

# **GST UPDATE**

## **(May, 2022)**

**Directorate of Training, Excise and Taxation Department, Punjab**

## **ABSTRACT OF GST UPDATE**

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## I GIST OF GST NOTIFICATIONS

### CENTRAL TAX NOTIFICATIONS

#### 1. Extension of due date of filing FORM GSTR3B for April 2022

CBIC Extends due date of filing FORM GSTR3B for the month of April 2022 till the 24th day of May, 2022 vide Notification No. 05/2022–Central Tax | Dated: 17th May, 2022.

In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in FORM GSTR-3B for the month of April, 2022 till the 24th day of May, 2022.

**[Notification No.05/2022-Central Tax Dated 17-May-2022]**

#### 2. Due date of payment of tax for April 2022 extended under QRMP scheme

CBIC extends due date of payment of tax for the month of April, 2022 by taxpayers under QRMP scheme in FORM GST PMT-06 till 27th May, 2022 vide notification No. 06/2022-Central Tax dated 17.05.2022.

In exercise of the powers conferred by the first proviso to sub-rule (3) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby extends the due date for depositing the tax due under proviso to sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 in FORM GST PMT-06 for the month of April, 2022 till the 27th day of May, 2022.

**[notification No. 06/2022-Central Tax dated 17.05.2022.]**

#### 3. Late fees for GSTR 4 waived till from 1.5.2022 to 30.06.2022

Seeks to waive off the late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR4 – Notification No. 07/2022–Central Tax | Dated: 26th May, 2022.

In exercise of the powers conferred by section 128 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, Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29th December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1600(E), dated the 29th December, 2017, namely :– In the said notification, after the fifth proviso, the following proviso shall be inserted, namely: – “Provided also that the late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2021-22 under section 47 of the said Act shall stand waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.”.

**[Notification No. 07/2022–Central Tax | Dated: 26th May, 2022.]**

### **INTEGRATED TAX NOTIFICATIONS**

#### **IGST: Relaxation in GST interest rate for March & April 2021**

CBIC vide Notification No. 01/2021-Integrated Tax Dated: 1st May, 2021 provides Relaxation in the interest rate based on Turnover to those who have to file GSTR 3B and also to Composition dealers. Relaxation is for Tax Period ending on 31st March 2021 and for 30th April 2021.

**[Notification No. 01/2021-Integrated Tax Dated: 1st May, 2021]**

## II CENTRAL TAX NOTIFICATIONS

1. [Notification No.05/2022-Central Tax Dated 17-May-2022]  
Extension of due date of filing FORM GSTR3B for April 2022
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[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

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

Notification No. 05/2022 – Central Tax

New Delhi, the 17<sup>th</sup> May, 2022

G.S.R.....(E).— In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in **FORM GSTR-3B** for the month of April, 2022 till the 24<sup>th</sup> day of May, 2022.

[F. No. CBIC-20006/9/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

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2. Notification No. 06/2022-Central Tax dated 17.05.2022.  
Due date of payment of tax for April 2022 extended under QRMP scheme

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

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

Notification No. 06/2022 – Central Tax

New Delhi, the 17<sup>th</sup> May, 2022

G.S.R.....(E).— In exercise of the powers conferred by the first proviso to sub-rule (3) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby extends the due date for depositing the tax due under proviso to sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 in **FORM GST PMT-06** for the month of April, 2022 till the 27<sup>th</sup> day of May, 2022.

[F. No. CBIC-20006/9/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

3. Notification No. 07/2022–Central Tax | Dated: 26th May, 2022.  
Late fees for GSTR 4 waived till from 1.5.2022 to 30.06.2022

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

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

Notification No. 07/2022 – Central Tax

New Delhi, the 26<sup>th</sup> May, 2022

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 73/2017–Central Tax, dated the 29<sup>th</sup> December, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1600(E), dated the 29<sup>th</sup> December, 2017, namely :–

In the said notification, after the fifth proviso, the following proviso shall be inserted, namely: –

“Provided also that the late fee payable for delay in furnishing of **FORM GSTR-4** for the Financial Year 2021-22 under section 47 of the said Act shall stand waived for the period from the 1<sup>st</sup> day of May, 2022 till the 30<sup>th</sup> day of June, 2022.”.

[F. No. CBIC-20006/8/2022-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification No. 73/2017-Central Tax, dated 29<sup>th</sup> December, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1600(E), dated the 29<sup>th</sup> December, 2017 and was last amended *vide* notification number 21/2021 – Central Tax, dated the 1<sup>st</sup> June, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R 365 (E), dated the 1<sup>st</sup> June, 2021.

### III INTEGRATED TAX NOTIFICATIONS

Notification No. 01/2021-Integrated Tax Dated: 1st May, 2021  
IGST: Relaxation in GST interest rate for March & April 2021

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

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

**Notification No. 01/2021 – Integrated Tax**

**New Delhi, the 1<sup>st</sup> May, 2021**

G.S.R.....(E).- In exercise of the powers conferred by section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (1) of section 50 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 6/2017 – Integrated Tax, dated the 28<sup>th</sup> June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 698(E), dated the 28<sup>th</sup> June, 2017, namely:–

(i) In the said notification, in the first paragraph, in the first proviso, in the Table after S. No. 3, the following shall be inserted, namely: –

(1)	(2)	(3)	(4)
“4.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 per cent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021
5.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 percent thereafter	March, 2021, April, 2021

6.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021
7.	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	Quarter ending March, 2021.”.

2. This notification shall be deemed to have come into force with effect from the 18<sup>th</sup> day of April, 2021.

[F. No. CBEC-20/06/08/2020-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification number 06/2017 – Integrated Tax, dated the 28<sup>th</sup> June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 698(E), dated the 28<sup>th</sup> June, 2017 and was last amended *vide* notification number 5/2020 – Integrated Tax, dated the 24<sup>th</sup> June, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R.410(E), dated the 24<sup>th</sup> June, 2020.

## IV ADVANCE RULINGS

### 1. Classification of legacy municipal solid waste processing & disposal services

Case Name : In re Zigma Global Environ Solutions Private Limited (GST AAR Andhra Pradesh)

Appeal Number : Advance Ruling No. AAR No.11/AP/GST/2022

Date of Judgement/Order : 30/05/2022

**I. Question: Classification of the services Viz., ‘Processing and disposal of the legacy municipal solid waste near Kakulamandu Tippa, Tirumala through Bio-remediation & Bio-mining on’ as is where is basis” to be provided by the applicant to the Superintendent Engineer, Tirumala Tirupati Devasthanams, Tirupati.**

Answer: ‘Solid Waste Management” services to be provided by them fall under SAC code No.9994 “sewage and waste collection, treatment and disposal and other environmental protection services” and in particular Group 99943-Waste treatment and disposal services” as per Annexure to Notification No.11/2017 Central Tax (Rate) dated 28.06.2017.

**II.Question: Whether aforesaid services provided by the applicant is exempted under SI.No.3 of Notification No.12/2017 – Central Tax (Rate) dt:28.07.2017 as amended?**

Answer: Answered in the negative.

