



Dimensions – 65th Edition

Judgment under Pre-GST era

Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s. Glaxo Smith Kline Consumer Health Care Limited ¹

Issue

Whether the Hon'ble High Court in its writ jurisdiction ought to entertain a challenge to the assessment order on the sole ground that statutory remedy of appeal stood foreclosed by the law of limitation?

Discussion

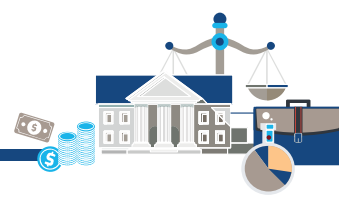
- The Respondent, a dealer who is registered under the Andhra Pradesh Value Added Tax Act, 2005 (the APVAT Act) and the Central Sales Tax Act, 1956 (the CST Act), is engaged in the business of manufacturing products such as Horlicks, Boost, Biscuits, Ghee etc.
- For assessment year 2013-14, the Assistant Commissioner (AC) passed an assessment order (impugned order) raising a demand of tax on failure the Respondent's to submit Form-F.

- The event timeline for the impugned order for assessment year 2013-14 is tabulated below:

Timeline	Event
June 21, 2017	An assessment order was passed raising a tax demand on the Respondent, and no appeal was filed within the prescribed timelines.
September 12, 2017	The Respondent paid an amount equivalent to 12.5% of the demand.
May 8, 2018	The Respondent filed an application under rule 50 ² of the APVAT Rules, 2005 highlighting an error in reporting of incorrect turnover.
May 11, 2018	The application was rejected by the AC.
May 28, 2018	The Respondent filed an appeal against the rejection of the application before the Appellate Deputy Commissioner.
August 17, 2018	An order rejecting the appeal against the application was passed.

¹ 2020-VIL-18-SC – The Hon'ble Supreme Court

² Rule 50 of the APVAT Act empowers higher revenue officials to revise, modify or set aside any order that is passed under the Act by any subordinate officers



Timeline	Event
September 24, 2018	The Respondent filed another appeal against the impugned order dated June 21, 2017 before the Appellate Deputy Commissioner.
October 25, 2018	The appeal dismissed since it was time barred as per section 31 ³ of the APVAT Act.

- Thereafter, the Respondent filed a Writ Petition before the Hon'ble High Court⁴, solely for the purpose of setting aside the impugned order, since it was contrary to the law. However, the Respondent did not challenge the order that was passed by the Appellate Deputy Commissioner.
- The Hon'ble High Court set aside the impugned order and remanded the matter for reconsideration taking the following facts into account:
 - The Respondent had deposited an amount that was equal to 12.5% of the tax that was demanded at the time of filing the appeal and on the request of the Division Bench of the High Court, the Respondent subsequently deposited an additional 12.5% of the tax that was demanded.
 - The employee who was in charge of the Respondent's tax matters failed to file an appeal against the impugned order within the prescribed time. The Respondent only become aware of this misdeed, together with some other irregularities that had been committed by the employee in question, in July 2018. Accordingly, the Respondent immediately suspended and initiated disciplinary proceedings against the employee in question.
- Aggrieved by this decision, the Appellants moved the Hon'ble Supreme Court. After perusing the facts of the case, the Hon'ble Supreme Court observed the following:

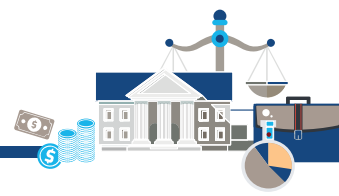
- Under Article 226 of the Constitution of India, a High Court can entertain a Writ Petition against any order or direction that is passed / action that is taken by the State. However, it is also a settled position⁵ that no Writ Petition should be entertained against any order if an alternate remedy is available as per the law.
- The powers of the High Court that are enshrined under Article 226 are not greater than the plenary powers that are bestowed upon the Supreme Court under Article 142 of the Constitution of India. Article 142 of the Constitution of India is a conglomeration of, as well as the repository of, the total judicial powers that are granted to the Supreme Court for the purpose of imparting complete justice to the parties.
- While exercising this power, the Supreme Court is required to consider the legislative intent, and it should not render the statutory provisions otiose. Reliance was placed upon the judgment in the case of *Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited & Ors.*⁶ wherein it was concluded that section 5 of the Limitation Act, 1963 cannot be invoked by the Court in order to maintain an appeal beyond the prescribed timelines.
- Evaluating the powers conferred under Article 142 of the Constitution of India, the Supreme Court observed that in situations where this Court cannot exercise its plenary powers under the said Article, it is unfathomable for the High Court to take a different approach in this matter with reference to Article 226 of the Constitution of India.
- The Court also observed that in cases where an appeal is presented beyond the extended statutory limitation period and is therefore not entertained, it is incomprehensible that it would

³ Section 31 of the APVAT Act provides a period of 30 days for filing of an appeal against an order that is passed under the Act. Furthermore, the section also provides the power to condone a delay in the filing of an appeal by a further period of 30 days.

