GST UPDATE
(February, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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Sr. No. Subject Page No.

(I) GIST OF GST NOTIFICATIONS

1. CBIC notifies class of person to whom Aadhar authentication not applies

CBIC notifies vide Notification No. 03/2021-Central Tax dated 23rd February, 2021 that Aadhar authentication under sub-section (6B) or sub-section (6C) of section 25of CGST Act, 2017 shall not apply to a person who is, (a) not a citizen of India; or, (b) a Department or establishment of the Central Government or State Government; or (c) a local authority; or (d) a statutory body; or (e) a Public Sector Undertaking; or (f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

[Notification No. 03/2021-Central Tax, 23rd February, 2021]

2. Due date for filing GSTR-9 & GSTR-9C for FY 2019-20 extended

It may be noted that the due date for furnishing of the Annual returns (GSTR-9 and GSTR-9C) specified under section 44 of the CGST Act read with rule 80 of the CGST rules for the financial year 2019-20 was earlier extended from 31.12.2020 to 28.02.2021 vide **Notification No. 95/2020- Central Tax dated 30.12.2020**. In view of the difficulties expressed by the taxpayers in meeting this time limit, **Government has decided to further extend the due date for furnishing of GSTR-9 and GSTR-9C for the financial year 2019-20 to 31.03.2021** with the approval of Election Commission of India. This press note is being issued to keep taxpayers informed so that they may plan their return filing accordingly. Suitable notification to give effect to this decision is being issued.

[Notification No. 04/2021– Central Tax, **28th February, 2021]**

(II) 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 03/2021-Central Tax

New Delhi, the 23rd February,2021

G.S.R.....(E).– In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 17/2020-Central Tax, dated the 23rd March, 2020, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 200(E), dated the 23rd March, 2020, except as respects things done or omitted to be done before such supersession, hereby notifies that the provisions of sub-section (6B) or sub-section (6C) of section 25 of the said Act shall not apply to a person who is, —

(a) not a citizen of India; or

(b) a Department or establishment of the Central Government or State Government; or

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector Undertaking; or

(f) a person applying for registration under the provisions of sub-section (9) of section 25 of the said Act.

[F. No. CBEC-20/06/02/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

[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. 04/2021 – Central Tax

New Delhi, the 28th February, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-section (1) of section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with rule 80 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 95/2020 - Central Tax, dated the 30th December, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 809(E), dated the 30th December, 2020, namely:-

In the said notification, for the figures "**28.02.2021**", the figures "**31.03.2021**" shall be substituted.

[F. No. CBEC-20/06/13/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 95/2020 - Central Tax, dated the 30th December, 2020, was published in the Gazette of India, Extraordinary, *vide* number 809(E), dated the 30th December, 2020.

(III) CGST CIRCULARS

Circular No. 145/01/2021-GST

CBEC-20/06/01/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, dated the 11th February, 2021

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /

Commissioners of Central Tax (All)

Madam/Sir,

Subject: Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017 – regarding

As you are aware that vide notification No. 94/2020- Central Tax, dated 22.12.2020, sub-rule (2A) has been inserted to rule 21A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules). The said provision provides for immediate suspension of registration of a person, as a measure to safeguard the interest of revenue, on observance of such discrepancies /anomalies which indicate violation of the provisions of Act and rules made thereunder; and that continuation of such registration poses immediate threat to revenue.

2.1 Sub-rule (2A) of rule 21A is reproduced hereunder:

"(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in **FORM GSTR-1**; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1,**

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.";

2.2 Till the time an independent functionality for **FORM REG-31** is developed on the portal, in order to ensure uniformity in the implementation of the provisions of above rule across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby provides the following guidelines for implementation of the provision of suspension of registrations under the said rule.

3. On the recommendation of the Council, the registration of specified taxpayers shall be suspended and system generated intimation for suspension and notice for cancellation of registration in **FORM GST REG-31,** containing the reasons of suspension, shall be sent to such taxpayers on their registered e-mail address. Till the time functionality for **FORM REG-31** is made available on portal, such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in **FORM GST REG-17**. The taxpayers will be able to view the notice in the "View/Notice and Order" tab post login.

4. The taxpayers, whose registrations are suspended (hereinafter referred to as "the said person") under the above provisions, would be required to furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies, if any, and shall furnish the details of compliances made or/and the reasons as to why their registration shouldn't be cancelled:

a. The said person would be required to reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in **FORM GST REG-18** online through Common Portal withing the time limit of thirty days from the receipt of notice/ intimation.
b. In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response. Similarly, in other scenarios as specified under **FORM GST REG-31**, they may meet the requirements and submit the reply.

5.1 Post issuance of **FORM GST REG-31** via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Also, the system generated notice can be viewed by the jurisdictional proper officers on their Dashboard for suitable actions. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under **"Suo moto cancellation proceeding**".

5.2 Proper officer, post examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in **FORM GST REG-20** or for cancellation of registration in **FORM GST REG-19**. Based on the action taken by the proper officer, the GSTIN status would be changed to "Active" or "Cancelled Suo-moto" as the case maybe.

5.3 Till the time independent functionality for **FORM GST REG-31** is fully ready, it is advised that if the proper officer considers it appropriate to drop a proceeding anytime after

the issuance of **FORM GST REG-31**, he may advise the said person to furnish his reply on the common portal in **FORM GST REG-18**.

5.4 It is advised that in case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in **FORM GST REG-20**. Post such revocation, if need be, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any. Further, in such cases, after detailed verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in **FORM GST REG-17**.

6. Difficulties, if any, in implementation of these instructions may be informed to the board (gst-cbec@gov.in). Hindi version follows.

(Sanjay Mangal)

Commissioner (GST)

Circular no. 146/02/2021-GST

F. No. CBEC-20/16/38/2020-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
***

New Delhi, dated the 23rd February, 2021

To

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, **w.e.f. 01.12.2020.** Further, vide Notification No. 89/2020-Central Tax, dated 29th November 2020, penalty has been waived for non-compliance of the provisions of Notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 31st March, 2021, subject to the condition that the said person complies with the provisions of the said Notification from 01st April, 2021.

2. Various references have been received from trade and industry seeking clarification on applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of Notification No. 14/2020-Central Tax, dated 21st March, 2020 as amended. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues in the table below:

Sl. No.	Issues	Clarification
1.	**To which invoice is Notification No 14/2020-Central Tax dated 21st March, 2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?**	This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases: i. Where the supplier of taxable service is: a) an insurer or a banking company or a financial institution, including a non-banking financial company; b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage; c) supplying passenger transportation service; d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person.

		As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020-Central Tax, dated 21st March, 2020 will not be applicable to them.
2.	**What parameters/ details are required to be captured in the Quick Response (QR) Code?**	Dynamic QR Code, in terms of Notification No. 14/2020-Central Tax, dated 21st March, 2020 is required, inter-alia, to contain the following information: - i. Supplier GSTIN number ii. Supplier UPI ID iii. Payee's Bank A/C number and IFSC iv. Invoice number & invoice date, v. Total Invoice Value and vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc. Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.
3.	**If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the**	If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: - i. Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without

	invoice, be considered as compliance of Dynamic QR Code on the invoice?	using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice ; or ii. In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice; The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.
4.	**If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?**	In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
5.	**Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre-**	If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the

	paid invoices i.e. where payment has been made before issuance of the invoice?	invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
6.	**Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?**	The provisions of the notification shall apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

3. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

4. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Commissioner

(IV) ADVANCE RULINGS

1. Renting of e-bikes/bicycles without operator is classifiable under SAC 9973

Case Name : **In re Yulu Bikes Pvt Ltd (GST AAAR Karnataka)**
Appeal Number : Advance Ruling ORDER NO.KAR/AAAR/03/2021
Date of Judgement/Order : 02/02/2021

The Appellate Authority set aside the ruling No.KAR ADRG 49/2020 dated: 30.09.2020 passed by the Advance Ruling Authority and answer the question of the Appellant as follows:

'Renting of e-bikes/bicycles without operator is classifiable under SAC 9973 – Leasing or rental services without operator and rate of tax as applicable under entry Sl.No.17(viia) of **Notification no. 11/2017 CT(R) dated 28th June 2017** as amended is applicable to the instant case.'

2. Thermal spray/metal or metal alloy coating on goods belonging to another person is Job work

Case Name : **In re Spraymet Surface Technologies (Pvt.) Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 06/2021
Date of Judgement/Order : 08/02/2021

Section 2 (68) of CGST Act, 2017 defines job work as, **'any treatment or process undertaken by a person on goods belonging to another registered person'.** Further Schedule II, in relation to Section 7 of the CGST Act 2017, prescribes the activities or transactions to be treated as supply of goods or supply of services. Clause 3 of the said Schedule II prescribes that **'any treatment or process which is applied to another person's goods is a supply of services**'. In the instant case the applicant undertakes thermal spray / metal or metal alloy coating on the goods / material belonging to another person i.e. the principal. Therefore the work undertaken by the applicant amounts to job work and is a supply of services.