### 2. GST on procurement/distribution of drugs, Medicines & other surgical equipment on behalf of govt

Case Name : In re Andhra Pradesh Medical Services and Infrastructure Development Corporation (GST AAR Andhra Pradesh)

Appeal Number : Advance Ruling No. AAR No. 10/AP/GST/2022

Date of Judgement/Order : 30/05/2022

**Question: Whether the procurement and distribution of drugs, Medicines and other surgical equipment by APMSIDC on behalf of government without any value addition, and without any profit or loss, without even the intent to do business in the same amounts to Supply under Section 7 of CGST/SGST Act.**

Answer: Affirmative

**Question: Whether the establishment charges received from the State Government as per G.O.Rt 672 dated 20-5-1998 and G.O.Rt 1357 dated 19-10-2009 by APMSIDC is eligible for exemption as per Entry 3 or 3A of Notification 12/2017 Central Tax (Rate)?**

Answer: Answered in the negative.

3. **GST on interest amount receivable on fixed annual instalments**

Case Name : In re Andhra Pradesh Industrial Infrastructure Corporation Ltd. (GST AAR Andhra Pradesh)

Appeal Number : Advance Rulings No. AR No. 09/AP/GST/2022

Date of Judgement/Order : 30/05/2022

Whether the interest amount receivable on the annual instalments fixed by the applicant is liable to GST or not. As seen from the application, it is clear that APIIC allots the land to the SC/ST/BC entrepreneurs by collecting 25% of the land cost from the entrepreneurs at the time of allotment of land, while the remaining 75% of the land cost will be collected from the entrepreneur in 8 equal annual instalments @ 16% p.a rate of interest duly providing 2 years moratorium period.

The entire interest income on the balance land cost is being recognized in the Financial Year in which the sale agreement is executed. The applicant sought clarification regarding the taxability of the interest amount receivable on the balance land cost. If we look into the transaction i.e., the sale of land, it is neither supply of goods nor Supply of services, as per para 5 of Schedule -III, which reads as under, "Schedule III [See section 7] Activities or Transactions Which Shall Be Treated Neither As A Supply Of Goods Nor A Supply Of Services 5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building." Whereas, the contract/ agreement that is executed between APIIC and its beneficiaries shall be treated as supply of service as per para 5(e) of Schedule -II, which reads as under ,

*"Schedule II [See section 7] Activities To Be Treated As Supply Of Goods Or Supply Of Services*

5. Supply of services

(e) *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and"*

Thus, it is supply of service, wherein the beneficiary is obligated to fulfil certain conditions of paying annual instalments @ 160/0 p.a rate of interest at specified periods as per the contract between the applicant and beneficiaries. Now we examine whether the 'interest' component in

the above transaction would form a part of taxable supply as per Section 15 (2)(d) which reads as under,

“Value of taxable supply

(2) The value of supply shall include—

(a) —

(b) —

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and” In the instant case the applicant, APIIC had given a facility to the beneficiaries, by extending the service of fixation of annual instalments with an interest @ 16% p.a for delayed payment of 75% of total consideration over a period of time. In such a case, the interest on the credit facility allowed by the applicant is part of the value of taxable supply and shall be liable to GST.

#### **4. GST on activity of Fish/Prawn Farming**

Case Name : In re Sri Vinayaka Hatcheries (GST AAR Andhra Pradesh)

Appeal Number : Advance Rulings No. AAR No. 08/AP/GST/2022

Date of Judgement/Order : 30/05/2022

The applicant seek Advance Ruling on the applicability of GST on renting of Land and whether the activity of Fish/Prawn Farming is covered under “services relating to rearing all life forms of animals- by way of renting or leasing of vacant land” and eligible for GST exemption as per Sl.No.54 of notification No. 12/2017 central tax (Rate) dt: 28.06.2017 and corresponding notification under Andhra Pradesh GST.

Primarily, we discuss the contention of the applicant that fish and prawn farming is covered under ‘rearing of all life forms of animals’, which means ‘care for the younger ones until they are fully grown’.

If we clearly examine the entry under 9986, the thrust is on services relating to ‘cultivation of plants’ and ‘rearing of all life forms of animals’. Cultivation of plants is essentially ‘agriculture’ while ‘rearing of all life forms of animals’ is ‘animal husbandry’. Animal husbandry is the branch of agriculture where animals are reared, bred and raised for commercial purposes like meat, fibre, eggs, milk and other food products. Fish farming is not an agricultural activity as no basic agricultural operation ‘directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing’, as enumerated in sl.no. 54(a) is carried out on that vacant land. Furthermore, in case of fish/prawn farming, any of the processes as listed in the sl.no.54 (c) of the notification such as ‘tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such other operations which do not alter the essential characteristics of agricultural produce’ are not

carried out on the vacant land. Hence, fish/prawn farming is not covered under services to agriculture as enumerated under Sl.No.54 of the notification.

Secondarily, we examine the fact that whether the land leased by the applicant is covered under services relating to cultivation of plants and rearing of all life forms of animals by way of 'renting or leasing of agro machinery or vacant land with or without a structure incidental to its use. In the instant case the applicant has taken on lease a land through a lease agreement. The clause 10 of the lease agreement is reproduced below for reference.

*“Clause 10: That the lessor hereby grants to the lessee, the right to enter into and use and remain in the said premises along with the existing appliances and fixtures and that the lessee will maintain the premises, including all appliances and fixtures in clean, sanitary, and good condition except normal wear and tear. Lessee will not remove lessor’s appliances and fixtures from the premises for any purpose. The lessee would maintain all appliances, fixtures and premises in good condition and would at the time of vacating the premises ensure that all the appliances are in working condition and the premises restored to a good and fit condition except normal wear and tear”.*

Not only the above clause, even when the lease agreement is examined in toto, nowhere it is mentioned specifically that the land is leased for any purpose related to agriculture, rearing of animals, fishing etc. The agreement between the lessor and the lessee (applicant) is executed in the lines of commercial renting of any other land without any reference to the purpose of usage of the land. It is open ended that the land might be used by the lessee for any other intended purpose in the absence of any specification as such. The activity of lease/license to occupy land is supply of service as per Schedule II of CGST Act, 2017 as presented below.

## SCHEDULE II

[See Section 7 of the CGST Act]

*“Activities or Transactions” to be treated as Supply of Goods or Supply of Services*

### 2) Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.”

This would lead to the conclusion that the lease of vacant land would obviously be covered under heading 9972 vide notification 28.06.2017 and is taxable.



SI No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)
16	9972	Real estate services	18%
	997212	Rental or leasing services involving own or leased non-residential property	

997212 service code includes:

1. Rental or leasing services concerning industrial, commercial or other non-residential buildings or property by owners or leaseholders, such as factories, office buildings, warehouses, theatres, convention centres, exhibition halls and multiple -use buildings that are primarily non-residential, agricultural, forestry and similar properties.
2. Rental or leasing of caravan sites, lock-up garages or other places for parking vehicles, by the month or year.

The absence of explicit intention in the lease agreement for the purpose of which the land is used would negate the eligibility criterion for exemption in the instant case. Thus, essentially it is this condition of sl.no 54(d) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 that is not meted to consider the renting activity of vacant land as services relating to rearing of all life forms of animals.

