GST UPDATE
(October, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

CONTENTS

Sr. No. Subject Page No.

Sr. No. Subject Page No.

VI COURT ORDERS/JUDGEMENTS

Sr. No. Subject Page No.

Sr. No. Subject Page No.

(I) GIST OF GST NOTIFICATIONS

1. CBIC clarifies on GST rates & classification for 12 Category of goods

CBIC clarifies **Circular No. 163/19/2021-GST** regarding GST rates & classification (goods) on 12 Type of Goods i.e. i. Fresh vs dried fruits and nuts; ii. Classification and applicable GST rates on Tamarind seeds; iii. Coconut vs Copra; iv. Classification and applicable GST rate on Pure henna powder and leaves, having no additives; v. Scented sweet supari and flavored and coated illaichi; vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate; vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006; viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822; ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations; x. External batteries sold along with UPS Systems/ Inverter; xi. Specified Renewable Energy Projects; xii. Fiber Drums, whether corrugated or non-corrugated.

[Circular No. 163/19/2021-GST]

2. CBIC clarifies on GST rates & exemptions on 9 services

Vide **Circular No. 164/20/2021-GST** CBIC clarifies GST rates Services by cloud kitchens/central kitchens, Supply of ice cream by ice cream parlors, Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of Scholarships for students with Disabilities, Satellite launch services provided by NSIL, Overloading charges at toll plaza, Renting of vehicles by State Transport Undertakings and Local Authorities, Services by way of grant of mineral exploration and mining rights attracted GST, Admission to amusement parks having rides etc., Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

[Circular No. 164/20/2021-GST]

(II) CENTRAL TAX (RATE) NOTIFICATIONS

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 13/2021-Central Tax (Rate)

New Delhi, the 27th October, 2021

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

In the said notification, -

(a) in Schedule II – 6%, S. No. 243 and the entries relating thereto shall be omitted;

(b) in Schedule III – 9%, against S. No. 452P, in column (3), the words "in respect of Information Technology software" shall be omitted.

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

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, and was last amended by notification No. 08/2021 – Central Tax (Rate), dated the 30th September, 2021,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 693(E)., dated the 30th September, 2021.

(III) IGST TAX (RATE) NOTIFICATIONS

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
Notification No. 13/2021-Integrated Tax (Rate)

New Delhi, the 27th October, 2021

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

In the said notification, -

(a) in Schedule II – 12%, S. No. 243 and the entries relating thereto shall be omitted;

(b) in Schedule III – 18%, against S. No. 452P, in column (3), the words "in respect of Information Technology software" shall be omitted.

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

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017, and was last amended by notification No. 08/2021 – Integrated Tax (Rate), dated the 30th September, 2021,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 698(E)., dated the 30th September, 2021.

(IV) CGST CIRCULARS

Circular No. 163/19/2021-GST

F. No. 190354/206/2021-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
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North Block, New Delhi
Date: 6th October, 2021

To,

Principal Chief Commissioners/ Principal Director Generals,
Chief Commissioners/ Director Generals,
Principal Commissioners/ Commissioners of Central Excise & Central Tax(All),

Madam/ Sir,

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow–reg.

Based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021, at Lucknow, clarification, with reference to GST levy, related to the following are being issued through this circular:

i. Fresh vs dried fruits and nuts;
ii. Classification and applicable GST rates on Tamarind seeds;
iii. Coconut vs Copra;
iv. Classification and applicable GST rate on Pure *henna* powder and leaves, having no additives;
v. Scented sweet *supari* and flavored and coated *illaichi*;
vi. Classification of Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues and applicable GST rate;
vii. GST rates on goods [miscellaneous pharmaceutical products] falling under heading 3006;

viii. Applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822;

ix. Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations;

x. External batteries sold along with UPS Systems/ Inverter;

xi. Specified Renewable Energy Projects;

xii. Fiber Drums, whether corrugated or non-corrugated.

2. The issue-wise clarifications are discussed in detail below.

3. <u>Applicability of GST on fresh and dried fruits and nuts</u>:

3.1 Representations have been received seeking clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates.

3.2 At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be **fresh (including chilled)**, **frozen** (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or **dried (including dehydrated, evaporated or freeze-dried**).Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

3.3. Therefore, exemption from GST to fresh fruits and nuts covers only such products <u>which are not frozen or dried in any manner as stated above or otherwise processed</u>. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

4. Applicability of GST on tamarind seeds:

4.1 Representations have been received seeking clarification regarding classification and applicable GST rates on tamarind seeds. The dispute is in classification of tamarind seeds between tariff heading 1207 and 1209.

4.2 As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as "seeds of a kind used for sowing". Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

4.3 The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017). Hence, with effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

5. Clarification of definition of *Copra:*

5.1. Representations have been received seeking clarification regarding the definition of *Copra* and applicable GST rates.

5.2 As per Explanatory Notes to HS (2017 edition) to heading 1203, *Copra* is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into *copra*, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to *copra*. Once taken out of shell, *copra* could be supplied either whole or broken.

5.3. As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes *Copra*. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017-Central Tax (Rate) dated 28.6.2017, is not available to *Copra*. Accordingly, *Copra*, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate) dated 28.06.2017, irrespective of use.

6. Applicability of GST on pure *henna* powder and leaves:

6.1 Representations have been received seeking clarification regarding classification and applicable GST rates on henna powder and henna leaves.

6.2 As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

6.3 Accordingly, it is clarified that pure *henna* powder and *henna* leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

6.4. Further, the GST rate on *mehndi* paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

7. Applicability of GST on scented sweet *supari* & flavored and coated *illaichi*:

7.1 Representations have been received seeking clarification regarding classification and applicable GST rates on flavored and coated *illaichi*, and scented sweet *supari*.

7.2 Scented sweet *supari* falls under tariff item 2106 90 30 as "Betel nut product" known as "*Supari*" and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

7.3 Flavored and coated *illaichi* generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from *illaichi* or cardamom (which falls under heading 0908). It is clarified that flavored and coated *illaichi* is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

8. Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues:

8.1 Representations have been received seeking clarification regarding classification and applicable GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues,

beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.

8.2 As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beet-pulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses).All these products remain classified in the heading whether presented in wet or dry.

8.3 Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

9. <u>Scope of GST rate on all pharmaceutical goods falling under heading 3006.</u>

9.1 Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017, reads as *"Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]"*

9.2 S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.

9.3 Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows:

> *"(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;*

(b) sterile laminaria and sterile laminaria tents;

(c) sterile absorbable surgical or dental haemostatics sterile surgical or dental adhesion barriers, whether or not absorbable;

(d) opacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;

(e) blood-grouping reagents;

(f) dental cements and other dental fillings; bone reconstruction cements;

(g) first-aid boxes and kits;

(h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;

(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and

(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.

(k) appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."

9.4 Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

10. **All laboratory reagents and other goods falling under heading 3822:**

10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

10.2. Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

10.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc.".

10.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory regents, falling under heading 3822.

10.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

11. **Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations**

11.1 Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1 (d) in notification No. 03/2017-Central Tax dated 28.06.2017 prescribes that *"whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be produced that the goods may be transferred to the transferee"*.

11.2. As per Section 7 read with Schedule-I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply 'of goods.

11.3. Representations have been received seeking clarification whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

11.4 GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.

11.5. The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

12. GST rates applicable on External batteries sold along with UPS Systems/ Inverter

12.1 References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST.

12.2 The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

13. Applicability of GST rates on Solar PV Power Projects

13.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No.24/2018- Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.

13.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

13.3 The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No.24/2018 dated 31st December, 2018. However, it is

specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

14. <u>Applicability of GST rates on Fibre Drums, whether corrugated or non-corrugated</u>

14.1 Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017).

14.2 For the period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

15. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version shall follow.

Yours faithfully,

(Piyush Kumar Ankit)
Technical Officer, TRU

CBIC-190354/207/2021-TO (TRU-II)-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
*****

North Block, New Delhi,
Dated the 6th October, 2021

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

Madam/Sir,

Sub: Clarifications regarding applicable GST rates & exemptions on certain services–reg.

Representations have been received seeking clarification in respect of applicable GST rates on the following activities:

1. Services by cloud kitchens/central kitchens,
2. Supply of ice cream by ice cream parlors,
3. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities",
4. Satellite launch services provided by NSIL.
5. Overloading charges at toll plaza,
6. Renting of vehicles by State Transport Undertakings and Local Authorities,
7. Services by way of grant of mineral exploration and mining rights attracted GST,
8. Admission to amusement parks having rides etc. ,
9. Services supplied by contract manufacture to brand owners or others for manufacture of alcoholic liquor for human consumption.

2. The issues have been examined by GST Council in the 45rd meeting of the Council held on 17th September, 2021. The issue-wise clarifications are given below:

3. **Services by cloud kitchens/central kitchens:**

3.1 Representations have been received requesting for clarification regarding the classification and rate of GST on services rendered by Cloud kitchen or Central Kitchen.

3.2 The word 'restaurant service' is defined in Notification No. 11/2017 – CTR as below: -
'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the

premises where such food or any other article for human consumption or drink is supplied.'

3. 3 The explanatory notes to the classification of service state that 'restaurant service' includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food. Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.

3.4 Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under 'restaurant service', as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

4. Supply of ice cream by ice cream parlors

4.1 Representations have been received requesting for clarification regarding the supplies provided in an ice cream outlet.

4.2 Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas, restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

4.3 Accordingly, as recommended by the Council, it is clarified that where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

5. Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities"

5.1 Representations have been received seeking clarification regarding applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.

5.2 In this regard, it is to mention that entry 72 of notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme

for which total expenditure is borne by the Central Government, State Government, Union territory administration.

5.3 The scope of this entry is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of 'Scholarships for students with Disabilities" where total expenditure is borne by the Government by way of funding to institute providing such coaching.

5.4 Accordingly, as recommended by the GST Council, it is clarified that services provided by any institutions/ NGOs under the central scheme of 'Scholarships for students with Disabilities" where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and hence exempt from GST.

6. Satellite launch services provided by NSIL.

6.1 Representation has been received for issuance of a clarification recognizing Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as 'Export of Service'.

6.2 It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

6.3 As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

7. GST on overloading charges at toll plaza.

7.1 Representations have been received seeking clarification regarding applicability of GST on Overloading charges collected at Toll Plazas.

7.2 Entry 23 of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Service by way of access to a road or a bridge on payment of toll charges.

7.3 *Vide* notification dated 25th Sep. 2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges.

7.4 As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

8. Renting of vehicles to State Transport Undertakings and Local Authorities

8.1 Representations have been received seeking clarification regarding eligibility of the service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities for exemption from GST under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Sl. No. 22 of this notification exempts *"services by way of **giving on hire** (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers"*.

8.2 This issue has arisen in the wake of ruling issued by an Authority for Advance Ruling that the entry at Sl. No. 22 of notification No. 12/2017-Central Tax (Rate) exempts services by way of giving on hire vehicles to a State Transport Undertaking or a local authority and not renting of vehicles to them. The ruling referred to certain case laws pertaining to erstwhile positive list based service tax regime.

8.3 It is relevant to note in this context that Schedule II of CGST Act, 2017 declares supply of any goods without transfer of title as supply of service even if right to use is transferred. Transfer of right to use has been declared as a supply of service [Schedule II, Entry 5(f) *refers*]

8.4 The issue was placed before the 45th GST Council Meeting held on 17.09.2021. As recommended by the GST Council, it is clarified that the expression *"giving on hire"* in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles .

9. Services by way of grant of mineral exploration and mining rights

9.1 Representations have been received requesting for clarification as to the rate of GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. With effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.

9.2 For the disputed period [1.7.2017 to 31.12.2018], divergent rulings have been issued by Authorities for Advance Ruling (AAR) and Appellate Authorities for Advance Ruling (AAAR) of various States on the GST rate applicable on the same. AAR, Haryana in case of M/s Pioneer Partners and AAR, Chhattisgarh in case of M/s NMDC have ruled that the service of grant of mining leases is classifiable under Service Code 997337 (*licensing services for the right to use minerals including its exploration and evaluation)* and attracted, prior to 01.01.2019, the same rate of GST as applicable to minerals, that is, 5% as prescribed against Sl. No. 17, item (viii) of

Notification No. 11/2017-Central Tax (Rate). The rate prescribed against this entry prior to 01.01.2019 was "*the same rate as applicable on supply of like goods involving transfer of title in goods*". In certain other advance rulings, a view has been taken that grant of rights for mineral exploration and mining would be covered under heading 9991 and would attract GST at the rate of 18%.

9.2.1 AAAR, Odisha, on the other hand has ruled vide Order dated 5.11.2019 in the case of M/s Penguin Trading and Agencies Limited that grant of mining lease was taxable @ 18% prior to 01.01.2019. The Appellate Authority in this case observed that GST rate applicable against Sl. No. 17 item (viii) of Notification No. 11/2017-Central Tax (Rate) prior to 01.01.2019 was not implementable. Unlike leasing or renting of goods, there are no underlying goods in case of leasing of mining area. The rate prescribed for goods cannot be made applicable to leasing of mining area, which confers the right to extract and appropriate minerals. The mining lease by Government, not being a lease of any goods, cannot attract the rate applicable to sale of like goods. Appellate Authority for Advance Ruling, Odisha has further held that the amendment carried out vide Notification No. 27/2018-Central Tax (Rate), dated 31.12.2018,which restricted the "*same rate as applicable to supply of goods involving transfer of title in goods*" only to leasing or renting of goods was to clarify the legislative intent as well as to resolve the unintended interpretation. It is a settled law that interpretation which defeats the intention of legislature cannot be adopted. It accordingly upheld that "*licensing services for the right to use minerals including its exploration and evaluation*" falling under service code 997337 were taxable @ 18% during 01.07.2017 to 31.12.2018.

9.2.2 It may be noted that the expression "same rate of tax as applicable on supply of like goods involving transfer of title in goods" applies in case of leasing or renting of goods. In case of grant of mining rights, there is no leasing or renting of goods. Hence, the said entry does not extend to grant of mining rights which is an entirely different activity.

9.3 The issue was place before the GST Council in its 45th meeting held on 17.9.2021.

9.3.1 As regards classification of service, it was recommended by the Council that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e. "*licensing services for the right to use minerals including its exploration and evaluation*".

9.3.2 As regards the applicable rate for the period from 1.7.2017 to 31.12.2018, the council took note of the following facts, namely,-

(i) GST Council in its 4th meeting held on 3rd & 4th November, 2016 had decided that supply of services shall be generally taxed at the rate of 18%.

(ii) More importantly, the GST Council in its 14th meeting held on 18th & 19th May, 2019, while recommending the rate schedules of services (5%, 12%, 18% and 28%), specifically recommended that all the residuary services would attract GST at the rate of 18%.

(iii) The rate applicable on the service of grant of mineral exploration license and mining lease under Service Tax was also the standard rate of 15.5%. Services under this category have been standard rated in GST at 18%

(iv) Therefore, the intention has always been to tax this activity / supply at standard rate of 18%

9.3.3 Accordingly, as recommended by the Council, it is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate. Post, 1st January, 2019 no dispute remains as stated above.

