GST UPDATE
(November, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Notification No. 15/2021 (Rate) – Central Tax dated 18th November 2021 Amends notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017

Effective w.e.f 1st January 2022

Composite supply of works contract to Govt. Entity or Govt. Authority will be taxable @18 percent

Job Work by way of Dyeing and Printing of Textile and Textile Products will be taxable @12 percent

[Notification No. 15/2021 (Rate) – Central Tax dated 18th November 2021]

2. Notification No. 16/2021 (Rate) – Central Tax dated 18th November 2021 Amends Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017

Effective w.e.f 1st January 2022

Exemption removed for following services-

-Pure services and composite supply of goods and services where goods constitute not more than 25 percent value, provided to a Govt. Entity or Govt. Authority

-Non-AC contract Carriage or State Carriage or metered Cabs or Auto/e-rickshaws if supplied through e-commerce operators.

[Notification No. 16/2021 (Rate) – Central Tax dated 18th November 2021]

3. Notification No. 17/2021 (Rate) – Central Tax dated 18th November 2021 Amends Notification No.17/2017- Central Tax (Rate), dated the 28th June, 2017

Effective w.e.f 1st January 2022

Tax shall be paid by e-commerce operator under section 9(5) of CGST Act for supply of –

-services by way of transportation of passengers by omnibus or any other motor vehicle

-restaurant service other than the services supplied by restaurant eating joints etc. located at specified premises. Online food delivery apps now liable to pay GST

[Notification No. 17/2021 (Rate) – Central Tax dated 18th November 2021]

(II) CENTRAL TAX (RATE) 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)

Notification No. 14/2021-Central Tax (Rate)

New Delhi, the 18th November, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification, -

a. in Schedule I – 2.5%, -

(i) S.Nos. 203, 207, 211, 216, 217, 218, 218B, 218C, 219A, 219AA, 219B, 220, 221, 222, 223, 224, 224A and 225 and the entries relating thereto shall be omitted;

b. in Schedule II – 6%, -

(i) S.No. 132A and the entries relating thereto shall be omitted;

(ii) after S.No. 132A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

"132AA	5007	Woven fabrics of silk or of silk waste.
132AB	5111	Woven fabrics of carded wool or of carded fine animal hair.
132AC	5112	Woven fabrics of combed wool or of combed fine animal hair.
132AD	5113	Woven fabrics of coarse animal hair or of horse hair.
132AE	5208	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200g/m^2.
132AF	5209	Woven fabrics of cotton, containing 85%

		or more by weight of cotton, weighing more than 200g/m^2.
132AG	5210	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200g/m^2.
132AH	5211	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200g/m^2.
132AI	5212	Other woven fabrics of cotton.
132AJ	5309	Woven fabrics of flax.
132AK	5310	Woven fabrics of jute or of other textile bast fibres of heading 5303.
132AL	5311	Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn.”;

(iii) S.No. 132B and the entries relating thereto shall be omitted;

(iv) after S.No. 132B and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

“132BA	5401	Sewing thread of man-made filaments, whether or not put up for retail sale.
132BB	5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex.
132BC	5403	Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex.
132BD	5404	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent

		width not exceeding 5 mm.
132BE	5405	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm.
132BF	5406	Man-made filament yarn (other than sewing thread), put up for retail sale.
132BG	5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404.
132BH	5408	Woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405.”;

(v) S.No. 132C and the entries relating thereto shall be omitted;

(vi) after S.No. 132C and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

“132CA	5501	Synthetic filament tow.
132CB	5502	Artificial filament tow
132CC	5503	Synthetic staple fibres, not carded, combed or otherwise processed for spinning.
132CD	5504	Artificial staple fibres, not carded, combed or otherwise processed for spinning.
132CE	5505	Waste (including noils, yarn waste and garnetted stock) of man-made fibres.
132CF	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning.
132CG	5507	Artificial staple fibres, carded, combed or otherwise processed for spinning.
132CH	5508	Sewing thread of man-made staple fibres, whether or not put up for retail sale.

132CI	5509	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale.
132CJ	5510	Yarn (other than sewing thread) of artificial staple fibres, not put up for retail sale.
132CK	5511	Yarn (other than sewing thread) of man-made staple fibres, put up for retail sale.
132CL	5512	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres.
132CM	5513	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170 g/m^2.
132CN	5514	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m^2.
132CO	5515	Other woven fabrics of synthetic staple fibres.
132CP	5516	Woven fabrics of artificial staple fibres.”;

(vii) S.No. 132D and the entries relating thereto shall be omitted;

(viii) against S.No. 139, in column (3), for the entry, the entry “Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated or sheathed with rubber or plastics.” shall be substituted;

(ix) after S.No. 139 and the entries relating thereto, the following S.No. and entries shall be inserted, namely:-

“139A	5608	Knotted netting of twine, cordage or rope; made up of fishing nets and other made up nets, of textile materials.”;

(x) after S.No. 146 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

"146A	5801	Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806.";

(xi) after S.No. 151 and the entries relating thereto, the following S.No. and entries shall be inserted, namely:-

"151A	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs).";

(xii) against S.No. 154, in column (3), for the entry, the entry "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles." shall be substituted;

(xiii) against S.No. 155, in column (3), for the entry, the entry "Woven fabrics of metal thread and woven fabrics of metallised yarn of heading 5605, of a kind used in apparel, as furnishing fabrics or for similar purposes, not elsewhere specified or included." shall be substituted;

(xiv) against S.No. 156, in column (3), for the entry, the entry "Embroidery in the piece, in strips or in motifs." shall be substituted;

(xv) against S.No. 168, in column (3), for the words "this Chapter", the word and the figure "Chapter 59" shall be substituted;

(xvi) after S. No. 168 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"168A	6001	Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted.
168B	6002	Knitted or crocheted fabrics of a width not exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001.

168C	6003	Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 6001 or 6002.
168D	6004	Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001.
168E	6005	Warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004.
168F	6006	Other knitted or crocheted fabrics.”;

(xvii) against S.No. 169, in column (3), for the entry, the entry “Articles of apparel and clothing accessories, knitted or crocheted.” shall be substituted;

(xviii) against S.No. 170, in column (3), for the entry, the entry “Articles of apparel and clothing accessories, not knitted or crocheted.” shall be substituted;

(xix) S.No. 171 and the entries relating thereto shall be omitted;

(xx) after S.No. 171A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

“171A1	6301	Blankets and travelling rugs.
171A2	6302	Bed linen, table linen, toilet linen and kitchen linen.
171A3	6303	Curtains (including drapes) and interior blinds; curtain or bed valances.
171A4	6304	Other furnishing articles, excluding those of heading 9404.
171A5	6305	Sacks and bags, of a kind used for the packing of goods.
171A6	6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods.
171A7	6307	Other made up articles, including dress patterns.
171A8	6308	Sets, consisting of woven fabric and yarn,

		whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale.
171A9	6309	Worn clothing and other worn articles.
171A10	6310	Used or new rags, scrap, twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials.
171A11	64	Footwear of sale value not exceeding Rs.1000 per pair."

c. in Schedule III – 9%, -

(i) S. Nos. 159, 160, 161, 162 and 163 and the entries relating thereto shall be omitted.

2. This notification shall come into force on the 1st day of January, 2022, unless otherwise stated.

[F.No.190354/206/2021-TRU]

(Gaurav Singh)
Deputy Secretary to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, and was last amended *vide* notification No. 13/2021 – Central Tax (Rate), dated the 27th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 763(E), dated the 27th October, 2021.

[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)

Notification No. 15/2021- Central Tax (Rate)

New Delhi, 18th November, 2021.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendments further to amend in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, -

(i) against serial number 3,-

(1) in column (3),in the heading "Description of Service", in items (iii),(vi),(ix) and (x), for the words "Union territory, a local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted;

(2) in column (3), in the heading "Description of Service", in item (vii), for the words "Union territory, local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted;

(3) in column (5), in the heading "Condition", the entries against items (iii),(vi),(vii),(ix) and (x), shall be omitted;

(ii) against serial number 26, in column (3), in the heading "Description of Service", in item (i), in clause (b), after the words, numbers, figures and brackets "Customs Tariff Act, 1975 (51 of 1975)" the words "except services by way of dyeing or printing of the said textile and textile products" shall be inserted.

2. This notification shall come into force with effect from the 1st day of January, 2022.

[F. No.354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No. 11/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 690 (E), dated the 28th June, 2017 and last amended by notification No. 06/2021 - Central Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 687(E), dated the 30th September, 2021.

[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)

Notification No. 16/2021 - Central Tax (Rate)

New Delhi, 18th November, 2021.

G.S.R. -----(E). - In exercise of the powers conferred by sub-sections (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendments further to amend the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 691(E), dated the 28th June, 2017, namely:—

In the said notification, in the TABLE, -

(i) against serial number 3, in column (3), in the heading " Description of Services" , the words "or a Governmental authority or a Government Entity" shall be omitted;

(ii) against serial number 3A, in column (3), in the heading " Description of Services ", the words "or a Governmental authority or a Government Entity" shall be omitted;

(iii) against serial number 15, in column (3), in the heading " Description of Services ", after item (c), the following shall be inserted, namely, -

"Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017).";

(iv) against serial number 17, in column (3), in the heading " Description of Services ", after item (e), the following shall be inserted, namely, -

"Provided that nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017)."

2. This notification shall come into force with effect from 1st day of January, 2022.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 12/2017 - Central Tax (Rate), dated the 28th June, 2017, vide number G.S.R. 691 (E), dated the 28th June, 2017 and last amended by notification No. 07/2021 - Central Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 688(E), dated the 30th September, 2021.

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 17/2021-Central Tax (Rate)

New Delhi, 18th November, 2021.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments further to amend the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.17/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 696(E) dated the 28th June, 2017, namely:-

1. In the notification,-

(i) in clause (i), for the words "and motor cycle;", the words ", motor cycle, omnibus or any other motor vehicle;" shall be substituted;

(ii) after clause (iii), the following clause shall be inserted, namely:-

"(iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises."

2. In the said notification, in Explanation, -

(i) in item (b), for the words, brackets, numbers and figures "and "motor cycle" shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).", the words, brackets, numbers and figures ,", motor cycle, motor vehicle and omnibus shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988)." shall be substituted;

(ii) after item (b), the following shall be inserted namely, -

"(c) specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent."

2. This notification shall come into force with effect from the 1st day of January, 2022.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note:-The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 17/2017 - Central Tax (Rate), dated the 28th June, 2017, *vide* number G.S.R. 696 (E), dated the 28th June, 2017 and last amended by notification No. 23/2017 - Central Tax (Rate), dated the 22nd August, 2017 *vide* number G.S.R. 1048(E), dated the 22nd August, 2017.

(III) IGST TAX (RATE) 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)

Notification No. 14/2021-Integrated Tax (Rate)

New Delhi, the 18th November, 2021

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017, namely:-

In the said notification, -

a. in Schedule I – 5%, -

(i) S.Nos. 203, 207, 211, 216, 217, 218, 218B, 218C, 219A, 219AA, 219B, 220, 221, 222, 223, 224, 224A and 225 and the entries relating thereto shall be omitted;

b. in Schedule II – 12%, -

(i) S.No. 132A and the entries relating thereto shall be omitted;

(ii) after S.No. 132A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

"132AA	5007	Woven fabrics of silk or of silk waste.
132AB	5111	Woven fabrics of carded wool or of carded fine animal hair.
132AC	5112	Woven fabrics of combed wool or of combed fine animal hair.
132AD	5113	Woven fabrics of coarse animal hair or of horse hair.
132AE	5208	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200g/m^2.
132AF	5209	Woven fabrics of cotton, containing 85%

		or more by weight of cotton, weighing more than 200g/m^2.
132AG	5210	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200g/m^2.
132AH	5211	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200g/m^2.
132AI	5212	Other woven fabrics of cotton.
132AJ	5309	Woven fabrics of flax.
132AK	5310	Woven fabrics of jute or of other textile bast fibres of heading 5303.
132AL	5311	Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn.”;

(iii) S.No. 132B and the entries relating thereto shall be omitted;

(iv) after S.No. 132B and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

“132BA	5401	Sewing thread of man-made filaments, whether or not put up for retail sale.
132BB	5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex.
132BC	5403	Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex.
132BD	5404	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent

		width not exceeding 5 mm.
132BE	5405	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm.
132BF	5406	Man-made filament yarn (other than sewing thread), put up for retail sale.
132BG	5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404.
132BH	5408	Woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405.”;

(v) S.No. 132C and the entries relating thereto shall be omitted;

(vi) after S.No. 132C and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

“132CA	5501	Synthetic filament tow.
132CB	5502	Artificial filament tow
132CC	5503	Synthetic staple fibres, not carded, combed or otherwise processed for spinning.
132CD	5504	Artificial staple fibres, not carded, combed or otherwise processed for spinning.
132CE	5505	Waste (including noils, yarn waste and garnetted stock) of man-made fibres.
132CF	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning.
132CG	5507	Artificial staple fibres, carded, combed or otherwise processed for spinning.
132CH	5508	Sewing thread of man-made staple fibres, whether or not put up for retail sale.

132CI	5509	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale.
132CJ	5510	Yarn (other than sewing thread) of artificial staple fibres, not put up for retail sale.
132CK	5511	Yarn (other than sewing thread) of man-made staple fibres, put up for retail sale.
132CL	5512	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres.
132CM	5513	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170 g/m^2.
132CN	5514	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m^2.
132CO	5515	Other woven fabrics of synthetic staple fibres.
132CP	5516	Woven fabrics of artificial staple fibres.”;

(vii) S.No. 132D and the entries relating thereto shall be omitted;

(viii) against S.No. 139, in column (3), for the entry, the entry “Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated or sheathed with rubber or plastics.” shall be substituted;

(ix) after S.No. 139 and the entries relating thereto, the following S.No. and entries shall be inserted, namely:-

“139A	5608	Knotted netting of twine, cordage or rope; made up of fishing nets and other made up nets, of textile materials.”;

(x) after S.No. 146 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

"146A	5801	Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806.";

(xi) after S.No. 151 and the entries relating thereto, the following S.No. and entries shall be inserted, namely:-

"151A	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs).";

(xii) against S.No. 154, in column (3), for the entry, the entry "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles." shall be substituted;

(xiii) against S.No. 155, in column (3), for the entry, the entry "Woven fabrics of metal thread and woven fabrics of metallised yarn of heading 5605, of a kind used in apparel, as furnishing fabrics or for similar purposes, not elsewhere specified or included." shall be substituted;

(xiv) against S.No. 156, in column (3), for the entry, the entry "Embroidery in the piece, in strips or in motifs." shall be substituted;

(xv) against S.No. 168, in column (3), for the words "this Chapter", the word and the figure "Chapter 59" shall be substituted;

(xvi) after S. No. 168 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"168A	6001	Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted.
168B	6002	Knitted or crocheted fabrics of a width not exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001.

168C	6003	Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 6001 or 6002.
168D	6004	Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001.
168E	6005	Warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004.
168F	6006	Other knitted or crocheted fabrics.”;

(xvii) against S.No. 169, in column (3), for the entry, the entry “Articles of apparel and clothing accessories, knitted or crocheted.” shall be substituted;

(xviii) against S.No. 170, in column (3), for the entry, the entry “Articles of apparel and clothing accessories, not knitted or crocheted.” shall be substituted;

(xix) S.No. 171 and the entries relating thereto shall be omitted;

(xx) after S.No. 171A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely:-

“171A1	6301	Blankets and travelling rugs.
171A2	6302	Bed linen, table linen, toilet linen and kitchen linen.
171A3	6303	Curtains (including drapes) and interior blinds; curtain or bed valances.
171A4	6304	Other furnishing articles, excluding those of heading 9404.
171A5	6305	Sacks and bags, of a kind used for the packing of goods.
171A6	6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods.
171A7	6307	Other made up articles, including dress patterns.
171A8	6308	Sets, consisting of woven fabric and yarn,

		whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale.
171A9	6309	Worn clothing and other worn articles.
171A10	6310	Used or new rags, scrap, twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials.
171A11	64	Footwear of sale value not exceeding Rs.1000 per pair."

c. in Schedule III – 18%, -

(i) S. Nos. 159, 160, 161, 162 and 163 and the entries relating thereto shall be omitted.

2. This notification shall come into force on the 1st day of January, 2022, unless otherwise stated.

[F.No.190354/206/2021-TRU]

(Gaurav Singh)
Deputy Secretary to the Government of India

Note: - The principal notification No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 666(E), dated the 28th June, 2017, and was last amended *vide* notification No. 13/2021 – Integrated Tax (Rate), dated the 27th October, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 764(E), dated the 27th October, 2021.

[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)

Notification No. 15/2021- Integrated Tax (Rate)

New Delhi, 18th November, 2021

G.S.R.....(E).- In exercise of the powers conferred by sub-sections (1), (3) and (4) of section 5, subsection (1) of section 6 and clauses (iii), (iv) and (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments further to amend the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 683(E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, -

(i) against serial number 3,-

(1) in column (3), in the heading "Description of Service" ,in items (iii),(vi),(ix) and (x), for the words and symbols "Union territory, a local authority, a Governmental Authority or a Government Entity" the words and symbols "Union territory or a local authority" shall be substituted;

(2) in column (3), in the heading "Description of Service", in item (vii), for the words and symbols "Union territory, local authority, a Governmental Authority or a Government Entity" the words and symbols "Union territory or a local authority" shall be substituted;

(3) in column (5), in the heading "Condition" ,the entries against items (iii),(vi),(vii),(ix) and (x), shall be omitted;

(ii) against serial number 26 in column (3), in the heading "Description of Service", in item (i), in clause (b), after the words, numbers, figures and brackets "Customs Tariff Act, 1975 (51 of 1975)" the words "except services by way of dyeing or printing of the said textile and textile products" shall be inserted.

2. This notification shall come into force with effect from the 1st day of January, 2022.

[F. No.354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: -The principal notification No. 08/2017 - Integrated Tax (Rate), dated the 28thJune, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 683 (E), dated the 28th June, 2017 and last amended by

notification No. 06/2021-Integrated Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 689 (E), dated the 30th September ,2021.

[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)

Notification No. 16/2021 – Integrated Tax (Rate)

New Delhi, 18th November, 2021.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (3) and sub-section (4) of section 5, subsection (1) of section 6 and clause (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (5) of section 15 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following amendments further to amend in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 684 (E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, -

(i) against serial number 3, in column (3), in the heading " Description of Services" ,the words "or a Governmental authority or a Government Entity" shall be omitted;

(ii) against serial number 3A, in column (3), in the heading " Description of Services" ,the words "or a Governmental authority or a Government Entity" shall be omitted;

(iii) against serial number 16, in column (3), in the heading " Description of Services" , after item (c), the following shall be inserted, namely, -

"Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017).";

(iv) against serial number 18, in column (3), in the heading " Description of Services" after item (e), the following shall be inserted, namely, -

"Provided that nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)."

2. This notification shall come into force with effect from 1st day of January, 2022.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: -The principal notification No. 9/2017 - Integrated Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 684 (E), dated the 28th June, 2017 and last amended by notification No. 07/2021 – Integrated Tax (Rate), dated the 30th September, 2021 vide number G.S.R. 690(E.), dated the 30th September 2021.

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No.17/2021-Integrated Tax (Rate)

New Delhi, 18th November, 2021.

G.S.R.....(E).- In exercise of the powers conferred by sub-section (5) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments further to amend the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.14/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 689(E) dated the 28th June, 2017, namely:-

1. In the notification,-

(i) in clause (i), for the words "and motor cycle;", the words ", motor cycle, omnibus or any other motor vehicle;" shall be substituted;

(ii) after clause (iii), the following clause shall be inserted, namely:-

"(iv) supply of "restaurant service" other than the services supplied by restaurants, eating joints etc. located at specified premises."