Ineligible for exemption as per Sl.No.54 of notification No.12/2017 central tax (Rate) dt: 28.06.2017 and taxable at the rate of 18% under sl. No. 16 of HSN Code 9972 of notification No.11/2017 central tax (Rate) dt: 28.06.2017.

**5. GST on printing of question papers, OMR sheets, Answer booklets by educational boards**

Case Name : In re Universal Print Systems (GST AAR Andhra Pradesh)  
Appeal Number : Advance Ruling No. AAR No.07/AP/GST/2022  
Date of Judgement/Order : 30/05/2022

**Question: Whether printing of Pre examination items like question papers, OMR sheets (Optical Mark Reading), Answer booklets for conducting of an examination by the educational boards be treated as exempted supply of service in terms of Serial Number 66 of Notification No.12/2017-CGST [Rate] dated 28-6-2017 as amended?**

Answer: Affirmative

**Question: Whether printing of Post examination items like marks card, grade card, certificates to educational boards (up to higher secondary) after scanning of OMR Sheets and processing of data in relation to conduct of an examination be treated as exempted supply of service**

**by virtue of in terms of Serial Number 66 of Notification No.12/2017-CGST [Rate] dated 28-6-2017 as amended?**

Answer: Affirmative

**Question Whether scanning and processing of results of examinations be treated as exempted supply of service by virtue of in terms of Serial Number 66 of Notification No.12/2017-CGST [Rate] dated 28-6-2017 as amended?**

Answer: Affirmative

All the above three queries are answered only with reference to the products associated with the conduct of Examinations and the Educational boards/Institutions within the purview of the definition in the Act.

**6. GST exempt on vehicles rented to State Transport Undertakings or Local Authorities**

Case Name : In re MH Ecolife E-Mobility Pvt. Ltd. (GST AAR Maharashtra)  
Appeal Number : Advance Ruling No. GST-ARA-60/2020-21/B-69  
Date of Judgement/Order : 25/05/2022

It was noticed at the time of final hearing of original order (dated 22/12/2021) passed in present case that a very similar issue which was involved in the case of M/s. M P Enterprises & Associates Limited, Advance Ruling No. GST-ARA 37/2020-21/B-16, dated 14 June 2021, was decided by this Authority as per the said order dated 14/6/2021. And mainly based on the said decision given in the case of M/s MP Enterprises, the decision in the case of present applicant was taken.

It was further noticed that, after the decision in the above mentioned case of M/s M.P. Enterprises, a Circular no. 164/20/2021-GST dated 6/10/2021 was issued by the CBIC, Govt of India in view of Representations having 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 Sr. No. 22 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which 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”.

The said Circular has 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.”

7. **GST on training & coaching in respect of Football, Basketball, Athletic, Cricket, swimming, Karate and Dance**

Case Name : In re Navi Mumbai Sports Association (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA-16/2020-21/B-67

Date of Judgement/Order : 25/05/2022

From the submissions made by the applicant, we find that they are registered under Section 12AA of the Income Tax Act and are providing training and coaching in Football, Basketball, Athletic, Cricket, swimming, Karate, Dance, Physical fitness and ‘summer coaching’. We also observe that Football, Basketball, Athletic, Cricket, swimming, and Karate are sports and ‘Dance’ would be covered under Arts.

However, Physical fitness can neither be considered as sports nor Arts or culture. Further, the term ‘summer coaching’ is a general term which cannot be said to cover sports, Arts or culture.

In view of the above we find that training and coaching in Football, Basketball, Athletic, Cricket, swimming, Karate, Dance by the applicant would be covered under Entry No. 80 of notification 12/2017-CTR dated 28th June, 2017, as amended and ‘Physical fitness’ training and ‘summer coaching’ are not covered under the said Entry No. 80 mentioned above. Therefore, the benefit as per Entry No. 80 of notification 12/2017-CTR dated 28th June, 2017, as amended will be available to the applicant only in respect of training and coaching in respect of Football, Basketball, Athletic, Cricket, swimming, Karate and Dance.

8. **18% GST payable on Renting of immovable Property Services to PCSCCL**

Case Name : In re Auto Cluster Development and Research Institute (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA-106/2019-20/B-68

Date of Judgement/Order : 25/05/2022

The Smart Cities Mission is a vision of the Government of India to drive economic growth and improve the quality of life of people by enabling local area development and harnessing technology, especially technology that leads to Smart outcomes, area-based development which will transform existing areas, including slums, into better planned ones, thereby improving liveability of the whole City.

In some cases, new areas to be developed around cities in order to accommodate the expanding population in urban areas. To fulfill the vision of the Government of India, Smart Cities are coming up in various States and the Pimpri Chinchwad Smart City is one such project for which PCSCCL has been formed with the support of the Government of Maharashtra also.

However, in the instant case, it is clearly seen that even though the pure service (renting of immovable property services) is provided to PCSCCL, a Government Entity, the said service, per se, cannot be considered as an activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution, or entrusted to a Panchayat under Article 243 G of the Constitution because the activity of renting of immovable property does not find mention in either Article 243 G or Article 243 W of the Constitution.

In view of the above discussions, we are of the opinion that, Renting of immovable Property Services i.e. 'Pure Service' provided by the applicant to PCSCCL, a Government Entity are not by way of any activity in relation to functions entrusted to a Municipality under article 243W of the Constitution or entrusted to a panchayat under article 243G of the Constitution and therefore, the impugned service supplied by the applicant is not exempt under the relevant provisions of Notification No.12/2017 Central Tax (Rate) dated 28/6/2017 as amended from time to time and therefore the applicant has to discharge GST @ 18%.

9. **18% GST on Training & Awareness Programmes on Fire Prevention & Emergency**

Case Name : In re Fire Prevent Systems (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 16/2022

Date of Judgement/Order : 17/05/2022

Applicant is providing training to the trainees on fire prevention, the same is covered under SAC 999293 and is liable to GST at 18% as per Serial No.30 of the Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017

10. **AAR rejects advance ruling application as applicant was not a supplier**

Case Name : In re Auriga Research Private Limited (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 15/2022

Date of Judgement/Order : 17/05/2022

Section 95 (c) of the CGST Act 2017 defines 'Applicant' as any person registered or desirous of obtaining registration under the said Act. It could be easily inferred from above that any person registered or desirous of obtaining registration under CGST Act 2017 can seek advance ruling only in relation to the supply of goods or services or both being undertaken or proposed to be undertaken.

In the instant case, we observe that Auriga Research Private Limited, who have filed the application, is not a supplier. Thus the instant application is not admissible and liable for rejection in terms of Section 98(2) of the CGST Act 2017.

#### **11. GST payable on Sale of second hand or used Paintings**

Case Name : In re Saffron Art Private Limited (GST AAR Maharashtra)  
Appeal Number : No. GST-ARA-51/2020-21/B-62  
Date of Judgement/Order : 20/05/2022

In re Saffron Art Private Limited (GST AAR Maharashtra)

#### **Question 1:- Classification of second hand or used 'Paintings' [Section 97(2) (a)]**

Answer: – The 'Paintings are classifiable under Heading 9701 of the GST Tariff.