Now we proceed to examine the classification of the job work being provided by the applicant. It is an admitted fact that the job-work being provided by the applicant is nothing but metal coating of the goods belonging to other persons in different methods i.e. thermal spray, plasma spray, HVOF spray, Powder flame spray & wore flame spray. The Explanatory Notes to the Scheme of Classification of Services specifies that **SAC 9988 covers Manufacturing services on physical inputs owned by others and SAC 998873** covers **Other fabricated metal product manufacturing and metal treatment services** which includes metal treatment and coating services, general machining services, cutlery, hand tool and general hardware manufacturing services and other fabricated metal product manufacturing services not elsewhere covered. In the instant case the applicant's services are indubitable metal treatment/coating services and hence merit classification under SAC 998873.

The **Notification No.20/2019-Central Tax (Rate) dated 30.09.2019** specifies the rate for job work in relation to diamonds, bus body building and all other rest of the items.

Now we invite reference to the **Circular No. 126/45/2019-GST dated 22.11.2019** wherein a clarification, on scope of the notification entry at item (id), related to job work, under heading 9988 of **Notification No.1/2017-Central Tax (Rate) dated 28.06.2017**, at para 4 has been issued, which stipulates that entiy at item (iv) covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST. The applicant, in the instant case has not furnished required information so as to decide whether the goods received by them for job work belong to an unregistered person or not. Thus the job work undertaken by the applicant gets covered under item (id) of SL.No.26 of **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** in case the owner of the goods (Principal) is registered under CGST and attract GST @ 12% and if the principal is unregistered the impugned job work gets covered under item (iv) of SL.No.26 of **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** and attracts GST @ 18%.

3. GST on printing of content provided by customer on PVC banners

Case Name : **In re Macro Media Digital Imaging Private Limited (GST Tamilnadu)**
Appeal Number : Advance Rulings No. AAAR/02/2021 (AR)
Date of Judgement/Order : 12/02/2021

The Appellant made an Application to AAR vide Application NO. 47 dated 18.11.2019 seeking advance ruling on the

1. Whether the transaction of printing of content provided by the customer on PVC banners and supply of such printed trade advertisement is supply of goods?

2. What is the classification of such trade advertisement material if the transaction is a supply of goods?

3. What is the Classification and applicable rate of GST on the supply of such trade advertisement material if the transaction is that of a supply of Services?

The original authority has ruled as follows:

1. The printing of content provided by the recipient on the PVC materials of the appellant and supply of printed trade advertising material to the recipient is a composite supply, and ‘Supply of service of printing’ is the principal supply.

2. The classification of the service is SAC 998912 and the applicable tax rate is 9% CGST + 9% SGST as per Sl.No.27/27 (ii) of Notification No.11/2017 CT(Rate) dated 28.06.2017 & G.o. (Ms)No.72 dated 29.06.2017 for the period 01.07.2017 to 13.10.2017 and thereupon the applicable rate is 6% CGST & 6% SGST as per Sl.No. 27(i) of Notification No. 11/2017- CT(rate) dated 28.06.2017 as amended & G.O.(Ms) No.72 dated 29.06.2017 as amended.

ON Appeal AAAR Held as follows-

It is evident that the Purchase Order is issued for 'Printing' the 'Copyrighted Digital Content of the client' in the desired material. The material blanks' owned by the appellant are transferred to the client as Trade Advertisement material' after undertaking Printing of the Content of the client on the blanks. The appellant is vested with and undertakes the printing of the content, the copyright of which rests with the recipient and the copyright always rests only with the client and the appellant do not have any propriety rights to the content. The content is never owned by the appellant, while the property in 'blanks' held by the appellant, on printing of the received content is transferred to the client. Thus the appellant do not have the whole propriety right on the final product-trade advertisement material' supplied by them to their clients. In such a situation, applying the ratio of the above decision of Hon'ble Supreme Court and the Jurisdictional High Court, we hold that in the case at hand, in the execution of the printing contract, the property held by the appellant in blanks stands transferred as 'Trade Advertisement Material' and therefore the activity is a contract for work or service only and not a contract of sale of goods.

Once it is held that the activity is a contract for work or service wherein there is also transfer of property in goods incidentally then it is a composite supply as per Section 8 of the GST Act. Ongoing through the Purchase Order, write-up giving the scope Of the appellant, it is evident that the client desires the print of the content in a particular media and the contract with the appellant is not for the materials they own. Trade Advertisement Material' is produced by printing the digital content in the required quality of the client on the blanks of the appellant; Printing is the main activity of the appellant and requirement of the client in the supply. Thus, the activity of Printing of the content is the principal supply during which the property held by the appellant in the media of such print gets transferred to their client incidentally. For these reasons we do not agree the contention of the appellant that the supply of Trade advertisement material' is the principal supply and therefore, even if the supply is considered as a composite supply, the 'Principal supply' is 'supply of goods', i.e., Trade advertisement material and do not find any reason to deviate from the findings of the Lower Authority in this context.

To sum up, the decisions relied upon relating to the printing industry are on the count of whether the activity amounts to manufacture as per Section of the Central Excise Act; marketability of tailor-made goods; classification of printed goods using PVC whether the final product is a product of Printing Industry or Plastic and others based on the material used. The exception is the facts of the case in the case of Venus Album and their own case in the jurisdiction of Hyderabad during the Service Tax regime and both these decisions have not attained finality as Department have filed appeal in both these cases. Therefore, the ratio of decisions relied upon do not help the case of the appellant.

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.

4. 5% GST Payable on 'Nizam Pakku' classifiable under CTH 0802 8090

Case Name : **In re S. A. Safiullah and Co. (GST AAAR Tamil Nadu)**
Appeal Number : Advance Ruling No. TN/AAAR/03/2021(AR)
Date of Judgement/Order : 12/02/2021

The Appellate Authority ruled that the product of the appellant 'Nizam Pakku' classifiable under CTH 0802 8090 is leviable to 2.5% CGST as per Sl.No.28 of Annexure-I of **Notification No.01/2017- C.T(rate) dated 28.06.2017** and 2.5% SGST under Sl.No.28 of Annexure -I of Notification No. II(2)/CTR/532(d-4)/2017 vide G.O.(Ms) No.62 dated 29.06.2017 as amended.

5. In absence of taxable supply liaison office not required to register under GST

Case Name : **In re Fraunhofer-Gesellschaft ZurForderung der angewandten Forschung (GST AAAR Karnataka)**
Appeal Number : Order No. KAR/AAAR/04/2021
Date of Judgement/Order : 22/02/2021

Since the parent company in Germany and the Appellant in India cannot be treated as separate persons but as one legal entity, the liaison activity performed by the Appellant for the parent company is in the nature of a service rendered to self A service rendered to oneself does not come within the purview of 'supply' under GST. Therefore, we hold that the activities of the Appellant as a liaison office does not amount to a supply of service. The activities of the liaison office are not a 'supply' under Section 7(1)(a) of the CGST Act and will also not be covered under the ambit of clause 2 of Schedule I of the said Act.

As regards the requirement of registration under GST, Section 22 of the CGST Act mandates that every supplier who makes a taxable supply of goods or services or both, whose aggregate turnover in a financial year exceeds Rs 20 lakhs is required to be registered in the State from where he makes the taxable supply. The term 'taxable supply' is defined in Section 2(108) of the CGST Act to mean a "supply of goods or services or both which is leviable to tax under this Act". We have already held that the activities of the liaison office do not amount to a 'supply' under GST. Hence, there is no taxable supply and there is no requirement for obtaining a GST registration or payment of GST.When the liaison office is not required to be registered under GST, the question of whether they are a distinct person or establishment of distinct person is irrelevant.

6. Motor Car Air Springs (shock absorber) classifiable under CTH 8708

Case Name : **In re SI Air Springs Private Limited (GST AAR Taminadu)**
Appeal Number : Advance Ruling No.01/Aar/2021
Date of Judgement/Order : 24/02/2021

Whether 'Air Springs' manufactured and supplied by the applicant will be correctly classifiable under Tariff heading 40169990 as opposed to Tariff heading 8708 9900 and attract GST at the rate of 18%?

In the case at hand, it is true that the products are for use primarily with articles of chapter 8701 to 8705. The product Main Air Spring are fitted in the lift axle and act as suspension for lift axle. The product Lift Air Springs are fitted in the lift axle suspension system and operate to move the lift axle up and down. Thus both these air springs are 'Suspension systems and part thereof' and by predominant usage are classifiable under CTH 8708. Following the Apex Court s decision above, the product in hand being suitable for use solely with articles of Chapter Heading No. 8701 to 8705 are classifiable under CTH 8708, more appropriately under 'CTH 8708 80 00- Suspension Systems and parts thereof. We find that the applicant are classifying their product under the residual entry 'CTH 8708 9900-Other' as seen in the Invoice furnished to us. But specific entry is to be preferred as per the General Interpretation Rules to Customs Tariff and therefore considering the functional utility and the entry being specific, CTH 8708 80 00 is the right classification for 'Air Springs', the product in hand and we hold so.

