner by not depositing the tax collected from its customers / purchasers has committed the offence of criminal breach of trust;
 - Further, the IBC was enacted in the year 2016 while the right to recover tax from the Petitioner accrued during the period 2011 to 2013, and therefore the right to recover tax by the State Government cannot be said to be affected by IBC;
 - Section 31 of the IBC clearly states that the approved resolution plan shall be binding on the stakeholders involved in the resolution plan. It is submitted that it shall not apply to the State Government as it was never involved in the resolution process;
 - Petitioner never published a notice in accordance with section 13 of the IBC and therefore, the state authorities had no knowledge of any such insolvency proceedings and were deprived from making any claim for tax dues.

⁸ 2020-VIL-192-JHR



- The Hon'ble High Court observed as under:
 - The State Government falls within the definition of 'operational creditor' and taxes payable by the Petitioner falls within the definition of 'operational debt' and thus, the above matter is governed by the provisions of the IBC;
 - There is force in department's submission that the tax amount collected by the Petitioner from the customers and not deposited with the Government, utilised the same for its business purposes, throughout the years 2011-12 and onwards, shall amount to criminal misappropriation of Government money and the Government is entitled to realize the same with penalty;
 - The amount of tax has already been realised from the customers. Accordingly, it is debatable as to whether the tax can be regarded as "*debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government*" so as to bring it within the definition of 'operational debt', since it is not a 'direct debt' of the Petitioner towards the State Government;
 - The decisions related to *Embassy Property Development Pvt. Ltd. v. State of Karnataka and Others*⁹ and *Pr. CIT v. Monnet Ispat and Energy Ltd.*¹⁰ pertains to income tax dues which are direct debts and hence not relevant;
 - The notice to be published in accordance with section 13 of IBC was required to be made in the newspapers in the location of the registered office, i.e. Ranchi, Jharkhand, whereas the same was made in the Kolkata edition of the Business Standard. Accordingly, since no announcement was made in the state of Jharkhand, the tax authorities had no knowledge about the insolvency proceedings, and they were deprived of making their claim before the interim resolution professional;
 - Admittedly, the State Government was never involved in the insolvency proceedings and

accordingly, the resolution plan cannot be said to be binding in terms of section 31 of IBC;

- Management of the Petitioner has been taken over by Vedanta Limited, but the Petitioner before the Court is the original Company which collected tax from customers and did not deposit it. Petitioner has not approached the Court with clean hands;
- Section 31(1) of the IBC was amended w.e.f. August 16, 2019. The said amendment takes away the substantive right of the Government in relation to statutory dues and therefore, interpretation that it should have retrospective effect would be unjust and unreasonable. Thereby, the resolution plan passed on April 17, 2018 would not be applicable to the amendment.

Judgment

The Writ Petitioner is not entitled to any reliefs. There being no merit in the writ applications, they are accordingly dismissed.

Dhruva Comments:

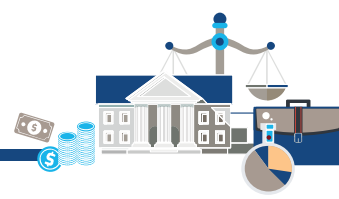
The instant judgment could again have far reaching implications considering the interpretation given to operational debt, section 31 of IBC (including the amendment being prospective in nature) and the distinction drawn *between* original company and new management.

Interestingly, in the case of *Ultra Tech Nathdwara Cement Ltd.*¹¹, the Hon'ble Rajasthan High Court held that the department cannot recover any additional amount than that mentioned in the approved resolution plan. The resolution plan is binding on all parties. In the said case also, the resolution plan was approved prior to the amendment in section 31(1) of the IBC.

⁹ Manu/SC/1661/2019

¹⁰ Special Leave to Appeal (c) No.6483 of 2018, decided on August 10, 2018

¹¹ Civil Writ Petition no. 9480/2019



Notifications under GST law

Companies allowed to file Form GSTR-3B using Electronic Verification Code (EVC) and facility for filing nil return using Short Messaging Service (SMS)¹²

- Rule 26(1) of the CGST Rules, 2017 has been amended w.e.f. April, 21 2020, inserting a new proviso stating that a registered person registered under the provisions of Companies Act, 2013 shall be allowed to verify Form GSTR-3B return through EVC which is filed during the period April 21, 2020 to June 30, 2020.
- A new Rule 67A has been inserted in CGST Rules, 2017 (*effective date to be notified later*) to provide the taxpayers with the facility of filing nil GSTR-3B returns using SMS facility and verifying the same by one time password. Further, nil return shall mean there is nil or no entry in all the tables of Form GSTR- 3B for the tax period.

Dhruva Comments:

Companies are required to mandatorily file their GSTR-3B returns by using the digital signature certificates (DSC). By virtue of this amendment another option has been given to them for filing the returns. Filing of Nil returns through SMS is a welcome step.

