GST UPDATE
(March, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

CONTENTS

Sr. No. Subject Page No.

Sr. No. Subject Page No.

VI COURT ORDERS/JUDGEMENTS

Sr. No. Subject Page No.

(I) GIST OF GST NOTIFICATIONS

1. GST e-Invoicing turnover limit reduced to ₹ 50 Crores wef 01.04.2021

Implementation of e-Invoicing from 01-04-2021 for units > 50 Crore- Now taxpayers having turnover exceeding Rs 50 Crores will have to generate e Invoices effective April 1, 2021.

The mandatory requirement for generating e-Invoice in terms of Rule 48(4) has been extended to all registered Taxpayers whose annual aggregate turnover in any of the three preceding financial years from 2017-18 has been more than Rs.50 Crore.

This compliance obligation takes effect from 1st April 2021, vide Notification No. 05 /2021, dated 08-03-2021 superseding the earlier parent notifications number 13/2020 dated 21-03-2020 and 88/2020 dated: 10-11-2020.

The applicability of E-invoicing threshold was Rs.500 crores till December 31, 2020, thereafter 100 crores till 31-03-2021 and now it is Rs.50 Crores with effect from 01-04-2021.

[Notification No. 05/2021–Central Tax Dated 8th March, 2021]

2. B2C QR code compliance exemption extended till 30th June 2021

The CBIC vide Notification No. 06/2021 – Central Tax dated March 30, 2021 amended **Notification No. 89/2020 – Central Tax dated November 29, 2020** to extend the waiver of penalty leviable under Section 125 of the **CGST Act, 2017** (i.e. general penalty) for non-compliance of provisions of Notification No. 14/2020–Central Tax dated March 21, 2020 (Provisions of Capturing of Dynamic QR Code in GST Invoices) between the period from December 1, 2020 to June 30, 2021, subject to the condition that the said person complies with the provisions of the said notification from July 1, 2021.

[Notification No. 06/2021–Central Tax Dated 30th March, 2021]

3. Clarification on GST refund & Adjusted total turnover calculation

CBIC issues Clarification in respect of refund claim by recipient of Deemed Export Supply, Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a) and The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

[Circular No. 147/03//2021-GST dated 12th March, 2021]

(II) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 30th March, 2021

No. S.O. 31/P.A.5/2017/S.96/2021.- In supersession of the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 107/P.A. 5/2017/S.96/2017, dated the 7th December, 2017 and in exercise of the powers conferred by section 96 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to constitute the Punjab Authority for Advance Ruling, which shall consist of the following members, namely:-

1. Sh, Rajan Lachala, Additional Commissioner, Goods and Services Tax Commisionerate, Jalandhar of Central Tax appointed by the Central Government; and
2. Sh. Showkat Ahmad Parray, Additional Excise and Taxation Commissioner-1 of State Tax appointed by the State Government of Punjab.

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

2264/3-2020/Pb. Govt. Press, S.A.S. Nagar

(III) CENTRAL TAX NOTIFICATIONS

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

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

Notification No. 05/2021 – Central Tax

New Delhi, the 8th March, 2021

G.S.R.....(E).– In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

In the said notification, in the first paragraph, with effect from the 1st day of April, 2021, for the words "one hundred crore rupees", the words "fifty crore rupees" shall be substituted.

[F. No. CBEC-20/13/01/2019-GST]

(Pramod Kumar)
Director, Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 196(E), dated 21st March, 2020 and was last amended *vide* notification No. 88/2020-Central Tax, dated the 10th November, 2020, published *vide* number G.S.R. 704(E), dated the 10th November, 2020.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
Notification No. 06/2021 – Central Tax

New Delhi, the 30th March, 2021

G.S.R……(E):- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 89/2020 – Central Tax, dated the 29th November, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 745(E), dated the 29th November, 2020, namely:–

In the said notification, –

(i) in the first paragraph, for the figures, letters and words, "31st day of March", the figures, letters and words "30th day of June", shall be substituted;

(ii) in the first paragraph, for the figures, letters and words, "01st day of April", the figures, letters and words "1st day of July", shall be substituted.

[F. No-20/16/38/2020-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 89/2020-Central Tax, dated the 29th November, 2020, published vide number G.S.R. 745(E), dated the 29th November, 2020.

(IV) CGST CIRCULARS

Circular No. 147/03//2021-GST

CBEC-20/23/03/2020-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 12th March, 2021

To,

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

Madam/Sir,

Subject: Clarification on refund related issues – Reg.

Various representations have been received seeking clarification on some of the issues relating to GST refunds. The issues have been examined and to ensure uniformity in the implementation of the provisions of law 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 clarifies the issues detailed hereunder:

2. **Clarification in respect of refund claim by recipient of Deemed Export Supply**

2.1 Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.

2.2 Para 41 of Circular No. 125/44/2019 – GST dated 18/11/2019 has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

2.3 The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a **deemed export supply** to **the recipient or the supplier** of deemed export supplies. The said proviso is reproduced as under:

> *"Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -*

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund"

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST dated 18.11.2019.

2.4 In this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

2.5 As stated above, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient. The amended para 41 of Circular no. 125/44/2.019-GST dated 18.11.2019 would read as under:

"41. Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and ***the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period***. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with."

3. **Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a).**

3.1 Para 26 of Circular No. 125/44/2019-GST dated 18th November 2019 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of **FORM GSTR-3B** of the relevant period and were unable to claim refund of the integrated tax paid on the same through **FORM GST RFD-01A**. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in **FORM GST RFD-01A** from being more than the amount of integrated tax/cess declared in table 3.1(b) of **FORM GSTR-3B**. The said Circular clarified that for the tax periods from **01.07.2017 to 30.06.2019**, such registered persons shall be allowed to file the refund application in **FORM GST RFD-01A** on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the tables **3.1(a), 3.1(b) and 3.1(c)** of **FORM GSTR-3B** filed for the corresponding tax period.

3.2 Since the clarification issued vide the above Circular was valid only from 01.07.2017 to 30.06.2019, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in **FORM GST RFD-01A/ FORM GST RFD-01**.

3.3 The issue has been examined and it has been decided to extend the relaxation provided for filing refund claims where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B **till 31.03.2021**. Accordingly, para 26 of Circular No. 125/44/2019-GST dated 18.11.2019 stands modified as under:

> "26. In this regard, it is clarified that for the tax periods commencing from ***01.07.2017 to 31.03.2021***, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period."

4. The manner of calculation of Adjusted Total Turnover under sub-rule (4) of Rule 89 of CGST Rules, 2017.

4.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.

4.2 Sub-rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89 (4) is reproduced below, as under:

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover"

4.3 Adjusted Total Turnover has been defined in clause (E) of sub-rule (4) of Rule 89 as under:

"Adjusted Total Turnover" means the sum total of the value of-

(a) ***the turnover in a State or a Union territory, as defined under clause (112) of section 2****, excluding the turnover of services; and*

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.'

4.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89 (4) has been defined under sub-section (112) of Section 2 of CGST Act 2017, as:

"Turnover in State or turnover in Union territory" means the aggregate ***value of all taxable supplies*** *(excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person,* ***exports of goods*** *or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess"*

4.5 From the examination of the above provisions, it is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods. The definition of "Turnover of zero-rated supply of goods" has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89 (4) of the CGST Rules, 2017.

4.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule. The same can explained by the following illustration where actual value

per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

Illustration: Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = Rs. 270

All values in Rs.

Outward Supply	**Value per unit**	**No of units supplied**	**Turnover**	**Turnover as per amended definition**
Local (Quantity 5)	200	5	1000	1000
Export (Quantity 5)	350	5	1750	1500 (1.5*5*200)
Total			**2750**	**2500**

The formula for calculation of refund as per Rule 89(4) is :
Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500
Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750]
Net ITC = Rs. 270

Refund Amount = Rs. $\frac{1500*270}{2500}$ = Rs. 162

Thus, the admissible refund amount in the instant case is Rs. 162.

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

6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Commissioner (GST)

(V) ADVANCE RULINGS

1. Wet-leasing classifiable under SAC 9973 Leasing or rental services with or without operator

Case Name : **In re HYT Sam India (JV) (GST AAAR Tamilnadu)**
Appeal Number : Advance Ruling No.TN/AAAR/04/2021(AR)
Date of Judgement/Order : 04/03/2021

Question Raised before AAAR

> Whether all the works awarded through the LOA together is a 'Composite supply of Works Contract Service' in as much as the tender floated is for "construction of shed, provision of M&Ps in ICF Shell / Furnishing Division, retro-fitment / re-conditioning / re-sitting / disposal of obsolete M&Ps of shell division including wet leasing of M&Ps and associated Electrical works on turn-key basis" and thereby the benefit of sl.No.3(v) of **Notification No. 11/2017-C.T.(Rate) dated 28.06.2017** is available to works under Schedule V and Schedule VI, for which separate agreements are entered into.

> If found that the works under LOA is not a 'Composite supply of Works Contract' whether the benefit of sl.No. 3(vi)(a) of **Notification No. 11/2017-C.T.(Rate) dated 28.06.2017** is available to them for the CAMC work under Schedule VI?

Held by AAAR

As per the contract agreement for wet-leasing, it is an activity consisting of leasing of M&Ps in working condition, providing skilled and unskilled manpower, spares, consumables for the entire period of leasing during which the leased goods are reflected in the books of the lessor. The lease charges are paid on a quarterly basis to the appellant based on the productivity. The M&Ps are transferred to ICF at the end of the lease period. Just because, there is a transfer of property in goods after the lease period, the activity is not a works contract. The activity of wet-leasing is squarely classifiable under SAC *9973 Leasing or rental services with or without operator* as held by the LA and we uphold the same. Therefore the benefit of entry at 3(v)(a) of **Notification No. 11/2017-C.T.(Rate) dated 28.06.2017** is not applicable in respect of Wet-Leasing of the M&Ps.

The appellant has claimed that they are eligible for the benefit of entry SI.No. 3(vi)(a) of the **Notification No. 11/2017-C.T.(Rate) dated 28.06.2017** as amended. The LA has rejected this claim for the reason that factory is meant for manufacture by ICF which is an activity of industry. The appellant claims that in the instant case, the Integrated Coach Factory is intended for the purposes of building coach which is not for commerce or industry or business since it is being done by Government of India for the purpose of Indian Railways whose predominant objective is to service general public and not business or commerce or industry or profession and Government cannot be said to be engaged in business or commerce when the President of India through its representative is signing the subject contract.

The above entry is applicable in the case of composite supply of works contract of maintenance of a civil structure or any other original works meant predominantly for

use other than for commerce, industry or any other business or profession to the class of receivers specified. ICF is a 'Production unit' of Railways and belongs to 'Central Government' and manufacturing steel coaches is not an activity where the Government is engaged as public authorities. As per the Explanation to the said entry, it is evident that when the activity is not in the capacity of 'Public authority', then the activity is for 'business' only. ICF is putting up the said Plant to manufacture Stainless Steel coaches, which is not an activity undertaken as a `Public Authority' and therefore, the benefit of the above entry is not applicable to the appellant in respect of CAMC as claimed by them and we hold so.

2. Rights granted for shared access of pathway is classifiable under SAC 999794

Case Name : **In re Chennai Metro Rail Ltd. (GST AAAR Tamilnadu)**
Appeal Number : Order-in-Appeal No. AAAR/05/2021 (AR)
Date of Judgement/Order : 04/03/2021

In this case entire land had been acquired by the appellant and the same had been acquired for business purposes only. The appellant after acquisition of the land had granted shared- access to the pathway with no grant of right of occupation and possession and the activity is in the genre of licence extended for a specific period against payment of rentals.

In the case of renting or leasing of the property, the owner (appellant in this case) will not have the right to use the land/pathway involved as 'renting/Leasing' involves transfer of the right to enjoy the property to the lessee and the lessor does not retain right to enjoy the property during the lease period.

In the instant case, it is not a lease of the pathway but only rights are granted to the land owner by the appellant for the shared access. It is seen that the grant of access to the pathway is a right given by them to the landowner. This activity of agreeing to grant rights for shared access of the pathway is an "act of agreeing to tolerate an act' and is classifiable under SAC 999794 under "other miscellaneous services/Agreeing to tolerate an act' and is taxable to 9% CGST and 9% SGST as per SI.No.35 of Notification 11/2017 CT(Rate) dated 28.06.2017 as rightly held by the Lower Authority.

3. Dismissal of AAR application for pendency of Appeal with HC valid: AAAR

Case Name : **In re Tvl. Padmavathi Hospitality & Facilities Management Service (GST AAAR Tamilnadu)**
Appeal Number : Advance Ruling No. TN/AAAR/06/2021(AR)
Date of Judgement/Order : 05/03/2021

The Order of the Advance Ruling Authority was right, since at the material time there was a petition filed by the appellant, pending before the Hon'ble High Court in this matter. Therefore, there is no need to interfere with the order of the AAR; however, the appellant is free to file a fresh application before the AAR, if he wishes to do so,

since there is no pending proceedings at the Honourable High Court. The subject appeal is disposed of accordingly.

4. GST: Supplier as recipient of inward supplies only eligible to seek advance ruling

Case Name : **In re Erode Infrastructures Private Limited (GST AAAR Tamilnadu)**
Appeal Number : Order No. AAAR/07/2021 (AR)
Date of Judgement/Order : 05/03/2021

The appellant has mainly harped on the wordings of Section 97(2)(d) of the GST Act, on the ground that since admissibility of ITC paid or deemed to have been paid can be sought as a question for obtaining advance ruling, in as much as that unless the appellant as a recipient of the service is permitted to know the taxability of its inward supply of service, the admissibility of ETC or otherwise will not be known to him.