2. In the said notification, in Explanation, -

(i) in item (b), for the words, brackets, numbers and figures "and "motor cycle" shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).", the words, brackets, numbers and figures ,", motor cycle, motor vehicle and omnibus shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988)." shall be substituted;

(ii) after item (b), the following shall be inserted namely, -

"(c) specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent."

2. This notification shall come into force with effect from the 1st day of January, 2022.

[F. No. 354/207/2021-TRU]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note:-The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 14/2017 – Integrated Tax (Rate), dated the 28th June, 2017, *vide* number G.S.R. 689(E), dated the 28th June, 2017

and last amended by notification No. 23/2017 – Integrated Tax (Rate), dated the 22nd August, 2017 *vide* number G.S.R. 1052(E), dated the 22nd August, 2017.

(IV) CGST CIRCULARS

Circular No. 165/21/2021-GST

CBEC-20/16/38/2020 -GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 17th November, 2021

To

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

Madam/Sir,

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

Various references have been received from trade and industry seeking further clarification on applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices for compliance of notification 14/2020-Central Tax, dated 21st March, 2020 as amended. It has been represented that in some cases where, though the service recipient is located outside India and place of supply of the service is in India as per IGST Act 2017, the payment is received by the service provider located in India **not** in foreign exchange, but through other modes approved by RBI. In such cases, the supplier will not be fulfilling the condition specified in S. No. 4 of the Circular No. 156/12/2021 dated 21st June 2021, and accordingly, will be required to have dynamic QR code on the invoice. It has been also represented that relaxation from dynamic QR code on the invoices in such cases should be available if the payment is received through any RBI approved mode of payment, and not necessarily in foreign exchange.

2. The issues have been examined and in order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, 2017, hereby clarifies the issues hereafter.

3. It is observed that from the present wording of S. No. 4 of Circular No. 156/12/2021 dated 21st June 2021, doubt arises whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but **not** in foreign exchange. It is mentioned that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

4. Accordingly, to clarify the matter further, the Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 is substituted as below:

4.	" In cases, where receiver of services is located outside India, and payment is being received by the supplier of services ,through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."

5. Circular No. 156/12/2021-GST, dated 21.06.2021 stands modified to this extent.

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

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

(Sanjay Mangal)
Principal Commissioner

Circular No. 166/22/2021-GST

F.No. CBIC-20021/4/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the 17th Nov, 2021

To,

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

Madam/Sir,

Subject: Clarification on certain refund related issues- reg.

Various representations have been received from taxpayers and other stakeholders seeking clarification in respect of certain issues relating to refund. The issues have been examined. In order to ensure uniformity in the implementation of the provisions of the law across 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 each of these issues as under:

S. No.	Issue	Clarification
1.	Whether the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?	No, the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed,would not be applicable in cases of refund of excess balance in electronic cash ledger.
2.	Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in	No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as

	electronic cash ledger?	unjust enrichment clause is not applicable in such cases.
3.	Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balancein cash ledger?	The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debitin electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.
4.	Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?	Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: *"(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods,* ***the date on which the return relating to such deemed exports is furnished****;"* On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports,

		irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

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

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

(Sanjay Mangal)
Principal Commissioner

(V) ADVANCE RULINGS

1. GST payable on services provided by Airtel to GHMC

Case Name : **In re Bharti Airtel Limited (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 20/2021
Date of Judgement/Order : 01/11/2021

1. Whether telecom services provided by Airtel to Greater Hyderabad Municipal Corporation (GHMC) are Nil rated under GST as per the S. No. 3 of **Notification No. 12/2017 dated: 28.06.2017** by considering the service as a pure service as they are in relation to functions entrusted under article 243W?

No. The service to GHMC is not exempt.

2. Invoices for telecommunication services are to be issued with (or) without GST?

Yes, invoices shall be issued with GST.

2. IGST applies on Supply of goods outside India from Outside India between 01.07.2017 to 31.01.2019

Case Name : **In re SPX Flow Technology India Pvt. Ltd (GST AAAR Gujarat)**
Appeal Number : Advance Ruling (Appeal) No. (GUJ/GAAAR/APPEAL/2021/34
Date of Judgement/Order : 02/11/2021

In view of the foregoing, the **Advance Ruling No. GUJ/GAAR/R/102/2020 dated 14.10.2020** is confirmed to the extent it has been appeal against, by holding that the Integrated Goods and Services Tax was payable by the appellant M/s. SPX Flow Technology (India) Pvt. Ltd. from 01.07.2017 to 31.01.2019 on supply of goods directly from the vendor's premises located outside India in the non – taxable territory to the customer's premises located at another place outside India in the non-taxable territory, without such goods entering into India

3. Papad (Fried) of different shapes & sizes classifiable under CTH No. 19059040

Case Name : **In re Alisha Gruh Udyog (GST AAAR Gujarat)**
Appeal Number : Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2021/30
Date of Judgement/Order : 02/11/2021

The product 'fried – different shapes and sizes Papad' involved in the present case merit classification under Custom Tariff heading (CTH) No. 19059040 of the Customs Tariff Act, 1975 and chargeable to 18% rate of Goods and Services Tax as per Sl. No. 16 of Schedule-III of **Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017** and **Notification No. 1/2017-IGST (Rate) dated 28.06.2017.**

4. Stovec Industries Ltd. is not an 'intermediary' under IGST Act, 2017: AAAR

Case Name : **In re Stovec Industries Ltd. (GST AAAR Gujarat)**
Appeal Number : Advance Ruling Appeal No. GUJ/GAAAR/APPEAL/2021/32
Date of Judgement/Order : 02/11/2021

In view thereof, we confirm the **Advance Ruling No. GUJ/GAAR/R/70/2020 dated 17.09.2020** of the Gujarat Authority for Advance Ruling in respect of Ruling No. 1 and 4 and reject the appeal filed by the appellant M/s. Stovec Industries Ltd. to that extent as discussed above in respect of said Ruling. We modify the **Advance Ruling No. GUJ/GAAR/R/70/2020 dated 17.09.2020** of the Gujarat Authority for Advance Ruling in respect of Ruling No. 2 and 3. We do not agree with the view of the GAAR ruling in respect of Question No.2 and rule that the recipient of service is located outside India i.e. SPA in terms of consideration paid to the appellant and not Indian Customer. Further in respect to Ruling No. 3, in view of the clarification given by the board (CBIC) vide **Circular No. 159/15/2021-GST dated 20.09.2021**, it is ruled that the appellant is not an 'intermediary' in terms of provisions of Section 2(13) of IGST Act, 2017

5. GST on narrow woven fabric of Polypropylene yarn with selvedges on both edges

Case Name : **In re M/s. Rajivkumar Giriraj Bansal (Proprietor of M/s. Gujarat Plast Industries) (GST AAAR Gujarat)**
Appeal Number : Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2021/33
Date of Judgement/Order : 02/11/2021

The product narrow woven fabric of Polypropylene yarn of width not exceeding 30 cms provided with selvedges on both edges manufactured by the appellant merit classification under Tariff heading No. 58063990 of the Customs Tariff Act, 1975, attracting rate of GST @5% (2.5% CGST + 2.5% SGST) or 5% IGST as per Sl. No. 219AA of Schedule-I of **Notification No. 1/2017-CT (Rate) dated 28.06.2017** (as amended) and **Notification No. 1/2017-IGST (Rate) dated 28.06.2017**.

6. TDS under GST applicable if services not exempt from GST

Case Name : **In re Tukaram Pundalik Borade (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-94/2019-20/B-84
Date of Judgement/Order : 02/11/2021

The applicant has submitted that the Samaj kalyan Vibhag of the Government of Maharashtra has taken the immovable property on rent from the applicant to house the girls from the backward class communities which can be considered as a welfare measure undertaken by the Government for the under-privileged section of the society. Other than making this statement, the applicant has not submitted any

evidence or submissions to state as to how his activities are covered under Article 243G/243W of the Constitution. There are no submissions made to show that the impugned services are supplied by the applicant by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Given the aforesaid, we find that even though the applicant as per his submission is supplying Pure Services, in light of insufficient material on record, it is not possible for us to find whether the said services are supplied by the applicant by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Hence, in view of the above, the renting of immovable property services by the applicant is not liable for exemption under the provisions of Entry No. (3) Of **Notification No. 12/2017-CT(R) dated 28.06.2017**.

The second question raised by the applicant is whether TDS provisions will be applicable in case where the supply of services are exempt.

We have already held above that the impugned services supplied by the applicant are liable to tax and therefore not exempt. Thus the TDS provisions under the relevant section 51 of the GST Act are applicable in the subject case.

7. GST advance rulings are applicable within the particular state only

Case Name : **In re Kamdhenu Agrochem Industries LLP (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-112/2019-20/B-87
Date of Judgement/Order : 02/11/2021

Question 1:- Whether the Applicant is required to obtain the registration in importing States other than Maharashtra, if goods are imported, sold and delivered directly from CFS (Container Freight Station) / DPD (Direct Port Delivery) which is under the Customs Boundaries to customers from those States?

Answer:- In the present case, as per this question, since the applicant will be selling the goods before clearing the same for home consumption from the port of import, the place of supply shall be the place from where the applicant makes a taxable supply of goods which, in this case will be the Maharashtra Office. Hence, the applicant can supply the goods on the basis of invoices issued by the Maharashtra Office and therefore they need not take separate registration in importing States other than Maharashtra.

Question 2:- Whether the Applicant is required to obtain registration in State where the applicant is proposing to open a warehouse for sale of imported goods from such warehouse?

Answer:- The authority for advance ruling is created under SGST/UTGST Act and thus rulings are applicable within the particular state only.

As the situs of transaction in question is not within the state of Maharashtra, then as per provisions of section 96 of the **Central Goods and service Tax Act 2017** (and similar provision under the MGST Act), the Maharashtra Advance Ruling Authority cannot acquire the jurisdiction over the questions raised, hence no ruling can be given on this question.

Question 3:- Whether issuing invoices under Maharashtra GSTIN is permissible in law for supply of imported goods from the proposed warehouse located in the State where the Applicant is not registered under GST?

Answer:- Not answered in view of the discussions made above.

8. Society claiming INR 7500 exemption cannot avail ITC

Case Name : **In re Vishal Cooperative Housing Society Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-75/2019-20/B-83
Date of Judgement/Order : 02/11/2021

According to **circular number 109/28/2019-GST dated 22 July 2019** RWAs are entitled to take ITC on GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary and hardware fittings etc.) and input services such as repair and maintenance services. The society claims exemption of INR 7,500 available to residential unit and hence, it does not claim ITC on various services availed such as professional fees, bank charges, insurance premium, stationery items purchased, repair and maintenance, security charges, Cable Services etc. Please provide your opinion whether the society can claim ITC on these services either fully or proportionately despite of availing exemption available to residential units.

Answer:- Society can claim ITC on the input services, proportionately, as mentioned in Explanation of Section 17(2) of the CGST **Act, 2017.**

9. GST payable on renting of property to Govt for under-privileged girls

Case Name : **In re Meerabai Tukaram Borade (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No .GST-ARA- 96/2019-20/B-86
Date of Judgement/Order : 02/11/2021

AAR, Maharashtra held that, services provided by M/s Meerabai Tukaram Borade **(Applicant)** to Samaj Kalyan Department (**SKD**), Government of Maharashtra (**GOM**), for residential accommodation of underprivileged girls is not exempt as per the provisions of **Notification No 12/2017-Central Tax (Rate) dated 28th June 2017 (Service Exemption Notification**):

Sl No.	*Chapter*	*Description of Services*	*Rate*	*Condition*
3	*Chapter 99*	*Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.*	*Ni*	*Nil*

The Applicant submitted that the supply is undertaken by her to SKD is exempt supply as per the above mentioned provision because it is supply of a pure services made to the department of GOM in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or Municipality under Article 243W of the Constitution.

The Hon'ble Maharashtra Authority for Advance Ruling **("MAAR")** held that though the Applicant is supplying pure services but has failed to satisfy that how her activities of providing residential accommodation to underprivileged girls is covered under Article 243G/243W of the Constitution.

Further held, that it is not possible to find whether the said services are supplied by the Applicant by way of an activity in relation to any function entrusted to a Panchayat under Article 243G/243W of the Constitution.

Held that, renting of immovable property services by the Applicant to GOM for under-privileged girl is not liable for exemption as per Service Exemption Notification.

Further, held that as the supply of service by the Applicant is not exempt supply, thus the **TDS provision as per Section 51 of Central Goods and Services Tax Act, 2017 will also be applicable**.

10. GST on services by Govt for residential accommodation of underprivileged girls

Case Name : **In re Shital Tukaram Borade (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-95/2019-20/B-85
Date of Judgement/Order : 02/11/2021

Question 1:- In the instant case, whether the services provided by us to Samaj Kalyan Department, State Government of Maharashtra (Social Welfare Department) for residential accommodation of underprivileged girls is exempt from GST?

Answer: Answered in the negative.

Question 2:- Whether TDS provisions will be applicable in case where the supply of services is exempt? We also would like to draw attention to the fact that 97 (b) of **CGST Act, 2017** covers the question on which advance ruling can be sought i.e. *"(b) applicability of a notification issued under the provisions of this Act".* Further, the issue has been addressed in **Dolphin Techno Waste Management Pvt. Ltd.** [2020 (35) G.S.T.L. 413 (A.A.R. – GST – W.B.)], **Mahalakshmi Mahila Sangha** [2020 (37) G.S.T.L. 385 (A.A.R. – GST – Kar.)] etc.

Answer:- TDS provisions will be applicable in the subject case..

Question 3:- As the Applicant is not registered under GST and provide services to Social Welfare Department (Samaj Kalyan Department), a Department of State Government, then whether TDS notification issued under section 51 would be applicable for deduction of TDS?

Answer:- Answered in the affirmative.

Question 4:- In case TDS is deducted, whether we would be entitled for refund of the same?

Answer:-Not answered in view of the discussions made above.

11. ITC not allowed if concessional rate of 5% GST is opted

Case Name : **In re Sri Krishna Logistics (GST AAR Telangana)**
Appeal Number : TSAAR Order No.22/2021
Date of Judgement/Order : 03/11/2021

1 (A) Whether the rate of GST of 5% (2.5% each towards CGST & SGST) as per Sl.No.8(ii)(b) of Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017 with the condition that input tax credit is not allowed on goods and services.

ITC is not allowed to be claimed if concessional rate of 5% GST is opted to be paid on service supplied under Sl.No.8(ii)(b) of **Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017**

1(B) Whether input tax credit on inward supply of services received from the suppliers who are in the same line of business as this condition is not mentioned against the said serial no.

Input tax credit is not allowed on any goods or services received by the applicant if tax is paid at the rate of 5% GST.

2 (A) Whether the rate of GST 5% (2.5% each towards CGST & SGST) as per Sl.No.8(vi) of Notification No.11/2017-Central Tax (Rates), dt: 28-06-2017 with the condition that input ax credit is not allowed on goods and services used in our outward supply of services other than that of similar inward supply of services received from another service provider.

This entry is not applicable to the business of applicant.

2 (B) Whether option of 12% (6% each towards CGST & SGST) with no conditions attributed to it is applicable.

This is not applicable to the business of the applicant.

12. GST exempt on printing of pre-examination material for educational boards/Universities

Case Name : **In re Hitech Print Systems Limited (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 24/2021
Date of Judgement/Order : 05/11/2021

1. Exam related printing activity rendered by the Appellant:

A. Whether printing of pre-examination material items like Question Papers, OMR Sheets [Optical Mark Reading], Answer Booklets with/without OMR, Practical Answer Booklets, Hall Tickets and other examination material specific to various educational boards/Universities amounts to provision of service and the same is exempt from GST levy?

These services are exempt as provided under Entry No.66 of **Notification No.12/2017** if supplied to educational institutions as defined at 2(y) of the said Notification.

B. Whether printing of post-examination material like Rank Cards, Marks Cards, Grade Sheets and Certificates specific to various educational boards/ Universities amounts to provision of service and the same is exempt from GST levy?

Same as above

C. Whether the activity of evaluation of OMRS and answer sheets, i.e., scanning and processing of results of examination falls under the category of service and is exempt from GST levy?

Same as above.

2. What is the classification and applicable GST rate for the supply of cheque books printed in the name of specific Bank name and customer name as per the specification given by the Banks?

Where the banker supplies the content and the applicant uses their own physical input, i.e., paper, then the case is covered under Heading 9989 (ii) of **Notification No.11/2017-Central Tax (Rate), dated: 28-06-2017** as amended and is taxable at 9% CGST & SGST Act each; and where the applicant uses physical input, i.e., paper supplied by their client then the same will fall under Heading 9988 (ii)(a) and is taxable at 6% under CGST & SGST each.

13. Design, supply, installing, testing & commissioning of train collision avoidance system in locomotives falls under HSN '8530'

Case Name : **In re Medha Servo Drives Private Limited (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 23/2021
Date of Judgement/Order : 05/11/2021

The applicant Medha Servo Drives are manufacturers of electronics equipments for locomotives and coaches for Indian Railways and Metro Railways. They have submitted that they have entered into contract with south central railway for design, supply, installing, testing & commissioning of train collision avoidance system in locomotives. That as per the agreement they have to supply multiple items and provide services including annual maintenance services with the service code 9954.

The applicant is desirous of ascertaining whether their supplies made for the above purchase order amounts to composite supply and the rate of tax on the same. Hence this application.

As seen from the letter of acceptance (LOA) issued by south central railway dated: 13.11.2019 the contract is for design, supply, installation, testing and commissioning of onboard TCAS equipment in locomotives and track side. The LOA also contains schedule of quantities mentioning various items to be utilized quantity and value wise in it. There is also a payment schedule for the contract. There is a specific clause 6 regarding GST which mentions that the contractee i.e., south central railway shall reimburse the GST if a higher rate is determined even after completion of the contract.

The Ministry of Railways, Government of India have published a handbook on Train Collision Avoidance System (TCAS) in Apr'2021 wherein the composition and working of the TCAS system has been given in detail. It is expressively stated that this system has been designed and implemented to prevent 'Signal Passing at Danger (SPAD) cases, unsafe situations arising due to over speed and train collisions in station as well as block sections'. It is mentioned in the introduction to overview that this includes automatic break application and display of information like speed, location, distance to signal ahead, signal aspects etc., in the loco pilots cabin and generation of auto & manual SOS messages from LOCO in case of emergency situation.

In the system overview of this handbook, it is seen that the entire system is based on signaling equipment and RFID tags. The principal goods in the system is electrical signaling equipment enumerated as HSN 8530 i.e., 'Electrical signaling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields'.

As seen from the description and illustration, supply of this system is a naturally bundled supply of various goods working in unison to achieve a single purpose of railway safety through signaling etc., Therefore the supply of this system to south central railway under a contract has all the attributes to make it a composite supply.

Therefore in view of the above discussions the supply made by the applicant against the letter of acceptance (LOA) of the South Central Railway is a composite supply and the rate of tax applicable is the rate at which the principal supply has to be taxed i.e., Electrical signalling equipment with HSN code '8530'

This commodity was made taxable at the rate of 9% under CGST & SGST respectively vide **Notification No. 41/2017 dated: 14.11.2017**. Therefore the supply of Train Collision Avoidance System (TCAS) is taxable at the rate of 9% under CGST & SGST respectively.

14. AAR rejects application as proceedings on similar issue was pending before DGGI

Case Name : **In Re M/s. Megha Engineering & Infrastructures Limited (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 19/2021
Date of Judgement/Order : 05/11/2021

In the present case as the DGGI, Hyderabad has conducted search of the premises of the applicant under Chapter-XIV of the CGST Act, 2017. It was addressed by the authority to ascertain whether any proceeding is pending before them regarding the questions raised by the applicant.

