

Recent Rulings by Courts and Authorities

Supreme Court

Doctrine of promissory estoppel cannot be invoked against exercise of legislative powers of the State

The Hon'ble Supreme Court of India ("Court") in the case of *Hero Motocorp Ltd. vs. Union of India and Ors.*¹, ruled on the applicability of doctrine of promissory estoppel against a statute/ legislative power.

The central government in the year 2003 incentivised setting up of new industrial units/ expansion of existing industrial units in Uttarakhand by providing 100% exemption from central excise duty for a period of 10 (ten) years from date of commencement of commercial production. Hero Motocorp Ltd. ("Petitioner") set up a new unit in Haridwar, Uttarakhand, which commenced commercial production in the year 2008 and availed exemption till July 1, 2017.

Upon implementation of GST², the central government realigned the incentives provided to the units and limited the benefit to 58% of central tax³. Aggrieved by this, the Petitioner filed a writ petition before the High Court, seeking to invoke the doctrine of promissory estoppel, which was dismissed. The Petitioner challenged the decision of the High Court before the Hon'ble Supreme Court of India.

The Petitioner *inter alia* contended that the central government had provided an unequivocal representation to provide 100% exemption from central excise duty to entities which were desirous of setting up/ expanding industrial units and the central government was bound by such representation. The Petitioner further submitted that it had relied on the representation made by the central government and had set up the industrial unit to avail exemption from central excise duty. However, the central government contended that benefit of exemption was withdrawn in pursuance to the statutory provision of Section 174(2)(c) of the CGST Act⁴.

The Court held that it is incorrect to hold the Centre to be bound by such representation made by it, in the event of change in the policy or a statutory regime. Further, it would also be contrary to the provision of Section 174(2)(c) of the CGST Act.

However, the Court observed that the claim of the Petitioner had substance and deserved due consideration. Based on the deliberations of the GST Council, the Court took note of the fact that the States need to correspondingly reimburse the units which were entitled to exemption under the existing incentive schemes. It was further noted that the GST Council is a constitutional body and has powers to make recommendations on wide range of issues concerning GST, including grant of exemption from GST. In light of this, the Court permitted the Petitioner to make representations to the respective state governments and the GST Council to consider such representations.

¹ 2022 (10) TMI 677.

² Goods and Services Tax.

³ Under the incentive schemes provided by the Central Government for setting up/ expansion of units in the States of Jammu & Kashmir, Himachal Pradesh, Uttarakhand and North-Eastern States, central excise duty levied by the Central Government was exempted. On implementation of GST, the said exemption was re-calibrated to 58% of central tax (i.e., CGST).

⁴ Central Goods and Services Tax Act, 2017.

High Court

Balance in the Electronic Credit Ledger can be utilized for payment of pre-deposit

The Hon'ble High Court of Bombay ("**Bombay HC**") in the case of *Oasis Realty vs. Union of India and Ors.*⁵, ruled on utilization of input tax credit available in the electronic credit ledger ("**ECL**") for payment of pre-deposit while filing an appeal before the Appellate Authority.

Oasis Realty contended that the amount available in the ECL can be utilized for payment of pre-deposit, as stipulated under Section 107(6) of the MGST Act⁶. However, GST Authorities contended that Section 49(4) of the MGST Act restricts usage of the amount available in the ECL only for payment of output tax and that the amount available in the ECL cannot be utilised for payment of pre-deposit.

The Bombay HC observed that the expression 'unless the Appellant has paid a sum equal to 10% of remaining amount of tax in dispute', is a precondition to file an appeal under Section 107 of the MGST Act. Further, the term 'tax' includes CGST, IGST⁷, SGST⁸ or UTGST⁹ and given that pre-deposit is tax itself, the amount available in the ECL can be utilised towards payment of pre-deposit. The High Court referred to a circular dated July 6, 2022¹⁰ issued by the CBIC¹¹, which clarified that any amount towards output tax payable, as a consequence of any proceedings instituted under the provisions of GST laws, can be paid by utilisation of the amount available in the ECL.

