

DIRECTORATE OF TRAINING, EXCISE AND TAXATION DEPARTMENT, PUNJAB,
PATIALA

GST UPDATE
(SEPTEMBER 2022)

ABSTRACT OF GST UPDATE

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GIST OF GST NOTIFICATIONS

1. Notification No. 18/2022–Central Tax | Dated: 28.09.2022

CBIC hereby appoints the 1st day of October, 2022, as the date on which the provisions of sections 100 to 114, except clause (c) of section 110 and section 111, of the said Act shall come into force.

2. Notification No. 19/2022–Central Tax | Dated: 28th September, 2022

CBIC notifies insertions/amendments in Rule 21 relating to returns, Rule 36 relating to FORM GSTR-2, Rule 37 relating to input tax credit, Rule 38 relating to GSTR-2, Rule 42 relating to GSTR-2, Rule 43 relating to GSTR-2, Rule 89 relating to refund and Rule 96 relating to Form GSTR-3 or FORM GSTR-3B.

3. Notification No. 20/2022–Central Tax | Dated: 28th September, 2022

CBIC rescinds the notification of the Government of India, Ministry of Finance (Department of Revenue), No.20/2018-Central Tax, dated the 28th March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section(i), vide number G.S.R. 309 (E), dated the 28th March, 2018, with effect from the 1st day of October, 2022,

CGST Notification

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
New Delhi, the 28th September, 2022

Notification No. 18/2022–Central Tax | Dated: 28.09.2022

S.O. 4569(E).—In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2022 (6 of 2022), the Central Government hereby appoints the 1st day of October, 2022, as the date on which the provisions of sections 100 to 114, except clause (c) of section 110 and section 111, of the said Act shall come into force.

[F.No.CBIC-20013/1/2022-GST]
RAJEEV RANJAN, Under Secy.

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
New Delhi

Notification No. 19/2022–Central Tax | Dated: 28th September, 2022

G.S.R. 734(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. -(1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2022.

(2) Save as otherwise provided in these rules, they shall come into force with effect from the 1st day of October, 2022.

2. In the Central Goods and Services Tax Rules, 2017 (herein after referred to as the said rules), in rule 21, after clause (g), the following clauses shall be inserted, namely:-

“(h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

(i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.”;

3. In rule 36 of the said rules,—

(a) in sub-rule (2), the words, letters and figure,” and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such personll shall be omitted;

(b) in sub-rule (4), in clause (b), after the words, “the details of”, the words, “input tax credit in respect of” shall be inserted;

4. In rule 37 of the said rules,—

(a) for sub-rules (1) and (2), the following sub-rules shall be substituted, namely:-

“(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with

interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.;

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).II; (b) sub-rule (3) shall be omitted;

5. In rule 38 of the said rules,—

(a) in clause (a), in sub-clause (ii), the word, letters and figure, “in FORM GSTR-2” shall be omitted;

(b) in clause (c), for the words, letters and figure, ‘and shall be furnished in FORM GSTR-2, the words’, letters and figure, “and the balance amount of input tax credit shall be reversed in FORM GSTR-3B” shall be substituted;

(c) clause (d) shall be omitted;

6. In rule 42 of the said rules, in sub-rule (1), in clause (g), the words, letters and figure, ‘at the invoice level in FORM GSTR-2 and’ shall be omitted;

7. In rule 43 of the said rules, in sub-rule (1), the words, letters and figure, “FORM GSTR-2 and” at both the places where they occur, shall be omitted;

8. In rule 60 of the said rules, in sub-rule (7), for the words —auto-drafted’, the words —auto-generatedII shall be substituted;

9. rules 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 of the said rules shall be omitted;

10. In rule 83 of the said rules, in sub-rule (8), in clause (a), the words —and inwardII shall be omitted; 11. In rule 85 of the said rules, in sub-rule (2), —

(a) in clause (b), for the words “said person;”, the words “said person; or” shall be substituted; (b) clause (c) shall be omitted;

12. In rule 89, of the said rules, in sub-rule (1), —

(a) after the words “claiming refund of”, the words, brackets and figures —any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 orII shall be inserted;

(b) the first proviso shall be omitted;

(c) in the second proviso, for the words “Provided further that”, the words “Provided thatII shall be substituted;

(d) in the third proviso, for the words “Provided also that”, the words “Provided further that” shall be substituted;

13. In rule 96 of the said rules, in sub-rule (3), for the words, letters and figures, “FORM GSTR-3 or FORM GSTR- 3B, as the case may be”, the letters and figure, “FORM GSTR-3B” shall be substituted;

14. FORM GSTR-1A, FORM GSTR-2 and FORM GSTR-3 of the said rules shall be omitted;

15. In FORM GST PCT-05 of the said rules, in Part-A, in the table, against No.1, under the heading “List of Activities”, the words, “and inward”, shall be omitted.

[F.No.CBIC-20013/1/2022-GST]
RAJEEV RANJAN, Under Secy.

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 20/2022–Central Tax | Dated: 28th September, 2022

G.S.R. 735(E).—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India, Ministry of Finance (Department of Revenue), No.20/2018-Central Tax, dated the 28th March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section(i), vide number G.S.R. 309 (E), dated the 28th March, 2018, with effect from the 1st day of October, 2022, except as respects things done or omitted to be done before such rescission.

[F.No.CBIC-20013/1/2022-GST]

RAJEEV RANJAN, Under Secy.

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

CORRIGENDUM

New Delhi, the 29th September, 2022

G.S.R. 740(E).—In the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 20/2022-Central Tax, dated the 28th September, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 735 (E), dated the 28th September, 2022,; at page 5, in line 33, for the figure “2018”, read “2018, with effect from the 1st day of October, 2022”.

[F. No. CBIC-20013/1/2022-GST]

RAJEEV RANJAN, Under Secy.

Advance Rulings

1. NAA order re-investigation against alleged Profiteering by Bollineni Developers

Case Name : Sh. Vinod E Vs Bollineni Developers Ltd. (NAA)

Appeal Number : Case No. 26/2022

Date of Judgement/Order : 30/09/2022

Courts : National Anti-Profiteering Authority

Applicant alleged that the Respondent Bollineni Developers Ltd. had not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in the price of the Flat No. J 703, 7th floor purchased from the Respondent in his project 'Bollineni Silas', situated at Sadarmangala, K R Puram, Bangalore-560048 on introduction of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.

National Anti-Profiteering Authority observes that: –

(i) The Respondent has contended that the total turn-over during the post-GST period was reflected as Rs. 1,83,96,55,636/- instead of Rs. 1,83,97,15,637/- and pending receivables of Rs. 17,14,83,699/- was ignored. In response to the same, the DGAP has clarified that during the course of investigation this data was not furnished by the Respondent.

(ii) The Respondent has contended that as per Section 15(5)(b) read with Rule 3(2) of the Karnataka VAT Act, in respect of VAT/WCT credit under Karnataka VAT Act, both under composition and non-composition scheme, and where, the execution of work is sub-contracted by main contractor to the sub-contractor on back to back basis, then whenever the subcontractor paid VAT/WCT on his turnover, the main contractor is eligible to avail deduction of turnover and WCT paid to subcontractor from his turnover and vice versa. The said claim of the Respondent needs to be examined with respect the relevant law after verification of the assessment orders from the State GST/ VAT authorities.

(iii) The Respondent has claimed that as per the master sheet of home buyers list the total area of both pre-GST and post-GST period's home buyer bookings are 1,71,575 Sft. and 4,63,165 Sft. respectively only. However, in Table-A the DGAP while arriving the Ratio of post-GST Input Tax Credit to turnover (post-GST) has considered the area of pre-GST and post-GST periods' home buyer bookings as 93,825 Sft. and 4,77,645 Sft. instead of 1,71,575 Sft. and 4,63,165

Sft. respectively. This claim of the Respondent needs to be examined from the documents already submitted. Hence, in view of the above facts and observations, the Authority, without going into the merits of the case, directs the DGAP to reexamine/ re-investigate and recalculate the amount of profiteering under Rule 133(4) of the CGST Rules, 2017 strictly in respect of the findings made in para 7(i) to 7(iii) above and submit its Report within 3 months of this order.

2. Advance ruling based on wrong set of facts is not valid: AAAR

Case Name : In re Hilti Manufacturing India Pvt. Ltd. (GST AAAR Gujarat)

Appeal Number : Advance Rulings GUJ/GAAAR/APPEAL/2022/21

Date of Judgement/Order : 27/09/2022

Courts : AAAR Advance Rulings

It has been submitted by appellant that inadvertently wrong facts were mentioned in the Advance Ruling Application dated 31.03.2021 filed by the appellant before the Advance Ruling Authority on 01.04.2021. It has been submitted that the GAAR had given its ruling based on the submission that the foreign customer sends the product samples/goods for R&D testing purposes to the appellant in India and that the appellant carries out R&D activity on such goods provided to them by the foreign customer. However the correct facts as informed by the appellant is that the goods on which R&D services are carried out are manufactured in India by the appellant and the detailed report is provided to the foreign customer after carrying out R&D testing thereon.

We find that the appellant in their application made before the GAAR has submitted that the foreign entities send the product samples/goods for R&D purposes to the appellant in India; that the appellant is carrying out such R&D activity in India on the goods provided to them by the foreign customers and submitting a detailed report to them thereafter. The appellant have also submitted that they have entered into a contract with Hilti Aktiengesellschaft. pursuant to which, the appellant is carrying out R&D services on the samples / goods provided by the foreign company, which is located outside India. Now the appellant before this authority has submitted that these were inadvertently wrong facts mentioned in the advance ruling application made before the GAAR. They have now pointed out that the goods are not supplied to the appellant by the foreign customer but the same is manufactured by the appellant in India and detailed report is provided to the foreign customer after carrying out R&D testing thereon. We find that there has been significant change in the facts of the case presented before the GAAR and now made before this authority by the appellant.

They stated during the course of personal hearing that the matter may be remanded back to GAAR for fresh consideration and decision.

The appellant has now presented new facts which have not been placed before the GAAR and the ruling given by the GAAR is thus based on different facts. Further, as the appellant have got the subject advance ruling based on different set of facts, the advance ruling given is not valid in view of the provisions of Section 103(2) and 104(1) of the CGST Act. 2017.

In view of the above discussion we find it fit to remand the matter to the Authority for Advance Ruling i.e. the GAAR for fresh decision.

3. Vadilal Paratha classifiable under Chapter heading 2106

Case Name : In re Vadilal Industries Ltd. (GST AAAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAAR/APPEAL/2022/20

Date of Judgement/Order : 15/09/2022

Courts : AAAR AAR Gujarat Advance Rulings

Whether the product viz. 'Paratha' i.e. various varieties of Paratha produced by the applicant merit classification under HSN Code 19059090 & Whether the product, namely, 'Paratha' i.e. all varieties of Paratha produced by the applicant are chargeable to 5% GST (i.e. 2.5% SGST and 2.5% CGST) under Sl. No. 99A of Schedule-I of Notification No. 01/2017-CT (Rate) and Notification No. 01/2017-IT (Rate) dated 28-6-17?

Parathas supplied by the appellant are different from Plain Roti or Chapatti and cannot be treated as or covered under the category of Plain Roti or Chapatti. Further as held by the GAAR, the parathas supplied by the appellant will not fall under Chapter heading 1905. We find that the appropriate classification of Parathas would be under Chapter heading 2106 as the subject Parathas require to be cooked before the same can be consumed. The Chapter heading 2106 covers food preparations not elsewhere specified or included and Parathas do not fall under any specific chapter head. Further as per Rule 3(c) of Rules of Interpretation, when goods cannot be classifiable under Rule 3(a) or 3(b) then they shall be classified under the heading which occurs last in numerical order among those which merit consideration. Thus, among the headings 1905 and 2106. latter occurs last in the numerical order and hence heading 2106 would be more appropriate and right classification of appellant's product, even from this consideration.

The appellant submitted that mere heating of their parathas for 3-4 minutes with a little bit of oil would not debar it from falling under Heading 1905 and the GAAR erred in not classifying Paratha under Heading 1905. We refer to cooking instructions mentioned on the packaging of various frozen parathas, as provided by appellant, wherein it is mentioned that "heat on a medium flame for about 3-4 minutes (flipping after every 30 seconds) pressing gently till Paratha is golden

brown on both sides". On going through the above, we observe that the above process of 3-4 minutes of heating amounts to cooking of the Parathas as the color of the Parathas changes and the frozen Parathas become ready for consumption. As compared to Roti or Chappati or items falling under Chapter heading 1905 which are ready to eat and does not require any further processing before consumption, the appellant's products have to be cooked before the same can be consumed.

The appellant has relied upon the advance ruling by Maharashtra Authority of Advance Ruling in the case of M/s. Signature International Foods India Pvt. Ltd. [2019 (20) GSTL 640], In the said case the authority has held Paratha is covered under Entry No.99A (Khakhra. Plain Chapatti or Roti) and is liable to concessional rate of duty. We find that in the said case the authority has given findings that " The product before us is examined from this view point. The product is plain like a chapatti and unstuffed like Gobhi paratha. Laccha paratha. To us, this is nothing but a plain chapatti and paratha is a misnomer for this food product supplied by the applicant. As such we do not find any difficulty in classifying the product as plain chapatti covered by entry 99A of Notification No. of 34/2017." We are of the view that as per Section 103 of the CGST Act, any Advance Ruling is binding on the Applicant who has sought it and on the concerned officer or the jurisdictional officer in respect of the Applicant. We also point out that on the contrary to the above ruling and in consonance with the ruling given by GAAR in the present case, we find that the Authority for Advance Ruling under GST Kerala in the case of M/s. Modem Food Enterprises Pvt. Ltd., while deciding the classification of 'Classic Malabar Parota' and 'Whole Wheat Malabar Parota' has held that "'Classic Malabar Parota and Whole Wheat Malabar Parota is classified under Schedule III of GST laws, vide Heading 2106 'Food preparations not elsewhere specified or included' and is taxable @18% GST'.

Thus, in view of the above, the Parathas supplied by the appellant are different from Plain Chapatti or Roti and cannot be treated as or covered under the Category of Plain Chapatti or Roti and appropriate classification of Parathas would be under Chapter heading 2106.

4. Combined wire Rope not Part of fishing Vessel & not eligible for 5% GST Rate

Case Name : In re Shakti Marine Electric Corporation (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/45

Date of Judgement/Order : 28/09/2022

Courts : AAR Gujarat Advance Rulings

Whether, GST Rate of 5% in terms of Sr.No.252 of Schedule-I of Notification No. 1/2017-CTR, corresponding notification issued by Gujarat State and Notification

No. 1/2017-ITR is applicable in the case 'Combined Wire Rope' used as a part of Fishing Vessel?

Goods whenever used as a parts of fishing vessel/vessel it attract 5% GST as per entry No. 252 of Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017 otherwise it will attract applicable GST rate of the goods.

In the instant case Combined Wire Rope is not a part of fishing vessel but it is used to tie the fishing net with the vessel.

Combined Wire Rope is not used as a part of fishing vessel and the impugned goods does not cover under entry No.252 of Schedule-I of Notification No. 1/2017-Central Tax (Rate) dated 28-06-2017 as amended and is not eligible to GST @ 5%{ CGST 2.5% + SGST 2.5% and IGST 5%}.

5. HSN and GST tax rate of HTP kirloskar Power Sprayer (engine driven)

Case Name : In re Kirloskar Oil Engines Ltd (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/44

Date of Judgement/Order : 28/09/2022

Courts : AAR Gujarat Advance Rulings

What is the 8 digit HSN and GST tax rate of HTP kirloskar Power Sprayer (engine driven)?

