GST ARTICLE

8 Landmark Judgments in 8 Years: GST through the Lens of Supreme Court - Part I

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INTRODUCTION

The implementation of the Goods and Services Tax Act ("GST") in July 2017 marked a constitutional and economic reset of indirect tax regime in India. GST was envisioned as a "one nation, one tax" framework, which replaced a maze of central and state taxes to provide for a unified and streamlined mechanism for collection and administration of indirect taxes. However, in its eight-year journey, GST has not been without its own challenges and issues, some of were resolved by the Supreme Court. This two part series of article revisits the evolution of GST through landmark decisions that shaped the GST as we see it today. Each case signifies a turning point in the legal understanding of critical GST concepts. Together, these judgments show that the jurisprudence under GST is developing in a fast-paced manner. Let's look at some of the landmark judgments which have settled the dust on some of the most critical issues in the GST framework.

A. OPENING THE P(AND)(OR)A'S BOX.

Starting with the Supreme Court's recent decision in **Chief Commissioner of Central Goods and Service Tax vs Safari Retreats** (*2024-VIL-45-SC*), wherein it opened the p(and)(or)a's box regarding the interpretation of the term "and" and "or" used in Section 17(5) of the CGST Act and held that immovable

property constructed for leasing purposes qualify as "Plant" if it is used is further supply of services.

In this case, the Respondent-Company was engaged in the business of constructing a shopping mall intended to be leased out to the tenants, and sought to avail Input Tax Credit ("ITC") on the GST paid for materials and services used in the construction. However, ITC was denied by the revenue department under Section 17(5)(d) of the CGST Act, which bars the ITC on goods/services used for construction of immovable property (except plant or machinery). Further, Section 17(5)(c) restricts ITC on works contract services availed in relation to "Plant and machinery". It should be noted that the explanation to Section 17 provides for the definition of "plant **and** machinery", which specifically excludes land and buildings. However, no such explanation has been provided for the interpretation of term "plant **or** machinery" used in Section 17(5)(d) which raised the dispute over the applicability of the said definition to the phrase "plant **or** machinery" under Section 17(5)(d).

ISSUES BEFORE THE HON'BLE SUPREME COURT

The primary questions before the Court were twofold: (i) Whether the definition of "plant and machinery" provided in the Explanation to Section 17 is applicable to the term "plant or machinery" as used in Section 17(5)(d); and (ii) Whether a building constructed for the purpose of commercial renting can be regarded as "plant," thereby qualifying for input tax credit (ITC). Central to the dispute was the variation in language between clauses (c) and (d) of Section 17(5), which gave rise to an argument that the legislature intended to permit ITC on construction of immovable property where such property is used for further supply of goods or services.

CONCLUSION

The Court observed that "plant and machinery" is used multiple times in the statute, but "plant or machinery" is used only once, which shows a deliberate

legislative differentiation. It applied the functionality test which was derived from a number of its earlier decisions to determine that if a building serves a special function in the business, it may qualify as "plant." The Court distinguished cases where buildings were constructed for sale Section 17(5)(c) from those constructed to provide output services like renting Section 17(5)(d), thereby allowing ITC for the buildings constructed for providing output services, holding that such building qualify as a plant based on its functionality. Supreme Court adopted a liberal interpretation allowing ITC on construction of immovable property when used for providing output services such as lease or rent.

B. CAN THE CREDIT BE CLAIMED ON TELECOM TOWERS AND PREFABRICATED INFRASTRUCTURE?

INTRODUCTION

Soon after, the decision in Safari Retreats, Hon'ble Supreme Court delivered another judgment in ***Bharti Airtel Ltd. Vs Commissioner of Central Excise, Pune*** (*2024-VIL-49-SC-CE*), where it upheld the right of mobile service providers to avail CENVAT credit on telecom towers and prefabricated buildings used to set up infrastructure for telecom services. The mobile service providers claimed CENVAT credit on towers and prefabricated buildings under the CENVAT Credit Rules, 2004, to offset their service tax liability on output telecom services. However, Revenue authorities issued show-cause notices alleging that such items did not qualify as capital goods/inputs under Rules 2(a)(A) and 2(k), and thus denying the claim of CENVAT Credit to the mobile service providers.

Subsequently, an appeal was filed in the Bombay High Court, which the case against the Petitioner and denied the CENVAT credit, holding that telecom towers were immovable property and hence not goods, on the other hand, the Delhi High Court passed the exact opposite judgement and upheld the claim of the mobile service providers to allow the CENVAT Credit, holding that the telecom

towers and prefabricated buildings are essential components/accessories for telecom services.

ISSUE BEFORE THE COURT

These conflicting judgments by Hon'ble Bombay High Court and Hon'ble Delhi High Court led to the appeal before the Supreme Court. In the matter before the Supreme Court, the central legal issue was whether telecom towers and prefabricated building used by mobile service providers could be classified as capital goods/inputs under the CENVAT Credit Rules, and thereby qualify for credit against service tax liability.

CONCLUSION

Hon'ble Supreme Court held that towers and prefabricated buildings, even if fixed, do not lose their character as "good" more so as were brought in CKD or SKD conditions, as they can be dismantled and relocated without substantial damage. As "input" under Rule 2(k) of the CENVAT Credit Rules includes all goods used for providing any output service and should not be interpreted restrictively. It was also held that towers and Prefabricated buildings serve as essential accessories for antennae, facilitating mobile connectivity, and thus qualify as inputs. Hon'ble Court rejected the narrow interpretation adopted by the Bombay High Court and upheld the broader interpretation as adopted by the Delhi High Court. Accordingly, it allowed mobile service providers to claim CENVAT credit on excise duties paid for such infrastructure items under Rule 2(k) of the CENVAT Credit Rules, 2004.