Prescribed time limit of 30 (thirty) days to be granted for filing reply to SCN¹²

In the case of *Sheetal Dilip Jain vs. State of Maharashtra and Ors.*¹³, SCN was issued to Sheetal Dilip Jain ("**Petitioner**"), under Section 73 of the MGST Act¹⁴, whereby the Petitioner was required to file a reply within 7 (seven) days from the date of issuance of the SCN. Due to non-filing of reply/ non-payment of demand, the authorities issued an order against the Petitioner.

The Petitioner aggrieved by the order, approached the Bombay HC and contended that Section 73(8) of the MGST Act prescribes a period of 30 (thirty) days to file a reply to the SCN, issued under Section 73 of the MGST Act. It was further contended that the assessing officer cannot arbitrarily reduce the time frame provided under a statute.

Agreeing with the Petitioner's contentions, the Bombay HC set aside the order. The Bombay HC also saddled the assessing officer with costs for issuing orders in contravention of the provisions prescribed under the statute.

Pre-consultation process mandatory before issuance of SCN

In the case of *Victory Electric Vehicles International Ltd. vs. Union of India and Anr.*¹⁵, the Hon'ble High Court of Delhi ("**Delhi HC**") discussed the importance of pre-SCN consultation process, prior to issuance of SCN.

Victory Electric Vehicles International Ltd. ("**Petitioner**") *inter alia* contended that the adjudicating order passed on the basis of SCN, was untenable in law as the SCN was issued without pre-SCN consultation. It was contended that, in terms of Section 28(1)(a) of the Customs Act¹⁶ read with Pre-Notice Consultation Regulations¹⁷, the SCN could only be issued after a pre-SCN consultation was provided. However, the Customs authorities contended that any exchange of communication prior to issuance of SCN constitutes pre-SCN consultation.

The Delhi HC observed that the assessee has a period of 15 (fifteen) days to file his submission, in writing, outlining the grounds in response to the allegations provided in the pre-consultation notice and to request for a personal

⁵ 2022 (10) TMI 42.

⁶ Maharashtra Goods and Services Tax Act, 2017.

⁷ Integrated Goods and Services Tax.

⁸ State Goods and Services Tax.

⁹ Union Territory Goods and Services Tax

¹⁰ Circular F. No. CBIC-20001/2/2022-GST dated July 6, 2022.

¹¹ Central Board of Indirect Taxes and Customs.

¹² Show-cause notice.

¹³ 2022 (10) TMI 177.

¹⁴ Maharashtra Goods and Services Tax Act, 2017.

¹⁵ 2022 (10) TMI 334.

¹⁶ Customs Act, 1962

¹⁷ Pre-Notice Consultation Regulations, 2018

hearing. The Delhi HC emphasised the importance of pre-SCN consultation and noted that after consultation, the concerned authority may decide to drop the proceedings if it is satisfied with the explanation provided by the assessee, thereby reducing the burden on judicial/ extra-judicial bodies. Given that the pre-SCN consultation procedure was not adhered to, the Delhi HC set aside the adjudicating order.

Instructions/ Circulars etc.

Methodology for payment of pre-deposit for cases pertaining to central excise duty¹⁸ and service tax¹⁹

Instruction No. CBIC-240137/14/2022-Service Tax Section-CBEC dated October 28, 2022

CBIC has clarified that payment through Form GST DRC-03 is not a valid mode of payment of pre-deposit for filing appeals pertaining to central excise, service tax or GST. The mode of payment to be used is as follows:

1. **Payment of pre-deposit in matters of central excise and service tax:** Through existing website/ portal of the CBIC-GST <https://cbic-gst.gov.in>.
2. **Payment of pre-deposit in matters pertaining to GST:** Form GST APL-01 for filing an appeal provides the option of payment of admitted amount and pre-deposit through electronic cash/credit ledger.

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¹⁸ Levied as per the provisions of Central Excise Act, 1944

¹⁹ Levied as per the provisions of Chapter V, Finance Act, 1994

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