CBIC has clarified that Mechanical Appliances whether or not hand operated for projecting, dispersing or spraying liquids attracted GST @18% | Sr. No. 325 of Schedule III]. The applicant goods are Mechanical Appliances which is used in dispersing and spraying the liquids in various fields as per the requirements.

12. It can therefore be concluded that the product 'HTP kirloskar Power Sprayer' merit classification under HSN 8424 89 90 and covered under Entry No. 325 of Schedule-111 of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 and attract GST tax rate 18% (9% SGST + 9% CGST).

6. GST on deduction against subsidized Canteen Facility to employees

Case Name : In re Zydus Lifesciences Ltd (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/42

Date of Judgement/Order : 28/09/2022

Courts : AAR Gujarat Advance Rulings

Whether the subsidized deduction made by the Applicant from the employees who are availing food in the factory/corporate office would be considered as a supply by the Applicant under the provisions of Section 7 of Central Goods and Service Tax Act, 2017 and Gujarat Goods and Service

Tax Act, 2017. i. In case answer to above is yes, whether GST is applicable on the amount deducted from the salaries of its employees?

2. In case answer to above is no; GST is applicable on which portion i.e. amount paid by the Applicant to the Canteen Service Provider or only on the amount recovered from the employees?

CBIC vide Circular No. 172/04/2022-GST dated 06-07-22 has issued following clarification on the issue whether GST is leviable on the benefit provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee :

Clarification

1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows there from that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

The Provision of Services of transports and canteen facility to its employees is as per the contractual agreement between the employee and the employer in relation to the employment. As cited in the above referred provisions of scheduled III and the clarification issued vide Circular No. 172/04/2022-GST dated 06-07-22 , the provision of the services of transportation and canteen facility cannot be considered as supply of goods or services and hence cannot be subjected to GST.

We have already discussed in above paras that the applicant is not liable to pay GST on the amount deducted/ recovered from the employees. Further the applicant is recipient of canteen service to facilitate the employees and Canteen Service Provider raised the Bill of canteen charges inclusive of GST as per the contract. The applicant collects/ recovers the partial amount from the employees and is required to pay the gross amount inclusive of GST to the canteen service by adding residual amount in the employees’ portion and is required to pay gross amount of Bill inclusive GST to the Canteen Service Provider.

7. No GST on services of transportation & canteen facility to employees as per contractual agreement

Case Name : In re SRF Limited (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/41

Date of Judgement/Order : 28/09/2022

Courts : AAR Gujarat Advance Rulings

Whether GST would be payable on nominal & subsidized recoveries made by the Applicant from its employees towards (i) Provision of canteen facility by 3rd party service provider to Applicant's employees at Applicant's premises. (ii) Provision of bus transportation facility by 3rd party service provider to Applicant's employees and

2. If the answer to any of the question above is yes, what is the applicable rate of GST thereupon?

We observe that the applicant is providing transport and canteen facility to its permanent employees (on payroll) as per contractual agreement between employer-employee relationships.

We find that CBIC vide Circular No. 172/04/2022-GST dated 06-07-22 has issued following clarification on the issue whether GST is leviable on the benefit provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee:

Clarification

1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows there from that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

The Provision of Services of transports and canteen facility to its employees is as per the contractual agreement between the employee and the employer in relation to the employment. As cited in the above referred provisions of scheduled III and the clarification issued vide Circular No. 172/04/2022-GST dated 06-07-22, the provision of the services of transportation and canteen

facility cannot be considered as supply of goods or services and hence cannot be subjected to GST.

8. Alleged profiteering by Anant Raj Ltd. : NAA order re-investigation by DGAP

Case Name : Smt. Renu Mittal w/o Mool Chand Mittal Vs Anant Raj Ltd. (NAA)

Appeal Number : Case No. 18/2022

Date of Judgement/Order : 27/09/2022

Courts : National Anti-Profiteering Authority

The brief facts of the Report are that the Applicant No. 1 had filed application before the Standing Committee on Anti-profiteering, under Rule 128 (1) of the CGST Rules, 2017 and submitted that she had purchased flat in the Respondent No. 1's Project "Maceo" but the Respondent No. 1 had not passed on the benefit of Input Tax Credit (ITC) to her by way of commensurate reduction in prices of the flats, in terms of Section 171 (1) of the CGST Act, 2017. The above reference was examined by the Standing Committee on Anti-profiteering and upon being prima facie satisfied that the Respondent No. 1 had not passed on the benefit of ITC had forwarded the application of Applicant No. 1 with its recommendation to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017. This Authority has carefully considered all the Reports filed by the DGAP, submissions of the Respondents and all other material placed on record. On examining the record, the observations of this Authority are as follows:-

a. The National Company Law Tribunal (NCLT) vide its Order dated 24.08.2020 has sanctioned the demerger of the Respondent No. 1 (Demerged Company) and the Respondent No. 2 (Resulting Company) and the subject project i.e. 'MACEO' of the Respondent No. 1, against which complaint regarding non-passing on the benefit of ITC was made by the Applicant No. 1, was transferred to the Respondent No. 2.

b. The Respondent No. 1 during personal hearing via video conferencing held on 10.09.2020 requested to allow him to submit the details of his final ITC. Further, the Respondent No. 1 vide his emails dated 28.09.2020 and 13.10.2020 has stated that the actual figures of the reversal of ITC could not be produced because the corporate restructuring through demerger of the Respondent No. 1's company was underway. The details of the reversal of ITC could only be produced post registration of the new entity and subsequent transfer of ITC from the erstwhile entity to the demerged entity. Though the Respondent No. 1 was provided adequate opportunities to submit the actual figures of ITC vide this Authority's Order dated

25.09.2020, 12.10.2020, 23.10.2020, 04.12.2020, 18.12.2020, 15.01.2021 and 12.02.2021, however, till date the Respondent No. 1 has not submitted the complete details of ITC. If the Respondent No. 1 or the Respondent No. 2 submits the correct details of ITC, the profiteered amount may change. Therefore, there is need to verify the above claim of the Respondent No. 1 or Respondent No. 2 to arrive at the correct findings on the above issue. Accordingly, the DGAP is directed to further investigate it and submit Report on the same.

c. The Respondent No. 1 & No. 2 have further contended that the ITC of Service Tax reflected in Tran-1 should be deducted from the figure of total ITC under GST. They have further claimed that while arriving at the profiteering percentage of 7.81%, and while applying the turnover method, the DGAP in his investigation report dated 23.03.2020 had taken Rs. 16,52,14,920/- as ITC in the GST regime. It was claimed that the aforesaid amount of Rs. 16,52,14,920/- included carried forward transitional CENVAT credit of pre-GST regime amounting to Rs. 1,43,78,603/- and the same had already been included in the calculation pertaining to the pre-GST period. The aforesaid amount of Rs. 1,43,78,603/- being inadvertently added, as claimed by the Respondent No. 1 & No. 2, in the total amount of the ITC under GST of Rs. 16,52,14,920/- had resulted into distorted profiteering percentage. Therefore, the aforesaid amount of Rs. 1,43,78,603/- be deducted from the total amount of ITC under GST so as to determine the correct ratio of profiteering. After excluding the amount of Rs. 1,43,78,603/- from total ITC under GST, the correct percentage of profiteering would work out at 6.87%, as against 7.81% considered in the Report of the DGAP. Upon perusal of the Report of the DGAP, we observe that the Report of the DGAP is silent on the above issue raised by the Respondent No. 1 & No. 2. Therefore, the above claim of the Respondent No. 1 & No. 2 is also required to be further investigated and findings be submitted to this Authority.

d. The Respondent No. 1 has contended that out of the total installments, the Applicant No. 1 has paid 10 installments in the pre-GST regime and the remaining installments were paid in the post-GST regime. However, as per the Report of the DGAP dated 23.03.2020, it has been claimed by the DGAP that out of the total installments, 13 installments were paid by the Applicant No. 1 in pre-GST era and rest were paid in post-GST period. It is apparent from the above that there is dispute over the installments paid by the Applicant No. 1 during the pre and the post GST periods which needs to be further investigated and correct figures be submitted to this Authority.

e. The Respondent No. 1 vide submissions dated 01.07.2020 has stated that out of 16 towers (A to R), he has received Occupancy Certificate for 12 towers i.e. '3"K"G' and 'H' on 07.06.2019 and for towers 'A"C"D"E"F"L' and 'N' on 28.11.2019, and the ITC in respect of these flats had already been passed on to the respective flat buyers. However, there is no documentary evidence to verify that the above Respondent has passed on the benefit of ITC in respect of above mentioned 12 towers i.e. '3"K"G' 'H"A"C"D"E"F"L"M' and 'N' to the flat buyers. Accordingly, the claim of the above Respondent be verified by the DGAP and report be submitted.

f. The Respondent No. 2 has submitted his own calculations of ratio of ITC to Turnover for the pre and post GST period and claimed that the ratios are 7.58% and 1.52% respectively and thus, as per his calculations, the revised profiteered amount came to Rs. (-5,26,90,777/-), which is also required to be verified by the DGAP.

g. For the reasons mentioned in Para 26(f) supra, it appears that there is a huge difference between the 'ratio of ITC to Turnover' and 'Profiteered Amount' calculated by the Respondent No. 2 as compared with the 'ratio of ITC to Turnover' and 'Profiteered Amount' calculated by the DGAP.

Therefore, it appears to this Authority that there is a need to verify the above claim of the Respondent No. 2 to arrive at the correct 'ratio of ITC to Turnover' and 'Profiteered Amount'. Accordingly, the DGAP is directed to further investigate it and submit Report on the same. Therefore, without going into the merits and the other submissions made by the Respondents and the Applicants at this stage, we find that this case merits re-investigation by the DGAP based on the above observations of this Authority. Thus, we direct the DGAP to reinvestigate the matter as per the provisions of Rule 133(4) of the CGST Rules 2017 and submit his report before this Authority. On his part, the Respondents are directed to fully cooperate with the DGAP in the process of reinvestigation which includes submission of the requisite documents/details/information pertaining to his supplies.

9. JKG Construction guilty of profiteering in its project JKG Palm Court: NAA

Case Name : Sh. Deepak Garg Vs JKG Construction Pvt. Ltd. (NAA)

Appeal Number : Case No. 80/2022

Date of Judgement/Order : 30/09/2022

Courts : National Anti-Profiteering Authority

The present Report dated 31.08.2021 had been received from the Applicant No. 2 i.e. the Director General of Anti-profiteering (DGAP) after a detailed investigation under Rule 129(6) of the Central Goods & Services Tax (CGST)

Rules, 2017 alleging profiteering by the Respondent in respect of the purchase of shops in the Respondent's project " JKG Palm Court " by not passing on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in prices after implementation of GST w.e.f. 01.07.2017. The Standing Committee forwarded the copy of the complaint of Applicant No. 1 to the DGAP for detailed investigation.

Held by NAA

The Authority finds that, to verify the claims of the Respondent of having passed on the benefit of ITC to the recipients of supply, the DGAP had sent emails dated 17.08.2021 to only 324 buyers (whose email addresses were provided by the Respondent). In response to these 324 emails, 23 home buyers had denied the receipt of any benefit. Hence, this Authority finds that, such verification is not comprehensive, complete, definite or conclusive and hence cannot be accepted.

The Authority finds that the Respondent has profiteered by an amount of Rs. 5,14,06,920/- during the period of investigation i.e. 01.07.2017 to 31.10.2020. The Authority determines an amount of Rs. 5,14,06,920/- (including 12% GST) under section 133(1) as the amount profiteered by the Respondent from his home buyers/shop buyers/customers/recipients of supply in the impugned Project (as per Annexure-A to this Order), including Applicant No. 1, which shall be refunded by him along with interest @18% thereon, as prescribed, from the date when the above amount was profiteered by him till the date of such payment, as per the provisions of Rule 133 (3) (b) of the GCST Rules 2017. The amount profiteered is Rs. 1,99,182/- in respect of Applicant No.1 .

This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/shop buyers/customers/recipients of supply commensurate with the benefit of ITC received by him as has been detailed above.

The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 5,14,06,920/-, for the project 'JKG Palm Court'. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients of supply, on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

The complete list of homebuyers/shop buyers/customers/recipients of supply is attached with this Order, with the details of the amount of benefit of ITC to be passed on along with interest @ 18%, as prescribed, in respect of the project 'JKG Palm Court' of the Respondent as in the said Annexure-'A'.

This Authority also orders that the profiteered amount of Rs. 5,14,06,920/- for the project 'JKG Palm Court' along with the interest @ 18% from the date of receiving the profiteered amount from the homebuyer/customers/recipients of

supply till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

It has also been found that the Respondent has denied the benefit of additional ITC to his customers/buyers/recipients of supply in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. As the said provision was inserted only with effect from 1.01.2020, therefore, the Respondent is liable for the imposition of penalty for the period from 01.01.2020 onwards under the provisions of the said Section. Accordingly, a Notice be issued to the Respondent for the said purpose.

10. MPHIDB guilty of Profiteering in EWS Housed in its Project at Kamayani Nagar

Case Name : Janki Prasad Pandey Vs Madhya Pradesh Housing and Infrastructure Development

Board (NAA)

Appeal Number : Case No. 78/2022

Date of Judgement/Order : 30/09/2022

Courts : National Anti-Profiteering Authority

The brief facts of the present case are that a reference was received from the Standing Committee on Anti-profiteering on 16.12.2020 under Rule 129 of the CGST Rules, 2017 to conduct a detailed investigation in respect of an application filed by the Applicant No. 1 under Rule 128 of the Rules, alleging that he purchased an EWS House in the Project at Kamayani Nagar at Rau, Indore from the Respondent in May, 2019 and the Respondent charged GST @ 12% from him instead of 1%.

It has been revealed from the DGAP's Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 0% and during the post-GST period (July, 2017 to November, 2020), it was 5.92% for the Project at Kamayani Nagar at Rau, Indore. This confirms that post-GST, the Respondent has benefited from additional ITC to the tune of 5.92% [5.92% (-) 0%] of his turnover for the said Project, and the same was required to be passed on to the customers/flat buyers/recipients. The DGAP has calculated the amount of ITC benefit to be passed on to all the flat buyers/customers/recipients as Rs. 26,33,536/- for the Project of the Respondent at Kamayani Nagar at Rau, Indore, the details of which are mentioned in Annexure-16 of the Report, which includes the amount of Rs. 52,873/- of the Applicant No. 1.

For the reasons and discussions made hereinabove, the Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's Report or the methodology adopted and hence, the Authority determines the profited amount for the period from 01.07.2017 to 30.11.2020, in the instant case, as Rs. 26,33,536/- for the Project of the Respondent at Kamayani Nagar at Rau, Indore. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as has been detailed above.

Given the above discussions, the Authority finds that the Respondent has profited by Rs. 26,33,536/- for the Project at Kamayani Nagar at Rau, Indore during the period of investigation i.e. 01.07.2017 to 30.11.2020. The above amount that has been profited by the Respondent from his home buyers/customers/recipients in the above said Project shall be refunded/returned/passed on by him, along with interest @18% thereon, from the date when the above amount was profited by him till the date of such payment, under the provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

The Respondent is also liable to pay interest as applicable on the entire amount profited, i.e. Rs. 26,33,536/- for the Project at Kamayani Nagar, Rau, Indore. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients on the entire amount profited, starting from the date from which the above amount was profited till the date of passing on/ payment, as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

11. Pearlite Real Properties guilty of profiteering in its project Godrej 24: NAA

Case Name : Sh. Parvez Khan Vs Pearlite Real Properties Pvt. Ltd. (NAA)

Appeal Number : Order No. 77/2022

Date of Judgement/Order : 30/09/2022

Courts : National Anti-Profiteering Authority

It has been revealed from the DGAP's Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 3.02% and during the post-GST period (July-2017 to December-2018), it was 6.66% for the project 'Godrej 24'. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 3.64% [6.66% (-) 3.02%] of his turnover for the said project and the same was required to be passed on to the customers/flat buyers/recipients. The DGAP has

calculated the amount of ITC benefit to be passed on to the customers/flat buyers/recipients as Rs. 6,89,62,698/- for the project “Godrej 24”, the details of which are mentioned in Table- B above. Further as per Table-C of DGAP, the profiteering amount to be passed on to the Applicant No. 1 is nil as no post-GST billing during the investigation period was made to Applicant No. 1.