The said decision was later followed in the GST regime by the Delhi High Court in ***Bharti Airtel Limited & Ors. Versus Commissioner, CGST Appeals & Ors.*** (*2024-VIL-1356-DEL*) allowing the same benefit to the taxpayers under the GST regime also.

C. CAN PROCEDURAL RELIEF BE GRANTED FOR A BONA FIDE ERROR WHEN THERE IS NO LOSS OF REVENUE TO THE GOVERNMENT?

In ***Central Board of Indirect Taxes and Customs v. Aberdare Technologies Pvt. Ltd.*** (*2025-VIL-15-SC*), the Supreme Court affirmed the principle that genuine, bona fide errors in return filing may be rectified where there is no loss of revenue to the exchequer. In this case, the assessee had filed GSTR-1 returns for the months of July 2021, November 2021, and January 2022. However, certain inadvertent errors in these returns were noticed only in December 2023-well beyond the statutory deadline for rectification under Section 39(9) of the CGST Act, which prescribes 30th November of the following financial year. The assessee approached the department seeking permission to make the necessary corrections, but the request was denied solely on the ground of limitation, despite the absence of any revenue loss and the bona fide nature of the mistake. The Supreme Court, in allowing the rectification, underscored the need for a pragmatic and revenue-neutral approach in such cases.

CONCLUSION

The matter was initially decided in favour of the assessee by the Bombay High Court. Aggrieved by the decision, the department preferred an appeal before the Supreme Court. The central issue before the Apex Court was whether the department's refusal to permit rectification of GSTR-1 returns was legally justified. The Court closely examined the facts and observed that the errors in question were bona fide and did not result in any revenue loss. Affirming the High Court's view, the Supreme Court held that the denial of rectification was unjustified, particularly in cases where the error is clerical or technical in nature and causes no prejudice to the revenue. It emphasised that such inadvertent mistakes are incidental to business operations and should be allowed to be corrected unless there exists a compelling statutory or factual bar to doing so.

D. CAN THE RECIPIENT BE PENALIZED FOR THE DEFAULT IN PAYMENT OF GST BY THE SUPPLIER?

In ***Suncraft Energy Pvt. Ltd. v. Assistant Commissioner of State Tax, Ballygunge Charge*** (*2023-VIL-99-SC*), the assessee had availed input tax credit (ITC) on the basis of purchases made from a registered supplier, against which payments - including GST - had been duly made as per valid tax invoices. However, certain invoices did not appear in the assessee's GSTR-2A, which reflects the inward supplies received by a recipient. Based on the mismatch between GSTR-2A and the summary return in GSTR-3B, the Assistant Commissioner issued a show-cause notice alleging excess availment of ITC and demand order was passed against the assessee for irregular availment of ITC.

ISSUE BEFORE THE COURT

Aggrieved by the decision, the assessee preferred the appeal in High Court, where the main issue before the Court was whether ITC could be denied to the purchaser solely on the ground that the invoices of the supplier were not reflected in GSTR-2A, despite the purchaser fulfilling all conditions under Section 16(2) of the CGST/WBGST Act. Secondly, whether recovery could be directly made from the purchaser without first initiating action against the defaulting supplier in such cases. The appellant argued that it had fully complied with Section 16(2) by possessing valid tax invoices, having received the goods/services, making payments to the supplier (substantiated by bank records), and filing returns under Section 39. It relied on CBIC's press releases, which clarified that GSTR-2A was for taxpayer facilitation and not a mandatory prerequisite for ITC. Secondly, it was argued that the revenue has failed to investigate or initiate recovery against the supplier.

CONCLUSION

The Calcutta High Court allowed the appeal, holding that the mere non-reflection of invoices in GSTR-2A cannot, by itself, be a ground for denial or reversal of

input tax credit (ITC), provided the conditions prescribed under Section 16(2) of the CGST Act are otherwise fulfilled. The Court relied on the CBIC's clarification that ITC should not be automatically reversed on account of a supplier's default unless there is specific evidence of collusion between the buyer and supplier, the supplier is untraceable or non-existent, the supplier has ceased business, or lacks sufficient assets. The Court observed that the department acted arbitrarily in proceeding directly against the buyer without first initiating any action against the defaulting supplier. Accordingly, the impugned order was quashed, and the authorities were directed to take recourse against the supplier in the first instance, reserving action against the recipient only in exceptional cases where involvement or complicity is established. The department SLP was subsequently dismissed by the Supreme Court.

E. WAY FORWARD IN GST REGIME

In the eight years since the enactment of GST, the judiciary has played a pivotal role in interpreting key provisions of the law and resolving issues that have arisen from its implementation. The Supreme Court judgments discussed in this article shed light on several such provisions, offering much-needed clarity on the interplay between GST law and business practices. These decisions are not isolated legal pronouncements but part of a broader judicial trend that reflects a purposive and pragmatic approach to interpreting the GST framework. Notably, the courts have expanded the scope of input tax credit in cases like *Safari Retreats* and *Bharti Airtel*, condoned bona fide errors in return filings in *Aberdare Technologies*, and upheld the entitlement to credit despite a supplier's default in *Suncraft Energy*.

Yet, these cases represent only a snapshot of a steadily evolving jurisprudence under the GST regime. In Part II of this series, we will continue to explore this legal evolution through additional landmark decisions. As GST enters its ninth year, one thing remains clear-the role of the judiciary will only grow more

significant in maintaining the delicate balance between protecting revenue interests and safeguarding taxpayer rights.

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