10. Admission to indoor amusement parks having rides etc.

10.1 Representations have been received requesting for clarification regarding applicable rate of GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word 'amusement park' under entry 34(iii) of Notification No. 11/2017-CTR.

10.2 Entry 34(iii) notification No.11/2017-CTR, prior to 01.10.2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iiia) in Notification No. 11/2017- CT(R) dated 28.06.2017 prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

10.3 On the recommendations of the Council, it is clarified that 28% rate [entry 34 (iiia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry- go rounds, go- carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to Entries 34(iii) and 34(iiia) as they existed prior to their amendment w.e.f 01.10.2021.

10.4 The entries in question have been suitably amended vide notification No. 6/2021-Central Tax(Rate) dated 30.09.2021 to make them clearer.

11. Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

11.1 Representations have been received requesting for issuing a clarification that the job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption attract GST @ 5% prescribed for job work services in relation to food and food products, in terms of Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-Central Tax (R) dated 28-6-2017. This entry prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.

11.2 The issue was placed before the GST Council in its 45th meeting held on 17th September, 2021. The Council had also deliberated upon this issue in its 39th and 40th meeting.

11.3 As recommended by GST Council, it is clarified that the expression "food and food products" in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.

12. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board.

Yours faithfully,

(Rajeev Ranjan)
Under Secretary, TRU
Email: rajeev.ranjan-as@gov.in

(V) ADVANCE RULINGS

1. GST payable on e-procurement services provided to Government

Case Name : **In re Telangana State Technology Services Limited (GST AAR Telangana)**
Appeal Number : Advance Ruling No. TSAAR Order No.12/2021
Date of Judgement/Order : 04/10/2021

Whether the e-Procurement transaction fee collected on behalf of ITE&C Department of Telangana State Government towards online tenders' results in supply of goods or services or both, within the meaning of supply as defined?

The applicant is providing service to various departments of Telangana Government in the field of Information technology and related services. These services include e-procurement of various goods & services for these Government departments. It is the opinion of the applicant that such services provided by him fall under Entry 6 of **Notification No. 12/2017- Central Tax (Rate) Dated 28th June, 2017** and therefore are exempt from any tax under GST.

The said entry reads as follows:-

"Services by the Central Government, State Government, Union territory or local authority excluding the following services

(a) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;

(b) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(c) Transport of goods or passengers; or

(d) Any service, other than services covered under entries (a) to (c) above, provided to business entities."

A careful reading of the said Entry in the Notification reveals that this entry pertains to services provided by the Government and not services provided to the Government. The applicant is providing services to the Government. Therefore the services provided by the applicant to the Government are not exempt under this Notification. Further the services provided by the applicant on behalf of the Government to business entities is covered by the exception to the above entry, therefore such services also are not exempt.

2. Concessional GST rate applicable on dwelling units falling under PMAY scheme

Case Name : **In re Honer Developer Private Limited (GST AAR Talangana)**
Appeal Number : TAAR Order No. 15/2021
Date of Judgement/Order : 08/10/2021

The applicant is in the business of construction and selling of residential flats. Their current project contains (760) flats of various dimensions and they intend to sell them in the market. They have informed that some of the customers are claiming that they are eligible for the benefit of PMAY scheme and hence insisting to pay a reduced rate of tax under **Notification No. 01/2018 dated: 25.01.2018**.

Questions raised:

1. Applicability of **Notification No. 01/2018 of central tax (rate) dated: 25.01.2018** issued under the provisions of CGST Act, 2017 on amount received from the customers claiming the benefit of PMAY scheme.

Held by AAR

Government of India in **Notification No. 01/2018 of central tax (rate) dated: 25.01.2018** has inserted the following entry in **Notification No. 11/2017 dated: 28.06.2017** against Serial No. 3, in column (3), in item (4) at sub item (db).

"a civil structure or any other original works pertaining to the —houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MlG-1)/ Middle Income Group-2 (MlG-2)|| under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)."

In view of the above new entry, if a person is acquiring a dwelling under the credit linked subsidy scheme for economically weaker section fulfilling all the conditions and formalities from designated banks/financial institutions under such scheme then he is eligible for the concessional rate of tax under the said notification.

3. GST payable on EPF, ESI, Salary, or Wages reimbursed by Hospital

Case Name : **In re Smt. Bhagyalakhsmi Devamma Vangimallu (GST AAR Telangana)**
Appeal Number : Advance Ruling TSAAR Order No. 14/2021
Date of Judgement/Order : 08/10/2021

The applicant has made various averments regarding the deductibility of Wages / Salaries, EPF, ESI contribution which are reimbursed by the Hospital from the value of supply which is exigible tax under CGST/SGST Act.

AAR held that Applicant is not a pure agent under GST Law. Further the deductions available under Section 15 of the CGST Act do not include the amounts pertaining to EPF, ESI, Salary, or Wages. Therefore entire amount received from the Hospital are exigible to CGST / SGST Act 2017.

4. GST & TDS not applicable on solid waste management services to municipality

Case Name : **In re Vinayak Singh (GST AAR West Bengal)**

Appeal Number : Order No. 14/WBAAR/2021-22
Date of Judgement/Order : 08/10/2021

Whether providing solid waste management services to the municipality is an exempt supply & whether the provision of TDS is applicable on such supply.

The applicant"s supply to the Howrah Municipal Corporation for lifting and removing of daily garbage etc. accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area is exempt from payment of tax vide entry serial number 3 of the **Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017** (corresponding West Bengal State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time.

As the applicant is making an exempt supply, the provisions of section 51 in respect of tax deduction at source do not apply in the instant case.

5. Manpower Agency cannot escape GST liability on Gross amount by showing Services Charges and Salary/Wages Separately

Case Name : **In re Prodip Nandi (GST AAR West Bengal)**
Appeal Number : Order No. 13/WBAAR/2021-22
Date of Judgement/Order : 08/10/2021

Manpower Agency cannot escape GST liability on Gross amount by showing Services Charges and Salary/Wages Separately

The applicant thus engages contract labour towards supply of manpower services as requited by his clients (recipient of services). Rule 33 of the CGST/WBGST Rules, 2017 clearly speaks that one of the conditions that has to be satisfied for exclusion of expenditure or costs from the value of supply which has been incurred by a supplier as a pure agent if the services procured by the service provider, as a pure agent of the recipient of service, from the third party are in addition to the services which he provides on his own account. Admittedly, in the instant case, the applicant first enters into an agreement to his client for supplying of manpower services and subsequently engages different work-men (third party) at the place of business of his clients and thereby supplies manpower services only. We therefore find no other services other than manpower services are provided by the applicant to his client. We further find that by virtue of the "Employment Agreement" made between the applicant (service provider) and work-man (third party), the applicant, being the employer is liable to make payment to the third party (work-men/employee).

In the instant case, undisputedly the applicant is the person who is liable to pay salary/wages to the work-men employed by him under Employment Agreement to provide manpower services to his clients and just showing such amount in a separate manner in the invoice doesn't shift his liability on the recipient of services and makes him qualify as a **pure agent** in terms of rule 33 of the CGST/WBGST Rules, 2017. The contention of the applicant that the recipient of services authorizes him to make payment of salary, wages and all allowances on behalf of him doesn't hold water on

the same ground that such amount is actually payable by the applicant himself. We accordingly fail to accept the argument that the applicant makes payment of such amount "on behalf of" his client i.e., the service recipient.

6. GST on amount received by Arbitration for works executed in pre-GST period

Case Name : **In re Continental Engineering Corporation (GST AAR Telangana)**
Appeal Number : TSAAR Order No.13/2021
Date of Judgement/Order : 08/10/2021

Telangana Authority for Advance Ruling has held that Goods and Services Tax (**GST**) would be payable on the amount received through Arbitration for work executed in the pre-GST period.

M/s. Continental Engineering Corporation (**Applicant**) had executed a works contract for M/s. Hyderabad Growth Corridor Ltd (**HGCL**). The work was completed in pre-GST era and the Applicant had raised certain claims under an Arbitration proceeding regarding compensation for delay in execution, payment of difference in rates and other contractual breaches. An arbitration award was passed on 09.05.2019 for Rs.169,58,22,197/- to be paid to the Applicant.

In the grounds submitted by the Applicant, they had contended that the works were completed in the Pre-GST regime and that only money was receivable after introduction of GST due to arbitration award. They have asserted that the receipt of money is not taxable under the provisions of GST laws as it doesn't amount to supply of goods as money is excluded from the definition goods.

The Hon'ble AAR Telangana observed that as the amount received via the arbitration award would comprise a cost for the delays in performing contractual obligations, the amount shall fall within the meaning of consideration for tolerating an act or a situation arising out of the contractual obligation as given under entry 5(e) of Schedule II to the **Central Goods and Services Tax Act, 2017** ("**the CGST Act**"). It was reiterated that the time of supply of the service of tolerance is the time when such determination takes place, which happened only by the arbitration award dated May 09, 2019. Therefore, the time of supply of this service as per Section 13 of the CGST Act is May 09, 2019. Accordingly, the amount received through Arbitration shall be taxable under the GST regime.

Our Comments:

Earlier (before the **Central Goods and Services (Amendment) Act, 2018**) the same was dealt under Section 7(1)(d) of the CGST Act which included activities referred to in Schedule II to CGST Act, in the scope of supply. Paragraph 5 of Schedule II to the CGST Act provides a list of activities to be treated as either as 'supply of goods' or 'supply of services' wherein inter alia comprised Para 5– *"(e) agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act*".

The Hon'ble Maharashtra AAR in the matter of ***Maharashtra State Power Generation Company Limited [Order No. GST-ARA- 15/2017-18/B-30, decided on May 8, 2018]*** held that GST at the rate of 18% would be payable on liquidated

damages received by the Applicant for delayed supply under a contract and considered liquidated damages to be a consideration for agreeing to the obligation to tolerate an act or a situation, which is treated as a supply of service under Para 5(e) of Schedule II of the CGST Act.

Further, a similar view has been taken by the ***Hon'ble Gujarat AAR, in the matter of M/s. Dholera Industrial City Development Project Ltd. [Advance Ruling No. GUJ/GAAR/R/2019/06, decided on March 4, 2019]*** wherein it was held that Applicant is liable to collect GST on amount recovered from contractors on account of breach of conditions specified in the contract and the transaction shall be treated as supply of services. Moreover, as violation charges are payable by the contractors, the same are required to be treated as consideration. Therefore, the transaction is liable to GST.

However, vide **Central Goods and Services (Amendment) Act, 2018**, Section 7(1)(d) of the CGST Act was retrospectively omitted and a new sub-section i.e., Section 7(1A) of the CGST Act was inserted w.e.f. July 1, 2017. Consequently, all activities which were specified in Schedule II to the CGST Act would be only for determination of classification of transactions either as 'supply of goods' or supply of services' but, it would be chargeable to GST only if such transaction qualify as a supply in terms of Section 7(1) of CGST Act.

In our view, the levy of GST on recovery of compensation/penalty/damages depends upon the "test of supply" i.e., one has to satisfy that recovery of compensation/penalty/damages in itself is a supply, then only GST could be levied on it in terms of the insertion of sub-clause (1A) in Section 7 of the CGST Act read with omission of sub-section (d) of Section 7(1) of the CGST Act (vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. July 1, 2017).

The Schedule II of the CGST Act is confined to define as to what constitute supply of goods or supply of services and does not defines supply *per se*. Schedule II of the CGST Act has to be read along with Section 7 of the CGST Act, which means if an activity does not constitute a "supply" in itself as per Section 7(1) of the CGST Act, mere coverage of the same under the entry Schedule II ibid cannot make it liable to GST.

Further, there is no positive act of supply of services between the parties and there is no agreement between the parties to cause loss or damage by breaching terms and conditions of an agreement for a consideration. The expression 'to tolerate an act' relates to situations where a person commissions another person to do or commit a particular act for a consideration. The payment of cost for the delays in performing contractual obligations is a condition of contract and not a consideration for any service in the nature of forbearance or tolerating an act.

Relevant provisions:

Entry 5(e) of Schedule II to the CGST Act:

"*5(e): Agreeing to the obligation to refrain from an act, or tolerate an act, or a situation, or to do an act*."

7. Process undertaken will come under job work purview if no new product comes into existence

Case Name : **In re Fine Electro Coating (GST AAR Maharashtra)**
Appeal Number : No. GST-ARA-81/2019-20/B-70
Date of Judgement/Order : 11/10/2021

Since no new product comes into existence after the process conducted by the applicant on the goods supplied by its principals, therefore the process undertaken will come under the purview of jobwork as defined under Section 2 (68) of the GST Act, 2017. Thus, in view of the above we find that, the applicant is only a job worker and as a job worker, carries out processes on goods supplied by its principals.

8. Job work services by Garware industries Limited falls under clause (id) Heading 9988

Case Name : **In re Garware Industries Limited (GST AAR Maharashtra)**
Appeal Number : No. GST-ARA-107/2019-20/B-73
Date of Judgement/Order : 11/10/2021

Question: – Whether as per **Notification no. 20/2019 dated 30/09/2019**, services provided by Garware industries Limited falls under clause (id) Heading 9988.

Answer:- The Impugned services provided by applicant falls under clause (id) Heading 9988.

9. Mumbai Port Trust eligible for GST exemption on certain payments to MMRDA

Case Name : **In re Mumbai Port Trust (GST AAR Maharashtra)**
Appeal Number : No. GST-ARA-79/2019-20/B-71
Date of Judgement/Order : 11/10/2021

Question. Whether in law and in facts and circumstances of the case, the Applicant (MbPT) is entitled to exemption from payment of GST in terms of Entry No.3 of the Notification No. 12/2012-CTR dtd.20-06-2012 on the following considerations payable to it by Mumbai Metropolitan Region Development Authority (MMRDA') in terms of Memorandum of Understanding (MOU) entered into between the MbPT and MMRDA.

a. Way Leave fees & Lease rent payable every year as consideration for the grant of lease and way leave permission for the plot of land and water areas required by MMRDA for the MTHL project. The Annual Lease Rent of Rs.22,58,30,199 is payable in respect of (i) Area under permanent occupation (i.e. 30 years lease period) and the Annual Lease Rentals of Rs.33,23,36,835 is payable in respect of (ii) Area under temporary occupation during the construction period (i.e. Temporary occupation).

b. Compensation equivalent to the amount of Rs.24.48 crores in lieu of demolition of 4 existing sheds at STP yard situated on the said plot of land which is licensed to

MMRDA for the purpose of the MTHL project and required to be demolished in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU. The amount is arrived at on the basis of reconstruction cost at the present rate of construction based on Ready Reckoner of Government of Maharashtra (GOM) and payment thereof is one of the conditions of MOU.

c. Compensation equivalent to the amount of Rs.64 crores in lieu of decommissioning of Old Pir Pau Jetty / Berth situated on the said plot of land which is licensed to MMRDA for the purpose of the MTHL project and required to be decommissioned by MbPT in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU and payment thereof is one of the conditions of MOU.

d. An amount equivalent to 15% of the Security Deposit, received by MbPT from MMRDA under the name of "Way Lease Agreement Charges" to meet the cost of execution of execution of Way lease agreement & Lease Agreement to be entered into between MbPT and MMRDA, for and on behalf of MMRDA on exact reimbursement basis. In other words, these amounts, if found excess will be refunded to MMRDA or if found less, will be called from MMRDA.

e. Refundable Security Deposit to be returned to MMRDA only on termination of the agreement.

f. Refundable Security Deposit of Rs.20 Crores, to meet the cost of damages during the execution of work, if any, in the future. The said deposit will be refunded to MMRDA after satisfactory completion of work including rectification work after deduction of the cost of rectification work, if any, not carried out by MMRDA.