⁴ Writ petition no. 39418/2018 dated November 19, 2018 – The Hon'ble High Court, Telangana

⁵ *Thansingh Nathmal & Ors. v. Superintendent of Taxes, Dhubri & Ors.* [AIR 1964 SC 1419], *Titaghur Paper Mills Co. Ltd. & Anr. v. State of Orissa & Ors.* [(1983) 2 SCC 433] and *Mafatal Industries Ltd. & Ors. v. Union of India & Ors.* [(1997) 5 SCC 536]

⁶ [(2016) 16 SCC 152]



- become a case of violation of a fundamental, statutory, or legal right;
- The Court also noted that the Respondent did not expressly state, in application for the condonation, the affidavit or the Writ Petition, the date on which it became aware that the Order had passed.
 - While passing its judgment, the High Court was impressed by the fact that the Respondent was in a position to offer an explanation regarding the discrepancies, and that the Respondent had already deposited 12.5% of the additional amount that was demanded. Furthermore, these facts should have no bearing on the justification for not filing the appeal within the statutory time limit.
 - It is also observed that the High Court did not record any findings to justify the view that this case involved a violation of the principles of natural justice or any manner of non-compliance with statutory requirements.
 - In the present case, therefore, no lenience should be granted to the Respondent regarding the expiry of the timeline for the filing of an appeal, given the absence of any reasons explaining why the appeal was not filed in time.
 - Thus, the High Court should not have entertained the Writ Petition, and the same deserved to be rejected at the threshold.

Judgment

The Hon'ble Supreme Court allowed the appeal filed and set aside the order that was passed by the Hon'ble High Court.

Dhruva Comments:

The Hon'ble Supreme Court in this judgment highlighted that although the powers conferred under Article 226 of the Constitution to the Hon'ble High Court are very wide, they cannot act beyond the statutory provisions and must also bear in mind the legislative intent.

For the maintainability of a Writ Petition, it is incumbent upon the Assessee to demonstrate a violation of the principles of natural justice.

Ruling under GST era

Anil Kumar Agarwal - Karnataka⁷

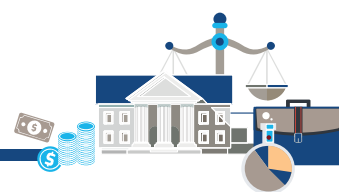
Issue

For the purpose of calculating aggregate turnover as per section 2(6) of the CGST Act, 2017, which triggers the requirement of obtaining registration, which income / revenue are required to be considered?

Discussion

- The Applicant is an unregistered person, who earned various revenue / income viz:
 - partner's salary from a partnership firm;
 - salary as a director of a private limited company;
 - interest income on the partners fixed / variable capital, loans / advances given, fixed deposits, debentures, post office deposits, etc;
 - rent on commercial and residential property;
 - dividend on shares, capital gain / loss on shares; and
 - receipt of maturity proceeds from life insurance policies.
- The Applicant approached the Authority to determine as to which income are required to be considered to be included in the aggregate turnover, which could require him to obtain the GST registration. The Applicant contended as follows:
 - Income received towards partner salary / salary as director are not includible in aggregate turnover since salaries do not fall within the purview of GST, as they are treated neither as supply of goods nor supply of services.
 - Income received towards renting of commercial property is to be included in the aggregate turnover as the said supply is treated as a taxable supply of service.
 - Income received towards renting of residential property is also to be included in the aggregate turnover, although this is an exempt service.
 - Income that is received from all other categories are not to be included in aggregate turnover as it does not fall under the purview of

⁷ Order No KAR ADRG 30/2020 dated May 4, 2020



GST and hence does not amount to supply under GST.