Hence, in view of our findings above, the Authority finds no reason to differ from the above detailed computation of profiteered amount by the DGAP or the methodology adopted by it. The Authority determines that the Respondent has profiteered an amount of Rs. 6,89,62,698/- (Rupees Six Crore Eighty-nine Lacs Sixty-two Thousand Six Hundred Ninety-eight only) during the period under present investigation i.e. 1.07.2017 to 31.12.2018, in the present Project. Therefore, given the above facts, the Authority under Rule 133(3)(a) of the CGST Rules orders that the Respondent shall reduce the price to be realized from the customers/flat buyers/recipients in the Project “Godrej 24” commensurate with the benefit of additional ITC received by him as detailed above.

The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 6,89,62,698/- for the project “Godrej 24”. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per the provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

This Authority also orders that the profiteered amount of Rs. 6,89,62,698/- for the project “Godrej 24” along with the interest @ 18% from the date of receiving of the profiteered amount from the customers/flat buyers/recipients in the Project “Godrej 24”, till the date of passing the benefit of ITC shall be paid/passed on by the Respondent to each customer/flat buyer/recipient within a period of 3 months from the date of this Order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

The details of the eligible customers/flat buyers/recipients in the Project “Godrej 24” and benefit which is required to be passed on to each customers/flat buyers/recipients along-with the details of the unit are contained in the Annexure ‘A’ of this Order.

As regards to point 13’ in para 7, the Authority finds that, in view of the discussions and findings above and in the given facts and circumstances and also stated position of law we find that the Respondent has denied the benefit of ITC to the customers/flat buyers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. We hold that the Respondent has

committed an offence by violating the provisions of Section 171 (1) during the period from 01.07.2017 to 31.12.2018, and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of the said Section 171 (3A) shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.07.2017 to 31.12.2018 when the Respondent has committed the above violation and hence the penalty under Section 171 (3A) cannot be imposed on the Respondent for such period. Accordingly, notice for imposition of penalty is not required to be issued to the Respondent.

Further the concerned jurisdictional CGST/SGST Commissioner is also directed to ensure that the benefit of ITC as determined by the Authority as per the Annexure 'A' of this Order be passed on along with interest @18% to each homebuyer/recipient/customer, if not already passed on. In this regard an advertisement of appropriate size to be visible to the public may also be published in a minimum of two local Newspapers/vernacular press in Hindi/English/local language with the details i.e. Name of the builder (Respondent) — M/s Pearlite Real Properties Pvt. Ltd., Project- "Godrej 24", Location- Pune, Maharashtra and profiteered amount Rs. 6,89,62,698/-; so that the Applicant along with Non-Appliants homebuyers/recipients/customers can claim the benefit of ITC which has not been passed on to them.

Homebuyers/recipients/customers may also be informed that this detailed NAA Order is available on Authority's website www.naa.gov.in. Contact details of concerned Jurisdictional Commissioner CGST/SGST for compliance of this Authority's order may also be advertised through the said advertisement.

12. Eden Realty guilty of profiteering in its project Siddha Eden Lakeville: NAA

Case Name : Rajesh Shaw Vs Eden Realty Ventures Pvt. Ltd. (NAA)

Appeal Number : Case No. 75/2022

Date of Judgement/Order : 30/09/2022

Courts : National Anti-Profiteering Authority

The Applicant No.1 Rajesh Shaw alleged that the Respondent No. 1 Eden Realty Ventures Pvt. Ltd. had not passed on the benefit of ITC to him by way of commensurate reduction in prices and charged GST @12% on the amount due to him against payments made for project Siddha Eden Lakeville, situated at Lake View Park Road, Banhooghly, Kolkata, West Bengal-700108 on 17.09.2016.

It is observed from the Report of the DGAP that the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 1.16%, whereas, during the post-GST period (July-2017 to September-2019), it was 6.85% for the project 'Siddha Eden Lakeview'. This confirms that, post-GST, the Respondent No. 1 & 2 have been benefited from additional ITC to the tune of 5.69% (6.85% – 1.16%) of their turnover for the project 'Siddha Eden Lakeview' and the same was required to be passed on to the customers/flat buyers/recipients. Therefore, the Respondent No. 1 had benefit by an additional amount of ITC amounting to Rs. 4,11,40,502/- (which includes GST @12%), similarly, the Respondent No. 2 had benefited by an additional amount of ITC amounting to Rs. 2,50,94,164/- (which includes GST @12%). The DGAP has calculated the total amount of ITC benefit to be passed on to all the customers/flat buyers/recipients as Rs. 6,62,34,666/- for the project 'Siddha Eden Lakeview'. The Respondent No. 1 is required to pass on Rs. 96,857/- as the additional benefit of ITC to the Applicant No. 1 and Rs. 4,10,43,645/- to other 264 recipients. Further, the Respondent No. 2 is required to pass on Rs. 2,50,94,164/- to 270 other flat buyers/recipients in the project 'Siddha Eden Lakeview' for the period from 1.07.2017 to 30.09.2019.

Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's Report or the methodology adopted. The Authority finds that the Respondent No. 1 has profiteered by an amount of Rs. 4,11,40,502/- and the Respondent No. 2 has profiteered by an amount of Rs. 2,50,94,164/- during the period of investigation i.e. 01.07.2017 to 30.09.2019. The Authority determines an amount of Rs. 4,11,40,502/- (including 12% GST) under section 133(1) as the profiteered amount by the Respondent No. 1 and an amount of Rs. 2,50,94,164/- (including 12% GST) as the profiteered amount by the Respondent No. 2 under section 133(1) from their 265 (including Applicant No. 1) and 270 homebuyers/customers/recipients of supply, respectively (as per Annexure 'A' to this Order), which shall be refunded/returned/passed on by the Respondents to the respective homebuyers/customers/recipients of supply along with interest @18% thereon, from the date when the amounts were profiteered by them till the date of such return/refund/payment, in accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017. The amount profiteered is Rs. 96,857/- (including GST) in respect of the Applicant No.1. Since the Respondent No. 2 had availed the entire CENVAT/ITC for the project (including units pertaining to the Respondent No. 1), therefore the aforesaid profiteered amount of Rs. 4,11,40,502/- (inclusive of GST) has to be passed on/refunded/returned by the Respondent No. 2 to the Respondent No. 1, who in turn is required to pass on/return/refund the benefit to his recipients including the Applicant No. 1.

This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that The Respondent No. 1 & 2 shall reduce the prices to be realized from the homebuyers/customers/recipients of supply commensurate with the benefit of ITC received as per the Methodology as has been detailed above.

The Respondent No. 1 & 2 are also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 4,11,40,502/- (in respect of the Respondent No. 1) and Rs. 2,50,94,164/- (in respect of the Respondent No. 2), for the project 'Siddha Eden Lakeview'. Hence the Respondent No. 1 & 2 are directed to also pass on interest @18% to the homebuyers/customers/recipients of supply on the entire amount profiteered, starting from the date from which the amount was profiteered till the date of passing on/ payment/return, as per provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

13.ATS Township guilty of profiteering in its project ATS Rhapsody: NAA

Case Name : Kundan Kumar Sinha Vs ATS Township Pvt. Ltd. (NAA)

Appeal Number : Case No. 74/2022

Date of Judgement/Order : 28/09/2022

Courts : National Anti-Profiteering Authority

Applicant alleged profiteering by ATS Township Pvt. Ltd. in respect of purchase of a Flat No. 4032 in Tower-4 in the Respondent's project 'ATS Rhapsody', situated at Plot No. GH12/1, Sector-1, Village Bisrakh, Greater Noida, Uttar Pradesh. The Applicant No. 1 alleged that the Respondent had not passed on the commensurate benefit of input tax credit (ITC) to him by way of commensurate reduction and charged GST @ 12 % on the amount due to him against payment.

In the instant case, there is no reduction of rate of tax during the relevant period and the only issue which is required to be decided by the Authority is as to whether Respondent is required to pass on the benefit of input tax credit. As mentioned in earlier paragraphs, the DGAP has carried out investigation in the subject matter and collected relevant information/evidences from the Respondent and after the analysis of the same the DGAP has come to a conclusion that the Respondent has gained benefit of ITC on the supply of Construction services after the implementation of GST w.e.f. 01.07.2017 and the Respondent was required to pass on such benefit to the buyers by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017 during the period 01.07.2017 to 31.05.2020.

In view of the above facts and findings discussed in the earlier paras at 34, 35 and 37, this Authority agrees with the methodology adopted by the DGAP in its Report to calculate the profiteered amount. This Authority has taken note of claim

of the Respondent regarding transfer of benefit of Rs.15,48,92,888/- and also findings of the DGAP in Table D in para 22 supra, that an amount of Rs. 9,03,74,981/- was to be transferred out. The Respondent has claimed to pass on excess benefit to some buyers at the expansion of other buyers as mentioned in the said Table D. The Respondent has not been able to provide any methodology whereby such amount of Rs.15,48,92,888/- was passed on whereas the DGAP has calculated amount of Rs. 9,03,74,981/- in scientific manners as mentioned in the Annexure-24 of said Report. Hence, this Authority determines that the Respondent has realized an additional amount of Rs. 9,03,74,981/- which includes both the profiteered amount @ 5.69% of the taxable amount (base price) and GST @ 12% on the said profiteered amount from the 395 buyers/recipients [including the amount of Rs.2,72,720/- (including GST @12%) from the Applicant No. 1] during the period from 01.07.2017 to 31.05.2020 which was required to be passed on such home buyers/customers/recipients of supply of his impugned project.

The details of eligible buyers to whom supply was made by the Respondent in his impugned Project and from whom additional amount on account of benefit of ITC had been realized by the Respondent during the aforesaid period along with details of such additional amount is given in Annexure-`A` to this Order.

Since, all the home buyers of supply are identifiable as per the documents placed on record therefore, the Respondent is directed to pass on the above said profiteered amount along with the interest @ 18% per annum (from the dates from which the said profiteered amount was collected by him from each of them till the date such amount is passed on/returned/refunded) to above said buyers/recipients, if not already passed on/returned/refunded within a period of 3 months from the date of passing of this Order as per the details mentioned in Annexure-`A`, failing which the said amounts shall be recovered as per the provisions of the CGST Act, 2017.

For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law we find that the Respondent has denied the benefit of ITC to the buyers of his flats/shops/units in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. The Authority holds that the Respondent has committed an offence by violating the provisions of Section 171 (1) and therefore, he is liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. As the said provision which has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019, the Respondent is liable to penalty for the amount profiteered by him from 1.01.2020 onwards. Accordingly, notice be issued to the Respondent for such purpose.

14. CRP Test Kit & HbA1c Test kit classifiable under chapter heading 3002

Case Name : In re Accurex Biomedical Private Limited (GST AAAR Maharashtra)
Appeal Number : Advance Ruling No. MAH/AAAR/AM-RM/12/2022-23
Date of Judgement/Order : 30/09/2022
Courts : AAAR AAR Maharashtra Advance Rulings

Order No. GST-ARA-98/2019-20/B-72 dated 11.10.2021 by holding that both the impugned products, i.e., CRP Test Kit and HbA1c Test kit, will be classified under chapter heading 3002, and accordingly, both the product will attract GST at the rate of 5% (CGST @2.5 % +SGST @2.5 %) in terms of the entry at Sl. No. 180 of the Schedule I to the Notification No. 01/2017-C.T. (Rate) dated 28.06.2017 read with entry at Sl. No. 125 of the List I appended to the Schedule I to the Notification No. 01/2017-C.T. (Rate) dated 28.06.2017 Thus, the appeal filed by the Appellant is, hereby, allowed.

15. CNG Dispenser merit classification under Chapter Heading 90.32

Case Name : In re Parker Hannifin India Private Limited (GST AAAR Maharashtra)
Appeal Number : Advance Ruling No. MAH/AAAR/AM-RM/11/2022-23
Date of Judgement/Order : 30/09/2022
Courts : AAAR AAR Maharashtra

CNG Dispenser does not have a pump or a pumping function. Rather, it has simpliciter inlets and outlets which allows for movement of the CNG from the storage tank to the vehicle via the CNG Dispenser. The reason for movement of the CNG is that the pressure in the tank is low, while that of being dispensed is high. Hence, by principle of simple physics, viz., gas moves from a region of high pressure to low pressure. It is also an undisputed fact that that there is no application of external force for causing movement of CNG into the vehicle. As per the submissions made by the Appellant regarding components of the impugned device which includes the components like pressure sensor, controller unit, which automatically control and regulate the pressure of CNG being dispensed into the fuel tank, it is observed that the impugned device would merit classification under the Chapter Heading 90.32 placed at Sl. No. 422 of the Schedule III to the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017

16. Housing Society not eligible to claim ITC on works contract services of repairs, renovations & rehabilitation

Case Name : In re Mahavir Nagar Shiv Shrushti Co-op. Housing Society Limited (GST AAAR Maharashtra)

Appeal Number : Advance Ruling No. MAH/AAAR/AM-RM/10/2022-23
Date of Judgement/Order : 30/09/2022
Courts : AAAR AAR Maharashtra Advance Rulings

AAAR do not find any reason to interfere with the Advance Ruling passed by the MAAR vide Order No. GST-ARA-19/2021-22/B-94 dated 10.11.2021 wherein it has been held that the Appellant-society is not eligible to avail ITC of the tax paid on the works contract services received from their appointed contractor related to Housing Society not eligible to claim ITC on repairs, renovations & rehabilitation works in terms of the limitations provided under section 17(5)(c) of the CGST Act, 2017, as they cannot be said to be providing works contract.

17.AAAR dismisses appeal on the ground of limitation for delayed filing

Case Name : In re KRBL Infrastructure Private Limited (GST AAAR Uttar Pradesh)
Appeal Number : Advance Ruling No. UP/AAAR/03/2022
Date of Judgement/Order : 30/09/2022
Courts : AAAR AAR Uttar Pradesh Advance Rulings

AAAR hold that the appeal filed by the Appellant is not admissible in eye of law and therefore, it is dismissed on the ground of limitation itself without going into the merits of the case. Since the impugned order was served on 12.02.2022 to the Appellant, as admitted by the Appellant in their appeal, (though in the appeal form GST ARA-2, it is written as 12.01.2022), the last date for filing an appeal would have been 30.05.2022. Further, even if the added benefit of provision to sub-section (2) or Section 100 of CGST Act is extended to the Appellant, by considering that the Appellant was prevented by a sufficient cause from presenting the appeal within the normal period and a further period of 30 days were allowed, even then the last date of filing appeal would be 29.06.2022. Therefore, in any foreseeable case, the last date for filing of appeal under law in the instant case was 29.06.2022. No appeal was filed by the Appellant that date and it was finally filed only on 07.07.2022. Accordingly, we hold that the appeal filed by the Appellant is not admissible in eye of law and therefore, it is dismissed on the ground of limitation itself without going into the merits of the case.