Answer: – Answered in the affirmative in view of the discussions made above. The Applicant is entitled to exemption from payment of GST in terms of Entry No.3 of the Notification No. 12/2012-CTR dtd.20-06-2012 on the above listed considerations payable to it by Mumbai Metropolitan Region Development Authority ("MMRDA") in terms of Memorandum of Understanding (MOU) entered into between the MbPT and MMRDA.

10. Turbilatex C-reactive protein (CRP) infinite & HbA1c infinite classifiable under Heading 38.22

Case Name : **In re Accurex Biomedical Private Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-98/2019-20/B-72
Date of Judgement/Order : 11/10/2021

Question: – HSN Classification and GST rate to be charged on below products:

1. Turbilatex C-reactive protein (CRP) infinite

2. HbA1c infinite

Answer:- The said products are classifiable under Heading 38.22 and under Sr.No 80 of Schedule II of the **Notification No. 1/2017 – Central Tax (Rate) dated 28th June, 2017** attract GST @ 12% (6% each of CGST and SGST/UTGST or 12% IGST)

11. Advance ruling cannot be obtained in respect of past & completed supply

Case Name : **In re USV Private Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA- 91/2019-20/B-77
Date of Judgement/Order : 14/10/2021

In ***M/s. USV Pvt. Ltd. [ORDER No.GST-ARA-91/2019-20/B-77 dated October 14, 2021]***, M/s. USV Pvt. Ltd **("the Applicant")** has sought an advance ruling on mainly two issues. The first issue pertains to whether the activity of transfer of registered trademarks by Novartis AG **("NAG")** to the Applicant is a supply of goods or supply of services under the **Central Goods and Services Tax Act, 2017 ("the CGST Act")** if yes then, whether the Applicant is liable to discharge Goods and Services Tax (GST) on the subject transaction under reverse charge mechanism in terms of entry no. 1 of **Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017.**

Factually, the Applicant is a healthcare company in India registered under the GST regime and NAG is a Switzerland-based pharma company that owns rights of Trade Marks across the world including India. The said Trade Marks are registered in the name of NAG under the Indian Trade Marks Act, 1999 and the Trade Marks Rules, 2017 in India. And Vide a Deed of Assignment dated 30th November, 2019, NAG has agreed to permanently transfer the said Trademarks related to Indian Territory to the Applicant at an agreed consideration. And the 'Effective Date' as stated in the Deed is December 10, 2019 and the application has been filed on January 16, 2020.

The Hon'ble Maharashtra Authority for Advance Ruling **("the Mah AAR")** pointed out that as per section 95 (a) of the CGST Act there are two conditions to be fulfilled for making an advance ruling application; firstly the question asked should be in relation to supply undertaken by the Applicant and secondly the question should be in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant.

The Mah AAR rejected the subject application as being non-maintainable as per Section 95 of the CGST Act because the Applicant has firstly raised questions as a recipient of services and secondly the questions are in respect of past and completed supply as on the date of the application and not a supply, which is being undertaken/proposed to be undertaken.

Further, Mah AAR find that in the subject case. the first condition mentioned above is not satisfied as much as NAG which is undertaking the supply and not the Applicant. And with respect to the second condition for the supply to be undertaken or proposed to be undertaken the Mah AAR observed that the Deed of Assignment is dated 30th November 2019, and the Effective Date as stated in the Deed is 10th December 2019 whereas the application has been filed on 16th January 2020.

In view of the above facts, the Mah AAR find that the Applicant's application does not satisfy the conditions of Section 95 of the CGST Act and is therefore rejected as being not maintainable. Therefore, the second question is not taken up for discussion.

12. GST not Payable on Ambulances Services to MCGM

Case Name : **In re Geetee Tours Private Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-55/2020-21/B-82
Date of Judgement/Order : 25/10/2021

Whether Toyota Innova Or Equivalent Vehicles (6 Seater) registered in Tourist category with All India Tourist Permit provided for carrying Covid 19 patients for Medical Treatment would be considered as Taxable Services Or Exempted Services?

We find that even though the applicant has submitted that the subject supplies would fall under entry no. 6 of twelfth schedule article 243W of the constitution i.e. "Public health, no evidence or documents have been submitted to substantiate their claims for exemption. Further, the only 'SERVICE PURCHASE ORDER', mentioned at 5.4 above, submitted by the applicant mentions the description of service as "Adv for ambulance like Innova covid 19". The applicant has not submitted that they have provided ambulance service for the covid patients. Neither have they submitted anything on record to show that the Innova vehicles supplied by them have been converted into ambulances or registered as such, nor have they submitted proof of having transported only covid 19 patients for medical treatment. Further, the vehicles are not registered with RTO for the use as the Ambulance and they are registered as tourist vehicles.

Finally, we also observe that, in its **Circular No. 51/25/2018-GST dated 31/07/2018** the Central Government clarified that the service tax exemption at Sr. No. 25(a) of **Notification No. 25/2012 dated 20/06/2012** (hereinafter referred to as the 'ST Notification') has been substantially, continued under GST vide Sr No. 3 and 3A of the Exemption Notification. Sr. No. 25(a) of the ST notification under the erstwhile service tax laws, exempted "services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and up-gradation." **The Circular further explains that in relation to the specific issue of ambulance service to the government by a private service provider such service is a function of 'public health' entrusted to Municipalities under Art 243W of the Constitution, and, therefore, eligible for exemption under Sl No. 3 or 3A of the Exemption Notification. However, it is once again reiterated that the applicant has not produced any documents or evidence to show that ambulance services are supplied by them to MCGM.**

In view of the above, we find that the said supply does not satisfy the provisions of Entry No 3 of **Notification no. 12/2017-C.T. (Rate) dated 28th June, 2017** as amended and therefore cannot be treated as exempted. Therefore the same is liable to tax under the **Notification No. 11/2017-C.T. (Rate) dated 28th June 2017**, as amended.

13. ITC cannot be availed on second hand car if applicant opted for concessional rate

Case Name : **In re Deccan Wheels (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-103/2019-20/B-81
Date of Judgement/Order : 25/10/2021

The Hon'ble Maharashtra Authority for Advance Ruling **(the Mah AAR)** in the matter of ***Deccan Wheels [ORDER No.GST-ARA-103/2019-20/B-81 dated October 25, 2021]***, ruled that Input Tax Credit cannot be claimed on Indirect Expenses like rent, commission, professional fees, telephone incurred for purpose of business.

Factually, the Deccan Wheels **(the Applicant)** purchases second-hand cars (goods) and after minor processing on it such as change of tires, change of battery, painting, denting, repairs, servicing, internal cleaning, polishing, etc, which does not change the nature of the goods, the said goods are sold. The Applicant does not claim the Input tax credit **("ITC")** on the purchase of second-hand goods and has opted for Margin Scheme and applies GST rate as per Notification No 8/2018- Central Tax (Rate) dated January 25, 2018 **("Goods Rate Notification")**.

The Applicant has sought the advance ruling on whether ITC can be claimed on other indirect expenses incurred for the purpose of business such as rent, commission, professional fees, telephone etc.

The Hon'ble Mah AAR observed that the concessional rate under the Goods Rate Notification shall not apply if the supplier of such goods has availed ITC as defined in Section 2(63) of the Central Goods and Services Tax Act, 2017**("the CGST Act")**, CENVAT as defined in CENVAT Credit Rules, 2004 or the ITC of Value Added Tax or any other taxes paid on such goods.

Further, held that since the Applicant has been availing the benefit of the Goods Rate Notification and paying GST at a concessional rate they shall not avail ITC.

Relevant Provisions:

Explanation for the purposes of the Notification 8/2018- Central Tax (Rate) dated January 25, 2018– (i) in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961(43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and where the margin of such supply is negative, it shall be ignored; and

(ii) In any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

2. This notification shall not apply, if the supplier of such goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such goods.

14. Recipient of services/Goods or both cannot apply for advance ruling

Case Name : **In re Godavari Marathwada Irrigation Development Corporation (GST AAR Maharashtra)**
Appeal Number : NO.GST-ARA- 91/2019-20/B-80
Date of Judgement/Order : 25/10/2021

Section 95 of the CGST Act, 2017 allows Advance Ruling authority to decide the matter in respect of supply of goods or services or both, ***undertaken or proposed to be undertaken by the applicant.*** We find that the applicant has not undertaken the supply in the subject case. Rather, the applicant is a recipient of impugned services in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence without discussing the merits of the case, we reject the subject application as not being maintainable.

15. 18% GST Payable on activity of reshelling of old sugar mill rollers

Case Name : **In re S.B. Reshellers Pvt.Ltd. (GST AAR Maharashtra)**
Appeal Number : NO.GST-ARA- 73/2019-20/B- 78
Date of Judgement/Order : 25.10.2021

Question 1:- The activity of reshelling of old sugar mill rollers whether is treatable as a job work service under SAC 9988 or is treatable as a repair/maintenance service under SAC 9987?

Answer: – The activity of reshelling of old sugar mill rollers is treatable as a repair/maintenance service under SAC 9987

Question 2:- Whether the said activity of reshelling of old sugar mill rollers will attract 12% GST in terms of clause (id) of Sr. No.26 of **Notification No. 11/2017-CT(R), dt. 28.06.2017** or will continue to attract 18% GST as earlier ?

Answer: – The said activity of reshelling of old sugar mill rollers will attract 18% GST under SAC 9987.

16. GST on job work services such as anodizing, plating, on goods/materials belonging to registered persons

Case Name : **In re ALCOATS (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 62/2021
Date of Judgement/Order : 29/10/2021

Job work services such as anodizing, plating, on goods/materials belonging to registered persons attracts 12% GST

In ***M/s Alcoats [KAR ADRG 62/2021 dated October 29, 2021]*** Karnataka Authority for Advance Ruling **(KAAR)** held that job work services undertaken by M/s

Alcoats **(the Applicant)** by way of treatment or processing such as anodizing, plating, on the goods/materials belonging to registered person are covered under clause (id) of entry number 26 of the *Notification 11/2017-Central Tax (Rate) dated June 28, 2017* as amended by *Notification 20/2019-Central Tax (Rate) dated September 30, 2019* **(Service Rate Notification)** and accordingly attracts GST rate of 12%.

The Applicant has sought an advance ruling that as per entry number 26 of Service Rate Notification whether job work services of anodizing, plating on the materials sent by their customers i.e. registered persons, falls under item number (id) which attracts 12% tax rate or whether it falls under item number (iv) which attracts 18% tax rate.

The Hon'ble KAAR observed, that Central Board of Indirect Taxes and Customs **("CBIC")** has issued a clarification vide para 4 of *Circular No. 126/45/2019-GST dated November 22, 2019* by making a clear demarcation between scope of the entries at item (id) and item (iv) of serial number 26 of Service Rate Notification.

Observed that, as per above-mentioned circular entry at item (id) covers only job work services as defined under Section 2(68) of the Central Goods and Services Tax Act, 2017 **("the CGST Act")** i.e. services by way of treatment or processing undertaken by a person on goods belonging to **another registered person** and on the other hand, entry at item (iv) specifically excludes service provided under entry (id) and includes only those services which are **provided on goods owned by other than registered persons** under the CGST Act.

Held that, the Applicant provides job work services on the goods belonging to registered persons and hence are covered under clause (id) of entry number 26 of Service Rate Notification and accordingly attracts GST rate at 12%.

17. GST on EPC contract of construction of poultry farm with all equipments

Case Name : **In re Golden Hatcheries (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 61/2021
Date of Judgement/Order : 29/10/2021

1. The rate of tax on the EPC contract of the construction of poultry farm on immovable property with all the equipments is as per serial number 3 of item number (ii) of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** at the rate of 9 % CGST and 9% KGST.

2. The Transfer of poultry farm equipment and others involved execution of composite supply of works contract on immovable property for the construction of poultry farm house is classified under HSN 9954.

18. Manpower services provided to Government entities not exempt from GST

Case Name : **In re Sree Vinayaka Enterprises (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 60/2021
Date of Judgement/Order : 29/10/2021

1. Whether the applicant is correct in classifying the services provided to the Government entities as exempted services?

The applicant is incorrect in classifying the manpower services provided to the organisations/ institutions as exempted services since the same is not provided by way of any activity in relation to any function entrusted to a *Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.*

2. Whether the applicant is correct in claiming exemption under Sl. No. 3 of Notification 12/2017 dated 28th June 2017 for the said exempted services?

The applicant is incorrect in claiming exemption under Sl.No.3 of ***Notification 12/2017 dated 28th June 2017*** *for the said services, since the services provided by the applicant are not covered under the said entry and therefore are not exempted.*

19. GST: AAR cannot give ruling on value for levy of IGST on imports

Case Name : **In re HDL Industries (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 59/2021
Date of Judgement/Order : 29/10/2021

For the import of goods, the importer has to pay custom duty and IGST as per Customs Act, 1962 and Customs Tariff Act, 1975 on the value as determined under the Customs Tariff Act, 1975 at the point when the duties of customs are levied on the said goods. Thus it is evident that the value for levy of IGST on imports is governed by Customs Act, 1962 and Customs Tariff Act, 1975.

The applicant is importing silk reeling machineries from China and is supposed to pay IGST on import of goods. The applicant wishes to know whether the subsidy given is to be reduced from the value of import of plant and machinery to pay IGST. Since the value for levy of IGST on imports is governed by Customs Act, 1962 and Customs Tariff Act, 1975 answering the questions of the applicant does not come under the purview of this authority.

20. GST on documentary services including picture of testimony / documentary videos to Govt departments

Case Name : **In re Star Creative (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 58/2021
Date of Judgement/Order : 29/10/2021

i. Whether the documentary services including picture of the testimony / documentary video provided to corporations and various boards incuding KHB are exempted under GST?

The documentary services including picture of the testimony/ documentary videos provided to corporations and various boards including KHB are taxable at 9% under the CGST Act and 9% under the SGST Act.

ii. Whether the documentary services including picture of the testimony / documentary videos provided to various government departments including Zilla and Taluk Panchayat are eligible for exemption from GST?

The documentary services including picture of the testimony/ documentary videos provided to various government departments including Zilla and Taluk Panchayat are taxable at 9% under the CGST Act and 9% under the SGST Act.

iii. Whether providing documentary videos and / or pictures of testimony through CD or other storable devices to various Government Departments and Panchayats continues to be exempted services?

