GST UPDATE
(January, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Blocking of GSTR-01 in case of nonfiling of GSTR-3B

-Where a taxpayer fails to file GSTR-3B for two subsequent months, his GSTR-1 shall now be blocked.

-Earlier non filing of GSTR-3B used to result in blocking of Eway Bill facility but from now on it shall also result in blocking of GSTR-1 of the taxpayer.

-Similarly, for quarterly return filers, the taxpayer failing to file GSTR-3B for the preceding quarter shall not be permitted to file GSTR-1 of subsequent quarter.

[Notification No. 01/2021–Central Tax dated 01.01.2021]

2. CBIC amends Jurisdiction of Commissioner Appeals for New Delhi & Mumbai

CBIC vide Notification No. 02/2021-Central Tax amends Jurisdiction of Principal Chief Commissioner/Chief Commissioner of Central Tax in terms of Commissioner (Appeals)and Additional Commissioner (Appeals) for New Delhi & Mumbai.

[Notification No. 02/2021–Central Tax dated 12.01.2021]

(II) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th January, 2021

No. S.O. 03/P.A.5/2017/S.128/Amd./2021.- In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) , and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. SO.13/P.A.5/2017/S.128/2018, dated the 27th February, 2018, published in the Punjab Government Gazette, (Extraordinary), dated the 7th March, 2018, namely:-

AMENDMENT

In the said notification, in the third proviso for the figures , letters, word and sign "10th January, 2020", the figures, letters, word and sign "17th January, 2020" shall be substituted.

A. VENU PRASAD,
Additional Chief Secretary Taxation to
Government of Punjab,
Department of Excise and Taxation.

2202/1-2021/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 8th January, 2021

No. S.O. 04/P.A.3/2020/S.1/2021.- In exercise of the powers conferred by sub-section (2) of section 1 of the Punjab Goods and Services Tax (Amendment) Act, 2020 (Punjab Act No. 3 of 2020) and all other powers enabling him in this behalf, the Governor of Punjab, on recommendations of the Council, is pleased to appoint the 10th day of November, 2020, as the date on which the provisions of section 7 of the said Act shall be deemed to have come into force.

A. VENU PRASAD,
Additional Chief Secretary Taxation to
Government of Punjab,
Department of Excise and Taxation.

2202/1-2021/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 8th January, 2021

No. S.O. 05/P.A.5/2017/Ss.148 and 39/ 2021.— In exercise of the powers conferred by section 148 read with sub-section (7) of section 39 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017), (hereinafter referred to as the said Act) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to notify the registered persons, notified under proviso to sub-section (1) of section 39 of the said Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

(i) thirty five per cent. of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or

(ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Provided that no such amount may be required to be deposited-

(a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;

(b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

Explanation– For the purpose of this notification, the expression "a complete tax period" means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

2. This notification shall come into force with effect from the 1st day of January, 2021.

A. VENU PRASAD,
Additional Chief Secretary Taxation to
Government of Punjab,
Department of Excise and Taxation.

2202/1-2021/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 8th January, 2021

No. S.O. 06/P.A.5/2017/S.39/2021.-In exercise of the powers conferred by proviso to sub-section (1) of section 39 read with proviso to sub-section (7) of section 39 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) (hereafter in this notification referred to as the said Act) and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to notify the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017(Central Act.13 of 2017), having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under sub-rule (1) of rule 61A of the Punjab Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules) as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said Act, namely: —

(i) the return for the preceding month, as due on the date of exercising such option, has been furnished:

(ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.

(2) A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

(3) For the registered person falling in the class specified in column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30th November, 2020, it shall be deemed that they have opted under sub-rule (1) of rule 61A of the said rules for the monthly or quarterly

furnishing of return as mentioned in column (3) of the said Table:-

Table

Sl. No.	Class of registered person	Deemed Option
(1)	(2)	(3)
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR-1** on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR-1** on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

(4) The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31st day of January, 2021.

A. VENU PRASAD,
Additional Chief Secretary Taxation to
Government of Punjab,
Department of Excise and Taxation.

2202/1-2021/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 8th January, 2021

No. S.O. 08/P.A.5/2017/Ss. 9, 11, 15 and 148/2021.- In exercise of the powers conferred by sub- sections (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Punjab Goods and Services Tax, 2017 (Punjab Act. No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. 37/P.A5/2017/S.11/2017, dated the 30th June, 2017, published in the Punjab Government Gazette, (Extraordinary) dated the 30th June, 2017, namely :-

AMENDMENT

In the said notification, in the Table, against serial number 41, -

(a) in column (3), for the figure "50", at both the places where they occur, the figure "20" shall be substituted: and

(b) for the entry in column (5), the following entries shall be substituted, namely:-

(5)
"Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial of financial business area: Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard: Provided further that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of state tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty: Provided further that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the state tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.".

2. This notification shall be deemed to have come into force on and with effect from the 1st day of January, 2020.

A. VENU PRASAD,
Additional Chief Secretary Taxation to
Government of Punjab,
Department of Excise and Taxation.

2202/1-2021/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 15th January, 2021

No. S.O. 10/PGSTR/2017/R.123/2021.- In supersession of the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 30/PGSTR/2017/R.123/2020 dated the 21st August, 2020 and in exercise of the powers conferred by sub-rule (2) of rule 123 of the Punjab Goods and Services Tax Rules, 2017, and all other powers enabling him in his behalf, the Governor of Punjab is pleased to constitute a State Level Screening Committee on Anti Profiteering which shall consist of the following officers by designation, namely:-

Serial No.	Designation of Officer	Contact No.	Email-ID
1.	Joint/Additional Commissioner, (Technical) CGST Commissionerate, Ludhiana	0161-2304558	cexldh@nic.in
2.	Additional Commissioner-I, Department of Excise and Taxation, Bhupindra Road, Patiala	0175-2212066	addlete1@punjab.gov.in

A. VENU PRASAD,
Additional Chief Secretary Taxation to
Government of Punjab,
Department of Excise and Taxation.

2205/1-2021/Pb. Govt. Press, S.A.S. Nagar

(III) CENTRAL TAX NOTIFICATIONS

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 01/2021 – Central Tax

New Delhi, the 1st January, 2021

G.S.R……(E). - In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Amendment) Rules, 2021.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), in rule 59, after sub-rule (5), the following sub-rule shall be inserted namely:-

"(6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.".

[F. No. CBEC-20/06/04/2020-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610 (E), dated the 19th June, 2017 and last amended *vide* notification No. 94/2020-Central Tax, dated the 22nd December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 786(E), dated the 22nd December, 2020.

[To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. 02/2021 - Central Tax

New Delhi, the12th January, 2021

G.S.R.(E). -In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Government, hereby makes the following notification further to amend the notification of the Government of India, Ministry of Finance, Department of Revenue No. 2/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification, -

(I). in Table I, -

(a) against Sl. No. 7, in column (4), for 7.4.2 and the entries relating thereto, the following shall be substituted, namely: -

	(4)
"7.4.2	Commissioner (Appeals I) Delhi and Additional Commissioner (Appeals II) Delhi";

(b) against Sl. No. 14, in column (4), for 14.4.1 and the entries relating thereto, the following shall be substituted, namely: -

	(4)
"14.4.1	Commissioner (Appeals II) Mumbai and Additional Commissioner (Appeals I) Mumbai";

(II). in Table III, the following shall be inserted at the end, namely: -

"Note 1: The Commissioner (Appeals I) Delhi mentioned in Column (4) for entries at SI. No. 7.4.1 and 7.4.2 shall have jurisdiction over Delhi I and Delhi II mentioned in Column (2) at SI. No. 13 and 14 of Table III;

Note 2: The Commissioner (Appeals II) Mumbai mentioned in Column (4) for entries at SI. No. 14.4.1 and 14.4.2 shall have jurisdiction over Mumbai I and Mumbai II mentioned in Column (2) at SI. No. 31 and 32 of Table III."

[F.No. CBEC-20/19/06/2020-GST]

(Pramod Kumar)
Director, Government of India

Note: - The principal Notification No. 2/2017-Central Tax, dated the 19th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 609(E), dated the 19th June, 2017 and was last amended vide notification No. 04/2019 – Central Tax, dated 29th January, 2019, published vide number G.S.R. 64 (E), dated the 29th January, 2019.

(IV) ADVANCE RULINGS

1. Chocolate Milk Powder is classifiable under Tariff heading 1806

Case Name : **In re M/s Karnataka Co-operative Milk Producers Federation Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 01/2021
Date of Judgement/Order : 08/01/2021

Milk and Milk products are classified in Chapter 4 and the headings 0401 86 0402 are relevant to Milk / Milk in the form of powder or granules and creme. The product in the instant case is neither milk nor milk powder but 'Chocolate Milk Powder', which is admittedly obtained on blending of Whole Milk Powder with Chacolate Flavoured Powder in the ratio of 97.5 to 2.5. Further it is an admitted / undisputed fact that the product in question also does not have the characteristics, required under FSSAI and BIS, to be considered as Milk Powder, in terms of para 7.5 supra. Thus the instant product does not cover under the heading 0401 or 0402. The other remaining headings of Chapter 4 are not relevant to the instant product.

We, now proceed to examine the alternate / competing entry under Chapter 18, which covers cocoa (including cocoa beans) in all forms, cocoa butter, fat and oil preparations containing cocoa. Explanatory Notes of World Customs Organisation to heading 1805 clearly specify that *cocoa powder to which milk powder or peptones have been added fall under tariff heading 1806.* Heading 1806 covers Chacolate and other food preparations containing cocoa and World Customs Organisation explanatory notes to the said heading clearly specify that *the heading 1806 includes all food preparations containing cocoa.* The instant product being a food preparation made out of blending of white milk powder with cocoa. Thus the instant product merits classification under heading 1806.