The provisions of Section 103 categorically states that the ruling pronounced is binding only on the appellant. It automatically flows that if a recipient obtains a ruling on the taxability of his inward supply of goods or services, the supplier of such goods or services is not bound by that ruling and he is free to assess the supply according to his own determination, in which case, the ruling loses its relevance and applicability even. Any law provision has to be interpreted in a constructive and harmonious way keeping in mind the object of the purpose of the provision. All parts of it should be read in aid of and not in derogation of that purpose. Any interpretation, if it defeats the very purpose of the objective and purpose of the law provision, is not only incorrect but also improper and bad in law. On a conjoint reading of the provisions of S.95(a), S.97(2) and S.103, it is our opinion that a supplier in the capacity of a recipient of his inward supplies only and not vice versa is only eligible to seek an advance ruling and not a mere recipient of goods or services in question even when he may otherwise be a supplier of his own goods or services.

5. GST Exemption provided to main contractors cannot be extended to subcontractors unless specifically provided

Case Name : **In re Sumeet Facilities Limited (GST AAAR Tamilnadu)**
Appeal Number : Advance Ruling No. TN/AAAR/08/2021(AR)
Date of Judgement/Order : 05/03/2021

The case laws and arguments pertaining to Service Tax law are specific to that law as there were provisions catering specifically to subcontractors whereas in GST the provisions are very restricted. Exemption benefit are not available to sub-contractors *ex facie* since those entries under 12/2017 specific to subcontractors occur only at two sl. Nos. that too pertaining to works contract. They restrict the exemption to only three sub clauses of sl. No. 3, performed by the main contractor and NOT extended to all the activities performed as a part of works contract. This itself

proves that the purpose of **exemption notification unless specifically provided, cannot be extended to subcontractors automatically on par with service suppliers (main contractors).**

6. 18% GST applies on erection & commissioning of lifts / escalators for domestic use

Case Name : **In re BG Elevators and Escalators Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 11/2021
Date of Judgement/Order : 09/03/2021

What is the Rate of tax required in respect of erecting and commissioning of lifts installed for domestic use and What is the Rate of tax required in respect of erecting and commissioning of escalators installed for domestic use?

The rate of GST applicable to erection and commissioning of lifts / escalators installed for domestic use is 18%, as the said services are covered under Lift and escalator installation services, falling under SAC 995466, in terms of Sl.No. 3(xii) of the Notification No. 11/2017 (Central Tax Rate) dated 28-06-2017, as amended.

7. Ice Cream manufacturer not eligible for GST Composition Scheme

Case Name : **In re Pioneer Bakers (GST AAR Odisha)**
Appeal Number : Order No. 06/ODISHA-AAR/2020-21
Date of Judgement/Order : 09/03/2021

Q. (a)Whether supply of Cakes, bakery items, ice creams, chocolates, drinks and other eatable products prepared at the premises of the applicant and supplied to the customers from the counter with the facility to consume the same in the air-conditioned premises itself covered under the restaurant services?

Ans: Yes, answer is in the affirmative.

Q. (b) Whether supply of items such as birthday stickers, candles, birthday caps, snow sprays etc related items which are essentially used in birthday celebration can be classified as Composite Supply defined under Section 2 (30) of the CGST Act, 2017 and Section 2 (30) of the OGST Act, 2017 wherein the principal supply of goods consists of bakery items, chocolates while the supply of services include the supply of air conditioned place to sit and to celebrate birthday.

Ans: The answer is in the ‘Negative’.

Q. (c) Whether the sale of handmade chocolates which are manufactured in the workshop of the Applicant and are utilised for the purpose of providing other services such as shakes, brownies and are also retailed by packing in different containers as

per the choice of the customer will be covered under the under the restaurant services?

Ans: Yes, answer is in the affirmative.

Q. (d) What is the nature and rate of tax applicable to the following items supplied from the premises of the Bakery shop of the Applicant

(i) Items such as Birthday caps, knife, decorative items which are bundled along with the cakes and are utilised by the Customers in the premises of the outlets.

Ans: Replied at para 4.5 & 4.6 as above.

(ii) Items such as Birthday caps, knife, decorative items which are bundled along with the cakes and are taken away by the Customers from the outlets. Ans: Replied at para 4.5 & 4.6 as above.

(iii) Items such as chocolate, cookies which are prepared in the nearby workshop of the Applicant and then processed / customized in the outlets of the Applicant before selling to the customers

(iv) Items such as chocolate, cookies which are prepared in the nearby workshop of the Applicant and then processed / customized in the outlet as per the choice and consumed in the premises itself.

Ans: The supply of the items as mentioned in clause (iii) & (iv) from the premises of the Bakery shop of the Applicant qualifies as 'composite supply' under Section 2(30) of the CGST Act . The said composite supply shall be deemed to be a supply of service as per the Entry 6(b) of Schedule II to the CGST Act and more specifically the 'Restaurant Service' and rate of tax is 5% without any input tax credit (2.5% for CGST and 2.5% for SGST).

Q. (e) Supposing, the Applicant's firm is covered under the Composite Scheme then in such cases what will be the tax liability charged on goods which are tax free without opting for composite scheme such as bread etc.

Ans: Since the applicant is a manufacturer of 'Ice Creams', he is not eligible for 'Composition Scheme'.

Q. (f) Suppose, the Applicant's firm is covered under composite Scheme, then in such circumstances whether the products which are prepared in the workshop but are sold only after certain customizations in the outlets will also be covered under the composite scheme or not?

Ans: Since the applicant is a manufacturer of 'Ice Creams', he is not eligible for 'Composition Scheme'.

8. 'K Juice Grape' is a Carbonated fruit beverage & classifiable under CTH '2202 1090-Other

Case Name : **In re M/s Kalis Sparkling Water Private Limited (GST AAAR Tamilnadu)**

Appeal Number : TN/AAAR/09/2021(AR)
Date of Judgement/Order : 10/03/2021

The Customs Tariff under single dash(-)CTH 2202 10 includes Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured and under the said (-), CTH 2202 10 90(with a (—)) covers others. The above heading as per the Explanatory notes covers Beverages that are often aerated with carbon dioxide gas and are generally presented in bottles or other airtight containers. The Customs tariff under single dash (-) CTH 220299 includes Other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009 and under the said single dash (-), CTH 2202 99 20(with a (—)) covers 'Fruit pulp or fruit juice based drink'. Thus, the heading 220299 as per the Explanatory Notes covers non-alcoholic beverages and includes Tamarind nectar rendered ready for consumption, Certain other beverages with the basis of milk and cocoa.

9.3 The schema of arrangement in the CTH under consideration is based on whether the product is water/ aerated water flavoured with fruit juices and containing sugar, etc which may be carbonated [220210] or a non-alcoholic beverage of Fruit pulp/juice-based drink [220299]. In the case at hand it is evident that the product contains fruit juice but is not 'Fruit pulp or Fruit juice based drink' but a Carbonated fruit beverage as marketed by the appellant and therefore, the product is not classifiable under CTH 22029920 as claimed by the appellant and is rightly classifiable under CTH '2202 1090-Other' as has been decided by the lower authority who have dealt in detail the applicable Food regulations as per FSSAI and the CTH 2202 readwith the explanatory notes to arrive at the said conclusion.

9. GST applicable on Sinking Fund collecting by Residential Society from Members

Case Name : **In re Olety Landmark Apartment Owner's Association (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 12/2021
Date of Judgement/Order : 10/03/2021

Whether the Applicant is liable to pay GST on amounts which it collects from its members for setting up the 'Sinking Fund'/Corpus Fund?

The amounts collected by the applicant towards Sinking Fund amount to advances meant for future supply of services to members, covered under SAC 9995 as "Services of Membership Association" and are taxable to GST @ 18% in terms of Sl.No.33 of Notification No.11/2017-Central Tax (Rate) dated 28/06/2017 as amended, as the time of supply is receipt of the advance amounts in terms of Section 13(2)(a) of the CGST Act 2017.

10. GST on reimbursement by subsidiary to its ultimate holding company located outside India

Case Name : **In re ICU Medical India LLP (GST AAAR Tamilnadu)**
Appeal Number : Advance Ruling No. TN/AAAR/10/2021(AR)
Date of Judgement/Order : 10/03/2021

Whether GST is leviable on the reimbursement of the subsidiary company to its ultimate holding company located in a foreign territory outside India and In case GST is leviable, what is the GST rate applicable to the said reimbursement of expenses?

The fact of reimbursement does not result in any transaction in its own, as was held by the AAR, but such expenses of employees of appellant through the credit card of the overseas holding company (recipient of the supply of appellant), borne at the first instance by the recipient of the supply is nothing but which the supplier (appellant) was liable to incur and reimbursed are for the only purpose of restoring the appellant company's accounts to previous position for operational convenience so that the same could be later included in the software development charges invoiced by the appellant to the recipient (overseas holding company). There is indeed an economic rationale for such treatment of expenses as transfer of resources happened between the appellant supplier to its overseas holding company recipient. Such reimbursements as per Section 15 of the GST Act read with sequential application of Rules 28-31 of the GST Rules are to be included in the value of supply and tax is to be paid as per the time of supply provisions applicable to such transactions; as per the admission of the appellant, the same is however being included albeit later in the tax invoice raised by the appellant.

In our opinion, GST is therefore to be paid on such amounts of expenses reimbursed at the time determined as per Section 13 of the GST Act, as it represents the part of consideration received in advance by the appellant from its recipient (notwithstanding that the same is later included in tax invoice of the appellant) and to be paid at the time of reimbursement as by then the actual expenses borne by the recipient is known. Therefore, the first question sought by the appellant is answered in affirmative.

The applicable rate of GST on such expenses incurred by the recipient and reimbursed by the appellant is the same rate at which the appellant charges for the software development service supplied by the appellant to the overseas holding company, on the ground that the expenses are part of the taxable value of such services and attract the same rate indicated in the tax invoice for the software development charges issued by the appellant on the overseas holding company.

11. GST on goodwill at the time of retirement of Partners; AAR withdrawn

Case Name : **In re Shiv Shankara Health Care Enterprises (GST AAR Tamilnadu)**
Appeal Number : Advance Ruling No. TN/06/ARA/2021
Date of Judgement/Order : 16/03/2021

Whether the goodwill paid to the partners at the time of retirement is liable to be taxed under GST Act.

We have carefully considered the application, various submissions of the applicant, remarks of the jurisdictional officers and the request for withdrawal made by the applicant. The issue on the applicability of GST on the 'Goodwill' extended by the applicant to the retiring partners can be arrived at only after analyzing the details as to how the goodwill was arrived at and the related accounts which have not been furnished by the applicant. The applicant for the reasons that their consultants are not available has requested for withdrawal of the application. In this scenario, we find that the withdrawal is to be permitted as the issue cannot be decided based on the submissions made by the applicant. Therefore, withdrawal is permitted without offering any observation/comment on the admissibility of the application under Section 97(2) of the TNGST/CGST Act 2017 and the applicability of the GST on the 'Goodwill'.

12. Work contract entrusted to NBCC (India) by IIT, Bhubaneswar is composite supply contract

Case Name : **In re NBCC (India) Limited (GST AAAR Odisha)**
Appeal Number : Advance Ruling Order No. 02/ODISHA-AAAR/Appeal/2020-21
Date of Judgement/Order : 19/03/2021

Under the Sl.No.3 of notification no. 11/2017-C.T. (Rate), it is clearly mentioned that, the service which is eligible for concessional rate of tax is composite supply of works. In the instant issue, when the Authority for Advance Ruling has allowed the concessional rate of tax to the major part of project under Sl.No.3 of exemption notification no. 11/2017-C.T. (Rate), it is automatically construed that Authority for Advance Ruling has accepted the service as composite supply service. The service mentioned under **Notification No. 11/2017-Central Tax (Rate) dated the 28th June, 2017.** of Sl.No.3(Heading 9954) from (ii) to (vii) is only composite supply. As the Authority for Advance Ruling has extended the benefits of the concessional rate of tax specified in the notification for the major part of the work of the project, it automatically implies that they have accepted the works/services, which is rendered by M/s. NBCC (India) Ltd. to IIT, Bhubaneswar as composite supply of works contract. But under para 4.10, the Authority for Advance Ruling has held that works contract entrusted the Applicant by IIT, Bhubaneswar under contract agreement dt.02.05.2016 cannot be termed as composite supply. The above decision/observation clearly contradicts to the observation made under para 4.7. Moreover, the Authority for Advance Ruling under para 4.10 of the order has not cited cogent reasons to substantiate their findings.

On perusal of the copy of the agreement made between IIT, Bhubaneswar & M/s. NBCC(India) Ltd. executed on dt.02.05.2016, we observed that IIT, Bhubaneswar entrusted the entire project works on turnkey basis to M/s. NBCC(India) Ltd. for works relating to Planning, designing and supervision of construction of various building infrastructure development and interior work etc. in IIT, Bhubaneswar campus and its extended campus. Under para 1 of the agreement, it is clearly mentioned that after

completion of the project M/s. NBCC(India) Ltd. will hand over the building to IIT, Bhubaneswar in ready to use condition. Nowhere in the agreement the works order were offered to M/s. NBCC(India) Ltd. differently for different works and also there is no such conditions made in the agreement to make separate invoices for separate works. The agreement clearly speaks that the project was awarded on turnkey basis. The turnkey project works executed by M/s. NBCC (India) Ltd. is an "works contract" in terms of clause 119 of Section 2 of CGST/OGST Act , 2017 and ought to be treated as a composite supply as per clause 30 of the Section 2 of CGST/OGST Act. Composite supply works contract are treated as a supply of service under Schedule II para 6 of the CGST/OGST Act. Therefore, we are not inclined to accept the decision of the Authority for Advance Ruling that the works contract entrusted to Applicant M/s. NBCC (India) Ltd. cannot be termed as composite supply.

13. GST on Supply of catering services to educational institution

Case Name : **In re Manoj Mittal (GST AAR West Bengal)**
Appeal Number : Order No. 18/WBAAR/2020-21
Date of Judgement/Order : 22/03/2021

Whether supply of food and beverages made by the applicant shall be treated as supply of goods or supply of services and whether supply of catering services to an educational institution is exempt supply?