The documentary and /or pictures of testimony through CD or other storable devices to various Government Departments and Panchayats are taxable at 9% under the CGST Act and 9% under the SGST Act.

21. Separate GST registration need not be obtained at the place of importation

Case Name : **In re Pine Subsidiary Industry (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 57/2021
Date of Judgement/Order : 29/10/2021

1. The applicant can issue tax invoice with IGST to the customer outside Karnataka as per section 20 of the IGST Act 2017 read with section 31 of the CGST Act 2017 for the interstate transaction as provided under section 7(1) of the **IGST Act 2017,** when the goods are directly dispatched from the port of import with invoicing done from the registered place of business and a separate registration need not be obtained at the place of importation.

2. The applicant can do the transaction using Karnataka GSTIN. In case of issuance of e-way bill, the applicant can mention the GSTIN of Karnataka and the place of dispatch as Chennai sea port.

22. GST Rate on 'Pushti', a mixture of Ragi, Rice, Wheat etc.

Case Name : **In re Devanahalli and Hosakote Taluks MSPC (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 56/2021
Date of Judgement/Order : 29/10/2021

i. Classification of Goods, HSN Code and Rate of Tax on 'Pushti', a mixture of Ragi, Rice, Wheat, Green gram, Fried gram, Moong dal and Soya in different proportions.

Pushti, which is a powdered mixture of Ragi, Rice, Wheat, Green gram, Fried gram, Moong dal, and Soya in different proportions, is classified under HSN code 1106. If

unbranded, it attracts Nil GST as per S. No. 78 of ***notification No. 2/2017-Central Tax (Rate) dated 28.06.2017*** *and if branded and packed, it attracts 5% GST as per S. No. 59 of schedule I of* ***notification No. 1/2017-Central Taxes (Rate) dated 28.06.2017****.*

ii. Does *Circular No. 149/ 05/2021-GST dated 17.06.2021*; apply to MSPC, as MSPC is supplying food to CDPO for which the end user is anganwadi centers.

Circular No. 149/ 05/2021-GST dated 17.06.2021*, does not apply to MSPC as the applicant is into supply of goods.*

23. No GST on Transportation Services by Rail on Eggs/hatcheries

Case Name : **In re SAS Cargo (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 55/2021
Date of Judgement/Order : 29/10/2021

a. Whether eggs/hatcheries are classified under the Agricultural Produces/Products?

Eggs on which no further processing is done are covered under the definition of 'Agricultural Produce' as per clause 2(d) of **Notification No. 12/2017 Central Tax (Rate), dated 28.06.2017**.

b. Applicability of GST on Transportation Services by Rail on Eggs/hatcheries under GST Act?

Services by way of transportation of 'Eggs' by rail from one place in India to another place is exempted as per Serial No. 20 of the ***Notification No. 12/2017 Central Tax (Rate), dated 28.06.2017****.*

24. Concessional GST rate on supply of HDPE Drums for use by manufacturer of Ethyl Alcohol in his factory

Case Name : **In re Time Technoplase Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 54/2021
Date of Judgement/Order : 29/10/2021

Whether they are liable for 0.1% concessional rate of tax under Notification No.41/2017-IT (Rate) on supply of HDPE Drums for use by the manufacturer of Ethyl Alcohol in his factory for packing his manufactured goods and supply to merchant exporter?

The applicant supplies HDPE drums, alleged packing material, to a merchant exporter, on receipt of a purchase order, by raising invoice on the merchant exporter and delivers the subject material, under the instructions of the said merchant exporter, to the premises of the chemical manufacturer, who manufactures the ethyl alcohol which is packed in the HDPE drums and then exported by the merchant exporter. Thus, the applicant sought advance ruling in respect of the question mentioned at para 3 supra.

The applicant contested that their product HDPE drums are used for packing the ethyl alcohol which is exported by the merchant exporter and hence they are entitled to the concessional rate of 0.1%, in terms of **Notification No.40/2017-Central Tax (Rate) dated 23.10.2017** or **Notification No.41/2017-Integrated Tax (Rate) dated 23.10.2017**.

The Notification supra stipulates certain conditions for supply of goods to the merchant exporter at concessional rate of GST at 0.1%. To avail the concessional rate of GST, the registered recipient is required to move the goods directly from the place of registered supplier to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported, or to a registered warehouse from where the goods shall be further moved to the Port, Inland Container Deport, Airport or Land Customs Station. In case the merchant exporter procures goods from different registered suppliers, the merchant exporter should move such supplies to the registered warehouse, aggregate such procured goods at the warehouse and should move the goods to the Port, Inland Container Depot, Airport or Land Customs Station from where the goods are exported. In the instant case, the applicant supplies HDPE drums by raising the invoice under Billed to Merchant Exporter and shipped to the manufacturer of the ethyl alcohol. Thus, the impugned goods are not moved directly to the Port, Inland Container Deport, Airport or Land Customs Station or to a registered warehouse, which is a pre-condition for availing concessional rate of GST. Therefore, the applicant is not entitled to supply the impugned goods at the concessional rate of GST at 0.1%.

25. GST Rate on job work services on goods (physical inputs) owned by companies registered under GST

Case Name : **In re Sheen Electroplaters Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 53/2021
Date of Judgement/Order : 29/10/2021

What is the GST Rate applicable for Job work service?

The applicant in into provision of various electro plating services on the goods received under delivery challan from their customers and returns the goods after doing the needful. The applicant purchases various raw material for provision of their output service. The applicant contends that their service is in the nature of job work and attract GST rate of 12% in terms of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017**, as amended by **Notification 20/2019 Central Tax (Rate) dated 30-09-2019**,. The applicant also contends that **Circular No. 126/45/2019-GST** prescribes 12% GST rate for all services by way of job work under the entry at item (id) under heading 9988 of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** inserted with effect from 01-10-2019.

In view of the above the core issue before us to decide is whether the job work services provided by the applicant are covered under clause (id) or clause (iv) of entry number 26 of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** as amended by **Notification 20/2019 Central Tax (Rate) dated 30-09-2019**, effective from

01.10.2019, for the heading 9988 and also the rate of GST applicable thereon. In this regard we invite reference to para 4 of the **Circular No. 126/45/2019-GST** issued by the CBIC, wherein it is communicated as under:-

"there is clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** . Entry at item (id) covers only job work services as defined in Section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act".

It could be inferred from the foregoing circular (para 4) that the job works defined under Section 2(68) of the CGST Act i.e. job work services by way of treatment or processing undertaken by a person on goods belonging to another registered person are covered under clause (id) of entry number 26 of the **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** , as amended, and clause (iv) of the notification supra covers only services which are excluded under clause (id) and also carried out on physical inputs (goods), owned by the unregistered person/s.

In the instant case the applicant provides the job work services on the goods belonging to registered persons and hence are covered under clause (id) of entry number 26 of the **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** , as amended and accordingly attract GST rate of 12%.

26. GST: Determination of place of supply is beyond AAR jurisdiction

Case Name : **In re Workplace Options India Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 52/2021
Date of Judgement/Order : 29/10/2021

we proceed to examine the issue as to whether the service received by the applicant from M/s Beacon, USA is covered under import of service or not. We invite reference to Section 2 (11) of **IGST Act, 2017**, in terms of which '**import of Service**' has been defined as a supply of service where

-The supplier of service is located outside India;
-The recipient of service is located in India; and
-The place of supply of service is in India;
In view of the above to decide whether the impugned services qualify to be import of services or not it is required to determine the place of supply of the impugned service, which is beyond the jurisdiction of this authority in terms of Section 97(2) of the CGST Act 2017. Thus we refrain from giving any ruling in this regard.

(VI) COURT ORDERS/ JUDGEMENTS

1. HC stays Provisional Attachments order passed without application of mind

Case Name : **Kerala Communicators Cable Limited Vs The Commissioner Of Central Tax And Central Excise (Kerala High Court)**
Appeal Number : WP(C) No. 20945 of 2021
Date of Judgement/Order : 01/10/2021

On a reading of Exts. P9, P9(A) and P9(B) orders, I am *prima facie* satisfied that none of the stipulations specfified in para 72 of the aforesaid judgment are evident in the orders impugned in this writ petition. I am *prima facie* satisfied that there is non-application of mind to the purport of power exercisable by the second respondent under **Section 83** of the CGST Act.

In this context, I also bear in mind that the crippling effect an order of provisional attachment, on the bank accounts of a running establishment can have. Petitioner asserts that it is a running establishment and the annual audited reports, a copy of which is produced as Ext.P8 shows that the petitioner is a running establishment

In view of all the circumstances, mentioned above both legal and factual, I am *prima facie* satisfied that the order impugned are liable to be stayed.

2. HC upheld reopening of computation of surcharge for earlier periods based on binding judgment

Case Name : **Sky Automobiles Vs Deputy Commissioner of Commercial Tax (Orissa High Court)**
Appeal Number : W.P.(C) Nos. 2225 of 2017
Date of Judgement/Order : 01/10/2021

Conclusion: AO was justified to reopen the computation of surcharge for the periods 2000-01, 2001-02 and 2002-03 as re-computing the tax payable to give effect to the judgment of the Supreme Court, which the authorities were bound to do, could not be termed illegal.

Held: Assessee, a registered dealer under the OST Act, was assessed by the Sales Tax Officer (STO) under Section 12(4) of the OST Act to Rs.4,98,533/-. In computing the surcharge under Section 5-A of the OST Act, the amount of entry tax payable under Section 4 (1) of the Orissa Entry Tax Act, 1999 (OET Act) was not set off from the sales tax payable. Aggrieved by the order, assessee preferred an appeal. Tribunal passed an order and directed the Department to re-compute the tax liability by allowing set off of entry tax from the tax due and thereafter levy surcharge on it. Accordingly, a re-computation order was passed by the STO and the excess amount to the tune of Rs.29,57,232/-was refunded to assessee. The grievance of assessee was that the Department could not on the basis of the judgment in *Bajaj Auto (SC)* seek to reopen the computation of surcharge for the periods 2000-01, 2001-02 and 2002-03. It was held that assessee could not have been taken by surprise when it received notices for

re-computation of tax following the judgment of the Supreme Court in *Bajaj Auto (SC) as assessee* was a party to that judgment. There was no other basis for accepting the plea of the assessee for the AYs in question. That very basis of the orders passed by the Court had been rendered non-existent by the judgment of the Supreme Court in *Bajaj Auto Ltd.* setting aside the order dated 5th January, 2007 of this Court. The aforementioned declaration of the law by the Supreme Court was binding on all the authorities in terms of Article 141 of the Constitution. Consequently, the impugned orders that had been passed, re-computing the tax payable to give effect to the judgment of the Supreme Court, which the authorities were bound to do, could not be termed illegal. A direction was therefore issued to the DCST to issue fresh orders re-computing the amount payable on the basis of the limited modification as regards interest, not later than 1st November 2021. It was made clear that it would not be open to assessee to again challenge the said order as long as it was in conformity with the directions issued in the present judgment of this Court.

3. No bail to assessee for alleged of wrongful availment of ITC by fictitious transactions

Case Name : **Paritosh Kumar Singh Vs State Of Chhattisgarh (Chhattisgarh High Court)**
Appeal Number : WPCR No. 469 of 2021
Date of Judgement/Order : 01/10/2021

Conclusion: Assessee who alleged of wrongful availment of Input Tax Credit (ITC) on the basis of fictitious transactions worth Rs. 258 Crores was not entitled to get default bail as the complaint had been filed within 60 days of their arrest which was within the time prescribed for filing of complaint to entitle or disentitle the accused persons for default bail.

Held: Assessee had been arrested for alleged violation of CGST Act, 2017 for offence committed under Sections 132(1)(b) and (c) and produced before the Judicial Magistrate, from where they were sent to judicial custody. Assessee would submit that as per the provisions of Cr.P.C. it was responsibility of the respective authority to submit charge sheet within 60 days, however, in the present case, no charge-sheet had been filed, therefore, assessee was entitled to be released on bail under section 167(2) but the same had been denied by the Chief Judicial Magistrate against which revision was preferred which was also dismissed. Thereafter, the present writ petition (criminal) had been filed. It was held that the officers under the GST Act was not a police officer, as such, he could not and he did not seek custody of the arrested persons for completing the investigation / inquiry. Section 69(2) oblige the officer authorized to arrest the person to produce before a Magistrate within 24 hours. Immediately upon production the Magistrate may remand him to judicial custody or admit the arrested person to bail in accordance with procedure prescribed under Cr.P.C. Thus, it was quite clear that the GST officers were not the police officers, therefore, they were not required to submit final report as envisaged in Section 173 of Cr.P.C. Moreover, the complaint had been filed within 60 days of their arrest which was within the time prescribed for filing of complaint to entitle or disentitle the accused

persons for default bail. As the complaint had been filed within 60 days, therefore, on this count also, assessee was not entitled to get default bail.

4. GST Registration Cancellation not valid if SCN not issued in Prescribed Template

Case Name : **Suresh Trading Corporation Vs The Asst. Commissioner (Circle) of SGST (Madras High Court)**
Appeal Number : W.P.No. 21109 of 2021
Date of Judgement/Order : 01/10/2021

Petitioner has filed this petition challenging the order dated October 10, 2019 in which the GST certificate of the Petitioner was cancelled. However, it is to be noted that SCN which preceded the same was not been issued in the prescribed template according to Rule 22(1) of Tamil Nadu Goods and Services Rules 2017 **(TNGST Rules).**

Petitioner contended that SCN refers to form GST REG-17 which was issued by the Respondent department regarding the cancellation of GST registration is not in this format/template as it does not mention the date, month, year and time for personal hearing. For this the Petitioner draws the attention to Rule 22(1) of the TNGST Rules which says where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29 of the Tamil Nadu Goods and Services Tax Act, 2017 **(TNGST Act)**, he shall issue a notice to such person in FORM GST REG-17 requiring him to show cause within a period of seven working days from the date of the service of such notice as to why his registration shall not be cancelled.

The Hon'ble Madras High Court after analyzing the facts of the present case set aside the impugned order dated October 10, 2019 for cancellation of GST Registration solely on the ground that SCN which preceded the same has not been issued in the prescribed template i.e., REG- 17 under Rule 22(1) of TNGST Rules as it does not mention the date and time of personal hearing.

Further, the Court directed the respondent authority to issue SCN afresh in prescribed template/format inter- alia setting out the date, time and venue for personal hearing and carry the same to its logical end as expeditiously as possible i.e., as expeditiously as the business of respondent shall permit and in any event, within six weeks from today i.e. on or before November 12, 2021. And there shall be no order as to costs.

5. Wrongful availment of ITC under GST: High Court grants Bail

Case Name : **Shailesh Chandra Vs DGGI Jaipur Zonal Unit (Rajasthan High Court)**
Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 15046/2021
Date of Judgement/Order : 01/10/2021

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

This Court perused the material available on record.

