

ARBITRATION IN TAXABLE MATTERS – ARBITRATION CLAUSE

NOT A BAR ON WRIT

The general principle dictates that there is a restriction on exercise of jurisdiction on the learned Courts, if the underlying contract has an arbitration clause and also the subject matter of the dispute between the contractual parties, is within the purview of the arbitral tribunal constituted thereafter. The Hon'ble High Court of Judicature for Andhra Pradesh in the matter of *Shiridi Sainadh Industries v. Deputy Commissioner of State Tax (INT)*¹ has reinstated the principle and held that since the subject matter of the dispute is not related to the contract nor is between the contractual parties, therefore, the Hon'ble Court has power to exercise its jurisdiction.

In this instant case, the petitioner aggrieved from the assessment order passed by the State GST Department based on the wrongful interpretation of the term 'consideration', wherein the tax was levied on the petitioner for the by-products retained as per the agreement with the State Government Civil Supplies Corporation for supply of rice. The petitioner has already paid the requisite tax on the purchase amount for the service rendered to the Civil Supplies Corporation.

The Hon'ble High Court distinguished the present petition from the Hon'ble Supreme Court judgement in *Assistant Commissioner v. Glaxo Smith Kline Consumer Health Care Limited*², on the ground that the writ has been preferred within the period of limitation. Further the Hon'ble Court held that the dispute is between the Revenue and the petitioner with regard to the question on whether the by-products would form part of the 'consideration', and not between the contractual parties for implementation of terms and conditions of the contract. Also, the subject matter is beyond the scope of the arbitral tribunal. Therefore, the Hon'ble High Court held that the instant writ is maintainable in the present facts and circumstances.

¹ 2021 (51) G.S.T.L. 374 (A.P.)

² 2020 SCC OnLine SC 440

CENTRAL EXCISE DUTY – TAXABLE EVENT SHALL DECIDE

JURISDICTION

The petitioner has preferred this petition for quashing show cause notice issued by the Commissioner of Central Goods and Service Tax & Central Excise, Audit-Thane, inspite the learned Adjudicating Authority vide the order-in-original concluded that the Thane Commissionerate action to demand central excise on the manufacture is beyond jurisdiction.

The Hon'ble High Court of Judicature at Bombay in *Supermax Personal Care Pvt. Ltd. v. Union of India*³, observed that the factory premises where the taxable event i.e. manufacturing is happening is situated at Una, Himachal Pradesh, which would fall within the administrative jurisdiction of the Chief Commissioner, Chandigarh where as the present concerned department falls within the Principal Chief Commissioner, Mumbai. Thereby, neither of the Respondents have jurisdictions to issue the notice. Additionally, the learned Adjudicating Authority in its order-in-appeal has issued factually decided which was upheld by the Hon'ble High Court. Thereby, the Hon'ble Court allowed the petition and quashed the show cause-cum-demand notice on ground of lack of jurisdiction and reopening an issue already settled by the learned Adjudicating Authority.

³ 2021 (377) E.L.T. 399 (Bom.)

SERVICE TAX – EXTENDED PERIOD ON LIMITATION INVOKE BY
REVENUE – NOT SUSTAINED

The learned Central Excise and Service Tax Appellate Tribunal, Allahabad bench in the matter of *A. N. Kapoor (Janitors) Pvt. Ltd. v. Commissioner of Central Excise and Service Tax, Lucknow*⁴, has held that the extension of the limitation period under Section 73 of the Finance Act, 1994 (Service Tax) for the second and subsequent show cause notices on account of suppression of fact when the first SCN issued all the relevant facts in the knowledge of the authorities. The learned Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Nizam Sugar Factory v. Collector of Central Excise, A.P.*⁵ held that the extension for initiation of assessment vis-à-vis subsequent SCN issued for the same financial year inspite the authorities had fully assessed the documents in the first SCN is not sustainable on ground under Section 73 of the Act.

The Hon'ble Supreme Court in *Nizam Sugar Factory (supra)* has placed reliance on its earlier judgment of *P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise*⁶, *ECE Industries Limited v. Commissioner of Central Excise, New Delhi*⁷ and *Hyderabad Polymers (P) Ltd. v. Commissioner of Central Excise, Hyderabad*⁸.

In light of the above judgments, the learned Tribunal denied to extend the limitation period under Section 73 of the Finance Act, 1994 and rejected the demand of service tax and also the penalty imposed upon the directors of the assessee.

⁴ 2021 (52) G.S.T.L. 153 (Tri. – All.)

⁵ 2006 (19) E.L.T. 465 (S.C.)

⁶ (2003) 3 SCC 599

⁷ 2004 (13) SCC 719

⁸ 2004 (166) E.L.T. 151 (S.C.)

SERVICE TAX – TAX EXEMPTION UNDER WORK CONTRACT SERVICE TO
GOVERNMENT

The Hon'ble Madras High Court in its order in the matter of *Senior Regional Manager, Tamil Nadu Civil Supplies Corporation v. Principal Chief Commissioner of GST & C. Ex.*⁹ has held that the assessee being a public sector undertaking, entirely funded by the State, then the contraction activities undertaken for building storage godowns shall also be exempted from the service tax liability by virtue of exemption provided under Clause 12(a) of the Mega Exemption Notification No 25/2012-S.T. read with Notification No. 6/2015-S.T.

In the instant case, the petitioner being the government undertaking, undertook construction work to build storage godowns in the State. The Respondent Department issued show cause notice with setting out demand. The petitioner aggrieved from the order preferred writ petition.

The Hon'ble Court allowing the petition, permitted the exemption to the petitioner based on the Mega Exemption Notification for the 'works contract service' and quashed the demand cum show-cause notice.

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⁹ 2021 (51) G.S.T.L. 360 (Mad.)

¹⁰ Majesty legal is law firm, established in 2013 and aim of the present article is to provide recent legal development. The opinions presented in the article are personal in nature and not to be deemed as legal advice.