1. **Calcutta High Court in Green Fizz Beverages Private Limited[1] - Condoned Delay of a period of 3.5 years in Filing of Writ Petition against the order of State Commissioner (Appeals):**

The Calcutta High Court was dealing with an inter-court appeal. The Single Judge has rejected the writ petition filed by the assessee against the order of State Appellate Authority because the same was filed after a period of 3.5 years. The assessee's argument was that the time period for filing the writ has to be reckoned from the date of notification issued for constituting the tribunal. Since, there was no said notification, though writ filed was post 3.5 years, the same should be allowed.

The larger bench has not accepted the assessee's argument of triggering of limitation period from the date of issuance of notification for constituting tribunal and has set aside the order of single judge by stating that no one stands to benefit by lodging an appeal or a petition belatedly. Since the dispute is being one of classification of goods manufactured and marketed by assessee, an adjudication is required to be done for which unless the respondents file their affidavit, they cannot give a binding decision. Accordingly, the writ petition was allowed subject to payment of 20% of disputed tax and satisfaction of other conditions.

Our Comments:

Though there is a point in the assessee's argument that the limitation must be reckoned from the date of notification constituting the tribunal, since he has not come with clean hands (a delay of 3.5 years), there is a possibility that the High Court has denied such ground. It is advisable to approach the writ jurisdiction at the earliest possible to avoid such aggressive stands. Further, one should be careful before approaching the writ jurisdiction. Seeing the trend of judgments at the High Court demanding huge pre-deposits when compared to Section 107 of CT Act, a conscious decision has to be made before approaching the writ jurisdiction.

2. **Jharkhand High Court in RSB Transmissions (India) Ltd[2] – Deposit of cash in Electronic Cash Ledger does not constitutes tax payment and upholds interest for the delayed GSTR-3B:**

A writ petition was filed by the petitioner on the question posing that amount deposited as tax through valid challans in the government exchequer prior to the filing of the GSTR 3B returns could be treated as discharge of the tax liability though GSTR- 3B return is being filed later, and whether interest could be levied on delayed filing of GSTR-3B in such circumstances under Section 50 of the Act?

In the instant case, the petitioner has received a notice demanding to pay the interest on the tax liability that has been paid through electronic cash ledger ('ECL') on the ground that they filed the return lately. The notice was challenged by the Petitioner in High Court, where he contended that the interest is payable only on the tax deposited later to the due date but not before such due date of return. The respondent submitted that the credit of such amount in the ECL shall be only deemed to be the date of deposit in the electronic cash ledger but not discharge of tax.

The High Court after hearing both parties' contention and after analysing of relevant provisions of the Act held that the date of credit in the ECL shall be date of deposit of amount in ECL and does not amount to payment of tax liability and also states that tax liability shall be discharged only by filing the GSTR-3B

[1] 2022 (11) TMI 680 – Calcutta High Court
[2] TS-589-HC(JHAR)-2022-GST

returns. Accordingly, upheld the interest payable by the petitioner. The Court in clear terms stated that just because tax is deposited in ECL does not amount to discharge of tax and the tax payment will happen only when GSTR-3B (offset) is filed or done.

Our Comments:

During a previous occasion, the Telangana High Court in Megha Engineering and Infrastructures Limited[3] has clearly stated that the amount paid (both cash and credit) stays in cloud and does not amount to payment of tax until the taxpayer sets it off against the tax liability by filing the periodical return. Though, in the said matter, the issue was payment of interest on credit portion, which is significantly different from the issue in the current matter of above petitioner, the ideology is constant, that is, the payment of taxes or credit stays in cloud and does not reach the government until there was an action from the taxpayer. In our view, the Jharkhand High Court has rightly interpreted the law and held that interest is payable till the period the ledgers are set off against the liabilities.

3. Allahabad High Court in Prashant Sharma[4] - Arrests under GST can be as per procedure laid down in Criminal Procedure Code – Follows Supreme Court in Arnesh Kumar vs State of Bihar[5]:

The applicant has filed for an anticipatory bail under Section 438 of Criminal Procedure Code (Cr.P.C) as he is apprehending the arrest in connection with proceeding under GST laws. The applicant submitted that he is innocent and does not have any criminal history and respondents are acting illegally, not disclosing the liability, dues, if any and he is ready to co-operate. The applicant stated that since the offence he is proposed to be charged is less than seven years of imprisonment, the ratio laid down by Supreme Court in Arnesh Kumar vs State of Bihar (supra) has to be followed.

The High Court after referring to the judgment of Supreme Court in Arnesh Kumar vs State of Bihar (supra) stated that, it is mandatory on the part of the investigation officer to record reasons for making arrest as well as for not making the arrest in respect of a cognizable offence for which the maximum sentence is up to seven years. The High Court stated that the statutory protection under Section 41 and Section 41A of the Cr.P.C [issuing of notice for appearance before arresting and arrest should not be made as a routine manner], which the police authorities are bound to comply shall apply to GST cases also. The High Court directed the Investigating Officer shall strictly comply with provisions of Section 41 and Section 41A of Cr.P.C.