The petitioner has been arrested in connection with Complaint No.DGGI/INV/GST/2371/2021-Gr-B/O/o ADG-DGGI-ZU- Jaipur for the offences punishable under Sections 132(1)(C) (F)(h) and (1) of CGST Act, 2017. He has preferred this bail application under Section 439 Cr.P.C.

Learned counsel for the petitioner submits that the alleged offences are compoundable and are triable by Magistrate. Learned counsel also submits that the petitioner is in custody since30.08.2021 and there are no previous criminal antecedents against the present petitioner.

Learned counsel for the Union of India as well as learned Public Prosecutor opposed the bail application.

Having regard to the totality of the facts and circumstances of the case as also the fact that conclusion of the proceedings is likely to take some time and without expressing any opinion on the merits of the case, this Court deems it just and proper to grant bail to the accused petitioner under Section 439 Cr.P.C.

Accordingly, this bail application filed under Section 439 Cr.P.C. is allowed and it is directed that petitioner **Shailesh Chandra S/o Shri Om Prakash Chandra** shall be released on bail in connection with Complaint No. DGGI/INV/GST/2371/2021-Gr-B/O/o ADG-DGGI-ZU- Jaipur provided he executes a personal bond in a sum of Rs.50,000/- with two sound and solvent sureties of Rs.25,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

6. No auto cancellation of Registration of Purchasing dealer for fraud by selling dealer

Case Name : **Bright Star Plastic Industries Vs Additional Commissioner of Sales Tax (Orissa High Court at Cuttack)**
Appeal Number : W.P.(C) No.15265 of 2021
Date of Judgement/Order : 04/10/2021

The Court finds merit in the contention of Mr. Harichandan that for the fraud committed by the selling dealer, which resulted in cancellation of a selling dealer's registration, there cannot be an automatic cancellation of the registration of the purchasing dealer. Rule 21 of the OGST Rules reads as under:

"21. Registration to be cancelled in certain cases.

The registration granted to a person is liable to be cancelled, if the said person,-

(a) does not conduct any business from the declared place of business: or

(b) issues invoice or bill without supply of goods or services in violation of the provisions of the Act, or the rules made thereunder; or

(c) violates the provisions of Section 171 of the Act or the rules made thereunder."

None of the three circumstances outlined above, in Clauses (a), (b) & (c) are attracted in the present case. Consequently, Rule 21 of the OGST Rules cannot be invoked by the Department, in circumstances such as the present, to cancel the registration of the purchasing dealer.

7. Tripura VAT: HC Quashes order passed in Violation of principal of Natural Justice

Case Name : **ITC Limited Vs State of Tripura (Tripura High Court)**
Appeal Number : W.P.(C) No. 340 of 2021
Date of Judgement/Order : 04/10/2021

We cannot appreciate the stand of the department that even during the time when the Corona Virus was at its peak, the administrative and legal representatives of the assessee company must appear before the Assessing Officer physically for conducting the hearings. Across the country courts at different levels not only High Court and Supreme Court but several District Courts also have operated virtually for months on end disposing of large number of contested cases. In a given case if the Head Office of the assessee company is located outside the state, insistence on personal appearance would require several people to travel long distances exposing them as well as others to cross infections. There were times when severe restrictions on inter-state movements particularly originating from the states which were recording high number of Corona cases were imposed. Insisting on personal hearing would either expose the representatives to catching infection or force the Assessing Officer to adjourn the hearings resulting into delays.

In a given case, we will examine the provisions under the relevant statute more closely and will also take into account the view point of the administration in resisting such virtual hearings. In the present case, however, in the interest of justice we would permit such virtual hearing. This is so for the reason that the petitioner is a company whose Head Office is registered at Kolkata. Its representatives such as accountants and legal representatives would have to travel long distances to appear before the Assessing Officer and it is not certain that such hearing could be concluded in one day.

When we are quashing the very order of assessment on the ground of inadequate hearing, it is not necessary to examine the legality of the order passed by the Assessing Officer on rectification application.

In the result, impugned order dated 26.02.2021 is set aside. Resultantly, the order rejecting the petitioner's application for rectification does not survive. The assessment proceedings are revived and restored to file of the Assessing Officer.

8. GST: Release on interim bail cannot be treated in constructive custody

Case Name : **Vishal Gupta Vs Union Of India And Another (Allahabad High Court)**
Appeal Number : Matters Under Article 227 No. 4968 of 2021
Date of Judgement/Order : 05/10/2021

Submission of the learned counsel for the petitioner is that although petitioner has been released on interim bail in compliance of directions issued by High Power Committee but he shall be deemed to be in constructive custody of the Court. The second submission of the learned counsel for the petitioner is that complete charge sheet has not been filed by the investigating officer in the matter, so petitioner is entitled to default bail.

Per contra, learned counsel for respondent vehemently opposed the aforesaid submission and contended that the petitioner cannot be treated in constructive custody because he is already on interim bail. Further submitted that department can file additional evidence any time after submission of charge sheet under Section 173(8) Cr.P.C.

The word 'custody' has not been defined in the Criminal Procedure Code. In Sundeep Kumar Bafna v. State of Maharashtra & anr. (2014) 16 SCC 623, Hon'ble Apex Court has referred several other authorites and held as under:

"7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

Thus, custody means when a police officer arrests a person, produces him before the Magistrate and gets a remand to judicial or other custody, he can be stated in judicial custody when he surrender before the court and submits to its directions. As petitioner has been released on interim bail, so he cannot be treated in constructive custody, as his movements are not restricted as per directions of the Court.

If a person who has been released on bail is treated in custody, then it will be mockery of justice. Bail always presupposes custody. Bail can be granted only when a person is detained.

In view of the above, I am unable to agree with the submission of the learned counsel for the petitioner that the petitioner despite being on interim bail shall be treated in constructive custody of the court. I am of the firm opinion that for the purposes of bail, petitioner cannot be treated in constructive custody.

9. MVAT Refund: HC dismisses writ for unreasonable delay in moving the same

Case Name : **E-Land Apparels Ltd. Vs State of Maharashtra (Bombay High Court)**
Appeal Number : Writ Petition No. 1819 of 2019
Date of Judgement/Order : 05/10/2021

Their Lordships thus held that as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by the extraordinary remedy of mandamus. Their Lordships then considered the following submission made by learned counsel 'that assuming that the remedy of recovery by action in a civil court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution' and the same is answered thus :-

"It is also held that learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known.

In **Bhailal Bhai's case** Their Lordships further held that even if there is no such delay in cases where the Government or the statutory authority raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation, the Court should ordinarily refuse to issue writ of mandamus for such payment. It is held that in both these kinds of cases it will be a sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a civil court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution of India. The dictum in Bhailal Bhai's case squarely applies in the present facts. We are therefore of the view that the petition being in the nature of a money claim, it does not appear that the petitioner has exercised due diligence and invoked the writ jurisdiction with utmost promptitude.

Not only do we find that a stale claim is sought to be agitated by way of this writ petition but the petitioner also raises disputed questions of fact regarding service of the order rejecting the refund. The delay in moving the writ petition is unreasonable and accordingly the same stands dismissed. No costs.

10. No power to CBIC to issue clarificatory circular for assessee on Fish Meal for GST Rate

Case Name : **Jenefa India Vs Union of India (Madras High Court)**
Appeal Number : W.P.(MD) Nos.16770 to 16776 of 2019

Date of Judgement/Order : 05/10/2021

Conclusion: CBIC was not empowered to issue circular in respect of fish meal used for making cattle / poultry / aquatic feed for clarification on GST rate as the power was to be exercised either by the Parliament by making a law as had been done in Finance Act, 2020 or by the Central Government by exercising their powers either under Section 11(1) of the **CGST Act, 2017** or under Section 6(1) of the **IGST Act, 2017.**

Held: Assessee was a manufacturer of fish meal. Till the issuance of Exemption Notification as well as Corrigendum and Amendment Notification, absolutely, there had been no quarrel. However, from the issuance of **Circular No.80/54/2018-GST dated 31.12.2018**, the revenue had taken a stand that, the product of assessee ie., fish meal, since was also to be used as a raw material for the purpose of making cattle / poultry / aquatic feed, which was not exempted, therefore, tax were to be levied on these items at the rate of 5% and accordingly, they inspected the premises of assessee's factories and demanded the tax and pursuant to which, the concerned officials of the Revenue ie., from Directorate General of GST Intelligence [DGGI] had issued summons that, there would be an enquiry proceedings conducted in the name of judicial proceedings within the meaning of Section 193 and Section 228 of the Indian Penal Code. Therefore, they should appear before the officer concerned of the DGGI ie., Directorate General of GST Intelligence. Assessee contended that such a clarificatory Circular issued under Section 168 could not override the exemption provided under the Notification, which was a statutory notification issued by the Central Government by exercising its powers under Section 11(1) of the CGST Act. Therefore, on that ground also, the impugned circular could not be sustained in the scrutiny of law. It was held that if at all the exemption provided by the Central Government in issuing the Exemption **Notification No.2 of 2017** was to be revisited or reviewed and certain items had to be taken away from the purview of exemption, such exercise should be undertaken either by the Parliament by making a law as had been done in Finance Act, 2020 or by the Central Government by exercising their powers either under Section 11(1) of the CGST Act, 2017 or under Section 6(1) of the IGST Act, 2017, as under such exercise of powers only those Exemption **Notification No.2 of 2017** as well as the Amendment **Notification No.28/2017** were issued, and only then, such kind of amendment could be made. However, no such attempt since has been made either by the Parliament or by the Central Government, by issuing a mere Circular exercising the powers under Section 168 of the CGST Act, 2017, such kind of right already vested, to get exemption, on the assessee, could not be taken away by way of a clarificatory Circular, that too issued only to the benefit of the officials and staff of the department. Therefore, the impugned Circular was unsustainable and set aside.

11. Statutory alternative remedy available -Writ petition cannot be entertained under Article 226

Case Name : **Costal Plastochem Pvt Ltd. Vs Assistant Commissioner (ST) (Madras High Court)**
Appeal Number : W.P.No. 21363 of 2021
Date of Judgement/Order : 05/10/2021

Where statutory alternative remedy was available under the Act, no writ petition could be entertained under Article 226.

Conclusion: High Court dismissed to entertain a petition pertained to reversal of **input tax credit (ITC)** under Section 19(4) of TNVAT Act as assessee had statutory alternative remedy to file an appeal or revision as the case may be under the Act.

Held: Assessee-company submitted that the impugned order pertained to reversal of input tax credit (ITC) under Section 19(4) of TNVAT Act and reversal of ITC no doubt was under Section 19(4) but the impugned order had been made under Section 27. Assessee pointed out that there was no mention about Section 27 of TNVAT Act in the impugned order which by itself had led to a sea of confusion in the case on hand. It was held that reversal of ITC if at all and if that be so, could be only for excess of 5% of tax and the impugned order had contravened this which would at the highest qualify only as an error. This argument might at best qualify as a good ground for an appeal or revision as the case may be. If assessee chose to file appeal under Section 51 or revision under Section 54 as the case may be (subject to limitation) the same could be dealt with on its own merits and in accordance with law by the appellate authority or revisional authority as the case may be. The appellate authority or revisional authority should deal with it on its own merits and in accordance with law untrammeled by any observation made in this order.

12. HC quashes summary revised GST demand for not giving Fair opportunity of hearing

Case Name : **Manoj Kumar Vs State of Bihar (Patna High Court)**
Appeal Number : Civil Writ Jurisdiction Case No.17524 of 2021
Date of Judgement/Order : 06/10/2021

Quashed summary revised GST demand cannot be made without giving the assessee a reasonable opportunity to be heard

Patna High Court has held that a demand made under GST laws on the basis of orders passed where the assessee was not given a reasonable opportunity to be heard is not maintainable as it violates the principles of natural justice.

Facts:

M/s Manoj Kumar ("**the Petitioner**") had filed an appeal before the Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea ("**Respondent 2**") against the order of the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa ("**Respondent 3**") dated February 9, 2021. The said appeal was dismissed via the order by Respondent 2 on April 9, 2021.

Subsequently, a summary revised GST demand was made to the Petitioner.

The Petitioner preferred the present Writ Petition against this demand by stating that the impugned orders passed by Respondent 3 and subsequently Respondent 2 indicate that no fair opportunity of hearing was afforded to the Petitioner which make

the impugned orders liable to be set aside on the ground of violation of principles of natural justice.

Held:

The Hon'ble Patna High Court, ***Writ Petition No.17524 of 2021 decided on October 6, 2021*** held as under:

- The counsel for the Revenue Department stated that they have no objection if the matter is remanded to the Assessing Authority for deciding the case afresh and that during pendency of the case, no coercive steps shall be taken against the Petitioner. While taking the statement on record, the Hon'ble Court opined that it has the jurisdiction to examine the veracity of the impugned orders irrespective of the said guarantees given by the Revenue Department.
- Subsequently, the Court observed that the orders are manifestly bad in law due to 2 reasons. Firstly, that no sufficient time was afforded to the Petitioner to represent his case which violates the principle of natural justice. Secondly, that the orders passed by Respondent 2 and Respondent 3 are ex-parte in nature, and do not assign any sufficient reasons as to how the officer could determine the amount due and payable by the Petitioner. Thus, the orders violate the principle of natural justice.
- Hence, the impugned orders were quashed. The bank accounts of the Petitioners were ordered to be relieved from being freezed under the impugned orders. The Assessing Authority has been ordered to decide the case on merits after complying with the principles of natural justice whereby no coercive steps must be taken against the Petitioner during the pendency of the case.

13. Jharkhand HC quashes vague SCN on wrongful availment of ITC

Case Name : **Nkas Services Private Limited Vs State of Jharkhand (Jharkhand High Court)**
Appeal Number : W.P.(T) No. 2444 of 2021
Date of Judgement/Order : 06/10/2021

Proceedings under Section 74 of GST Act have to be preceded by a proper SCN – Jharkhand High Court quashed the Show Cause Notice **(SCN)** in respect of wrongful availment of Input Tax Credit **(ITC)** as it was vogue, unclear and lacked serious details.

M/s Nkas Services Private Limited **("the Petitioner")** has challenged the SCN issued under Section 74 of the Jharkhand Goods and Services Tax Act **("the JGST Act")** on the grounds that it was vague and does not disclose the offense and contraventions as it is a mere mechanical reproduction of the provisions of Section 74 without striking of the irrelevant portions. It was contended, by the Petitioner that the impugned SCN is incapable of any reply and does not fulfill the ingredients of a notice in the eyes of law.

As per the said SCN, the Petitioner would be denied the opportunity to properly defend itself. It is, therefore, in violation of the principles of natural justice. The essential requirements of the proper notice are that it should specifically state charges to which the notice has to reply.

The Petitioner has sought to quash the impugned SCN issued under Section 74 of the JGST Act being in violation of principles of natural justice and lacking in jurisdictional facts to initiate a proceeding under Section 74 of the CGST Act on the allegations that the Petitioner has wrongfully availed the ITC by reason of fraud or any willful misstatement or suppression of facts to evade tax or not paid or short paid or erroneously got a refund of any tax.