2. ITC eligible on works contract service to Municipal Corporation

Case Name : **In re Sital Kumar Poddar (GST AAR West Bengal)**
Appeal Number : Advance Rulings No. 15/WBAAR/2020-21
Date of Judgement/Order : 11/01/2021

The applicant is eligible to claim the input tax credit on the inward supplies of the goods and services used for supplying the works contract service to Kolkata Municipal Corporation (KMC) for construction of an immovable property.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

3. Property or other tax cannot be deducted to compute rental value for GST

Case Name : **In re Midcon Polymers Pvt Ltd. (GST AAAR Karnataka)**
Appeal Number : Order No. KAR/AAAR/01/2020-21
Date of Judgement/Order : 11/01/2021

The Appellate Authority modify the advance ruling No.KAR ADRG 48/2020 dated 16-09-2020 and answer the questions raised by the Appellant in the original advance ruling application and in this appeal, as follows:

1. For the purpose of arriving at the value of rental income, the Appellant cannot deduct the amount paid as property tax to the Municipal Authority or any other satutory levies levied under any law for the time being in force, other than the CGST, SGST, IGST and Compensation Cess, subject to the condition that it is charged separately by the Appellant.

2. For the purpose of arriving at the total rental income, the notional interest earned on the security deposit is not to be taken into consideration.

4. GST on Capital Subsidy for Green Field Public Street Lighting System

Case Name : **In re Surya Roshni LED Lighting Projects Limited (GST AAR Odisha)**
Appeal Number : Advance Ruling Order No. 05/ODISHA-AAR/2020-21
Date of Judgement/Order : 20/01/2021

Question No. 1 Whether Capital Subsidy (90 per cent of Project Capital Expenditure, received by the Applicant as per SIOM Agreement and Escrow Agreement from Odisha Government / ULBs for the Green Field Public Street Lighting System in the State of Odisha is not liable to GST and if liable to GST, then at what rate of GST?

Answer:- Capital Subsidy (90 per cent of Project Capital Expenditure, received by the Applicant is liable to GST. The GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading.

Question No.2 What shall be the GST rate for the balance 10% of the Project Capital Expenditure and O&M Fees received as Annuity Fee over the period of 7 years by the Applicant as per SIOM Agreement considering the SI. No. 3(vi) of the **notification No. 11/2017 Central Tax (Rate), dt. 28-06-2017** as amended by **Notification No. 31/2017 Central Tax (Rate), dt. 13-10-2017** and corresponding notifications of Odisha State Tax Rate as amended.

Answer :- The supply being undertaken or proposed to be undertaken by the applicant would qualify to be a supply of 'composite supply' in terms of definition under Section 2(119) of the **Central Goods and Services Tax Act, 2017**, where the principal supply is ' supply of goods' not ' supply of service'. Therefore, question of the applicability of concessional rate of tax in terms of **Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017** and as amended does not arise. The GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading.

Question No.3 What shall be the time for raising GST Invoices for Capital Subsidy and Annuity Fee (consisting of 10% of Project Capital Expenditure and O&M Fee) payable in 7 years?

Answer:- Since in the subject case there is a 'composite supply where the predominant supply/principal supply is 'supply of goods', we are of the opinion that the applicant should raise invoice as per the provisions of Section 31 of the **CGST Act, 2017**.

Question No.4 Whether the rate of tax on the supplies by the sub-contractor to the Applicant shall be 12 % GST (6% CGST and 6 % SGST) in terms of serial no. 3 (ix) of **Notification No.11/2017-Central Tax(Rate) dated 28.6.2017** as amended by **Notification No.1/2018-Central Tax (Rate) dated 25.01.2018/** Odisha State Tax (Rate) dated 28.06.2017**'** as amended.

Answer:- Notification No. 11/2017-Central Tax(Rate) dated 28.6.2017 as amended is applicable for 'supply of service'. In the instant case, the supply being undertaken or proposed to be undertaken by the applicant would qualify to be a supply of composite supply' in terms of definition under Section 2(119) of the Central Goods and Services Tax Act, 2017, where the principal supply is ' supply of goods' not ' supply of service'. Therefore, the said notification is not applicable to the applicant.

5. Capital Subsidy for Public Street Lighting System includible in Transaction Value for GST

Case Name : **In re Pinnacles Lighting Project Private Limited**
Appeal Number : Advance Ruling No. 04/Odisha-AAR/2020-21
Date of Judgement/Order : 20/01/2021

Question No. 1 Whether in facts and circumstances of the case, the activities of supply installation, operation and maintenance of Greenfield Public Street Lighting System (GPSLS) carried out by the Applicant is classifiable as a supply of Works Contract Services?

Answer: – Answered in the negative.

Question No.2 If the answer to Question 1 is in affirmative, whether GST is liable to be paid under Entry 3(vi) of **Notification No.11/2017-Central Tax (Rate) dated 28.06.2017** (as amended) on the supply and installation activities along with operation and maintenance activities to be undertaken by the Applicant?

Answer: – Since, answer to Question No. 1 is in negative, there is no need to answer Question No.2.

Question No.3 Whether in facts and circumstances of the case, the capital subsidy received/ receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST payable in terms of Section 15 of the **CGST Act, 2017?**

Answer:- Capital Subsidy received/receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST.

6. GST on supply installation, operation & maintenance of Greenfield Public Street Lighting System

Case Name : **In re Nexustar Lighting Project Private Limited (GST AAR Odisha)**
Appeal Number : Order No.03/ODISHA-AAR/2020-21
Date of Judgement/Order : 20/01/2021

Question No. 1 Whether in facts and circumstances of the case, the activities of supply installation, operation and maintenance of Greenfield Public Street Lighting System (GPSLS) carried out by the Applicant is classifiable as a supply of Works Contract Services?

Answer:- Answered in the negative.

Question No.2 If the answer to Question 1 is in affirmative, whether GST is liable to be paid under Entry 3(vi) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) on the supply and installation activities along with operation and maintenance activities to be undertaken by the Applicant?

Answer: – Since, answer to Question No. 1 is in negative, there is no need to answer Question No.2.

Question No.3 Whether in facts and circumstances of the case, the capital subsidy received/ receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST payable in terms of Section 15 of the CGST Act, 2017?

Answer:- Capital Subsidy received/ receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST.

7. Eligibility of Transitional Credit is not under Advance Ruling purview

Case Name : **In re Shapoorji Pallonji and Company Private Limited (GST AAAR Tamilnadu)**
Appeal Number : A.R.Appeal No. 03/2020/AAAR & ORDER-in-Appeal No. AAAR/01/2021 (AR)
Date of Judgement/Order : 25/01/2021

The Appellate Authority has ruled as follows:

1.With regard to the Mobilization Advance transitioned into GST on which no Service Tax is paid as per Chapter V of Finance Act 1994, the issue is not answered and is deemed to be that no ruling is issued under Section 101 3 of the CGST TNGST Act 2017 because of the difference of opinion between both the Members.

2. On the issue of eligibility of Transitional Credit, we hold that the same is not under the purview of the Advance Ruling

8. GST on support services for research on Prevention of Epilepsy

Case Name : **In re Vivaan Ventures (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 05/2021
Date of Judgement/Order : 29/01/2021

(a) What will be the SAC applicable to the activities undertaken by M/s Vevaan Ventures?

The services provided by the applicant, as explained earlier is not in connection with the diagnosis or treatment or care for illness and is related to support services for research and is covered under SAC 998599 and hence is not covered under healthcare services and thereby not covered under entry no. 74 of **Notification No.12/2017- Central Tax (Rate) dated 28.06.2017**.

(b) Whether the exemption given under Notification No. 9/2017-Integrated Tax(Rate) dated 28.06.2017 is applicable to the applicant?

The opinion of the applicant that their activity would be covered under "health care services" is examined and found that the term "health care services" is defined in **Notification No. 9/2017-Integrated Tax(Rate) dated 28.06.2017** in clause (zg) of para 2 and the same reads as under:-

"(zg) "health care services" means any services by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma:"

The services provided by the applicant, as explained earlier is not in connection with the diagnosis or treatment or care for illness and is related to support services for research and is covered under SAC 998599 and hence is not covered under healthcare services and thereby not covered under entry no. 74 of **Notification No.12/2017- Central Tax (Rate) dated 28.06.2017**.

(c) Whether the applicant can avail input tax credit of tax paid or deemed to have been paid?

Since the services provided by the applicant is not exempt, the applicant is eligible to claim and avail input tax credit in terms of section 16 of the **CGST Act, 2017** and section 16 of the KGST Act, 2017.

(d) Whether the applicant is liable to pay tax on outward services, if yes, at what rate?

The activity of the applicant is squarely covered under the entry no. 23(ii) of **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** and is liable to tax at 9% CGST and similarly liable to tax at 9% KGST, in case the transaction is a intra-State supply.

(e) Whether the applicant is required to be registered under the Act?

Since the applicant is involved in intra-State supply of services, as the location of the supplier and the place of supply is the same state, the applicant is liable to register as per the terms of section 22 of the CGST Act, 2017.

9. GST on diagnostic & treatment services rendered to Hospitals/Labs/biobanks registered outside India

Case Name : **In re Dr. H.B. Govardhan (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 04/2021
Date of Judgement/Order : 29/01/2021

(a) Is the applicant eligible to be registered under GST Act?

The applicant is providing Business Promotion & Management Services, covered under SAC 9983 and are taxable as discussed at para 11 supra. The applicant being a service provider, as an intermediary, becomes a taxable person and hence is liable for registration in terms of Section 22(1) of **CGST Act 2017**. Therefore the applicant is liable for registration subject to threshold limit of turnover.

(b) Is there any tax liability on services rendered to the Hospitals/Laboratories/ Biobanks registered in United States of America (USA) and other countries include export of Intellectuals like clinical data completions, analysis, clinical opinion advisory consultation through Phone calls, Video Conference, Mails and other Electronic devices and the applicant is living in India and services rendered from the place of India?

There is no liability of tax on diagnostic and treatment services rendered to Hospitals/ Laboratories/ biobanks registered in United States of America and other countries. However, the business promotion services rendered, as per the contract submitted, are liable to tax under the GST Acts.

(c) Is there any tax liability on Health Care Services-Medical Services and Paramedical Services (Para-time practicing in Clinic) rendered in India to the recipient from India?

The diagnostic and treatment services are covered under Health Care Services and the medical services and part time practising in Clinic are exempted from the payment of GST.