As seen from the information provided by the DGGI the investigation proceedings are still pending under Chapter XIV of the CGST Act, 2017 with respect to the questions raised by the applicant. When seen in light of the amendment to Section 83(1), the pending investigation after inspection or search have to be interpreted as pending proceedings in light of rules of interpretation and law declared by the Hon'ble Supreme Court of India discussed above.

Thus as the proceedings are pending under Chapter-XIV of the CGST Act, 2017 regarding the question raised by the applicant, the application filed by M/s. Megha Engineering & Infrastructures Limited stands rejected.

15. Separate registration not required for supply of works contract service in Karnataka

Case Name : **In re GEW (India) Pvt. Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 63/2021
Date of Judgement/Order : 08/11/2021

Separate registration not required for supply of works contract service in Karnataka; IGST to be charged on invoice raised from registered office in Noida

Karnataka Authority for Advance Ruling **(KAAR)** held that no separate registration is required for supply of works contract services in Karnataka by M/s L&T, Karnataka by the assessee registered at Noida, Uttar Pradesh as invoice can be raised by the assessee charging IGST from its registered office in Noida, Uttar Pradesh.

M/s Gew India Pvt. Ltd. **("the Applicant")** has sought an advance ruling on, whether the Applicant registered at Noida, Uttar Pradesh is required to take registration in the

state of Karnataka for execution of works contract issued by M/s L&T, Karnataka at Karnataka.

The KAAR observed that the Applicant is neither having and nor intending to have any establishment in Karnataka, therefore the **location of the supplier in the present case would be the place of the business of the Applicant which is Noida, UP.**

Further observed that, as per Section 12(3) of the Integrated Goods and Services Act, 2017 **("IGST Act")**, service provided by the Applicant in relation to immovable property by way of grant of right to use immovable property or for carrying out or co-ordination of construction work or any ancillary services, the **place of supply of services shall be location of immovable property i.e. Karnataka.**

Held that, as the location of the supplier, Noida, Uttar Pradesh and place of supply of service, Karnataka are at two different states so as per Section 7(3) of the IGST Act the supply of service will be considered as **inter-state supply and accordingly IGST will be charged.**

Held that, **the Applicant is not required to take separate registration in Karnataka** for the supply of services and can raise the invoice by charging IGST from their registered office at Noida, Uttar Pradesh, with the place of supply as Karnataka.

Further held that, the Applicant are not entitled to take Input Service Distributor **("ISD")** registration for the site at which they are delivering service as they are not having nor intending to have any establishment at the site i.e., Karnataka.

16. GST not applicable on payment of notice pay and allowed ITC on canteen services

Case Name : **M/s Bharat Oman Refineries Limited (GST AAAR Madhya Pradesh)**
Appeal Number : Advance Ruling No. MP/AAAR/07/2021
Date of Judgement/Order : 08/11/2021

The AAAR, Madhya Pradesh in the matter of ***M/S. Bharat Oman Refineries Limited [Advance Ruling No. MP/AAAR/07/2021 dated November 8, 2021]*** reversed the ruling of AAR which held that GST is applicable on recovery of:

- Notice pay from an employee by employer in lieu of notice period
- Telephone charges
- Group Medical Insurance Policy (**"the Policy"**) recovered from employees and providing
- Canteen facility to employees free of cost

Held that, the AAR had erred in concluding that such activity was leviable to GST. Further held that Input Tax Credit (**"ITC"**) shall be available on obligatory canteen services provided by the employer to their employees.

Facts:

This appeal has been filed by M/s Bharat Oman Refineries Limited (**"the Appellant"** or **"the Employer"**) against the ruling passed by the AAR, Madhya Pradesh in ***M/S. Bharat Oman Refineries Limited [Advance Ruling Order No. 02/2021 dated June 7, 2021]***, wherein, it was held that, GST is applicable on payment of notice pay by an employee to employer in lieu of notice period and telephone charges, premium of the Policy recovered from employees and free of cost canteen facility provided to employees. Further AAR disallowed the ITC with respect to canteen services provided by the employer to their employees.

Issue:

Whether the Appellant is liable to pay GST on amount recovered in lieu of notice pay by an employee, the premium of the Policy at actuals from non-dependent parents of employees, telephone charges, and nominal charges for availing and canteen facility or free of cost canteen facility to the employees, and whether the ITC of tax paid or deemed to have been paid is admissible on such facilities provided?

Held:

The AAAR, Madhya Pradesh in ***Advance Ruling No. MP/AAAR/07/2021 dated November 8, 2021*** held as under:

- Noted that, para 5(e) of the Schedule II of the Central Goods and Services Tax Act, 2017 (**"CGST Act"**) is similar to the Section 66E(e) of the Finance Act, 1994 (**"the Finance Act"**) applicable during Service Tax regime. In the GST era also, services provided by an employee to the employer is treated neither as supply of goods nor supply of services under Schedule III of the CGST Act.
- Relied on the judgment of the Hon'ble Madras High Court in ***GE T & D India Limited v. Deputy Commissioner of Central Excise [W.P. Nos. 35728 to 35734 of 2016]*** wherein, it was held that, no service tax is payable on notice pay recovery made by the Employer.
- Stated that, the services by an employee to the Employer in the course of or in relation to his employment have been placed out of the purview of GST. Further, the compensation which accrues to the Employer is in relation to the services provided by the employee and is related to the services not provided by him to the Employer during the course of employment i.e. the Employer is being compensated for the employee's sudden exit.
- Observed that, the Appellant is collecting amounts only in respect of Mediclaim cover in lieu of the Policy provided to the employee's non-dependent parents and retired employees who opt for such cover. Evidently, the Appellant is not in the business of providing insurance coverage and providing such insurance cover is not a mandatory requirement under any law for the time being in force and therefore, non-providing insurance coverage to employees non-dependent parents and retired employees would not affect Appellants business by any means. Therefore, activity of recovery of cost of insurance premium at actuals cannot be treated as an activity done in the course of business or for the furtherance of business.
- Reversed the ruling passed by the AAR, Madhya Pradesh and held that:
  - Merely because the Employer is being compensated does not mean that any services have been provided by him or that he has 'tolerated' any act of the employee for premature exit.

- Facilitating medical insurance services in lieu of the Policy to non-dependent parents and retired employees upon recovery of premium amount on actuals and telephone connection to employees upon recovery of usage charges on actuals cannot be considered as 'supply of service' under CGST Act.
- GST is not applicable on the collection by the Appellant, of employees' portion of amount towards foodstuff supplied by the third party / Canteen Service Provider and the Appellant is providing the facility to employees, without making any profit and working as mediator and the Employer is mandated to run a canteen under the Factories Act, 1948 (**"the Factories Act"**). Further, canteen services provided to employees without charging any amount i.e. free of cost will also fall under Para 1 of Schedule III of CGST Act that shall be treated neither as a supply of goods nor a supply of services and therefore, not be subjected to GST.
- ITC on GST paid towards telephone services and Policy would not be available to the Appellant in terms of Section 17(1) of the CGST Act and Section 17 (5) of the CGST Act respectively. Further, ITC in respect of canteen facility provided by the Appellant would be available as per Section 17(5)(b), as obligatory for an Employer to provide the same to its employees under the Factories Act.

17. Services by 'Airbus Group India' are 'Intermediary service' & liable to GST

Case Name : **In re Airbus Group India Pvt. Ltd. (GST AAAR Karnataka)**
Appeal Number : Advance Ruling No. KAR/AAAR/Appeal-09/2021-22
Date of Judgement/Order : 09/11/2021

The Appellate Authority uphold the **order No. KAR ADRG 31/2021 dated 01/07/2021** passed by the Advance Ruling Authority and the appeal filed by the Appellants M/s. Airbus Group India Private Limited, stands dismissed all accounts.

One of the important requirements for supply of any service to be treated as export of service' is that the place of supply of service is outside India. The provisions for determination of place of supply of services where the location of the supplier or the location of the recipient of services is outside India are contained in Section 13 of the IGST Act, 2017. Section 13(8)(b) of the said Act stipulates that the place of supply in the case of intermediary services will be the location of the supplier of service. In this case, the activity of the Appellant who is the supplier of intermediary service i.e collection of information of parties in India, analysis of potential suppliers and skill development of existing suppliers, are all very much done in India, which is the location of the supplier of intermediary service. Therefore, by virtue of Section 13(8) (b) of the IGST Act, it automatically flows that the place of supply of the intermediary service provided by the Appellant to Airbus France, is in India. When the place of supply is in India, it does not satisfy one of the conditions for export of service, that the place of supply should be outside India. Therefore, we hold that the intermediary services provided by the Appellant to Airbus France, do not qualify as export of service.

18. GST on reimbursement received from MMRDA

Case Name : **In re Maha Mumbai Metro (M3) Operation Corporation Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-13/2021-22/B-93
Date of Judgement/Order : 10/11/2021

The present application has been filed under Section 97 of the **Central Goods and Services Tax Act, 2017** and the **Maharashtra Goods and Services Tax Act, 2017** [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s MAHA MUMBAI METRO (M3) OPERATION CORPORATION LIMITED, the applicant, seeking an advance ruling in respect of the following question.

(i) Whether GST is applicable on reimbursement of expenses such as salaries, rent, training, staff welfare expenses etc.?

(ii) If above answer is affirmative, at what rate GST should be charged?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

19. No GST on recovery of amount towards Top-up & parental insurance premium from employees

Case Name : **In re TATA Power Company Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-99/2019-20/B-92
Date of Judgement/Order : 10/11/2021

Whether the recovery of an amount towards Top-up and parental insurance premium from the employees, amounts to a supply of any service under section 7 of the Central Goods & services Tax Act, 2017?

We find that the activity undertaken by the applicant like providing of mediclaim policy for the employees and their parents (parents of the employees) through the insurance company neither satisfies conditions of section 7 to be held as "supply of service" (in the instant case, insurance service) nor is it covered under the term "business" of section 2(17) of CGST ACT 2017. Hence, we find that the applicant is not rendering any services of health insurance to their employees' parent and; hence, there is no supply of insurance services in the instant case of transaction between employer and employee.

5.14 Applicant has referred the ARA order in case of M/s POSCO India Pune Processing Center private Limited (POSCO IPPC) vide Order NO.GST-ARA-36/2018-19/B-110 Mumbai dated 07-09-2018 wherein facts are identical and similar to that of the facts of applicant and ARA had ruled that, "they are not rendering any service of

health insurance to their employees and hence, there is no supply of services in the instant case". Considering the similar nature of facts and earlier ruling, as referred above, the same ruling is confirmed in this matter also.

20. GST registration not required by Trust if engaged in charitable activities

Case Name : **In re Jayshankar Gramin Va Adivasi Vikas Sanstha (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-97/2019-20/B-91
Date of Judgement/Order : 10/11/2021

Question 1:- Whether applicant is required to obtain registration under the Maharashtra Goods and Service Tax Act, 2017?

From a perusal of the submissions made by the applicant it is seen that the main thrust of its argument is that the activity of supply by the applicant trust are fully exempted from levy of tax under the provisions of Sr.No. 1 of **Notification No. 12/2017 C.T. (R) dated 28.06.2017** i.e. Services supplied by an entity registered under Section 12AA of the Income-Tax Act, 1961 (43 of 1961) by way of charitable activities. Since we have found that the activities undertaken by the 'applicant do not conform strictly to the definition of a 'charitable activity, the applicant shall obtain registration under GST Act.'

Question 2:- If answer to above question is affirmative, whether the applicant is liable to pay GST on the amounts received in the form of Donation / Grants from various entities including Central Government and State Government.

Answer:- Answered in the affirmative in cases of grants received. In case of donations, if the gift or donation is made to a charitable organization; the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, then GST is not leviable. In all other cases GST is leviable.

Question 3:- If answer to above question 2. is affirmative, what will be the rate at which the GST would be charged.

Answer- GST would be charged @18% (CGST 9% and SGST/UTGST 9%/IGST 18%).

21. Medical Education imparted by Trust is exempt service under GST

Case Name : **In re Kasturba Health Society (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-120/2018-19/B-90
Date of Judgement/Order : 10/11/2021

Question (i): Whether the applicant, a Charitable Society having the main object and factually engaged in imparting Medical Education, satisfying all the criteria of 'Educational Institution', can be said to be engaged in the business so as to cast an

obligation upon it to comply with the provisions of **Central Goods and Service Tax Act, 2017** and Maharashtra Goods and Service Tax Act, 2017 in totality.

Answer:- Answered in the affirmative. However, in view of the submissions made by the applicant and discussions made above, we find that applicant is engaged in imparting Medical Education and it is an exempt service.

Question (ii):- Whether the applicant, a Charitable Society having the main object and factually engaged in imparting medical education, satisfying all the criteria of "Educational Institution" is liable for registration under the provisions of section 22 of the Central Goods and Service Tax Act, 2017 and Maharashtra Goods and Service Tax Act, 2017 or it can remain outside the purview of registration in view of the provisions of section 23 of the said act as there is no Taxable supply.

Answer: The applicant is liable for registration as discussed above.

Q.No. (iii) (a) Whether the fees and other charges received from students and recoupment charges received from patients (who is an essential clinical material for education laboratory) would constitute as "outward supply" as defined in section 2 (83) of The Central Goods and Service Tax Act, 2017 and **Maharashtra Goods and Service Tax Act, 2017** and if yes then whether it will fall in classification entry at Sr. No 66 or the portion of nominal amount received from patients (who is an essential clinical material for education laboratory) at Sr. No. 74 in terms of **Notification 12/2017 Central Tax-dt. 28/6/2017**.

Answer: The said charges collected are exempt from tax as discussed hereinabove.

Q. No. (iii) (b):-Whether the cost of Medicines and Consumables recovered from OPD patients along with nominal charges collected for Diagnosing by the pathological investigations, other investigation such as CT-Scan, MRI, Colour Doppler, Angiography, Gastroscopy, Sonography during the course of diagnosis and treatment of disease would fall within the meaning of "composite supply" qualifying for exemption under the category of "educational and/or health care services."

Answer: The said charges collected are exempt from tax as discussed hereinabove.

Q. No. (iii) (c):-Whether the nominal charges received from patients (who is an essential clinical materials for education laboratory) towards an "Unparallel Health Insurance Scheme" to retain their flow at one end for the purpose of imparting medical education as a result to provide them the benefit of concessional rates for investigations and treatment at other end would fall within the meaning of "supply" eligible for exemption under the category of "educational and/or health care services."

Answer: It is taxable at 18% under the residuary entry, as discussed above.

Q.No. (iii)(d): Whether the nominal amount received for making space available for essential facilities needed by the students and staffs such as Banking, Parking, and Refreshment which are support activities for attainment of main activities and further amount received on account of disposal of wastage would fall within the meaning of "supply" qualifying for exemption under the category of "educational and/or health care services."

Answer: The receipt on account of rent is taxable at 18% as discussed above. It is further clarified that the food supplied to the in-patients as advised by the doctor/nutritionists, as well as supply to employees and staff of the applicant; from such canteen, is a part of composite supply of healthcare and is not taxable. But the other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable at 5%, as discussed above.

22. 18% GST Payable on pulp wood & Falls under HSN Code 4403

Case Name : **In re Gogineni Mohan Krishna (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 26/2021
Date of Judgement/Order : 22/11/2021

GST @5% is being paid on supply of pulp wood in terms of Chapter 4401. Whether payment of GST at the said rate of tax is correct?

HSN Code 4401 is dealing in wood chips, saw dust, wood waste and scrap. It proposed to tax this items as such or when they are agglomerated or made into bounded forms such as logs, briquettes or pellets. As seen from the entry the word 'logs…' is predicated with the phrase 'whether or not agglomerated in'. Thus only those logs agglomerated from wood chips or particles or saw dust or waste as scrap of wood will qualify to fall under this entry. This entry proposes not to tax logs as such but only such those logs which come into being upon agglomeration of wood chips, saw dust, wood waste, scrap etc. hence the debarked eucalyptus or subabul wood cut sizes do not fall under this entry.

The HSN Code 4403 covers "timber for sawing; poles for telephone, telegraph or electrical power transmission lines; unpointed and unsplit piles, pickets, stakes, poles and props; round pit-up-props; logs; whether or not quarter-split, for pulping; round logs for the manufacture of veneer sheets, etc; logs for manufacture of match sticks, wood ware, etc.".

This HSN code clearly covers poles, props and logs for pulping. The applicant is supplying logs for pulping therefore the commodity dealt by him HSN code 4403 which is enumerated at Sl.No.134 of Schedule-III and hence taxable at the rate of 9% under CGST & SGST respectively.

23. GST payable on services provided by Club to its Members against monthly contribution

Case Name : **In re Rotary Club Of Bombay Queen City (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-19/2020-21/B-96
Date of Judgement/Order : 22/11/2021

Whether the activity of the applicant i.e. collecting contributions and spending towards meeting and administrative expenditures only, is 'business' as envisaged u/s 2(17) of the CGST Act, 2017 and Whether contributions from the

members in the Administration Account, recovered for expending the same for the weekly and other meetings and other petty administrative expenses incurred including the expenses for the location and light refreshments, amounts to or results in a supply, within the meaning of supply?

In the instant case, the monthly contribution made by the members to the association is in return for receiving the services of the Applicant Club. The money collected by the Appellant from its members is used to procure services and goods from a third party and provide the benefits of such procured goods and services to the members of the association. Under GST, the term 'person' has been defined in Section 2(84) of the CGST Act, 2017, to include an 'individual' as well as an 'association of persons or a body of individuals, whether incorporated or not. Therefore, the individual members who are members of the Applicant Club are beneficiaries and the contribution made by them is to be considered as consideration for the services received.

From the above facts, the definitions and the legal provisions, it is clear that the member and the club are two distinct persons and hence, any activities and transactions between them will be supply between separate/distinct persons. After the retrospective amendment as mentioned above, there remains no doubt that the activities involved in present case are nothing but 'supply', as defined under the Act. Thus, in view of the above the amount collected as membership subscription and admission fees from members is liable to GST as supply of services. The reliance placed by the applicant on order of Hon AAAR in the cases of in the cases of Rotary Club of Mumbai Queens Necklace and Rotary Club of Mumbai Nariman Point is not proper as said order was passed prior to the afore mentioned amendment to Section 7 of the CGST Act, 2017. The words the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration cover all types of activities/transactions of the present applicant. There is no list or limit or any restriction prescribed in this respect in this amendment. The fees/donation/subscription/ amount (by whatever name called), collected by the applicant, is nothing but the "consideration" for the such "supply" and is covered by the scone of the term "business". The club and the member are two distinct persons. The principle of mutuality has no application after this amendment. The applicant merely contended that the position does not change after the amendment but failed to explain the said proposition of law. The applicant has further failed to explain as to for what purpose or to remove which particular mischief or cover which particular aspect or transaction was the said amendment brought about. All the other case laws relied, also do not provide any guidance on the legal situation, particularly after the amendment.

Further, the applicant has also submitted that a Co-joint reading of the definitions of a "supplier" and a "recipient" as per the GST Act provides that, where a consideration is involved in a transaction, the recipient is the "person" who pays the consideration to the "supplier" and hence Two different persons have been envisaged in the law to tax a transaction as a supply made for a consideration.

The amendment to Section 7 (mentioned above) clearly treats the applicant and its member as two different persons where there is a supply of services from the applicant to its members and thus as per the applicant's own submission that two different

persons have been envisaged in the law to tax a transaction as a supply made for a consideration, we find that in the instant case there is a supply by the applicant to its members and consideration is received in the form of “fees”.