Extension of validity of e-way bill till May 31, 2020¹³

An e-way bill generated on or before March 24, 2020 and whose validity as per rule 138 of the CGST Rules, 2017 would have expired during the period March 20, 2020 to April 15, 2020 shall be deemed to be extended till May 31, 2020.

Due date for filing GSTR-9 and GSTR-9C extended September 30, 2020¹⁴

The due date for filing of annual return in Form GSTR-9 along with reconciliation statement in Form GSTR-9C

for the financial year 2018-19 has been extended till September 30, 2020.

Due date for filing return in Form GSTR-3B extended for registered persons in Jammu & Kashmir and Ladakh¹⁵

The due date for filing monthly return in Form GSTR-3B has been extended for registered persons in Jammu & Kashmir and Ladakh as under-

Union Territory	Return period	Due date
Jammu and Kashmir	November 2019 to February 2020	March 24, 2020
Ladakh	November 2019 to December 2019	March 24, 2020
Ladakh	January 2020 to March 2020	May 20, 2020

Circular under GST law

CBIC circular on challenges faced by registered persons in implementation of GST provisions¹⁶

A) Clarifications related to Insolvency and Bankruptcy Code, 2016 (IBC):

Time line for registration:

- Notification no. 11/2020-Central Tax dated March 21, 2020 (IBC notification) was issued prescribing the procedures to be followed by corporate debtors under IBC. As per the said notification interim resolution professionals (IRP) / resolution professionals (RP) were required to obtain fresh registration within 30 days of issuance of the said notification or appointment as IRP / RP, *whichever is later*. However, considering the difficulties being faced in obtaining registration due to COVID-19, a new notification no. 39/2020-Central Tax

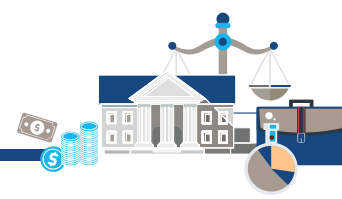
¹² Notification no. 38/2020-Central Tax dated April 5, 2020

¹³ Notification no. 40/2020-Central Tax dated April 5, 2020

¹⁴ Notification no. 41/2020-Central Tax dated April 5, 2020

¹⁵ Notification no. 42/2020-Central Tax dated April 5, 2020

¹⁶ Circular no. 138/08/2020-GST dated May 6, 2020



dated May 05, 2020 (IBC amendment notification) was issued whereby the time line for taking registration was extended to June 30, 2020. The present circular has been issued to clarify the same.

Requirement to take registration:

- As per the IBC notification (*supra*) a corporate debtor was required to obtain registration with effect from the appointment of the IRP / RP. Clarification was sought as to whether fresh registration would be required even where corporate debtor has complied with all the provisions of GST under the earlier GSTNs prior to the periods of appointment of IRP / RP?
- It has been clarified that as per the IBC amendment notification (*supra*) new registration is not required to be taken where GSTR-1 and GSTR-3B returns for all prior tax periods have already been filed under old registration.

Transfer of GSTN from IRP to RP:

- Clarification was sought as to whether an appointed IRP is not ratified, and a separate RP is appointed whether the new GST registration would be transferred from IRP to RP or would both require fresh registration?
- It has been clarified that in case IRP is not the same as RP or there is a change in IRP / RP, changing the authorized signatory in GST registration is required. However, if previous authorised signatory does not share the credentials, then the successor can get the details added through jurisdictional authority as primary authorised signatory.

B) Clarifications related to measures taken in response to COVID-19 pandemic:

Merchant Exporter

- A registered person can supply goods to a merchant exporter at the rate of 0.1%, provided the merchant exporter exports the goods within 90 days from the date of invoice of registered person. Clarification had been sought whether

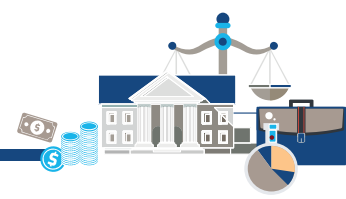
in lieu of Notification¹⁷ (extension notification) the said time period of 90 days also stands extended.

- It has been clarified that if the time period of 90 days falls within March 20, 2020 to June 29, 2020, the requirement of exporting the goods would be extended to June 30, 2020.

Goods sent to job worker

- A person dispatching or receiving goods from a job-worker during a quarter is required to file Form ITC-04 on or before 25th day of the month succeeding that quarter. Clarification had been sought whether in lieu of the extension notification (*supra*) the said time period also stands extended.
- It has been clarified that all of the compliances which fall within March 20, 2020 to June 29, 2020, the due date is extended up to June 30, 2020. Accordingly, the due date for furnishing Form ITC 04 for the quarter ended March 2020 stands extended to June 30, 2020.

¹⁷ Notification no. 35/2020-Central tax dated April 3, 2020





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