#### **Question 2:- Whether for determination of the liability to pay tax on the sale of second hand or used 'Paintings', the applicant can apply Rule 32(5) of CGST & MGST Rules, 2017 ?**

Answer: – Answered in the affirmative. The provisions of Rule 32(5) of CGST Rules will be applicable to applicant in respect of second hand i.e. used paintings which are purchased by them and then sold.

#### **12. Nashik Cambridge Pre-school entitled for Nil rate of GST**

Case Name : In re Rahul Ramchandran (Inspire Academy) (GST AAR Maharashtra)  
Appeal Number : No. GST-ARA-43/2020-21/B-64  
Date of Judgement/Order : 23/05/2022

In re Rahul Ramchandran (Inspire Academy) (GST AAR Maharashtra)

**Question 1: – Whether ‘Nashik Cambridge Pre-School’ is covered under Notification No. 12/2017-CT, dated 28th June, 2017 SI No. 66, under the Heading 9992 under GST Act**

Answer:- Answered in the affirmative.

**Question 2:- Whether Nashik Cambridge Pre-school is entitled for Nil rate of tax as per Serial No. 66 of the Notification no. 12/2017-CT (Rate) dated 28/06/2017, on the supply of Pre-school education service to its students against fee?**

Answer:- Answered in the affirmative.

**Question 3:- Whether “Nashik Cambridge Pre-school” is entitled for Nil rate of tax is per Serial No. 66 of the Notification no. 12/2017-CT (Rate) dated 28/06/2017, on the supply of some goods to its Pre-school students, without any consideration?**

Answer:- Answered in the affirmative.

**Question 4:- Whether “Nashik Cambridge Pre-school” is entitled for Nil rate of tax is per Serial No. 66 of the Notification no. 12/2017-CT (Rate) dated 28/06/2017, on the supply of some goods to its Pre-School students for some consideration?**

Answer:- Answered in the negative.

**Question 5:- Whether “Nashik Cambridge Pre-school” is entitled for Nil rate of tax is per Serial No. 66 of the Notification no. 12/2017-CT (Rate) dated 28/06/2017,, on the supply of transportation service to its Pre-school students without any consideration?**

Answer:- Answered in the affirmative.

**Question 6:- Whether “Nashik Cambridge Pre-school” is entitled for Nil rate of tax is per Serial No. 66 of the Notification no. 12/2017-CT (Rate) dated 28/06/2017, on the supply of transportation service to its Pre-school students for some consideration?**

Answer:- Answered in the affirmative.

**Question 7:- Whether “Nashik Cambridge Pre-school” is entitled for Nil**

rate of tax is per Serial No. 66 of the Notification no. 12/2017-CT (Rate) dated 28/06/2017, on the supply of transportation service to its faculty and staff for some consideration?

Answer:- Answered in the affirmative.

**13. State Examination Board eligible to claim GST exemption Notification benefit**

Case Name : In re State Examination Board (GST AAAR Gujarat)

Appeal Number : Advance Ruling (Appeal) No. GUJ/ GAAAR /APPEAL/ 2022/08

Date of Judgement/Order : 12/05/2022

In re Gujarat Industrial Development Corporation (GST AAAR Gujarat) AAAR held that Gujarat Industrial Development Corporation does not fall under the category of 'State Government' but is covered under the category 'Government Entity', Read AAR :- No GST exemption to GIDC on establishment, organisation & development of industries

**14. Gujarat Industrial Development Corporation is a Government Entity: AAAR**

Case Name : In re Gujarat Industrial Development Corporation (GST AAAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAAR/APPEAL/2022/07

Date of Judgement/Order : 09/05/2022

In re Gujarat Industrial Development Corporation (GST AAAR Gujarat) AAAR held that Gujarat Industrial Development Corporation does not fall under the category of 'State Government' but is covered under the category 'Government Entity',

**15. ITC not eligible on capital goods procured for building LNG Jetties**

Case Name : In re Swan LNG Pvt. Ltd (GST AAAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAAR/APPEAL/2022/06

Date of Judgement/Order : 09/05/2022

**(1) Whether in terms of Section 17 of the CGST Act, 2017 read with GGST Act, 2017, the LNG jetties proposed to be built by the applicant can be said to be covered within expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it?**

LNG Jetties being built by the appellant are not covered within the expression 'plant and machinery' as foundation to equipment, apparatus, machinery to be installed on it in terms of Section 17 of the CGST Act, 2017

**(2) Whether as per Section 16 read with Section 17 of the said Acts, the applicant can accordingly avail 'input tax credit' of GST paid on inputs, input services as well as capital goods procured for the purpose of building the LNG jetties?**

Appellant cannot avail input tax credit of GST paid on inputs, input services and capital goods procured for the purpose of building the LNG Jetties in terms of Section 16 of the CGST Act, 2017.

**16. 18% GST on Fans used in Poultry House for Air circulation**

Case Name : In re Naimunnisha Nadeali Saiyed (Star Enterprise) (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/32

Date of Judgement/Order : 13/05/2022

**In re Naimunnisha Nadeali Saiyed (Star Enterprise) (GST AAR Gujarat) Which Tax rate shall be applicable on Fans (HSN-84145930) used in Poultry House for the purpose of Air circulation ?**

We find from the submitted brochure that the applicant supplies Industrial grade fans. From the specifications submitted before us, We note that the electric motor of these fans have an output exceeding 125 W. We find these fans are Industrial fans, attracting HSN 84145930. We find that with effect from 15-11-17, these industrial fans are liable to CGST at 9% vide Sr no. 317B to Schedule III of Notification 1/2017-CT(R) dated 28-6-17. GST rate of said Industrial fans is 18%. (CGST9% & SGST9%).

**17. Recipient of Supply cannot file Advance Ruling application under GST**

Case Name : In re Gujarat Rural Industries Marketing Corporation Ltd. (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/31

Date of Judgement/Order : 11/05/2022



In re Gujarat Rural Industries Marketing Corporation Ltd. (GST AAR Gujarat)  
We refer to Section 103(1) CGST Act, which stipulates that Advance Ruling shall be binding only on the applicant who had sought it and on the concerned officer/ jurisdictional officer in respect of the applicant. Section 95(a) CGST Act defines advance ruling as a decision provided in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. GRIMCO has not substantiated its locus standi to file said application as per section 95(a) CGST Act. We hold that GRIMCO's supplier is not bound by our Ruling as per section 103(1) CGST Act.

**18. No GST on Services by Security Manager located outside India for Subscription to Secured Notes placed in USA**

Case Name : In re Adani Green Energy Ltd (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/30

Date of Judgement/Order : 11/05/2022

M/s. Adani Green Energy Ltd. ('AGEL') submitted that it requires substantial working capital to undertake its supplies and for this purpose it has raised USD 750 million by issuing Senior Secured Notes (Notes) carrying interest coupon of 4.375% due for redemption in 2024 in terms of Subscription Agreement dated 1st September 2021 entered into with Axis Bank Limited, Singapore and others for acting as Managers. All the Managers do not have any establishment in India and have been incorporated outside India and undertake business from their establishment outside India. A copy of the Subscription Agreement was submitted.