10. GST on Manpower Services payable on Gross Amount

Case Name : **In re Dr. Ravi Prasad M.P.(GST AAR Karnataka)**

Appeal Number : Advance Ruling No. KAR ADRG 02/2021
Date of Judgement/Order : 29/1/2021

Whether applicant should charge GST @ 18% for providing manpower service only on the services charges or on the total bill amount?

The value of the taxable supply of manpower services is the transaction value equivalent to the bill amount which is inclusive of actual wages of the manpower supplied and the additional 2% amount paid to the applicant.

(V) COURT ORDERS/ JUDGEMENTS

1. GST: Writ petition not maintainable if alternative remedy available- HC

Case Name : **Radha Krishan Industries Vs State Of H.P. And Others (Himachal Pradesh High Court)**
Appeal Number : CWP No. 5648 of 2020
Date of Judgement/Order : 01/01/2021

Conclusion: When a statutory form is created by law for redressal of grievance, a writ petition should not be entertained ignoring the statutory dispensation. Therefore, assessee had not only have efficacious remedy, rather alternative remedy under the GST Act, and therefore, the present petition was not maintainable.

Held: A detection case under section 74 of the Himachal Pradesh GST Act, 2017 and the CGST Act, 2017 read with section 20 of the IGST Act, 2017 was conducted against one of the suppliers of M/s Radha Krishan Industries, by way of search and seizure as provided under section 67 of the HPGST/CGST Acts. After initial inquiry into the matter, evidences of tax evasion were detected, it was found that M/s GM Powertech, Kala-Amb claimed and utilized input tax credit on account of the invoices issued by the fake/fictitious firms without actual movement of goods from the fake firms to various recipients including assessee. Consequently, Officer issued provisional attachment of the payment receivable by assessee. Assessee filed a writ petition under Article 226 of the Constitution of India for quashing the impugned order. It was held that Hon'ble Supreme Court has recognized some exception to the rule of alternative remedy, i.e. where the statutory authority has not acted in accordance with the provisions of the Act or in defiance the fundamental principles of judicial procedure or has resorted to invoke the provisions, which are repealed or where an order has been passed in total violation of the principle of natural justice, but the High Court will not entertain a petition under Article 226 of the Constitution of India, if efficacious remedy is available to the aggrieved person or where the statute under which the action complained of has been taken in mechanism for redressal of grievance still holds the field. Meaning thereby, that when a statutory form is created by law for redressal of grievance, a writ petition should not be entertained ignoring the statutory dispensation. Having said so, assessee had not only have efficacious remedy, rather alternative remedy under the GST Act, and therefore, the present petition was not maintainable.

2. ITC under GST of ex-Director cannot be blocked to recover VAT Dues of Company

Case Name : **Nipun A Bhagat, Proprietor of Steel Kraft Industries Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 14931 of 2020
Date of Judgement/Order : 04/01/2021

Whether Rule 86A of the **CGST Rules, 2017** can be exercise for the purpose of blocking the input tax credit available in the credit ledger account of the writ applicant for the purpose of recovering the dues of Dolphin Metals (India) Limited.

At the outset, we reject the first contention raised by Mr. Dave, the learned AGP, as regards Section 18 of the Act, 1956. Section 18 of the Act, 1956 specifically talks about "Private Company". Indisputably, Dolphin Metals (India) Limited is a Public Limited Company. There is a specific In view of the aforesaid, we are left with no other option but to allow this writ application and the same is hereby allowed. The respondent No.2 is directed to unblock the input tax credit available in the credit ledger account of the writ applicant at the earliest. We clarify that this order shall not preclude the department from recovering the dues of Dolphin Metals (India) Ltd. by any other mode of recovery permissible averment in this regard in the memorandum of the writ application which has not been denied or disputed. The moot question to be determined is whether Rule 86A could have been invoked for blocking the input tax credit available in the electronic credit ledger of the writ applicant to recover the dues of Dolphin Metals (India) Ltd? In our opinion, the answer has to be in the negative. Rule 86A can be invoked only if the conditions stipulated therein are fulfilled. In other words, it is only if the Commissioner or an Officer authorized by him has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible for the reasons stated in Rule 86A(1)(a) to (d) that the authority would get the jurisdiction to exercise the power under Rule 86A of the Rules. We fail to understand how Rule 86A could have been invoked in the present matter. In our opinion, the issue, as such, stands squarely covered by three decisions of this High Court, i.e, (i) ***Mr. Choksi vs. State of Gujarat*** (SCA No.243 of 1991) (ii) **Different Solution Marketing Private Ltd. vs. State of Gujarat** (SCA No.19949 of 2015) and (iii) **Paras Shantilal Savla vs. State of Gujarat** (SCA No.7801 of 2019).

3. GST: Stop mechanical & Casual bank account attachment: HC

Case Name : **Vinodkumar Murlidhar Chechani Proprietor of M/S Chechani Trading Co. Vs State of Gujarat & 1 Other (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 12498 of 2020
Date of Judgement/Order : 04/01/2021

We have noticed over a period of time that in each and every matter in which proceedings under Section 67 of the Act are initiated, an order of provisional attachment of the bank accounts under Section 83 of the Act would follow. This mechanical exercise of the power is not appreciated. The Legislature has thought fit to confer upon the authority the power to provisionally attach the property of the assessee in the hope that such power is not exercised casually but, only after due and proper application of mind. A mechanical or casual exercise of such power will dilute the very efficacy of the provisions of Section 83 of the Act. Every day there are not less than ten matters on the subject of Section 83 of the Act in the cause-list. When there are plethora of judgments explaining Section 83 of the Act in details, then why so much of litigation in the High Court. The only reason that can be attributed is the mechanical exercise of power under Section 83 of the Act. This should stop at the

earliest. So much judicial time is wasted in all such matters wherein the law is so well settled.

4. Open GSTN portal to enable refund application or accept manually

Case Name : **Atibir Industries Co. Ltd. Vs Union of India (Jharkhand High Court)**
Appeal Number : W. P. (T) No. 4061 of 2019
Date of Judgement/Order : 04/01/2021

Conclusion: On discovering of technical glitches faced by assessee-company, GST Authority was directed either to open GSTN portal enabling assessee to file its application for refund in GST RFD-01 or to manually accept the application for refund pertaining to the period 2017-18 and 2018-19 in respect of its claim for refund of unutilized Input Tax Credit pertaining to compensation cess for the financial years 2017-18 and 2018-19 within a period of 15 days from such communication.

Held: Assessee was the manufacturer of Sponge Iron regularly exports goods outside the country without payment of export duty in terms of "Letter of Undertaking" issued in favour of assessee by the competent authority. By virtue of the Circular dated 31st December 2018, it was clarified by CBIC that compensation cess can be claimed as ITC and unutilized compensation cess can be claimed as refund, assessee, on 4th March 2019, logged in on GSTN Portal for claiming refund by filing statutory Form GST RFD- 01 towards unutilized ITC at the hands of assessee on account of compensation cess for the financial year 2017-18. When assessee logged in on GSTN Portal and filed GST RFD-01 Form for refund, even the claim of refund of assessee was computed in terms of Section 54(3) of the CGST/SGST Act, 2017 read with Rule 89 of the CGST/SGST Rules and a sum was determined as refundable to assessee for the financial year 2017-18 and assessee had stated that refund application in GST RFD-01 Form could not be submitted online by assessee on GSTN Portal, as the option of 'Save', 'Review' and 'Submit' as occurring on GSTN Portal did not get "Active". When assessee was unable to upload its application, it on the same day itself, made a complaint in the Helpdesk of GSTN Portal and was allotted Ticket Number. In spite of allocation of said Ticket Number, no response was received by assessee from the Helpdesk intimating the reason as to why the application for refund for the financial year 2017-18 was not being accepted on GSTN Portal. The grievance of assessee was that on one hand the application for refund of assessee for the financial year 2017-18 was not being accepted on GSTN Portal due to technical glitches and, on the other hand, even subsequent application for the period 2018-19 was not being accepted on GSTN Portal with a message directing assessee to first file application for refund for the period 2017-18. It also claimed that while filing application for refund for the period 2018-19, assessee could have also claimed the amount of unutilized ITC towards compensation cess as refund pertaining to the financial year 2017-18, as the same was within the period of limitation, but assessee was even prevented from doing so on the GSTN Portal in view of the message that assessee was first required to submit its application for refund for the financial year 2017-18. It was held that the officer was directed either to open GSTN portal enabling assessee to file its application for refund

in GST RFD-01 or to manually accept the application for refund pertaining to the period 2017-18 and 2018-19 in respect of its claim for refund of unutilized Input Tax Credit pertaining to compensation cess within a period of one month from the date of communication of this judgement. The officers were directed to communicate assessee through e-mail as to whether they would open the GSTN portal or would accept the refund applications manually and upon such communication, assessee would be entitled to avail of the opportunity to file applications for refund of compensation cess for the financial years 2017-18 and 2018-19 within a period of 15 days from such communication.

5. HC allows Anticipatory Bail in alleged GST evasion of Rs.100 Cr

Case Name : **Nitin Verma Vs State of U.P. (Allahabad High Court)**
Appeal Number : Criminal Misc Anticipatory Bail Application U/S 438 Cr.P.C. No. 4116 of 2020
Date of Judgement/Order : 05/01/2021

Conclusion: Where the implication of a person was for a non-bailable offence, he could apply for anticipatory bail. If the applicant cooperated with the inquiry, there was no requirement of his arrest. Assessee was having his own address of residence and business. He could give surety ensuring his appearance. Therefore, he deserved to be granted limited protection for the purpose of conclusion of inquiry by the Proper Officer. Thus, Allahabad High Court granted the anticipatory bail to a person alleged of GST evasion to the tune of Rs.100 Crores.