18.GTA service: GST payable on Value of free diesel filled by service recipient

Case Name : In re Gurjinder Singh Sandhu (Proprietor M/s New Jai Hind Transport Service) (GST AAR Uttarakhand)
Appeal Number : Advance Ruling No. 10/2022-23
Date of Judgement/Order : 26/09/2022

Courts : AAR Uttarakhand Advance Rulings

The AAR, Uttarakhand in the matter of M/s Gurjinder Singh Sandhu (Proprietor M/s New Jai Hind Transport Service) [Ruling 10/2022-23 In Application No: 06/2022-23] an application filed by, under Section 97(1) of the Central Goods and Service Tax Act, 2017 (“the CGST Act”), and the Uttarakhand Goods and Service Tax Act, 2017 (“the Uttarakhand GST Act”), passed a ruling that, the value of Free Diesel filled in vehicles by the Recipient must be subject to GST, by adding the free value diesel in the value of the Goods Transport Agency (“GTA”) service.

19.UK CAMPA falls under State Government category under CGST Act, 2017

Case Name : In re M D Power Transmission Corporation of Uttaranchal Limited (GST AAR Uttarakhand)

Appeal Number : Advance Ruling No. 08/2022-23

Date of Judgement/Order : 26/09/2022

Courts : AAR Uttarakhand Advance Rulings

Q1. Whether UK CAMPA, falls under the ambit of the definition of “Government” as laid under section 2(53) of the Central Goods & Service Tax (CGST) Act, 2017?

A1. UK CAMPA falls under the category of State Government as per the provisions of the CGST Act, 2017.

Q2. Whether services rendered by UK CAMPA for which compensation is paid by PTCUL, qualifies as a ‘supply of services’ as per section 7 of CGST Act, 2017?

A2. Services rendered through the Forest Department of State Government of Uttarakhand, for which compensation is paid by PTCUL, qualifies as a ‘supply of services’ as per section 7 of CGST Act, 2017.

Q3. Whether services supplied by UK CAMPA, which is a section 12AA registered entity of The Income Tax Act 1961, be covered under Serial No 1 (Chapter 99) of Notification No 12/2017-Central Tax (Rate) dated 28th June 2017 read with section 11 of the CGST Act 2017?

A3. Services rendered through the Forest Department of State Government of Uttarakhand, is not covered under Entry No 1 (Chapter 99) of Notification No 12/2017-Central Tax (Rate) dated 28th June 2017 read with section 11 of the CGST Act 2017.

Q4. If the answer to Question No 3 above is in the negative, under which heading of the GST tariff shall the said supply of service be covered?

A4. Services fall under the Heading 999799 – “Other services nowhere else classified” in the “Group 99979- Other miscellaneous services.

Q5. If the answer to Question No 3 above is in the negative, identify the person liable to deposit such GST with the Government authorities i.e. is such payment covered under the Reverse Charge mechanism or normal forward charge rules?

A5. The applicant being a business entity is liable to follow the provisions of the Notification No. 13/2017- Central Tax (Rate) dated 28th June, 2017 and is liable to pay due tax under reverse charge mechanism on the total assigned value for which demand is raised by the Forest Department of State Government of Uttarakhand, as per the provisions of the CAMPA Act.

Q6. Whether compensation paid by PTCUL to DFO, the Government of Uttarakhand, is subject to levy of GST?

A6. As the Supply of services of “Premium or Annual Lease” is done for a consideration by the DFO of the Forest Department of State Government of Uttarakhand hence services rendered, qualifies as a ‘supply of services’ as per section 7 of CGST Act, 2017.

Q7. If the answer to Question No 6 above is in the positive, under which heading of the GST tariff shall the said supply of service be covered?

A7. Services fall under the Heading 997212 – “Rental or leasing services involving own land or leased non-residential property”.

20. GST on ‘coal rejects’ whose invoice is raised upon washery/job-worker

Case Name : In re Punjab State Power Corporation Limited (GST AAR Punjab)

Appeal Number : Advance Ruling Order No. AAR/GST/PB/017

Date of Judgement/Order : 20/09/2022

Courts : AAR Punjab Advance Rulings

(i) Whether the ‘coal rejects’ whose invoice is raised by Applicant upon washery/job-worker, is taxable under GST Act and Compensation Cess Act in the hands of Applicant?

Yes, Coal rejects are to be classified under HSN 2701 and are taxable at 5% GST Rate Rs. 400 PMT Compensation Cess.

(ii) If the answer to above question is yes. whether applicant is eligible to avail Input Tax Credit (ITC) of GST and Compensation Cess of raw coal brought from its supplier and transferred to washery/job worker for cleaning?

Where the goods are being received in lots or installments. the registered person shall be entitled to take credit upon receipt of the last lot or installment. Thus, if

the applicant fulfils the eligibility conditions as prescribed under Section 16 of CGST Act, 2017 & PGST Act, 2017 and if the type of ITC do not fall under the categories prescribed under Section 17 of CGST Act, 2017 & PGST Act, 2017. the applicant is eligible to avail Input Tax Credit of GST and Compensation Cess of raw coal brought from its supplier and transferred to washery/job worker for cleaning. Further, the “principal” shall be entitled to avail ITC in relation to goods sent directly to the premises of job-worker.

(iii) If the answer to above question is yes and ITC is admissible, what is the admissible proportion of Input Tax Credit?

The formula prescribed under Rule 42 of CGST & PGST Rules, 2017 for manner of determination of input tax credit in respect of inputs or input services and reversal thereof will be applicable in both cases i.e. GST and Compensation Cess. Therefore, the provisions prescribed under Rule 42 of CGST & PGST Rules, 2017 should be followed by the applicant and they have to make reversal in the proportion of exempt/taxable turnover.

21. GST exempt on training programmes approved by NSDC

Case Name : In re Nxtwave Disruptive Technologies Private Limited (GST AAR Telangana)

Appeal Number : Advance Ruling TSAAR Order No. 50/2022

Date of Judgement/Order : 27/09/2022

Courts : AAR Telangana Advance Rulings

Q1. Whether training programmes offered by the applicant, as approved by NSDC would be construed under the ‘any other scheme implemented by the NSDC’ as required under serial no.69 of the Notification and the benefit of GST exemption would be available to the applicant from the date of its agreement with NSDC?

A1. Yes, the services offered by the applicant fall under Sl.No.69 (d) (iii) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 of CGST notifications and therefore eligible for exemption under this notification for CGST and SGST.

Q2. Whether the training programmes offered in collaboration with other business partners, imparted by business partners of the applicant under a sub contract would be construed under the “any other scheme implemented by the NSDC” as required under serial no.69 of the Notification and the benefit of GST exemption would be available to the applicant?

A2. No, under this entry the services supplied by the applicant as Approved Training Partner to NSDC in relation to any other scheme implemented by the NSDC as required under serial no.69 of the Notification are exempt but not the services received by the applicant from others including a subcontractor who supplies such services to the applicant who is not a training partner approved by the National Skill Development Corporation or the Sector Skill Council.

Q3. Exemption of GST is available to the company as a whole as long as its services fulfil the criteria laid down under serial no. 69 of the said notification and not limited to Telangana GST?

A3. Only the services supplied by the applicant as Approved Training Partner to NSDC in relation to any other scheme implemented by the NSDC as required under serial no.69 of the Notification are eligible for exemption from both CGST and SGST. The services supplied by the applicant company which do not fall under the above category are not eligible for this exemption.

22. GST on GTA services in respect of Cotton seeds (Banaula)

Case Name : In re Ahuja Industries (GST AAR Punjab)

Appeal Number : Order No. AAR/GST/PB/21

Date of Judgement/Order : 20/09/2022

Courts : AAR Punjab Advance Rulings

1. Are Cotton Seeds Banaula included in the list of agricultural produce for exemption GTA service under Notification No. 12/2017-Central Tax (Rates) dt. 28.06.2017 Tariff heading 9965/996712?

Cotton Seed (Banaula) is not eligible for exemption from payment of GST on GTA services as per Notification No. 12/2017-Central Tax (Rates) dt. 28.06.2017 (Tariff heading 9965/9967).

2. If not, what is the tax rate applicable on M/s Ahuja Industries for GTA services in respect of Cotton seeds?

GST chargeable is 5% (2.5% CGST and 2.5% SGST) on GTA services availed by the applicant for transporting Cotton Seed (Banaula). provided that credit of input tax charged on goods and services used in supplying the service has not been taken, else @6%, under Sr. No. 9 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

23. Advance ruling cannot be given if application Fees not paid in full

Case Name : In Re Bhawani Founders & Engg Works (GST AAR Punjab)

Appeal Number : Order No. AAR/GST/PB/20

Date of Judgement/Order : 20/09/2022

Courts : AAR Punjab Advance Rulings

1. What is the classification and rate of Goods and Services Tax for Chaff Cutter Machine, which is used in cutting of chaff, hay and agriculture produce for fodder of live stocks?
2. What is the classification and rate of Goods and Services Tax for Parts of Chaff Cutter Machine. The names of parts are Wheel, Handle and stand. Such parts are assembled to manufacture Chaff Cutter Machine.?
3. What is time of supply of machinery, if machinery is manufactured and transported in parts for ease of transportation and to save manufacturing cost and assembled in purchaser location?
4. What is the classification and rate of Goods and Services Tax for Chaff Cutter Machine, which is supplied in parts for ease of transportation and to save manufacturing cost and different invoice is issued for different parts but contract is for supplying full machine?
5. Whether parts of Chaff cutter machine can be delivered with delivery Challan if there is contract is for supplying full machine and final invoice can be issued on completion of supply of full machine?

Held: The requisite fee for filling Advance Ruling application is Rs. 10,000/- (Rs. 5,000 each for CGST and SGST), but the applicant has deposited only Rs. 5,000/- under SGST Act. Despite giving multiple opportunities, the applicant has not deposited the required pending fee of Rs. 5,000 under GCST Act. Thus, the application is hereby filed without any ruling.

24. No ruling on Advance Ruling application if requisite fees not paid

Case Name : In re Kaka Ram Hari Chand (GST AAR Punjab)

Appeal Number : Order No. AAR/GST/PB/19

Date of Judgement/Order : 20/09/2022

Courts : AAR Punjab Advance Rulings

Applicability of Notification No. 12/2017-Central Tax (Rates) dt. 28.06.2017 issued under section 11(1) of the CGST Act, 2017 which exempts the tax on GTA services in relation to 'agriculture produce', vide entry No. 21(a) in the table appended to the said Notification read with definition of the term 'agricultural produce' given vide para 2 (d) of the said Notification. Whether there is no liability

to pay tax in view of the exemption granted vide Notification No. 12/2017-Central Tax (Rates) Dated 28.06.2017.

Held: The requisite fee for filling Advance Ruling application is Rs. 10,000/-(Rs. 5,000 each for CGST and SGST), but the applicant has deposited only Rs. 5,000/- under IGST Act. Despite giving multiple opportunities, the applicant has not deposited the required pending fee of Rs. 10,000 under (Rs. 5,000 each for CGST and SGST). Thus, the application is hereby filed without any ruling.

25. Advance Ruling application without payment of requisite fee not valid

Case Name : In re Tarsem Chand Garg Contractor (GST AAR Punjab)

Appeal Number : Order No. AAR/GST/PB/18

Date of Judgement/Order : 20/09/2022

Courts : AAR Punjab Advance Rulings

The requisite fee for filling Advance Ruling application is Rs. 10,000/-(Rs. 5,000 each for CGST and SGST), but the applicant has deposited only Rs. 5,000/- under SGST Act. Despite giving multiple opportunities, the applicant has not deposited the required pending fee of Rs. 5,000 under CGST Act. Thus, the application is hereby filed without any Advance ruling.

26. GST on operation & maintenance of Municipal Wet Waste processing facility

Case Name : In re Simoco Telecommunications (South Asia) Limited (GST AAR West Bengal)

Appeal Number : Advance Ruling No. 10/WBAAR/2022-23

Date of Judgement/Order : 23/09/2022

Courts : AAR West Bangal Advance Rulings

Classification and rate of tax of supply to be provided by the applicant to State Urban Development Agency for Municipal Wet Waste processing facility along with operation & maintenance under Swachh Bharat Mission/Mission Nirmal Bangla.

Supply of services to be provided by the applicant to State Urban Development Agency for design, build, finance, operate and transfer of Municipal Wet Waste processing facility based on Composting and/or Bio-methanation Technology, setting up Semi-Automatic Material Recovery Facility for Dry Waste and construction of Sanitary Landfill along with operation & maintenance under Swachh Bharat Mission/Mission Nirmal Bangla is classifiable under SAC 9994 as „sewage and waste collection, treatment and disposal and other environmental

protection services" and is taxable @ 18% vide serial number 32 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017).

27. AAR Rajasthan allows 'Samarpan Processing' to withdraw application

Case Name : In re Samarpan Processing Private Ltd. (GST AAR Rajasthan)

Appeal Number : Advance Ruling No. RAJ/AAR/2022-23/11

Date of Judgement/Order : 14/09/2022

Courts : AAR Rajasthan Advance Rulings

The Applicant vide their letter dated 16.08.2022 has requested to withdraw the Advance Ruling Application filed before the authority.

Since the applicant has requested for withdrawal of the application therefore, their request to withdraw the application is considered. Hence, no ruling is given.

28. AAR Rajasthan allows 'Celebal Technologies' to withdraw application

Case Name : In re Celebal Technologies Private Ltd. (GST AAR Rajasthan)

Appeal Number : Advance Ruling No. RAJ/AAR/2022-23/10

Date of Judgement/Order : 14/09/2022

Courts : AAR Rajasthan Advance Rulings

The Applicant vide their letter dated 01.09.2022 has requested to withdraw the Advance Ruling Application filed before the authority.

Since the applicant has requested for withdrawal of the application therefore, their request to withdraw the application is considered. Hence, no ruling is given.

29. GST on printing service where content is supplied by recipient along with raw materials

Case Name : In re Dachepalli Printers (GST AAR Telangana)

Appeal Number : TSAAR Order No. 55/2022

Date of Judgement/Order : 14/09/2022

Courts : AAR Telangana Advance Rulings

What is the rate of tax under CGST & SGST on the service of the printing in cases where content is supplied by the recipient along with raw materials such as paper & cover board?

1. Where content as well as physical inputs are supplied by the recipient of printing services the rate of tax is 2.5% under CGST & SGST respectively
2. Where only content is supplied by the recipient of printing services, i.e., the publisher and the physical inputs used belong to the printer, the rate of tax on such service is taxable upto 30.09.2021 – 6% and from 01.10.2021 onwards 9% under CGST & SGST respectively.

30. Job work of manufacturing chocolates falls under SAC code 998816

Case Name : In re Gandour India Food Processing Private Limited (GST AAR Telangana)

Appeal Number : TSAAR Order No. 53/2022

Date of Judgement/Order : 14/09/2022

Courts : AAR Telangana Advance Rulings

1. M/s. Gandour India Food Processing Private Limited, Survey No.172, 173, Phase IV, IDA, Cherlapally, Hyderabad, Telangana – 500 051 (36AABCG1404G1Z6) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST 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 TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

JUDGEMENTS

1. HC allows delayed filing of appeal against GST Registration cancellation order

Case Name : Poonamchand Saran Vs Union of India (Rajasthan High Court)

Appeal Number : Civil Writ Petition No. 14521/2022

Date of Judgement/Order : 29/09/2022

Courts : Rajasthan High Court

It is not disputed that appeal against cancellation of the GST registration can be filed within thirty days which can be extended by a further period of 30 days. The petitioner Poonamchand Saran filed the e-appeal in time but could not submit the hard-copy. On the other hand, the petitioner Mohan Singh failed to submit an appeal against the cancellation order dated 09.05.2022. The petitioner Poonamchand has challenged the order dated 09.09.2022 whereby his appeal has been dismissed on the ground of same being time-barred. The petitioner Mohan Singh has raised the grievance of not being able to file an appeal on account of unavoidable reasons.