(i) Supply of food and beverages from the sweetmeats counter by the applicant, where the customers have not been provided with any services in relation to consume the same in the premises, shall be categorized as supply of goods and the applicant is eligible to avail input tax credit in respect of such supply of goods subject to conditions as laid down in Chapter V of the GST Act and rules made there under.

(ii) Supply of food items and beverages by the applicant which offers the facility of eating in the same premises along with takeaway of the same shall be treated as restaurant services and shall attract tax @ 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken.

(iii) Supply of catering services to the educational institution, based on the agreement, is found to be covered under entry serial number 66 (b)(ii) of the Exemption **Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017**, as amended from time to time (corresponding West Bengal State Notification No. 1136 F.T. dated 28.06.2017) and shall, therefore, be exempted from payment of tax.

(iv) Supply of food and beverages to the auditor, guests/ parents on programme days, as it appears from the agreement shall be treated as 'outdoor catering' and shall attract tax @ 5% vide entry serial number 7(iv) of the **Notification No. 11/2017 Central Tax (Rate) dated 28/06/2017**, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017) provided that credit of input tax charged on goods and services used in supplying the service has not been taken.

(v) The applicant shall follow the principle of apportionment of credit as laid down in sub-section (1) and (2) of section 17 of the GST Act read with rule 42 and 43 of the CGST/WBGST Rules, 2017 in respect of common input tax credit in the form of inputs, input services and capital goods.

14. GST on leasing of property for use as residence with basic amenities

Case Name : **Bishops Weed Food Crafts Pvt. Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 16/2021
Date of Judgement/Order : 24/03/2021

1) Whether leasing of property for use as residence along with basic amenities would qualify, as composite supply under Section 2(30) of the Karnataka Goods and Services Tax Act, 2017?

'Leasing of property for use as residence along with basic amenities', in the instant case, is covered under accommodation services, as ruled in the preceding paras, falls under SAC 996311 and hence would qualify as composite supply under Section 2(30) of the CGST/KGST Act, 2017.

2) Whether renting of property by Applicant is covered under entry 12 of the exemption Notification 12/2017 (Rate) dated June 28, 2017?

Renting of property by Applicant is not covered under entry 12 of **Notification 12/2017-Central Tax (Rate) dated 28.06.2017**, as their services are covered under accommodation services falling under SAC 996311.

3) If the answer to 2 is negative, whether services by the Applicant are covered under entry 14 of the exemption Notification 12/2017 (Rate) dated June 28, 2017?

The exemption under entry 14 of **Notification 12/2017-Central Tax (Rate) dated 28.06.2017** is available to the transaction of the applicant.

4) Whether leasing of property for residential subletting would be covered under the exemption for residential dwelling via notification 12/2017 (Rate) dated June 28, 2017?

Leasing of property for residential subletting would not be covered under the exemption for residential dwelling under entry 12 **Notification 12/2017-Central Tax (Rate) dated 28.06.2017** as the two are different and individual transactions.

15. Supply of software licence – supply of goods or services?

Case Name : **In re SPSS South Asia Pvt. Ltd (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 15/2021
Date of Judgement/Order : 24/03/2021

Does the supply of licenses for internet downloaded software fall within the ambit of **Notification No.47/2017-Integrated Tax (Rate) dated 14th November 2017 and** and **Notification No.45/2017- Central Tax (Rate) dated 14.11.2017**?

The core issue before us to decide is the classification of the supply of software licence by the applicant i.e. whether it amounts to supply of goods or services. We observe that the software supplied by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys and hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of 'goods', Further the goods which are supplied by the applicant can't be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable and hence the goods supplies is "Computer Software" and more specifically covered under "Application Software". Further the Explanatory Notes to the Scheme of Classification of Services stipulates that the services of **limited end-user licence as part of packaged software** are excluded from the SAC 997331, that covers **Licensing services for the right to use computer software and databases**. Hence the supply made by the applicant is covered under "Supply of goods" and the said supply is covered under tariff heading 8523.

The **Notification No.45/2017- Central Tax (Rate) dated 14.11.2017** and **Notification No.47/2017-Integrated Tax (Rate) dated 14th November 2017** stipulates the rate of CGST / IGST @ 5%, if the goods of computer software is supplied to public funded research institutions subject to fulfillment of the conditions prescribed under column 4 of the said notification. In the instant case the applicant is supplying computer software to National Institute of Science Education and Research, Bhubaneswar, a public funded research institution, under the administrative control of Department of Atomic Energy (DAE), Government of India. Further the said institute has also furnished a certificate as required to fulfill the required condition.

The **Notification No.45/2017- Central Tax (Rate) dated 14.11.2017** or **Notification No.47/2017-Integrated Tax (Rate) dated 14th November 2017** are applicable to the transaction / supply of the applicant.

16. GST on supervision charges of loading/unloading/transportation of agricultural produce

Case Name : **In re Karnataka State Warehousing Corporation (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 14/2021
Date of Judgement/Order : 24/03/2021

Whether 'supervisory charges' under clause 28(b) of the Office order on charges of KSWC charged to Food Corporation of India (FCI) by the Corporation towards supervision of loading, transportation and unloading of agricultural produce like Rice, wheat etc., at the rate of 8% on the amount billed by 'Handling and Transportation' Contractors is chargeable to tax under the CGST/KSGST Acts, 2017, If yes, at what is the applicable rate of tax and the HSN/SAC Code applicable thereto?

The services of the applicant to supervise the handling & transportation of "agriculture produce" belonging to the FCI, from railhead to the warehousing station provided by the H&T contractors, are covered under SAC 9997 being the services nowhere else classified and are exigible to GST @ 18% in terms of Sl.No.35 of the ***Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017,*** *on the value equivalent to 8% of the sum of actual amounts paid to H&T contractors, in terms of Section 15 of the CGST Act, 2017.*

17. No GST on cold storage of tamarind inner pulp without shell & seeds

Case Name : **In re Arun Cooling Home (GST AAR Tamilnadu)**
Appeal Number : TN/07/ARA/2021
Date of Judgement/Order : 24/03/2021

Whether the service of cold storage of tamarind inner pulp without shell and seeds are exempted under the purview of the definition of Agricultural produce vide Notification No.11/2017 and 12/2017 Central Tax(Rate) both dated 28.06.2017?

The Tamarind inner pulp without shell and seeds is not an 'Agricultural produce' as defined under explanation 2(d) of the **Notification No. 12/2017- C.T.(Rate) dated 28.06.2017** and therefore the service of cold storage of such tamarind are not exempted under Sl.No. 54 (e)of **Notification No. 12/2017- C.T.(Rate) dated 28.06.2017** .

18. GST on Retrofitting works for strengthening NPKRR Maaligai etc.

Case Name : **In re PSK Engineering Construction & Co. (GST AAR Tamilnadu)**
Appeal Number : Advance Ruling No. 08/AAR/2021
Date of Judgement/Order : 25/03/2021

1. What is the rate of GST to be charged on providing works contract services to TANGEDCO for carrying out retrofitting work for strengthening the NPKRR Maaligai against seismic and wind effect and modification of elevation in TNEB headquarters building at Chennai?

The rate of GST to be charged on the services provided by the applicant to TANGEDCO for carrying out retrofitting work for strengthening the NPKRR Maaligai against seismic and wind effect and modification of elevation in TNEB headquarters building at Chennai is 18% ((9%CGST + 9% SGST) as per SL.No.3(xii) of **Notification no.11/2017-Central Tax (Rate) dated 28.06.2017** as amended .

2. Whether the entry in Sl.No.3 item (vi) of the Notification no.11/2017-Central Tax (Rate) dated 28.06.2017 as amended is applicable to the applicant in instant case?

The entry in Sl.No.3 item (vi) of the **Notification no.11/2017-Central Tax (Rate) dated 28.06.2017**as amended is not applicable to the applicant in the instant case for the reasons discussed in Para 8 above.

19. GST on composite Supply to Greater Chennai Corporation

Case Name : **In re Unique Aqua Systems (GST AAR Tamilnadu)**
Appeal Number : Order No. 09/AAR/2021
Date of Judgement/Order : 30/03/2021

Whether the Services provided by the applicant to the recipient i.e The Greater Chennai Corporation is a pure service provided to the local authority by way of activity in relation to functions entrusted to a Panchayat under article 243G and Municipality under article 243W of the Constitution and eligible for benefit of exemption provided under Serial No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017?

The Supply provided by the applicant to the recipient i.e. The Greater Chennai Corporation based on the agreement to provide RO Plant and undertake O & M of the same, being not a "Pure service" but a composite supply of goods & Services, they are not eligible for benefit of exemption provided at Serial No. 3 of **Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017**

20. Services by TANGEDCO to TANTRANSCO not constitutes electricity distribution service

Case Name : **In re Tamil Nadu Generation and Distribution Corporation Limited (GST AAAR Tamilnadu)**
Appeal Number : Advance Ruling Appeal No. TN/AAAR/12/2021 (AR)
Date of Judgement/Order : 30/03/2021

Notification 12 notifies the list of services that are exempt from GST and has been issued in pursuance of the proviso in Section 11. Therefore, all entries in this notification deal only with services and not with goods. Entry No.25 under heading 9969 exempts transmission or distribution of electricity by an electricity transmission or distribution utility. Therefore, the essential requirements are the following:

(i) Supplier must be either transmission utility or distribution utility.

(ii) The supplier must supply either transmission service or service of distribution of electricity. It also follows that there must be a recipient to receive the services. The supply transaction must be between the utility and a recipient of either of these two services. It may be possible that a transmission utility may provide a distribution service to a recipient or a distribution utility may provide a transmission service to another recipient. A transmission service essentially requires conveyance of electricity by means of transmission lines. For this, Section 2 (74) of the Electricity Act may be referred as has been proposed by the appellant in his argument. Therefore, for making a supply of service to a recipient, the supplier must convey electricity for the recipient who must either be a generating company or a distribution company. In the present instance, TANGEDCO is not conveying electricity for TANTRANSCO. Clearly, TANGEDCO is not providing a transmission service to TANTRANSCO.

Section 2(17) of the Electricity Act defines distribution licensee as a licensee authorized to operate and maintain a distribution system for supply of electricity to consumers in his area of supply. Therefore, the output supply for distribution licensee is electricity to consumers in his area of supply which means that a distribution service from a distribution licensee can be received only by consumers of electricity in the area of supply of the distribution licensing. Operation and maintenance of a distribution system is only a process for delivery of the supply of electricity.

TANGEDCO is indisputably a generation company and a distribution utility. TANTRANSCO on the other hand is a transmission utility. It is not the case of the appellant that the appellant company is providing transmission services to TANTRANSCO. The appellant contends that the various services extended to TANTRANSCO constitute distribution services. However, as already been stated above, distribution service can be supplied only to consumers in the area of supply of the licensee. Therefore, the services extended by TANGEDCO to TANTRANSCO cannot constitute distribution service.

With respect to Deposit Contributory Works which include activities like shifting of service line, etc., we do not find any compelling reasons to differ with the ruling pronounced by the AAR.

21. Time of supply of gift vouchers / gift cards under GST

Case Name : **In re Kalyan Jewellers India Limited (GST AAAR Tamilnadu)**
Appeal Number : Advance Ruling Appeal No. TN/AAAR/11/2021(AR)
Date of Judgement/Order : 30/03/2021

The time of supply of the gift vouchers / gift cards by the applicant to the customers shall be the date of issue of such vouchers and the applicable rate of tax is that applicable to that of the goods.

22. GST on Quality material testing & Geophysical survey investigation

Case Name : **In re Tamilnadu Water Supply And Drainage Board (GST AAR Tamilnadu)**
Appeal Number : TN/11/ARA/2021
Date of Judgement/Order : 31/03/2021
Q1. Applicability of the following Act Rule: “Pure Services (testing of materials for quality) by TWAD Board which is the Governmental Authority relating to water supply and sewerage schemes to urban and rural beneficiaries which are covered under Twelfth Schedule of Article 243 W of the constitution. Therefore, the services (Quality material testing charges) rendered by the TWAD Board are exempted from CGST under Sl.No.3 of the **Notifications No.12/2017 CT(Rate) dated 28.06.2017** as amended and exempted from SGST under Sl.No.3 of the G.O(Ms) No.73 dated 29.06.2017 No.II/CTR/532(d-15)/2017 as amended.

A1. The services provided by the applicant, namely, Quality material testing works is **not** exempted from Goods and Services Tax in terms of entry no.3 of the **Notifications No.12/2017 CT(Rate) dated 28.06.2017** as amended and

Q2. Applicability of Notification for conducting Geological surveying and testing (Pure Services) to identify the water potentiality by TWAD Board which is Governmental Authority relating to water supply schemes to urban and rural beneficiaries which are covered under Twelfth Schedule of Article 243W of the constitution. Therefore, the services (Geological surveying and testing charges) rendered by the TWAD Board are exempted from CGST under SL.No.3 of the **Notifications No.12/2017 CT(Rate) dated 28.06.2017** as amended and exempted from SGST under Sl.No.3 of the c No.II/CTR/532(d-15)/2017 as amended.

A2. The service of Geophysical survey investigation **is exempted** from Goods and service Tax terms of entry no.3 of the **Notifications No.12/2017 CT(Rate) dated 28.06.2017** subject to conditions stated in Para 9.7 below.

23. No ITC on pipeline for unloading Propane/Butane from Vessel/Jetty to Terminal

Case Name : **In re SHV Energy Private Limited (AAR GST Tamilnadu)**
Appeal Number : Advance Ruling Order No. 10/AAR/2021
Date of Judgement/Order : 31/03/2021

1. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline which is intended for unloading Propane/Butane from the Vessel/Jetty to the Terminal?

The applicant is not eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline which is intended for unloading Propane/Butane from the Vessel/Jetty to the Terminal for the reasons discussed in Para 9 above.

2. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank and input credit of goods and services used for foundation and structural support for such tanks?

The applicant is eligible for availment of input tax credit of GST paid on goods and services used for setting up refrigerated storage tank including the structural support thereon as per the Purchase Order No 4500405026 dated 11.03.2020 subject to the condition that the tanks are capitalized in their books of accounts as Plant and Machinery' and not as 'Immovable Property' and the applicant are not eligible to avail input credit of goods and services used for 'Pile foundation' as per the Purchase Order No. 4500401679 dated 10.02.2020 for the reasons discussed in Para 10 above

3. Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir(tank) and input

credit on goods and services used for foundation and structural support for such reservoir?

The applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir(tank) including the structural support thereon as per the Purchase Order No. 4500405071 dated 11.03.2020 subject to the condition that the tanks are capitalized in their books of accounts as 'Plant and Machinery' and not as Immovable Property' and the applicant are not eligible to avail input credit of goods and services used for 'Pile foundation' and input credit on goods and services used for such pile foundation for the reasons discussed in Para 11 below.

(VI) COURT ORDERS/ JUDGEMENTS

1. Tax on ATM facilities outsourced to Banks under Tamil Nadu Sales Tax

Case Name : **India Switch Company Pvt.Ltd. Vs Deputy Commercial Tax Officer (Madras High Court)**
Appeal Number : W.P.Nos. 39268 to 39274 of 2005
Date of Judgement/Order : 01/03/2021

It is stated that the ATM's facilities are outsourced by the banks and that the petitioner was providing a technology solution to Bank of India and United Bank of India and the terms of the agreement clearly bring the transaction within the meaning of the taxable service of a transaction of 'transfer of right to use' within the meaning of the respective enactments and therefore the petitioner was liable to pay TNGST/CST to the commercial tax departments.

To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes:

a. There must be goods available for delivery;

b. There must be a consensus ad idem as identity of the goods;

c. The transferee should have a legal right to use the goods-consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;

d. For the period during which the transferee has such legal right, it has to be the exclusion to the transferor this is the necessary concomitant of the plain language of the statute – viz. a "transfer of the right to use" and not merely a licence to use the goods;

e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

In the facts and circumstances of the present case, the above test enunciated for "transfer of right to use" is not satisfied. Therefore, the petitioner cannot be subjected to tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and/or under the provisions of the Central Sales Tax Act, 1956. In the transactions entered between the petitioner and the banks, the effective control over to ATM's continued to vest with the petitioner. Since the issue stands fully covered in favour of the petitioner in the above cited decision of the Hon'ble Supreme Court in **Bharat Sanchar Nigan Ltd. and another Vs. Union of India and Other** (2006) 3 SCC 1 ; 2006 (2) STR 2, these writ petitions deserve to be allowed by quashing the impugned orders.

As a matter of fact, the subject transaction may have been liable to tax under Section 65(105)(zzzzj) of the Finance Act, 1994 with effect from 2008 after service tax was levied on "Supply of Tangible Goods" as about test for "transfer of right to use" is conspicuously absent.

Therefore, the impugned orders seeking to tax the petitioner under the provision of the Tamil Nadu General Sales Tax Act, 1959 and under the provisions of the Central Sales Tax Act, 1956 are quashed with consequential relief to the petitioner.

2. HC dismisses VAT Assessment order passed merely based on report of Enforcement Wing

Case Name : **Next IT World Vs Assistant Commissioner (CT) (Madras High Court)**
Appeal Number : W.P.(MD)Nos.9822 to 9824 of 2018
Date of Judgement/Order : 01/03/2021

The respondent in all the three impugned orders had stated that the Inspecting Officers had verified the relevant records and that they had correctly proved along with recorded evidence and that it was accepted by one Thiru.S.Kathir Rajan, who was the Managing Director of the petitioner entity during the time of inspection. It has been further stated that the Inspecting Officers had verified the purchase and sales and noticed that the return filed by the dealer is incorrect and incomplete. The assessing authority chose to overrule all the objections of the petitioner as untenable in a single line. It is obvious that the respondent has not at all considered the materials from an independent perspective. Of-course, the report of the Enforcement Wing can provide a starting point for reopening the assessment. But the assessing authority must have his own approach. His discretion cannot be governed or bound by the stand taken by the Enforcement Wing Officials. In the case on hand, the petitioner had stated that he was coerced into making some admissions at the time of inspection.

I am satisfied that the respondent has merely reproduced the stand of the Enforcement Wing Officials and has not dealt with the issue independently. A learned Judge of this Court in ***Amutha Metals Vs. Commercial Tax Officer, Mannady (East), Assessment Circle, Chennai (2007) 9 VST 478 (Mad)*** held that if the reasoning stated by the Enforcement Officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing Officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. This approach has not at all been adopted in the case on hand. On this sole ground, the orders impugned in these writ petitions are quashed. These Writ Petitions are allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law.

3. Madras HC directs Govt to Facilitate uploading of Form TRAN-1

Case Name : **Anand Distributors Vs Union of India (Madras High Court)**
Appeal Number : W.P. (MD) No. 25528 of 2019
Date of Judgement/Order : 02/03/2021

There can be no doubt that the petitioner made effort to upload the details in the web portal. Even according to the respondents, though Rule 117 of **CGST Rules, 2017**, originally stipulates that Form TRAN-1 is filed within 90 days, there was a periodical extension and the final extended date was 31.03.2020. In the present case, the impugned order itself came to be passed on 28.08.2019. Therefore, applying the aforesaid decision made in W.P. (MD) No.3328 of 2020, dated 14.02.2020, the communication impugned in the writ petition is quashed. The Writ Petition is allowed. The respondents are directed to facilitate the uploading of Form TRAN-1 of the petitioner as original prayed for by him. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

4. Consider application claiming for a special rate to be fixed based on add-ons made to goods manufactured: HC directs GST Commissioner

Case Name : **Ahinsha Chemicals Ltd. Vs Union of India (Gauhati High Court)**
Appeal Number : Case No. WP(C)/343/2021
Date of Judgement/Order : 03/03/2021

This petition is instituted on the grievance that the Notification dated 27.03.2008 having been restored as per the judgment of the Supreme Court, two application dated 28.09.2020 under Clause 3(1) of the **Notification No.20/2008-Central Excise dated 27.03.2008** was submitted by the petitioner claiming for a special rate, but the same has not been given its consideration and without giving a due consideration to the claim for special rate made by the petitioners, the respondents now intend to attach the bank accounts of the petitioner on the premises that the refund of excise duty would be as per the rates provided in the Notification dated 27.03.2008. As the Notification dated 27.03.2008 provides for a legal right to the assessee to claim for a special rate to be fixed in the event of there being any add-ons to the goods manufactured, we are of the view that without an appropriate decision being taken on such claim for special rate, it would be inappropriate for the department to proceed against the petitioners as per the rates provided in the Notification dated 27.03.2008.

In view of the above, as agreed by the learned counsel for the parties, this petition stands disposed of by directing the Principal Commissioner of GST Guwahati to consider the aforesaid application of the petitioner dated 28.09.2020 claiming for a special rate to be fixed on the basis of the add-ons made to the goods manufactured. After arriving at the special rate, if any as per the order to be passed by the Principal Commissioner, GST further process against the petitioner as per law may be initiated. Till such decision is taken, no coercive measure be taken against the petitioner pursuant to the communication impugned dated 01.01.2021 as well as not to pursue with the communication dated 22.01.2001 made from the Office of the Assistant Commissioner of GST Guwahati to the AGM/Branch Manager, State Bank of India.

The Principal Commissioner of GST shall do the needful as indicated above within a period of 6 (six) weeks from the date of receipt of the certified copy of the order.

5. HC dismisses GST Appeal as matter is at the stage of show cause notice

Case Name : **Genus Power Infrastructure Ltd. Vs Central Goods and Service Tax (Rajasthan High Court)**
Appeal Number : S.B. Civil Writ Petition No. 185/2021
Date of Judgement/Order : 03/03/2021

In the present facts and circumstances, the writ petition filed by the petitioner deserves to be dismissed for the reasons; firstly the matter is at the stage of show cause notice and opportunity of filing reply and personal hearing is still available with the petitioner; secondly the petitioner, if aggrieved by the order of the Adjudicating Authority, has a statutory remedy of filing appeal before the Appellate Authority as provided under Section 85 of the Act; thirdly against the order of the Appellate Authority, the petitioner has a right to file second appeal before the Appellate Tribunal as provided under Section 86 of the Act.

6. GST -Telephone & E-mails cannot substitute personal hearing: HC

Case Name : **BA Continuum India Pvt. Ltd. Vs Union of India and others (Bombay High Court)**
Appeal Number : Writ Petition (L) NO.3264 of 2020
Date of Judgement/Order : 08/03/2021

The expression 'opportunity of being heard' is not an expression of empty formality. It is a part of the well-recognized principle of *audi alteram partem* which forms the fulcrum of natural justice and is central to fair procedure. The principle is that no one should be condemned unheard. It is not necessary to delve deep into the expression save and except to say that by way of judicial pronouncements the said expression has been made central to the decision making process, breach of which would be construed to be violation of the principles of natural justice thus adversely affecting the decision making process; a ground for invoking the power of judicial review.

When the law requires that no application for refund shall be rejected without giving an applicant an opportunity of being heard, the same cannot be substituted by telephonic conversations and exchange of e-mails. This is more so in the case of a claim for refund where no time-limit is fixed *vis-a-vis* rejection of claim. Under sub-section (7) of section 54, a time-limit of 60 days is prescribed for making of an order allowing claim of refund; but that period of 60 days would commence from the date of receipt of the application *complete in all respects* (emphasis is ours) without there being a corresponding provision for rejection of application not complete in all respects.

Admittedly in this case, no hearing was granted to the petitioner. Impugned orders, therefore, would be in violation of the *proviso* to sub-rule (3) of rule 92 of the CGST Rules and also in violation of the principles of natural justice.

That being the position, we are of the view that the matter should be remanded back to the original authority for a fresh decision in accordance with law after giving an

opportunity of being heard to the Since respondent No.4 has already taken a view on merit by disclosing her mind which is adverse to the petitioner, it would be in the interest of justice and fairness if another competent officer is assigned the task of deciding the refund applications of the petitioner *de novo* on remand.

In the light of what we have discussed above, we set aside the impugned orders dated 26.06.2020. Applications of the petitioner for remand shall now be considered afresh by another proper officer to be allotted by respondent No.3. Let the applications for refund be heard by the new officer within a period of three months from the date of receipt of a copy of this order by respondent No.3 after giving an opportunity of being heard to the petitioner. All contentions are kept open.

7. HC dismisses Assessment order for Violation of Natural Justice

Case Name : **OSTRO Anantapura Private Limited vs State of Andhra Pradesh (Andhra Pradesh high court)**
Appeal Number : Writ Petition No. 382 of 2021
Date of Judgement/Order : 08/03/2021

Coming to the aspect of violation of principles of natural justice clamored by the petitioner, the impugned order as well as the counter refers to certain notices. So far as CTO (Int), ATP Form VAT 304 dated 12.06.2016 (reference No.2 in the assessment order) is concerned, the petitioner denied to have received the said notice in the writ petition and rejoinder. However, in para 5 of the counter, it is stated as if the said notice and other notices were sent by registered post as well as through e-mail ID of the firm i.e., Deepakagerwal@astro.in. The contention of the petitioner is that the said Deepak Agarwal, who was the erstwhile employee of the petitioner company, resigned from the company on 15.10.2018 itself and therefore, they did not receive any notice dated 12.06.2016. In this context, the petitioner filed the proceedings dated 30.10.2018 issued by the Senior Manager, Human Resources, stating that Mr. Deepak Agarwal worked as Deputy Manager in Finance, Legal and Secretarial (Taxation) from 22.01.2016 to 15.10.2018. Therefore, as rightly argued by the petitioner, the notice dated 12.06.2016 cannot be said to be received by the petitioner.

Then, in the 3rd reference of the assessment order, notices dated 21.01.2019, 20.11.2019 and 27.11.2019 were mentioned stating that books of accounts were called for from the office of the petitioner through those notices. In paras 5 and 10 of the counter, it is mentioned as if the petitioner received those notices and submitted a letter seeking additional time for furnishing the information and in fact an endorsement dated 30.01.2019 was made by the 2nd respondent granting 15 days time. Further, the petitioner furnished the counter affidavit mentioned documents on 15.02.2019 containing the address of the Corporate Office, Delhi, but not the local address. Thus, it is the case of the 2nd respondent that the petitioner had in fact received all the notices. In this regard, the contention of the petitioner is that the notices were sent to M/s. OSTRO A.P. Wind Private Limited a group company of the petitioner and on their request, time might have been granted. Thus, it is contended that the petitioner did not receive the aforementioned notices. The petitioner produced copies of the notices sent

to M/s. OSTRO A.P. Wind Private Limited. A perusal of the same would show that a final notice under Section 64(1) of the AP VAT Act, 2005 dated 21.01.2019 was issued by the 2nd respondent to M/s. OSTRO A.P. Wind Private Limited, C/o Renew Power Venture India Private Limited, Service Road, Rudrampeta, NH 44, Kovur Nagar, Anantapuram, and also through e-mail ID ostroapwind@gmail.com. Admittedly, the petitioner's concern is M/s. OSTRO Anantapura Private Limited which is a different one. Then, the letter dated 30.01.2019 styled as endorsement (mentioned in reference No.4 of the assessment order) would show that the 2nd respondent granted 15 days time to the dealer as against their request letter dated 28.01.2019. This letter was also addressed to M/s. OSTRO A.P. Wind Private Limited. Then in reference Nos.6 and 7, show cause notice dated 20.03.2020 and personal hearing notice dated 22.05.2020 were sent by the 2nd respondent to the dealer but they were returned by the postal authorities as addressee was left. Thus, admittedly those two notices were also not received by the petitioner. It is stated in the counter that the notice in form VAT 305-A dated 20.03.2020 was sent to the house address of one of the Directors Sri Rajath Kumar Gupta of New Delhi. However, the petitioner's contention is that Rajath Kumar Gupta has resigned from the Directorship on 28.03.2018 itself. To this effect, the petitioner filed a copy of Form No.DIR-XII which shows that the Director Rajath Kumar Gupta, S/o Ved Prakash, resigned from the Directorship on 28.03.2018. Hence, notice sent to him cannot be attributed to the petitioner. Notice date 20.03.2020 was also said to be sent by e-mail, but as already discussed supra, the concerned employee left service.