Held: Assessee-individual had filed anticipatory bail application with reference to summon issued by Superintendent (A.E.) CGST and Central Excise, Agra under section 70 of the **CGST Act, 2017** read with Section 174 of the CGST Act, 2017 during the pendency of the case before the CGST and Central Excise, Agra. CGST Department, had vehemently opposed the prayer of applicant for grant of anticipatory bail. He had submitted that in the instant case, GST evasion of more than Rs. 100 crores was involved. It was a cognizable and non-bailable offence as per Section 132 (1) (i) of the CGST Act, 2017 r/w Section 132 (5) of the CGST Act. During search of assessee's premises, number of incriminating documents were recovered which prove his involvement in GST evasion of more than 100 crores. Hence, notice u/s 70 of the CGST Act was issued to assessee. The inquiry was still in progress and 111 fake firms, had been found and bogus invoices numbering 373 had been recovered. Assessee was the mastermind of the entire fraud. The goods were sold on paper only without any actual production or supply. It was held that under **Section 438** Cr.P.C., where the implication of a person is for a non-bailable offence, he can apply for anticipatory bail. If the applicant cooperates with the inquiry, there is no requirement of his arrest. The applicant is having his own address of residence and business. He can give surety ensuring his appearance. He does not appears to be habitual offender, prosecuted or convicted earlier. Therefore, he deserves to be granted limited protection for the purpose of conclusion of inquiry by the Proper Officer. Assessee should make himself available for interrogation by the proper officer as and when required; he should not directly or indirectly, make any inducement, threat or promise

to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the Court or to any officer; he should not leave India without the previous permission of the Court and if he has passport, the same should be deposited by him before the proper officer concerned; the party should file computer generated copy of such order downloaded from the official website of High Court Allahabad; the concerned Authority/Official should verify the authenticity of such computerized copy of the order from the official website of Allahabad High Court and should make a declaration of such verification in writing; in case assessee failed to appear on any date fixed by the Proper Officer under the CGST Act, for any reason whatsoever, this anticipatory bail application should stand automatically rejected and the protection given to assessee would cease to have any effect.

6. GST: Power to attach Bank Account cannot be used in absence of statutory precondition

Case Name : **Proex Fashion Private Limited Vs Government of India (Delhi High Court)**
Appeal Number : W.P.(C) 11245/2020
Date of Judgement/Order : 06/01/2021

Conclusion: Power to attach the bank account must therefore be exercised only in strict compliance with the statutory power, and could not be extended to cover situations which were not expressly contemplated by the section. Absent the statutory precondition for exercise of the power of attachment, any order under Section 83 was wholly illegal and unsustainable.

Held: Assessee-company had challenged a communication by which bank account of assessee in the respondent Bank had been attached by respondent authority, purportedly under Section 83 of the **CGSTax Act, 2017**. GOI contended that assessee declared as a "risky exporter", and several communications addressed to assessee at its registered office were returned undelivered therefore, proceedings under Section 71 were initiated against assessee and the attachment of the bank account under Section 83 was pursuant to those proceedings. It was held that the power to attach the bank account must therefore be exercised only in strict compliance with the statutory power, and could not be extended to cover situations which were not expressly contemplated by the section. Absent the statutory precondition for exercise of the power of attachment, any order under Section 83 was wholly illegal and unsustainable. In the present case, the admitted position was that no proceedings under any of the provisions mentioned in Section 83 of the Act were in fact initiated against assessee. Therefore, the impugned order was *ultra vires* the statutory powers of GOI and was hereby quashed.

7. HC deletes penalty equal to tax amount for E-way Bill Expiry & Imposes Rs. 10000 Penalty

Case Name : **M/S Sri Gopikrishna Infrastructure Pvt.Ltd Vs The State of Tripura and Ors (Tripura High Court)**

Appeal Number : WP(C)317 of 2020
Date of Judgement/Order : 07/01/2021

Quantum of penalty for transportation the taxable goods without the cover of valid e-way bill

Learned counsel has fairly stated that only violation that has been noticed by the taxing authority is of not carrying the valid e-way bill against the said invoice. Even in the detention order dated 18.05.2020, as examined by us, the only ground of detention, as shown, is that no e-way bill was tendered for the goods in movement. That is the only solitary ground in the notice, as issued under Section 129(3) of the CGST Act etc.

Held by High Court

We are satisfied that the breach definitely falls within the ambit of Section 122(xiv) of the CGST Act and as such the petitioner is excisable to the penalty. But the pertinent question that falls for consideration is whether the Superintendent of State Tax has exceeded his jurisdiction in imposing the penalty? Having read the provisions of imposing penalty as provided under Section 122 of the CGST Act, we are of the view for the breach which falls under Section 122(xiv), the penalty is fixed @Rs.10,000/-. So far the penalty for an amount equivalent to tax is concerned those are for the incidents when the tax is sought to be evaded or not deducted under Section 51 etc. The other incidences as cataloged in Section 122 of the CGST Act are not relevant to the present case and as such we are of the firm view that the Superintendent of State Tax has exceeded his jurisdiction while imposing the penalty. The penalty would have been Rs.10,000/-. As there is no dispute about the tax, we will not lay our hands on that aspect. Mr. Majumder has categorically stated that the petitioner has paid the said tax. We are also not accepting that statement on the face of it. The revenue authority shall be at liberty to verify that fact to ascertain whether tax has been paid or not. In the event of nonpayment of tax the appropriate action be taken for realizing the said tax from the petitioner. But in the circumstances, we set aside the order of penalty and direct the petitioner to pay the sum of Rs. 10,000/- as penalty for the breach which is covered under Section 122(xiv) of the CGST Act within a period of 1 month from today. If not paid, the action as prescribed by the statue be followed for realizing the same.

8. SC: Challenge Constitutional validity of CGST provisions before HC

Case Name : **Devendra Dwivedi Vs Union Of India (Supreme Court)**
Appeal Number : Writ Petition(s)(Criminal) No(s). 272/2020
Date of Judgement/Order : 07/01/2021

SC: Dismissed Writ challenging constitutional validity of various provisions under CGST Act, directed to pursue the remedies before HC

The Hon'ble Supreme Court of India in ***Devendra Dwivedi vs Union of India & ors. [Writ Petition(s) (Criminal) No(s). 272/2020, dated January 7, 2021]*** dismissed writ petition under Article 32 of the Constitution of India, challenging constitutional validity of certain provisions of **Central Goods and Services Tax Act, 2017 (CGST**

Act) pertaining to powers of inspection, search, seizure, arrest and penalties & prosecution. Held that, it would be appropriate to approach High Court for remedy by way of a petition under Article 226 of the Constitution of India, so that the Hon'ble Supreme Court has the benefit of the considered view of the jurisdictional High Court.

Facts:-

The Writ Petition had been filed by Devendra Dwivedi (**"Petitioner"**) invoking the jurisdiction of the Hon'ble Supreme Court under Article 32 of the Constitution of India wherein, the following reliefs have been sought:

(i) A challenge to the constitutional validity of following provisions of the CGST Act:

a. Section 67(1) of the CGST Act (i.e., power of inspection, search and seizure) and Section 69 (i.e., power to arrest) for being violative of principles of natural justice as they do not provide for recording of reasons to believe in writing;

b. Section 69 and Section 132 (i.e., punishment for certain offences) for being ultra vires to Articles 21 of the Constitution of India;

c. Section 70(1) (i.e., power to summon persons to give evidence and produce documents) for being ultra vires to Articles 20(3) of the Constitution of India;

d. Section 135 (i.e., presumption of culpable mental state) as it requires accused to disprove the reverse burden of proof beyond reasonable doubt;

e. Section 137 (i.e., offences by companies) for being contrary to the settled principles of law, which provide that there can be no fastening of vicarious liability for a criminal offence requiring *mens rea*, without there being an active role being proved by the prosecution.

ii. A direction for compliance with the procedure for investigation enunciated in Chapter XII of the Code of Criminal Procedure, 1973 (**"CrPC"**) for valid commencement of investigation into any offence.

iii. Declaring the investigations which have been instituted against the petitioner as illegal

Issue:-

Whether recourse to the jurisdiction under Article 32 of the Constitution of India should be entertained, challenging the constitutional validity of above-mentioned sections of the CGST Act?

Held:-

The Hon'ble Supreme Court of India in ***Writ Petition(s) (Criminal) No(s). 272/2020, dated January 7, 2021*** held as under:

- Noted that, a Bench of three-Judges declined to entertain ***Writ Petition (Crl) Nos 107 and 108 of 2019*** dated April 10, 2019 and several other petitions which were instituted under Article 32 of the Constitution have eventually been withdrawn, and some were dismissed.

- Observed that, though the Petitioner has invoked Article 21 of the Constitution of India, the case essentially involves a challenge to revenue legislation. The jurisdiction under Article 32 of the Constitution of India is a salutary constitutional safeguard to protect the fundamental rights of citizens, the recourse to the jurisdiction under Article 32 of the Constitution should be entertained in a particular case is a matter for the 'calibrated exercise of judicial discretion'.
- Stated that, besides the fact that the constitutional challenge can be addressed before the High Court, the grievance in regard to the conduct of the investigation can appropriately be addressed before the competent forum, either in exercise of the jurisdiction under Article 226 of the Constitution or Section 482 or analogous provisions of the CrPC. The Petitioners have an efficacious remedy in the form of proceedings under Article 226 of the Constitution to challenge the constitutional validity of the provisions of the CGST Act as mentioned in the facts above.
- Held that, there is regime of well-established remedies and procedures under the laws of CrPC and revenue legislation also provides its own internal discipline. Hence, it would be appropriate to relegate the Petitioner to the remedy of a petition under Article 226 of the Constitution so that the Hon'ble Supreme Court has the benefit of the considered view of the jurisdictional High Court.

9. HC explains Parallel enquiries on same GST issues by State & CGST authorities

Case Name : **RCI Industries And Technologies Ltd Vs Commissioner DGST Delhi & Ors. (Delhi High Court)**
Appeal Number : W.P.(C) 121/2021
Date of Judgement/Order : 07/01/2021

If an officer of the Central GST initiates intelligence- based enforcement action against a taxpayer administratively assigned to State GST, the officers of the former would not transfer the said case to their counterparts in the latter department and they would themselves take the case to its logical conclusion. At this stage, we are only concerned with the search action initiated and the ultimate logical conclusion would have to be gone into at the appropriate stage, when the Revenue proceeds for determination of tax. The Respondents would be bound by the aforenoted circulars and we reiterate that in case the action of the State and Central Authorities is overlapping, the Petitioner would be at liberty to take action to impugn the same in accordance with law.