**Issue: Whether the Applicant is liable to discharge GST under the reverse charge mechanism in respect of the services of arranging for subscription supplied to the Applicant, by the Managers located in the non-taxable territory ?**

Held: We find that AGEL issues Notes which are subscribed by Investors. We find that the Senior Secondary Notes issued by AGEL are in the nature of securities. The main supply of Notes is between AGEL and investors both acting as Principals and the Manager is supplying ancillary supply of arranging the main supply between the Principals. We note that an intermediary includes a person who arranges/ facilitates supply of securities between two or more persons. We find that Manager has the characteristics of an agent and a broker, performing subsidiary role in arranging the said main supply. We note that Manager's role is supportive in main supply. We

find the Manager satisfying the definition of Intermediary as per IGST Act. We agree with AGEL that place of supply in present case is determined as per Section 13(8)(b) IGST Act which is the location of Manager. Both the Manager and Place of Supply both being in non-taxable territory, subject transaction is not an import of service as place of supply is outside India.

**19. Fire safety product trolley classifiable under HSN 84131990**

Case Name : In re Swadeshi Empresa Pvt. Ltd (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/29

Date of Judgement/Order : 11/05/2022

In re Swadeshi Empresa Pvt. Ltd (GST AAR Gujarat) HSN Tariff of fire safety product assembled on trolley, consisting of engine operated pump, water tank, hose reel, pipe and gun, operated through electric panel on trolley.

We refer to the description of the Goods which is a water mist firefighting trolley. It is an assembly of Pump driven through engine, water tank, hose reel, pipe and gun and these assembled parts are kept on trolley. This firefighting goods sprays water in such a way that a small quantity of water is sprayed at high velocity to make very fine disjointed droplets of water covering an exponentially larger area.

The high pressure hose reel is fitted with high pressure fog/ jet gun. The gun has a pistol grip nozzle having discharge of atleast 12-30 lpm at 100 bar (pressure). Thereby subject goods are called water mist firefighting goods. We find that the description of the goods may be categorized as Firefighting pump with internal reservoir and thereby, as per HSN Explanatory Notes does not merit classification at Tariff 84241000. Further the subject product is not a Fire fighting vehicle as described at Tariff 8705.

The subject goods have ultrahigh pressure pump driven through the engine to discharge water at a specified LPM at specified pressure (bar) and thereby the goods need to be fitted or designed to be fitted with pressure measuring device. Further, we note that the said goods have nozzle attached to the water pipe permitting the control of the water mist discharged. We find this Tariff item 84131990 satisfying the product description. The HSN explanatory notes to 8424 has excluded such fire extinguishing goods and categorized them under 8413.

In conspectus of aforementioned Discussion and Findings, in pursuance to

HSN Explanatory Notes to Chapter heading 8424 [ page number: XVI-8424-1] and to HSN Explanatory Notes to Subheading 841311 and 841319 [ page number: XVI-8413-5 ],

We classify the said Fire safety product trolley at HSN 84131990.

## 20. **GST on conference and exhibition conducted by ISCCM**

Case Name : In re Indian Society of Critical Care Medicine (GST AAR Gujrat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/28

Date of Judgement/Order : 11/05/2022

Q1. What shall be the nature of service and classification in accordance with Notification No. 11/2017- CT R, dated 28.06.17 read with annexure attached to it in relation the following services: a. Service provided by ISCCM to the delegates; b. Service provided by ISCCM to the exhibitors.

A1(a). ISCCM supplies Composite Supply to its delegates, the principal supply being Professional Service supply. SAC is 998399.

A1(b). ISCCM supplies 'Exhibition, Trade show organization and assistance services' to the exhibitors. SAC is 9985 96.

Q2. In relation to the brand promotion packages offered by ISCCM in the course of the event.

a. What shall be the nature of service and classification in accordance with Notification No. 11/2017- CT R, dated 28.06.17 read with annexure attached to it?

b. Whether ISCCM is liable to pay tax on services provided to the brand promoters or the liability to pay tax on such services falls on recipient under reverse charge according to Notification No. 13/2017 Central Tax Rate ?

A2(a). ISCCM supplies Sponsorship Services to its sponsors. SAC is 9983 97.

A2(b). GST liability on sponsorship service is on the service recipient (if the recipient is a body corporate or partnership firm) if the recipient is in taxable territory. If the service recipient is not a body corporate/ firm, then GST is liable to be paid by ISCCM on forward charge.

Q3. Whether Input Tax Credit is admissible for ISCCM in respect of tax paid on the following a. Services provided by the hotel including accommodation, food & beverages b. Supply of food and beverages by outside caterers c. Services provided by event manager like pickup & drop exhibition stall set up, tenting, etc A3. ITC, as per Question 3 of the Application, is admissible to ISCCM.

21. **TASL Gujarat cannot file advance ruling for project to be executed by TASL Bengaluru** .

Case Name : In re Tata Advanced Systems Limited (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/27

Date of Judgement/Order : 11/05/2022

- i. The Applicant has no locus standi to file said Advance Ruling Application, as per clause 2.2.1 of the said Contract 29-10-21, wherein the project execution unit is TASL Bengaluru GSTIN is 29AACCT5245K1ZZ.
- ii. The Application by the applicant is premature and without locus standi, as no Intimation for change in place of project execution as per clause 2.2.1 has been made in the name of TASL Ahmedabad GSTIN 24AACCT5245K1Z9.
- iii. In the eyes of GST scheme of law, GSTIN 24AACCT5245K1Z9 (TASL Ahmedabad), GSTIN 29AACCT5245K1ZZ (TASL Bengaluru) and GST registered Unit of TASL Hyderabad are distinct persons for the purposes of CGST Act, as per the provisions of Section 25(5) CGST Act, which reads as follows: ‘

Section 25(5):

*“Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.”*

The Application is rejected as non- maintainable under Section 95(a) CGST Act.

## **22. **SUG is indispensable part of taxable value for Re-gasification service****

Case Name : In Re Shell Energy India Pvt. Ltd. (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/26

Date of Judgement/Order : 11/05/2022

**Issue: Whether value attributable to SUG stipulated in the Agreement between the Applicant and Customers is subject to the levy of GST and therefore, liable to be included in the consideration for re-gasification services determined as per Section 15 of the CGST Act ?**

### **Held by AAR Gujarat**

1. The scope of Re-gasification Services covers not only the services related to regasification of LNG into RLNG on behalf of M/s Shells customers but includes allied, incidental and ancillary services such as receipt of LNG Carriers at the Port, unloading of LNG from LNG carriers and its receipt at Terminal receipt point, temporary storage of LNG in storage tanks and delivery of RLNG to the customers, as detailed at para2
2. Thus this SUG [(a) gas used as fuel by Shell in GTG/ SCV; (b) gas used by M/s Shell for safety procedures by flaring/ venting out, even in cases of shutdown/ breakdown/ power failure when gas is vented out for safety reasons in the process of draining, purging and cooling down; (c) gas used by M/s Shell in maintenance of re-gasification equipment; (d) gas vented out by M/s Shell for cooling of BOG compressor; (e) gas flared out by M/s Shell to maintain tank pressure; (f) gas used by M/s Shell on account of unloading arms purging and warming, so gas is vent out into the atmosphere without flare] is a cost for Supplier of Service M/s Shell and thereby to be allocated into cost of provision of Regasification Service Supply. Vide this business contract, M/s Shell translates the cost of SUG required into SUG value by raising GST Tax invoices to its customers under item description- value of SUG.
3. Further, in cases where measurement uncertainties are in negative as discussed at para 93 (C), in such cases, this translates that System use gas provided by its customers, as per contract is retained by M/s Shell, as negative measurement means excess of Gas and not shortage of gas.
3. Thus value of SUG is an indispensable part of taxable value, for Re-gasification service supply by M/s Shell and liable to GST.