Learned counsel urged that the petitioners have been left remediless for hyper-technical reasons of the appeal against cancellation GST registration not being filed in hard-copy/in time. He contended that owing to cancellation of GST registration, the petitioners are being deprived of the opportunity of doing business which has resulted into loss of all avenues of earning livelihood and is violative of right to life and liberty as guaranteed by Article 21 of the Constitution of India. He thus, urges that one more opportunity deserves to be given to the petitioners to file the appeal in the proper format and the competent authority may be directed to decide such appeal as per law.

It cannot be denied that the petitioners herein would not be able to continue with their business in absence of GST registration and thus, would be deprived of their livelihood which amounts to violation of right to life and liberty as enshrined in Article 21 of the Constitution of India. In this background, the order dated 09.09.2022 passed in the case of Poonamchand Saran (Writ Petition No.14521/2022) is set aside. Both the petitioners are given liberty to file appeal against the cancellation of their GST registration to the competent authority within ten days from today.

2. Parallel GST Proceedings by different Wings of Same department for same Period not Permissible

Case Name : R. P. Buildcon Private Limited & ANr. Vs Superintendent, CGST & CX (Calcutta High Court)

Appeal Number : M.A.T. No.1595 of 2022

Date of Judgement/Order : 30.09.2022

Courts : Calcutta High Court

As could be seen from the records placed before this Court, we find that three wings of the same department are proceeding against the appellants for the very same period, i.e. financial years 2017- 2018, 2018-2019 and 2019-2020.

The learned Advocate for the appellants submitted that four issues were pointed out for the said period, out of which two issues as pointed out by the audit was accepted by the appellants and the necessary tax and interest were remitted and for the remaining two issues, the appellants had submitted their response to the notice and the matter has not been taken to the logical end. In the meantime, the other two wings of the department, viz. Anti Evasion wing as well as the Range Office have also proceeded against the appellants by issuing notices for the very same period for which audit proceedings under Section 65 of the Act has already commenced.

The learned standing counsel appearing for the respondents, on instructions, submitted that the three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same. It is not clear as to why in the present days of electronic communications available in the department, such parallel proceedings can be conducted by three wings of the same department for the very same period.

Therefore, we are of the view that since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

3. Denial of ITC due to cancellation of registration of supplier of goods with retrospective effect

Case Name : ACIT Vs LGW Industries Limited & ors. (Calcutta High Court)

Appeal Number : MAT 855 of 2022

Date of Judgement/Order : 16/09/2022

Courts : Calcutta High Court

Hon'ble Division Bench of Calcutta high Court has dismissed the appeal of the department vide its judgment dated 16th September, 2022 in a dispute relating to denial of Input Tax credit due to cancellation of registration of supplier of goods with retrospective effect.

Hon'ble single bench of Calcutta High Court vide its judgment dated 13th December'2021 had held that if it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions were made before the cancellation of registration of those suppliers than the benefit of input tax credit shall be given to the petitioners.

Hon'ble single bench of Calcutta High Court had remanded the matter back to the departmental officers to consider afresh the cases of the petitioners on the issue of our entitlement of benefit of input tax credit by considering the documents which they want to rely in support of their claim of genuineness of the transactions by considering whether payments for purchases with GST has been actually paid or not to the suppliers and by also considering whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and the compliance of statutory obligation by the petitioners in verification of identity of the suppliers.

Hon'ble Division bench of Calcutta High Court has dismissed the appeal of the department against the aforesaid order with a direction to the petitioners to submit one more set of documents which they seek to rely upon to the concerned appellant authority within a period of two weeks from the date of receipt of the server copy of the order and on receipt of these documents, the concerned authority shall afford an opportunity of personal hearing to their authorized representative and peruse the documents, take note of the directions issued by the learned Single Judge and proceed to act on merits and in accordance with law and conclude the proceedings as expeditiously as possible preferably within a period of four weeks from the date on which the personal hearing is concluded.

The matter was represented on behalf of the petitioners by Mr. Vinay Shraff with Ms Priya Sarah Paul and Mr. Kaushal Agarwal and on behalf of the department by Mr. A. Ray, Id. G.P. (State), Md. T. M. Siddiqui, Id. A.G.P., Mr. D. Ghosh, Mr. S. Mukherjee, Mr. N. Chatterjee.

4. Whether refund claim was time barred or not to be reconsidered as Limitation of 2 Years started from the insertion of Rule 89(1A)

Case Name : Axis Bank Limited Vs Union of India (Andhra Pradesh High Court)

Appeal Number : Writ Petition No.11424 of 2021

Date of Judgement/Order : 29/09/2022

Courts : Andhra Pradesh HC

Conclusion: Since the impugned order of rejecting the refund claim was passed on 23.11.2020 and this Circular came to be issued on 25.09.2021 giving a clarification as to the date for claiming refund under Section 89 of the CGST Act, and Section 19 of the IGST Act, 2017, therefore, the matter was remanded back to the authority to deal with the refund application in the light of the Circular No.162/18/2021-GST dated 25.09.2021, issued more particularly with regard to the applicability of the Circular issued by the Government, and then pass orders in accordance with law.

Held: Assessee-bank was said to be the third largest Private Bank in India providing an entire spectrum of financial services for personal and corporate banking. It filed refund applications for the IGST paid for the years July, 2017 to August, 2019 on 14.02.2020 in Andhra Pradesh. The amount according to the assessee was Rs.16,90,41,709/-. A Show Cause Notice was issued calling upon the assessee, as to why the refund claim should not be rejected on the ground that the refund claim was time barred as per Section 54. A reply came to be submitted by assessee on 16.04.2020 explaining the same, but the application came to be rejected on the ground that the claims were time barred and the details regarding excess payment of tax had not been reflected. It was held that reading of the Circular No.162/18/2021-GST and Column No.3 of 4.3 relating to refund claim, it was clear that if "A" had paid tax under a correct head before issuance of notification No.35/2021-Central Tax dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification). In case, the adjudicating authority hold that the transaction as an inter-State supply and if 'A' pays IGST in respect of transaction on 10.05.2019, the last date for filing refund application would be 23.09.2023. However, if a particular person pays IGST on the same transaction on 10.11.2022 i.e. after issuance of notification No.35/2021, the last date for filing

would be 09.11.2024. Relying upon the said Circular and transactions and having regard to the above Circular issued, assessee bank sought remand of the matter, but the same was opposed. It was also to be noted here that the impugned order was passed on 23.11.2020 and this Circular came to be issued on 25.09.2021 giving a clarification as to the date for claiming refund under Section 89 of the CGST Act, and Section 19 of the IGST Act, 2017. But the entire counter of the respondents was only in relation to Section 54 of the CGST Act, even the authority who passed the impugned order could not have considered the Circular issued by the Ministry of Finance in September, 2021, as the same was not issued by the date of the impugned order. Since the issue involved related to period of limitation in filing the refund application, coupled with the documents to be filed, it would be just and proper the matter was remanded back to the authority to deal with the refund application in the light of the Circular No.162/18/2021-GST dated 25.09.2021, issued more particularly with regard to the applicability of the Circular issued by the Government, and then pass orders in accordance with law.

5. Differential liability under Highways and Public Works post GST should be computed as per Govt. orders

Case Name : J.K. Constructions Vs The Chief Engineer (Madras High Court)

Appeal Number : W.P. Nos. 30891, 30894 & 30897 of 2019

Date of Judgement/Order : 29/09/2022

Courts : Madras High Court

Madras High Court held that for contract entered prior to 01.07.2017 under National Highways and Public Works Department differential tax liability is to be computed as per Government Orders and any recovery affected from the contractor contrary to the methodology will be refunded.

Facts- The petitioner is a contractor for National Highways and Public Works Department (PWD) of the State of Tamil Nadu. The issue in these writ petitions relates to liability to commercial taxes post the onset of Goods and Services tax, with effect from 01.07.2017. The Finance Department has issued two Government Orders viz., one in G.O.Ms.No.264, Finance (Salaries) Department dated 15.09.2017 and the second in G.O.Ms.No.296, Finance (Salaries) Department dated 09.10.2017. The Government orders set out the methodology of computation of GST liability in respect of contracts executed prior to 01.07.2017 and make it clear that any difference in liability shall be made good by the purchaser, in this case, the Highways and Public Works departments. The turnover from contract was liable to VAT at the rate of @ 2% prior to 01.07.2017 and 12% post 01.07.2017 under the Goods and Services enactment. It is the

petitioners case that the difference in tax liability must be met by the respective purchasers as per the government orders.

Conclusion- The petitioner shall be called upon to appear before the respondent (Highways and PWD), and an order passed by them computing the tax liability in line with the aforesaid Government Orders. As regards the impalement of the Central GST authority, the petitioner alleges that there have been coercive recovery effected of tax demands in excess of 2% that they are liable to pay. Upon determination of the liability by the petitioner and the respondents conjointly and as above, any recovery affected from the petitioner contrary to the methodology set out under the aforesaid G.O.'s shall be refunded to the petitioner.

6. GST Registration cancellation by AO, GST Tribunal not established- HC directs AO to consider grievance of petitioner
Case Name : Yaghneswar Logistics Vs Additional Commissioner (Telangana High Court)
Appeal Number : W.P.No.36746 of 2022
Date of Judgement/Order : 26/09/2022
Courts : Telangana High Court

Heard Mr. Srinivas Chitturu, learned counsel for the petitioner and Mr. B. Narsimha Sharma, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 05.10.2021 passed by respondent No.2 cancelling the Goods and Services Tax (GST) registration of the petitioner as well as the order dated 18.08.2022 passed by respondent No.1 dismissing the appeal filed by the petitioner.

3. Petitioner before us is a proprietary firm and is engaged in the business of courier agency services. It is registered under the Central Goods and Services Tax Act, 2017(briefly, 'CGST Act', hereinafter) as well as Telangana State Goods and Services Tax Act, 2017 (briefly, 'TGST Act', hereinafter). On 02.09.2021, Respondent No. 2 issued a show cause notice as to why the GST registration of the petitioner should not be cancelled on the ground of failure to furnish returns for a continuous period of six months. Petitioner submitted reply on 03.10.2021 explaining the circumstances because of which the returns could not be filed for a continuous period of six months. However, respondent No.2 passed the impugned order dated 05.10.2021 cancelling the GST registration of the petitioner stating that the petitioner neither responded to nor filed returns up-to-date. Thereafter, petitioner preferred appeal under Section 107 of the CGST Act before respondent No.1. However, respondent No.1 dismissed the appeal vide order dated 18.08.2022 on the ground of belated filing of the appeal.

4. The issue raised in this writ petition is squarely covered by a recent decision of this Court in M/s. Chenna Krishnama Charyulu Karampudi v. Additional Commissioner (Appeals-1) 2022(7) TMI 82. In the aforesaid decision, this Court held as follows:

Though the lower appellate authority may be right in holding that while it may allow filing of an appeal beyond the limitation of three months for a further period of one month, therefore, by extension of limitation beyond the extended period of one month delay beyond the extended period of one month cannot be condoned, we are of the view that such a stand taken by respondent No.1 may adversely affect the petitioner. This is more so because respondent No. 2 had suo motu cancelled the GST registration of the petitioner on the ground of non-filing of returns and as GST Tribunal has not been constituted under Section 109 of the CGST Act, petitioner would be left without any remedy. We further find that the issue pertains to cancellation of GST registration of the petitioner. In the facts and circumstances of the case, it would be just and proper if the entire matter is remanded back to respondent No.2 to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.

In the light of the above and without expressing any opinion on merit, we remand the matter back to the file of respondent No.2 to consider the grievance expressed by the petitioner against cancellation of GST registration and thereafter pass an appropriate order in accordance with law. Needless to say, when the respondent No.2 hears the matter on remand, petitioner shall submit all the returns as per the statute.

5. Accordingly and in the light of the above, we set aside the orders dated 05.10.2021 of respondent No.2 as well as the order dated 18.08.2022 of respondent No.1. Matter is remanded back to the file of respondent No.2 to consider the grievance expressed by the petitioner against cancellation of GST registration and thereafter pass an appropriate order in accordance with law.

6. Needless to say, during consideration of the matter by respondent No.2 on remand, petitioner shall submit the returns as per the statute. Writ Petition is accordingly disposed of. No costs. As a sequel, miscellaneous petitions, pending if any, stand dismissed.

7. Appellate Tribunal is ultimate fact finding authority: Madras High Court

Case Name : Wavin India Limited Vs Sales Tax Appellate Tribunal (Madras High Court)

Appeal Number : W. P. No. 35902 of 2007

Date of Judgement/Order : 16/09/2022

Courts : Madras High Court

Madras High Court held that as the Appellate Tribunal is the ultimate fact finding authority, it is incumbent on the part of the Appellate Tribunal to examine the claim on the basis of additional documents/ evidences. Accordingly, matter remanded back to Appellate Tribunal to re-examine the issue. Facts- Petition under Article 226 of the Constitution of India was being filed praying for issue of a Writ of Certiorari-fied Mandamus to call for the records and quash the same as invalid and illegal, and without jurisdiction and further directing to pass orders on merits under Section 6-A of the Central Sales Tax Act, 1956. It was submitted that it was not mandatory for the petitioner to file Form – F to claim exemption under Section 6A of Central Sales Tax Act, 1956 during the period in dispute and therefore the petitioner was entitled to produce any other documents in its possession to establish branch transfer. Conclusion- The Appellate Tribunal is the ultimate fact finding authority. Therefore, it was incumbent on the part of the Appellate Tribunal to have examined the claim based on the additional documents/evidence in the light of the law settled by the Kerala High Court in M. Syed Alavi and Others vs. State of Kerala, followed by this Court in State of Tamil Nadu vs. Sharada Enterprises. We are therefore of the view that the impugned order passed by the first respondent Appellate Tribunal is unsustainable and liable to be set aside. We, therefore remand the case back to the first respondent Appellate Tribunal to re-examine the issue in the light of the law settled by the Kerala High Court in M. Syed Alavi and Others vs. State of Kerala and the decision of this Court in State of Tamil Nadu vs. Sharada Enterprises, within a period of six months from the date of receipt of a copy of this order.

8. Proper officer cannot issue DRC-01/01A on matters not intimated to taxpayer in form ASMT 10

Case Name : Vadivel Pyrotech Private Limited Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : W.P. (MD)No. 22642 of 2022 and W.M.P.(MD)Nos.16803 and 16804 of 2022 Date of Judgement/Order : 27/09/2022

Courts : Madras High Court

To a pointed question as to whether Form ASMT 10 which ought to have been issued in respect of aspects forming the subject matter of the proceedings in GST DRC-01 culminating in GST DRC-07 in view of the fact that the proceedings are pursuant to scrutiny of assessments, the learned Additional Government Pleader submitted that Form ASMT 10 was not issued other than the one issued on 22.12.2021, which does not cover the issues raised in the impugned proceeding. The learned Additional Government Pleader sought leave to issue notice in Form ASMT 10 in respect of the aspects forming the subject matter of

the impugned proceedings and thereafter to assess in compliance with the procedure contemplated under the Act including Section 61. Recording the same, the impugned order dated 09.05.2022 is set aside and the matter is remitted back to the Assessing Officer for redoing the assessment. It is open to the Respondent to issue appropriate Form (Form ASMT 10) and after affording a reasonable opportunity to the petitioner in the manner contemplated under the Act proceed further in accordance with law. The petitioner shall also co-operate in the proceedings.