As regards the absence of the two independent witnesses, we may first note that there is no *panchnama* on record. In essence, the main thrust of Petitioner's argument is that the statement of Mr. Rajeev Gupta does not record the presence of the two independent witnesses or signatures, making the search action illegal. We have already dealt with the contention of the Petitioner regarding the alleged involuntary/forced statement and in view of our observations made hereinabove, this issue, is rendered insignificant. Further, no specific provision is shown to us that deals with recording of statement in search action. The only relevant section is Section 70, which does not entail signatures of witnesses. Be that as it may, determination of tax liability, has to be in accordance within the confines of statutory provisions of the GST

laws. We reiterate that the evidentiary value of the aforenoted statement, and the effect of payment of tax and interest made pursuant thereto, are issues which would have to be gone into at the stage of adjudication.

We also do not find merit in the contention of the Petitioner that absence of the signature of the authorised person on Form GST INS-01 would render the search action to be non-est. Mr. Babbar does not dispute that the persons who carried out the search were indeed those whose names has been mentioned in the said authorisation, and they had displayed their identity cards at the time of search. It is also not the case of the Petitioner that the officers who carried out the search did not properly discharge their official duty or otherwise acted in furtherance of some extraneous purpose. The absence of signatures does not manifest an absence of delegation of power in favour of the team which conducted the search action. Further, the provisions of DVAT Act quoted in the documents also cannot render the proceedings as illegal.

As regards the reasons to believe to inspect and search the premises of the Petitioner, we have been shown that such reasons exist with the Respondents. Under Section 67 of the CGST Act, when an authorized officer carries out an inspection, search and seizure, the same is on the basis of the satisfaction arrived at by the proper officer not below the rank of the Joint Commissioner that reasons to believe as specified under the said provision. Our scrutiny is limited because of the well settled principles of law relating to judicial review of search action. While exercising writ jurisdiction, we cannot adjudge or test the adequacy and sufficiency of the grounds. We can only go into the question and examine the formation of the belief to satisfy if the conditions specified under the statutory provision invoked are met. The Courts can interfere and hold the exercise of power to be bad in law only if the grounds on which reason to believe is founded have no rational connection between the information or material recorded; or are non-existent; or are such on which no reasonable person can come to that belief. The reasons to believe shown to us demonstrate that the Appropriate authority had the reasons, as per mandate of Section 67(2) of the DGST Act alongwith relevant Rules, for formation of belief to carry out the search. Applying the test of reasonable man, we cannot say that there is no application of mind while issuing search warrant. Thus, we would not like to countermand the action taken against the Petitioner. Accordingly, the present petition is disposed of in the above terms. We clarify that we have not expressed any opinion on the merits of the case.

10. GST: Delhi HC refuses ‘interim-relief’ in writ challenging Section 69 & 132

Case Name : **Dhruv Krishan Maggu Vs Union of India & Ors. (Delhi High Court)**
Appeal Number : W.P. (C) 5454/2020
Date of Judgement/Order : 08/01/2021

Present writ petition has been filed seeking a declaration that Sections 69 and 132 of the CGST Act, 2017 are arbitrary, unreasonable and being beyond the legislative competence of the Parliament are ultra vires the Constitution.

Held by High COurt

This Court has refused to pass any interim order holding that it is not inclined to interfere with the investigation at this stage and that too in writ proceedings. The relevant observations made by this Court in **Dhruv Krishan Maggu vs. Union of India & Or** (supra) are reproduced h ereinbelow:-

(i) There is always a presumption in favour of constitutionality of an enactment or any part thereof and the burden to show that there has been a clear transgression of constitutional principles is upon the person who impugns such an enactment. Further, laws are not to be declared unconstitutional on the fanciful theory that power would be exercised in an unrealistic fashion or in a vacuum or on the groundthat there is a remote possibility of abuse ofpower.

(ii) The Goods and Service Tax is a unique tax, inasmuch as the power as well as field of legislation are to be found in a single Article, i.e., Article 246A. The scope of Article 246A is significantly wide as it grants the power to make all laws 'with respect to'goods and service tax.

(iii) This Court is ofthe prima facie opinion that the pith and substance of the CGST Act is on a topic, upon which the Parliament has power to legislate as the power to arrest and prosecute are ancillary and/or incidental to the power to levy and collect goods and services tax.

(iv) Even if it is assumed that power to make offence in relation to evasion of goods and service tax is not to be found under Article 246A, then, the same can be traced to Entry 1 of List III. The term 'criminal law'used in the aforesaid entry is significantly wide and includes all criminal laws except the exclusions.

(v) This Court, at the interim stage, cannot ignore the view is taken by the Gujarat High Court with regard to application of Chapter XII Cr.P.C. to the CGST Act.

(vi) In view of the Supreme Court judgment in Directorate of Enforcement vs. Deepak Mahajan (supra) and the aforesaid Gujarat High Court judgment, the arguments that prejudice is caused to the petitioners as they are not able to avail protection under Article 20(3) ofthe Constitution and/or the provisions of Cr. P.C. do not apply even when CGST Act is silent, are untenable in law.

(vii) Reliance on "no coercive orders"by counsel for the petitioners are untenable as the Supreme Court in **Union of India vs. Sapna Jain & Ors., SLP (Crl.) 4322 4324/2019 dated 29th May, 2019** has 'spoken its mind'.

(viii) This Court prima facie finds force in the submissions of the learned ASG that the Central Tax Officers are empowered to conduct intelligence based enforcement action against taxpayers assigned to State Tax Administration under Section 6 of the CGST Act.

(ix) What emerges at the prima facie stage is that it is the case of the respondents that a tax collection mechanism has been converted into a disbursement mechanism as if it were a subsidy scheme.

(x) In view of the serious allegations, this Court is not inclined to interfere with the investigation at this stage and that too in writ proceedings. At the same time, innocent

persons cannot be arrested or harassed. Consequently, the applications for interim protection are dismissed with liberty to the parties to avail the statutory remedies.

11. GST Software Glitches: HC to ascertain who causing Harassment of Poor Taxpayers

Case Name : **Ansari Construction Vs Additional Commissioner Central Goods And Services Tax (Appeals) (Allahabad High Court)**
Appeal Number : WRIT TAX No. 626 of 2020
Date of Judgement/Order : 11/01/2021

From the submission it appears that the system and the operators are solely responsible for the harassment being meted out to the poor assesses. As the enquiry referrred to by Mr. Trivedi is not on record, this Court is unable to decipher whether, the harassment to the taxpayer is a personal one or the system/service provider is to be blamed. Thus, I deem it fit that the respondent no.3 is directed to file its response with regard to the submissions made by the applicant so that this Court may fix the liability on the relevant person.

In view of the fact that this Court is now going to ascertain the liability of the person concerned whosoever he may be, for the glitches that have occasioned harassment to the petitioner and to fix cost thereafter on the person concerned.

This Court is of the view that a direction for payment of cost as against the applicant and the observations shall remain stayed till the next date.

12. GST: HC not to be approached in Goods detention cases if effective alternate remedies available

Case Name : **Podaran Foods India Private Limited Vs State Of Kerala (Kerala High Court)**
Appeal Number : WP(C). No. 17379 of 2020(V)
Date of Judgement/Order : 12/01/2021

Conclusion: Writ Court was not to be ordinarily approached in detention cases where effective alternate remedies by way of provisional clearance, and appeal thereafter, were provided against alleged arbitrary/illegal detention orders.

Held: In the instant case. writ petitions being filed in this court challenging detention orders passed under the GST Act when the scheme of the Act clearly indicated that the writ court was not to be ordinarily approached in detention cases where effective alternate remedies by way of provisional clearance, and appeal thereafter, were provided against alleged arbitrary/illegal detention orders. It was held that any person aggrieved by the order of the proper officer must necessarily approach the appellate authority before which an appeal against the adjudication order under Section 129 (3) of the Act is maintainable. In the instant case too, the remedy of assessee was to approach the appellate authority under the Act against the finding of the proper officer. There was no reason to interfere with the adjudication orders in Form GST MOV-9

impugned in the writ petition. Assessee was relegated to his alternate remedy of preferring appeals against the said adjudication orders before the appellate authority under the Act.

13. Bombay HC grants interim Stay to Advocate on GST notices

Case Name : **Sanjiv Madhusudan Shah Vs Assistant Commissioner of Central and Service Tax and Ors. (Bombay High Court)**
Appeal Number : Writ Petition (L) No.646 of 2021
Date of Judgement/Order : 12/01/2021

Challenge made in this writ petition is to the notice to show cause cum demand issued by the Assistant Commissioner of Central Goods and Services Tax (CGST), Mumbai West dated 28.12.2020 seeking to levy service tax upon the petitioner for the financial year 2014-15.

It is submitted that petitioner is an advocate by profession. Central Government has issued several exemption notifications whereby services provided by an individual as an advocate or as a partnership firm of advocates by way of legal services are exempt from the charge of service tax. That apart, there is a provision for recovering service tax from the service recipient. Ignoring the above, the impugned show cause cum demand notice has been issued mechanically.

Having heard learned counsel for the petitioner and on due consideration, we direct as an interim measure, there shall be stay of the impugned show cause cum demand notice dated 28.12.2020 until further orders.

14. HC allows continued Attachment of Bank Accounts until objections under CGST Rule 159(5) filed

Case Name : **ramakrishna Electro Components Pvt Ltd Vs Union of India & Anr. (Delhi High Court)**
Appeal Number : W.P.(C) 11180/2020 & CM No. 34884/2020 (for interim relief)
Date of Judgement/Order : 14/01/2021

We have heard the counsel for the respondents on the aforesaid aspect. The respondents cannot have any claim to further overdraft, if any, availed of by the petitioner in the overdraft account with the SBI. We thus deem it apposite to, while disposing of this petition as aforesaid, direct that while the ICICI Bank account and the SBI account with monies therein as on the date of attachment shall continue to be attached till further orders in pursuance to the objections to be filed under Rule 159(5) supra, the petitioner shall be entitled to avail of further overdraft in the SBI account and to withdraw and/or disburse by cheques or otherwise the further overdraft amount so availed of by the petitioner.