Above all, the GST registration certificate of the petitioner shows that the address of the petitioner was changed with effect from 01.02.2019. So, for this reason also, the petitioner cannot be said to be received the notices which if they were sent to old address.

Thus, on a conspectus, we are of the view that the petitioner did not receive any of the notices said to be sent by the 2nd respondent and therefore, they had no occasion to submit their explanation/objection. So also, they had no occasion to submit their case personally. Consequently, the principles of natural justice are violated in the instant case. Therefore, the impugned assessment order is liable to be set aside.

8. Maximum Penalty of Rs. 1000 for Minor clerical error in E-way Bill

Case Name : **Tirthamoyee Aluminium Products Vs. State of Tripura (High Court of Tripura)**
Appeal Number : W.P(C) No.1108/2018
Date of Judgement/Order : 09/03/2021

According to the petitioner, due to a clerical error the distance from the place of origin to the ultimate destination i.e. from Howrah to Agartala, was shown as 470 Kms. instead of actual distance which was 1470 Kms. The petitioner would point out that as per sub-rule (10) of Rule 138 of the Central Goods and Services Petitioner is a proprietary concern and is engaged in the business of manufacturing aluminium utensils and its unit is located at Agartala. The petitioner purchased certain aluminium products from Hindalco Industries Ltd. which is a Government of India

company for a sum of Rs.19,46,014/- and would be supplied from Kolkata to be transported to Agartala by road. Invoice was generated by the Hindalco on 25.10.2018 which showed that the goods would be transported from Howrah west, Kolkata and would be delivered at the petitioner"s unit at A.D Nagar Industrial Estate, Agartala. Hindalco also issued a Tax Rules, 2017, a transporter would have time of one day to transport the goods for every 100 Kms. of distance require to be travelled. The system thus automatically generated the validity period of five days for the E-way bill since the distance, as noted earlier, was erroneously shown as 470 Kms. instead of 1470 Kms.
The inspecting agency intercepted the goods and issued a memo of detention on the ground that the transporter had not produced valid E-way bill. On 5.11.2018 itself, a show cause notice was issued by the Inspector of State Taxes calling upon the petitioner to pay total GST of Rs.2,96,850/- and penalty of Rs.8,24,582/- under sub-clauses (a) and (b) of sub-section (1) of Section 129 of the CGST Act, 2017. He required the petitioner to appear before him on 19.11.2018 at 10.45 a.m. Strangely, having issued notice to the petitioner to appear on 19.11.2018, the Inspector of State Tax passed the impugned order on 05.11.2018 itself and confirmed the principal tax demand with penalties as noted. This order, the petitioner has challenged on the ground that validity of the E-way bill had expired on account of a clerical error which would not result into any tax liability. The penalty obviously was wrongly demanded.

In view of such undisputable facts, we do not think that the Inspector of State Tax had the power to demand GST with penalty. Central Board of Indirect Taxes and Customs, has issued a circular dated 14th September, 2018 clarify the manner in which such clerical errors would be dealt with.

As per this circular thus in case the goods are accompanied by an invoice as also an E-way bill, proceedings under Section 129 of the CGST Act, 2017 should not be initiated if there is a error of one or two digits in a document number mentioned in the E-way bill. In such a situation, at best, penalty of Rs. 500 & 1000/- under State and Central GST may be collected under Section 125 of the Act.

9. HC directs GSTN to allow petitioner to rectify GSTR-3B return

Case Name : **Deepak Print Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 18157 of 2019
Date of Judgement/Order : 09/03/2021

Issue Involved:

To issue directions to edit and upload actual entries in GSTR 3B for May 2019.

Facts of the Case:

1. Proprietary concern engaged in the business of dress materials etc, inadvertently, wrongly uploaded entries in Gstr 3B for May 2019.

2. The dealer wrongly uploaded the entries of M/s Deepak Process instead of M/s Deepak Print.

3. The dealer made representation in writing to the Nodal Officer, SGST Office, Rajkot on 25th June 2019 but the the nodal officer did not even bother to respond to the representation.

Citations Referred to:

Bharti Airtel Limited Vs Union Of India WP No 6345 of 2018 dated 05th May 2020

Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries, (2008) 13 SCC

Emphasis Of Matter:

Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

Final Judgement:

1. The Respondents have also not been able to expressly indicate the rationale for not allowing the rectification in the same month to which the Form GSTR-3B relates.

2. The only remedy that can enable the Petitioner to enjoy the benefit of the seamless utilization of the input tax credit is by way of rectification of its annual return i.e. GSTR-3B.

3. The rectification of the return for that very month to which it relates is imperative.

4. Accordingly, we read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred.

5. The writ applicant should be permitted to rectify the Form GSTR-3B in respect of the relevant period.

6. The writ applicant has been dragged into unnecessary litigation only on account of the technicalities raised by the respondents, the writ applicant shall not be saddled with the liability of payment of late fees.

Conclusion:

This is a landmark judgement by the Hon’ble HC deciding in favour of the writ applicant setting aside the anomaly of non-provisioning of the rectification of Gst 3B returns since the inception of the Gst return filing system and to nullify the liability for payment of late fees that could have been calculated by the GSTN and could have been imposed on the applicant.

10. Bank account of Family Members cannot be attached for Tax Dues of Assessee

Case Name : **Dharmesh Gandhi Vs Assistant Commissioner (Anti-Evasion) (Bombay High Court)**
Appeal Number : Writ Petition (L) No. 4229 of 2021
Date of Judgement/Order : 10/03/2021

After hearing the matter at some length, we find that out of the nine bank accounts that have been attached by respondent No.1, only the accounts at Sr. Nos.2, 3 and 4 belong to the petitioner whereas the other accounts belong to the family members, namely, Bharti H. Gandhi (mother), Pranjal D. Gandhi (wife) and Shaalin D. Gandhi (son).

In **Siddhart Mandavia Vs. Union of India, Writ Petition (L) No.2901 of 2020,** decided on 03.11.2020, this Court had examined a similar issue relating to attachment of bank account of not only the taxable person but also of his family members. In that context, this Court held that bank account of only the taxable person can be provisionally attached under section 83 of the CGST Act and therefore the provisional attachment of bank account of the family members was set aside. In so far bank account of the taxable person in **Siddharth Mandavia** (*supra*) was concerned, this Court took note of the provisions contained in sub rules (5) and (6) of Rule 159 of the Central Goods and Services Tax Rules, 2017 and relegated the taxable person to the forum of the Commissioner to take a decision regarding release of the bank account of the taxable person provisionally attached.

Having regard to the above and on due consideration, we pass the following orders :-

I) The bank accounts at Sr. Nos.1 and 5 to 9 as per statement in paragraph 3 herein-above shall be released from provisional attachment forthwith.

II) In so far the bank accounts of the petitioner at Sr. Nos.2, 3 and 4 in the said statement are concerned, petitioner may file objection before the Commissioner i.e. respondent No.2 within a period of seven days from today.

III) If such objection is filed as above, respondent No.2 shall afford an opportunity of hearing to the petitioner and thereafter pass an appropriate order in accordance with law within a period of three weeks from the date of filing of objection.

IV) Since we have not examined or decided anything on merit, all contentions are kept open.

11. No section 271D penalty if reasonable cause exist & AO fails to Record satisfaction

Case Name : **Sarita Singh Vs Addl. CIT (ITAT Delhi)**
Appeal Number : I.T.A No.723/Del/2017
Date of Judgement/Order : 10/03/2021

Section 273B of the I.T. Act provides that no penalty shall be imposable on the persons or the assessee as the case may be for any failure referred to in section 271D of the I.T. Act, if he proves that there was a reasonable cause for the said failure. The assessee explained before the authorities below that two of the neighbours of the assessee purchased the properties and they were to make payment to HUDA. Since there was having no bank account, therefore, on their request assessee received the amount and deposited in his bank account. The drafts were prepared favouring the HUDA and ultimately the same have been deposited by them. The receipts are in the names of Mrs. Sujata and Shri Dushyant of the equivalent amount. The receipts of HUDA in favour of Shri Dushyant are also placed on record. These facts would clearly disclose that assessee has reasonable cause for failure to comply with provisions of law contained u/s 271D of the I.T. Act. Further, while passing the assessment order dated 21.03.2014 the AO did not disbelieve the explanation of the assessee as regards receipt of cash from these two neighbours and issue of drafts for these two neighbours and ultimate payment to HUDA. The AO did not record any satisfaction in the assessment order for contravention of provisions of section 271D of the I.T. Act.

In this case assessee has reasonable cause for failure to comply with provisions of law and that no satisfaction has been recorded by the AO in the assessment order, would clearly show that no penalty is leviable in the matter.

12. GST: HC set aside order for violation of principles of natural justice

Case Name : **Sri Kanniga Parameswari Modern Rice Mill Vs The State Tax Officer (Madras High Court)**
Appeal Number : W.P. Nos.6200 of 2021
Date of Judgement/Order : 11/03/2021

Mr.ANR. Jayaprathap, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed in the matter. Hence, by consent expressed by both parties, these Writ Petitions are disposed finally even at the stage of admission.

2. The challenge is to four orders of assessment, all dated02.2021, for the periods 2017-18 to 2020-21, passed in terms of the Tamil Nadu Goods and Service Tax Act, 2017 (in short 'TNGST Act'). Admittedly, personal hearing has not been granted to the petitioner prior to passing of the impugned orders and it is contrary to the provisions of Section 74(5) of the TNGST Act, which mandates that an opportunity of personal hearing shall be granted in all cases where a specific request is received or where the Officer contemplates adverse decision against the assessee.

3. I reiterate my opinion expressed to this effect in order dated 19.01.2021 passed in W.P.No.13652 of 2020 and set aside the impugned orders on the ground of violation of principles of natural justice.

4. Let the petitioner appear before the Assessing Authority on Wednesday, the 24th of March, 2021 along with materials, if any, in support of its stand without expecting any further notice in this regard. The Assessing Officer shall, after hearing the petitioner

and considering the materials, if any circulated, pass orders of assessment de novo within a period of six (6) weeks thereafter.

5. These Writ Petitions are disposed in the aforesaid No costs. Connected Miscellaneous Petitions are closed.

13. SVLDRS application cannot be rejected merely for initiation of enquiry after 30.06.2019

Case Name : **New India Civil Erectors Private Limited Vs Union of India and others (Bombay High Court)**
Appeal Number : Writ Petition (L) No.989 of 2020
Date of Judgement/Order : 12/03/2021

A careful reading of the query and the answer given thereto would make it clear that if an enquiry or investigation or audit was initiated on or before 30.06.2019 then such a person would not be eligible to make a declaration under the voluntary disclosure category. Logical corollary to this would be that an enquiry or investigation or audit post 30.06.2019 would not act as a bar to filing of declaration under the voluntary disclosure category.

If we read the scheme as a whole more particularly in the context of an enquiry or investigation or audit, then we find that the date 30.06.2019 is quite significant. We have already noticed the definition of enquiry or investigation as per section 121(m). Coming to section 123 of the Finance (No.2) Act, 2019 which deals with tax dues for the purposes of the scheme, as per clause (c) thereof where an enquiry or investigation or audit is pending against the declarant, the tax dues would mean the amount of duty payable which had been quantified on or before 30.06.2019. Even in the context of eligibility under section 125(1), we find that clause (e) thereof clarifies that any person subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30.06.2019 would not be eligible to make a declaration. Therefore, whenever and wherever the scheme talks about an enquiry or investigation or audit, the date 30.06.2019 carries considerable significance and becomes relevant. The enquiry or investigation or audit should commence prior to 30.06.2019. Though clause (f) of sub-section (1) of section 125 does not mention the date 30.06.2019 by simply saying that a person making a voluntary disclosure after being subjected to any enquiry or investigation or audit would not be eligible to make a declaration, the said provision if read and understood in the proper context would mean making of a voluntary disclosure after being subjected to an enquiry or investigation or audit on or before 30.06.2019. Such a view if taken would be a reasonable construct consistent with the objective of the scheme.

That being the position, we are of the opinion that respondent No.4 was not justified in rejecting the declaration of the petitioner dated 26.12.2019 on the ground that petitioner was not eligible to file declaration under the category of voluntary disclosure since enquiry was initiated against the petitioner on 19.12.2019 where after petitioner filed declaration.

Since on the basis of the above deliberations, we have come to the conclusion that respondent No.4 was not justified in rejecting the declaration of the petitioner, it would not be necessary for us to examine the other points raised by the petitioner particularly relating to the nature of the summons dated 19.12.2019 issued under section 70 of the CGST Act.

14. HC dismisses Bail condition of 50% payment for alleged GST default

Case Name : **Neeraj Ramkumar Tiwari Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Criminal Application No. 5777 of 2020
Date of Judgement/Order : 15/03/2021

On 03.09.2020, the petitioner filed Criminal Misc.Application No.12831 of 2020 for bail under Section 439. However, pending the bail application, statutory period of 60 days for registering the complaint under the provisions of the GST Act had expired and therefore, on 28.09.2020, the petitioner preferred an application for default bail before the Court of Magistrate, Vadodara being Criminal Misc.Application No.2636 of 2020. Considering the provisions of Section 167(2), the Magistrate by order dated 01.10.2020, allowed the application for default bail, in view of the fact that within the period stipulated, the investigation was not completed and the complaint was not filed. However, while allowing the application for default bail, the Magistrate was pleased to impose condition of depositing an amount to the extent of 50% of the alleged amount for which prosecution was launched, i.e. Rs.9,43,50,223/-. The question therefore before the Court is, while considering the case for default bail of the applicant, whether condition can be imposed lime the condition imposed in the present case for depositing 50% of the amount for which prosecution was launched.