9. GST Provisions of Provincial Statute cannot override provisions of Central Statute

Case Name : Godrej And Boyce Manufacturing Co. Ltd Vs State of U.P (Allahabad High Court)

Appeal Number : Writ Tax No. - 587 of 2018

Date of Judgement/Order : 18/09/2018

Courts : Allahabad High Court

1. In all these writ petitions seizure orders and notices issued under sections 129 (1) and (3), respectively, by various authorities, mainly on the ground that E-Way Bill-01 under U.P. Goods and Service Tax Act 2017 (hereinafter referred to as U.P.G.S.T ACT) read with Integrated Goods and Services Tax Act 2017 (hereinafter referred to as I.G.S.T. Act 2017) and Rules framed there under were not accompanied by Transporters when goods were intercepted within State of U.P. during Intra State or Inter State transportation, have been challenged on the ground that there is no requirement of accompanying said E-Way Bill; provisions of Provincial Statute cannot override provisions of Central Statute and, in any case, omission is only indeliberate and unintentional.

(I) Writ Tax No. 587 of 2018

2. This writ petition under Article 226 of Constitution of India has been filed challenging order dated 21st March 2018 passed by Assistant Commissioner, State Commercial Tax, Mobile Squad, Unit-I, Shamli in purported exercise of powers under Section 129 (1) of UPGST Act, 2017 on the allegation that in respect of goods transported by Vehicle No. DL-1LW-5527, aforesaid authority has reason to believe that for evasion of State Goods and Service Tax (hereinafter referred to as "SGST") goods have been transported by said vehicle. Estimated value of goods constituting machines and parts, mentioned in the order is Rs. 9,85,000/-. Petitioner M/s. Godrej and Boyce Manufacturing Company Limited has transported six loading/unloading machines from its manufacturing unit situated at Thane, (State of Maharashtra) through two tax invoices dated 16.03.2018, to its Ghaziabad office, for the purpose of being used at Warehouse of M/s. Alstom Manufacturing India Pvt. Limited, Saharanpur as inter unit stock. Aforesaid goods were transported through M/s. Delhi Bombay

Goods Carrier, Mumbai vide GR No. 41448 dated 16.03.2018 by vehicle no. DL-1LW-5527. Petitioner company downloaded Central Government E-Way Bill at its Thane unit for invoice no. B020101800000130 dated 16.03.2018. Due to bonafide omission, no Central E-Way Bill for remaining goods could be downloaded. Aforesaid E-Way Bill was for four items of machines mentioned therein. Remaining two items of machines were subjected to tax invoice no. D020101800000131 but no E-Way-Bill with respect to aforesaid invoice was downloaded. In transit goods were intercepted by respondent authorities on 20.03.2018 and finding that E-Way Bill in respect of Government of U.P. was not available with goods, same were detained. Thereafter, Transporter downloaded said E-Way Bill on 21.03.2018 and presented the same before Assistant Commissioner but on the same date he passed seizure order impugned in present petition. A show cause notice under section 129 (3) has also been issued by Assistant Commissioner, requiring petitioner to show cause up to 28.03.2018 as to why tax and penalty of Rs. 1,87,300/- may not be imposed upon the petitioner. The aforesaid order of seizure has been challenged on the ground that mistake was unintentional, Assistant Commissioner has no jurisdiction to pass order of seizure as there is no requirement of carrying any other E-Way Bill under U.P.G.S.T Act, 2017 and Rules framed thereunder.

(II) Writ Tax No. 454 of 2018

3. This writ petition has been filed by M/s. LG Electronics India Limited assailing interception memo dated 15.03.2018, seizure order dated 16.03.2018 and show cause notice dated 16.03.2018 issued by Assistant Commissioner, State Commercial Tax Division Mobile Squad III, Sonbhadra. This writ petition has also challenged Notification dated 21.07.2017 issued by State of U.P. making carrying on E-Way Bill-01 for import of goods worth Rs. 50,000/- from outside the State in State of U.P. mandatory, and also letters dated 06.02.2018 and 18.02.2018 issued by State Government. Petitioner is a Private Limited Company engaged in manufacturing of electronic goods and items having its principal place of business at Plot No. 51, Udyog Vihar, Surajpur Kasna Road, Greater Noida, Gautam Budh Nagar (State of U.P.). It has several manufacturing units as well as Warehouses in different States across the country. Petitioner is registered in State of Jharkhand with Goods and Service Tax Department (hereinafter referred to as "G.S.T. Department") and has been allotted GSTIN-20AAACL1745QIZI. In State of U.P. also petitioner is duly registered with U.P.G.S.T Department and has been allotted GSTIN-09AAACL 1 745QIZ2. Petitioner has a warehouse in Ranchi (State of Jharkhand). Goods in dispute were transported from Ranchi to Gautam Budh Nagar and intercepted. The goods were transported by M/s. Saluja Freight Carriers which is also registered with G.S.T Department bearing GSTIN-06AUKPS7618E1ZC. The goods were loaded on vehicle no. HR3SV0769 against G.R. No. 3001-3002 dated 14.03.2018 issued by Transporter to petitioner. Tax invoices issued in respect to aforesaid goods were numbered as STNAKW2018647, STNAKW2018648 and STNAKW2018649 dated 13.03.2018.

All the requisite details of transportation of said goods were mentioned in receipts issued by Transporter. Requisite documents were with driver of vehicle. The vehicle was intercepted by Mobile Squad Team of Uttar Pradesh Commercial Tax Division, (hereinafter referred to as "UPCTD") and detained at Raparganj, District Sonbhadra by Assistant Commissioner Mobile Squad III. Interception memo dated 15.03.2018 at 10:30 A.M was issued and handed over to driver of vehicle. Memo of interception was issued on the ground that driver of vehicle was not carrying E-Way Bill 01, though in possession of original tax invoices issued by Consignor and LR receipts issued by Transporter. Thereafter physical verification was made by Assistant Commissioner who submitted report dated 16.03.2018 stating that goods worth more than Rs. 50,000/- being interstate supply were being transported but not accompanied by E-Way Bill-01. Subsequently, Assistant Commissioner passed a seizure order under section 129 (1) of U.P.G.S.T. Act 2017 on 16.03.2018 and issued a show cause notice proposing recovery of tax of Rs. 1163472/- and penalty of the same amount i.e. total Rs. 2326944/-. It has been challenged on the ground that there is no provision for carrying of E-Way Bill-01, while the goods are in transit for interstate transfer and impugned orders are without jurisdiction.

(III) Writ Tax No. 455 of 2018

4. This writ petition has been filed by M/s. Bharti Airtel Telecommunication Company, having its registered office at New Delhi. It is engaged in providing cellular telephony services in different areas of telecom pursuant to telecom license granted by Government of India Department of Telecommunication. It has various offices in State of U.P. including at Lucknow and Varanasi. It is duly registered under U.P.G.S.T Act 2017 having GSTIN No. 09AAACB2894GIZP. Petitioner transferred stock by two consignments of eight boxes each, of telecom goods from its New Delhi office to Varanasi. It generated two separate E-Way Bill-01 giving details of both the transactions including details of goods and vehicle number. These two E-Way Bills numbered as 1803W177918800367522 and 1803W177918800369265 dated 12.03.2018. The goods were transported through GIR Movers Pvt. Limited by vehicle no. UP32F/N6684. Petitioner also issued invoices-Cum-Challan no. DLG25723 and DLG25727 dated 12.03.2018 for two transactions after charging Integrated Goods and Service Tax (hereinafter referred to as "I.G.S.T Act") at the rate of 18%. When goods were in transit from Delhi to Varanasi, the vehicle in which they were being transported i.e. UP32F/N6684, broke down. Hence goods were transferred to another vehicle no. DL1GC/3360 at Hathras. Aforesaid vehicle DL1GC/3360 while crossing Commercial Tax Department check post, at about 4:30 P.M. on 13th March 2018 was intercepted by Assistant Commissioner. Finding different vehicle number in the documents, goods were detained. Interception memo dated 13.03.2018 issued by Assistant Commissioner mentioned this fact. Though Transporter

explained reason for transportation of goods in different vehicle, but Assistant Commissioner i.e. respondent 3 passed seizure order dated 14.03.2018 under section 129 (1) and also issued notice dated 14.03.2018 under section 129 (3) of UPGST Act 2017, requiring petitioner to show cause why tax of Rs. 12,76,155/- and penalty of same amount be not realized from petitioner. Seizure order dated 14.03.2018 and show cause notice of the same date have been challenged by this petitioner on the ground that goods were transported in interstate transaction governed by provisions of IGST Act and therefore, governed by Central Goods and Service Tax Act 2017 (hereinafter referred to as "CGST Act") and Rules framed thereunder. The mechanism of E-Way Bill under Central Goods and Service Tax Rules 2017 (hereinafter referred to as "CGST Rules 2017") have not been implemented by Central Government. Hence, E-Way Bill alongwith goods were not carried by Transporter and that cannot be a ground for seizure or imposition of penalty. Hence, there is no violation of any provisions of IGST Act 2017/CGST Act 2017 or the Rules framed thereunder. Therefore, provisions of section 129 (1) of UPGST Act cannot be invoked against petitioner. UPGST Act 2017 cannot transgress upon field occupied by IGST Act 2017 and Notification issued under Rule 129 is beyond the power conferred by UPGST Act 2017.

(IV) Writ Tax No. 462 of 2018

5. This writ petition has been filed under Article 226 of Constitution of India by M/s. Guala Closures (India) Pvt., Ltd., having its Registered Office D-1, Sesa Ghor, Patto, P.O. Box No. 101, Panjim, Goa, challenging order of seizure dated 05.03.20 18 and show cause notice of same date. Petitioner Company, engaged in manufacturing Nip Cap (Bottle Cap), has its manufacturing unit at Survey No. 4/44, 4/14, National Highway, No. 8, Kerala Village, Bavla Taluka, District Ahmedabad, (Gujarat). M/s. Pernod Ricard India, (P) Ltd., Daurala, Meerut, U.P. issued a purchase order and pursuant thereto for transporting goods, petitioner issued invoice No. A2094 dated 23.02.2018 for Rs. 882,961.00/- after charging IGST at the rate of 18%. Petitioner also generated E-Way Bill dated 23.02.2018. Goods were transported by M/s. Agarwal Packers & Movers Ltd., who issued G.R. dated 23.02.2018 and transported goods vide vehicle No. DL-IM-9213. Purchaser, also provided E-Way Bill-01 dated 26.02.2018, prescribed under U.P. Goods and Services Tax Rules 2017 (hereinafter referred to as "Rules") which was valid up-to 15.03.2018 and same was given by petitioner to Transporter. The vehicle was intercepted on 5th March, 2018 by Assistant Commissioner VI, Ghaziabad and goods were detained on the ground that State E-Way Bill- 01, was not being carried by transporter. Thereafter a seizure order was issued on 05.03.2018 alleging that without E-Way Bill- 01 goods were being transported in State of U.P. from outside U.P. A show cause notice under section 129 (3) of U.P.G.S.T. 2017 was also issued on 05.03.2018. It is also challenged on the ground that respondents have no authority to intercept goods, detain, and pass

order of seizure as there was no requirement of carrying E-Way Bill- 01 and provisions of provincial Statute cannot override provisions of Central Statute. (V) Writ Tax No. 458 of 2018

6. This writ petition has been filed by M/s. RAS Polytex Pvt. Ltd having its manufacturing unit E-II, Ramnagar, Industrial Area, Chandauli (State of U.P.). It has assailed seizure order dated 09.03.2018 passed by Deputy Commissioner/Assistant Commissioner, Unit Chandauli and notice dated 09.03.20 18 passed under section 129 (3) of U.P.G.S.T. Act 2017. It has also sought a writ of certiorari for quashing Notification No. KA.NI.-1014/XI-9(52)/17-U.P. and U.P. Act-1-2017 ORDER-(31)-2017 dated July 21, 2017. The facts in brief, are that petitioner is a Pvt. Ltd. Company engaged in manufacture and sale of HDPE/P.P. bags and registered under G.S.T Act 2017. P.P. Compound is used by petitioner as raw material for manufacturing of bags and for said purpose placed an order of supply of P.P. compound to M/s. Kalpana Industries (India) Limited, situated at Village & Post Chaturbhujkathi, Kandua, P.S. Sankrail, Howrah (State of West Bengal). The aforesaid supplier booked consignment for transport of raw material to petitioner by Transporter M/s. Swastik Cargo Movers. Goods were being transported by truck no. UP63T-3207. Driver of vehicle was carrying requisite documents i.e. tax invoices, bilty and Central E-Way Bill. Goods were intercepted and detained on 09.03.2018 at 4:00 A.M. at Chandauli on the ground that same were imported in the State of U.P. from outside U.P. without E-Way Bill-01. Seizure order was passed under section 129 (1) on 09.03.2018 and it is also mentioned that U.P. E-Way Bill was not accompanied and Central E-Way Bill dated 07.03.2018 was generated on trial basis, therefore, it was not legally acceptable. Respondent 4 also issued notice under section 129 (3) proposing imposition of tax of Rs. 1,07,460/- and penalty of same amount i.e. Rs. 1,07,460/-. (VI) Writ Tax No. 559 of 2018 & Writ Tax No. 560 of 2018 7. Both these writ petitions have been filed by same petitioner M/s. Rimjhim Ispat Limited, having its manufacturing unit at Industrial Area, Sumerput, District Hamirpur (U.P.) and registered office at 123/360, Fazalganj, Kanpur. In Writ Petition No. 559 of 2018 seizure order dated 11.03.2018 and show cause notice issued under section 129 (3) dated 17.03.2018 have been challenged, which have been passed by Assistant Commissioner GST/State Tax, Mobile Squad, 7th Unit Kanpur. Here petitioner sold Stainless Steel Bright Bars to M/s. M.R.S. Corporation Aligarh for which tax invoice no. 008573 dated 08.03.2018 was generated for a total amount of Rs. 10,13,673/-. The said goods were transported from petitioner's factory at Hamirpur to M/s. M.R.S Corporation, Kanpur through Shree Balaji Transport Company by truck no. UP78CT 4540 E-Way Bill-02 dated 08.03.2018 was generated giving all requisite information. However, respondent 2 intercepted the vehicle and detained at Kanpur on the ground that since E-Way Bill-02 had already expired therefore, there was no valid E-Way Bill-02 being carried by Transporter. Consequently seizure order dated 11.03.2018 was

passed and a show cause notice proposing tax of Rs. 77,314/- (CGST), 77,314/- (SGST) and penalty of same amount was issued.

8. In Writ Petition No. 560 of 2018 seizure order dated 07.03.2018 and notice under section 129 (3) is dated 13.03.2018 issued by Assistant Commissioner Mobile Squad Kannauj are under challenge. Here S.S. Rods purchased by M/s. Bansal Wire Industries Limited Unit-II, B-3, Site II, Loni Road Industrial, Mohan Nagar District Ghaziabad were being transported through Transporter M/s. Buland Road Transport Company by Truck no. UP78BT2 199. Petitioner has generated tax invoice no. 08440 dated 28.02.2018 for goods worth Rs. 21,31,051/- which includes IGST. E-Way Bill-02 dated 28.02.2018 was also generated by petitioner giving all details. Same were intercepted and detained by Assistant Commissioner Mobile Squad, Kannauj on the ground that E-Way Bills had already expired. Consequently seizure order was passed on 07.03.20 18 and a show cause notice under section 129 (3) were issued on the same date, proposing tax of Rs. 3,27,420/- and penalty of same amount.