17. It is further clarified that all contentions remain open to the parties and the petitioner, if remains aggrieved from the order to be passed under Rule 159(5) supra, shall have remedies in law including on the grounds urged in this petition. We further

clarify that if the objections to be filed by the petitioner are dismissed, the attachment to continue till vacated in the appropriate proceedings.

15. Fake GST invoice: White collar offences more serious than offences like murder, dacoity etc.

Case Name : **Tejas Pravin Dugad Vs Union of India (Bombay High Court)**
Appeal Number : Criminal Writ Petition No.1715 OF 2020
Date of Judgement/Order : 15/01/2021

The Petitioners are directors of M/s. Ganraj Ispat Private Limited company and the company is registered under the provisions of the Central Goods and Services Tax Act, 2017 (GST Laws) (the Act). It has registered office at Supa, District Nagar, Maharashtra. One Tushar Munot, sole proprietor of M/s. Rutu Enterprises was arrested by the Respondents, officers of GST intelligence in the month of October 2020. In the month of November 2020, search of the premises of the company of Petitioners was conducted and some documents came to be seized. It is the contention of the Petitioners that as there was allegations of commission of offence under Section 132 of the Act and it was informed to them that there was GST liabilities of Rs.84,00,046/-(Rupees Eighty-Four Lakh and Forty-Six Only), the Petitioner deposited this amount with Respondent No.2, but under protest. It is the contentions of the Petitioners that they want to contest the liability levied against them.

In the petitions, it is mentioned that the Petitioners want to challenge the prosecution as it is on wrong conceptions and as the provisions of Sections 154, 157 and 172 of the Code of Criminal Procedure are not followed by the Respondents. It is the contentions of the Petitioners that all the provisions of the Code of Criminal Procedure need to be applied for registration of crime, investigation and for taking cognizance of the offence and as the procedure is not followed, action taken against them is illegal.

Held by High Court

Respondent department was virtually prevented from exercising its powers even like issuing summons. By such order, the Petitioners indirectly got relief of anticipatory bail, which is also not ordinarily permissible in proceeding of present nature. White collar offences are more serious than offences like murder, dacoity etc. Such offences are committed after hatching conspiracy. This circumstance needs to be kept in mind by Court as the granting of relief of anticipatory bail hampers investigation and such approach causes damage to the image of judiciary.

The circumstances shows that even when the matter could have been filed before the regular Court as search and seizure took place in November 2020, the matter came to be filed before the Vacation Court. This circumstance also cannot be ignored. Attempt is made to give explanation that the consultant of the company was infected due to Covid-19 virus. Such submission ordinarily cannot be accepted by the Court. On 11th January, 2021, there was insistence to grant interim relief and adjournment was sought. The interim relief was vacated by this Court by order dated 11th January, 2021. On 14th January, 2021 also, initially an attempt was made by the counsel, who

argued the matter that only the Petitioner from Criminal Writ Petition No.1716 of 2020 had instructed him to argue the matter. When the Court expressed that the Court will dispose of all the matters on merits if the Court finds that admission is not possible, then only argument was advanced in all the matters. Due to all these circumstances, this Court holds that some costs needs to be imposed on the Petitioners. In the result, the following order is passed:

1. All the petitions stand dismissed.
2. In each petition, the Petitioner to deposit Rs.25,000/- (Rupees Twenty Five Thousand only) as costs of the petition.

Cash credit account cannot be attached provisionally under GST

Case Name : **Formative Tex Fab Vs State Of Gujarat (Gujarat High Court)**
Appeal Number : Special Civil Application No. 14059 of 2020
Date of Judgement/Order : 18/01/2021

Appellant pointed out that the order of provisional attachment is specifically confined to the cash credit account only and not to the other accounts including the fixed deposits referred to above in the chart. He submits that as the PAN Card number is common, no sooner the authority concerned instructed the bank to provisionally attached the cash credit account, then the Bank, on its own, freezed all other accounts. His principal argument is that even otherwise, the cash credit account cannot be attached provisionally by virtue of power under Section 83 of the Act.

Held by High Court

We are of the view that the provisional attachment of the cash credit account bearing No.510044021166 maintained with the Kotak Bank is not sustainable in law. The law in this regard is no longer *res integra*. In such circumstances, we quash and set aside the order of provisional attachment dated 23rd September 2020 passed in the Form GST DRC – 22 annexed at page : 51A of the writ application.

16. Petitioner cannot be made to suffer for No provision of restoration of GST registration in Software: HC

Case Name : **Vidyut Majdoor Kalyan Samiti Vs State of U.P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 638 of 2020
Date of Judgement/Order : 18/01/2021

The contention that there is no provision of restoration of a GST registration, once it has been cancelled borders on the absurd. In case, no provision for its restoration has been made in the software, the same is not the fault of the petitioner and it is for the department and the respondents to make provisions for the same in the software and on the GST Portal. Merely because such provision has not been made, the petitioner cannot be made to suffer and non compliance of an appellate order, passed by a competent appellate authority cannot be accepted or permitted on the plea raised in the counter affidavit or during the course of arguments.

Accordingly, the writ petition is liable to be and is hereby, allowed. The respondents are directed to restore petitioner's GST registration on the GST Portal, forthwith not later than ten days from the date a copy of this order is filed before them.

17. Rule not prescribe for cancellation of e-way bill if no transportation of goods is made within 24 Hours

Case Name : **Anandeshwar Traders Vs State Of U.P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 503 of 2020
Date of Judgement/Order : 18/01/2021

The Rule does not prescribe that the dealer must necessarily cancel the e-way bill if no transportation of the goods is made within 24 hours of its generation. It certainly does not provide any consequence that may follow if such cancellation does not take place. On the contrary, the Rule permits a dealer to cancel the e-way bill only if the transportation does not take place and the dealer choses to cancel such e-way bill within 24 hours of its generation.

Even if the dealer does not cancel the e-way bill within 24 hours of its generation, it would remain a matter of inquiry to determine on evidence whether an actual transaction had taken place or not. That would be subject to evidence received by the authority. As such it was open to the seizing authority to make all fact inquiries and ascertain on that basis whether the goods had or had not been transported pursuant to the e-way bills generated on 24.11.2019. Since the petitioner-assessee had pleaded a negative fact, the initial onus was on the assessing authority to lead positive evidence to establish that the goods had been transported on an earlier occasion. Neither any inquiry appears to have been made at that stage from the purchasing dealer or any toll plaza or other source, nor the petitioner was confronted with any adverse material as may have shifted the onus on the assessee to establish non-transportation of goods on an earlier occasion.

The presumption could not be drawn on the basis of the existence of the e-way bills though there did not exist evidence of actual transaction performed and though there is no statutory presumption available. Also, there is no finding of the assessing authority to that effect only. Mere assertion made at the end of the seizure order that it was clearly established that the assessee had made double use of the e-way bills is merely a conclusion drawn bereft of material on record. It is the reason based on facts and evidence found by the assessing authority that has to be examined to test the correctness of the order and not the conclusions, recorded without any material on record.

Appeal authority had no jurisdiction to examine fresh evidence at the behest of the revenue

Rule 112 of the Rules does not allow for additional evidence to be led at the instance of the respondent in the appeal. In the case of penalty or assessment, where the appeal may be filed by the assessee alone, the correctness of the order is to be tested on the strength of the reasons given in that order and not on the basis of any

supplementary or other material that may be brought on record by the revenue authority during the appeal proceedings. To do that would be to allow the order impugned in an appeal proceeding to be tested and affirmed on fresh reasons, existing outside the assessment or penalty order. Clearly, that is impermissible and against the principle laid down by the Supreme Court in **Mohinder Singh Gill (supra)**. In absence of specific Rule of procedure allowing the appeal authority to admit additional evidence at the behest of the respondent, it never became open to it to confront the petitioner with that evidence and draw it's independent conclusions based thereon.

The appeal authority had no jurisdiction to examine fresh evidence at the behest of the revenue or record fresh reasons to support original order. The proper authority, had not recorded any reason to establish evasion of tax or attempt to evade tax or even reuse of the documents by the petitioner. Though he raised that issue in the seizure proceedings, he did not record any finding that effect in the final order dated 3.12.2019 passed under Section 129(3) of the Act. He simply rejected the explanation furnished by the assessee without recording any reason and consequently imposed tax and penalty.

18. GST classification Issue: HC directs GST Authorities to not to detain person called for recording any evidence

Case Name : **Nowrangroy Agro Private Limited Vs Union of India (Calcutta High Court)**
Appeal Number : WPA No. 11583 of 2020
Date of Judgement/Order : 18/01/2021

The officer holding the enquiry shall receive the documents after preliminary scrutiny thereof and should release the person producing such documents immediately thereafter without detaining him for recording any evidence. The officer shall make a full study of the documents so produced on 29t^{h} January, 2021 and shall communicate to the petitioner as to whether any further documents are required to be produced.

The petitioners shall be bound to produce such documents which may further be asked for, provided the same are in their possession on the date and time that may be specified by the Inquiry Officer. The Inquiry Officer shall not ask for personal presence of any of the officials of petitioner no.1 till the stage of production of documents continue.

After the Inquiry Officer is through with the documents, he will call the person or persons from the petitioner no.1 for recording of statement or evidence as the case may be.

This modification to the procedure is made owing to the present pandemic situation when a person or persons should not be called to be present before the Inquiry Officer at New Delhi within very short span of time and presence of more than one person at a time should also be avoided.

Let the writ petition be adjourned till March 15, 2021 with liberty to the parties to mention in case of any difficulty.