Further, we find that the US tariff classification bearing No. N303352 dated 28th March 2019 relied upon by the applicant has classified the rolling lobe air spring under 4016.99.5500, HTSUS, which provides for Other articles of vulcanized rubber other than hard rubber: Other: Other: Other: Vibration control goods of a kind used in vehicles of headings 8701 through 8705. Thus it is seen that the said classification is based on the heading of the HTSUS, i.e., Vibration control goods of a kind used in vehicles of heading 8701 through 8705′, which is specific to cover those goods wherein the functionality is defined by the type of rubber and for use in vehicles of heading 8701 to 8705 for the purposes of vibration control. Whereas the Customs Tariff which is adopted for GST do not have any such entry and therefore the above ruling is differentiable.

To sum up, we find that the product as a whole is not an article of vulcanized rubber other than hard rubber and not classifiable under Customs Tariff entry at 40169990. Customs heading entry at 87088000 specifically covers Suspension systems and parts thereof of Motor Vehicles classifiable under CTH 8701 to 8705 and the functional utility of the 'Air Springs being extending suspension or acting as shock absorber designed specifically for Motor Vehicles, the said entry is to be preferred to the residual entry of CTH 8708 9900. However, the GST rates for the purposes of Notification No. 01/2017-C.T.(Rate) dated 28.06.2017 are based on the descriptions in the notification with the CTH at the four digit level and therefore we hold that the 'Air Springs' manufactured by the applicant are rightly classifiable under CTH 8708 and more specifically under CTH 8708 8000.

7. Tamilnadu Skill Development Corporation liable to Register under GST

Case Name : **In re Tamilnadu Skill Development Corporation (GST AAR Tamil Nadu)**
Appeal Number : Advance Ruling Order No. 02/AAR/2021

Date of Judgement/Order : 25/02/2021

Tamilnadu Skill Development Corporation is not exempted vide entry Sl.No. 69 and Sl.No.70 of **Notification No. 12/2017-C.T.(Rate) dated 28.06.2017** and therefore, they are required to be registered under the CGST/TNGST Act 2017.

8. GST Payable on Cheque Bouncing Charges, Interest on receivable on delayed payments, Connection/ Reconnection/ Disconnection/ Charges

Case Name : **In re New Tirupur Area Development Corporation Limited (GST AAR Tamilnadu)**
Appeal Number : Advance Ruling No.05/Aar/2021
Date of Judgement/Order : 26/02/2021

a. The applicant not being the class of persons specified in **Notification No. 14/2017-C.T.(Rate) dated 28.06.2017** as amended, they are not eligible for the said Notification as discussed in Para 10.2 above.

b. The activity of Sewage offtake and treatment extended to Tirupur Municipal Corporation as per the CA is exempt under Sl.No.3 of **Notification No.12/2017-C.T.(Rate) dated 28.06.2017** for the reasons discussed in Para 11.3 above.

c. The Consultancy Services rendered by the applicant to Tirupur City Municipal Corporation in respect of the Project- Construction Management and Supervision Consulting Service to assist Project ULBs- Tirupur City Municipal Corporation exempt under Sl.No.3 of **Notification No. 12/2017- C.T.(Rate) dated 28.06.2017** for the reasons discussed in Para 11.4 above.

d. In respect of the activities incidental to main business activities, it is rules as under :-

i. Interest on receivable on delayed payments being charges received for 'Agreeing to tolerate an act' classifiable under SAC 999794 is taxable @ 9% CGST and 9% SGST as per Sl.No. 35 of **Notification No. 11/2017- C.T.(Rate) dated 28.06.2017** read with. Sl.No. 35 of Notification No. II (2)/CTR/532(d- 14)/2017 vide G.o. (Ms.)No.72 dated 29.06.2017 as amended for the reasons discussed in Para 13.(1a) above.

ii. Cheque Bouncing Charges being charges received for 'Agreeing to tolerate an act' classifiable under SAC 999794 is taxable @ 9% CGST and 9% SGST as per Sl.No. 35 of **Notification No. 11/2017- C.T.(Rate) dated 28.06.2017** read with Sl.No. as of Notification No. II (2)/CTR/532(d- 14)/2017 vide G.O. (Ms.)No.72 dated 29.06.2017 as amended for the reasons discussed in Para 13.1 (b) above.

iii. New connection works executed as per CA for TCMC , the established asset is accounted as their assets are not taxable being self-service for the reasons discussed in para 13.1(c) above.

iv. Connection/ Reconnection/ Disconnection/ Permanent Disconnection Charges are charges received for the services of 'Water Distribution Services' classifiable under SAC 9969 and is taxable @ 9% CGST and 9% SGST as per Sl.No. 13 of **Notification**

No. 11/2017- C.T.(Rate) dated 28.06.2017 read with Sl.No. 13 of Notification No. II (2)/CTR/532(d- 14)/2017 vide G.o. (Ms.)No. 72 dated 29.06.2017 as amended for the reasons discussed in Para 13.1 (d) above.

But as regard to the activity of 'supply of Water-goods' by the applicant to the purchasers as per the CA, we have different views on this aspect as discussed in Para 12.2 supra. Since we have different views on this particular issue, we are making a reference to the Appellate Authority for hearing and decision on this issue in terms of Section 98(5) of the Act ibid which provide that where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

9. GST AAR application submitted by Service recipient not liable for admission

Case Name : **In re Chennai Metropolitan Water Supply and Sewerage Board (GST AAR Tamil Nadu)**
Appeal Number : Order No. 03/AAR/2021
Date of Judgement/Order : 26/02/2021

An applicant can seek an Advance Ruling only in relation to supply of goods or services or both undertaken or proposed to be undertaken by them. Further, as per Section 103(1) of the GST Act, the ruling is binding only on the applicant and the concerned officer or the jurisdictional officer of the applicant. In the case at hand, the applicant is the recipient of the services and not supplier of such service. Accordingly, this question is not liable for admission and therefore rejected without going into the merits of the case.

10. GST on supply of food inside the restaurant (branch) situated in zoological garden

Case Name : **Hotel Sandesh Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 10/2021
Date of Judgement/Order : 26/02/2021

What is the applicable Rate of GST (SGST and CGST) for the supply of food inside the restaurant (branch) situated in zoological garden?

The applicable Rate of GST (SGST and CGST) for the supply of food inside the restaurant (branch) situated in zoological garden, Mysuru is 5% (CGST-2.5% & KGST-2.5%), in terms of entry number 7(ii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, if separate registration is obtained for the premises or separate account is maintained in respect of the premises.

Alternately, if the applicant maintains common account in respect of both the premises, they need to discharge GST @ 5% (CGST-2.5% & KGST-2.5%) in respect of the supply made at the premises situated at Zoological garden, Mysuru and invariably

need to reverse the input tax credit in terms of Section 17 of the CGST Act 2017 read with Rule 42 & 43 of CGST Rules 2017.

11. Classification of Hand Sanitizer for GST & Applicable Tax Rate

Case Name : **Wipro Enterprises Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 08/2021
Date of Judgement/Order : 26/02/2021

What is the appropriate classification of Hand Sanitizer for the purpose of GST and What is the applicable rate of GST?

The hand sanitizers are classifiable under Heading 3808 under the Customs Tariff Act and hand sanitizers are liable to tax at the rate of 9% under CGST Act and at the rate of 9% under the KGST Act.

12. Isopropyl rubbing alcohol IP & Chlorhexidine Gluconate & Isopropyl Alcohol solution merit classification under Chapter Heading 3808

Case Name : **In re Ce Chem Pharmaceuticals Pvt Ltd (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 07/2021
Date of Judgement/Order : 26/02/2021

Whether Isopropyl rubbing alcohol IP and Chlorhexidine Gluconate and Isopropyl Alcohol solution are to be classified under Chapter Heading 3004 attracting 12% GST, and if not, what would be the appropriate classification and justification for such classification.

Isopropyl rubbing alcohol IP and *Chlorhexidine Gluconate & Isopropyl Alcohol solution merit classification under Chapter Heading 3808 & attract 18 % GST, in terms of entry no. 87 of Schedule III of Notification No.01/ 2017 – Central Tax (Rate) dated 28.06.2017*

(V) COURT ORDERS/ JUDGEMENTS

1. GST: Documents not relied upon in SCN required to be returned

Case Name : **Universal Dyechem Private Limited Vs Union of India (Gujarat High Court)**
Appeal Number : Special Civil Application No. 1654 of 2021
Date of Judgement/Order : 01/02/2021

We are of the view that once the show-cause notice is issued to the party concerned, the documents/records, which have not been relied upon, should be returned to the party. This is what even is suggested in the master circular dated 19.01.2017 which has been referred to in the representation.