### **23. AAAR Maharashtra directs AAR to pass ruling on Merits**

Case Name : In re Royal Carbon Black Private Limited (GST AAAR Maharashtra)

Appeal Number : Order No. MAH/AAAR/AM-RM/06/2022-23

Date of Judgement/Order : 02/05/2022

In re Royal Carbon Black Private Limited (GST AAAR Maharashtra)

AAAR have also examined the impugned Advance Ruling passed by the MAAR, wherein the MAAR has refrained from passing the advance ruling in the matter citing the reason that the Appellant has not provided the details regarding the chemical composition of the impugned product, i.e., Tyre Pyrolysis Oil.

However, the Appellant, in their grounds, have contended that they have submitted the Test Reports consisting the chemical composition of the impugned Product during the course of the proceedings before the MAAR along with the details of the manufacturing processes carried out to obtain the impugned product. In such circumstances wherein the Appellant and the MAAR are contradicting each other factually and considering the plea of the Appellant that they may be permitted to present the Test Reports of the impugned product along with other required documents afresh before the Advance Ruling Authority to get the required Advance Ruling,

it is opined that issue under question may be heard by the Advance Ruling Authority on merit after calling for all the required documents as it may deem fit to pronounce its ruling in the matter.

In view of the above AAAR hereby, set aside the Advance Ruling passed by the MAAR vide Order No. GST-ARA-50/2019-20/B-60 dated 15.12.2020, and hold that the case may be decided on merit after calling for all the required documents from the Appellant. Accordingly, the case is remanded back to the Maharashtra AAR for passing the advance ruling in respect of the questions asked by the Appellant. Thus, the subject Appeal stands disposed of in the above terms.

## **24. GST on Composite Supply of hospital construction works for Govt Entity**

Case Name : In re KPC Projects Ltd. (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA-65/2021-22/B-57

Date of Judgement/Order : 04/05/2022

From the submissions made by the applicant, we find that in the instant case there is Composite supply of works contract provided to UPRNN, a Government Entity by way of construction of a clinical establishment i.e. a hospital. However we also find that, the above mentioned Rate Notification No 11/2017 has been further amended by Notification No. 15/2021 – CTR dated 18.11.2021 (with effect from 01.01.2022) and in Sr. No 3, in column (3), in the heading “Description of Services”, in item (vi), for the words “Union territory, a local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” have been substituted and that means the words “or a Governmental authority or a Government Entity” are omitted.

Therefore, with effect from 01.01.2022, the impugned services supplied by the applicant will not be covered under Sr. No. 3 (vi) of Notification No. 11/2021 – CTR dated 28.06.2017 as amended from time to time. During the course of the final hearing, the Authorised representative of the applicant informed this Authority that the impugned services are not being rendered at present and they will begin the construction as per the Work Order only in the future as a proposed activity.

Thus we find that the Sr. No. 3 (vi) mentioned above will not be applicable to the activity to be undertaken by the applicant at a future date. The Authorised representative of the applicant also agreed that the provisions of Sr. No. 3 (vi) will not be applicable to applicant’s activities in view of the amendment brought about in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 vide Notification No. 15/2021 – CTR dated 18.11.2021 (with effect from 01.01.2022).

However, this authority has been asked by the applicant to answer all its questions. In view of the above discussion made in para nos 5.3.1 to 5.3.4, we hold that the applicant is not eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 for the impugned construction services provided by them to UPRNN.

The second question raised by the applicant is if the impugned service is not covered under Sr. No. 3(vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, then what is the appropriate classification and rate of GST to be charged by the applicant.

Since the impugned service is expected to commence only at a future date, in view of the amended Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned activity is not covered under Sr. No. 3 (vi) mentioned above and therefore the said activity will be covered under the residuary clause (xii) of Sr. No. 3 of Notification No. 11/2017- mentioned above and the rate of GST to be paid by the applicant will be 18% of the taxable value.

**25. GST on Royalty, MMDR, DMF Fund & Reserve Price paid directly to Government**

Case Name : In re Baranj Coal Mines Private Limited (GST AAR Maharashtra)

Appeal Number : Advance Ruling No. GST-ARA-57/2021-22/B-59

Date of Judgement/Order : 04/05/2022

In the subject case, we find that the applicant (supplier of service) and KPCL (recipient of service) are not related persons and price is the sole consideration for the supply. Further, from Article 6.1.3 and Article 29.1.2 of the Mining Agreement it is clear that the amounts towards Royalty, MMDR, DMF Fund and Reserve Price are payable by KPCL directly to Government of Maharashtra and which is being paid accordingly by KPCL.

Therefore, the said amounts are not payable by KPCL to the applicant. From the submissions we also find that the said amounts are not paid by KPCL to the applicant.

Thus the amounts towards Royalty, MMDR, DMF Fund and Reserve Price are neither payable nor paid to the applicant by KPCL. Hence the provisions of Section 15 (1) are not satisfied in the subject case. From the submissions we also find that there is no amount that the supplier i.e the applicant, is liable to pay in relation to the impugned supply which has been incurred by the recipient i.e. KPCL of the supply and not included in the price actually paid or payable for the services.

We therefore find that, none of the provisions of Section 15 are attracted in the subject case with respect to amounts towards Royalty, MMDR, DMF Fund and Reserve Price, payable and paid by KPCL directly to the concerned Governmental Authority of Maharashtra and therefore the said amounts are not includible in the value of supply for the purpose of levy of GST.

The jurisdictional officer has submitted that Clause (b) of subsection (2) of Section 15 provides that any amount that the supplier is liable to pay in



relation to such supply but which has been incurred by the recipient of the supply whether or not included in the price shall be the part of Value of Supply.

Therefore, components like Royalty, MMDR, DMF fund Cess, Stowing Excise duty, Reserve Price, etc. are required to be considered for determining the transaction price. We do not agree with the jurisdictional officer on this count. A perusal of the impugned agreement (relevant Articles discussed above), reveals that the components like Royalty, MMDR, DMF fund Cess, Reserve Price are not at all liable to be paid by the supplier of service, in this case, the applicant and further, the said components are liable to be paid exclusively by KPCL who is the recipient of the impugned supply.

Thus KPCL is incurring the expenses towards the said components on its own behalf and not on behalf of the applicant as is seen from the relevant clauses of the impugned agreement. In view of the above we hold that the amounts towards Royalty, MMDR, DMF Fund and Reserve Price, payable and paid by KPCL directly to the concerned Governmental Authority of Maharashtra are not includible in the Value of Supply for the purpose of levy of GST.