After taking perusal of all the facts and evidences, the Honorable Jharkhand HC noted that the impugned SCN does not fulfill the ingredients of proper SCN and thus amounts to a violation of principles of natural justice, the challenge, by the Petitioner, was taken to be entertainable in the exercise of writ jurisdiction of the Court.

Accordingly, the Court ruled that the impugned notice and the summary of SCN in Form GST DRC-01 are quashed.

"However, since this Court has not gone into the merits of the challenge, respondents are at liberty to initiate fresh proceedings from the same stage in accordance with law within a period of four weeks from today," the Court said.

14. De novo reassessment in case of failure of respective authority to consider objections sent by assessee-dealer

Case Name : **Tvl. South India Engineering Corporation Vs Assistant Commissioner (ST) (Madras High Court)**
Appeal Number : W.P.Nos. 21588 and 21591 of 2021 and W.M.P.Nos. 22788 and 22791 of 2021
Date of Judgement/Order : 06/10/2021

Conclusion: Sales tax authority should *de novo* do revision/reassessment under Section 27 of TNVAT Act by considering the objections of assessee-dealer and made an order as expeditiously as possible.

Held: Assessee contended that impugned orders which had been made under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 had been made on the basis that writ petitioner had not sent objections whereas, assessee had sent their reply which had been placed before this Court as part of case file and moreover, impugned orders had been made more than 3 years from the date of original notice. In any event, it had been made more than $1^1/_2$ years post last of the objections. It was held that the orders were set aside solely on the ground that it proceed on the basis that assessee-dealer had not filed objections, whereas objections in fact had been filed and the same had been duly acknowledged by respondent. The respondent should *de novo* do revision/reassessment under Section 27 of TNVAT Act by considering the objections of writ petitioner/dealer and made an order as expeditiously as possible i.e., as expeditiously as the official business of respondent would permit and in any event, within three weeks from today i.e., on or before 27.10.2021. *De novo* order i.e., revision/reassessment order made in the aforesaid manner should be duly communicated to assessee under due acknowledgement within five working days from

the date of the order. Second point urged by assessee regarding the time taken for making impugned orders pales into insignificance.

15. TNVAT Act: Writ not maintainable if alternative remedy available

Case Name : **Tvl. F.M. Sales &** Marketing Vs State Tax Officer (Madras High Court)
Appeal Number : W.P.No.21643 of 2021
Date of Judgement/Order: 06/10/2021

Conclusion: In present facts of the case, the Hon'ble Madras High Court dismissed the writ petition filed against order under Section 27 of TNVAT Act, by observing that alternate remedy is available to file appeal under Section 51 of TNVAT act as in the impugned order detailed finding on facts has been provided.

Facts: Writ petitioner effected sale of about 5000 packets of what is known as 'Hans Chap Khaini' chewing tobacco vide a tax invoice dated 30.12.2010 to a local buyer in Arumbakkam. In the invoice, it was mentioned that the goods sold is non-taxable goods and exemption was claimed. In the course of a routine physical check, the rowing squad of the respondent detained said goods i.e., aforementioned consignment and a writ petition was filed in W.P.No.3212 of 2011 and the Revisional Authority was directed to dispose of the matter.

Writ petitioner submitted that orders of higher authorities have been disregarded and on this ground, the impugned order warrants interference in writ jurisdiction. Respondent, submitted that impugned order is a reasoned order which has been made after giving sufficient opportunity to the writ petitioner i.e., ample and adequate opportunity to the writ petitioner to show-cause. Learned counsel adds that even personal hearings have been granted to the writ petitioner though it is not statutorily imperative.

The Hon'ble High Court relied upon the Judgment of *Kesarwani Zarda Bhandar Vs.State of UP and others reported in 19 VST 545 (SC), and observed that* a perusal of the aforesaid portion of the impugned order makes it clear that the matter turns on facts and Hans Chap Khaini is only a brand and it is not a Whether the product would qualify as 'Tobacco' is a matter which turns on facts and in the considered view of this Court, in the light of the aforementioned extracts in the impugned order, the reasoned impugned order does consider the principles qua earlier orders and the same stand distinguished. To be noted, with regard to Tax case order, which has already been alluded to supra, it does not mention about Hans Chap Khaini and therefore that does not fall for consideration.

The Hon'ble High Court while dismissing the Appeal observed that there is no disputation or disagreement that the impugned order is appealable. In other words, statutory appeal qua impugned order is available to the writ petitioner, which will be under Section 51 of TNVAT Act. Further it was observed that suffice to say that exceptions to alternate remedy rule are set out i.e., adumbrated in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others*** reported in **(1998) 8 SCC 1** and the captioned writ petition does not fall under any of the exceptions

adumbrated in ***Whirlpool*** case. On the contrary, in the considered view of this Court, this is a case which has to be dealt with by Appellate Authority if the writ petitioner / dealer chooses to prefer an appeal as it turns heavily on facts. As already alluded to supra, 'Hans Chap Khaini' is a brand name and though the written submission talks about packets, it is understood that it is effectively sachets. The contents of sachets have to be necessarily gone into. One of the aforementioned extracts from the impugned order makes it clear that the respondent in the impugned order has clearly gone into the ingredients and has even gone into process and making of 'nice tobacco'. Respondent has gone into and examined that products such as menthol, geru, lime an spices etc., are homogeneously mixed with the same either by a electric machine or by a manually operated machine. As all these details turn on facts, it would be appropriate this if the writ petitioner chooses to file an appeal under Section of 51 of TNVAT Act.

16. Pre deposit for appeal under GST should be paid through cash ledger only: HC

Case Name : **Jyoti Construction Vs Deputy Commissioner of CT & GST (Orissa High Court)**
Appeal Number : W.P.(C) Nos.23508, 23511, 23513, 23514 and 23521 of 2021
Date of Judgement/Order : 07/10/2021

1. As far as the above contention is concerned, the Court is of the view that the prayer of the Petitioner that the debiting of the ECRL made by it should be reversed is a separate cause of action for which the Petitioner should independently seek appropriate remedies in accordance with law. The making of the pre-deposit by the Petitioner is not contingent upon the above reversal of the debit entry in the ECRL.

2. Pre deposit for appeal under the GST should be paid through cash ledger only.

17. Technical Glitches not to stand in way of ultimate relief to Taxpayers: Kerala High Court grants GST Refund

Case Name : **Dantara Jewellers Vs State of Kerala (Kerala High Court)**
Appeal Number : WP(C) No. 19271 of 2021
Date of Judgement/Order : 07/10/2021

The Kerala High Court while granting the refund to the taxpayer ruled that all the technical glitches that may occur in between, shall not stand in the way of ultimate relief of the grant of refund to the petitioner.

The Petitioner, Dantara Jewellers assailed the order wherein the petitioner's claim for refund of taxes paid under Central Goods and Services Tax as well as State Goods and Services Tax have been refused on the ground that there is no evidence to prove the payment of tax by the petitioner.

As per the order of demand of tax and penalty issued under section 129(3) of the State Goods and Services Tax Act, the petitioner remitted an amount of Rs.12,26,064/-. Thereafter, the petitioner challenged the final orders passed under section 129(3) of the State Goods and Services Tax Act, before the Appellate Authority. By virtue of the order, the petitioner was found not liable for payment of any amount of tax, and the Appellate Authority quashed the orders.

The petitioner became entitled to a refund of the amount deposited under section 129(3) of the State Goods and Services Tax Act, for the release of the goods. Pursuant to the order, the petitioner filed an application for a refund of the amount deposited. In the meantime, the respondent issued a show-cause notice to the petitioner asking him to show cause why the claim of the petitioner for refund ought not to be rejected on the ground of absence of details of remittance of the tax amount, as claimed by the petitioner.

The single-judge bench of Justice Bechu Kurian Thomas directed the respondent authority to refund the amount of Rs.12,26,064/-, due to the petitioner as a refund, within a period of 30 days from the date of receipt of a copy of this judgment. All the technical glitches that may occur in between, shall not stand in the way of ultimate relief of the grant of refund to the petitioner as otherwise the sanctity of the whole scheme of section 129 of the State Goods and Services Tax Act will lose the confidence of the assessees to deposit the amount as contemplated under section 129 of the State Goods and Services Tax Act, will be affected.

18. TNVAT: Last chance provided to Assessee for reconciliation

Case Name : **Supreme Trading House Vs Assistant Commissioner (ST) (Madras High Court)**
Appeal Number : W.A.Nos. 2612 to 2617 of 2021
Date of Judgement/Order : 07/10/2021

Conclusion: In present facts of the case the Division Bench of the Hon'ble Madras High Court while allowing the writ appeals have provided one more opportunity to the main petitioners to make the reconciliation of which Assessing Officer make take note of it and complete the assessment.

Facts: The writ petitions were filed by the appellant challenging the Assessment Order under the provisions of the TNVAT for the Assessment Years 2011-12 to 2015-16. The writ petitions were dismissed on the ground that the petitioner have been dragging on the matter and the petitioner was unable to do the reconciliation and to reconcile the errors pointed out by the Department. Therefore, Petitioners filed Writ Appeals before the Division Bench.

It was observed that the allegations against the appellant is suppression of turnover. The appellant was issued notice dated 07.12.2016, and stating that no reply or objections were filed till 30.12.2016, the proposal was confirmed and the reassessment was completed. This was put to challenge in W.P.Nos.3951 to 3956 of 2017. The Court found that there has been violation of principles of natural justice, inasmuch as show cause notice was not received on time and accordingly, the writ

petitions were disposed by the direction that if the appellant had sought for copies of documents or records which were taken away during the inspection, the same have to be provided where ever permissible and viable. Pursuant to the said order, the respondent officer had issued notices but adjournments were sought by the Petitioners.

It was further observed that the respondent had granted reasonable time to the appellant and the appellant had sought for adjournment on more than three occasions. But their contention is that the reconciliation would take certain time and they are required to explain to the Assessing Officer by comparing the slips along with the ledger. This according to them is a very cumbersome process, more particularly, when the assessment is for six years. When the writ petitions were entertained, it appears that the respondent was directed by the Court not to initiate any coercive action, not in written orders, but by making certain oral observations. Thus, the assessments have been kept pending since October, 2020. The writ petitions have now been dismissed by the impugned order and no liberty had been granted to the petitioner to file an appeal.

While allowing the Writ Appeals it was observed that the respondent shall fix the date for personal hearing during the second week of November, 2021 and on the date fixed, the appellant shall appear and no adjournment shall be granted. The appellant shall produce the necessary slips and records and give the required particulars in respect of D7 records as mentioned in the Assessment Order and the said particulars be verified by the respondent and the assessment be completed. If the appellant refuses to cooperate with the assessment proceedings, the benefit of this order will not enure to the appellant and the Writ Appeals will be dismissed automatically without reference to this Court, thereby, reviving the order passed in the writ petitions.

19. It is illegal to attach Director's personal property for recovery of sales tax dues

Case Name : **Manharlal Hirjibhai Virdiya Vs Assistant Commissioner of Commercial Tax (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 12733 of 2021
Date of Judgement/Order : 08/10/2021

Facts- The only question that arises is whether for the purpose of recovery of sales tax dues under the Gujarat Value Added Tax Act and Gujarat Sales Tax Act against the private limited company, the personal property belonging to the Managing Director of such company can be attached.

Accordingly, the order passed attaching the personal property of the petitioner is challenged.

Conclusion- In the case of Mr. Chokshi Vs. State of Gujarat it was held that the auction of the residential property is illegal and bad-in-law. Further, attaching/ selling of private property of the Managing Director was also restrained for realization of the dues.

On the basis of the observation made in the case of C.V. Cherian and Mr. Chokshi it was held that attaching director's personal property for recovery of sales tax dues is illegal and bad-in-law.

20. Bombay HC directs GST Authority to process Application for IGST Refund as no order was passed

Case Name : **Evertime Overseas Private Limited Vs Union of India and ors. (Bombay High Court)**
Appeal Number : Writ Petition No. 3793 of 2021
Date of Judgement/Order : 08/10/2021

Evertime Overseas Private Limited **(Petitioner)** filed petition claiming that he is entitled to refund under the provisions of Section 16 of the **Integrated Goods and Services Tax Act, 2017 (IGST Act)**.

Factually, the Petitioner claimed the refund under the provisions of Section 16 of the IGST Act in respect of the goods that have been supplied & exported. It is submitted by the Petitioner that the claim for refund is not being processed by Respondent on the ground that the investigation is pending against the Petitioner.

The Petitioner invited attention to the provisions of Section 54(10) of the **Central Goods and Services Tax Act, 2017 ("the CGST Act")** which says that where any refund is due under Section 16(3) of the CGST Act to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be and deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under the CGST Act or under the existing law.

Moreover, the Petitioner submits that in the teeth of the provisions of Section 54(10) of the CGST Act, the action on the part of the Respondent refusing to process the refund on the ground that the investigation is pending is untenable. On the other hand, the Respondent submitted that the department is justified in not processing the application on the count of a pending investigation to secure the interest of the revenue.

The Hon'ble Bombay High Court held that there is no order or decision on record against the Applicant claiming refund. And it would be appropriate to direct the Respondent to process the application made by the Petitioner for refund and pass a reasoned order upon hearing the Petitioner. The claim for refund be decided as expeditiously as possible on its own merits and preferably within a period of eight weeks from today.

Relevant Provisions:

Section 54 (10) of the CGST Act: Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay

any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

***Explanation.–** For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.*

21. Non-Transmission of Data Relating To Export from GSTN to ICEGATE Not A Valid Ground To Withhold Refund

Case Name : **SRC Chemicals Private Limited & Anr. Vs Central Board of Indirect Taxes (Bombay High Court)**
Appeal Number : Civil Writ Petition No.5160 of 2021
Date of Judgement/Order : 12/10/2021

As petitioner did not receive the refund of IGST, petitioner approached the customs office to check the status of its refund. Petitioner No.1 was informed that unless export data was transmitted from GSTN (GST Network) to ICEGATE (Indian Customs Electronic Gateway), the Customs office would not be in position to process the refund claim. Petitioner had no control or role to play in the transmission of data from GSTN to ICEGATE.

It was held that Customs Authorities cannot withhold refund lawfully due to an assessee for mere Technical reason i.e. non-transmission of data relating to export from GSTN to ICEGATE. HC also imposes Costs of Rs. 25,000/- on CBIC.

22. HC orders CBI inquiry against erring officers of Customs & Anti-Evasion Unit

Case Name : **Sunil Dutt Vs Department of Customs (Punjab and Haryana High Court)**
Appeal Number : CRM-M No. 42144 of 2021
Date of Judgement/Order : 13/10/2021

In ***Sunil Dutt v. Department of Customs, Commissionerate, Ludhiana [CRM-M-42144-2021 (O&M) dated October 13, 2021]***, the Honorable Punjab and Haryana High Court **(Punjab HC)** initiated Central Bureau of Investigation **(CBI)** enquiry to fix liability of erring Customs Department and Anti Evasion Goods and Services Tax **(GST)** Units in respect of clearing of Consignment without making any entry.