In the master circular, in clear terms, it has been stated that a show-cause notice and the documents relied upon in the show-cause notice, should be served on the assessee for initiation of the adjudication proceedings. However, the documents/records which are not relied upon in the show-cause notice, are required to be returned under proper receipt to the person from whom those are seized.

In view of the aforesaid, we dispose of this writ application with a direction to the respondent No.2 to immediately look into the representation at Page-114, Annexure-P to this writ application and take an appropriate decision in accordance with law within a period of one week from the date of the communication of this order. We hope that an appropriate decision in accordance with law is taken and the writ applicants are not dragged to a second round of litigation.

2. Documents not relied in GST SCN needs to be returned Under Proper Receipt

Case Name : **Universal Dyechem Private Limited Vs Union of India (Gujarat High Court)**
Appeal Number : Special Civil Application No. 1654 of 2021
Date of Judgement/Order : 01/02/2021

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a period of one week from the date of the communication of this order. We hope that an appropriate decision in accordance with law is taken and the writ applicants are not dragged to a second round of litigation.

3. Withholding of refundable VAT contravenes Section 36 of VAT Act

Case Name : **Dharti Quarry Works Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 9431 of 2020
Date of Judgement/Order : 01/02/2021

We are of the view that there is no legal justification for withholding the amount referred to above, which is otherwise refundable to the writ applicants in passing of any assessment orders for the relevant assessment years. It could be said that such withholding of the refund is contrary to the provisions of the Section 36 of the VAT Act, 2003.

We may refer to and rely upon the decision of this Court rendered in the case of Shilpa Industries Vs. State of Gujarat [SCA/540/2020], decided on 22.01.2020. We quote the relevant observations as under –

The stand taken by the respondent No.2 in the affidavit in reply is clearly a bureaucratic approach and redtapism, whereby the citizen of this country has to approach this court for getting legitimate refund. It is expected from the State machinery not to harass the citizen of this country in such a manner compelling them to approach to the Highest Court of the State for getting refund amount, which otherwise cannot be withheld for a minute without there being any authority with the respondent.

In the overall view of the matter, we are convinced that the writ application deserves to be allowed and is hereby allowed. The respondents are directed to pay to the writ applicants an amount of Rs.14,61,850/ together with the statutory interest @ 6 % within a period of six weeks from the date of communication of this order.

4. Condonation of delay against order in GST ASMT-13 & FORM GST DRC-07

Case Name : **Hash Constructions Vs Deputy Commissioner (Kerala High Court)**
Appeal Number : WP(C).No.671 of 2021(H)
Date of Judgement/Order : 02/02/2021

Conclusion: Despite receipt of assessment order under Section 62, assessee-registered person had not filed any valid return within 30 days from the receipt of the assessment order. This ultimately had resulted in issuance of demand notice in FORM GST DRC-07, mentioning the amount due and payable by assessee. That assessment order was not deemed to have been withdrawn due to non-filing of valid return within 30 days of service of the assessment order under Section 62. As such, it could not be said that the appeals filed by assessee were in fact the appeals challenging the demand notice in FORM GST DRC-07.

Held: Assessee could not file monthly returns prescribed under the GST Act for the period April 2018 to May 2019. Therefore, AO had passed several orders under Section 62 of the GST Act in respect of the said period. Assessee challenged the appellate order passed by the Joint Commissioner (Appeals) under the **Central Goods and Services Tax Act** by rejecting the appeals filed by assessee being barred by limitation, apart from non-deposit of 1% of the court fees as per the KLBF . It was held that bare perusal of the provision of section 62 of CGST Act makes it clear that after making the assessment on the criteria best of the judgment by the Assessing Officer, a notice is required to be issued to the assessee along with the assessment order. The assessee is granted an opportunity of filing his returns. If such registered person furnishes valid returns in response to the best of the judgment assessment, then such assessment order is deemed to have been withdrawn. In the case in hand, despite receipt of assessment order under Section 62, assessee registered person had not filed any valid return within 30 days from the receipt of the assessment order which ultimately had resulted in issuance of demand notice in FORM GST DRC-07, mentioning the amount due and payable by assessee. That **assessment order was not deemed to have been withdrawn due to non-filing of valid return within 30 days of service of the assessment order under Section 62**. As such, it could not be said that the appeals filed by assessee were in fact the appeals challenging the demand notice in FORM GST DRC-07. Even during pendency of this appeals, no amendment application was moved to delete the challenge so far as the Assessment Officer in order in FORM GST ASMT-13 was concerned or to incorporate the challenge to the orders in FORM GST DRC-07. Undisputedly, the appeals were filed after they suffered uncondonabe delay of more than four months. In this view of the matter, no fault could be filed in the impugned order rejecting the appeals as those suffered uncondonable delay.

5. Carry forward & set off of unutilized Cess against GST Output Liability not allowable

Case Name : **Jay Ushin Limited Vs Union of India (Rajasthan High Court)**
Appeal Number : D.B. Civil Writ Petition No. 4133/2020
Date of Judgement/Order : 03/02/2021

Assessee was not entitled to carry forward and set off of unutilised Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess against the GST Output Liability with reference to Section 140 of the **CGST Act, 2017**.

6. Initiation of GST recovery proceedings without Opportunity to taxpayer- HC gives Opportunity

Case Name : **Alkem Laboratories Limited Vs Union of India (Gujarat High Court)**
Appeal Number : Application No. 994
Date of Judgement/Order : 04/02/2021

Recovery Proceeding under GST can be initiated only after 3 Months from the date of the service of the order

A perusal of the provisions of Section 78, referred to above, would indicate that no recovery proceedings can be initiated against the assessee before the expiry of three months from the date of the service of the order. It is not in dispute that in the case on hand, within one month, the proceedings came to be initiated in the form of attachment of the factory premises.

Having regard to the materials on record, one thing is for sure that no opportunity of personal hearing was given to the writ applicant by the concerned authority before passing the impugned order. Although a specific request in this regard was made, yet, the impugned order came to be passed without affording any opportunity of hearing. Section 75(4), referred to above, makes it abundantly clear that an opportunity of hearing has to be given, more particularly, in those cases where a request is received in writing from the person chargeable with tax or penalty and without any adverse decision is contemplated against such person.

We are of the view that we should give one opportunity to the writ applicant to appear before the respondent No.2 and make good his case In the result, this writ application succeeds and is hereby allowed.

7. GST registration Cancellation vide deficient SCN unsustainable

Case Name : **Turret Industrial Security Pvt. Ltd Vs Union of India (Jharkhand High Court)**
Appeal Number : W.P.(T) No. 2661 of 2020
Date of Judgement/Order : 04.02.2021

Petitioner has sought quashing of the ex parte order of cancellation of GST registration of the petitioner, on the ground that no opportunity was given to the petitioner. The GST registration has been cancelled on the ground of failure to file six monthly returns from August, 2019 to January, 2020 by the petitioner within the prescribed time limit. According to the petitioner, it had filed GSTR–I return for the period in question, but could not file GSTR-3B returns due to non-payment of the outstanding dues from its clients, as their business were shut down.

Petitioner has prayed for a direction for revocation of the cancellation of registration of the petitioner to enable his clients to release the outstanding payment. He has also sought direction upon the respondents to accept his belated returns in GSTR-3B for the period in question and allow him to deposit the admitted tax in installment after receiving the outstanding amount from its clients.

Petitioner has also sought quashing of the letter dated 13.07.2020 (Annexure-5) issued by respondent no. 3 wherein his request for revocation of order of cancellation of GST registration has been declined and he has been directed to clear the entire dues of tax liability along with interest and thereafter, only upon filing of GSTR- 3B, petitioner should contact the jurisdictional Assistant Commissioner for revocation of the cancellation order.

We have considered the submission of learned counsel for the parties and taken note of the relevant pleadings on record relied upon by them.