However, in future if it is agreed between the applicant and KPCL to make payable and pay, the amounts towards Royalty, MMDR, DMF Fund and Reserve Price by KPCL to the applicant, in such a case, the amounts will be included in the Value of Supply of the impugned services and will be taxed at 18% GST.

## V COURT ORDERS/ JUDGEMENTS

### **1. Constitutional validity of GST levy on Lease/Rental payments under scrutiny of Punjab & Haryana High Court**

Case Name : Durga Dass Foundation Vs Estate Officer (Punjab & Haryana High Court)

Appeal Number : CWP-11577-2022 (O&M)

Date of Judgement/Order : 26/05/2022

Punjab & Haryana HC has considered the constitutional validity of GST levy on ground rent/rental/Lease payments based on the following two substantial questions:

- (i) Whether the tax on lease of land would be covered by Entry 49 of List II of the Constitution of India ?
- (ii) (ii) Whether a lease of land is a “Service” as contemplated by Article 246-A read with Article 366 (12A) and 26A of the Constitution of India ?

#### **Brief Facts:**

In the present case, petitioner being a Public Charitable Trust is running a school in the name of ‘Strawberry Fields High School’. Petitioner was allotted a land on leasehold basis in the year 2003 under “The Allotment of Land to Educational Institutions (Schools) etc. on leasehold basis in Chandigarh Scheme, 1996” for the construction of a school. Accordingly, petitioner was paying ground rent on the said allotted land and paid all the instalments timely. In the year 2021, the Estate Officer created a demand of Service Tax and GST on the said ground rent for the number of years. Feeling aggrieved by the action of the respondents recovering the amount of Service Tax/GST on ground rent, petitioner has challenged the vires of Para 2 of the Schedule II to the CGST Act, 2017 r.w.s 21 of the UTGST Act, 2017 being not in consonance with the Constitution of India .

#### **Order:**

A Bench headed by Hon’ble Justice Tejinder Singh Dhindsa heard the submissions of Advocate Sandeep Goyal, appearing on behalf of Petitioner who contended that the Article 246A of the Constitution of India allows GST to be levied on “services” and the definition of “service” in Article 366(26A) to mean “anything other than goods” is so vague. Therefore, the ordinary meaning of the word “service” does not include mere lease of land. Moreover, only the State Legislatures have the power to tax transactions relating to immovable property under Entry 49 List II Seventh Schedule and by deeming a lease of land to be a “supply of service” impose a tax on land itself. The Hon’ble Division Bench on hearing the contentions of the petitioner

issued Notice of Motion to the Respondents (Revenue Authorities) with respect to the relief as prayed for .

The next date of hearing is 02.11.2022 .

## **2. HC stays GST Registration cancellation order for continuing trading activities of Assessee**

Case Name : APCO Automobiles Private Limited Vs Superintendent of Central Tax and Central Excise and Ors. (Kerala High Court)

Appeal Number : WP(C) No. 11808 of 2022 (A)

Date of Judgement/Order : 10/05/2022

The Hon'ble Kerala High Court in APCO Automobiles Private Limited v. Superintendent of Central Tax and Central Excise and Ors. [WP(C) No. 11808 of 2022 (A) dated May 10, 2022] stayed the order of cancellation of GST Registration and directed the Revenue Department to open the GST site so as to enable the assessee to continue their trading activities in relation to the stocks held by them at the time of passing of order for cancellation of GST Registration, for a period of two weeks.

### **Facts:**

APCO Automobiles Pvt. Ltd. ("the Petitioner") is Authorised Dealers for TATA Automobiles and spare parts. The Petitioner has challenged the order of cancellation of its GST Registration ("the Impugned Order") by the Revenue Department ("the Respondent") on the grounds of non-filing of return in GSTR-3B.

The Petitioner has contended that due to inordinate delay in collection of sale proceeds and COVID, attendant circumstances and losses, the Petitioner was unable to raise funds to fully discharge the output tax liabilities from April 2020 onwards and consequently, the Petitioner was unable to file Returns in GSTR-3B since the system did not accept returns without entire payment of tax.

Further the Petitioner on issuance of the Show Cause Notice ("SCN"), sought time and requested that the matter may be kept in abeyance. Furthermore, though the CGST Act provides for levy of late fee, in case of delayed returns and also provide for levy of interest for delayed payment of tax due on the value of output supplies made, GST site would not accept returns, unless tax due as per return is paid and particulars incorporated. This unauthorized stipulation in the GST Site has resulted in Petitioner's inability to file Returns for which their Registration has been cancelled, which is a serious flaw in the GST site.

However, the Petitioner raised sufficient finances to meet the tax liability for the months of April 2020 to December 2020 as well as January 2021 to March 2021 and immediately thereafter, uploaded the Returns, but the Petitioner was not able to file application for revocation of cancellation of registration, within the time stipulated under Section 30 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”).

Subsequently an appeal was filed before the Appellate Authority, wherein it was notified that the Petitioner would not be able to issue invoices for the sales made to those from whom advances had been taken and also to sell the “stock-in-hand” supported by invoices, in the absence of which such dealers will not be able to seek input tax credit (“ITC”), unless such cancellation is revoked. However, such appeal was rejected on the grounds of non-filing of revocation application within the extended period and there is no provision under the CGST Act to extend the time limit for filing the revocation application. Hence, this petition has been filed.

**Issue:**

***Whether cancellation of GST Registration due to non-filing of GST Return can be condoned?***

Held:

The Hon'ble Kerala High Court in WP(C) No. 11808 of 2022 (A) dated May 10, 2022 held as under: Stayed the Impugned Order and directed the Respondent to open the GST site for the Petitioner to continue with the trading activities in relation to the stocks held by them during passing of the Impugned Order, for a period of two weeks.

**3. SC deprecates practice of Insurance Companies to deny genuine & lawful claims of Insured on technical & flimsy grounds** .

Case Name : Gurmel Singh Vs Branch Manager National Insurance Co. Ltd.  
(Supreme Court of India)

Appeal Number : Civil Appeal No. 4071 of 2022

Date of Judgement/Order : 20/05/2022

It is common knowledge that the Insurance Companies deny the genuine & lawful claims of the Insured on technical & flimsy grounds. Be it vehicle loss/accidental claims or health insurance claims or theft/fire claims, the insurance companies design ways/devices/ruse to fizzle out from their liabilities for payment of claims. The Consumer Disputes Redressal forums also take a technical view and most of the

claims are negated on flimsy grounds .

Recently, the Apex Court in the case of Gurmel Singh vs. Branch Manager, National Insurance Co. Ltd. in civil appeal no. 4071 of 2022 decided on May 20, 2022 deprecated this practice & awarded full claim with interest & costs.

The brief facts of the case are that the appellant was the registered owner of Truck No. CG04JC4984. The said vehicle was duly insured with National Insurance Co. Ltd. and premium of Rs. 28,880/ was duly paid. The said vehicle was stolen and FIR was duly lodged/registered in the Police Station on the same day. The insurance company as well as the Regional Transport Office (RTO) were duly intimated regarding the theft of the Truck.