The applicant further submitted that they are also doing charitable activities. However applicant’s questions do not pertain to the so called charitable activities done by them and the same are not discussed.

24. GST on sale of developed land

Case Name : **In re Bhopal Smart City Development Corporation Ltd (GST AAR Madhya Pradesh)**
Appeal Number : Advance Ruling No. 16/2021
Date of Judgement/Order : 22/11/2021

Q1) whether GST is applicable on sale of developed plot of land for which consideration is received before the issuance of completion certificate (if any), under the following facts:-

a. The sale of plot is after carrying out the development activities oi providing amenities such as Drainage line, water line, electricity line, land levelling, and common facilities viz road and street light etc. which are to be provided by the applicant; and

b. remaining construction activities including civil foundation on the developed plot will be carried out by the buyer on their own account and cost.

Ans: Regarding applicability of GST on sale of developed land (the applicant has declared that no completion certificate is required for the project) for the reasons stated above, it is ruled that the sale of developed land, by the applicant as per the facts provided by him where the development work is limited to providing common amenities (common drainage, water line, electricity line, land levelling, road and street light) and no development work will be done by the applicant after the sale of the developed land and if no advance from the customer for undertaking development activities is taken then it does not constitute a supply within the meaning of Section 7 of the GST Laws and therefore GST is not applicable on such sale.

25. GST payable on renting of temporary residential rooms to devotees

Case Name : **In re Acharya Shree Mahashraman Chaturmas Vyvastha Samiti (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 27/2021
Date of Judgement/Order : 23/11/2021

Q1. Whether Applicant is liable to pay tax on renting of temporary residential rooms for consideration to the devotees and renting of space for shops and stalls for the purpose of religious programmers where the predominant object is not to do business but for advancement of religion?

Ans 1: Liable to tax only if the room rent per day is Rs.1,000/- or more as per Entry 13 of Notification 12/2017.

Q2. Whether Applicant is liable to pay tax on renting of temporary residential rooms as per the following categories, to the devotees to stay for the purpose of religious programs where charges per room is less than one thousand per day, if answer to the question 1 is yes?

Ans 2: Not liable as enumerated at Entry 13

Q3. Whether Applicant is liable to pay tax on renting of space for stalls, where the predominant object is not to do business but for advancement of religion if answer to the question 1 is yes?

Ans 3: Liable to tax only if the rent per month is Rs. 10,000/- or more.

26. Baby wipes classifiable under heading 3307, 18% GST Payable

Case Name : **In re Xtracare Products Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 64/2021
Date of Judgement/Order : 26/11/2021

Tariff heading 9619 covers articles having multiple layers designed to absorb and store fluid. Generally, these articles are shaped so as to fit snugly to human body. In the instant case, the impugned article- 'baby wipes' are neither designed to absorb and store fluids nor are shaped to fit human body and hence cannot be classified under tariff heading 9619.

Thus the product 'baby wipes" merits classification under tariff heading 3307 and attract 18% GST, in terms of **Circular No. 52/26/2018 GST dated 09.08.2018**

27. Advance ruling application liable for rejection if fees not paid

Case Name : **In re Smt. Maddi Sumalatha (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 71/2021
Date of Judgement/Order : 29/11/2021

Rate of GST applicable to **Areca Leaf Plates Machine** pressed, But the Applicant, vide their email dated 29.10.2021, has informed this authority that they wish wish to withdraw their application. Further the applicant has to discharge fee of Rs.5,000/- each in terms of Section 97(1) of the CGST Act 2017 as well as the KGST Act 2017 , whereas the applicant has discharged the fee of Rs. 5,000/- under KGST Act 2017 only and hence the instant application is liable for rejection under Section 98(2) of the CGST Act 2017. The application filed by the Applicant for advane ruling is hereby rejected for the reasons mentioned above.

28. Advance ruling application rejected for non-payment of fees under CGST Act

Case Name : **In re Johnson Lifts Pvt. Ltd (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 69/2021
Date of Judgement/Order : 29/11/2021

Whether Sl.No.3(v)(b) of **Notification 11/2017-CT(Rate)**-6% CGST is available, when- (a) Such building consists of more than one residential unit and falls under the definition of 'residential complex' But the Applicant, vide their letter dated 26.08.2021, informed this authority that they withdraw their application, filed for advance ruling. Further the applicant has to discharge fee of Rs.5,000/- each under CGST Act 2017 as well as the KGST Act 2017 as per Section 97(1), whereas the applicant has discharged the fee of Rs.5,000/- under the KGST Act 2017 only and hence the instant application is liable for rejection under Section 98(2) of the CGST Act 2017.

29. Advance ruling application rejected for non-payment of fees under CGST/KGST Act

Case Name : **In re Premier Solar Powertech Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 68/2021
Date of Judgement/Order : 29/11/2021

a. Whether supply of turnkey engineering, procurement and construction (EPC) contract for construction of solar power plant wherein both goods and services are supplied can be construed to be a composite supply in terms of Section 2(30) of CGST Act 2017?

b. Whether the supply of 'Solar Power Generating System' is taxable at 5% GST? But the applicant, vide their letter dated 18.08.2021, requested this authority to permit them to withdraw the application filed for advance ruling quoting the reason that they have got the clarity on manufacturing of solar power systems and the rate of tax applicable thereon from the **Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018**. Further the applicant has to discharge fee of Rs.5,000/- each under CGST Act 2017 as well as KGST Act 2017 as per Section 97(1), whereas the applicant has not discharged the fee of Rs.5,000/- each under any of the CGST/KGST Act 2017 and hence the instant application is liable for rejction under Section 98(2) of CGST Act 2017. The application filed by the Applicant for advane ruling is hereby rejected for the reasons mentioned above.

30. GST on Tamarind seeds- AAR rejects application for non-payment of fees

Case Name : **In re Sri. Imtiyaz Magboolsab Nandgaon, M/s. Nandgaon Traders (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 67/2021
Date of Judgement/Order : 29/11/2021

Whether Tamarind seeds are taxable or exempt under GST Act. But the applicant, vide their letter dated 16.08.2021, has informed this authority that they wish to withdraw their application. Further the applicant has to discharge fee of Rs.5,000/- each in terms of Section 97(1) of the CGST Act 2017 as well as KGST Act 2017, whereas the applicant has discharged the fee of Rs.5,000/- only under KGST Act 2017 and hence the instant application is liable for rejection under Section 98(2) of CGST Act 2017. The application filed by the Applicant for advane ruling is hereby rejected for the reasons mentioned above.

31. Value to be mentioned on E-Way Bill in case of Job Work- Application rejected

Case Name : **In re Metalex Steel Strips Pvt.Ltd (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 66/2021
Date of Judgement/Order : 29/11/2021

We do job work of slitting, cut to length and matt finishing of stainless steel sheets with HSN code 9988. Further above type of job work what value to be mentioned in e-way bill whether goods value or job work charges only. But the applicant, vide their letter dated 17.08.2021, requested this authority to permit them to withdraw the instant application filed for advance ruling, for the reason that, they have got the clarifications for the question from **Circular No.126/45/2019-GST dated 22.11.2019**, issued by CBIC. However, the issue on which the applicant has sought advance ruling is not in respect of any of the issues covered under Section 97(2) of the CGST/KGST Act 2017. Further the applicant has to discharge fee of Rs.5,000/- each in terms of Section 97(1) of the CGST Act 2017 as well as KGST Act 2017, whereas the applicant has discharged the fee of Rs.5,000/- under KGST Act 2017 only and hence the instant application is liable for rejection under Section 98(2) of CGST Act 2017. The application filed by the Applicant for advance ruling is hereby rejected for the reasons mentioned above.

32. GST on trailers to be used for agriculture purpose – AAR rejects application

Case Name : **In re NPS Industries (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 65/2021
Date of Judgement/Order : 29/11/2021

i. Rate of tax on trailers registered to be used for agriculture purpose.

ii. Rate of tax on trailers without tipping kit and to be registered for use for agricultural purposes. But the Applicant, vide their letter dated 16.08.2021, requested to permit them to withdraw the instant application, filed for advance ruling. Further the applicant has to discharge fee of Rs.5,000/- each in terms of Section 97(1) of the CGST Act 2017 as well as the KGST Act 2017, whereas the applicant has discharged the fee of Rs.4,975/- only under the KGST Act 2017 & only Rs.25/- under the **CGST Act**

2017 and hence the instant application is liable for rejection under Section 98(2) of the CGST Act 2017. The application filed by the Applicant for advane ruling is hereby rejected for the reasons mentioned above.

33. ITC of GST paid on Motor cars of seating capacity not exceeding 13

Case Name : **In re New Pandian Travels Private Limited (GST AAR Tamilnadu)**
Appeal Number : Order No. 43/AAR/2021
Date of Judgement/Order : 30/11/2021

1. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented to customers will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017?

GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) leased or rented with Operators to the Vendors is not available to the applicant as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(A) of Central Goods and Service Tax Act, 2017 for the reasons specified at Pam 8.2 below.

2. Whether the GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will be available to it as INPUT TAX CREDIT (ITC) in terms of Section 17(5)(a)(B) of Central Goods and Service Tax Act, 2017.

GST paid on the Motor cars of seating capacity not exceeding 13 (including Driver) registered as public vehicle with RTO to transport passengers, provided to their different customers on lease or rental or hire will NOT be available to as INPUT TAX CREDIT (ITC) for the reasons stated at Para 8.3 below.

3. Whether the supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as taxable supply and whether ITC is admissible on Motor Vehicles procured and used commonly for such supply to SEZ and other than SEZ supplies?

Supply of services by way of Renting or Leasing or Hiring Motor Vehicles to SEZ to transport the employees of the customers without payment of IGST under LUT is deemed as **taxable supply;** ITC is not admissible on Motor Vehicles procured as the same is restricted at S.17(5)(a)(A) of the Act.

34. Advance Ruling cannot be given on questions relating to TCS

Case Name : **In re Bookwater Tech Private Limited (GST AAR Tamilnadu)**
Appeal Number : Order No. 42/AAR/2021
Date of Judgement/Order : 30/11/2021

Questions Raised

1. Supply of raw water falls under exempt goods under GST. Does raw water that is supplied through tankers through the Bookwater platform come under exempted goods as well?

2. Does the supplier of water through tankers come under supply of raw water or under transport services?

3. Does Bookwater have to withhold any tax-GST TCS 1% from the suppliers before making payments for the supply of raw water through our platform?

4. Is the supplier making raw water sale is required to register under GST since they are transacting through an e commerce operator?

5. Does Sewage Evacuation come under 18% GST? If yes, most individual sewage tanker operators have turnover less than 20lakhs per annum. Since we are not billing the customer directly and are only billing on behalf of the supplier, will the exemption limit of Rs.20Lakhs per annum be applicable to suppliers individually?

6. Consequently, is GST Registration applicable for all suppliers through the Bookwater platform or only applicable for those suppliers who have a turnover over 20Lakhs?

7. Does Bookwater have to withhold any tax (GST TCS 1% applicability) from the suppliers before making payments since the supplies have been made through our digital platform and we also deduct our charges for our services rendered before making payments?

Held by AAR

In the case at hand, the applicant collects an 'amount' at the specified rate under Section 52 of the Act and the said amount is not a 'Tax' levied under Section 9 of the GST Act, the determination of the liability is covered under 97(2) (e). The applicant in their application has stated that they do not undertake supply of Raw water or the service of Sewage evacuation service. Thus it is clear that the. questions raised by the applicant, except for Q. No. 3 *&* 7, is not in relation to the supply of g00ds services being undertaken or proposed to be undertaken by him. In this connection, we would also like to refer to the ruling of the TNAAAR, in the case of M/s. Erode Infrastructure, wherein, the Appellate authority, while considering the admissibility of the application, has stated as under:

14. The provisions of S. 103 categorically states that the ruling binding only On the applicant. 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 jive to assess the supply according to his Own determination, in which case, the ruling 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 purpose of law low provision, is not only incorrect but also improper and bad in law…'.*

Thus the applicant, who is an e commerce operator, and not the 'supplier' of Raw water and Sewage Evacuation Services, the question raised on the classification of supply, applicability of Notification for such suppliers, is not the question on supplies being or proposed to be undertaken by him. Therefore, we do not have any hesitation, to hold that the questions raised (except Q. No. 3 &, 7), do not pertain to the supply of the applicant and are not admissible for ruling as per Section 95(a)/103 read with Section 97(2) of the Act.

In respect to Q. No.3 & 7, the applicant has sought ruling as to whether the applicant is to withhold TCS from the suppliers before making Payments to the 'Concerned suppliers'. Section 52 of the Act governs the collection of amount by e commerce operator in respect of supplies made through Such ¯e-Commerce. The ambit of Advance Ruling do not provide for answering the questions raised on provisions relating to 'Tax Collected at Source' provided under Section 52 of the Act. Further the amount collected as TCS is not in the nature of 'Tax' as stated above. Therefore, we hold that these questions are also not covered under the ambit of this authority as per Section 97(2) of the Act.

35. Applicant cannot seek Advance ruling for supply already made

Case Name : **In re WEG Industries India Private Limited (GST AAR Tamilnadu)**
Appeal Number : Order No. 41/AAR/2021
Date of Judgement/Order : 30/11/2021

1. Whether the relaxations provided vide the notification of 35/2020 – Central tax Dated April 3, 2020, for completion of various compliance actions would apply to the time limit provided for the export of goods under notification no. 41/2017 – Integrated tax (rate) Dated October 23, 2017.

2. Whether under the facts and circumstances of the present case, even where the goods were exported on 10 June 2020 with a delay of one day over and above the 90 days specified as under notification no. 41/2017 – Integrated tax (rate) Dated October 23, 2017, the benefit of concessional rate of 0.1% IGST would still be available in view of the extension of time limit granted by notification of 35/2020 – Central tax Dated April 3, 2020

Held by AAR

Applicant cannot seek the Advance ruling under GST for the supply already made or for Ongoing Supply

In the case at hand, from the facts before us, it is found that the question raised is in relation to the supply which had been made by the applicant and the proof of documents of such supply furnished before the concerned authorities for further action as required under **Notification No. 41/2017- I.T.(Rate) dated 23.10.2017**. The necessary documents have been furnished vide -their letter dated 31.05.2021 and the application seeking the ruling is made on 09.07.2021. Thus, it is seen that the issue raised before us pertains to the supply already made and is now pending before the concerned authorities, for verification of fulfillment of conditions stipulated in

the **Notification No. 41/2017-I.T.(Rate)**. Thus as per the. Proviso to Section 98(2) mentioned above, the question No. 2 raised by the applicant as to whether the benefit of the concessional rate of 0.1% IGST, would still be available to them is not admissible before this authority and we hold so.

Applicant cannot seek the Advance ruling under GST for the supply undertaken by the Merchant Exporter

Further, the Question No. 1 seeks the applicability of relaxation provided under **notification of 35/2020 – Central tax Dated April 3, 2020**, to the time-limit provided for the export of goods under **Notification No. 11/2017 -I.T(Rate)**. Advance Ruling is applicable to the applicant, his Jurisdictional Officer and the Concerned Officer as per Section 103 of the CGST/TNCST Act 2017. The questions admissible should pertain to the supply 'being undertaken' or 'proposed to be undertaken' by such applicant only. in the facts presented, it is noticed that supply has been undertaken by the Merchant Exporter and not by the applicant as stated in their submissions. Hence, the applicant cannot seek the ruling for the supply undertaken by the Merchant Exporter and therefore Q. No. 1, which seeks ruling on the applicability of relaxation in the time-limit for export is. not admissible and we hold so.

36. 12% GST payable on supply of Stator Coil for use in WOEG

Case Name : **In re Coral Coil India Private Limited (GST AAR Tamilnadu)**
Appeal Number : Order No. 40/AAR/2021
Date of Judgement/Order : 30/11/2021

Whether the supply of Stator Coil by the Applicant to M/s. Coral Manufacturing Works India Private Ltd., will be eligible for the levy of 2.5% CGST in terms of Sl. No. 234 in the notification 1-CTR dated 28 June 2017 and 2.5% SGST in terms of the corresponding SGST notification?

The supply of Stator Coil by the Applicant to M/s. Coral Manufacturing Works India private Limited for use in the *WOEG* will be eligible for the levy of 6% CGST in terms of Sl. No.201 A in the Schedule II in the **notification 1-CTR dated 28 June 2017** (as amended) and 6% SGST in terms of corresponding SGST notification with effect from 01.10.2021, subject to the self-assessment of the applicant that all such supplies are for the manufacture of the Generators for Renewable Energy, based on the Purchase Orders/Supply Contracts for *(each* of such supply.

(VI) COURT ORDERS/ JUDGEMENTS

1. HC Quashed order Cancelling GST Registration without opportunity of hearing

Case Name : **S.S. Traders Vs State of U.P And 3 Others (Allahabad High Court)**
Appeal Number : Writ Tax No. 651 of 2021
Date of Judgement/Order : 02/11/2021

Quashed cancellation of GST registration order as no opportunity of being heard was given

The Hon'ble Allahabad High Court **(Allahabad HC)** ***in the matter of M/S. S.S. Traders v. State of U P and 3 Others [WRIT TAX No. – 651 of 2021 dated November 02, 2021]***, quashed the cancellation of GST registration order as no opportunity of hearing was accorded. Further, said that the denial of opportunity of hearing to the assessee as is mandated in the first proviso to Section 29(2) of the **Central Goods and Services Tax Act, 2017 (CGST Act)** vitiates the proceedings as well as the orders cancelling the registration.

M/S. S.S. Traders **("the Petitioner")** filed the current petition being aggrieved of the order dated July 17, 2021 passed by Additional Commissioner, Grade-2 (Appeal), Commercial Tax, Muzaffarnagar **("the Respondent")** in which the order dated May 28, 2021 for cancellation of GST registration of the Petitioner was upheld.

Factually, the Petitioner was engaged in the business of purchase and sale of Iron and Steel Goods and it was registered under the provisions of the CGST Act. By means of show-cause notice the Petitioner was directed to show cause why its registration should not be cancelled. The Petitioner submitted its reply but by means of order the registration of the Petitioner was cancelled for the reason that no one was found at the place of the business and neither any business activity nor any bill book were found at the time of the survey and the landlord of the premises had informed the survey team that no one came there to start a business and no business activity takes place there.

The cancellation of GST registration order further observed that after scrutinizing the return it was found that the Petitioner had purchased goods worth Rs. 29,50,000/- from non-existing dealers and availed bogus input tax credit with mala fide intention. It was also found that after granting registration the Petitioner did not furnish bank account details in due time in terms of Rule 10A of **Central Goods and Services Tax Act Rules, 2017** (**"the CGST Rules"**).

Whereas the Petitioner contended that the show cause notice reveals no details as to whether any survey had actually taken place or not and that what was the date and time fixed for a personal hearing. It is contended that the show cause notice, which is imperative compliance of the principles of natural justice was mandatorily required to furnish basic details regarding the date and time of the personal hearing.

The Hon'ble Allahabad High Court held that the denial of opportunity of hearing to the Petitioner as is mandated in the first proviso to Section 29(2) of the CGST Act vitiates the proceedings as well as the orders cancelling the registration of the Petitioner. Resultantly, the order of cancellation of registration dated May 28, 2021 as well as order passed in the appeal dated July 17, 2021 are quashed. And the petition is allowed.

2. KVAT Act – Amnesty Application does not warrant automatic Dismissal of Appeal

Case Name : **Sakthi Agencies Vs The Assistant Commissioner (Kerala High Court)**
Appeal Number : WP(C) No. 13611 of 2021
Date of Judgement/Order : 05/11/2021

KVAT Act – Amnesty Application does not warrant automatic Dismissal of Appeal – Kerala High Court Single Bench – on 5th November 2021

Kochi: In a first of its kind judgement in Kerala, a Single Bench of the High Court of Kerala presided over by Justice Bechu Kurian Thomas held that applying under an amnesty scheme will not render the appeal filed by an assessee to be deemed to be dismissed.