Admittedly, no reply to the show-cause was filed by the petitioner. However, a perusal of the impugned order at Annexure- 2 dated 13.03.2020 shows the observation of the Superintendent, CGST – respondent no. 4 that he has examined the reply and submissions made at the time of hearing by the assesse and is of the opinion that his registration is liable to be cancelled for the following reasons. Thereafter, the order records that the assesse has not responded to the show-cause notice dated 26.02.2020 for cancellation of his GST registration on the ground of failure to file six monthly returns from August, 2019 to January, 2020 within prescribed time limit. We do not intend to enter into the merits of the impugned order as the ingredients of a proper show-cause notice as per the prescribed form GST REG-17 are completely absent. **Petitioner could not furnish his reply as no date or time was indicated therein. As such, the cancellation of registration resulting from such an incomplete/deficient show-cause notice (SCN) also cannot be sustained being violative of principles of natural justice.**

8. Credit cannot be denied for merely for non-filing of TRAN-1 form

Case Name : **Neptune Plastics Vs Union of India and others (Jammu & Kashmir HC)**
Appeal Number : OWP No. 512 of 2019
Date of Judgement/Order : 05/02/2021

It is stated that because of the lack of awareness about the procedure to claim the benefit, the petitioner could not submit TRAN-1 within prescribed time but the respondents are denying the same to the petitioner though the petitioner had mentioned about the credit sought to be claimed, in GSTR-3B return submitted by the petitioner within the prescribed period. The respondents have neither disputed that the petitioner is not entitled to carry forward the said credit nor they have disputed the correctness of the amount. Even they have not disputed that the petitioner has not reflected the said credit in GSTR-3B filed within the stipulated time. Only objection that has been raised by the respondents is that TRAN-1 form was required to be submitted within the prescribed period but was not submitted by the petitioner. Learned counsel for the petitioner at this stage informs that the portal for submitting TRAN-1 is lying closed and it is not possible for the petitioner to submit the claim in TRAN-1.

We are of the view that the petitioner cannot be deprived of the benefit of claiming the credit lying in its account on the stipulated date only on the basis of procedural or technical wrangles that one form TRAN-1 was not filled by the petitioner particularly when the petitioner has reflected the said credit in its return GSTR-3B.

In view of what has been stated above, we direct the respondents to permit the petitioner to submit the TRAN-1 either electronically or manually on or before 15.03.2021 and the petitioner shall coordinate with the respondents for the submission of TRAN-1 as directed.

9. GST on transmission & distribution of electricity – HC Stays Demand

Case Name : **Jodhpur Vidyut Vitran Nigam Ltd Vs Union of India (Rajasthan High Court)**
Appeal Number : D.B. Civil Writ Petition No. 9397/2018
Date of Judgement/Order : 05/02/2021

Rajasthan High Court relied on Gujarat High Court judgment dated 19.12.2018 in case of **Torrent Power Ltd. Vs. Union of India**, and restrained GST department from raising any demand and/or taking any coercive measures to recover any tax on the basis of impugned **circular No. 34/8/2018-GST dated 1.3.2018** which sought to levy GST on (i) application fee for releasing connection of electricity; (ii) Rental Charges against metering equipment; (iii) Testing fee for meters/ transformers, capacitors etc.; (iv) Labour charges from customers for shifting of meters or shifting of service lines; and (v) charges for duplicate bill.

It was also held that A circular cannot seek to clarify provisions of statutory notification dated 28.06.2017, which is otherwise unequivocal. There is no room for ambiguity or doubt, for which the GST Counsil was required to issue the circular. Respondents have as a matter of fact, levied tax on some of the services by carving them out that too by way of a circular under the cloak of a clarification.

10. HC directs GSTN to help in transfer of ITC

Case Name : **Netrika Trends Vs Deputy Commissioner Appeals (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 13296 of 2020
Date of Judgement/Order : 08/02/2021

HC disposes writ application with a direction to the respondents that once the writ applicant comes forward with a request for transfer of the Input Tax Credit in accordance with the provisions contained in Section 18 of the Act, the request shall be immediately look into and needful shall be done. For this purpose, if some assistance of the GSTN is required, the same may be availed from the GSTN. The GSTN is directed to cooperate and see to it that the problem is solved. Let this exercise be completed at the earliest.

11. Reconsider decision of exclusion of Ice Cream from Composition Scheme: HC directs GST Council

Case Name : **Del Small Ice Cream Manufacturers Welfare's Association (Reg.) Vs Union Of India & Anr (High Court Of Delhi)**
Appeal Number : W.P.(C) 5252/2019
Date of Judgement/Order : 09/02/2021

Hon'ble High Court direct the GST Council to reconsider the exclusion of small scale manufactures of ice cream from the benefit of Section 10(1) of the Act, including on the aforesaid two parameters i.e. the components used in the ice cream and the GST payable thereon and other similar goods having similar tax effect continuing to enjoy the benefit.

12. Amount paid by Mistake or ignorance of Repealment of Act must be Refunded: HC

Case Name : **WS Retail Services Private Limited Vs State of Jharkhand (Jharkhand High Court)**
Appeal Number : W. P. (T) No. 2429 of 2018
Date of Judgement/Order : 09/02/2021

It is the case of the petitioner, undisputed by the respondent that petitioner is not a registered dealer under JVAT Act, 2005 nor has been assessed to tax under the Act. No demand notices were raised against the petitioner as such to the effect that any tax is due against him. Petitioner claims to have made deposit of Rs. 61,74,899/- in order to ensure continuity of business and to avoid coercive action without any demand of tax since the goods transported by the petitioner were already excisable to Central Sales Tax to the tune of Rs. 58,05,157**/-** which were paid in the State of Origin. No sale took place in the State of Jharkhand within that period. The principles regarding maintainability of writ petition seeking refund in case the levy is unauthorized or without jurisdiction or is unconstitutional is well settled by the decisions of the Apex Court. In the case of **HMM Ltd. (supra),** the Apex Court has held that realization of tax or money without the authority of law is bad under Article 265 of the Constitution of India. It has further been held in the case of **Arvind Lifestyle Brands Ltd. Vs. Under Secretary Technology Development Board & Ors.,** reported in **2019(368) ELT 387 (Kar.)** relying upon the decision in the case of **HMM Limited (Supra)** that any amount paid by mistake or through ignorance of repeal Act deserves to be refunded as retention of such amount would be hit by Article 265 of the Constitution of India. In the case of the petitioner admittedly there has been no assessment of tax liability till date. The claim of refund has been denied on the plea that there is no provision under the JVAT Act since the petitioner is not a registered dealer and no assessment proceedings have been held. Under the Scheme of JVAT Act, assessment proceedings can be held against dealers, who have failed to get themselves registered. However, no assessment can be made under Sections 37 or 38 after expiry of 5 years from the end of the tax period, to which the assessment relates. On the face of the pleadings on record and the stand of the respondents brought through their counter affidavit, the rejection of claim for refund only on the ground that there is no provisions under the JVAT Act, 2005 for entertaining such a claim is not sustainable in law. Whether the contention of the petitioner that the entire sale transaction originated in a different State after payment of central sales tax to the tune of Rs. 58,05,157**/-** and there was no sale transaction originating within the State of Jharkhand for the respondent to retain the amount so deposited is a matter of verification upon assessment.

However, as it appears the transaction relates to the period December, 2014 to August, 2015. Any assessment proceedings in respect of transaction for the period December, 2014 till 31st March, 2015 would be impermissible in the light of Section 39 of the JVAT Act, 2005. However, it may be open for the respondent authorities to undertake such assessment for the period 1st April, 2015 till August, 2015 with the rider contained in Section 38 & 39 of the JVAT Act, 2005. We do not wish to observe any further in this regard. However, having regard to the facts and circumstances of the case and the discussions made hereinabove, the order of rejection of claim of refund by respondent no. 3 dated 1st September, 2016 (Annexure-4) and the order of learned Commercial Taxes Tribunal dated 31st October, 2017 (Annexure-8) upholding the same cannot be sustained in the eye of law Accordingly, they are set aside. The matter is remitted to the respondent no. 3, Joint Commissioner of Commercial Taxes (Admin), Ranchi to consider the claim of refund of the petitioner in accordance with law within a period of six weeks from today. Petitioner should appear before the respondent no. 3 on 15th February, 2021 with the relevant records.

13. Bail granted in case of alleged availment of fraudulently ITC

Case Name : **Lupita Saluja Vs DGGI (Delhi High Court)**
Appeal Number : Bail Appln. 319/2021 & Crl.M.B. 92/2021
Date of Judgement/Order : 11/02/2021

It is not in dispute that on the day the impugned order has been passed, the said Judge granted regular bail to the husband of the applicant after spending nearly 50 days in custody who is the person involved in day-to-day affairs of the company, however, dismissed the anticipatory bail of the applicant.

It is also not in dispute that the applicant and her husband were called for investigation by the Investigating Agency/Department on 10.12.2020 and their statements were duly recorded. Husband of the applicant was arrested but applicant was released on the same day.

Admittedly, the export made by the companies of the applicant in crores of rupees. The Investigating Agency has conducted as many as 5 raids including the residence and office premises of the applicant and seized the evidence such as original documents, purchase and sale invoices, ledgers and Bank Statements, hard disks, CPU, export details, etc.