Our Comments:

Section 41A of Cr.P.C provides for issuance of notice of appearance before police officer. The Supreme Court in the case of Arnesh Kumar vs State of Bihar (supra) has held that issuance of notice under Section 41A is mandatory before arresting a person. Applying the said provisions and judgments to GST cases is appreciable, since the arrests cannot be made in a routine manner.

[3] 2019 (4) TMI 319 – Telangana and Andhra Pradesh High Court
[4] [2022] 145 taxmann.com 85 (Allahabad)
[5] (2014) 8 SCC 273

4. **High Court of Andhra Pradesh in the case of M/s. Esveeaar Distilleries Private Limited[6] - Held that the alcoholic liquor for human consumption does not fall within the ambit of food and food products:**

A writ petition was filed challenging the NN 06/2021 – CT (R) dated 30.09.2021 on the ground that the job work charges relatable to manufacture of alcoholic liquor charging rate of 18% instead of 5% is illegal and contrary to the law. The short question that seized the High Court was, whether the alcoholic liquor for human consumption falls within the meaning of food or food preparation products?

Assessment is carried by tax authorities and accordingly demanded tax at a rate of 18% instead of 5% on the job work charges of manufacturing of alcoholic liquor for human consumption. Petitioner contended that alcoholic liquor falls under the category of 'Food and Food Products' under Chapter 22 of Customs Tariff and accordingly as per the relevant notification the tax rate for such job work charges should be charged at rate of 5%. He also contended that the said notification is substituted through various notification, which means that the said notification will apply prospectively but not retrospectively and for the period in dispute, the rate of tax for his services would be 5% and not 18% as demanded by the tax authorities.

The Respondent contended that the Chapter 1 to 22 of Customs Tariff in the first schedule include food and food products that does not cover the alcohol and states that the notification is applicable retrospectively due to the declaratory nature of such notification. The tax authority by taking the view in the case of M/s. Parle Exports Private Limited[7] held that the alcoholic liquor for human consumption is not classifiable as food and food products.

The High Court referring to M/s. Parle Exports Private Limited (supra) has held that alcoholic liquor for human consumption cannot be classified as food or food products as the concerned exemption is provided with a view to encourage the food industry but not to encourage unhealthy food products which have adverse effects on humans and it also held that the Petitioner is liable to pay tax at 18% as the concerned notification is applicable retrospectively as the same is issued to clarify the rate of such services but not to substitute the existing entries.

5. **Punjab & Haryana High Court in the case of M/s. Genpact India Pvt Ltd[8] - Held that the services rendered in nature of main services but not as Intermediary services**

A writ petition was filed challenging the order passed by adjudicating authority wherein it held that the services provided by them are in the nature of 'intermediary services' but not as main services and the same would not qualify for zero rated supply and accordingly refund claim of unutilized ITC is rejected.

The said case has arisen after the refund has been issued to Petitioner. The OIO passed by the adjudicating authority has been undergone review by the Principal Commissioner under Section 107 of CT Act and held that the services provided by them are 'intermediary services' and does not qualify for export of such services and accordingly adjudicating authority has filed an appeal before joint commissioner against such OIO for contesting the entire amount of refund sanctioned to petitioner.

[6] Writ Petition No.15534 of 2022 – High Court Andhra Pradesh
[7] 1998 (38) ELT 741 (SC)
[8] 2022 (11) TMI 743 - PUNJAB AND HARYANA HIGH COURT

The adjudicating authority has placed main reliance on the circular vide Circular No. 127/46/2019 – GST dated 04-12-2019 which was later withdrawn, where such circular clarifies that the intermediary services are treated in par with the export of services. After hearing both parties' arguments, the joint commissioner has passed an order and held that the services provided by the Petitioner are intermediary services and accordingly refund sanctioned was rejected.

Accordingly, the Petitioner has filed this instant petition challenging the order passed by the adjudicating authority. In this instant case, the Petitioner has contended that the adjudicating authority has taken wrong view in defining the intermediary services in their case as they provide such services to service receiver on their own account but not as an intermediary and he also contended that the definition of intermediary clearly excludes such main services. The petitioner also argued that this is a case of sub-contract and there is only one sale involved in the findings of impugned order and have no factual or legal basis to allege that there was a second contract of agency between the petitioner and service receiver. On the other side, the adjudicating authority has contended that the Petitioner is supplying the supportive services wherein it helps the service receiver in-turn to provide its main services.

The High Court after perusing of the clauses in the agreements and the arguments of both parties, it held that the services provided by the Petitioner would not fall under the category of 'intermediary services' but as 'main services' to the service receiver and accordingly quashed the OIO and restored the original refund sanction order.

Our Comments:

The concept of 'intermediary' was quite an ambiguous one. However, the said concept cannot be applied to the facts in the above case, since the above indicate the classic case of export of services. As long as the services are provided by his own account, the service provider can be out of the ambit of intermediary.