The judgement was passed on the 5th of November 2021, in Sakthi Agencies v. Assistant Commissioner & Anr. [W.P.(C) No. 13611 of 2021]. The petitioner was represented by Advocate K.S.Hariharan & Associates.

The petitioner had filed Application under Kerala VAT Amnesty Scheme while the appeal filed by them was pending for disposal. The Appellate Authority, upon finding from KVATIS that the petitioner had opted for the Amnesty Scheme, unilaterally dismissed the appeal holding the appeal as "deemed withdrawn", citing the reason that one of the pre-conditions to avail Amnesty was withdrawal of appeals. Meanwhile the Amnesty Scheme also expired due to non-payment of the Amnesty settlement amount by the petitioner.

Setting aside the Appellate Authority's dismissal order, the High Court held that "The reasoning given by the Appellate Authority is ex facie perverse. If the condition for opting for the amnesty scheme or applying for the amnesty scheme is withdrawal of the appeal and if the appeal was not withdrawn, then the same should have only rendered the application for amnesty scheme to be dismissed and not vice versa. Applying under the amnesty scheme will not render the appeal filed by the assessee to be deemed to be dismissed by any stretch of imagination."

3. HC directs GST dept to reconsider registration of petitioner as composite dealer instead of regular dealer

Case Name : **Varsha Ritu Vs Union of India (Rajasthan High Court, Jodhpur Bench)**

Appeal Number : S.B. Civil Writ Petition No. 3638/2019
Date of Judgement/Order : 08/11/2021

In the wake of second surge in the COVID-19 cases, abundant caution is being maintained for the safety of all concerned.

Counsel for the petitioner submits that petitioner-firm was registered with effect from 31.03.2018 as regular dealer under the GST Act.

Counsel for the petitioner submits that the petitioner thereafter filed an application for cancellation of registration on 28.04.2018 and simultaneously he applied for registration as a composite dealer.

Counsel for the petitioner submits that the regular registration was cancelled vide order dated 11.06.2018 (Annex.4) with effect 31.03.2018 and, thus, as per law the respondents were free to grant composite registration.

Counsel for the petitioner further pointed out that instead of giving composite registration, they have given registration to petitioner as regular dealer vide order dated 09.06.2018 (Annex. 1) and now even the regular registration is being cancelled vide order dated 30.09.2021 (Annex. 7)

Counsel for the respondents made a limited submission that consideration for regular composite registration could not have happened earlier because the petitioner was already registration as a regular dealer.

In light of aforesaid submission the 'writ petition is disposed of with direction to the respondents that they will reconsider registration of the petitioner as composite dealer w.e.f. 31.3.2018 while keeping into consideration the fact that the respondents themselves cancelled the registration as regular dealer w.e.f. 31.03.2018 vide order dated 11.06.2018 (Annex.4). Necessary order shall be passed by the respondents within a period of 60 days from today w.e.f. date on which petitioner had originally applied for composite registration, strictly in accordance with law.

The second stay petition and the main stay petition both are disposed of accordingly.

4. GST Registration cancellation on Hyper-Technical grounds causes Revenue Loss: HC

Case Name : **CIGFIL Retail Pvt. Ltd. Vs Union of India (Calcutta High Court)**
Appeal Number : WPA 16415 of 2021
Date of Judgement/Order : 10/11/2021

HC held that it is not a case of tax evasion or causing revenue loss to the Government rather petitioner's activity of carrying on the business which cannot be called illegal is creating revenue for the State as well as in helping the State to solve the problem of unemployment a little bit and such type of drastic action in the facts and circumstances of the case by canceling the registration of the petitioner on such hyper technical ground will not help the State rather it will cause revenue loss to the State as well as

aggravate unemployment problem in the State which will be a social problem in the society.

"While re-considering the case of the petitioner for revocation of cancellation of its registration, the respondent concerned will make a physical inspection of the premises in question upon notice to the petitioner and give opportunity to the petitioner to place all the documents to satisfy the respondent concerned about the actual physical possession of the petitioner at the premises in question and the respondent concerned may verify the existence of the petitioner at the premises in question as well as carrying on business activity of the petitioner from the premises in question from the local people and take a final decision by not taking a hyper technical view and pass a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authorised representatives," the Court directed.

5. HC stayed payment of GST for grant of mining lease/royalty

Case Name : **A.D. Agro Foods Private Limited Vs - Union of India (Allahabad High Court)**
Appeal Number : Writ Tax No. - 475 of 2021
Date of Judgement/Order : 15/11/2021

Heard Shri Vishnu Kesarwani, learned counsel for the petitioner, Shri Sudarshan Singh, learned counsel for the Union of India and Shri Manu Ghildyal, learned Standing Counsel for the State.

While entertaining the writ petition, we had passed the order dated 06.09.2021 which is quoted hereinbelow:-

"On the last date, time was granted to the respondents for filing counter affidavit and the same is still awaited.

Learned counsel for the respondent prays for and is granted three weeks' further time to file counter affidavit. Rejoinder affidavit, if any, may be filed within one week, thereafter.

Put up on 08.11.2021, in the additional cause list."

In pursuance of the aforesaid order, counter affidavit has been received.

Upon the matter being taken up, learned counsel for the petitioner has vehemently urged that the royalty payment is tax and not consideration in the context of the privilege parted by the State allowing the petitioner and others to mine sand. That being the nature of the payment made by the petitioner, the same is not amenable to GST as it is not consideration either for sale of goods or service provided.

Further reliance has been placed on a Constitution Bench decision of the Supreme Court in India Cement Ltd. and Others vs. State of Tamil Nadu and Others (1990) 1 SCC 12, wherein, nature of royalty payment was considered and it was opined to be in the nature of tax, (in paragraph 34 of the report).

Also, it has been shown that a similar controversy is engaging the attention of the Supreme Court in M/s Lakhwinder Singh vs. Union of India & Ors. in Writ Petition (Civil) No. 1076 of 2021. On 04.10.2021, the Supreme Court has passed the below quoted order:-

"1 Issue notice.

2 Tag with SLP(C) No 37326 of 2017.

3 Until further orders, payment of GST for grant of mining lease/royalty by the petitioner shall remain stayed."

List after two months.

Until further orders, payment of GST for grant of mining lease/royalty by the petitioner shall remain stayed.

6. Remand order upheld on the ground of violation of principles of natural justice

Case Name : **State of Kerala Vs Sri. P. T. Johnson (Kerala High Court)**
Appeal Number : OT. Rev No. 212 of 2015
Date of Judgement/Order : 15/11/2021

Conclusion: In present facts of the case, the Hon'ble High Court dismissed the Revision filed by the Revenue and upheld the Orders of Tribunal where it sustained the Remand Order passed by the Deputy Commissioner (Appeals) as there was violation of principle of Natural Justice in the Original Order passed by the primary authority.

Facts: The dealer is engaged in the business of rearing Broiler Chicken Birds and its sale. The inspection of dealer's books, by the Revenue disclosed that the dealer had undervalued the chicken for the purpose of account books and paid VAT thereon. In other words, suppression of actual sale value of chicken was resorted to resulting in evasion of tax.

The Revenue initiated proceedings under Section 67 of the Act for the assessment year 2008-09. The Revenue finally imposed penalty of Rs.3,11,39,550/- through the order dated 30.10.2012 based on undervaluation, resulted in estimation of turnover and details in the income tax returns filed by the dealer are contradictory. The dealer aggrieved by the order, filed appeal before the Deputy Commissioner (Appeals) and the Deputy Commissioner, through the order dated 29.10.2013 set aside the order dated 30.10.2012 and remanded the case to Primary Authority for disposal in accordance with law.

The Revenue filed Appeal before the KVAT against the remand order, but Tribunal upheld the remand order. The Revenue then approached the Hon'ble High Court.

The Hon'ble High Court after taking into submissions from both sides were in agreement with the view expressed by the Deputy Commissioner (Appeals) on the procedure followed by the Primary Authority and denial of reasonable opportunity to

the dealer, vitiates the order. Hence, the Hon'ble High Court sustain the findings recorded both by the Appellate Authority and the Tribunal on the violation of principles of natural justice and/or denial of reasonable opportunity to the dealer, including the right to cross-examine the persons whose statements the Revenue is relying on in support of its case against the dealer, for initiating and concluding penalty proceedings.

Further, the Hon'ble High Court while dismissing the Revision Petition held that in view of the above consideration, as matter of fact, there is violation of principles of natural justice and denial of reasonable opportunity to the dealer, thus warranting setting aside the penalty order, and, as a corollary to the above finding, the Appellate Authority has rightly, within its powers and jurisdiction, remitted the matter to the Primary Authority for consideration and decision afresh. The power of remand is available and no exception to the findings recorded by the Tribunal and the Appellate Authority on the remand is warranted. Therefore, the remand to Primary Authority ought to be open-ended and the Primary Authority is given discretion to proceed in accordance with law. Hence, it was made clear that the remand is open and all contentions/objections of both the parties are left open for decision.

7. Bail granted in fictitious entity investigation as petitioner was in custody for more than a year

Case Name : **Kashmir Kumar Agrawal Vs State of Odisha (Orissa High Court)**
Appeal Number : BLAPL No. 9462 of 2020
Date of Judgement/Order : 15/11/2021

Facts- The prosecution allegation is that the petitioner claims to be the Director of the company named M/s. Madhusmita Steel Industries Pvt. Ltd. which is a fictitious entity.

The petitioner is in custody since 17.08.2020. P.R. was submitted on 09.10.2020 keeping the investigation open. From the report filed by the prosecution on 02.07.2021, it is seen that further investigation is still in progress. The question is, can this be a ground to deny bail to the accused indefinitely.

Conclusion- It should be kept in mind that the offences under Section 132(1)(b)(c)&(i) of the **CGST Act** are punishable with a maximum punishment of five years Rigorous Imprisonment. Therefore, investigation ought to be completed within 60 days as per Section 167 Cr.P.C. Of course, Section 173(8) Cr.P.C. permits the investigating agency to keep the investigation open. But the same, if not concluded for an indefinite period, cannot obviously be cited as a ground to detain the accused in custody. As is seen, the initial prosecution report was filed way back on 09.10.2020 and till date further investigation is said to be in progress. Thus, more than a year has elapsed from the date of submission of initial P.R.. This cannot be a ground to detain the accused in custody indefinitely.

In result, the application for bail is allowed.

8. Order passed without issuance of notice is bad-in-law as contrary to principle of natural justice

Case Name : **Laxmi Barter Private Limited Vs Union of India (Patna High Court)**
Appeal Number : Civil Writ Jurisdiction Case No.18720 of 2021
Date of Judgement/Order : 15/11/2021

Facts- The petitioner has challenged the summary of an order issued in Form GST DRC-07 by the Assistant Commissioner, State-Tax, Patna u/s 75 of the GST Act whereby the interest has been imposed on gross amount without deducting the Input Tax Credit which is already paid by the petitioner and in utter violation of the principle of natural justice as the same was passed without the issuance of show cause notice in Form GST DRC-01A and GST DRC-01.

Conclusion- The order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee.

9. Vires of Section 16(2) of CGST Act, 2017 challenged before HC

Case Name : **Unifab Engineering Project Pvt. Ltd. and anr. Vs Deputy Commissioner CGST And CEX (Bombay High Court)**
Appeal Number : Writ Petition (L) No. 23044 of 2021
Date of Judgement/Order : 16/11/2021

1. A show cause-cum-demand notice dated July 29, 2021 issued by the Deputy Commissioner CGST & CEX, respondent no.1, is under challenge in this writ petition. By the impugned notice, explanation has been called for from the petitioners as to why action, as proposed in paragraph 8 thereof, may not be taken. The petitioners have also challenged the vires of section 16(2)(c) of the **Central Goods and Services Tax Act, 2017** (hereafter 'the CGST Act', for short).

2. Having heard learned advocate for the petitioners, *prima facie,* we find no reason to interfere with the show cause notice in view of the decision of the Supreme Court reported in (2004) 3 SCC 440 (**The Special Director and anr. Vs. Mohd. Ghulam Ghouse and anr.).** We would have relegated the petitioners to the respondent no.1, but for the challenge to the vires of section 16(2)(c) of the CGST Act. The point raised needs to be dealt with upon notice to the respondents.

3. Issue notice to the respondents, returnable on **January 11, 2022.** Since the vires of section 16(2)(c) of the CGST Act is under challenge, the petitioners are directed to put the Attorney General for the Union of India on notice.

4. Pendency of the writ petition shall, however, not preclude the respondent no.1 to take the proceedings arising out of the impugned show cause notice to its logical conclusion; however, any order passed in such proceedings shall be subject to and

abide by the result of this writ petition. If the petitioners are so advised, they may participate in the proceedings without prejudice to their rights and contentions herein.

10. No right to challenge search proceedings in case assessee availed benefit of restriction of penalty to 15%

Case Name : **Vijay Steelcon Private Limited Vs Principal Commissioner of Central Tax (GST) (Delhi High Court)**
Appeal Number : W.P.(C) 13034/2021
Date of Judgement/Order : 18/11/2021

Conclusion: Where assessee availed the benefit of restriction of penalty to only 15% of tax and the seizure of cash was setting off against the outstanding balance amount of GST, interest and penalty, assessee had no right to challenge the concluded search proceedings.

Held: Assessee *inter alia* filed a petition challenging the seizure of cash amounting to Rs.65 lakhs (Rupees Sixty Five Lakhs only) from the residential premises of the Director of assessee on 04.03.2021. Assessee further challenged the letter issued by the respondent whereby the bank was directed to release the said amount of Rs.65 lakhs to assessee, however, only for payment of Government dues. Assessee further claimed that a sum of Rs.94,65,316/- (Rupees Ninety Four Lakhs Sixty Five Thousand Three Hundred Sixteen Only) deposited by it with the respondents had been erroneously recovered by the respondents from assessee without proper adjudication. Respondents carried out a search at the premises of assessee company. The respondents further carried out a search at the registered office premises of assessee company and sealed the said premises on the basis that the said address had not been disclosed in the Form GST Reg.-06. Stock lying in the said premises was also seized by the respondents. It was held that assessee can by making voluntary deposit of tax, interest and penalty avail the benefit of restriction of penalty to only 15% of such tax. In the present case, assessee availed of this remedy and based thereon, proceedings against assessee arising out of the search and seizure activities carried out were closed. This was also informed to the assessee vide impugned letter of the respondents. Assessee having availed of the relief, could not now turn around and challenge the said proceedings.

11. Post substantial compliance denial of benefit of ITC on technicality is unsustainable in law

Case Name : **Commissioner of GST and Central Excise Vs Bharat Electronics Limited (Madras High Court)**
Appeal Number : W.A.No. 2203 of 2021
Date of Judgement/Order : 18/11/2021

1. The petitioner/respondent herein aggrieved by the action of the Revenue / appellant herein in not permitting them to revise the Form TRAN-1 resulting in deprivation of the **Input Tax Credit** filed a Writ Petition in W.P.No.2937 of 2019.

2. This Hon'ble Court on hearing the above matter was pleased to direct the respondent/appellant herein to enable the petitioner/respondent herein to file a revised Form TRAN-1, by opening of the portal and that such exercise was to be completed within a period of 8 weeks from the date of issue of the impugned order. The Revenue, aggrieved by the above order of the Learned Single Judge has preferred this intra Court appeal.

3. The respondent had lodged a claim for Input Tax / CENVAT Credit by filing form TRAN-1, admittedly, within time and disclosed a credit of Rs.14,97,28,201/- as Balance Credit in Column 5(a) of form TRAN-1, while showing a sum of Rs.80,98,936/- in Column 6 of form TRAN-I, though the respondent ought to have disclosed the sum of Rs.14,97,28,201/- in Column 6 of form TRAN-1 as well, on an erroneous / mis-construction as to the purpose of the said column in form TRAN-1.

4. It is relevant to note that Input Tax / CENVAT Credit was available under the existing / prior indirect Tax laws such as VAT, Entry tax and Central Excise and Service Tax, both the State and Union intended to provide a mechanism for transition of credit that was legitimately earned and remained unutilised under various fiscal laws existing at the time of introduction of GST. With this avowed objective, the GST law permitted the registered / taxable persons under GST law to transition the credit that was earned and lying to the credit of such registered / Taxable person under the existing / prior laws to GST.

5. It may be relevant to note the Statement of Objects and Reasons with respect to Goods and Service Tax (GST):

"The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. ***The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services****. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax."* (Emphasis supplied)

6. Section 140 of the GST Act provided for the transitional arrangement for Input Tax Credit while also imposing certain limitations / exclusion in respect of certain class of credit under the proviso to sub-section(1) of Sec 140 of **CGST Act, 2017**. Sec 140 of the CGST Act, 2017 also provided that the transition of credit may be made in accordance with the manner prescribed. Rule 117 of the CGST Act, 2017 prescribed the method and the manner for availing input tax credit. The relevant portions of the said rule reads as under:

"117.Tax or Duty Credit Carried Forward under any Existing Law or on Goods Held in Stock on the Appointed Day (Chapter-XIV: Transitional Provisions)

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in Form GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in Form GST TRAN-1 by a further period not beyond 31st March 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension."

A reading of the above Rule would show that a Registered / taxable person under GST Act, intending to transition credit earned under the previous regime is under a mandate to file and lodge a claim within 90 days in Form GST TRAN-1. The 1st proviso further provides that the said period of 90 days may be extended by the Commissioner by a further period not exceeding 90 days on the recommendation of the GST Council.

7. It is undisputed that the respondent had filed their Form TRAN-1 on 30.10.2017 i.e., within the time prescribed under Section 140 of the CGST / SGST Act 2017 and declared a sum of Rs.14,97,28,201/- in Column 5(b) of form TRAN-1 as "Balance Cenvat Credit". However, in Column 6 of form TRAN-1 with the heading "Cenvat admissible as Input Tax Credit", the respondent had instead of repeating the figures Rs.14,97,28,201/-mistakenly entered the figure of Rs.80,98,936/-, stated to be the credit pertaining to inputs lying in stock and towards certain services received prior to 30.06.2017, while the invoices were received in respect of the same after the said date. The appellant / Revenue is of the view that the respondent is not entitled to Cenvat Credit, as the said mistake viz., filling the wrong figure in Column 6 of form TRAN-1 is fatal to the claim to transition of credit claimed to have been earned under the erstwhile regime to GST.

8. In this regard reliance is sought to be placed by the appellant on Rule 120A of the CGST Act, 2017 which enables the respondent/assessee to carry out correction in Form TRAN-1 only once and such correction ought to be made on or before 27.12.2017. However, the respondent had on 27.12.2017, while carrying out a few other corrections to the Form TRAN-1 had not corrected the above error in Column 6 of form TRAN-1, inasmuch as the respondent, were under the bonafide belief that the figures filled in Column 5(b) and 6 of form TRAN-1 were correct. This, as stated above was in view of the erroneous understanding of the purpose of Column 6 of form TRAN-1. It was only in February 2017, when the Electronic Credit Ledger did not reflect the amount of Rs.14,97,98,201/- as it had not transitioned in the Electronic Credit Ledger,

enquiries were made with the department by the respondent. On such enquiry, it was informed by the department that the amount of Rs.14,97,98,201/-, would not be transitioned in view of the mistake in not reflecting the correct amount in Column 6 of Form TRAN-1.