It is not in dispute that the W.P.(C) 10013/2020 and W.P.(C) 10014/2020 and W.P.(C) 10015/2020 filed by the applicant, challenging the powers of seizure, arrest, etc. However, the applicant was never called upon to join the investigation in about 1 year, but called first time i.e. after her husband and she had challenged the entire investigation before this Court in the abovementioned writ petitions.

In view of above facts, I am of the view that custodial interrogation of the applicant is not required. 19. Accordingly, the Arresting Officer is directed that in the event of arrest, the petitioner/applicant shall be released on her furnishing a personal bond in the sum Rs.25,000/-.

14. Fake ITC availment case: HC refuses to interfere with the investigations

Case Name : **Kaushal Kumar Mishra Vs Additional Director General, Ludhiana Zonal Unit And Another (High Court Of Punjab And Haryana)**
Appeal Number : CWP-21387-2020 (O&M)
Date of Judgement/Order : 12/02/2021

High Court held that we are of the view that the investigations being conducted by competent Officers against the petitioner are not hit by provisions of Section 6(2)(b) of CGST Act, 2017. So, we see no reason to interfere with the aforesaid investigations undertaken by the competent authorities against the petitioner under CGST Act, 2017.

15. SC directed UOI to file affidavit regarding technical glitches faced in filing GST TRAN-01

Case Name : **Union of India & Ors. Vs National Engineering Co. (Supreme Court of India)**
Appeal Number : Special Leave Petition (Civil) Diary No(s). 2701/2021
Date of Judgement/Order : 15/02/2021

The Hon'ble Supreme Court of India in ***Union of India & Ors. v. M/s National Engineering Co. [Special Leave Petition (Civil) Diary No(s). 2701/2021, dated February 15, 2021]*** directed Union of India (**the Petitioner**) to file an affidavit within 4 weeks, answering the assertion regarding technical glitches and problems faced by the taxpayers while uploading and filing Form GST TRAN-01 details. Further stated that, the factual assertions in this regard will be dealt with concretely and expressly and if required, by taking the help of experts.

Furthermore, granted stay over the judgement/ order of Hon'ble Punjab & Haryana High Court in ***M/s National Engineering Co. v. Union of India & Ors. [CWP No. 27891 of 2019 (O&M) decided on November 4, 2019]*** wherein taxpayers were allowed to file or revise their already filed incorrect TRAN-1 either electronically or manually statutory Form GST TRAN-01 on or before November 30, 2019. Further, it was held that Department cannot deprive taxpayers from their valuable right of credit and cannot deny the taxpayers from carry forwarding legitimate claim of CENVAT / Input Tax Credit on the ground of non-filing of Form GST TRAN-01 by December 27, 2017.

16. Bombay HC explains authorisation of arrest by GST Commissioner

Case Name : **Daulat Samirmal Mehta Vs Union of India (Bombay High Court)**
Appeal Number : Writ Petition No. 471 of 2021
Date of Judgement/Order : 15/02/2021

Having briefly noted the aforesaid provision, we may now revert back to what we had discussed about the sine qua non for exercising the power of arrest under section 69 of the CGST Act. We had noticed that the Commissioner may authorize arrest of a

person only if he has reasons to believe that such a person has committed any offence under the clauses mentioned therein. The expression 'reasons to believe' is an expression of considerable import and in the context of the CGST Act,confers jurisdiction upon the Commissioner to authorize any officer to arrest a person. This expression finds place in a number of statutes including fiscal and penal. Without dilating much, it can safely be said that the expression 'reasons to belief' postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. Reasons to believe does not mean a purely subjective satisfaction. It contemplates existence of reasons on which the belief is founded and not merely a belief in the existence of reasons inducing the belief. The belief must not be based on mere suspicion; it must be founded upon information. Such reasons to believe can be formed on the basis of direct or circumstantial evidence but not on mere suspicion, gossip or rumour. It is open for a court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief. A rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the officer and the formation of his belief. Courts have also held that recording of reasons distinguishes an objective from a subjective exercise of power and is a check against arbitrary exercise of power.

Having noticed the above, we may now examine the reasons recorded by the Principal Additional Director General while authorizing arrest of the petitioner.

From the note sheet dated 21.01.2021, we find that Principal Additional Director General has recorded her reasons after going through the facts and the arrest proposal put up before her. She recorded that she had reasons to believe that the petitioner had committed the two offences as mentioned above, which are cognizable and non-bailable.

Thereafter she noted that during the course of the investigation, petitioner had not co-operated with the department and had tried to mislead the investigation. Offences were committed with full disregard to the statutory provisions with intent to defraud Union of India of its legitimate revenue. Therefore, she agreed with the proposal to arrest the petitioner in order to ensure that he does not tamper with crucial evidence and does not influence the witnesses as well as does not hamper in the investigation process.

We may also mention that in Makemytrip (India) Private Limited (supra), Delhi High Court also recorded that decision to arrest a person must not be taken on whimsical grounds. Reasons to believe must be based on 'credible material'. Of course, that was a case under sections 90 and 91 of the Finance Act, 1994 regarding allegation of evasion of service tax by the petitioner but the fact remains that under section 91 also, the Commissioner was required to have reason to believe that any person had committed an offence as specified to clothe him with the jurisdiction to arrest such person.

The requirement under sub-section (1) of section 69 is reasons to believe that not only a person has committed any offence as specified but also as to why such person needs to be arrested. From a perusal of the reasons recorded by the Principal Additional Director General, we find that other than paraphrasing the requirement of

section 41 Cr.P.C., no concrete incident has been mentioned therein recording any act of tampering of evidence by the petitioner or threatening / inducing any witness besides not co-operating with the investigation, not to speak of fleeing from investigation. In such circumstances, we are of the view that the Principal Additional Director General could not have formed a reason to believe that the petitioner should be arrested.

17. Forceful Recovery during GST search- HC issues guidelines

Case Name : **Bhumi Associate Vs. Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 3196 of 2021
Date of Judgement/Order : 16/02/2021

High Court Issues direction against alleged forceful recoveries during search/inspection under **CGST Act, 2017** –

(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.

(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/ advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

(3) Facility of filing complaint/ grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.

(4) If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer.

18. Summon can be issued by GST Authorities to give evidence & produce documents

Case Name : **Jsk Marketing Limited & Anr Vs Union of India & Ors.(Bombay High Court)**
Appeal Number : Writ Petiton (L) No.5000 of 2020
Date of Judgement/Order : 16/02/2021

A conjoint reading of Section 14 of the Central Excise Act, 1944, Section 83 of the Finance Act, 1994 and Section 70 & 174 of the CGST Act show that though the Central Excise Act and the Finance Act, 1994 to the extent of Chapter V of the said Act have been repealed, sub-section (2) of section 174 states that the aforesaid action shall not affect any investigation, inquiry, verification (including scrutiny and audit) assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, service charge, penalty, fine etc.

and other legal proceedings or recovery of arrears or remedy as may be instituted, continued or enforced and any such tax may be levied or imposed as if the aforesaid acts had not been so amended or repealed. Thus it is evident that respondent No.2 has power and authority to issue summons to the petitioners and more specifically petitioner No.2 under the provisions of the aforementioned statutes to give evidence and produce the relevant documents in inquiry.

Having noticed the above, we may state that the power to summon persons to give evidence and produce documents in inquiry is a statutory function regulated by the aforementioned provisions of the statutes. Sub-sections (1) and (2) of Section 14 of the Central Excise Act state that summons to produce documents or other things in the possession of or under the control of the person summoned can be issued by an officer duly empowered by the Central Government and all persons so summoned shall be bound to attend and state the truth upon any subject respecting which they are examined or make statements or to produce such documents and other things as may be called upon. Sub-section (3) of section 14 states that every such inquiry as aforesaid shall be deemed to be a judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code, 1860.

On a thorough reading of the summons dated 12.10.2020 and 13.11.2020 it is clear that the summons have been issued to petitioner No.2 calling upon him to tender oral evidence and produce documents or things which have been specified in the summons. The summons clearly state that an inquiry in connection with GST under the CGST Act, 2017 is being undertaken by the Superintendent / Appraiser / Senior Intelligence Officer and that the attendance of petitioner No.2 is considered necessary to give evidence and produce documents. Perusal of the summons signify that there is no threat of arrest as perceived and argued by the petitioners / petitioner No.2. This is buttressed by the fact that under section 70 of the CGST Act tendering of evidence or production of document is to be done in the same manner as done by a civil court under the provisions of the Civil Procedure Code, 1908. The summons specifically call upon the petitioner to tender evidence and produce documents and clarification as stated in the summons dated 12.10.2020.