19. Allow 'NIXI' to rectify bona fide human error in Form GST TRAN-1: HC

Case Name : **National Internet Exchange of India Vs Union of India & Ors. (Delhi High Court)**
Appeal Number : W.P.(C) 10795/2020
Date of Judgement/Order : 19/01/2021

On perusal of the record, it emerges that Petitioner has filed TRAN-1 form within the time prescribed by the Respondents under the rules. Petitioner is holding documents evidencing payment of tax by it on such inputs / input services received under the erstwhile tax regime. It is thus eligible to carry forward the credit from erstwhile tax regime to the GST regime under Section 140 of the CGST Act read with Rule 117 of CGST Rules. Petitioner claims that this error has occurred because of the introduction of new and vastly different tax regime (GST) of which the Petitioner had no prior experience whatsoever, and thus it was new to the filing of Form GST TRAN-1 as well. For the aforesaid bona fide human error, inadvertently, it failed to take into account certain invoices, on which service tax amounting to Rs. 40,36,542/- was not reflected in TRAN-1 Form.

Supreme Court in **Union of India & Ors. v. Adfert Technologies Pvt. Ltd. 2020 SCC OnLine SC 106**, has dismissed the SLP filed by the department against the judgment rendered by the Punjab & Haryana High Court. We are satisfied that the difficulty faced by the Petitioner was a genuine one. Due to an inadvertent human error and oversight on the part of the Petitioner, its substantive right should not be denied. Petitioner should therefore not be precluded from having its claim examined by the authorities in accordance with law.

In view of the aforesaid decisions, we have no hesitation in allowing the request of the Petitioner and accordingly the present petition is allowed. The Respondents are directed to open the online portal so as to enable the Petitioner to re-file the rectified TRAN-1 form electronically, or, accept the same manually with the corrections within a period of three weeks from today. Petitioner's claim shall thereafter be processed in accordance with law and Respondents shall be at liberty to verify the genuineness of the claim of the Petitioner. The Petitioner shall thereafter be permitted to correspondingly revise Form TRAN-2.

20. Re-decide on question of grant of refund under Assam VAT: HC directs department

Case Name : **VA Tech Wabag Ltd. Vs State of Assam And 2 Ors (Gauhati High Court)**
Appeal Number : Case No. WP (C)/6314/2017
Date of Judgement/Order : 20/01/2021

The Rule 29 of the Assam Value Added Tax Rules 2005 provides that a claim for refund as provided under Section 50(1) of the AVAT Act, 2003 shall be made in Form

37 within 180 (one hundred and eighty days) from the date of assessment or reassessment. The said Rule prescribes the manner in which the Form is to be filled and submitted seeking claim of refund. Provisio to Rule 29(1)(a) of the AVAT Rules gives a latitude to the Prescribed Authority to entertain an application seeking refund submitted even after the prescribed period of 180 (one hundred and eighty days) from the date of assessment or reassessment as the case may be. The Prescribed Authority may consider the refund claim if it is satisfied that the dealer had sufficient cause for not making an application within the said period. What will be sufficient cause has not been described in the statute. The Prescribed Authority is given the liberty to entertain such claims that may be filed even after the expiry of prescribed period of 180 (one hundred and eighty days) from the date of assessment or reassessment on sufficient causes being shown by the dealer. Accordingly, it is implied under the provisions of Section 50 of the AVAT Act 2003 read with Rule 29(1)(a) AVAT Rules 2005 that if cause(s) shown by a dealer are not considered to be sufficient then the Prescribed Authority must reflect and disclose the reasons therefor in the order passed by the Prescribed Authority rejecting any claim for refund made by a dealer, namely the petitioner company in the present proceeding.

The Department's Notice dated 21-05-2015 at page 32 of the writ petition called upon the petitioner to submit proof of submission of applications or otherwise submit reasons for late filing of refund applications. The petitioner duly responded to the Notice issued by the Department. A copy of the refund application of 2006-07 originally submitted was also stated to have been enclosed with the reply submitted. However, as discussed above the department vide the impugned order dated 09-12-2016 rejected the claims of refunds sought by the petitioner. It is evident from the recital of the impugned order that the question of the delay which occurred in filing the refund petition, whether ought to be condoned or not, was not adequately addressed to by the respondent No.3. There was also no reference to the application seeking refund and/or the relevant orders of assessment which indicates the refund available/payable to the petitioner. There was no reference in the impugned order, regarding any enquiry etc. made by the Departmental Officer to have arrived at a finding that the applications were not filed, which the petitioner on the contrary had claimed it had filed within the relevant time although no acknowledgement was received. That fact whether verified by the respondent authorities from the records before arriving at the conclusion as has been done by the impugned order, is not discernable from the impugned order.

This exercise of the respondent authorities although not reflected in the recital of the impugned order, the same is now sought to be supported by way of an affidavit filed on 03.09.2020 in respect of the impugned order which was passed on 09-12-2016. It is also stated in paragraph 4 of the affidavit filed by the Department before this court that the petitioner failed to submit any reasonable, logical and substantive reasons for not filing application within the prescribed time. Such explanation in a subsequent affidavit pursuant to the impugned order passed will amount to permitting the Department to expand the scope of an order passed by the Departmental Officer exercising quasi-judicial jurisdiction and which is not permissible under the statute. It has long been held that **orders passed by administrative or quasi judicial authorities are required to stand or fall on its own.** Subsequent explanations by

way of affidavit(s) cannot be permitted in order to improve an order already passed by the Departmental Officer.

In view of all the above discussions, the writ petition is allowed. The impugned order dated 09.12.2016 and Communication No. 3589-90 dated 17-12-2016 is interfered with and is accordingly set aside and quashed.

The matter is remanded back to the respondent authorities to re-decide on the question of grant of refund as prayed for by the writ petitioner, keeping in view the law laid down by the Apex Court.

21. Jharkhand HC disposes Writ as state imposing interest on Net GST Liability

Case Name : **BGR Mining & Infra Limited, Dhanbad Vs State of Jharkhand (Jharkhand High Court)**
Appeal Number : W. P. (T) No. 1908 of 2020
Date of Judgement/Order : 21/01/2021

We have considered the submission of learned counsel for the parties in respect of the issue of levy of interest under Section 50 of the Act on the gross tax liability as upheld in appeal by the Respondent Joint Commissioner of State Sales Tax (Appeal), Dhanbad Division. We have also taken note of the CBIC circular dated 18th September, 2020 quoted hereinabove. The Respondent-State by way of supplementary counter affidavit has made a categorical statement that after issuance of the above Administrative Instructions by CBIC, the State authorities are also imposing interest on Net Tax Liability. Having regard to the categorical stand of the respondent State, for the present, it appears to us that there is no purpose in keeping the writ petitions pending for decision on the challenge to the appellate order made herein on the grounds urged. However, liberty is reserved with the petitioner to approach the Court in case the respondent State chooses to realize interest on the gross tax liability for the subject period covered under the appellate order.

22. VAT Refunds – SEZ Units – Advantageous Judgement by Hon'ble HC Karnataka

Case Name : **Cerner Healthcare Solutions Pvt. Ltd. Vs. Additional Commissioner Of Commercial Taxes (Karnataka High Court)**
Appeal Number : S.T.A. No.155 of 2016
Date of Judgement/Order : 21/01/2021

Introduction

SEZ Units have been given with an option to claim Refund under VAT Laws. As per the provisions of sub section (2) of Section 20 of the Karnataka Value Added Tax Act, 2003, *"Tax paid under this Act on purchase of inputs by a registered dealer who is a developer of any special economic zone or an unit located in any special economic zone established under authorization by the authorities specified by the Central*

Government in this behalf, shall be refunded or deducted from the output tax payable by such dealer subject to such conditions and in the manner as may be prescribed".

Based on the above said provisions of the KVAT Act, 2003. All the SEZ Units are eligible for refund of Input tax paid on the purchase of goods from the registered dealers used for the purpose of authorized operations which are approved by the Approval Committee of the Cochin SEZ authorities respectively.

On January 21, 2021, The Hon'ble High Court of Karnataka has passed an Advantageous Judgement in the Case **CERNER HEALTHCARE SOLUTIONS PRIVATE LIMITED v/s THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE-1, BANGALORE [STA No.155 of 2016]**

Facts of the Case

CERNER is engaged in the business of Software Development and is a unit located in SEZ. The Company had filed VAT Refund Application as per Section 20 (2) of KVAT Act where the Jurisdictional Authorities had disallowed Inputs purchased by SEZ unit such as food items, housekeeping and office maintenance, printing and stationery, maintenance of photocopying machine, sports goods and events, car lease etc.

Subsequently, upon receipt of Refund Order the SEZ Unit filed Appeal before Appellate Authorities. The Appellate Authorities allowed the said Appeal filed by the SEZ Unit. Further, the Additional Commissioner (ADC) by exercising the Power under Section 64 (1) of KVAT Act (Revisional powers of ADC and CC) had disallowed the aforesaid Input Tax Credit and passed a Order dated October 03, 2016.

Accordingly, The SEZ Unit preferred an Appeal before High Court on the aforesaid ADC Order

Analysis of the Case

The discussion on eligibility of VAT Refund on Inputs to SEZ Units has been extensively made in the current case by giving light to Section 2(19), Section 20(2) of KVAT Act & Rule 130-A of KVAT Rules therein.

Analysis made by the Joint Commissioner on Section 20(2) of KVAT Act read with Rule 130-A was duly considered where he has held that the SEZ Unit involved in the current case is eligible for refund based on Rule 130-A(1)(b) i.e. *"If such inputs are purchased for the purpose of setting up, operation and maintenance of an unit in processing area of SEZ"* and the expression "operation" used in Rule 130A (1)(c) is completely different since the intention of law maker is to widen the benefit line to SEZ Units , SEZ Developers.

Also, there exist is no condition that SEZ unit should be engaged in the activity of involving goods as output. SEZ units are also entitled for the refund of input tax paid on inputs by a developer and also for units located in the SEZ for setting up of operations or maintenance of the unit.

Further, discussion on the terminology used in definition of Input under Section 2(19) has brought proper backup for the decision of JCCT – where under the said definition it contains *'any other use in business'* which has completely wider meaning and

includes any purchases made which are for any other uses in the business carried out by the appellant.