9. It is submitted by the appellant that Rule 120A of the **CGST Act 2017**, does not enable an assessee / taxable person to rectify more than once and the respondent / assessee having already carried out a rectification, it is impermissible for the respondent / assessee to carry out one more correction, more so, when such attempt to correction is made after the expiry of the extended time limit on 27.12.2017. In this regard, reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case of *ALD* ***Automotive Private Limited v. Commercial Tax Officer, (2019) 13 SCC 225 (ALD Automotive)*** and the decision of the Division Bench of the Hon'ble High Court of Bombay in the case of ***Nelco Limited v. Union of India [2020 SCC Online Bom 437] (Nelco),*** to support their contention, that Input Tax Credit is in the nature of the concession and any conditions attached thereto ought to be strictly construed including limitation, if any, prescribed for claiming such credit. There are no two views with regard to the above proposition. However, in the present case, admittedly, Form TRAN-1 has been filed by the respondent/assessee within the period prescribed and thus the above judgment holding the time limits are mandatory to lodge a claim may not advance the case of the Revenue / appellant. Reliance was placed on the decision of the Hon'ble High Court of Allahabad in the case of ***M/s.Ingersoll-Rand Technologies & Services Pvt.Ltd. Vs. Union of India & 3 others reported in 2019-TIOL-2740-HC-ALL-GST*** to submit that similar issue has been decided by the Allahabad High Court wherein it has been held that revision of Form TRAN-1 declaration cannot be permitted more than once. There appears to be distinction between the kind of rectification which was sought for by the assessee / petitioner before the Allahabad High Court in the matter of ***M/s.Ingersoll-Rand Technologies & Services Pvt.Ltd. Vs. Union of India & 3 others*** and in the case on hand inasmuch as the assessee before the Allahabad High Court was claiming transition of higher amount of credit for the first time after the expiry of the period prescribed through their rectification of form TRAN-1. However, in the present case, the respondent had filed form TRAN-1 declaring that the Balance Cenvat Credit is to the extent of Rs.14,97,28,201/- and only in Column 6 of form TRAN-1 due to an inadvertent mistake on a mis-construction of the purpose of Column 6 of form TRAN-1, the respondent has shown a different figure viz., Rs.80,98,936/-. The decision of the Allahabad High Court turned on the facts that claim to transition to certain Input Tax Credit was being made for the first time, while in the present case, there is only a clerical error. Form TRAN-1 reflects the entire figure of Rs.14,97,28,201/-, however, inadvertently the same has not been carried over in column 6 of Form TRAN-1 due to a misinterpretation or misunderstanding of the purpose of the said column of Form TRAN-1. Thus, the decision of the Allahabad High may not apply to the facts of the present case.

10. We concur with the order of the learned Single Judge directing the respondent to enable filing of revised Form TRAN-1 by the respondent by opening the portal for the following reasons:-

(a) It is admitted that the respondent had filed their Form TRAN-1 in time and had also shown the correct amount in Column 5(b) of form TRAN-1. The only error is that in

Column 6 of Form TRAN-1, the respondent had erroneously shown a sum of Rs.80,98,936/- instead of Rs.14,97,28,201/-.

(b) The respondent / assessee have complied with the requirement of filing Form TRAN-1 within time, to transition credit of Rs.14,97,28,201/-stated to be legitimately earned under the erstwhile regime. Thus, there is substantial compliance with the requirements of Section 140 of the GST Act which provides for transition of credit under the erstwhile regime to GST. In this regard, it may be useful to refer to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case ***Commissioner of Customs vs. Dilipkumar and Co. (2018) 9 SCC 1: 2018 SCC Online SC 747,*** wherein the "Doctrine of Substantial compliance was held to be applicable even while considering a claim of exemption, thus, the above doctrine would afortiorari apply to a claim of Input Tax Credit. The relevant portion of the judgment is extracted under :-

"51.The Constitution Bench then considered the doctrine of substantial compliance and "intended use". The relevant portions of the observations in Paras 31 to 34 are in the following terms : (Hari Chand case [CCE vs. Hari Chand Shri Gopal, (2011) 1 SCC 236], SCC pp.247-48)

"31. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction between provisions of statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished…. ***Doctrine of substantial compliance and `intended use':***

32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non- compliance

of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34.The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."

(c) The submission of the appellant that the inadvertent mistake in filling in the wrong figures in Column 6 of Form TRAN-1 would prove fatal to the respondent's claim of ITC, even if they are otherwise entitled to, appears to be an objection which is technical and more importantly, could frustrate the very objective of extending the benefit of transition of Input Tax Credit from the erstwhile regime of GST. In this regard, it may be relevant to refer to the decision of the Division Bench of the High Court of Bombay in the case of ***Heritage Lifestyles and Developers Private Limited vs. Union of India reported in 2020 SCC 43 GSTL 33 : (2021) 1 Bom CR 345: (2021) 86 GSTR 321,*** wherein after finding that the respondent could not file the Form TRAN-1 by 27.12.2017 due to lack of awareness of the procedures, technical glitches, GST being new and a complex system to operate and after recording that the denial was only in view of the fact that the taxpayer has neither tried for saving/submitting or filing form TRAN-1, had proceeded to hold that undue emphasis on technicality is unwarranted and extended the benefit to the assessee / petitioner therein. While doing so, reliance was placed on the ***decision of the Supreme Court in the case of Mangalore Chemicals and Fertilizers Ltd., vs. Deputy Commissioner [(1991) 55 ELT 437 (SC)]*** and proceeded to hold as under:-

"23. In this context, we would like to refer to the Supreme Court decision in the case of Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner (Supra). That was a case where there was no dispute that the appellant was entitled to the benefit of an exemption under notification dated 30.06.1969 nor there was a dispute that the refunds were eligible to the adjusted against sales tax payable for respective years, but the only controversy was whether the appellant not having actually secured "prior permission" would be entitled to adjustment having regard to the words of notification of 11 th August 1975, that until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. Hon'ble Supreme Court aptly summarized the contention as under :-

"The contention virtually means this : "No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you

such permission. But see language of Clause 5. Since we did not give you the permission you cannot be permitted to adjust" Is this the effect of the law?"

24. After considering the arguments of the counsel and after considering its own decisions in various cases including the decision in the case of Kedarnath Jute Manufacturing Co. V/s. Commissioner of Income Tax, Supreme Court allowed the appeal while quoting Lord Denning [in the case of Wells Vs. Minister of Housing and Local Government: 1967 (1) WLR 1000] as under :

"Now I know that a Public Authority cannot be stopped from doing its public duty, but I do think it can be stopped from relying upon a technicality and this is a technicality".

It may also be relevant to quote Francis Bennion in his "Statutory Interpretation", 1984 edition at page 683 which reads as under:

"Unnecessary technicality : Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfillment of the purposes of the legislation."

(d) While there is no doubt that Input tax credit is a concession, and conditions attached thereto ought to be strictly complied, it is equally true that the Input Tax Credit is a beneficial scheme which is framed in larger public interest to bring down the cascading effect of multiple taxes / multi-point taxes. One cannot lose sight of the larger objective behind the Input Tax Scheme. Keeping the above objective in mind and also the fact that GST was a new law and there were a number of initial hiccups which was taken cognizance of, by the Legislature and Executive and remedial actions were duly taken, including extending timelines for statutory compliance to ameliorate the difficulties faced by the trade, thus, denial to transition of credit for a clerical mistake may not be warranted.

11. It may also be relevant to refer to the decision of the High Court of Punjab and Haryana at Chandigarh in the case of ***Heritage Lifestyle and Developers and Private Limited vs. Union of India reported in 2016 SCC Online P&H 6549*** while dealing with the claim of Input Tax Credit, reliance was placed on the judgment of Division Bench of the High Court of Punjab and Haryana in the case of ***Commissioner of Central Excise, Ludhiana Vs. Ralson India Ltd., 2006 (202) ELT 759***, wherein it was held that while dealing with the Cenvat Credit that it may be inappropriate to deny the benefit by taking a hyper-technical view of the rules. The relevant portion is extracted under:

"It is to prevent the misuse of the modvat claims and any fraud being played by a manufacturer. Being a beneficial legislation, its object of input duty relief to a manufacture should not be defeated on a technical and strict interpretation of the Rules governing modvat. In fact, in order to obviate any difficulty on account of loss of duplicate copy of the invoices, Notification No.23/9-C.E. (N.T.), dated 20-05-1994 has been issued by the Board enabling a manufacturer to take Modvat credit on the basis of original copy of the invoice, provided the loss of duplicate copy of the invoice had occurred only in transit and the Assistant Commissioner is satisfied about its loss."

12. Thus, there seems to be a consistent view that if there is substantial compliance, denial of benefit of Input Tax Credit which is a beneficial scheme and framed with the larger public interest of bringing down the cascading effect of multiple taxes ought not to be frustrated on the ground of technicalities. In view of the above, we are inclined to affirm the order of the learned Single Judge in directing the petitioner/ respondent to enable the respondent herein to file a revised Form TRAN-1, by opening of the portal and that such exercise is to be completed within a period of 8 weeks from the date of issue this order.

13. Needless to state, it is open for the Revenue to thereafter examine the legality / correctness or otherwise of the claim of credit stated to be earned under erstwhile regime and transitioned to GST by the respondent / assessee in accordance with law.

14. Thus, the writ appeal stands disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

12. GST: Partial relief provided to taxpayer on condition of co-operation in investigation

Case Name : **Madhav Copper Limited Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 15201 of 2021
Date of Judgement/Order : 23/11/2021

Conclusion: In present facts of the case, the writ petition was disposed of by providing partial relief to the Petitioner for fulfilment of its business orders but with a condition to cooperate with Revenue in investigation.

Facts: This is a petition under Article 226 of the Constitution of India challenging the provisional attachment order attaching the properties of Madhav Copper Limited under Section 83 of the CGST Act. The petitioner no.1 is a company engaged in the business of Copper Products and is a leading manufacturers of various products of copper like Copper Rod, Copper Wire, Fiber Glass Conductor etc. The petitioner no.1 also imports raw-materials/ scraps for manufacturing these products and export final products made out of the copper. It has its own Certificate of Importer-Exporter Code (IEC). The petitioner also supplies to the reputed private entities and government entities across the India.

A notice came to be issued by the Assistant Commissioner of State Tax in the Form GST DRC-01 on 08.07.2019 calling upon the petitioner no.1 to make payment for the input tax credit claimed for the purchase made through the suppliers who defaulted in payment of GST. The reply had been given on 06.08.2020 with a request to drop the proceedings, however, no communication has been received from the Assistant Commissioner of State Tax till this date. According to the petitioner, it has to be understood that the explanation is accepted.

The officers of the State Tax had caused search under the GGST Act at the office premises of the petitioner no.1 and drew the Panchnama on 04.10.2019 and seized various purchase files as noted in order of seizure on the very date under FORM GST INS-02. Since there was a discrepancy in the stock, the petitioner no.1 voluntarily

deposited the GST to the tune of Rs. 1,76,198/- and 15% penalty by DRC-03. The petitioner has also substantiated the same with the Challan in FORM GST DRC-03.

Pursuant to the said search and seizure dated 04.10.2019, the respondent no.2 issued FORM GST DRC-01A under Rule 142(1A) on 22.07.2020 directing the petitioner to deposit the total tax of Rs. 10,43,33,762/- under Section 74(5) of the GGST Act on the ground that the ITC was not allowable as per the provisions of Section 16(2) of the GGST Act and the same was required to be recovered under the provisions of Section 74 of the GGST Act.

A show cause notice dated 22.07.2020 has been issued in the FORM GST DRC-01 for the financial years 2017-18, 2018-19 and 2019-20 on the ground that the suppliers' GSTN had been cancelled ab-initio and hence, the petitioner no.1 has been asked to pay the tax of Rs. 2,37,20,365/- for the year 2017-18, Rs. 7,90,31,782/- for the year 2018-19 and Rs. 15,81,616/- for the year 2019-20. Although, it is a grievance of the petitioners that respondents did not disclose the details of dealers whose registrations were cancelled.

Once again, the search was conducted on 23.12.2020 and the Panchnama had been drawn. It is further averred that the petitioner has been summoned on 06.01.2021 under Section 70 of the CGST Act to appear before him on 20.01.2021 to give statement and produce documents mentioned in the summons. The petitioner therefore filed Special Civil Application No. 3729 of 2021 seeking various reliefs. The Court issued notice and passed the order on 08.03.2021. It has essentially challenged the actions of the respondent under the CGST Act and also challenged the vires of Section 16(1) and 16(2)(c) of the CGST Act and also has sought the striking down of Section 43(A)(6) of the GGST Act. It also sought the declaration in relation to the input tax credit to be reversed.

Since another search was carried out on 07.07.2021 pending the adjudication of the show cause notice dated 05.11.2020 and several documents were seized, the petitioner is before this Court challenging action of the Respondents to set aside the attachment order.

The Hon'ble High Court observed that essentially since the question is of the provisional attachment, without there being any proceedings pending, according to the petitioner, at the time of exercising the powers under Section 83 of CGST Act, the Commissioner is required to form his opinion. Neither has he formed any opinion nor is it justifiable for him to exercise these powers in absence of any pending proceedings.

The rejoinder affidavit has been filed denying all contentions raised in the affidavit-in-reply. According to the petitioner, the formation of the opinion for the purpose of purported protection of the state revenue should be based on objective facts and not on ipse dixit and caprice of the respondent authority. According to the petitioner, the proceedings under Section 67 have been completed on 10.08.2021 and hence, there is no proceeding pending or initiation of any proceedings as contemplated under Chapters XII, XIV and XV and therefore, the attachment orders are ex-facie illegal.

The Hon;ble High Court relied on the case of **Radha Krishan Industries** [2021 (48) G.S.T.L. 113 (S.C.)], where the Court has held that provisional attachment is a draconian power exercised before finalization of assessment or raising of demand.

The same has to be exercised with due caution. The provisional attachment as in aid of something else and its purpose is to protect the revenue.

Further, it was observed that the statute has contemplated an attachment during the pendency of the proceedings under the stipulated statutory provisions noticed earlier. An attachment which is contemplated in Section 83, in other words, at a stage which is anterior to the finalization of an assessment or the rising of a demand. A provisional attachment under Section 83 contemplates during the pendency of certain proceedings, which means that a final demand or liability is yet to be crystallized. The anticipatory attachment of this nature must strictly conform to the requirements of substantive and procedural embodied in the statute and the rules.

Further, the Hon'ble High Court relied on **Vinodkumar Murlidhar Chechani** [2021 (45) G.S.T.L. 209 (Guj.)], wherein it was held that the Court can determine whether the opinion is arbitrary, capricious or whimsical. The order and record must record and indicate that it was necessary to take a drastic action.

The Hon'ble High Court observed that as is quite clear from the various decisions that there shall need to be ordinarily the pendency of proceedings under Sections 62 or 63 or 64 or 67 or 73 or 74 of the GST Act for the commissioner to form an opinion for the purpose of protecting the interest of the Government Revenue to order in writing to attach the provisionally any property including the bank account belonging to the taxable person. In absence of any kind of pendency of proceedings, it is not permissible for the respondent authority to invoke powers under Section 83 for the purpose of provisional attachment. This Court in case of Piyush Shamjibhai Vasoya vs. Union of India and Others [SCA 16437/2020, decided on 27.01.2021] has in categorical terms held thus and quashed and set aside the provisional attachment. The Apex Court in no unclear terms has adopted the test of tangible material and has emphatically held that the writ petition before this Court under Article 226 of the Constitution challenging the provisional attachment is maintainable. The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled. Such powers when exercised must need to be preceded by the formation of an opinion by the Commissioner that it is necessary to so do it for the purpose of protecting the interest of the Government Revenue and the opinion needs to be formed on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the Government Revenue.

In the instant case, the search was carried out under the GGST Act at the office premises of the petitioner no.1 and the panchnama was drawn on 04.10.2019. There was discrepancy noticed in the stock, therefore summons came to be issued on 22.10.2019 under Section 70 of the GGST Act. As detailed hereinabove, the various proceedings followed this action of search and seizure dated 04.10.2019. The Court notices that the search proceedings were initiated of Tax (Enforcement) and the search of the business as well as residential premises of M/s. Madhav Copper Limited had begun soon thereafter and the provisional attachment had been directed invoking the powers under Section 83. The Commissioner had delegated the powers to the officers subordinate to them and accordingly, the powers have been exercised by the

Deputy Commissioner, Assistant Commissioner as well as the State Tax Officer. The search proceedings were initiated on 07.07.2021 at the residential premises and concluded on the same date, it concluded on 09.07.2021 at the head office and at the factory and office premises, it continued upto 15.07.2021. The directors since were not present, they were asked to remain present and the proceeding was postponed on 16.07.2021. Once again, the search team on 10.08.2021 had visited the factory and office premises to carry out the search.

Prima facie, there does not appear to be any sustainability of contention that in absence of any kind of proceedings, the invocation had been made at the end of the respondent authority. The said proceedings since had been initiated on 07.07.2021, the order of attachment of bank account in FORM GST DRC 22, the attachment of immovable properties, the vehicles, movable properties and the personal properties of the Directors as well as directions to the debtors not to make the payments were on different dates starting from 08.07.2021 to 27.07.2021. Therefore, that contention is not found sustainable.

The vital question that arise is as to whether the authority concerned has exercised the powers by safeguarding the procedural aspects of giving opportunity of hearing to the parties, where it is required to pass a reasoned order. Noticing the fact that the hearing has already taken place two months' back and according to learned advocates appearing for the petitioners, it was an exhaustive hearing which lasted for many hours, the order is needed to be passed by the concerned authority and therefore, let such order be passed within 10 days by the authority concerned as giving an opportunity of hearing alone is not sufficient, passing of reasoned order will also be equally imperative and the same shall need to be done to fulfill the obligations under the principle of natural justice as also in due compliance of the directions issued in case of **Radha Krishan Industries** (supra) bearing in mind the provisions and rules in this regard.

This Court has prima facie noticed that the allegations made are of such a nature that the respondents have collected the material from the business premise during the investigation revealing that the company has availed the Input Tax Credit by engaging in billing transactions for wrongful availment of the ITC, the huge amount of ITC to the tune of Rs. 137 Crores is alleged to be fraudulently claimed by the petitioner and according to the petitioner, the cancellation of registration number of the companies with which it was dealing would not be in many manner putting an onus on the petitioner company. Here is a public limited company, the allegation of wrongful availment of Rs. 137 Crores and attachment order is without any credible material on record. According to the petitioner, unless the show cause notices are decided, it will be wrong to say on the part of the respondent that 36 registered dealers who had the GSTN and which were active on the date of supply of the goods and who had also filed the regular returns under the GST, for any default on their part, liability cannot be shifted on the petitioner. This version is already before the concerned authority for him to consider.

Finally this petition was disposed of without entering into the merits of the matter by not prejudicing the rights of the parties before the authority concerned. The investigation, as submitted before this Court, shall be completed within 8 weeks. The

petitioner shall cooperate without fail. The petitioner was granted relief in terms of fulfilment of its business orders.

13. Non-registered units eligible to claim 'Scheme of Budgetary support under GST': HC

Case Name : **Glenmark Pharmaceuticals Limited Vs Union of India (Sikkim High Court)**
Appeal Number : Writ Petition (Civil) No. 48 of 2020
Date of Judgement/Order : 24/11/2021

Facts- The dispute in the present writ petition lies in a narrow compass and relates to the rejection of the petitioners claims for budgetary support under a 'Scheme of Budgetary Support under Goods and Service Tax' regime on the ground that the claims were made for the period prior to the GST registration which is impermissible.

Conclusion- The fact that registration and UID was granted makes it evident that the petitioner was eligible for the budgetary support under the scheme. Held, once the unit is found to be an eligible unit the only question kept open to the authorities is the admissible amount of budgetary support from the claims made by the eligible unit on compliance of the requirement of the scheme.