Sub-section (2) of section 14 of the Central Excise Act mandates that any person so summoned shall be bound to attend and state the truth upon any subject in respect of which he is examined or make statements and produce such documents and other things as may be required. Under this provision there is a clear mandate on the petitioner No.2 to honour the summons and present himself in the inquiry undertaken in connection with evasion of GST under the CGST Act by the investigating officer. The summons do not state that the petitioner No.2 shall be liable for arrest or will be arrested as the statutory provisions under which the summons have been issued pertain to investigation undertaken by the statutory officer. Hence there is no reason for the petitioners to assume that the petitioner No.2 on presenting himself before the investigating officer will be arrested or apprehended. The inquiry which is undertaken by respondent No.2 is a statutory inquiry pertaining to evasion of GST under the CGST Act wherein the petitioner No.2 has been called upon to tender his oral evidence as also to produce the documents that may be required for the purpose of completing the inquiry by the investigating officer. Petitioners' apprehension that petitioner No.2 will be apprehended / arrested / incriminated since the inquiry pertains to evasion of

service tax / GST is not well founded. The summons dated 12.10.2020 makes it required to tender oral evidence and produce certain documents. Investigation is under way pursuant to the raid which was carried out at the premises of the petitioners on 03.04.2019 and seizure of the material and documents by the authority. It is therefore incumbent upon the petitioners to cooperate in the investigation / GST inquiry. The summons issued to the petitioners / petitioner No.2, does not authorize the investigating officer to arrest petitioner No.2, but have been issued only for the purpose of completing the investigation into evasion of GST undertaken by respondent No.2. In this view of the matter, we do not see any reason for the petitioners / petitioner No.2 to apprehend arrest on presenting himself before the investigating officer in response to the summons which have been issued to the petitioners.

We state that in view of the aforementioned legal position, the summons issued to the petitioners / petitioner No.2 on 12.10.2020 and 13.11.2020 are valid and no interference is called upon.

19. ITC benefit cannot be denied merely for entering details in Wrong Column

Case Name : **Ram Auto Vs Commissioner of Central Taxes & Central Excise (Madras High Court)**
Appeal Number : W.P(MD)No.15531 of 2020
Date of Judgement/Order : 16/02/2021

In this case The petitioner had filed FORM GST TRAN-1 in time. His only grievance is that he is being denied the benefit of input tax credit for having entered the details in wrong column.

The learned counsel for the petitioner drew my attention to the decision of the Hon'ble Division Bench of the **Delhi High Court in W.P.(C) No.3798 of 2019 (M/s.Blue Bird Pure Pvt. Ltd. Vs. Union of India and Others)**. In the said case also the dealer had committed an inadvertent error in showing the available stock of goods in column 7(d) of the Form insetad of 7(a) of the Form. The Hon'ble Division Bench of Delhi High Court held as follows:-

"In the present case, the Court is satisfied that, although the failure was on the part of the Petitioner to fill up the data concerning its stock in Column 7(d) of Form TRAN-1instead of Column 7(a), the error was inadvertent. The Respondents ought to have provided in the system itself a facility for rectification of such errors which are clearly bona fide. It should be noted at this stage that although the system provided for revision of a return, the deadline for making the revision coincided with the last date for filing the return i.e. 27th December, 2017. Thus, such facility was rendered impractical and meaningless"

The decision of the Hon'ble Division Bench of Delhi High Court provides a complete answer to all the objections raised by the respondents before me.

In this view of the matter, the communication impugned in the writ petition is quashed. The second respondent is directed to forward the petitioner's application to the third respondent forthwith and without any delay. The third respondent will verify the

correctness of the averments set out in communication of the jurisdictional Assistant Commissioner to the Commissioner of Central Taxes & Central Excise, Madurai vide C.No.IV/16/48/2018-Tech, dated 17.05.2019. Upon the third respondent being satisfied with the correctness of the same, the third respondent will grant the relief as sought for by the writ petitioner. The entire exercise shall be concluded within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

20. GST: Revenue cannot attach bank accounts having debit balance

Case Name : **Skylark Infra Engineering Pvt. Ltd. Vs Additional Director General (Punjab & Haryana High Court)**
Appeal Number : CWP-21989-2020 (O&M)
Date of Judgement/Order : 16/02/2021

The object and intention of legislature to endow Commissioner with power of attachment under Section 83 is very clear. It is drastic and far-reaching power which must be used sparingly and only on substantive weighty grounds and reasons. The power should be exercised only to protect interest of revenue and not to ruin business of any taxable person. Primarily Section 83 permits to attach property. Property means an asset which may be movable, immovable, tangible, intangible or in the form of some instrument. Cash in hand as well bank account is property, in the form of liquidity which is better than immovable property and directly affects working in the form of working capital of a dealer. A dealer may be having cash in hand or in account in the form of fixed deposit or saving account. The mandate of Section 83 in our considered opinion is to attach amount lying in an account in the form of FDR or saving and it cannot be intention or purport of Section 83 to attach an account having debit balance. No purpose leaving aside securing interest of revenue is going to be achieved except closure of business which cannot be permitted unless and until running of business itself is prohibited by law. The contention of Respondent that they have power to attach bank account irrespective of nature of account cannot be countenanced

21. No penalty for non-declarations of concessional rate of tax in VAT/CST Registration Certificate

Case Name : **Mahindra & Mahindra Ltd. Vs Joint Commissioner (Madras High Court)**
Appeal Number : Writ Appeal No. 493 of 2021 & CMP.No.1959 of 2021
Date of Judgement/Order : 18/02/2021

Conclusion: Proposal to levy penalty on the ground that assessee- dealer purchased SAP software at concessional rate of tax against C Form Declarations without having included the same in the registration certificate issued under the CST Act was made by an officer, who was not the officer, who passed the order dated 30.1.2014, as there had been a transfer of the officer and the new officer took over charge thus, the defect, which had occurred by levying penalty without affording an opportunity of personal

hearing would go to the root of the very levy itself, therefore, the assessment orders was remanded to AO for a fresh consideration.

Held: AO had issued the notices proposing to levy penalty on the ground that assessee- dealer purchased SAP software at concessional rate of tax against C Form Declarations without having included the same in the registration certificate issued under the CST Act. Hence, AO was of the prima facie view that the software was not capable of being used in manufacturing and therefore, had proposed to levy penalty under Section 10A(1) of the CST Act. It was noted that AO did not afford any opportunity of personal hearing to assessee though more than one year had lapsed. This, was a serious issue because the dealer had taken a specific stand that the software was being used in the manufacture. Furthermore, the dealer's case was that in their registration certificate issued under the CST Act, as mentioned in Clause 9 in the annexure, computer software was also one of the items mentioned in their certificate of registration. Had an opportunity of hearing been granted to the dealer, especially when AO took more than one year to complete the assessment, the dealer would have explained the same. That apart, the proposal to levy penalty was made by an officer, who was not the officer, who passed the order dated 30.1.2014, as there had been a transfer of the officer and the new officer took over charge. This was also one more aspect, which should have weighed in the mind of AO to afford an opportunity of personal hearing because the officer, who completed the assessment, was not the officer, who made the proposal to levy penalty. Thus, the case of hand having fallen under one of the exceptional circumstances as mentioned warranting exercise of jurisdiction under Article 226 of The Constitution of India and as the defect, which had occurred by levying penalty without affording an opportunity of personal hearing would go to the root of the very levy itself, therefore, the assessment orders was remanded to AO for a fresh consideration.

22. GST officer can suspend registration during pendency of proceedings relating to cancellation of registration

Case Name : **Kans Wedding Centre Vs Commissioner of Commercial Taxes (Kerala High Court)**
Appeal Number : WP(C). No. 4227 of 2021(C)
Date of Judgement/Order : 18/02/2021

in the event the registered persons fail to file returns for a continuous period of six months, the proper officer can cancel the registration, but that has to be done by granting opportunity of hearing to the registered person. Rule 22 of the GST and ST Rules 2017 deals with procedure for cancellation of registration and as per requirement of this Rule, the registered person is required to be issued with a show-cause notice requiring him to show-cause as to why the registration shall not be canceled. Section 29 of the GST Act empowers the proper officer to suspend the registration during the pendency of proceedings relating to cancellation of registration. In the wake of these statutory provisions, I find no fault on the part of the proper officer in issuing the show-cause notice at Ext.P3 asking the petitioner to show-cause as to why the registration of the establishment should not be canceled.

Apprehension of the petitioner that the proceedings for cancellation of registration will continue for a long period and till then his registration is under suspension causing loss to his business can be taken care of by directing the petitioner to approach the proper officer for preponing the date. In this view of the matter, the following order:

The petition is dismissed. However petitioner is permitted to approach the proper officer for preponement of date of hearing by submitting his reply to the show-cause notice. If such request is made by the petitioner, the proper Officer shall consider the same and shall decide the proceedings expeditiously. If the petitioner cooperates with the proper Officer, it is expected of the proper Officer to dispose of the proceedings for show-cause notice of cancellation within a period of three weeks from the date of appearance of the petitioner.