In the instant case, Sunil Dutt **("the Petitioner")** has filed a second Petition seeking grant of anticipatory bail in Complaint Case for the offences under Sections 135, 135-A, and 132 of the Customs Act, 1962.

The Petitioner is a registered informer of General GST, Commissionerate **("the Respondent")**, and has helped in unearthing many scams and GST Evasion for which he has been granted the award. The Petitioner is enrolled as a G-Card Holder by the Department of Customs on behalf of M/s. Safe Cargo Clearing Services and being a G-Card Holder, the Petitioner is assisting in moving the files of the parties in the Department of Customs for handling the custom clearances and has also obtained a KYC Form, Import-Export Code, PAN Card, Aadhar Card, etc. from one Prabhjot Singh.

The Petitioner has argued that he has initially given the information to GST Department regarding a consignment which was illegally cleared by the Customs Department without making any entry and the same was intercepted by Preventive Wing of CGST Commissionerate, Ludhiana and it was found that the shipping line seal of the container was intact and not broken which suggested that the Customs Authorities never checked the consignment.

When the consignment was checked by the Preventive Wing of CGST Commissionerate, Ludhiana, it was found containing 39,60,000 Cigarettes (100 mm each) of four different brands, 10030 Kgs of iron scrap, and 04 alloy wheels. The Petitioner further submitted that he was apprehensive that since he has unearthed a scam, he may fell to the anger of the Customs Department as the Custom Official, who was the Port In-charge when the consignment was allowed to move out of the Port without making any entry, is now made the Head of the Special Investigative Team.

After taking perusal of all the facts and evidences, the Punjab HC noted that it is very strange that Department of Customs, Customs Commissionerate, Ludhiana and Anti-Evasion Unit, Central Goods & Services Tax, Commissionerate, Ludhiana, are fighting regarding fixing the liability as to how the consignment was cleared manually without making any entry by the Customs Department.

The Honorable court said, ***"The officers of Customs Department, as well as the CGST Department, derive their powers from the respective Customs Act, 1962 and the Central Goods and Services Act, 2017 and both Departments are part of premium investigating agencies, however, instead of fighting and levelling allegations against each other, the office of the Director-General of both the Departments should have intervened and settled the dispute. Therefore, taking note of the tardy, casual and irresponsible attitude of both the departments, I find it to be a fit case where the matter needs to be referred to the Central Bureau of Investigation (CBI) for conducting further investigation of the case and fix liability of the erring official(s)."***

23. HC makes scathing remarks against dept for not allowing filing of Form Trans-1

Case Name : **Siddharth Enterprises Vs The Nodal Officer (Gujarat High Court)**
Appeal Number : Misc. Civil Application (For Direction) No. 3 of 2020
Date of Judgement/Order : 14/10/2021

HC held that We fail to understand that what is now left to be pointed out. We are disturbed by the fact that its been more than two years but our directions have not been complied with. All that is required to be done is to open the portal and allow the original writ applicants to file declaration in **Form GST TRAN 1 and GST TRAN 2** so as to enable them to claim the transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the Act.

In view of the aforesaid, we direct the Nodal Officer, D/5, E-Governance Branch, Rajyakar Bhavan, Ashram Road, Ahmedbad to personally remain present before this Court on 27.10.2021 at 11:00 a.m.

24. Gujarat HC denies bail to company directors for allegedly availing ITC on basis of fake bills

Case Name : **Nileshbhai Natubhai Patel Vs The State of Gujarat (Gujarat High Court)**
Appeal Number : R/Criminal Misc. Application No. 17697 of 2021
Date of Judgement/Order : 14/10/2021

Conclusion: Applicant was not entitled to be released on anticipatory bail for allegedly involved in wrongfully availing ITC on the basis of fake bills of RS. 737 crores as if assessee was enlarged on anticipatory bail then, there were all chances that assessee would tamper with the evidence and witnesses and at the time of trial, assessee would not be available.

Held: Assessee entered into transaction with 36 dummy firms and false invoices and sales were raised and in pursuance thereto, the Company had issued cheques to 36 dummy firms including four person, who were arrested by the department. There were receipts of more than Rs.737.00 Crores and after the withdrawal of the amount by dummy firms, the said amount was transferred to the applicants through Angadia in cash. The department had collected certain material during the course of investigation with other accused, who had been arrested. It was the specific case of the department that the transaction worth of Rs.737.00 Crores were entered into with 36 dummy firms and there would be liability of more than Rs.137.00 Crores. Assessee contended that since no FIR had been filed against the applicants, arrest of the applicants under Section 69 could not be made. It was held that the Hon'ble Supreme Court had laid down certain guidelines in case of Satender Kumar Antil Vs. Central Bureau of Inveestigation & Anr. in Special Leave to Appeal (Crl.) No.5191/2020 for the grant of bail in categories/types of offence. It was pertinent to note that the present offfence could be categorized as "economic offence" where huge public money in the form of alleged tax liability of Rs.137.00 Crores was involved. This Court had considered the seriousness of the charges and the fact that assessee had not cooperated with the investigating agency though directed by the Hon'ble Supreme Court and, therefore in the fact of the present case, the aforesaid order passed by the Hon'ble Supreme Court would not be applicable. The applicant was not entitled to be released on anticipatory bail as looking to the gravity of the offence, if assessee was enlarged on anticipatory bail then, there were all chances that the applicant would tamper with the evidence and witnesses and at the time of trial, assessee would not be available.

25. Summary Order in GST DRC-07 quashed by Patna HC for violating principles of natural justice

Case Name : **K. R. Steel Traders Vs State of Bihar (Patna High Court)**
Appeal Number : Civil Writ Jurisdiction Case No. 17795 of 2021
Date of Judgement/Order : 21/10/2021

M/s K.R. Steel Traders **(Petitioner)** filed petition being aggrieved against Order dated August 16, 2019 passed by the Joint Commissioner of State Taxes, Patna South Circle and Summary Order in Form GST DRC-07 dated August 29, 2019 passed by Deputy Commissioner of State Tax Patna South, Jurisdiction- Patna South, Patna in which the appeal of the Petitioner has been rejected merely on the grounds of being barred by limitation and both the orders were ex parte in nature.

The Hon'ble Patna High Court quashed the orders on the grounds of violation of principles of natural justice i.e. Fair opportunity of hearing was not given and said that no sufficient time was afforded to the Petitioner to represent his case and order passed ex parte in nature does not assign any sufficient reasons even decipherable from the record as to how the officer could determine the amount due and payable by the Petitioner.

The Court further directed de-freezing/de-attaching of the bank accounts of the Petitioner, if attached in reference to the proceedings subject matter of present petition. This shall be done immediately. And the Assessing Authority shall pass a fresh order only after affording adequate opportunity of hearing to the Petitioner.

Further, the Petitioner undertakes to additionally deposit 10% of the amount of the demand raised before the Assessing Officer this shall be done within four weeks. And the Court directed that this deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. However, if it is ultimately found that the Petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order.

The Petition disposed of by the Court.

26. Provisional attachment after expiry of one year breaches Section 83 provisions of CGST Act

Case Name : **Formative Tex Fab Vs State of Gujarat (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 13559 of 2021
Date of Judgement/Order : 21/10/2021

HC held that continuing the attachment after completion of one year is violative of provisions of Section 83 of the CGST / GGST Act, 2017. HC held that State cannot insist on continuing with something which is impermissible under the law.

HC disposes petition with the word of caution to the GST Department that the statutory provision needs to be complied with very strictly and stringently. There must not be any requirement for the Taxpayers to approach this Court for compliance of the provisions of law. If there are statutory remedies available, they may take recourse to,

however, the State cannot insist on continuing with something which is impermissible under the law.

27. GST :Writ petition not admissible if alternative statutory remedy was available

Case Name : **Steel Centre Vs State Tax Officer (Inspections 1) (Madras High Court)**
Appeal Number : W .P. Nos. 22150, 22152 and 22154 of 2021
Date of Judgement/Order : 21/10/2021

Conclusion: Except of absence of 'Natural Justice Principle violation, there is no other exception that arose in the case on hand, therefore, it was a fit case to relegate assessee to alternate remedy by way of statutory appeal under Section 107 of TNGST Act and CGST Act.

Held: Assessee had sent a reply to the impugned orders passed by the respondent in which respondent held that reply to be admissible, but had ultimately passed impugned orders on the basis that assessee was the beneficiary of **'Input Tax Credit' ['ITC']** and the same had been adjusted towards outward tax liability. Assessee submitted that the objections of assessee had not been considered and objections of assessee not being considered was violation of one of the facets of 'Natural Justice Principle' ['NJP']. It was held that if assessee chose to take alternate remedy route or statutory appeal under Section 107 of TNGST Act and CGST Act, the same would be dealt with and decided on its own merits, in accordance with law by Appellate Authority uninfluenced by any observation that was made in this order which was for the limited purpose of disposal of captioned writ petitions. Appeal would be subject to limitation and pre-deposit conditions, but this Court refrained itself from expressing any opinion on the same as all these were in the domain of the Appellate Authority. It was open to assessee to make a plea before the Appellate Authority that the time spent in this Court in these writ petitions should be excluded (under Section 14 of Limitation Act, 1963) for the purpose of computation of limitation qua appeals. If assessee chose to do so, the same should be decided on its own merits and in accordance with law by the Appellate Authority.

28. Writ maintainable Alternative Remedy available examining records, facts mis-match

Case Name : **Kanunga Extrusion Private Limited Vs Assistant Commissioner (ST) (Madras High Court)**
Appeal Number : W.P. Nos. 22049, 22056, 22060, 22064, 22066 and 22069 of 2021
Date of Judgement/Order : 21/10/2021

Writ not maintainable as Alternative Remedy available for examining records, facts and mis-match

Conclusion: In present facts of the case, the Hon'ble High Court dismissed the writ petitions by observing that question of looking into the records, going into the facts and examining mismatch, this exercise can be done by the Appellate Authority only. Therefore, petitions shall avail alternative remedy.

Facts: In present facts of the case the six main writ petitions were filed before the Hon'ble High Court, assailing six separate revisional/re-assessment orders under Section 27 of TN VAT Act.

The respondent had made revisional/re-assessment orders earlier, the same were called in question/assailed by the writ petitioner by way of six writ petitions in this Court and all these six writ petitions together with writ miscellaneous petition came to be disposed of by a Hon'ble Single Judge in and by a common order dated 15.03.2018. In brief, the facts were that this is a case of mismatch and if the dealer at the far end had not paid the tax, the writ petitioner cannot be penalized for the same. According to learned counsel for writ petitioner, the impugned orders are not in accordance with directions given by this Court in the aforementioned previous common order.

The Revenue submitted that the respondent has in fact given an opportunity of personal hearing to writ petitioners but writ petitioner-dealer had failed to even submit a reply. If reply had been filed by the dealer and if the dealer had responded to 11.02.2021 personal hearing notice (issued pursuant to aforementioned earlier common order of this Court), the respondent would have got an opportunity to examine the same, but not having done that, the dealer/writ petitioner has now embarked upon second round of litigation to avoid pre-deposit qua alternate remedy. Learned Revenue counsel pointed out that the writ petitioner has appeal remedy by way of statutory Appeal under Section 51 of TNVAT Act.

After taking submissions of both sides into consideration, the Hon'ble High Court dismissed the writ petitions and held that this case does not fall under any of the aforementioned exceptions as laid down by various Judgment of Hon'ble Supreme Court. *The question of looking into the records, going into the facts and examining mismatch, this exercise can be done by the Appellate Authority.* This is more so as the Appellate Authority can well go into facts. Therefore, this was not considered to be a case for exercising writ jurisdiction for interference qua impugned orders. Therefore, the campaign against impugned orders in writ jurisdiction in the captioned main writ petitions fail. However, it was made clear that it is open to the writ petitioner to avail alternate remedy under Section 51 of TNVAT Act, if the writ petitioner chooses to do so, subject to limitation and pre-deposit conditions set out therein, i.e., if the writ petitioner satisfies these conditions and takes alternate remedy route i.e., statutory appeal, the Appellate Authority shall deal with the appeals on its own merits and in accordance with law, uninfluenced by any of the observations made in this order.

29. Property tax exemption not available to college building

Case Name : **Christian Medical College Vellore Association Vs Government of Tamil Nadu (Madras High Court)**
Appeal Number : W.P.No.18116 of 2020
Date of Judgement/Order : 25/10/2021

Facts- The petitioner is a society registered in terms of the Societies Registration Act managing and administering the Christian Medical College and Hospital at Vellore. The challenge in this Writ Petition is to an order passed by the respondent – Assistant Commissioner, Zone – III demanding property tax in respect of two buildings owned by the petitioner.

The two properties in respect of which exemption is sought are, one, the CHAD, which is part of the hospital and is engaged admittedly in medical work and two, some of the buildings attached to, and part of the College.

Conclusion- With regard to CHAD property it is held that, I agree with the petitioner that it is entitled to the exemption claimed. Whereas, for second property i.e., the buildings comprised in the educational institution, it is held that, the Statute as it stands post amendment in 1994 militates against such claim, amendment, Section 123(c). Accordingly, it is held that the petitioner is not entitled to exemption from property tax in regard to the college building.

30. Bail granted to person accused of availing ITC fraudulently

Case Name : **Krishan Lal Chopra Vs Director General of GST Intelligence (Punjab and Haryana High Court)**
Appeal Number : CRM-M-38781-2021
Date of Judgement/Order : 28/10/2021

Prayer in this petition is for grant of regular bail to the petitioner for the offence committed under Section 132 (1)(c) of **CGST Act, 2017** read with Section 20 (xv) of **IGST Act, 2017**.

While granting interim bail to the petitioner, following order was passed by this Court on 22.09.2021: –

"… Learned senior counsel for the petitioner has referred to the application filed by the respondent before the Chief Judicial Magistrate, Ludhina seeking judicial remand of the petitioner, to submit that in its para No.4, it is stated that ITC of Rs.12.19 crores was availed by Shubham Steels on purchase from Atul Trading Company, Narwana, Shree Krishna Trading Company, Narwana and S.K. Trading Company, Kaithal, as per figures given regarding the purchase made from the aforesaid dealers. It is also submitted that in para No.10 of this application, it is stated as under: –

"… It, therefore, appeared that SS and AS and various other beneficiary traders/furnace units, in connivance with Haryana based dealers availed fraudulent ITC taking benefit of nonworking of toll plazas in Punjab/Haryana due to farmers' agitation. Further, it was also important to notice that during the period 01.11.2020 to 15.06.2021, SS had passed on approx. 40% of its ITC to be a single firm, namely Salasar Castings, Mandi Gobindgarh (prop. Sh. Krishan Lal Chopra)."

Learned senior counsel has further referred to para No.14.5 with regard to statement of the petitioner, which is recorded after his arrest, wherein it is stated that he found that Shubham Steels had passed on ITC of Rs.5.23 crores to his firm against purchase shown from Atul Trading Company and he has issued debit notes to Shubham Steels

involving ITC of approximately Rs.7.33 lacs against purchases shown from Atul Trading Company.