14. Bogus ITC | Fake GST Invoices | Orissa HC grants Bail to accused

Case Name : **Gurdit Dang Vs State of Odisha (Orrisa High Court)**
Appeal Number : BLAPL No. 8217 of 2021
Date of Judgement/Order : 26/11/2021

This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. This is the 2nd journey of the Petitioner who is in custody in connection with No. P.R.02 of 2021-22 dated 09.07.2021 of the CT & GST Enforcement Unit, Rourkela, corresponding to 2(C) CC Case No. 32 of 2021 on the file of learned S.D.J.M., Panposh, Rourkela running for commission of offences punishable under section 132 (1)(b)(c) and (1) of Odisha Goods and Services Tax Act, 2017 (for short called as 'OGST Act'), in filing this application under section 439 of the Cr.P.C. for his release on bail.

3. Prosecution allegations run to the effect that this Petitioner being in collusion with the accused Sujay Maitra had created and operated five fictitious business entities as also has created and operated other three such agencies. It is said that they have issued fake invoices in the name of eight non-existent and fictitious business entities without physical movement of the goods and both being defacto operators have lodged claim of wrongful utilization of bogus ITC on the strength of fake invoices without physical receipt of the goods. Similarly such activities are said to have been carried out by this Petitioner with accused Basant Kumar Pattnaik. It is stated that this Petitioner and Basant by such clandestine business activities have been able to pass

on huge Input Tax Credit (ITC) to the tune of more than Rs.72.00 crores and received ITC of around Rs.8.5 crores being passed on to M/s. Satguru Metal & Power Private Ltd. and M/s. Tirupati Traders.

4. Learned counsel for the Petitioner submitted that the Petitioner has made all genuine sale and purchase of goods using genuine GSTN and has paid the GST. He further submitted that the complaint petition reveals that the accused Basant being a resident of Rourkela is the mastermind in creating and operating eight numbers of fictitious business entities who used to obtain basic personal identity documents from the proprietors of the firms by misutilizing those documents had registered all those firms under the GST Act. It is submitted that the complaint allegation also runs on the score that accused Basant in collusion with this Petitioner had issued invoices and they have traded without physical movement of the goods and claimed bogus ITC on the strength of such fake invoices without physical receipt and supply of goods. It is further submitted that lastly in a general manner, it is said that thereby huge ITC has been passed on and availed of. He also submitted that similar allegation against the Petitioner as to have wrongfully passed on and availed ITC in collusion with accused Basanta Kumar Patnaik been made. He submitted that the Petitioner is no way involved in commission of the alleged offences and defrauded the revenue of huge extent as stated which would be finally determined in the assessment proceedings and he has been arrested in the case on frivolous ground without determining the tax liability and by erroneous calculation, the ITC is alleged to have been availed. According to him, all these materials on record do not indicate as to the direct involvement of the Petitioner in the business affairs of all those Firms. It was next submitted that the entire prosecution case is based on documentary evidence which by now have already been seized and when the Petitioner has remained in custody for more than four months, practically, the scope on his part to tamper with any such evidence stands foreclosed. He submitted that the Petitioner being a permanent resident of Rourkela City, there arises no scope on his part to flee from justice. It was his submission that the complaint was lodged in the Court of law from the beginning and now in view of the lapse of time and collection of all such materials when the Authority have already seized all the relevant documents to which the Petitioner has no more the access, the question of tampering the evidence and influencing the trial in that way do not arise. In view of all these above, he urged for reconsideration of the prayer for grant of bail as according to him, further detention of the Petitioner in custody in connection with the case would serve no useful purpose save and except standing to the sufferance of the Petitioner and the family members which according to him would amount to denial of fair assessment to the Petitioner. In support of the prayer of the Petitioner for reconsideration of grant of bail, he has invited the attention of the Court to the orders passed by this Court in case of Rama Chandra Mallick vs. State of Odisha & Others (BLAPL No. 10958of 2019 disposed of on 17.3.2020) and Pramod Kumar Sahoo vs. State of Odisha & Others (BLAPL No. 4125 of 2020 disposed of on 23.12.2020) in granting bail to the Petitioners therein.

5. Learned Addl. Standing Counsel, CT & GST opposed the move. He submitted that the prayer for grant of bail to the Petitioner having earlier been rejected in BLAPL No. 6354 of 2021, there is no change in the circumstances for reconsideration of the said prayer. According to him, the Petitioner being involved in commission of economic

offence and on the face of the materials collected that the Petitioner had all the role in defrauding the State Exchequer to the tune of huge sum by passing over bogus ITC and receiving the ITC simply by managing to have the transactions reflected in the papers without physical movement of the goods or services and in the process has created numerous fake documents such as invoices, bills etc. besides having the hand in creating and operating the fake Firms and opening Bank accounts in the name of those entities which have no existence in reality in the commercial field; merely basing upon the factum of detention of the Petitioner in custody for more than four months, this subsequent move for release of the Petitioner on bail has to fail. He submitted that the materials would show that the Petitioner was involved in the matter with the intention to defraud the State Exchequer by way of creation and operation of such fictitious business entities including those existing and has proceeded in that mission. He submitted that with the collection of all such materials further investigation is in progress and the Petitioner being an influential person in the society may try to win over the public witnesses and attempt to erase the money trail of the alleged crime as also may attempt to influence the proprietors of the different firms created for the purpose. In support of the submission as to non-consideration of the prayer for grant of bail, he relied upon the decisions in case of “Nimmagadda Prasad vs. Central Bureau of Investigation; (2013) 7 SCC 466; Y.S. Jagan Reddy vs. Central Bureau of Investigation”; (2013) 7 SCC 439 and others.

6. Keeping in view the submission, I have perused the materials as placed and have further gone through the respective written notes of submission with the citations.

7. The Hon’ble Apex Court in case of “Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others”; (1980) 2 SCC 559 has observed which has also been reiterated in case of “Shri P. Chidambaram vs. Central Bureau of Investigation”; (Criminal Appeal No. 1603 of 2019 disposed of on 22.10.2019) that at the stage of consideration of the matter for granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided.

8. In case of Shri P.Chidambaram (supra), it has been held by the Hon’ble Apex Court that:-

“The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion 17 of the court has to be exercised judiciously and not in an arbitrary manner”.

9. In “Kalyan Chandra Sarkar v. Rajesh Ranjan and another”; (2004) 7 SCC 528, the Hon’ble Apex Court has said as under:-

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider 18 among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC 338.)”

Referring to the factors to be taken into consideration for grant of bail, in Jayendra Saraswathi Swamigal v. State of Tamil Nadu (2005) 2 SCC 13, it has been said that:-

“16. …… The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case…… ”

The Hon’ble Apex Court after referring para (11) of Kalyan Chandra Sarkar, in State of U.P. through CBI v. Amarmani Tripathi (2005) 8 SCC 21, it has held that:-

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence

at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused

10. In the given case, the complaint has been lodged against the Petitioner and others for commission of the aforesaid offences under section 132(1)(b)(c) and (1) of the OGST Act. The maximum punishment prescribed thereunder is the imprisonment for a term of five years and with fine in case the amount of tax evaded or the ITC wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs.500.00 lakh. The investigation having commenced on the basis of complaint by two business firms claiming to be the victims of the GST fraud by the Petitioner and other having received the goods supplied by the Petitioner under the coverage of fictitious invoices issued in the name of non-existent business entities said to have been created and operated by the Petitioner, it appears that extensive searches of said business premises and the house of the Petitioner and other connected premises have already been conducted and a large number of documents have also been seized pursuant to the said search as also informations collected. All these are in custody and control of the Complainant/Authority to which the Petitioner is having no more the access. Co-accused persons have been arrested and all the Bank accounts details have been ascertained.

The prosecution case is mainly based upon the documents in respect of the so-called clandestine business activities. The complaint having already been filed, by now more than four months have already passed. The Petitioner is a permanent resident of the city of Rourkela in the district of Sundergarh and as such hardly there remains the scope for him to flee away from justice. The proceeding for assessment of the GST payable for the transactions may be continuing where the party aggrieved may further carry Appeal and Revision as provided in law. Till such time at the stage of hearing of the application for grant of bail it may be difficult to prejudge the guilt of the Petitioner in ascertaining the exact quantum involved. The assessment in such matter is largely based on documents and relevant records which would take its own time.

In such circumstances of the case on hand, no other materials are placed to support that further detention of the Petitioner still stands as of necessity for the case. In the meantime, more than four months have passed since the detention of the Petitioner in custody and thus those stages of the investigation here appear to be over when it can be said that the Petitioner being enlarged on bail may stand on the way of proper investigation in collecting all the materials triggering derailment of investigation process with the possibility of the Petitioner influencing the witnesses and absconding on which scores there also stands no material particulars.

11. In view of all these aforesaid, this court feels inclined to reconsider the prayer for grant of bail to the Petitioner.

Accordingly, it is directed that the Petitioner be released on bail on furnishing bail bond of Rs.50,00,000/- (Rupees Fifty lakhs) with two sureties for the like amount to the satisfaction of the learned court in seisin of the case with the following conditions that:-

(i) the Petitioner shall not in any manner make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing truth before the Court and shall not tamper with the evidence;

(ii) the Petitioner shall not be indulge himself in similar activity.

(iii) the Petitioner shall surrender his passport if any before the learned court in seisin of the case and will not leave India without prior permission of the Court and in the event the Petitioner has not been issued with any passport, he would submit an affidavit stating the said fact; and

(iv) the Petitioner shall appear before the concerned Authority as would be so required for the purpose.

Violation of any of the above condition(s) shall entail cancellation of bail.

12. The BLAPL is accordingly disposed of.

Issue urgent certified copy as per rules.

15. HC grants anticipatory bail to person accused of fraudulently availing & passing on fake ITC

Case Name : **Tarun Jain Vs Directorate General of GST Intelligence DGGI (Delhi High Court)**
Appeal Number : Bail Appln. 3771/2021 & CRL.M.A. 16552/2021
Date of Judgement/Order : 26/11/2021

Conclusion: Anticipatory bail was granted to a person accused of fraudulently availing and passing on fake Input Tax Credit (ITC) worth Rs. 72 Crores with some stringent conditions in view of the prior conduct of assessee.

Held: In the present case, assessee had been accused of wrongfully utilizing the Input Tax Credit amounting to Rs. 72 Crores, an offence under Section 132(b) and (c). The Department had alleged that the Company made most of its purchases from three firms which further purchased from that firms which had been found to be non-existent at their official addresses and had no inward supplies. It was held that since the alleged amount exceeded five hundred lakhs, the accused can be punished with a maximum of five year of imprisonment and with fine. It is equally important to highlight that the offences under the Act are bailable and non-cognizable except for the offence under Section 132(5) of the Act. The task before High Court was two-fold, first being to ensure that no unwarranted abuse of process was allowed to impinge upon life and liberty of assessee, and second to ensure that the investigation was not hampered, procedure of administration of justice was not adversely impacted and ultimately the guilty was prosecuted. These were competing interests included in an anticipatory bail application i.e., the liberty of the accused and the interest of the investigative authorities for discovering the particular of offence. Custodial interrogation in the instant matter was neither warranted nor provided for by the statute. Detaining assessee in Judicial Custody would serve no purpose rather would adversely impact the business of assessee. The apprehension of arrest of assessee was also not bereft of factual evidence. It was this apprehension that forced him to make a request to the authorities concerned for recording the statement in the presence of the counsel and to apply for the grant of anticipatory bail in the Sessions Court, which was refused. In

view of these facts and circumstances and in light of the provisions of law, this Court was inclined to allow the anticipatory bail application with some stringent conditions in view of the prior conduct of assessee. This Court allowed the instant application under section 438 of Code of Criminal Procedure. In the event of arrest, assessee be released on bail on his furnishing a personal bond in the sum of Rs. 5,00,000/-(Rupees Five Lakhs only) with two solvent sureties of like amount to the satisfaction of the Investigating Officer/Apprehending Authority with the prescribed terms and conditions.

16. Bogus ITC Case: Orissa HC grants Bail to accused

Case Name : **Smruti Ranjan Sahoo Vs State of Odisha (Orissa High Court)**
Appeal Number : BLAPL No. 9407 of 2021
Date of Judgement/Order : 26/11/2021

This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. This is the 2nd journey of the Petitioner who is in custody in connection with No. P.R.02 of 2020-21 dated 17.12.2020 of the CT & GST Enforcement Unit, Bhubaneswar corresponding to 2(C) CC Case No. 317 of 2021 on the file of learned J.M.F.C., Bhubaneswar running for commission of offences punishable under section 132 (1)(b)(c) and (1) of Odisha Goods and Services Tax Act, 2017 (for short called as 'OGST Act'), in filing this application under section 439 of the Cr.P.C. for his release on bail.

3. Prosecution allegations run to the effect that this Petitioner being the proprietor of M/s. S.R. Enterprises in collusion with others had been managing in showing the receipt of purchase invoices in the name of fake firms without physical receipt of goods and issuing sale invoices without onward physical movement of the goods and thereby has wrongfully availed and passed on bogus Input Tax Credit (ITC) on the strength of those fake invoices in defrauding the State exchequer. It is also said that there was supply of the goods purchased out of accounts from clandestine sources without obtaining invoices and without payment of tax besides creation and operation of dummy firms in the name and style of M/s Kuladia Traders and others in collusion with one Sri Sandip Mohanty and others to the tune of Rs.10.75 and Rs.6.25 crores and thus it is said that there has been the availment and passing of bogus ITC in the name of the said firms as alleged.

4. Learned Senior Counsel for the Petitioner submitted that the Petitioner has made all genuine sale and purchase of goods using genuine GSTN and has paid the GST. It was thus submitted that the Petitioner is no way involvement in commission of offences as alleged and he has been arrested in the case on frivolous ground without determining the tax liability and by erroneous calculation of the ITC as alleged when it is said that accused Sandip Ku. Mohanty is the main accused and this Petitioner is said to have been in collusion with him. He further submitted that except mere inferences which are also too weak, no such material has come on record to show the indulgent of the Petitioner in the business affairs of other firms when the Petitioner has in his statement has explained that accused Sandeep Mohanty was supplying his

goods in the name of different fake firms and he was making payment to said Sandeep. He further submitted that lastly in a general manner, it is said that thereby huge ITC has been passed on and availed of. He also submitted that entire prosecution case is based on documentary evidence which by now have already been seized when the Petitioner has remained in custody for about five months. So it was submitted that at this stage, the scope on the part of the Petitioner to tamper with any such evidence stands foreclosed. He submitted that the Petitioner being a permanent resident under jurisdiction of Khandagiri Police Station, Bhubaneswar, there arises no scope for the Petitioner to flee from justice. It was submitted that the complaint was lodged in the Court of Law from the beginning and now in view of lapse of time and collection of all such materials when the Authority have already seized all the relevant documents to which the Petitioner has no more the access, the question of tampering the evidence and influencing the trial in that way do not arise. In view of all these above, further inviting the attention of the Court to the relevant provision of the statute prescribing the maximum punishment for five years and fine for the alleged offences, he urged for reconsideration of the prayer for grant of bail as according to him, further detention of the Petitioner in custody in connection with the case would serve no useful purpose save and except standing to the sufferance of the Petitioner and the family members which according to him would amount to denial of fair assessment to the Petitioner. In support of the prayer of the Petitioner for reconsideration of grant of bail, he has invited the attention of the Court to the orders passed by this Court in case of Rama Chandra Mallick vs. State of Odisha & Others (BLAPL No. 10958of 2019 disposed of on 17.3.2020) and Pramod Kumar Sahoo vs. State of Odisha & Others (BLAPL No. 4125 of 2020 disposed of on 23.12.2020) in granting bail to the Petitioners therein.

5. Learned Addl. Standing Counsel, CT & GST opposed the move. He submitted that the prayer for grant of bail to the Petitioner having earlier been rejected in BLAPL No. 5883 of 2021, there is no change in the circumstances for reconsideration of the said prayer. According to him, the Petitioner being involved in commission of economic offence and on the face of the materials collected that the Petitioner had all the role in defrauding the State Exchequer to the tune of huge sum by passing over bogus ITC and receiving the ITC simply by managing to have the transactions reflected in the papers without physical movement of the goods or services and in the process has created numerous fake documents such as invoices, bills etc. besides having the hand in creating and operating the fake Firms and opening Bank accounts in the name of those entities which have no existence in reality in the commercial field; merely basing upon the factum of detention of the Petitioner in custody for about five months, this subsequent move for release of the Petitioner on bail has to fail. He submitted that the materials would show that the Petitioner was involved in the matter with the intention to defraud the State Exchequer by way of creation and operation of such fictitious business entities including those existing and he to have proceeded in that mission. He submitted that with the collection of all such materials further investigation is in progress and the Petitioner being an influential person may try to win over the public witnesses and attempt to erase the money trail of the alleged crime as also may an attempt to influence the proprietors of the different firms created for the purpose. In support of the submission as to non-consideration of the prayer for grant of bail, he relied upon the decisions in case of Nimmagadda Prasad vs. Central Bureau of

Investigation; (2013) 7 SCC 466; Y.S. Jagan Reddy vs. Central Bureau of Investigation; (2013) 7 SCC 439 and others.

6. Keeping in view the submission, I have perused the materials as placed and have further gone through the written notes of submission with the citations.

7. The Hon'ble Apex Court in case of "Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others"; (1980) 2 SCC 559 has observed which has also been reiterated in case of "Shri P. Chidambaram vs. Central Bureau of Investigation"; (Criminal Appeal No. 1603 of 2019 disposed of on 22.10.2019) that at the stage of consideration of the matter for granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided.

8. In case of Shri P.Chidambaram (supra), it has been held by the Hon'ble Apex Court as under:-

"The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion 17 of the court has to be exercised judiciously and not in an arbitrary manner".

9. In "Kalyan Chandra Sarkar v. Rajesh Ranjan and another"; (2004) 7 SCC 528, the Hon'ble Apex Court has said as under:-

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider 18 among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC 338.)"

Referring to the factors to be taken into consideration for grant of bail, the Hon'ble Apex Court in "Jayendra Saraswathi Swamigal v. State of Tamil Nadu"; (2005) 2 SCC 13, it has been said that:-

"16. …… The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh AIR 1962 SC 253 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case…… "

After referring para (11) of "Kalyan Chandra Sarkar, in State of U.P. through CBI v. Amarmani Tripathi"; (2005) 8 SCC 21, the Hon'ble Apex Court has held as under:-

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280 and Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused…….. "

10. In the given case, the complaint has been lodged against the Petitioner and others for commission of the aforesaid offences under section 132(1)(b)(c) and (1) of the OGST Act. The maximum punishment prescribed thereunder is the imprisonment for a term of five years and with fine in case the amount of tax evaded or the ITC wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs.500.00 lakh. The investigation having commenced, it appears that extensive searches of business premises and the house of the Petitioner and other connected premises have already been conducted and a large number of documents have also been seized pursuant to the said search. All these are in custody of the complainant to which the Petitioner is having no more the access.

The prosecution case is mainly based upon the documents in respect of the so-called clandestine business activities. The complaint having already been filed, the Petitioner has been in custody since 28.6.2021. The Petitioner is a permanent resident under

jurisdiction of Khandagiri Police Station, Bhubaneswar in the district of Khurda and as such hardly there remains the scope for him to flee away from justice. The proceeding for assessment of the GST payable for the transactions may be continuing where the party aggrieved may further carry Appeal and Revision as provided in law. Till such time at the stage of hearing of the application for grant of bail it may be difficult to prejudge the guilt of the Petitioner in ascertaining the exact quantum involved. The assessment in such matter is largely based on documents and relevant records which would take its own time.