In view of the aforesaid and considering the language of Section 167(2) of the Criminal Procedure Code, i.e. on expiry of the statutory period to complete investigation, an indefeasible right is created in favour of the accused person entitling him to default bail once the accused applies for the default bail and shows his willingness to furnish bail, if any other condition is imposed, is to be treated beyond the jurisdiction of the Court concerned while exercising powers to grant default /statutory bail under Section 167(2) of the Criminal Procedure Code.

In view of the aforesaid, condition imposed under order dated 01.10.2020 passed by the Chief Judicial Magistrate, Vadodara in Criminal Misc.Application No.2636 of 2020, to the extent of directing deposit of 50% of the alleged amount of Rs.9,43,50,223 is hereby ordered to be quashed and set aside.

15. Property of mother cannot be attached for due of Son: Gujarat HC

Case Name : **Nirupaben Manilal Thakkar Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 22651 of 2019
Date of Judgement/Order : 15/03/2021

The principal argument of Mr. Trivedi is that, the respondents could not have invoked Section 57 of the Gujarat Value Added Tax Act, 2003 (for short "GVAT Act, 2003") for the purpose of recovering the dues of the deceased dealer as the immovable property sought to be put to auction is of the ownership of the mother of the deceased dealer and it is not the estate of the deceased.

When the matter was taken up for further hearing, Mr. Utkarsh Sharma, the learned AGP appearing for the respondents very fairly submitted that the Department has not been able to gather any cogent material or any other evidence to even remotely indicate that the deceased Kamlesh Manilal Thakkar was a joint owner, or had any other right, title or interest in the property in question.

Late Kamlesh Manilal Thakkar was the proprietor of the proprietary concern, namely, M/s. Thakkar Manilal Devchand and he passed away on 31st December, 2010. The Department, in so many words, has stated that the property in question was not of the ownership of Kamlesh Manilal Thakkar but the lawful owner is Smt. Nirupaben Manilal Thakkar (the writ applicant herein). In such circumstances, it was informed by the Department to the Mamlatdar that no other steps were required to be taken with respect to the property, and the mutation of the charge over the property bearing No.21919 be cancelled.

In view of the aforesaid, all that we may observe is that if the Department wants to recover the dues of the deceased dealer, then the same cannot be recovered from the immovable property in question as the said property is not the estate of the deceased. We may observe further that the communication by the Department dated 22nd December, 2014 addressed to the Mamlatdar, referred to above, shall be given effect to at the earliest.

16. No bail to accused of GST evasion of Rs. 12.82 Cr

Case Name : **CGST Vs. Sanyam Mittal (Patiala House Court)**
Appeal Number : File No. IV (HQRS. PREV)/GST-N/MITTAL/948-19-20
Date of Judgement/Order : 15/03/2021

On behalf of the department, It is submitted that accused availed fraudulent ITC of Rs. 12.82,05,579/- from various bogus firms and he accepted his fraud in his statement under section 70 of CGST Act on 06.03.2020 and also on 08.09.2020 where he confirmed that he purchased goodsless invoices from Tarun Verma only. It is submitted that summons dated 07.07.2020, 25.08.2020 and 08.09.2020 were issued to the applicant to provide certain document but he did not submit the record to the department and investigation of the beneficiaries of M/s Mittal Wire Company and M/s Bhuinika Metal LLP is still pending. Show cause notice will be issued after completion of investigation Also, accused submitted irrelevant documents to divert the investigation pretending to be bonafide person. None of the vendor / supplier firm of the accused is existent at this point of time and mere bank payment do not absolve the applicant from his liability and same cannot be construed as an evidence in his favour. The department could not examine him during the interim bail during Covid 19

and custody of the accused is required by the department to conclude the investigation in a fair manner.

In the given facts accused is in interim bail since 06.04.2020 and his custodial interrogation is required by the department for concluding the investigation. The department could not interrogate him post his release on interim bail due to Covid 19. the fact that accused has disobeyed the summons earlier and provided irrelevant material to the department indicate that he would jettison the ongoing investigation. Accordingly, in the interest of fair investigation. this Court is not inclined to grant bail to the accused at this stage. The application is dismissed. The accused is to surrender forthwith.

17. Filing of GST Appeal Electronically or Otherwise Defined by HC

Case Name : **Sri Lakshmi Venkateswara Vs State of Andhra Pradesh (High Court Andhra Pradesh)**
Appeal Number : Writ Petition No. 24150 of 2020
Date of Judgement/Order : 15/03/2021

The Counsel for the petitioner submits that since the Assessment Order copies were received manually, there was no occasion for the petitioner to submit grounds of appeal electronically as he has to file the order copies and other relevant documents along with the grounds of appeal. Further, Rule 108 of APGST Rules, 2017 gives liberty to an appellant to file an appeal with required forms and relevant documents "either electronically or otherwise as notified by the Chief Commissioner". Since the Chief Commissioner has, as of now, not notified any particular form for filing appeal, the appellant is at liberty to file the appeal by choosing either mode. He further argued that in fact the petitioner tried to upload the appeal electronically through the GST portal, but as the portal did not open, he had resorted to manual mode and the same was accepted by the office of the 3rd respondent *vide* acknowledgment dated 28.06.2018. In spite of the same, he lamented, the appeal was rejected on the sole ground that it was not filed electronically.

18. GST Refund cannot be denied without issuing SCN

Case Name : **Navneet R. Jhanwar Vs State Tax Officer and others (Jammu and Kashmir High Court)**
Appeal Number : WP(C) No.443/2021
Date of Judgement/Order : 17/03/2021

Admittedly, the claim for refund was initially sought to be rejected by respondent No.1 on the ground that it was barred by limitation. Section 54 of the Act provides a period of two years for making an application for refund from the relevant date. The delay, however, was explained by the petitioner by bringing it to the notice of respondent No.1 two notifications dated 03.04.2020 and 27.05.2020 issued by respondent No.3 providing for extension of limitation upto 31.08.2020 on account of lockdown due to outbreak of corona virus pandemic. Respondent No.1 was quick to realize the mistake

and treated the claim for refund filed by the petitioner in time. Having done so, respondent No.1 proceeded to determine the claim of the petitioner on merits. As mandated by Rule 92 and is also the demand of principles of natural justice, no notice of show cause was given to the petitioner to explain as to why his claim for refund may not be rejected on merits. A unilateral decision was taken and the petitioner was conveyed the outcome of such decision i.e. rejection of the claim of the petitioner.

Learned counsel for the petitioner is correct that with regard to the passing of order of rejection of the refund claim of the petitioner on merits, he was never put on notice nor was any opportunity of being heard ever afforded to him. It is, thus, apparent that the impugned order passed by the adjudicating authority i.e. respondent No.1 herein traverses beyond the scope of show cause notice, which was served upon the petitioner to show cause as to why his claim should not be rejected having been filed beyond limitation.

Viewed thus, impugned order of rejection of refund claim of the petitioner is not inconformity with the proposal made in the show cause notice that was served upon the petitioner when the adjudicating authority found it barred by limitation. The grounds on which the impugned order has been passed were never proposed to the petitioner nor was he ever given any opportunity to explain his position. It is, thus, clear case of violation of principle of natural justice as also proviso to Rule 92(3) of the Rules of 2017.

In the similar set of circumstances, Madras High Court in the case **R. Ramadas v. Joint Commissioner of C.Ex., Puducherry, 2021 (44) G.S.T.L. 258 (Mad.)** observed thus:-

"7. It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals."

The instant case is fully covered by the aforesaid judgment of the Madras High Court, which, we find has very succinctly enunciated the law on the point.

For the foregoing reasons, we allow this petition, quash the impugned order and remand the case back to respondent No.1 for passing order afresh after putting the petitioner to proper show cause notice and after affording him a reasonable opportunity of being heard.

19. Allow revision of GST TRAN- 1 Form electronically or manually: HC

Case Name : **Precision Gasification Services Pvt. Ltd. Vs Union of India (Gujarat High Court)**
Appeal Number : Special Civil Application No. 19818 of 2019
Date of Judgement/Order : 18/03/2021

The respondents are directed to either open the online portal, so as to enable the writ applicants to again file rectified Form GST TRAN-1 electronically or accept the manually filed from the GST TRAN-1 with necessary corrections on, or before, 18.05.2021.

20. HC allows GST Registration with effect from 1st July 2017

Case Name : **JAP Modular Furniture Concepts Pvt. Ltd. Vs. State Of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 20885 of 2019
Date of Judgement/Order : 19/03/2021

In this case provisional GST registration of the writ applicants under the GST Act was also blocked / inactivated and final registration was not granted to the writ applicants under the GST Act on account of cancellation of registration under Vat.

The writ applicants filed an appeal under the VAT Act challenging the legality and validity of the cancellation order on 15th June 2017. The first appellate authority, by order dated 3rd April 2018, allowed the appeal and restored the registration under the VAT Act right from the date on which it was cancelled.

Thereafter, the writ applicants represented before the authorities on number of occasions requesting for activation of the registration certificate under the GST Act and grant of final registration certificate since the very basis for inactivation / blocking of such certificate had been removed by the first appellate authority under the VAT Act.

Because of inactivation of registration certificate, the writ applicants were unable to file the returns and pay tax under the GST Act nor they were able to claim the Input Tax Credit of IGST paid on the imports made during the interregnum period.

High Court held that “In the result, this writ application succeeds and is hereby allowed. The respondents are directed to unblock / activate the registration of the writ applicants under the GST Act and grant the final registration certificate under the GST Act with effect from 1St July 2017 at the earliest. The respondents shall permit the writ applicants to upload the returns and pay tax under the GST Act from 1st July 2017 onwards without charging any late fee for the belated filing of the returns. The respondents are also directed to allow the writ applicants to claim the Input Tax Credit in respect of the imports / purchases made during the period in which the registration under the GST Act was blocked / inactivated and no dispute of time limit under Section 16(4) of the GST Act shall be raised as the Input Tax Credit was not allowed to be claimed on account of blocking / inactivation of the registration by the respondents.”

21. VAT on AC service Charges – HC referred matter Back to Officer for fresh Adjudication

Case Name : **Tvl. Weather Maker Vs Commissioner of Commercial Taxes (Madras High Court)**

Appeal Number : W.P. (MD) No. 6897 of 2018
Date of Judgement/Order : 19/03/2021

The petitioner is engaged in trading of LLOYD Air Conditioners. The case of the petitioner is that the petitioner had also been doing maintenance contract. For the said service rendered by the petitioner, the petitioner was paid the charges. According to the petitioner, the said amount of charges would represent the petitioner's income and that it would not fall within the purview of TNVAT Act. In fact, for the charges paid to the petitioner, TDS had also been effected. The petitioner had filed additional type set of papers, in which, the materials to this effect has been enclosed.

The petitioner would claim that these materials were originally placed before the assessing authority also. I must however record that there is no clear proof evidencing the same. Be that as it may, it appears that in the impugned order, atleast a portion of the amount that represents the petitioner's income amenable to income tax, has been included for the purpose of computing the petitioner's turnover under TNVAT Act. That apart, another defect pointed out by the assessing authority rests on mismatch. However, the procedure laid down in J.K.M.Graphics Solution Private Limited case, was not followed.

On these twin grounds, I am of the view that the order impugned in this writ petition is to be set aside. Accordingly, it is set aside. The Writ Petition is allowed. The matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. The petitioner is directed to adhere to the undertaking given earlier. No costs. Consequently, connected miscellaneous petition is closed.

22. Sales Tax on Lease rental against goods supplied in the course of Import by NBFC

Case Name : **Russell Credit Ltd. Vs Commercial Tax Officer (Madras High Court)**
Appeal Number : W.P. Nos. 37341 and 37342 of 2007
Date of Judgement/Order : 22/03/2021

The respondent bank entered into an agreement with Hindustan Power Plant Limited, Hosur, for importing and leasing of machinery on rental basis. The master lease agreement was entered into on April 17, 1998. There afterwards, the respondent bank ordered for machinery as per the specification of the company-Hindustan Power Plant Limited from the foreign manufacturer/supplier in Japan. While the goods were in transit, the assessee and the company-Hindustan Power Plant Limited entered into a supplementary lease agreement on July 31, 1998, which is stated to be part of the master lease agreement dated April 17, 1998. There, on behalf of the Commercial Tax Department, it was contended that the delivery taking place inside the State and therefore the question of the respondent having the benefit to deduction under Section 3A(2)(a) of the Tamil Nadu General Sales Tax Act, 1959 does not arise. It was concluded that under the supplementary lease agreement, a reference was made to invoice as well as a reference to the master lease agreement. The Court concluded that there was an inextricable link between the Master Agreement and the

supplementary lease agreement on the one hand and the import of specific goods based on which the purchase order was placed. The various documents were placed by the Bank particularly the Bill indicating the name of the user as Hindustan Power Plant Ltd. which showed that the import was linked to the purchase order placed on behalf of the said company. It was held that thus, but for the purchase order placed by Hindustan Power Plant Ltd and latter approaching the respondent Bank for financing the import, the question of the bank ever placing any purchase order with the Japanese manufacturers to supply did not arise. The purchase order was placed by the bank with the foreign supplier who in turn showed that the purchase order of Hindustan Power Ltd. with the Japanese firm and import itself was in connection with the Master Agreement between the Bank and the lessee. There, it was concluded that the receipt of rental by the Bank was on account of the transaction in the course of import and was not liable to tax by the State.