23. GST officers should act within the four corners of law: HC

Case Name : **M/s Bhumi Associate Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 3196 of 2021
Date of Judgement/Order : 18/02/2021

We have been assured by Dr. Satish Dhavale that there shall not be any further complaint against the officers of the department of undue harassment, threat, pressure, etc. Dr. Dhavale has assured that the inquiry or investigation that may be undertaken shall be in accordance with law.

We would not have asked the officers to join the video conference but for the serious allegations which have been levelled in the respective writ applications. We do not intend to discourage or lower down the morale of all the officers before us. Our endeavour is only to bring it to their notice that they should act and perform their duties within the four corners of law. They should not take law in their hands. On the contrary, this Court has always appreciated the efforts put in by the officers in catching hold of fraudsters and all those persons involved in the huge scam of tax evasion etc. It shall be open for the officers to conduct the search proceedings under Section 67, but, strictly in accordance with law.

24. GST: HC removes bank account attachment subject to maintenance of Balance as on the day of attachment

Case Name : **SKF Finvest Advisory Pvt. Ltd. Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 457 of 2021
Date of Judgement/Order : 19/02/2021

We dispose of this writ application directing the writ applicant that he shall maintain the minimum balance of Rs.22 lac in the bank account in question up to 21st September 2021. On this condition, we permit the writ applicant to operate his bank account. The respondents shall intimate the bank concerned about this order and permit the writ applicant to operate his bank account. The writ applicant shall file his

undertaking in this regard on oath in writing before the concerned department as well as placed the same undertaking on the record of this case also. The inquiry, if any, initiated, shall proceed further in accordance with law.

25. HC Grant Bail to accused in case of alleged wrongful ITC claim under GST

Case Name : **Anil Kumar Gupta Vs Union of India (Rajasthan High Court)**
Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 15605/2020
Date of Judgement/Order : 19/02/2021

1. Petitioner has filed this bail application under Section 439 Cr.P.C.

2. F.I.R. No.IV (06) 248/ AE/ALWAR/2020 was registered at Chief Metropolitan Magistrate (Economic Offences) Jaipur (Raj.) for offence under Sections 132(1)(c) of the **Central Goods and Services Tax Act, 2017**.

3. It is contended by counsel for the petitioner that in the initial application, there was an allegation with regard to wrongful claim of input tax credit to the tune of Rs.5.27 Crore, however, in the complaint that was filed before the Court, wrongful claim of input tax is to the tune of Rs.5.88 Crore. It is also contended that all these firms which are stated to be bogus firms were shown in the portal of the Department and three firms are still existing on the 4. It is further contended that there was an actual movement of the goods, which is established by toll naka receipt, wherein the truck number is also mentioned which tallies with the truck portal of the Department, It is also contended that petitioner is not in the management of any of the firms.

4. It is further contended that there was an actual movement of the goods, which is established by toll naka receipt, wherein the truck number is also mentioned which tallies with the truck number mentioned in the e-way bills. It is further contended that, if the actual goods movement is calculated then there would be reduction of input tax credit by about three crores. It is also contended that where the offence is of wrongful claim of input tax credit below Rs.5 crore the same is bailable and the maximum sentence provided under the Act is five years. Petitioner is in custody since November 2020.

5. Counsel for the Union of India has vehemently opposed the bad application. It is contended that fake firms were created for claiming input tax credit. From the investigation, it is revealed that the firms were fake. The proprietor and owner of the firms are not traceable. It is further contended that evasion of tax has an effect on the economy of the Nation and Court should not be liberal in granting bail to such offenders.

6. I have consider the contentions.

7. Considering the contentions put forth by counsel for the petitioner, I deem it proper to allow the bail application.

8. This bail application is, accordingly, allowed and it is directed that accused-petitioner shall be released on bail provided he furnishes a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) together with two sureties in the sum of

Rs.50,000/- (Rupees Fifty Thousand only) each to the satisfaction of the trial Court with the stipulation that he shall appear before that Court and any Court to which the matter be transferred, on all subsequent dates of hearing and as and when called upon to do so.

26. HC Quashes vague & imprecise SCN & instructs unblock of GST account

Case Name : **Dayamay Enterprise Vs State of Tripura And 3 Ors. (Tripura High Court)**
Appeal Number : WP(C) No.89/2021
Date of Judgement/Order : 22/02/2021

The impugned notice has been issued only for cancellation of registration, that too without citing any particular reason. The reason stated is picked up from the statute itself namely, non-compliance of any specified provisions of GST Act or the Rules made thereunder. Without specifying which provisions of the Act or the Rules and in what manner the petitioner has approached, granting hearing to the petitioner would be an empty formality. This apart, admittedly, so far no order cancelling the petitioner's GST registration has been passed. If that be so, without resorting to the power of suspending the registration, if there is any, the respondent surely cannot block the petitioner's GST account on the official portal. Any such action would prevent the petitioner from carrying on his business in lawful manner. Such an action would have the effect of suspension of the petitioner's registration.

Under the circumstances, impugned show cause notice dated 16th December 2020 is quashed on the ground of being vague and imprecise. Further, the respondents are directed to unblock the petitioner's GST account on its official portal. This is without prejudice to the steps that the department make take for recovery of its dues in accordance with law or for breach any of the requirements under the law as the rules and regulations permit.

27. HC directs GST department to enable amendment to GSTR-1 by Appellant

Case Name : **Pentacle Plant Machineries Pvt. Ltd. Vs Office of The GST Council And Ors. (Madras High Court)**
Appeal Number : W.P. No. 1022 of 2020
Date of Judgement/Order : 23/02/2021

The petitioner seeks a mandamus directing the respondents to rectify the mistake in its GSTR-1 return, wherein it has, instead of the GST number of the purchaser in Andhra Pradesh, mentioned the GST number of the purchaser in Uttar Pradesh.

The revenue does not dispute the position that Forms GSTR-2 and 1A are yet to be notified. It also does not dispute the position that goods have reached the intended recipient. However, the credit claimed on the basis of accompanying invoices has been denied solely on account of the mismatch in GSTR number. It is only on 15.07.2019 when the recipient notified the petitioner of the rejection of the credit,

seeking amendment of the return, and threatening legal action, that the petition came to be aware of the mismatch.

In Sun Dye Chem (supra), the error related to distribution of credit as between IGST/CGST/SGST, which posed a difficulty to the recipient in the matter of availment. I have taken a view noticing that the error arose out of inadvertence, that such bonafide mistakes must be permitted to be corrected.

To summarise, since Forms GSTR-1A and GSTR-2 (erroneously mentioned as GSTR-2A in para-17 of order dated 06.10.2020 in WP.No.29676 of 2019) are yet to be notified, the petitioner should not be mulcted with any liability on account of the bonafide, human error and the petitioner must be permitted to correct the same.

Both learned counsel for the respondents, Mr.Srinivas as well as Mr.Jaya Prathap, would concur on the position that it is for the Assessing Officer/R2 to give effect to this order, and a direction is thus issued to R2 to enable amendment to GSTR-1 with all consequences thereto, within a period of eight (8) weeks from today.

28. VAT TDS Credit Allowed Under GST Transitional Laws

Case Name : **DMR Constructions Vs. Assistant Commissioner, Commercial Tax Department (Madras High Court)**
Appeal Number : W.P. Nos. 9991 of 2019
Date of Judgement/Order : 26/02/2021

Issue Involved:

1. There was Accumulated credit of TDS under TNVAT Act and the same has also been permitted to carry forward the same from year to year.

2. The petitioners sought transition of the accumulated TDS into their respective accounts for set off against output tax – GST liabilities

Submissions of the petitioner:

1. Tax deducted at source is nothing but tax and Section 13 of the TNVAT makes this position clear.

2. Being a value added tax for the purposes of Section 140(1) of the TNGST Act, it is entitled to be carried forward for set off.

3. Deduction of tax at source is only a mechanism to ensure advance payment and collection of tax without leakage. Thus, TDS is a tax

4. Article 265 of the Constitution of India casts a mandate upon all citizens to the effect that collection of any amount styled as ‘tax’ is under the authority of law.

5. The authority to collect and remit tax is delegated to all payers and carries with it the full import of Article 265. Thus what is collected can be nothing, but tax.

Concluding Order:

1. Once that any deduction made towards anticipated tax liability would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability

2. **Section 140** of the Act talks of carrying forward of the credit of 'VAT' and Entry Tax under the existing law, defined under Section 2(48) of the TNGST Act to mean any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services made prior to the commencement of the TNGST. Since the amount collected/deducted has been captured in the returns of turnover filed under the erstwhile TNVAT regime, I accept the stand of the petitioners to the effect that such amounts would stand included for the purposes of transition under Section 140.

3. In the light of the detailed discussion as above, the impugned orders are set aside, and the petitioners held to be entitled to transition TDS under the TNVAT Act in terms of Section 140 of the **TNGST 2017**.