

# GST HC Case Laws

18 June, 2021

## Madras HC: Quashes ITC-reversal orders, raps Revenue for inaction against defaulting sellers [TS-190-HC(MAD)-2021-GST]

Madras HC quashed assessment orders reversing ITC availed by assessee on the ground that no proceedings were initiated against the sellers in the first place, for non-payment of tax and held that the said orders suffer from fundamental flaws. The HC condemned Revenue for not confronting the sellers and inaction against them in this regard. Further the court noted that the assessee, engaged in trading of Raw Rubber Sheets, had purchased goods from sellers and based on the returns filed by sellers, availed ITC. However, when Revenue discovered that sellers had not discharged their tax liability, Revenue passed the impugned orders, levying the entire liability on the assessee, rather than confronting the sellers. Moreover, the court observed that ordinarily, the assessee must have received the goods and the tax charged in respect of supply must have been actually paid to the Govt., however, if the tax has allegedly not reached the Govt. kitty, then the liability will have to be eventually borne by one party, either the seller or the buyer, noting that here, the Revenue does not appear to have taken any recovery action against the seller nor has taken a stand that the assessee has not even received the goods and had availed ITC on the strength of generated invoices. The court remarked that when it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax must have been viewed very seriously and strict action ought to have been initiated against him. The HC opined that the sellers ought to have been examined and they should have been confronted, and thus, remanded the matter to the Assessing Officer and parallelly, directed initiation of recovery action against the sellers.

## Rajasthan HC: Dismisses petition seeking direction to statutory authority for extension in submitting GSTR-9/9C [TS-212-HC(RAJ)-2021-GST]

Rajasthan HC dismissed writ seeking direction to the Revenue to extend the period of time for submitting of Form GSTR-9 and GSTR-9C for the FY 2019-20 until September 10, 2021. The court held that the period for filing of the return is fixed by the Statute and it is the statutory authority alone who has power and authority to extend any period for compliance. The court noted that Revenue extended the period for filing of return under Form GSTR-9 and GSTR-9C by press release dated December 30, 2020. The HC rejected Assessee's submission that in terms of the Statute, an assessee had a right to file his forms within nine months from the date of conclusion of the financial year in question, the forms i.e. Form GSTR-9 and GSTR-9C were finally notified on December 10, 2020 & December 30, 2020 respectively and consequently, the period of nine months would start from the date of last publication itself. Thus, it held that the petition cannot be entertained and leaves it to the Petitioner to approach the statutory authority to seek further extension, and remarked, *"If such a representation is filed, we hope and trust that the same would be considered and disposed of at an early date."*

## Karnataka HC: Absent consideration of Order service-date controversy, quashes Appellate Authority's best judgment order [TS-1239-HC(KAR)-2020-GST]

Karnataka HC set aside Revenue's order rejecting Assessee's appeal against the best judgment order on the ground of delay. The court restored the same before the Appellate Authority for reconsideration. Revenue averred that the copy of the best judgment order was served on Assessee's registered email, however, it is the Assessee's claim that it has not received copy of the order on registered email. Assessee submitted that the Appellate Authority couldn't have concluded that a copy of order was served on the Assessee only because Revenue asserts that a copy is sent without furnishing any details as regards same, and claimed that it came to know about the impugned order only after its Bankers informed about the same and a physical copy was served under acknowledgement. The HC found that the impugned order doesn't indicate that the Appellate Authority had considered the controversy as regards date. The court observed that given the scheme of the Act prescribing definite timelines for preferring an appeal and the lapse of right of appeal thereafter, the Appellate Authority would have to consider the circumstances asserted and would also have to decide on the merits of the matter.

## Madras HC: Dismisses Petition assailing SCN questioning ITC transition, allows Revenue to proceed with assessment

[TS-213-HC(MAD)-2021-GST]

Madras HC dismissed writ challenging the show cause notice(SCN) questioning the veracity of the ITC that has been carried forward by assessee in TRAN-1 from service tax era to GST era, as premature. The court remarked that “...*the tenor of the notice is to question...*”, and refused to interfere at the current stage, the Court found that at this stage, to go into the question of actual availment of credit, is a question of fact and to go into the extract of the of the electronic credit register, is a matter to be looked into by the authorities in the course of the proceedings for assessment under the impugned SCN. The court noted that upon verification by the GST Audit department, it was found by the authorities that Cenvat credit had been availed on various services relating to investments in shares, debentures, mutual fund, securitization etc, receipts from which were exempt and as such Officer classified such services as those in respect of which Cenvat credit ought not to have been transitioned in terms of Section 141 of GST Act. The court stated that the language in which the notice is couched may indicate recovery, i.e. “*recovery' of the Cenvat credit that has been wrongly transitioned*”, The HC opined that “*the appropriate term to have been used would be 'reversal' and not 'recovery' at the stage of SCN*”; Hence, the court *let the petitioner put forth its objections in regard to the proposed reversal of carried-forward of input tax credit within a period of four weeks.*

## *Amicus Comments*

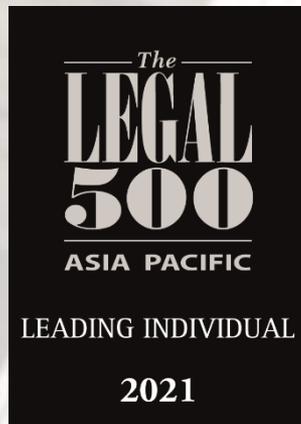
The Madras HC judgement on scrutiny of suppliers in case of non-payment of tax and reversal of ITC is crucial for buyers in the current scenario as it puts onus on suppliers to timely deposit GST. Further, this ruling will act as guiding light for future adjudication on this issue.

Non payment or deposit of GST by suppliers has been haunting buyers ever since GST was introduced. The pre-condition for deposit of tax by supplier was diluted by Government via Press Release dated 4<sup>th</sup> May 2018 which required that enquiry/ action against the supplier was first to be conducted for non-payment of taxes and only after these efforts failed could recourse be had to the bonafide buyer. The Madras High Court Ruling comes as a shot in the arm for beleaguered buyers not having any remedy in law to counter defaulting suppliers. One hopes that the logic of the Madras High Court would also appeal to other High Courts and the practice of only a second recourse to the buyers (after Government has exhausted efforts to recover tax from supplier) becomes the norm. This would go a long way in reducing hardship of bonafide buyers and make the GST mechanism fair and equitable.

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