- The Authority observed as follows:

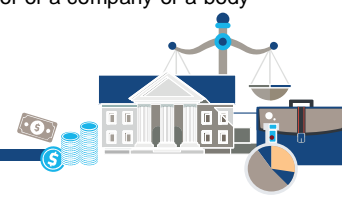
- As per section 2(6) of the CGST Act, 2017, “aggregate turnover” means sum of all taxable supplies, exempt supplies, export of goods or services and all inter-state supplies of the persons having the same PAN, to be computed on all India basis but excludes inward supplies on which tax is payable under reverse charge mechanism and also excludes central tax, State tax, Union territory tax and integrated tax and cess. As evident, the definition includes various supplies. Therefore, any income should be regarded as a supply in terms of section 7(1)(a) of the CGST Act, 2017 so as to be included in the aggregate turnover.
- The interest income that is received from various sources are out of the deposits / loans extended by the Applicant. These are exempted under sl. no. 27(a) of the Notification⁸ (exemption notification). Therefore, any deposits / loans / advances that have been extended constitute an exempted service and the actual amounts of consideration i.e. interest earned on such deposit / loans / advances become value of service which are to be included in the aggregate turnover.
- If the Applicant is a working partner and receives salary, then, such salary is not a supply in terms of clause 1 of Schedule III of the CGST Act, 2017. Further, even if the amount is received as a profit share, then also the said income is not covered under the purview of GST as share of profit is nothing but an application of money and hence not to be included as a part of aggregate turnover. However, no relevant documents have been submitted in this regard.
- If the Applicant is an Executive director in the company and receives salary as an employee of that company, then such salary is not a

supply in terms of clause 1 of Schedule III of the CGST Act, 2017. Further, if the Applicant provides services to the company as a Non-Executive director, then the remuneration that is received by the Applicant is liable to be taxed under reverse charge mechanism as per section 9(3) of the CGST Act, 2017 read with sl. no. 6 of the Notification⁹ and such a value shall be included as a part of the aggregate turnover of the Applicant. However, no relevant documents have been submitted in this regard.

- Rental income on commercial / residential property constitutes a supply and is therefore to be included in the aggregate turnover. Further, even though the services provided by way of renting of residential property is exempted under sl. no. 12 of the exemption notification (*supra*), the same would be included in the aggregate turnover as it includes exempted supplies.
- The definition of ‘goods’ and ‘services’ under sections 2(52) and 2(102) of the CGST Act, 2017 respectively, exclude securities which is defined under section 2(101) of the CGST Act, 2017. Dividend on shares and capital gains / losses on sale of shares are relevant to shares (securities) and the income earned in this relation is nothing but application of money. Therefore, this income earned on shares being excluded from goods / services would also be excluded from aggregate turnover.
- Insurance proceeds are received on maturity of insurance policies. Insurance premium is taxable under GST being consideration for services rendered by the insurance companies. Therefore, on maturity of the policy, there would not be any service involved between the policy holder and the insurance company. Therefore, the amounts received on maturity of an insurance policy are not to be included in the aggregate turnover.

⁸ Sl. no. 27(a) of Notification no. 12/2017 Central Tax (Rate) dated June 28, 2017 exempts the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)

⁹ Sl. no 6 of Notification no. 13/2017 Central Tax (Rate) dated June 28, 2017 states that the services supplied by a director of a company or a body corporate to the said company or the body corporate are liable to tax under reverse charge mechanism



Ruling

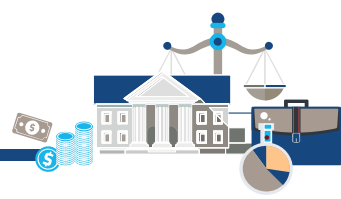
- The following amounts should be added together in order to determine the aggregate turnover:
 - Salary / remuneration as non-executive director of a company;
 - Rental income from commercial and residential properties; and
 - Interest received on amounts extended as loans / advances / deposits.

Dhruva Comments:

The ruling clearly brings out the various incomes which are to be considered in order to compute the aggregate turnover.

However, the Rajasthan Authority for Advance Ruling recently in the case of *Clay Craft India Pvt. Ltd.*¹⁰ held that the remuneration that was paid by the company to a director (even as salary) was liable to be taxed under reverse charge mechanism. Thus, there exists conflicting views and accordingly, the Government should clarify the same so as to avoid any further litigation.

¹⁰ 2020-VIL-86-AAR





ADDRESSES

Mumbai

11th Floor, One IndiaBulls Centre,
Tower 2B, 841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahaldnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

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