In such circumstances of the case on hand, no other materials are placed to support that further detention of the Petitioner still stands as of necessity for the case. In the meantime, about five months have passed since the detention of the Petitioner in custody and thus those stages of the investigation here appear to be over when it can be said that the Petitioner being enlarged on bail may stand on the way of proper investigation in collecting all the materials triggering derailment of investigation process with the possibility of the Petitioner influencing the witnesses and absconding on which scores there too stand no material particulars..

11. In view of all these aforesaid, this court feels inclined to reconsider the prayer for grant of bail to the Petitioner.

Accordingly, it is directed that the Petitioner be released on bail on furnishing bail bond of Rs.35,00,000/- (Rupees thirty five lakhs) with two sureties for the like amount to the satisfaction of the learned court in seisin of the case with the following conditions that:-

(i) the Petitioner shall not in any manner make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing truth before the Court and shall not tamper with the evidence;

(ii) the Petitioner shall not be indulge himself in similar activity;

(iii) the Petitioner shall surrender his passport if any before the learned court in seisin of the case and will not leave India without prior permission of the Court and in the event the Petitioner has not been issued with any passport, he would submit an affidavit stating the said fact; and

(iv) the Petitioner shall appear before the concerned Authority as would be so required for the purpose.

Violation of any of the above condition(s) shall entail cancellation of bail.

12. The BLAPL is accordingly disposed of.

Issue urgent certified copy as per rules.

17. CST ‘turnover’ cannot be included for determination of tax liability/filing of Returns under TNVAT Act, 2006

Case Name : **Schneider Electric India Pvt. Limited Vs Assistant Commissioner (ST) (Madras High Court)**
Appeal Number : W.P. No. 26347 of 2019

Date of Judgement/Order : 29/11/2021

Rule 8 of the TNVAT Rules, 2007 prescribes a method of determination of '**taxable turnover**' for the purpose of payment of tax. It is not to be read to mean that CST **'turnover'** is to be included either for determination of tax liability under the TNVAT Act, 2006 or for filing of Returns under Rule 7 of the TNVAT Rules, 2007 on 12/14 of the succeeding month as the case may be.

Thus, "taxable turnover" under Section 2(38) under TNVAT Act, 2006 can include only the "turnover" on which a dealer was liable to pay tax under TNVAT Act, 2006as determined after making such deductions from "total turnover" and in such manner as may be prescribed for determining "total turnover". The amounts to be deducted Rule 8(2) of TNVAT Rules, 2007 can never form part of the "taxable turnover" under Section 2 (38) of the TNVAT Act 2006 for the purpose of Section 21 of the TNVAT Act 2006.

The overlap between the CST Act, 1956 and the TNVAT Act, 2006 and the Rules made thereunder are only for the purpose of following the procedure prescribed under the latter Act for the former. Barring the above, there is no scope for including one turnover into another either for determining the tax liability or the determining the due date for filing the Returns, Section 9 of the CST and Rule made thereunder do not permit any inclusion of the turnover under one tax enactment into another.

18. Enable Taxpayer to File Revised TRAN-1 Form Electronically or Manually

Case Name : **Trivedi And Sons Pvt. Limited Vs Union of India (Delhi High Court)**
Appeal Number : W.P.(C) 1548/2021 & CM APPL. 4437/2021
Date of Judgement/Order : 29/11/2021

The petitioner has attached the screenshot showing the invoices uploaded on the portal. Though the petitioner was unable to file TRAN-1 due to technical glitches, yet the petitioner had filed grievances dated 13th April, 2018 and 20th April, 2018 on the portal. Thereafter, the petitioner also informed the respondents vide letters dated 11th May, 2018 and 25th March, 2019, regarding the difficulties faced by him in processing and filing of TRAN-1. These letters were followed up with the representation dated 12th March, 2020 to the respondents.

Accordingly, the present writ petition is allowed in accordance with paragraphs 28 and 29 of the judgment of this Court in Super India Paper Products (Supra). However, the date for accepting the TRAN-1 Form electronically or manually shall be read as 15th December, 2021.

19. GST: Section 130 contemplate release of goods on payment of fine in lieu of confiscation

Case Name : **State Tax Officer Vs Y.Balakrishnan (Kerala High Court)**
Appeal Number : RP No. 630 of 2021
Date of Judgement/Order : 29/11/2021

(1) The provisions of section 130 of the Act contemplate release of goods on payment of fine in lieu of confiscation at two stages (i) during the process of adjudication, under section 130(2) and, (ii) post-adjudication under section 130(3) of the Act.

(2) At the time of release of goods under section 130(2) of the Act, the owner of the goods is required to pay the fine in lieu of confiscation alone, while penalty tax and other charges can be paid after adjudication.

(3) The basis for calculating the fine in lieu of confiscation under section 130 of the Act is only the market value as defined under section 2(73) of the Act and not the maximum retail price.

20. Section 130 of CGST Act contemplate release of goods on payment of fine in lieu of confiscation

Case Name : **State Tax Officer Vs Y. Balakrishnan (Kerala High Court)**
Appeal Number : RP No. 630/2021
Date of Judgement/Order : 29/11/2021

Conclusion: In present facts of the case, the Hon'ble High Court dismissed the Review Petition and it was observed that the provisions of section 130 of the Act contemplate release of goods on payment of fine in lieu of confiscation at two stages (i) during the process of adjudication, under section 130(2) and, (ii) post-adjudication under section 130(3) of the Act.

Facts: In present facts of the case a Review Petition was filed by the State Tax Officer, leading to seminal questions on the scope and ambit of the powers of release of goods while the confiscation proceedings are going on. The dispute emerges from an inspection conducted by the officers who seized, as per Rule 139(2) of the **Central Goods and Services Tax Rules, 2017**, beedis (which is undoubtedly perishable in nature, with a limited shelf life), stored by the respondent in this review petition in his different godowns. Orders of prohibition were later issued under Rule 140 of the Rules.

The dealer initially filed Writ wherein, by an interim order dated 26-08-2021, this Court observed that the dealer is free to approach the Tax Officer for release of goods. In the meantime, the Tax Officer issued three separate show-cause notices, all dated 25-08-2021, proposing to confiscate the goods and the conveyances and levied penalty under section 130 of the Act. The dealer immediately filed another writ challenging the show-cause notices. The notices specified, apart from tax and penalty, the quantum to be paid as fine in lieu of confiscation of the goods. The writ petition was filed, alleging that the goods were not liable for confiscation and that perishable goods cannot be detained indefinitely. It was claimed that the goods were liable to be released on a provisional basis, upon execution of a bond or a bank guarantee.

The Hon'ble High Court vide its Order dated 07-09-2021 directed the Tax Officer to release the goods in favour of the dealer, on payment of the amounts contemplated under section 130(2) of the Act. Soon thereafter, the Tax Officer preferred the present review petition, seeking to review the interim order dated 07-09-2021. The Hon'ble

High Court in the Review Petition framed three issues after taking submissions of both sides into consideration:

Issues

(i) Whether the provisions of section 130 of the Act contemplate any provisional release of goods, as directed in the interim order of this Court?

(ii) Whether the amount payable for release of the goods under section 130 of the Act is fine alone or is it fine, penalty and tax to be paid together for securing release of the goods? and,

(iii) What is the basis or rate for calculating the fine under section 130 of the Act?

On Issue -1, the Hon'ble High Court observed that in the decision in decision of High Court of Gujarat in **Kannan v. State of Gujarat**, though it was observed that the competent authority has the power to pass an order of provisional release of goods, subject to certain terms and conditions, this Court is of the view that section 130(2) contemplates a release not provisional or absolute but a release peculiar to the Act during the course of adjudication. Further, the provisions of section 125 of the Customs Act though contains similar wordings as in section 130(2) of the Act, the interpretations adopted therein cannot be adopted in their entirety since specific distinctions are available in the various clauses of section 130 of the Act.

Thus, it was concluded that though section 130(2) is not a case of provisional release, *the sub-clause confers power upon the competent officer to release the goods on payment of fine in lieu of confiscation, while the proceedings for confiscation are continuing and before orders of adjudication are passed.*

For Issue – 2, it was observed that the words "be liable" in section 130(3) of the Act only conveys a possibility of attracting the obligation and not an imperative obligation, shorn of fair procedure. In view of the above deliberations, this Court is of the view that, when fine in lieu of confiscation is paid by a dealer under section 130(2) of the Act, the liability for payment of tax, penalty and charges will fall upon the dealer, in addition to the fine and they need be paid only after adjudication. To obtain the release of the goods or conveyances, while the adjudication proceedings are continuing, the taxpayer needs to pay only the fine and not the tax, penalty and charges thereon. The tax, penalty and charges can be paid after adjudication.

On Issue 3, it was observed that the first proviso to section 130(2) states that the fine leviable shall not exceed the market value of the goods confiscated. The term 'market value' is defined in section 2(73) to mean "*the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at about the same time and at the same commercial level where the recipient and the supplier are not related*". Therefore, the definition of the term market value clearly indicates that the term is not referable to the maximum retail price and on the contrary, it is a sale price that is agreed to between a bonafide supplier and a bonafide purchaser, who are not related to each other. Thus, The basis for calculating the fine in lieu of confiscation under section 130 of the Act is only the market value as defined under section 2(73) of the Act and not the maximum retail price.

21. Release Vehicle subject to Payment of applicable GST: HC directs GST Authorities

Case Name : **Tvl. PANINDIA Tubes Private Limited Vs Deputy State Tax Officer (Madras High Court)**
Appeal Number : W.P. No. 25441/2021
Date of Judgement/Order : 30/11/2021

Ms. Amirta Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has challenged impugned proceedings in Form GST Mov 1 dated 06.11.2021.

3. It is the case of the petitioner that the petitioner has a unit in Thuvakudi in Trichy and had placed an order from a supplier namely Sreevatsa Tube Corporation, Chennai for supply of goods who had raised GST invoice on 03.11.2021 and had consigned the consignments to the petitioner's place of business at Thuvakudi in Trichy and billed/invoiced the Petitioner's Head Office/Registered Office in Telungana.

4. The learned counsel for the petitioner submits that the supplier has also charged applicable **IGST (Integrated Goods and Services Tax)** as there was an inter-state supply.

5. The learned counsel for the petitioner further submits that the respondent has seized the vehicle as the E-way bill which accompanied the goods had expired before the goods could be delivered and meanwhile the vehicle developed some technical snag. It is submitted that both the goods and vehicle have been seized. He therefore submits that the respondent will be directed to release the vehicle.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

7. Prima facie, it appears that the petitioner is liable to pay SGST & **CGST** as the supply is within the State from Sembudoss Street, Chennai of the supplier to the petitioner at Thuvakudi in Trichy, though the bill has been sent to the petitioner's Head Office/ Registered Office in Telungana.

8. Considering the same, the respondent is directed to release the vehicle subject to payment of the applicable SGST and CGST by the petitioner to be treated as deposit. The respondent shall issue appropriate notice to the petitioner to show cause as to why SGST and CGST directed to be deposited should be demanded and why penalty should not be imposed on the petitioner. It is made clear that the amount to be paid by the petitioner shall be treated as deposit amount against the liability that may be confirmed by the respondent and its appropriation will be subject to the outcome of such proceeding.

9. This writ petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

22. Pandemic cannot be cited as a reason for Non-Inclusion of Petroleum Products under GST: Kerala HC

Case Name : **Kerala Pradesh Gandhi Darshanvedhi Vs Union of India (Kerala High Court)**
Appeal Number : WP(C) No. 23325 of 2021(S)
Date of Judgement/Order : 30/11/2021

Sri. P. R Sreejith, learned Standing Counsel for the Central Board of Indirect Taxes and Customs, handed over a copy of the letter dated 29th November, 2021 of the Director of Goods and Services Tax Council, New Delhi and submitted that the petroleum products could not be brought under the GST regime.

2. Even though the matter was taken in the 45th GST Council meeting, three issues seemed to have been considered by the Council, for bringing the petroleum products under the GST regime, i.e., (i) the matter involves high revenue implications, (ii) requires larger deliberations and (iii) during pandemic times, it would be difficult to bring petroleum products under GST regime. We are not satisfied with the reasons. There should be some discussion and genuine reasons, as to why petroleum products cannot be brought under the GST regime.

3. Further, pandemic period cannot be cited as a reason. It is well known that even during pandemic period, several decisions were taken involving revenue, after deliberations.

4. We direct Sri. P. R Sreejith, learned Standing Counsel for the Central Board of Indirect Taxes and Customs, to file a detailed statement with reference to the observations made above and the prayers sought for.

Post the matter in the second week of December, 2021 along with W.P.(C) No. 15055 of 2021.

23. HC permits filing of GST refund application manually

Case Name : **Laxmi Organic Industries Ltd. Vs Union of India (Bombay High Court)**
Appeal Number : Writ Petition No. 7861 of 2021
Date of Judgement/Order : 30/11/2021

Having failed to upload “Statement 5B” along with refund applications which were filed online, the petitioner applied manually on 10th June, 2021 and 22nd June, 2021 for F.Y.s 2018-19 and 2019-2020. Such applications were returned without being processed with an instruction that in terms of **Circular No. 125/44/2019-GST dated 18th November 2019** (hereafter “the impugned circular”, for short), a refund application has to be filed in FORM GST RFD 01 on the common portal and the same has to be processed electronically, with effect from 26th September 2019. Such an instruction is contained in letter bearing F. No. CGST/RGD/Div-II/Tech-I/Misc/21-22, New Panvel, dated 27th July 2021 issued by the Superintendent, Tech-, Division-II, CGST & C. Ex., Raigad (hereafter ‘the said Superintendent”, for short). Aggrieved

thereby, this writ petition dated 4th September 2021 has been presented before this Court seeking, inter alia, the following relief: –

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction calling for the records pertaining to the Petitioner's case and after going through the facts of the Petitioner's case hold and declare that impugned **Circular No. 125/44/2019-GST dated 18th November 2019** in so far as it creates a condition that the refund application has to be filed online only as being wholly beyond the parent provisions (i.e. Section 54, section 16 and section 168(1) of **CGST Act, 2017** and Rule 89 of **CGST Rules, 2017**) and hence, ultra vires the Act;

(b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction calling for the records pertaining to the Petitioner's case and after going through the facts of the Petitioner's case hold and declare that the Petitioner is entitled to file a refund application manually as well, if he is not in a position to file the refund application online."

2. Mr. Raichandani, learned advocate for the petitioner has invited our attention to rule 97A of the Central Goods and Services Tax Rules, 2017 (hereafter "the CGST Rules", for short) and contended that such rule permits processing of an application for refund filed manually and not on the common portal as referred to in the impugned circular. According to him, the terms of rule 97A of the CGST Rules are such that an application filed manually has to be accepted and an order passed thereon one way or the other. It is contended that the said Superintendent acted illegally in not accepting and processing the application for refund. The writ petition, he submits, ought to succeed by granting relief claimed in terms of prayer clauses (a) and (b).

3. A short reply affidavit has been filed by the respondents contesting the petitioner's claim and bringing on the record the impugned circular.

4. According to Mr. Mishra, learned advocate for the respondents, the said Superintendent who issued the letter dated 27th July 2021 is bound by the terms of the impugned circular and, therefore, was disabled from accepting the application for refund filed by the petitioner manually. He has referred to a decision of the Gujarat High Court reported in 2020 (32) G.S.T.L. 321 (Guj.) (**F. S. Enterprise vs. State of Gujarat**), which we propose to deal with hereafter. Resting on such authority, it is submitted that no illegality has been committed by the said Superintendent. As regards rule 97A, paragraph 6.1 of the reply affidavit has been referred to where it is pleaded that "any provisions of Rules under the said Chapter X of the CGST Rules, 2017 when applicable for 'electronic filing' shall also be applicable for 'manual filing'." Therefore, it is urged that the writ petition may not be entertained and the petitioner ought to file the application for refund in the manner prescribed by the impugned circular.

5. We have heard the parties and perused the materials on the record, including the statutory provisions as well as the impugned circular.

6. The origin of the impugned circular can be traced to section 168 of the Central Goods and Services Tax Act, 2017 (hereafter "the CGST Act", for short), which empowers the Central Board of Indirect Taxes and Customs (hereafter "the Board", for short) to issue such orders, instructions or directions to the central tax officers as it

may deem fit and thereupon all such officers and all other persons employed in the implementation of the CGST Act shall observe and follow such orders, instructions or directions. There can hardly be any dispute that the said Superintendent was under an obligation to follow the terms of the impugned circular. However, it is axiomatic that the said Superintendent is also equally bound by the CGST Act and the CGST Rules and could not have turned a blind eye to rule 97A of the CGST Rules. In our considered opinion, the said Superintendent failed to appreciate that the impugned circular could not have been ignored on the face of rule 97A, which is equally binding on him in the discharge of his duties. We say so for the reason that follows.

7. Chapter X of the CGST Rules is titled “Refund” and begins with rule 89. Rule 89 provides for the procedure to be observed while applying for refund of tax, interest, penalty, fees or any other amount. In terms of sub-rule (1) of rule 89, such an application could be made by the person eligible therefor electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner. We need not refer to the other sub-rules of rule 89 and the provisos appended to some of such sub-rules as well as rules 90 to 97, because the same have not been shown to us to be relevant for the purpose of a decision on this writ petition.

8. Adverting to rule 97A, which is the sheet-anchor of the petitioner’s claim, we find that the same was inserted in the CGST Rules by a notification dated 15th November 2017 and is the last rule in Chapter X. Obviously, such insertion was in exercise of the rule-making power conferred on the Central Government by section 164 of the CGST Act. It would be appropriate to reproduce below rule 97A in its entirety for facility of convenience: –

“97A. Manual filing and processing

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.”

9. Since rule 97A contains a non-obstante clause, it is intended to override rules 89 to 97 of the CGST Rules forming part of Chapter X. The plain and simple construction of rule 97A is that despite rule 89 providing for electronic filing of applications for refund on the common portal, in respect of any process or procedure prescribed in Chapter X any reference to electronic filing of an application on the common portal shall, in respect of that process or procedure, include manual filing of the said application. If indeed the argument of Mr. Mishra that no application in any form other than online can be received and processed is accepted, rule 97A would be a dead letter and rendered redundant. Rule 97A cannot be construed in a manner so as to defeat the purpose of legislation. We, therefore, conclude that the impugned circular would certainly be applicable to all applications filed electronically on the common portal, but the impugned circular cannot affect or control the statutory rule, i.e., rule 97A of the CGST Rules or derogate from it.

10. The proposition of law laid down in **F. S. Enterprise** (supra) that officers and all other persons employed in the institutions governed by the CGST Act and the CGST Rules are bound by instructions issued by the Board under section 168 of the CGST Act admits of no doubt. However, such decision did not lay down the law, as it could never have, that in a given case governed by a statutory rule the tax officers would be at liberty to elect and apply the orders, instructions or directions issued under section 168 of the CGST Act ignoring such statutory rule framed under section 164 thereof while discharging public duties entrusted to them. For the reasons we have assigned above, such decision does not advance the case of the respondents.

11. We, therefore, dispose of this writ petition with the following order: –

(i) the impugned circular is clarified and it is observed that its terms shall be applicable only to applications filed electronically on the common portal but would have no applicability to an application for refund which is filed manually;

(ii) the letter dated 27th July 2021 issued by the said Superintendent stands set aside;

(iii) the petitioner is permitted to file afresh the application for refund manually within a fortnight from date and on such receipt, the said Superintendent shall process the same and ensure that the application is taken to its logical conclusion in accordance with law as early as possible, preferably within 2 (two) months thereof; and

(iv) should the application be rejected; the order must have the support of reasons but if it succeeds no time shall be wasted to effect refund to the extent the petitioner is found eligible.

12. The writ petition stands allowed on the aforesaid terms. There shall be no order as to costs.