(VII) Writ Tax No. 478 of 2018

This writ petition has been filed by M/s. Gaurang Products Pvt. Ltd., having its Unit at Industrial Area, Ghaziabad challenging, seizure order dated 19.03.2018 and show cause notice of the same date issued by Assistant Commissioner, State/Commercial Tax, Mobile Squad, Unit-12, Kanpur. Petitioner is engaged in manufacturing M.S. Tubes & Pipes and duly registered with GST Department of U.P. having GSTIN No. 09AACCG0182L120. It has supplied 4300 Meters of M.S. Tubes and Pipes to U.P. Jal Nigam and same was to be delivered at Jal Nigam office at Allahabad. Petitioner prepared invoice no. 5267 dated 16.03.2018 in respect of 266.71 meters of M.S. Tubes & Pipes after charging IGST. The goods were handed over to M/s. Pragati Logistic Pvt. Ltd., Transporter against GR dated 16.03.2018 and same were transported by truck no. UP13T-0693. E-Way Bill-02 was also downloaded by petitioner on 16.03.2018 at 7:01 PM and it was carried by driver of vehicle. On 19.03.2018 at 08:44 AM vehicle was intercepted at Kanpur by respondent 3, who found that validity period of E-Way Bill-02 had already expired. The goods were accordingly seized by him and seizure order was passed on 19.03.2018. Same day notice under section 129 (3) of UPGST was also issued proposing to impose tax of Rs. 1,23,764/- and equivalent amount of penalty.

(VIII) Writ Tax No. 464 of 2018

This writ petition has been filed by M/s. Aditya Birla Fashion and Retail Ltd., Rave Multiplex Complex, V.I.P. Road, Kanpur. Petitioner placed an order for supply of certain goods (advertising material) to M/s. J.K. Advertising, J-10, Jahangeerpuri, New Delhi in respect of said goods. 7 invoices were prepared on 11/12.03.2018 and goods were transported through Transporter M/s. Maa Chamunda Devi Transport Service, Tilak Nagar, New Delhi, through truck no. HR55AA-0252. Transporter issued four separate GRs on 12.03.2018 and also

downloaded a consolidated E-Way Bill for the aforesaid transaction from the website of Central Government on 12.03.2018. While in transit, goods were intercepted by Assistant Commissioner Mobile Squad Unit, Etah, in the morning on 13.03.2018 and same were detained on the ground that E-Way Bill-01 of U.P. Government was not available alongwith goods. After getting knowledge seven E-Way Bill-01 were downloaded from the website of Commercial Tax Department of Government of U.P. on 13.03.2018 and placed before respondent 3. However, respondent 3 has passed seizure order on 14.03.2018 under section 129 (1) and also issued notice under section 129 (3). Copy of notice has not been filed. Petitioner is only challenging seizure order 14.03.2018.

(IX) Writ Tax No. 551 of 2018

11. This writ petition has been filed by M/s. Navyug Air Conditioning, Hotel Rainbow Market, Railway Road, Bazaria, Ghaziabad. It is a proprietorship firm engaged in trading of Air conditioners and its parts. Petitioner placed purchase order of compressor assembly with accessories-FOW to M/s. Tecumseh Products India Private Limited, 38 Km Stone Delhi-Mathura Road, Ballabgarh (Haryana). The said supplier prepared invoice no. IBW/DOM/SALE1555 dated 23.03.2018 for Rs. 10,14,139/- including IGST at 18%. The goods were handed over for transportation by truck no. DL-ILY-2278 for delivery at Ghaziabad. The goods were intercepted by Assistant Commissioner Mobile Squad, Unit-V, Noida on 24.03.2018 and detained on the ground that goods did not accompany E-Way Bill-01 prescribed under UPGST Rules 2017. A seizure order was passed on 25.03.2018 and notice under section 129 (3) was also issued on the same date proposing levy of tax of Rs. 1,54,699/- and penalty of the same amount.

(X) Writ Tax No. 87 of 2018

12. This writ petition has been filed by M/s. Proactive Plast Pvt. Ltd., Plots No. 274, 275, 280, 281, Ecotech-1 Extension, Kasna, Greater Noida, District Gautam Budh Nagar. He has filed this writ petition challenging seizure order dated 20.01.2018 and notice issued on same date under section 129 (1) and (3) of UPGST Act 2017. Petitioner company is engaged in manufacture of packing material and registered under UPGST Act 2017, having GST TIN No. 09AADCP5536C1ZJ. Petitioner placed purchase order of raw material i.e. 2,500 Kg of NUCREAL AE Resin and 7,500 Kg of SURLYN SR Resin to a Ex-U.P. Registered dealer i.e. M/s. Fibro Plast Corporation, Mumbai, Maharashtra. The supplier who has registered office at Mumbai and its godown at Bhiwandi, (Maharashtra) had issued proforma on invoice dated 15.01.2018, indicating all the details. Goods were handed over to Transporter for transporting the same from Bhiwandi (State of Maharashtra) to Greater Noida by truck no. HR55X4835. For the purpose of E-way Bill Form 01, petitioner also generated Intermediate no. 1801W166944700522219 from online portal on 15.01.2018 and provided the same to supplier for transportation of goods. Supplier however, mentioned alongwith invoice, the details of documents supplied by petitioner as E-Way Bill-

01. When vehicle entered U.P., it was intercepted at Noida, by Assistant Commissioner Mobile Squad, Sixth Unit, Noida and he detained goods on the ground of absence of E-Way-Bill-01, vide interception memo dated 19.01.2018. Thereafter, seizure order was passed on 20.01.2018 under section 129 (1) and notice under section 129 (3) was also issued on the same date proposing tax of Rs. 31,17,500/- and penalty of same amount.

13. In order to give a consolidated bird eye view of details of invoices, seizure orders, show-cause notices and the amount of tax/penalty proposed, a chart is being given as under:

S. N o.	Writ Petition No.	Name of petitioner	Date of invoice	Date of interception /seizure order	Date of show cause notice	Amount of tax/ penalty proposed	Date of Final order
1.	587/2018	M/s Godrej and Boyce Manufacturing co. Ltd. Hapur.	16.3.18	21.3.18	21.3.18	374600 /-	—
2.	454/2018	LG Electronics India Pvt. Ltd.	13.3.18	15.3.18/ 16.3.18	16.3.18	232694 4/-	—
3.	455/2018	Bharti Airtel Limited	12.3.18	14.3.18	14.3.18	255231 0/-	—
4.	462/2018	Mrs. Guala Closures (India) Pvt. Ltd.	23.2.18	5.3.18	5.3.18	269378 /-	—
5.	458/2018	M/s RAS Polytex Pvt. Ltd.	7.3.18	9.3.18	9.3.18	209520 /-	—
6.	559/2018	Rimjhim Ispat Ltd.	8.3.18	11.3.18	11.3.18	309256 /-	17.3.18
7.	560/2018	Rimjhim Ispat Ltd.	28.2.18	6.3.18/ 7.3.18	7.3.18	654840 /-	13.3.18
8.	478/2018	M/s Gaurang Products Pvt. Ltd.	16.3.18	19.3.18	19.3.18	247528 /-	—

9.	464/2018	M/s Aditya Birla Fashion and Retail Ltd. Kanpur	11.3.18 & 12.3.18	14.3.18	—	461450 /- (Approx value of seized goods)	—
10 .	551/2018	M/s Navyug Air conditioning	23.3.18	24.3.18/ 25.3.18	25.3.18	154699 /-	—
11 .	87/18	Proactive Plast Pvt. Ltd.	15.1.18	19.1.18/ 20.1.18	20.1.18	112230 0/-	—

14. Seizure orders passed by authorities concerned as also notices issued under section 129 (3) are challenged by different counsels appearing in these writ petitions broadly on following grounds:

(i) There was no requirement of e-way-bill under UPGST Act 2017 and Rules framed thereunder to be accompanied by the Transporters, hence, authority concerned has no jurisdiction to pass orders under Section 129 and orders impugned in this writ petition are patently without jurisdiction.

(ii) Provisions of U.P.G.S.T Act 2017 will have to sub-serve to the provision of I.G.S.T Act 2017 when goods are transported in an Inter-State transaction, which is governed by I.G.S.T Act 2017. (iii) Fault in any case is unintentional and therefore, there could have been no seizure or imposition of penalty in the exercise of powers under Section 129.

(iv) Tax having already been paid and shown in tax invoices, there is no occasion to levy tax again on aforesaid goods and it is wholly without jurisdiction and illegal.

(v) Demand of penalty is illegal since applicable tax had already been paid prior to transportation of goods in the matters where the allegation is that e-way-bill has expired. (vi) The fact is that vehicle transporting the goods broke down hence, goods were transferred to another vehicle or after repair transportation resumed therefore delay was neither intentional nor deliberate and hence penalty is not attracted.

(vii) Notification no. 1014 dated 21.07.2017 prescribed e-way-bill-02 for Intra-State movement of goods and Circular no. 1102 dated 9th August 2017 prescribed 48 hours time period in respect of e-way-bill-02. On account of substitution of Rule 138 by UPGST (13th Amendment) Rules 2018 which came into force on 01.02.2018, earlier Notification dated 21 July 2017, and Circular dated 9th August 2017 became unenforceable and seizure thereafter for violation of circular dated 09 August 2017 is without jurisdiction.

(viii) Under Rule 138, power has been conferred upon State Government to specify documents which in charge of conveyance shall carry, when goods are in movement. The State Government not only prescribe e-way-bill-02 as document for intra-State movement, but also sub-delegated procedure to be prescribed by Commissioner for downloading e-way-bill-02. In the garb of prescription of procedure for downloading e-way-bill-02, Commissioner vide circular dated 9 August, 2017 also prescribed 48 hours time period during which e-way-bill-02 shall remain valid and this prescription by Commissioner is ultra-vires and beyond the power conferred upon him as it is not contemplated either under the Act or the Rules or even Notification dated 21 July, 2017 issued by State Government. Prescription of time period of validity of e-way-bill-02 could have been done only by the State Government and not the Commissioner and this power exercised by Commissioner vide circular dated 09th August, 2017 is wholly ultra-vires.

(ix) Rule 138 confers no power upon State Government to sub-delegate power to Commissioner.

(x) Commissioner in its circular dated 09th August 2017 has prescribed time period of validity for e-way-bill-01 for Inter-State movement and also for e-way-bill-02 for Intra-State movement. However, for the same distance, time period for e-way-bill-02 is only 48 hours while for e-way-bill-01 it is ten days. This distinction/different period of time is clearly discriminatory and arbitrary having no rationale and nexus with the object sought to be achieved. In any case in the substituted Rule 138 made effective from 01.02.2018, time period specified for validity of e-way-bill-01 is one day for 100 km, and, therefore, reliance on Commissioner's Circular applying different time period is clearly illegal.

(xi) In the matter of inter-state transactions State Government cannot prescribe e-way-bill-01 and this prescription is wholly without jurisdiction. Where the transaction is inter-state, it is governed by IGST Act 2017. In the tax invoices IGST was charged and transaction is not covered under UPGST Act 2017, hence, it cannot be said that there is any contravention of provisions of UPGST Act 2017 and Rules framed there under.

(xii) UPGST Act 2017 is applicable to transactions within the State of U.P. i.e. Intra-state and not to the Inter-State transactions. It would be covered by the provisions of IGST Act 2017 and CGST Act 2017, hence, respondent-authorities had no jurisdiction to impose any conditions on Intra-State transactions and seizure orders and notices issued are wholly without jurisdiction. 15. Per-Contra learned Standing Counsel argued that a valid Notification was issued under Section 129 and petitioners having flouted the provisions thereof, in order to give opportunity, show cause notices have been issued after passing seizure orders and the same warrant no interference.

16. We have heard Sri V.K. Upadhyay, learned Senior Advocate assisted by Sri Praveen Kumar, Sri Nishant Mishra, Sri Ritvik Upadhyay, Sri Tanmay Sadh and

Sri Atul Gupta, learned counsel for Petitioners and Sri Manish Goyal, Additional Advocate General assisted by Sri C.B. Tripathi, learned counsel for the respondents. We have also perused record of all writ petitions and relevant statutes in depth.

17. Concept of Goods and Services Tax (hereinafter referred to as “G.S.T.”) has been brought by Parliament through One Hundred and First Constitution Amendment vide “Constitution (One Hundred and First Amendment) Act, 2016. G.S.T has been introduced so as to replace various indirect taxes levied by Central Government and State Governments i.e. Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparation (Excise Duties) Act 1955, Service Tax Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services. It includes State Government’s Taxes like State Value Added Tax/Sales Tax, Entertainment Tax, (other than the tax levied by the local bodies), Central Sales Tax levied by Centre and collected by States), Octroi and Entry-Tax Purchase Tax, Luxury Tax, Taxes on lottery, betting and gambling and State Cesses and surcharges in so far as they relate to supply of goods and services. Aforesaid Constitutional Amendment inserted Articles 246-A and 269-A which read as under.

“246-A.Special provision with respect to goods and services tax,-(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both **takes place in the course of Inter-state trade or commerce.**

Explanation.- The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article- 279-A take effect from the date recommended by the Goods and Services Tax Council.”

“269-A. Levy and collection of goods and services tax in course of inter-State trade or commerce.-(1) **Goods and services tax on supplies in the course of Inter-State trade or commerce shall be levied and collected by the Government of India** and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendation of the Goods and Services Tax Council.

(2) The amount apportioned to a State under clause (1) shall not form part of the consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246-A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under Article 246-A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5). Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”

18. There are corresponding amendments in Articles 248, 249, 250, 268, 269, 270, 271, 286, 366, 368 and in Sixth and Seventh Schedules of the Constitution. Article 268-A has been omitted by the aforesaid Amendment. Provision of Constitution of Goods and Services Tax Council has been made by insertion of article 279-A.

19. Definitions of “Goods and Service Tax” and “Services” had been provided by insertion of clauses 12-A and 26-A in Article 366 and the aforesaid two clauses read as under: “(12-A) “goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;”, (26-A) “Services” means anything other than goods;”

20. Section 1 (2) of One Hundred and First Amendment Act 2016 provides that the aforesaid amendment of Constitution shall come into force on such date as Central Government may, by Notification in the Official Gazette. appoint and different dates may be appointed for different provisions of the said Act. Provisions of aforesaid Amendment have been made effective with effect from 16th September, 2016.

21. Parliament thereafter enacted certain statutes in respect of G.S.T and in the present cases, we are concerned with C.G.S.T Act 2017 and I.G.S.T Act 2017.

22. C.G.S.T Act 2017 makes provisions to levy tax on all Inter State supplies of goods or services or both, except supply of alcoholic liquor for human consumption, at a rate to be notified not exceeding 20% as recommended by Goods and Services Tax Council (hereinafter referred to as “G.S.T.C”); to broad base input tax credit by making it available in respect of taxes paid on supply of any goods and services or both; “to impose obligation on electronic commerce operators to collect tax at source at such rate not exceeding one percent or not any net value of taxable supplies; to provide sale-assessment of taxes payable by registered person; to provide for conduct of audit of registered persons in order to verify compliance with the provisions of Act; to provide for recovery of

arrears of tax using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person; to provide for powers of inspection search, seizure and arrest to the officers; to establish G.S.T Appellate Tribunal by Central Government; to make provision for penalties for contravention of the credit; to provide for an anti-profiteering clause in order to ensure that business passes on the benefit of reduced tax incidence on goods and services or both to the consumers and to provide for elaborate transitional provisions.