Though the relief has been granted by the Court in the said case to Karnataka Bank Ltd, I am unable to apply the said ratio to the facts of the present cases. The facts of the present cases are clear. The imports were made by the petitioner itself in its own name. The Bills of Lading were in the name of the petitioner itself. The Bills of Entry for clearing the goods were also in the name of the petitioner. The only intervening event was the execution of four Operating Lease Agreements between the petitioner and the four lessees when the imported goods were allegedly in transit before being cleared from the customs barriers. As a concept, transfer of right to use during the course of import cannot be applied to the facts of the present case inasmuch as the petitioner not only continued to exercise both effective control but also possession over the imported machinery till they were actually delivered at a later point of time. The petitioner also continued to receive lease rental thereafter till the termination of lease period. Therefore, it cannot claim exemption under Section 5(2) of the Central Sales Tax Act, 1956.

The fact that the petitioner is stated to have acted as an agent of the lessee at the time of import under the respective Operating Lease Agreements is of no relevance as the petitioner neither transferred the possession nor effective control to the lessee till the actual delivery and also continued to receive lease rentals during the currency of the respective Operating Lease Agreements. Therefore, the petitioner cannot claim exemption under Section 5(2) of the Central Sales Tax Act, 1956 for the entire period.

Further, it should be noted that in the case of ordinary “sale”, the transaction between the seller and the buyer ends with a single transaction. However, in the caseof lease, where there is no transfer of ownership but only a transfer of possession and effective control. Tax is to be paid on the transaction for the period upto the period of lease under the Agreements. Each payment of lease rent would amount to extended definition of sale. Therefore, while the petitioner is entitled for deduction of lease rental received period upto the date of actual clearance of the imported goods from the customs barriers under Section 3-A of the Tamil Nadu General Sales Tax Act, 1959, for the period thereafter,e. after the effective possession and control were transferred to the respective lessees / actual users, the petitioner will be liable to pay tax under Section 3-A of the Tamil Nadu General Sales Tax Act, 1959.

Therefore, while upholding the impugned orders demanding sales tax for the period after delivery and transfer of effective control, I remit the cases back to the respondent to give the benefit of deduction to the petitioner upto the date of import to the petitioner for any lease rental which the petitioner may have received prior to the said date. This exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this Order.

23. Enable submission of rectified Form GST TRAN-2: HC

Case Name : **Jigar Cars Pvt. Ltd. Vs Union of India (Gujarat High Court)**
Appeal Number : R/SPECIAL Civil Application No. 15631
Date of Judgement/Order : 23/03/2021

The respondents are directed to either open an online portal so as to enable the writ-applicants to again file a rectified Form GST TRAN-2 electronically, for the month of July 2017 as well as the Form GST TRAN-2 for the subsequent months from August to December 2017, or accept the manually filed the Form GST TRAN-2 for all the months with necessary corrections.

The respondents are further directed not to raise any objection of time limit in filing the Form GST TRAN-2 for the months from August 2017 to December 2017 as the portal did not allow the writ-applicants to file such forms because of a *bonafide* error in the form filed for the month of July 2017.

24. Notice for recovery under GST must be issued in Form GST DRC 07

Case Name : **Rajkamal Builder Infrastructure Private Limited Vs Union of India (Gujarat High Court)**
Appeal Number : Special Civil Application No. 21534 of 2019
Date of Judgement/Order : 23/03/2021

Plain reading of the Rule 142(1)(a) indicates that Form GST DRC 01 can be served by the proper officer along with the notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130 and that too, electronically as a summary of notice.

We do not find reference of any notice under Section 50 so far as Rule 142(1)(a) of the CGST Rules is concerned. In such circumstances, DRC 01 could not have been issued for the purpose of recovery of the amount towards interest on delayed payment of tax.

The aforesaid leads us to consider the question that if the amount towards interest on delayed payment of tax is to be recovered, and then what is the Form in which the notice is to be issued?

Provisions of Section 75(12) make it abundantly clear that notwithstanding anything contained in section 73 or Section 74, if there is any amount of interest payable on tax and which had remained unpaid, the same has to be recovered under the provisions of Section 79.

Section 79 is with respect to recovery of tax. Section 79 provides for the modes of recovery.

Rule 142 makes it clear that the order referred in sub-rule (5) shall be treated as the notice for recovery.

From the aforesaid, we have reached to the conclusion that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.

In view of the aforesaid, the Form GST DRC 01 could be said to have been issued without any authority of law.

High Court also held that interest under Section 50 of the CGST Act, 2017 can only be levied on the net tax liability and not on the gross tax liability.

25. Fake GST ITC: Meerut Court Rejects Bail Application

Case Name : **Vishan Gupta Vs State of U.P. (High Court of Meerut)**
Appeal Number : Bail application No. 1201 of 2021
Date of Judgement/Order : 24/03/2021

The applicant has been arrested and he has been explained the grounds of his arrest. The raid and search operation were conducted by the team of officers of Directorate General of GST intelligence on 25/05/2019 at the rented premises and during search some documents and Computer Processing Unit were resumed under panchnama and resumption memo dated 25052019 and during search no business activity was found in the premises and incriminating evidences recovered from the premises of the accused. During scrutiny it was found that the input Tax Credit of Rs. 159.20 Crores had been passed on through 47 Firms leading to wrongful availment or utilisation of input tax credit. Statement of accused was recorded on 25/05/2019, 26/05/2019, and 31/03/2019 under Section 70 of CGST Act 2017. All the 47 fake Firms have been verified physically and found that these firms were nonexistent. The copies of the panchnamas are placed opposite for perusal which clearly reflect that the firms were fake/nonexistent. On being pointed out that the activity performed by the applicant, the passing on fake GST credit of Rs. 159.20 Crores through the firms created by him without supply of any goods being a cognizable and non bailable offence. The accused vide letter dated 11062019 submitted certain documents which, on scrutiny, revealed that there were 31 more Firms which were admittedly created and controlled by the accused. The accused has violated provisions of the **CGST Act 2017**. It is also apparently clear that on account of issuance of GST invoices without supply of goods leading to fraudulent availment and utilization of input tax credit to the tune of Rs. 159.20 Crores. It is also evident from the arrest memo generated on line 04012021 having valid document identification number. In the instant case, the competent

authority had followed the provisions of Section 69 and after going through the investigation report he had ordered for the arrest of the applicant. It is simply clear that the applicant was in full knowledge that the Firms for which he applied for registration were not suppliers in terms of Section 2 (105) of the Act. All guidelines were followed during the preparation of the arrest memo. The applicant was called in the office of DGG Ghaziabad and he was served upon the summons and his statement was recorded on the same day and the investigation report put up before the competent authority. The applicant is sole mastermind and responsible for every act of himself. Suffice to say *primafacie*, the accused has committed an economic offence and caused monetary loss to the State which is most harmful. There is a possibility to be tampered with the evidence and tempered with the witnesses if the applicant is released on bail.

Keeping in view the facts and circumstance of the case and the gravity and seriousness of the offence, without making any comment upon the merits of the case, I do not find it a fit case for bail. Hence, the bail application is liable to be rejected.

26. Issue of `C' Forms for natural gas: SC upheld view of Punjab & Haryana HC in Carpo Power Ltd

Case Name : **Commissioner of Commercial Taxes & Anr. Vs Ramco Cements Ltd.Etc. (Supreme Court of India)**
Appeal Number : Special Leave to Appeal (C) No(s). 15785-15788/2020
Date of Judgement/Order : 24/03/2021

1. It is held that the respondents are liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana.

2. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise.

27. HC denies Bail in alleged Rs. 18 Crore fake Input Tax Credit Case

Case Name : **Mohit Bathla Vs Central Goods And Service Tax Division Panipat (Punjab & Haryana High Court)**
Appeal Number : CRM-M No.8190 of 2021 (O&M)
Date of Judgement/Order : 24/03/2021

Learned senior counsel for the petitioner has reiterated the arguments that on an earlier occasion, when the record of the petitioner was verified on 14.10.2020, a specific note was made by the Assistant Commissioner, CGST, that e-Way bill and transport documents were found to be genuine and therefore, it will be a matter of trial as to how the same documents are now termed as fake documents as it will require evidence to prove the same.

Learned senior counsel for the petitioner has lastly argued that the petitioner is the first offender; he is not involved in any other case of such or similar nature and he is in custody since 26.12.2020 and as on today, the petitioner has undergone about 03 months of judicial custody and as the complaint has been filed, it will take long time in conclusion of the trial.

After hearing the counsel for the parties and going through the voluminous documents and judgments relied upon by both the parties, it is found that main allegations against the petitioner are regarding availment of fake Input Tax Credit (ITC) Limit of 04 firms and on clubbing of the same, the amount as calculated by the respondent is approximately Rs.18 crores, however, considering the fact that the custody of the petitioner is less than 03 months, I do not deem it appropriate to grant the concession of regular bail to the petitioner, at this stage.

28. GST: HC waives condition of Bank Guarantee of Rs. 30 Crore

Case Name : **Kerala Communicators Cable Limited Vs Additional Director General (Kerala High Court)**
Appeal Number : WP(C) No.5063/2021(G)
Date of Judgement/Order : 24/03/2021

In the case in hand, search was conducted on 09.06.2020 and the further proceedings thereof are still pending. Claiming to be necessary in the interest of revenue, by orders at Exts.P6, P6A and P6B, bank accounts of the petitioner came to be attached and subsequently, on the basis of objection (Ext.P7), the provisional attachment order has been modified by the order at Ext.P9, the relevant portion of which is already quoted herein above. The petitioner is directed to furnish the security in the form of bank guarantee in the name of the Hon'ble President of India, equivalent to the credit balance available as on 20.08.2020 which according to the learned counsel for the petitioner, is about Rs.30 crores. Neither the order at Exts.P6(series) nor the order at Ext.P9 reflects anything which substantiate that interest of revenue requires this action to be taken in the matter. What is the reasonable apprehension with the authority is not disclosed in the order at Ext.P6(Series) or in the order at Ext.P9. Furnishing bank guarantee of about Rs.30 crores would certainly block that much amount from the business of the petitioner. The petitioner, on account of an order by the adjudicating authority has no remedy of appeal under Section 107 of the CGST Act in the matter. Therefore, in the light of ratio of judgments in the matter of **Valerius Industries** and **AJE India Private Limited**, I am of the considered opinion that the order directing furnishing of the bank guarantee needs to be stayed till disposal of the writ petition, by directing the petitioner to execute the undertaking that he will not sell, alienate or dealt with any of his assets as seen from the balance sheet produced by him at Ext.P16. Therefore the order:-

During the pendency of the petition, the impugned direction contained in Clause 2(a) of Ext.P9, requiring the petitioner to furnish security in the form of the bank guarantee is stayed and the petitioner is directed to furnish undertaking before this Court by way of an affidavit that it shall not alienate any of its fixed assets, plant, property and

equipments shown in the balance sheet dated 31.03.2020 (Ext.P16) till disposal of the instant petition. Parties to act on authenticated copy of this order.

29. VAT Assessment order cannon be passed on mere Presumptions

Case Name : **S.R. Paramasivam Vs Commercial Tax officer (Madras High Court)**
Appeal Number : W.A.No.913 of 2021
Date of Judgement/Order : 25/03/2021

We have heard Mr.R.Senniappan, learned counsel for the appellant and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2. This writ appeal by the writ petitioner is directed against the order dated 01.12.2020 made in W.P.No.19219 of 2015. The said writ petition was filed by the appellant challenging the assessment order mainly on the ground that it is in violation of principles of natural justice in as much as the Assessing Officer did not look into the accounts, which were produced by the appellant.

3. The appellant is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The assessment for the year 2011-12 was taken up for scrutiny under Section 22(3) of the Act and a show cause notice dated 08.12.2014 was issued alleging that there has been sale of cement bags lesser than the purchase price. The Assessing Officer alleged that only with a view to show profit account, they have sold the cement bags in lesser price. Further, the Assessing Officer stated that the appellant has sold the cement bags in a price lesser than the purchase price except discount and the sale consideration, which includes the amount of discount, is also liable to be taxed.

4. The appellant submitted his reply dated 06.01.2015 along with a statement showing 7 transactions to demonstrate that the sale price was higher than the purchase price. The appellant requested the Assessing Officer to consider all the factors mentioned in the reply and drop the proposal of making assessment of tax at different rates on the amount of Rs.7,03,237/- received as discount from the sellers for the year 2011-12. The appellant produced the accounts, purchase bills and sale bills for the year 2011-12. It appears that the appellant did not seek for an opportunity of personal hearing and therefore, the Assessing Officer did not afford such an opportunity.

5. **The Assessing Officer rejected the reply filed by the appellant by holding that there was no opening and closing stock of goods and all the goods were purchased as sold out during the assessment year. Further, the Trading, Profit and Loss Account disclosed gross loss and had the dealer sold all the goods purchased with a marginal increase in sale price over the purchase price, then the Trading Account would reflect a different picture with a gross profit. Further, the Assessing Officer observed that he need not again call for the appellant's accounts to segregate the purchase bills and the sale bills, wherein the sale price was found to be less than the purchase price. After making such an observation, the Assessing Officer further stated that, probably, if the bills are**

examined, except the 7 purchase and sale bills, all other bills would reveal that the sale price quoted by the appellant was lesser than the purchase price.

6. The question would be whether such a presumption could have been drawn by the Assessing Officer.

7. Thus, the Assessing Officer, as proposed in the show cause notice, concluded that the amount of discount received certainly form part of the sale consideration and completed the assessment vide order dated 19.01.2015.

8. At the time when the writ petition was entertained, an order of interim stay was granted. The writ petition was pending before this Court for nearly 5 years and the Department did not file their counter affidavit. When the matter was heard during December, 2020, the Court rejected the same on the ground of availability of alternate

9. We have, in several decisions, held that the refusal to exercise extraordinary jurisdiction under Article 226 of the Constitution of India when a statutory alternate remedy is available under the Act is a self-imposed restriction and there are exceptions carved out from this self-imposed rule. One such exception, which has been held by the Court to be a justifiable reason to exercise writ jurisdiction, is when the writ petition is pending for a considerable length of time before a Court and it would be too harsh on the party to be driven to avail the alternate remedy after few years.