Judgement

The Hon'ble High Court concluded that order passed by JCCT Appeals cannot be said erroneous. Also concluded that the position adopted by ADC is not in line with KVAT Laws where the order passed by ADC was based on assumption that the benefit of refund of tax paid on purchase of Inputs can be granted only in respect of manufacture and processing of goods which is not at all prescribed under the law. Accordingly, there is no justification on the part of ADC in invoking revisional power u/s 64 (1) of the KVAT Act.

Hence, Order passed by ADC has been quashed by allowing appeals filed by SEZ Unit.

Conclusion: The above landmark Judgement passed by Hon'ble High Court of Karnataka will help all the SEZ Units in substantiating the VAT Refund Eligibility which is also duly backed up with the proper interpretation of relevant Provisions of VAT Laws therein.

23. GST registration cancellation order cannot be passed without issuing SCN

Case Name : **Syed Jafar Abbas Vs Commercial Tax Officer (High Court Gujarat)**
Appeal Number : R/Special Civil Application No. 14423 Of 2020
Date of Judgement/Order : 27/01/2021

The subject matter of challenge in the present writ application is to the impugned order dated 04.06.2020 cancelling the GST registration of the writ applicant w.e.f. 24.10.2018. We need not delve much into the facts of this litigation as the order impugned deserves to be quashed and set aside outright on two grounds (i) no show-cause notice in form GST REG17 was issued and (ii) the impugned order cancelling the registration is bereft of any details.The impugned order is at page 25, AnnexureD to the writ application. We take notice of the fact that the writ applicant had no opportunity to put forward his case before the impugned order of cancellation came to be passed.

Mr.Kathiriya, the learned AGP very fairly submitted that the order impugned dated 04.06.2020 is not only bereft of any material particulars, but the same has been passed without issuing the showcause notice in Form GST REG17.

In the result, this writ application succeeds and is hereby allowed. The impugned order dated 04.06.2020 is quashed and set aside.

The matter is remitted to the Commercial Tax Officer, Ghatak7, Ahmedabad, with a direction that, if he intends to pass a fresh order of cancellation of registration, then he shall first issue showcause notice in Form GST REG17 giving an opportunity of hearing to the writ applicant and thereafter, pass an appropriate order. This exercise be completed at the earliest, preferably within a period of **four weeks** from the date of presentation of this order before the authority. We may clarify that, if the respondent

is of the firm view that the registration deserves to be cancelled, only then, he may intend fresh exercise of issuing fresh showcause notice and passing of the fresh order, otherwise, the original registration may restore in accordance with law.

24. Bail application rejected in Alleged bogus GST refund & wrongful ITC availment case

Case Name : **Rakesh Arora Vs State of Punjab (Punjab And Haryana High Court)**
Appeal Number : CRM-M-1511-2021
Date of Judgement/Order : 28/01/2021

Conclusion: Application of bail by assessee was rejected as assessee had created three fake firms for procuring bills from the firms based at Delhi who had no purchases and tax which was not deposited for these transaction was utilized by the firms for not only availing ITCs but for getting the refunds by showing the sales to export units. Thus, refund was received for the tax which was actually never received by Revenue.

Held: GST Department had information that three firms were engaged in availing and passing bogus Input Tax Credits ['ITC']. The firms had issued bills worth ` 158 crores involving ` 13.39 crores of tax. Firms had availed fake ITC of ` 21.60 crores and claimed refund of ` 5.02 crores. The mechanism adopted by these firms was of procuring bills from Delhi based firms who had no purchases and further billing was done to export units for utilizing the ITC. These Firms had common partners. Assessee contended that he was in custody since 5th December, 2020 and till date no complaint was filed. The matter was of Magistrate trial and was punishable maximum for five years. The plea was that there was nothing to suggest that before being put in custody, assessee had tried to flee. Respondent submitted that assessee had changed his identity. It was only during investigation when certain documents were found that he could be identified and arrested. It was argued that assessee if granted bail would tamper with the evidence and should be in a position to influence the witness. It was held that power to arrest under Sections 69 and 132 of the Act should not be exercised for terrorizing or creating atmosphere of fear. Illustrative circumstances where arrest be made were mentioned such as when direct documentary or otherwise concrete evidence was available on file/record of active involvement of a person in tax evasion. . It was rightly stated by Union of India that case of assessee covered under the same. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. The factual error pointed out in impugned order could not in itself be a reason for allowing the prayer. The Court had given other reasons also for denying the bail.

25. Cera Audit of Private Entity Not Permitted In GST

Case Name : **Kiran Gems Private Limited Vs Union of India and Ors. (Bombay High Court)**
Appeal Number : Writ Petition No. 1135 of 2019
Date of Judgement/Order : 29/01/2021

Petitioner submitted that the **Central Goods and Services Tax Act, 2017** has no provision empowering CERA to conduct audit of the petitioner's records also merits acceptance. Brief perusal of the annexure to the impugned communication reveals that detailed audit of the petitioner's accounts and records is sought for the period 2015-16 to 2017-18 i.e. for a period of three years by respondent No.3. Such a detailed audit can only be called for under relevant and specific statutes. It is settled law that jurisdiction goes to the root of a matter and power of any authority invoking such jurisdiction to call for special audit needs to be traceable to the relevant statutory provision. In the absence of statutory backing, such an exercise of power would be invalid and nonest. In the present case, the impugned notice / letter dated 10.01.2019 calls for CERA audit and respondents in their affidavit-in-reply have relied on the provisions of Section 16 of the CAG's (DPC) Act to justify the impugned communication. If that be the case then as discussed hereinabove, the respondent's action is wholly without jurisdiction and unconstitutional.

Section 16 of the CAG's (DPC) Act does not authorize the CAG or any audit team under the control of CAG to audit the accounts of a non-government company, that too, in the absence of any request either from the President of India or Governor of the State in which the company is having its operation.

Petitioner's submission that there are specific statutory provisions under which special audit of accounts of the petitioner company can be conducted by following the due process of law therefore needs to be accepted. Case of the respondents in the affidavit-in-reply that the impugned communication has been issued under the provisions of Section 16 of the CAG's (DPC) Act and that CERA is authorized to extend the audit exercise to the petitioner's accounts therefore deserves to be rejected for want of jurisdiction and statutory authority. Case of the respondents that CERA is authorised to conduct the audit of the department and as part of the said audit examination of the records of the private company can be examined to ascertain whether the Government is getting its due share by way of indirect taxes deposited by the private company and therefore private company is bound to provide all records and documents called for by CERA deserves to be rejected looking at the scheme of Chapter III discussed above.

In view of the above, it is clear that the statutory responsibility of the CAG is to audit receipts of the Union and States. These receipts include both direct and indirect taxes. It is duty of the Central Excise Revenue Audit (CERA) to see that sums due to the Government are properly assessed, realized and credited to the Government account. The scheme enacted and envisaged in Chapter III of the CAG's (DPC) Act, 1971 begins with the word "Comptroller or Auditor General to compile accounts of Union and or States." The statutory scheme clearly states that the CAG shall from the accounts compiled by him or by the Government or any person responsible prepare

in each year accounts showing under the respective heads, the annual receipts and disbursement for the purpose of the Union, each State or each Union Territory and shall submit the same to the President or the Governor or the Administrator, as the case may be. It is in such context that the provisions of Section 16 pertaining to audit of all receipts which are payable into the Consolidated Fund of India and each State and of each Union Territory is required to be construed with respect to the accounts maintained in the Government departments / Corporations belonging to the Government. In view of the mandate of Section 16 of the CAG'S (DPC) Act, 1971, CERA audit cannot be extended to call for audit of a private entity such as the petitioner company.

26. HC quashes GST refund cancellation order for being cryptic & non-speaking

Case Name : **Genpact India Pvt. Ltd. Vs Union Of India And Ors. (Punjab And Haryana High Court)**
Appeal Number : CWP-10302-2020
Date of Judgement/Order : 29/01/2021

The petitioner has straightway approached this Court, challenging the order dated 11.09.2020 of the Adjudicating Authority, vide which the refund claimed by the petitioner has been rejected.

Having heard the counsel for the parties and on going through the pleadings as well as the impugned orders, we are of the firm view that the above orders impugned passed by the Adjudicating Authority/Appellate Authority, are cryptic and non-speaking and the reasons assigned for holding the petitioners to be intermediaries, do not sustain as they do not pass the test of law as has been laid down in the judgments.

Since we are of the view that the matter needs to be remanded back to the Appellate Authority for fresh decision.

27. HC allowed IGST refund against artificially inflated CGST & SGST

Case Name : **Radheshyam Spinning Pvt Ltd Versus Union Of India (Gujarat High Court)**
Appeal Number : Special Application No. 20759 of 2018
Date of Judgement/Order : 29/01/2021

After the present writ application was filed on 18th December 2020, Section 49 of the CGST came to be amended w.e.f. 01/02/2019 and new Section 49A and Section 49B were inserted in the said Act. By virtue of power under Section 49B, Rule 88A was inserted w.e.f. 29/03/2019 in the CGST Rules vide **Notification No. 16/2019CT, dated 29/03/2019**. In such circumstances, w.e.f. 01/02/2019, the **ITC available on account of IGST has to be first utilized for the payment of GST or CGST or SGST**. This provision was amended w.e.f. 01/02/2019, but the GST portal started functioning as per the amended provisions w.e.f. 01/06/2019. Therefore, w.e.f. 01/06/2019, the accumulated ITC of IGST of Rs. 3,37,79,196/- (Additional Customs duty paid by the

writ applicants, EPCG holder) started getting utilized automatically during the pendency of the petition.

In view of the above, the ITC of CGST and SGST started accumulating correspondingly. In such circumstances, as on date on account of such amendment in operation, the writ applicants have Nil balance of IGST in its electronic credit ledger and the IGST balance is converted into CGST and SGST. In other words, the balance of CGST and SGST got artificially inflated as a result of the appropriation of IGST credit.

In such circumstances referred to above, this writ application is allowed. The respondents are directed to sanction and pay the refund of Rs. 3,37,79,196/- after first reversing the entries of utilization of the subject credit and debiting the said amount from the credit ledger consequently available to the writ applicant. Let this exercise be undertaken within four weeks from the date of the receipt of this order.