23. IGST Act 2017 to some extent has replaced Central Sales Tax Act 1956. Article 269 of Constitution empowered Parliament to make laws on the taxes to be levied on the sale or purchase taking place in the course of Inter-State Trade or Commerce. Consequently Central Sales Tax 1956 for levying Central Sales Tax on sales taking place during the course of Inter-State Trade or Commerce, was enacted. Central Sales Tax was collected and retained by exporting States. Crucial aspect of the above tax was that it was non-vatable i.e. credit of this tax was available as set off for future tax liability to be discharged by purchaser. Further since rate of Central Sales Tax was different from Value Added Tax being levied on Intra-State sale, it created a tax arbitrage which was exploited by unscrupulous elements. Thus, after the constitutional amendment as stated above Parliament enacted IGST Act 2017, with the objective to levy tax on all Inter-State supplies of goods or services or both except supply of alcoholic liquor for human consumption at a rate to be notified not exceeding 40% as recommended by G.S.T Council; levy of tax on goods imported into India in accordance with the provisions of Customs Tariff Act 1975 read with Customs Act 1962; levy of tax on import of services on reverse charge basis; empower Central Government to grant exemptions; determination of nature of supply as to whether it is an Inter-State or an Intra-State supply; to provide elaborate provisions for determining place of supply in relation to goods or services or both; payment of tax by a supplier of online information and data-base access or retrieval services; refund of tax paid on supply of goods to tourist leaving India; apportionment of tax and settlement of funds and for transfer of input tax credit between Central Government, State Government and Union Territory; application of certain provisions of C.G.S.T Act 2017; and transitional transactions in relation to import of services made on or after appointed day.

10.HC quashed GST Assessment carried out by Investigating Officer who also Carried Out Search

Case Name : Swastik Plastics Vs Commissioner of DGST (Delhi High Court)

Appeal Number : W.P.(C) 5680/2022 & CM Appl.32411/2022

Date of Judgement/Order : 26/09/2022

Courts : Delhi High Court

1. This writ petition came up for hearing for the first time on 05.04.2022, when after hearing the counsel for the parties, we had inter alia recorded the following:

“2. This writ petition is directed against the order dated 11.03.2022, passed by the Assistant Commissioner, Delhi under Section 74 of the Delhi Goods and Services Tax Act, 2017.

3. Apart from anything else, Mr Rajesh Jain, who appears on behalf of the petitioner, says that the impugned order has been passed by, one, Mr Chunni Lal Roy, who was also the officer who carried out the investigation and search and seizure at the petitioner’s premises located at Patparganj, East Delhi, Delhi.

3.1. For this purpose, our attention has been drawn to the document appended on page 51 of the case file. This is a document dated 23.08.2021, and authorizes inspection/search and seizure qua the petitioner’s premises. The authorization has been made in favour of Mr Chunni Lal Roy, who, as indicated above, has passed the impugned order dated 11.03.2022.

4. Issue notice. 4.1 Mr Satyakam accepts notice on behalf of the respondent.

5. Mr Satyakam says that he will revert with instructions, on the next date of hearing. 5.1 In case instructions are received to resist the petition, counter-affidavit will be filed before the next date of hearing.

6. Prima facie, according to us, there would be a likelihood of bias, if the person, who carried out the search and seizure operation, is also empowered to conduct the adjudication proceedings. 6.1 In these circumstances, for the moment, the operation of the impugned order dated 11.03.2022 is stayed.

7. List the matter on 11.05.2022.”

2. The matter, as indicated above, was listed on 11.05.2022, when liberty was given to the counsel for the parties to file their written submission. 2.1 However, interim order dated 05.04.2022 was made absolute during the pendency of the writ petition, and CM No.16906/2022 was, accordingly, disposed of.

3. Mr Satyakam, who appears on behalf of the respondent, had indicated to us that the respondent/revenue would like to revisit its position, and perhaps bring it in line with the position adopted by the Central Government vis-à-vis central tax.

4. Accordingly, the matter was posted for hearing today i.e., 26.09.2022.

5. Mr Satyakam, in the meanwhile, has filed a copy of the Circular dated 20.09.2022, which bears the following title: “Modification of Guidelines for Tax Authorities for Inspection, Search and Seizure dated 01.12.2020.” 1 The

directions/clarifications issued by this Circular are set forth in paragraphs (i) to (iv) of the aforesaid Circular.

6. The petitioner, in this case, had raised an issue concerning jurisdiction, right at the very outset.

6.1 In these circumstances, we are of the view, that the respondent/revenue will have to commence de novo proceedings, bearing in mind the modification Guidelines given in the aforementioned Circular i.e., the Circular dated 20.09.2022

7. Accordingly, the impugned order dated 11.03.2022 is set aside.

7.1 The logical sequitur would be, that a fresh show cause notice will have to be issued, bearing in mind the aforementioned Circular dated 20.09.2022.

8. The writ petition is disposed of in the aforesaid terms. 9. The pending interlocutory application shall stand closed.

11. Authority cancelling GST Registration must Indicate Reasons for the same in order

Case Name : Om Prakash Mishra Vs State of U.P (Allahabad High Court)

Appeal Number : Writ Tax No. - 100 of 2022

Date of Judgement/Order : 06/09/2022

Courts : Allahabad High Court

A perusal of the Annexure no.2, makes it clear that no reasons whatsoever have been recorded while passing the order of cancellation of the registration of the petitioner's firm. The order clearly being without any reason cannot be accepted to be an order in accordance with law. It is essential that every administrative authority or a quasi judicial authority should indicate the reasons, howsoever, brief they may be before passing an order of the nature which has been done by the authority. The order passed dated 15.03.2019 has a very harsh consequences and the same being without any reason whatsoever, fails to satisfy the test of a judicial order and suffers from the vice of violation of Article 14 of the Constitution of India, as such, the order dated 15.03.2019 is set aside with direction to the petitioner to file his response to the show cause notice before the respondent no.3 who shall pass fresh order after giving an opportunity of hearing to the petitioner with all expedition. The petitioner would be at liberty to place whatever documents he pleases to rely upon in support of his defense. In view of the fact that the order dated 15.03.2019 is set aside, the appellate order, although not interfered with, is also set aside.

12. GST order uploaded on website but not intimated to Assessee: HC allows time to file appeal

Case Name : Nirmala Menon Vs Assistant Commissioner (ST) (Madras High Court)

Appeal Number : W.P.No.24634 of 2022

Date of Judgement/Order : 15/09/2022

Courts : Madras High Court

To be noted, that the order is stated to have uploaded on the website of the portal, but the petitioner has not been intimated about such uploading by any means. It is only when coercive recovery was taken to recover the demand under the order that the petitioner states that it came to be aware of the impugned order having come to be passed. In such circumstances and in view of there being no objection by Mr. Kaushik to the request of the petitioner to file a statutory appeal, time of two (2) weeks from today is granted to the petitioner to file an appeal.

13. HC upheld denial of CST exemption on sale to merchant exporter

Case Name : Azam Laminators (P) Limited Vs Commercial Tax Officer (Madras High Court) Appeal Number : W.P. No. 4382 of 2008

Date of Judgement/Order : 15/09/2022

Courts : Madras High Court

The specific case of the petitioner is that the petitioner had effected sale of M.G. Plain Kraft Paper to a merchant exporter, who, in turn had received a purchase order from a buyer from Kuala Lumpur, Malaysia for Parcel Leaf Size and that the merchant exporter also exported the goods to the overseas buyer from Malaysia and the merchant exporter, therefore issued Form 'H' to the petitioner.

The specific case of the petitioner is that the impugned order passed by the Appellate Tribunal is erroneous inasmuch as it has not considered the fact that M.G. Plain Kraft Paper supplied by the petitioner to the merchant exporter, which was converted as Parcel Leaf did not undergo any change and therefore, what was sold by the petitioner to the merchant exporter was exported by the petitioner.

It is further submitted that the merchant exporter has also issued Form 'H' to substantiate that the goods sold by the petitioner, namely Kraft Paper, has been exported by the merchant exporter and therefore, there is an error committed by the Tribunal in allowing the appeal filed by the Commercial Tax Authority.

On perusing the records, particularly the commercial invoice raised by the petitioner on the merchant exporter and the purchase order of the foreign buyer from Kuala Lumpur, Malaysia on the merchant exporter and the commercial

invoice raised by the merchant exporter on the foreign buyer indicate that, what has been sold by the petitioner is not what has been exported by the petitioner. The commercial invoice of the petitioner indicates the price of M.G. Plain Kraft Paper as at Rs.16/- per Kg and that the petitioner had sold 69.278.0 Kg M.G.Plain Kraft Paper to the merchant exporter. What the merchant exporter has exported is Poly coated with LDPE Kraft Paper in Parcel Leaf size. There is no value addition in the price declared in the commercial invoice of the merchant exporter. On the other hand, what has been exported by the merchant exporter is, much below the cost on which the petitioner has sold.

That apart, Form 'H' which has been filed by the petitioner also indicates that it was valid up to 31.03.1998 and was re-validated up to 31.03.2001. The commercial invoice of the petitioner is dated 28.01.2002 which comes in the next Assessment Year. Therefore, we are of the view that the writ petition is liable to be dismissed.

14. GST Registration cannot be cancelled by Infraction of Rule 25 of CGST

Case Name : Balaji Enterprises Vs Principal Additional Director General, Directorate General of GST Intelligence & Ors. (Delhi High Court)

Appeal Number : W.P.(C) 10315/2022

Date of Judgement/Order : 07/09/2022

Courts : Delhi High Court

A perusal of the SCN would reveal, that there is next to nothing stated, as to the reason why the concerned authority proposed the cancellation of registration.

As a matter of fact, the concerned authority, ironically, put the onus on the petitioner to demonstrate that registration has been obtained by fraud, willful misstatement statement or suppression of facts.

We would have thought, that in the first instance, the concerned authority would have adverted to some broad facts, which would have demonstrated that the petitioner had employed fraud, willful misstatement or suppression of facts, while obtaining registration.

Since, ostensibly, principles of natural justice were sought to be adhered to by the concerned authority, the petitioner was directed to file a reply to the SCN during the given timeframe i.e., seven days, and appear before the concerned authority on the given date and time.

The petitioner, admittedly, did file a reply.

A plain reading of the order would show, that the petitioner's registration was cancelled on account of an enquiry pending against the petitioner, which evidently is being carried out by DGGI, Chennai concerning supply of "spurious goods."

Furthermore, it is also indicated, as is evident on a plain reading of the impugned order, that the premises of the petitioner were physically verified by the

Range Inspector, after receiving approval from the competent authority, and that it was found that the premises had been sealed by DGGI, Chennai.

Interestingly, the impugned order reveals, that nothing was due from the petitioner on account of tax, interest, penalty or cess.

Clearly, the SCN did not advert to the facets, which were referred to in the impugned order, whereby the petitioner's registration has been cancelled.

Although, as per the impugned order, the Range Inspector appears to have physically verified the petitioner's premises, neither was any notice given of the physical verification, nor is the report which was generated after the verification, uploaded on the portal.

This was required to be done, as provided in Rule 25 of the CGST Rules.

Ms Anjali J. Manish, who appears on behalf of the petitioner, has emphatically submitted before us, that the verification report has not been uploaded on the designated portal.

Apart from anything else, there is, certainly, an infraction of the provisions of Rule 25 of the CGST, and that apart, as indicated above, the impugned order has gone beyond the frame of the SCN. Accordingly, the prayer made in the writ petition is allowed.

15. HC restore GST Registration despite delay in application for revocation/appeal

Case Name : Trans India Carco Carriers Vs The Assistant Commissioner (Circle)
(Madras High Court)

Appeal Number : WP. Nos. 18537, 18881 and 25091 of 2022

Date of Judgement/Order : 21/09/2022

Courts : Madras High Court

I have had an occasion to consider the identical issue that arises in these writ petitions, in a batch of writ petitions in W.P.Nos.10663 of 2022 etc. batch and I have passed the following order on 17.08.2022:- 'All writ petitioners have challenged orders passed on various dates cancelling their registrations under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act').

2. The petitioners have missed the bus in regard to several opportunities that were extended to them post-cancellation of the registrations by way of Amnesty Schemes wherein dealers were granted extension of time to take necessary steps to restore the cancelled registrations.

3. The Act contains two in built modes to enable revocation of cancellation or restoration thereof. The first is the remedy under Section 30 which benefit has to be availed within thirty days from date of cancellation of order. None of these petitioners in this batch have filed application in terms of Section 30.

4. The second remedy relates to filing of an appeal before the Appellate Authority and has to be availed within a period of three months from the date of

communication of the cancellation order to the dealer. Barring some petitioners, that is, petitioners in WP.Nos.18698, 17850, 14931, 14369 and 18306 of 2022, none of the petitioners before me have availed this remedy. 5. The Petitioner in WP.No.14931 of 2022 is stated to have availed appellate remedy, though belatedly with a delay of one year and eight days. The appeal was accompanied by returns for a period of six months with the admitted tax. In the case of petitioner in WP.No.17850 of 2022 the delay is stated to be of a period of two years, three months and three days. The appeal was accompanied by returns for a period of six months with the admitted tax.

6. In the case of petitioner in WP.No.18698 of 2022, the delay is stated to be for a period of 165 days. The appeal was accompanied by returns for a period of six months with the admitted tax. In all the above cases, the appellate authority rejected the appeals as against which the present writ petitions have been filed. In WP.No.14369 of 2022, the order of cancellation had come to be passed prematurely, when the default in filing return was itself only for one month, contrary to the statutory provision. Be that as it may, return for the month of September 2020 is stated to have been filed along with admitted tax for both months.

7. All other petitioners have approached this Court direct, by way of writ petition, seeking the relief of restoration. A learned Single Judge of this Court in a batch of writ petitions in WP.Nos.25048 of 2021 and batch has, by way of an order dated 31.01.2022, considered the cases of identically placed petitioners as before me. In the cases of those petitioners as well, orders of revocation had been passed and some of the petitioners had approached the assessing authority in terms of Section 30 seeking revocation, some had appealed the orders of cancellation under Section 107 and others had merely approached this Court under Article 226 of the Constitution of India.

8. The learned Judge has considered interim events including the position that Amnesty Schemes had not been availed by those petitioners. In fine, the learned Judge accepts the case of the petitioners, imposing certain conditions in para 229 of the order. A specific query was put to the State Counsel as to whether order dated 31.01.2022 has attained finality. He brings to my notice a communication that has been addressed by the Additional Chief Secretary/Commissioner of Commissioner of Commercial Tax to the GST Council on 31.03.2022 seeking the view of the Council and its guidance/directions in regard to the order of this Court dated 31.01.2022.

9. There has been no response to the above communication and the State, like Samuel Beckett's Godot, has merely been waiting, much past the time for filing of writ appeal before this Court. In my view, this tantamounts to their having accepted the order of this Court dated 31.01.2022 as a conscious decision has been taken by the State to let the limitation slip.

10. The State also confirms that the directions as set out in order dated 31.01.2022 have been implemented in the case of all those petitioners. In light of the aforesaid discussion, the following directions at paragraph 129 of order dated 31.01.2022, extracted below, shall be taken to be passed in the present matter as well, effective from date of receipt of this order.

- i. The petitioners are permitted to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.
- ii. It is made clear that such payment of Tax, Interest, fine/fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.
- iii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.
- iv. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable charges in the architecture of the GST Web Portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.
- v. The above exercise shall be carried out by the respondents within a period of forty five (45) days from the date of receipt of a copy of this order.

11. These writ petitions are allowed in the above terms. No costs. Connected miscellaneous petitions are closed.'

2. Since all learned counsels for the petitioners and the respondents concur on the position that the above order will be applicable on all fours in the present writ petitions, the same order is taken to be passed in these matters as well.

3. The directions at paragraph 10 of the aforesaid order are reiterated and shall stand triggered from today.

4. These writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.