Learned senior counsel for the petitioner has further argued that the check period is from 01.11.2020 to 15.06.2021 and in the intervening period, the firm of the petitioner has done the business on 100% making payment through cheque/RTGS and no transaction took place in cash. Learned senior counsel has relied upon the print-outs taken from the website of respondent-Department relating to 01.04.2021 to 01.07.2021 in support of his arguments. The petitioner has already paid the tax to the corresponding period as per his returns attached with petition.

It is also argued that it is case of the respondent-department that Shubham Steels has passed approximately 40% of its ITC to a single firm namely Salasar Castings, Mandi Gobindgarh, whose proprietor is petitioner Krishan Lal Chopra and as per table given in para No.4 of the application, ITC availed by Shubham Steels on purchase made from its dealers is only Rs.12.19 crores and 40% of the same would be around Rs.4.87 crores, qua which the offence is bailable, however, to make it non-bailable, the Department has added certain figures solely on the basis of disclosure of the petitioner (which is not admissible against him), that Shubham Steels has passed on ITC of Rs.5.23 crores. This is done just to make the offence non-bailable as per Section 132 (4) of GST Act. It is also argued that Atul has not been arrested, whereas upon notice, Shubham has deposited an amount of Rs.50.00 lacs with the Department and similarly, brother of Shubham, namely Anshu has also deposited Rs.30.00 lacs with the Department and both of them have not been arrested.

Learned senior counsel for the petitioner has lastly argued that no show cause notice was issued to the petitioner before arresting him, therefore, no legal procedure was followed, asking the petitioner to deposit any amount, if found short and in pursuance of summons issued under Section 70 of CGST Act, he has been arrested straightway without following procedure under Section 69 of CGST Act, therefore, his arrest is in violation of Article 20 of the Constitution of India."

Written statement along with Annexures R-1 & R-2 on behalf of the respondent, filed in the Court today, is taken on record.

Heard.

After hearing learned counsel for the parties, this petition is allowed and the order dated 22.09.2021 passed by this Court, granting interim bail to the petitioner, is hereby made absolute.

31. GST: 'Rectification of Errors Permissible Only At Initial Stages': Supreme Court Dismisses Bharti Air-tel's Plea For Refund of Rs.923 Crore

Case Name : **Union of India Vs Bharti Airtel Ltd. & Ors (Supreme Court of India)**
Appeal Number : Civil Appeal No. of 2021
Date of Judgement/Order : 28/10/2021

The Honorable Supreme Court of India in the matter of ***Union of India v. Bharti Airtel Ltd. and Others [CIVIL APPEAL NO. OF 2021 (ARISING OUT OF S.L.P. (C) NO.***

8654 OF 2020) dated October 28, 2021] barred telecom major Bharti Airtel **(the Respondent)** from seeking Goods and Services Tax **(GST)** refund of ₹ 923 crore by rectifying return.

Facts- The brief facts of the case were that the Respondent was facing several problems while their filing of GSTR Form 3B due to the several glitches that were occurring in the Online GST Portal. Amidst these glitches, the Respondent filed their GST returns for the period of July, 2017 to September, 2017 with excess amount of ₹ 923 Crores and therefore, they have sought the refund accordingly.

The Delhi High Court [*W.P. (C) No. 6345 of 2018 dated May 05, 2020*] – Held that the rectification of the return for that very month to which it relates was imperative and, accordingly, read down para 4 of the ***Circular No. 26/26/2017-GST dated December 29, 2017*** to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred.

Accordingly, the Delhi HC allowed the present petition and permitted the Respondent to rectify Form GSTR-3B for the period to which the error relates, i.e. the period from July, 2017 to September, 2017. The Delhi HC also directed the Respondents that on filing of the rectified Form GSTR-3B, they shall, within a period of two weeks, verify the claim made therein and give effect to the same once verified.

In July 2020, the Central Government **("the Appellant")** moved to the Supreme Court challenging the Delhi HC order of grant of refund. While authorities claimed the Respondent had under-reported Input Tax Credit **("ITC")** from July, 2017 to September 2017, the Respondent said it had paid excess tax of ₹ 923 Crore on inputs based on estimates since the Form GSTR-2A was not operational during the error period.

The Supreme Court [*CIVIL APPEAL NO. OF 2021 (ARISING OUT OF S.L.P. (C) NO. 8654 OF 2020)]–* Allowed the Appellant's plea against the Delhi HC Order that had directed to issue the tax refund to the Respondent by rectifying its GST return for July, 2017 to September 2017 and observed as under:

"despite…an express mechanism provided by Section 39(9) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") read with Rule 61 of the Central Goods and Services Tax Act, 2017 ("the CGST Rules") it was not open to the High Court to proceed on the assumption that the only remedy that can enable the Respondent to enjoy the benefit of the seamless utilization of the ITC is by way of rectification of its return submitted in Form GSTR 3B for the relevant period in which the error had occurred. Any unilateral change in such return as per the present dispensation, would have cascading effect on the recipients and suppliers associated with the concerned transactions".

32. Default bail U/s. 167(2) Cr.P.C. cannot be equated with discretion of Court U/s. 437, 438 or 439 Cr.P.C.

Case Name : **Amandeep Singh Bhui Vs Inspector (Preventive) Central Goods and Service Tax (Punjab and Haryana High Court)**
Appeal Number : CRM-M No. 29607/2021

Date of Judgement/Order : 28/10/2021

Default bail under Section 167(2) Cr.P.C. cannot be equated with the discretion of the Court under Sections 437, 438 or 439 Cr.P.C., wherein the Court has got ample power to impose any condition as would be deemed fit on the facts and in the circumstances of the case. The indefeasible right under Section 167(2) Cr.P.C., accrued due to the failure on the part of the investigating agency to complete the investigation and present the challan within the stipulated period would, therefore, be a right free from any inhibition or embargo.

33. Bombay HC issues notice in challenge to Constitutional validity of 16(4) of CGST Act

Case Name : **Meta Tiles Pvt. Ltd. Vs Union of India (Bombay High Court)**
Appeal Number : Writ Petition (L) No. 12338 of 2021
Date of Judgement/Order : 29/10/2021

Hon'ble Bombay High Court issues notice in challenge to Constitutional validity of 16(4) of the CGST Act

In terms of section 16(4) of the Central GST Act and Maharashtra GST Act, a taxpayer is not entitled to take input tax credit in respect of any invoice after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains; or furnishing of the relevant annual return, whichever is earlier.

Meta Tiles Pvt. Ltd. has filed a writ petition vide W.P. (L) No: 12338 of 2021 before the Hon'ble Bombay High Court challenging the constitutional validity and vires of section 16(4) of the Central GST Act and Maharashtra GST Act. The petition is also praying for declaration of the conditions as prescribed in Section 16(4) of the Act as merely procedural in nature which cannot override substantive conditions as mandated under Section 16(1) and Section 16(2) of the Act.

The petition is also challenging the constitutional validity of the retrospective amendment of Rule 61 of the CGST / MGST Rules.

Further, the petition is also praying for declaration of return required to be furnished in Form GSTR- 3B as an incomplete, non est and invalid return in the eye of law. Hon'ble Bombay High Court vide its Order dated October 29, 2021 has issued notice to the Central and State Government to file affidavit-in-reply by three weeks and to file rejoinder thereto, if any, by one week thereafter. The matter is listed for hearing on 3rd December, 2021.

It was submitted that if the restriction under Section 16(4) of the Act is invoked and ITC is denied then the 'non-obstante clause' in Section 16(2) of the Act would cease to have any meaning or purpose and would be rendered otiose. It was further submitted that ITC is not taken through return but instead it is taken through the books of accounts immediately on receipt of goods or services in terms of 1st proviso to Section 16(2) of the Act. It was also submitted that the provision of section 16(4) of

the **CGST Act, 2017**/ MGST Act, 2017 is arbitrary and unreasonable as they are violative of Article 14. Further they are also violative of Article 19(1)(g) and Article 300A of the Constitution and the denial of ITC would defeat the object of the 122nd Constitutional Amendment Bill, 2017 to avoid the cascading effect of taxes.

This matter was represented on behalf of the petitioners by Advocate Vinay Shraff a/w Advocate Nikita Agarwal i/by Advocate Nikhil K. Rungta. The respondents were represented by Advocate J.B. Mishra and Advocate Jyoti Chavan, AGP for State.

34. Pass Reasoned order against accused taxpayer involved in passing on fake ITC: HC

Case Name : **Krit Kunal Dhawan Vs The State of Assam (Gauhati High Court)**
Appeal Number : Case No. WP(C)/5642/2021
Date of Judgement/Order : 29/10/2021

Reasoned order to be passed against the accused taxpayer involved in passing on fake ITC without actual movements of goods

HC held that in a case where assessee is accused of passing on fake Input Tax Credit **(ITC)** without actual moment of goods, a reasoned order must be passed by Joint Commissioner of State Tax, after acknowledging all the relevant material and contentions that the assessee may produce to satisfy the authorities.

Facts:

Kriti Kunal Dhawan **("the Petitioner")** is engaged in carrying on business in the name and style of eco fuel industries. An investigation was conducted and it was found that the taxpayer has utilized ITC from dubious firms. It has been reported in print and electric media that these dubious firms are involved in bill trading and passing on fake ITC without movement of actual goods therefore, ITC claimed from these firms by the Petitioner are sought to be reversed with levy of interest and penalty as per Assam Goods and Services Tax Act 2017 **("AGST Act")**.

The Petitioner was summoned on September 10, 2021 for further investigation and consequently the Petitioner appeared on September 23, 2021 and requested time up-to September 30, 2021. The request made by the Petition was agreed by the authorities but even on September 30, 2021 however, the Petitioner failed to appear.

Therefore a Show Cause Notice in form DRC-01 was issued on October 8, 2021 **("the SCN")** as per Rule 142(1)(a) of the Assam Goods and Service Tax Rules, 2017 **("AGST Rules").**

Issues:

- Whether SCN can be issued on the basis of certain report in print and electronic media?
- Whether the Petitioner should be given an opportunity to appear before the department to produce relevant material and contentions?

Held:

The Hon'ble Gauhati High Court in ***W.P. No. 5642 of 2021 decided on October 29, 2021*** held as under:

- Observed that, the department before issuing a SCN to the Petitioner has not only relied upon print and electronic media, as alleged by the Petitioner, but also found during their investigation that the tax payers had utilized dubious ITC forms.
- Observed that, the department gave time and opportunity to the Petitioner during the investigation to justify the alleged charges against him but the **Petitioner had failed to satisfy the authorities and the department had no option but to rely upon the fact that the Petitioner has utilized ITC From dubious firms and further issued a SCN against the Petitioner**.
- Held that, though the Petitioner has failed to provided appropriate material and document at the time of the investigation but **it would be against the principles of natural justice if the Petitioner would not be given an opportunity to appear before the department with all relevant materials that he may desire to rely upon and satisfy the authorities in their investigation**.
- Ordered that, the petitioner shall appear before the Joint Commissioner of State Taxes, Guwahati, on November 8, 2021 at 11 a.m., and the abovementioned authority shall give the Petitioner appropriate consideration upon his attendance and acknowledge all relevant items as well as arguments that he may offer to justify the allegations against him.
- Further ordered that, by following the above mentioned procedure the department shall pass a reasoned order either accepting or rejecting the contentions of the petitioner and further ordered that the **SCN shall be kept in abeyance till the reasoned order is not passed**.
- Held that, if the reasoned order comes in favor of the Petitioner, the SCN would not be valid but if comes against the Petitioner than a fresh SCN may be issued against the Petitioner.

Relevant Provision:

Rule 142(1)(a) of the AGST Rules:

"142. Notice and order for demand of amounts payable under the Act.

(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01."

35. SCN quashed by Bombay HC for allegedly availing inadmissible transitional credit as has been issued on an erroneous legal premise

Case Name : **Godrej & Boyce Mfg. Co. Ltd. Vs Union of India and Ors. (Bombay High Court)**
Appeal Number : Writ Petition No. 3226 of 2019
Date of Judgement/Order : 29/10/2021

SCN quashed by Bombay HC for allegedly availing inadmissible transitional credit as has been issued on an erroneous legal premise

The Hon'ble Bombay High Court **(Bombay HC)** in the matter of ***Godrej & Boyce Mfg. Co. Ltd. v. Union of India and Ors. [WRIT PETITION NO. 3226 OF 2019 dated October 29, 2021],*** quashed the Show Cause Notice for allegedly availing inadmissible transitional credit worth Rs.3.83 Crores as it has been issued on an erroneous legal premise.

Godrej & Boyce Mfg. Co. Ltd. **(the Petitioner)** filed the petition dated November 14, 2019 in which the Petitioner has mounted a challenge to a show cause notice dated August 27, 2019 issued by the Joint Commissioner, CGST & C.Ex, Navi Mumbai. It has been alleged in such notice that the Petitioner availed inadmissible transitional credit amounting to Rs.3.83 crores. Further the Petitioner contended that the impugned notice proceeds on the footing that the transitional arrangement for taking Input Tax Credit in the cases of CESS such as Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess has been taken away by a retrospective amendment in the GST Law. However, the Petitioner claims that even on the date, this writ petition was presented, the amendment(s) referred to in the impugned notice had not come into force and, therefore, the impugned notice has been issued on an untenable legal premise. Hence it is without jurisdiction.

The Petitioner while articulating this point in support of his claim that the impugned notice is non-est in the eyes of law, pointed out that Explanation 3 has been inserted in Section 140 of the **Central Goods and Services Act, 2017 ("the CGST Act")** with effect from July 1, 2017 by Section 28 of the **Central Goods and Services (Amendment) Act, 2018**. It is further pointed out by the Petitioner that amendments have also been introduced in Explanations 1 and 2 to Section 140 of the CGST Act.

The Respondents opposed the petition by contending that the impugned show-cause notice has been issued by an officer who does have the jurisdiction to issue such notice hence, the Petitioner ought to be directed to raise all points that are available to it in defence for consideration of the said officer. It was further contended by the Respondents that the point urged by the Petitioner that the impugned show cause notice is not founded on any legal premises is a jurisdictional issue and such issue can even be urged by it for an adjudication by the Respondent.

The Hon'ble Bombay High Court relied on the case ***Special Director and Anr. v. Mohd. Ghulam Ghouse & Anr. [Appeal (crl.) 35 of 2004 dated January 9, 2004],*** and held in the present case that where the impugned show-cause notice suffers from an error going to the root of the jurisdiction of the Respondent in assuming jurisdiction and is, accordingly indefensible and liable to be set aside.

Further, the Court directed that if the Respondent has reason to believe that the action proposed in the show-cause notice could be saved even without the amendments in Explanations 1 and 2 to Section 140 of the CGST Act having been brought into force or on grounds other than the one assigned therein, it shall be at liberty to issue a fresh show- cause notice to the Petitioner and if such notice is issued, the Petitioner will be free to respond to the same and take all possible defences available to it in the law.