10. We are of the view that the case on hand will fall within the said exception. The Assessing Officer cannot state that he need not call for other bills and even it is called for, except for the 7 bills, which were purchased by the appellant, all other bills will reflect lower sale price than the purchase price. This may not be a right approach while completing the assessment for the purpose of levying tax. The Assessing Officer has to come to a definite conclusion, especially, when it is a scrutiny assessment and the dealer has cooperated in the scrutiny by filing their reply and submitting the documents available with them. Had it be a case of best judgment assessment, the situation would have been different, which is not so in the case on hand.

11. Therefore, in our considered view, the matter has to be sent back to the Assessing Officer to redo the assessment after affording an opportunity to the appellant/dealer.

12. In the result, the writ appeal is allowed and the matter is remanded to the respondent-Assessing Officer for a fresh consideration. The appellant/dealer is directed to treat the assessment order dated 19.01.2015 as a show cause notice and submit their objections along with a copy of the earlier objections dated 06.01.2015 and copies of all records available with them and submit the same to the respondent within a period of 2 weeks from the date of receipt of a copy of this judgment. On receipt of the same, the respondent shall afford an opportunity of personal hearing and cause necessary verification of the records produced and redo the assessment in accordance with law and pass a speaking order as expeditiously as possible, preferably within a period of 60 days from the date on which the personal hearing is concluded. As the appellant had the benefit of interim stay for nearly 5 years during the pendency of the writ petition, till final orders are passed, in terms of the above directions, the Assessing Officer shall not initiate any coercive action against the appellant/dealer. No costs.

30. Do not restrict use of 'C' Forms for inter-State purchases of High Speed Diesel

Case Name : **Sasi Anand Spinning Mills India P Ltd. Vs State of Tamil Nadu (Madras High Court)**
Appeal Number : W.P. No. 663 of 2021
Date of Judgement/Order : 25/03/2021

The Appellant State and the Revenue Authorities are directed not to restrict the use of 'C' Forms for the inter-State purchases of six commodities by the Respondent/Assessees and other registered Dealers at concessional rate of tax and they are further directed to permit Online downloading of such Declaration in 'C' Forms to such Dealers. The Circular letter of the Commissioner dated 31.5.2018 stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu.'

31. Personal hearing to taxpayer must before cancellation of GST Registration: HC

Case Name : **Tvl. Vectra Computer Solutions Vs Commissioner of Commercial Taxes (Madras High Court)**
Appeal Number : W.P.(MD)No. 9531 of 2020 and
Date of Judgement/Order : 25/03/2021

High Court held that Personal hearing must be afforded to taxpayer before cancellation of GST Registration. As in this case no such Opportunity was afforded to Taxpayer so High Court has Quashed the Cancellation order.

32. GST on erection, commissioning & installation of waste-water pre-treatment plant

Case Name : **In re Arvind Envisol Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 17/2021
Date of Judgement/Order : 25/03/2021

Whether the service of supply, erection, commissioning and installation of waste-water pretreatment plant followed by operation and maintenance of such plant attracts rate 12% of GST in terms of **notification No.11/2017 Central Tax (rate) Dated: 28/06/2017**?

The service of supply, erection, commissioning and installation of waste-water pre-treatment plant (ZLD plant) and the services of Operation and Maintenance (O&M) of the said plant together is composite supply of works contract classified under SAC 9954 and is liable to CGST @ 6% and KGST @6% in terms of entry No.3(iii) of the **notification No.11/2017 Central Tax (rate) Dated: 28/06/2017** as amended by **Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017** and **Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017.**

33. GST: Consider lifting of Provisional Attachment of Bank accounts: HC

Case Name : **Senior Intelligence Officer Vs KPN Travels India Ltd. (Madras High Court)**
Appeal Number : W. A. No. 984 of 2021
Date of Judgement/Order : 25/03/2021

Learned counsel for the first respondent would submit that by attaching all 14 bank accounts, the business operations of the first respondent have been absolutely crippled and they are unable to pay salaries, discharge creditors, etc.

In the light of the above, we direct that the impugned order dated 10.03.2021 shall remain stayed subject to the following directions:

(a) the authorized representative of the first respondent shall appear before the first respondent at **11.00 AM on 29.03.2021.**

(b) an opportunity of personal hearing be granted to the authorized representative.

(c) the first appellant is directed to pass a speaking order within 10 days therefrom.

(d) since the first respondent has pleaded that their business operations are virtually crippled, till final orders are passed on the representation dated 27.01.2021, the first appellant shall consider and pass appropriate interim orders, if found tenable, considering the lifting of the provisional attachment in respect of a few bank accounts to enable the first respondent to carry on its business activities.

In the result, the writ appeal is partly allowed subject to the directions issued. No costs.

34. Interest payable on delayed remittance of refund on account of IGST

Case Name : **TMA International Pvt. Ltd. & Ors. Vs Union of India & Anr. (Delhi High Court)**
Appeal Number : W.P.(C) 2694/2019 & CM No.26556/2020
Date of Judgement/Order : 26/03/2021

Thus, the only other question left for consideration is: as to whether the petitioners should be paid any interest for delayed remittance of refund on account of IGST?

Mr. Samar Bansal, who appears on behalf of the petitioners, in support of his plea that the interest should be paid, has cited the judgement dated 27.06.2019, passed by a Division Bench of the Gujarat High Court, in ***M/s Amit Cotton Industries vs. Principal Commissioner of Customs, (2019) 75 GST 33 (Guj)***. In particular, reliance has been placed on paragraph 36 of the said judgment. For the sake of convenience, the observations made in paragraph 36 of the judgment are extracted hereafter:

"*36. In the result, this writ-application succeeds and is hereby allowed. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. "zero rated supplies", with 7% simple interest from the date of shipping bills till the date of actual refund."*

We are in agreement with the principle set forth in the aforesaid paragraph. Therefore, while granting refund to the petitioners, the petitioners will be granted interest at the rate of 7% simple, from the date, when the shipping bills were filed by them, till the date of actual refund, which, in this case, ought not to go beyond 26.04.2021.

35. Discount deductible from Taxable Turnover under J&K Sales Tax

Case Name : **MRF Limited Vs Dy. Commissioner Commercial Taxes and anr. (Jammu and Kashmir High Court)**
Appeal Number : Sales Tax Reference (STR) Nos. 1, 2, 3, 4, 5-7 of 2010
Date of Judgement/Order : 26/03/2021

In the cases at hand, the documents on record reveal that every voucher provides for 1% turnover discount, meaning thereby that the discount has been actually allowed as per the agreement/understanding of the parties. The said discount stand deducted as a credit note in respect thereof is issued simultaneously to be adjusted later on or by reimbursement. It is not the case of anyone that the dealer has paid the actual price of the goods mentioned in the voucher and not the lesser amount by way of discount. In fact, upon reimbursement as per credit note, the actual price paid by the dealer stand reduced. There is no evidence that the dealer paid to the assessee the original value of the goods and not the discounted price.

Accordingly, we are of the opinion that the authorities below have adopted a too technical an approach in disallowing the deduction of discount from the taxable turnover of the assessee.

Since we were of the view that the facts contained in the orders of the authorities below were enough for answering the question, we did not deem it necessary to call for a statement of the case which, in our view, would have been an exercise in futility and thus have straightaway proceeded to answer the question.

36. Reasonable Opportunity of being heard to dealer must prior to framing Assessment Order: HC

Case Name : **Sham Interiors Vs Assistant Commercial Tax Officer (Madras High Court)**
Appeal Number : W.P. Nos. 7933 and 7928 of 2021
Date of Judgement/Order : 29/03/2021

The proviso to Section 24(3) of Puducherry Value Added Tax Act, 2007 specifically requires that the dealer be afforded reasonable opportunity of being heard prior to framing of an assessment. Such reasonable opportunity, Courts have been consistently held, must include an opportunity of personal hearing. Admittedly, in the present case, the petitioner has not been heard personally prior to the impugned orders having been passed.

For the aforesaid reason, the impugned orders dated 18.01.2021 are set aside. The petitioner will appear before the respondent on Thursday, the 15th of April 2021 at 10.30 a.m without expecting or anticipating any further notice in this regard. After hearing the petitioner and considering all/any materials that may be filed in support of the petitioner's contention, orders of assessment shall be passed de novo within a period of four (4) weeks from the date of first hearing.

Learned counsel for the petitioner states that post filing of these Writ Petitions, two bank accounts of the petitioner, one in South Indian Bank, Mahe Branch and the second in Canara Bank, Mahe Branch have been attached and a sum of Rs.10.98 lakhs and 1.64 lakhs respectively appropriated. While the attachments shall continue, no further amounts shall be appropriated and the return or otherwise of the amounts appropriated shall be subject to the de novo orders of assessment to be passed in terms of the order as above.

37. Freight charges not includable in sale price for calculating taxable turn over under Orissa Sales Tax

Case Name : **Utkal Moulders Vs State of Orissa (Orissa High Court)**
Appeal Number : Strev No.29 of 2010
Date of Judgement/Order : 30/03/2021

In the considered view of the Court, the legal position, as explained in ***Hindustan Sugar Mills and others v. State of Rajasthan and others*** (supra) and the ***State of Karnataka and another v. Bangalore Soft Drinks Pvt. Ltd.*** (supra) supports the case of the Petitioner is that in the instant case the freight charges are not includable in the sale price, which is amenable and therefore, has to be excluded while calculating the taxable turn over for the purposes of the OST Act.

For the aforementioned reasons, the question framed is answered in negative that is in favour of the Petitioner-assessee and against the Department by holding that the Tribunal was incorrect in holding that the freight shown in the sale bill separately is part of the sale price. It is held that the Petitioner is entitled to claim deduction of the freight charges from the taxable sales turnover.

38. State Governments cannot levy electricity duty on inter-State sale of electricity: Tripura High Court

Case Name : **ONGC Tripura Power Company Ltd. Vs State of Tripura (Tripura High Court)**
Appeal Number : WP(C) No.14/2021
Date of Judgement/Order : 31/03/2021
In a significant legal victory for electricity-generating companies, the Tripura High Court has held State Governments cannot levy electricity duty on inter-State sale of electricity. ONGC Tripura Corporation Ltd had challenged the provisions of the Tripura Electricity Duty Act, 2019 (TEDA) by a petition in the High Court through their advocate Parinay Deep Shah of Urja Law Chambers.

The Division Bench comprising the Chief Justice, Akil Kureshi and Justice S.G. Chattopadhyay quashed Section 4 (4) (d) of the Tripura Electricity Duty Act, 2019 (TEDA), reasoning that the State legislature is not competent to levy electricity duty on the inter-State sale of electricity and allowed OTPC's prayer for a refund to the extent the tax has not been passed on to the consumers.

The High Court held that Articles 286, 269 and 269A restrict the State legislature's power to levy tax on the inter-State sale of goods.

The Bench dealt with the changes to taxation laws by GST regime through constitutional amendments and enactment of the Integrated Goods and Services Tax Act, the Central Goods and Services Tax Act and the State Goods and Services Tax Act. The Bench accepted Mr Shah's argument that the Schedule 7 entries are not the source of the power of legislation but are mere legislation fields on which the State or Union Legislature can frame a law and that the power to legislate and its limitations can be traced in the Constitution.

The present decision assumes significance because the Govt of Tripura exempted levy of duty on supply to Tripura State Electricity Corporation Ltd; thus, it exempted consumers in Tripura from payment of the tax. But for this Judgment, such a levy may have become a precedent for all State Governments to tax the residents of States other than their own.

39. GST: Only Commissioner can carry out provisional attachment

Case Name : **Praful Nanji Satra Vs State of Maharashtra (Bombay High Court)**
Appeal Number : Writ Petition(L) NO.5182 of 2020
Date of Judgement/Order : 31/03/2021

Under section 83 of the MGST Act, it is the Commissioner which has the competence to carry out provisional attachment of property including bank account subject to fulfillment of the preconditions of section 83. As we have already noticed, the word 'Commissioner' is a defined expression under section 2(24) of the MGST Act meaning a Commissioner of State Tax appointed under section 3 which includes Principal Commissioner or Chief Commissioner of State Tax appointed under section 3. The impugned provisional attachment has been carried out by respondent no.3 i.e. Joint Commissioner of State Tax. The record does not disclose any authorization by the Commissioner to the Joint Commissioner to carry out provisional attachment. There is also no averment to that effect in the reply affidavit of the respondents. That apart, section 83 does not provide for such delegation or authorization. The opinion contemplated under section 83 of the MGST Act that to protect the interest of government revenue, it is necessary to provisionally attach any property including bank account has to be necessarily that of the Commissioner. No such opinion of the Commissioner is discernible from the record. Attachment of property including bank account of a person even if provisional is a serious intrusion into the private space of a person. Therefore, section 83 of the MGST Act has to be strictly interpreted.

Since the impugned attachment of bank account has been found to be without jurisdiction, availability of alternative remedy in the form of filing objection under rule 159(5) of the MGST Rules would be no bar to the petitioner from seeking relief under writ jurisdiction. Even here also it is doubtful whether the Joint Commissioner to whom the representation dated 01.07.2020 was addressed could have at all exercised power under rule 159(5) of the MGST Rules when the authority to do so is the Commissioner.

Consequently and in the light of the above, we are of the opinion that the impugned provisional attachment order dated 19.06.2020 cannot be sustained. The same is hereby set aside and quashed. Consequently, respondents are directed to forthwith withdraw the provisional attachment of bank account of the petitioner bearing account No.001101218141 maintained with ICICI Bank Limited, Andheri West Branch, Mumbai.