The appellant also submitted his claim and relevant documents but the insurance company failed to settle the claim. The appellant thereafter moved to the District Consumer Forum which required the appellant to file duplicate certified copy of the certificate of registration and also directed the RTO to furnish the same to the appellant.

However, RTO denied to issue duplicate certified copy of the certificate of registration on technical grounds. The appellant again filed a fresh complaint to the District Consumer Forum but the forum negated the claim without submission of duplicate certified copy of the certificate of registration. The State & National Consumer Disputes Redressal Commission also did not give relief to the appellant due to non submission of duplicate certified copy of the certificate of registration.

The Apex Court expressed shock & displeasure at the apathy shown by the hierarchy of the Consumer Forum & observed thus:

" 4. It is not in dispute that the vehicle belonging to the appellant was insured with the respondent – insurance company. It is also not in dispute that the same was valid for the period between 22.08.2012 to 21.08.2013. It is also not in dispute that the appellant herein paid a sum of Rs. 28,880/ to the respondent towards premium. It is also not in dispute that the insured vehicle was stolen for which a FIR has been registered in the Police Station Kumhari on the very day on which the vehicle was stolen. Immediately on the very same day, the appellant informed the insurance company as well as RTO regarding the theft of the Truck. The appellant also produced the photocopy of the certificate of registration and the registration particulars as provided by the RTO. However, the appellant could not produce either the original certificate of registration or the duplicate certified copy of certificate of registration of the Truck. When the appellant applied for the duplicate certified copy of the certificate of

registration, the RTO denied to issue the duplicate certified copy on the ground that in view of information/report regarding theft of the vehicle, which has been registered with the RTO, the details regarding registration certificate on the computer has been locked. The insurance claim has not been settled mainly on the ground that the appellant has not produced either the original certificate of registration or even the duplicate certified copy of certificate of registration issued by the RTO.

However, the appellant did produce photocopy of certificate of registration and other registration particulars as provided by the RTO. Even, at the time of taking the insurance policy and getting the insurance, the insurance company must have received the copy of the certificate of registration. Therefore, the appellant had tried his best to get the duplicate certified copy of certificate of registration of the Truck. However, because of the report of theft of the Truck, the details of registration on the computer have been locked and the RTO has refused to issue the duplicate certified copy of registration.

Therefore, in the facts and circumstance of the case, when the appellant had produced the photocopy of certificate of registration and the registration particulars as provided by the RTO, solely on the ground that the original certificate of registration (which has been stolen) is not produced, non-settlement of claim can be said to be deficiency in service .

Therefore, the appellant has been wrongly denied the insurance claim.” While upholding the claim of the appellant/Insured the Court held thus :

” In the present case, the insurance company has become too technical while settling the claim and has acted arbitrarily. The appellant has been asked to furnish the documents which were beyond the control of the appellant to procure and furnish. Once, there was a valid insurance on payment of huge sum by way of premium and the Truck was stolen, the insurance company ought not to have become too technical and ought not to have refused to settle the claim on non-submission of the duplicate certified copy of certificate of registration, which the appellant could not produce due to the circumstances beyond his control.

In many cases, it is found that the insurance companies are refusing the claim on flimsy grounds and/or technical grounds. While settling the claims, the insurance company should not be too technical and ask for the documents, which the insured is not in a position to produce due to circumstances beyond his control.

In view of the above and for the reasons stated above, the order passed by the District Consumer Disputes Redressal Commission, Durg, Chhattisgarh, dismissing

the complaint filed by the appellant and the orders passed by the State Commission and National Consumer Disputes Redressal Commission, confirming the same deserve to be set aside and are hereby set aside.

The original complaint being Consumer Complaint No. 179/2014 filed before the District Consumer Disputes Redressal Commission, Durg, Chhattisgarh, is hereby allowed. The appellant is entitled to the insurance amount of Rs. 12 lakhs along with interest @ 7 per cent from the date of submitting the claim .

The respondent – insurance company is also saddled with the liability to pay the litigation cost, which is quantified at Rs. 25,000/ to be paid to the appellant herein. The aforesaid amount is to be paid by the insurance company to the appellant within a period of four weeks from today.

The present appeal is accordingly allowed.”

This judgment should be an eye opener for the Insurance Companies to settle the claims logically and should not fizzle out from their legal liabilities on technical & flimsy grounds.

#### **4. Recommendations of GST Council not binding on Union & States: SC**

Case Name : Union of India Vs Mohit Minerals Pvt. Ltd. (Supreme Court of India)

Appeal Number : Civil Appeal No. 1390 of 2022

Date of Judgement/Order : 19/05/2022

Union of India Vs Mohit Minerals Pvt. Ltd. (Supreme Court of India) Supreme Court  
Held as follows:-

- (i) The recommendations of the GST Council are not binding on the Union and States for the following reasons:
  - (a) The deletion of Article 279B and the inclusion of Article 279(1) by the Constitution Amendment Act 2016 indicates that the Parliament intended for the recommendations of the GST Council to only have a persuasive value, particularly when interpreted along with the objective of the GST regime to foster cooperative federalism and harmony between the constituent units;
  - (b) Neither does Article 279A begin with a non-obstante clause nor does Article 246A state that it is subject to the provisions of Article 279A. The Parliament and the State legislatures possess simultaneous power to legislate on GST. Article 246A does not envisage a repugnancy provision to resolve the inconsistencies between the Central and the State laws on GST. The

'recommendations' of the GST Council are the product of a collaborative dialogue involving the Union and States. They are recommendatory in nature. To regard them as binding edicts would disrupt fiscal federalism, where both the Union and the States are conferred equal power to legislate on GST. It is not imperative that one of the federal units must always possess a higher share in the power for the federal units to make decisions. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation; and

(c) The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279A (4) are binding on the legislature's power to enact primary legislations;

(ii) On a conjoint reading of Sections 2(11) and 13(9) of the IGST Act, read with Section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service;

(iii) The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient – in this case the importer – by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;

(iv) Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation;

(v) The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.



## **5. HC Directs Dept to consider GST refund application on merits**

Case Name : Heatworks Private Limited Vs ACIT (Calcutta High Court)

Appeal Number : WPA 8107 of 2022

Date of Judgement/Order : 11/05/2022

### **Heatworks Private Limited Vs Assistant Commissioner, State Tax (Calcutta High Court)**

In this writ petition, petitioner has challenged the impugned order dated January 18, 2022 passed by the respondent-GST authority rejecting the claim for refund to the petitioner on the ground of limitation.

Learned advocate for the petitioner submits that the impugned order of rejection is bad in law. In support of his contention, he has relied upon an unreported decision of the Bombay High Court dated January 10, 2022 passed in Writ Petition (L) No.1275 of 2021 (Saiher Supply Chain Consulting Pvt. Ltd.-vs-The Union of India & Anr.) and also an unreported decision of the Madras High Court dated September 28, 2021 passed in WP No.18165 of 2021 & WMP Nos. 19386 & 19389 of 2021 (M/s. GNC Infra LLP-vs-Assistant Commissioner (Circle) Ekkatuthangal, Commercial Tax Department) and also my order dated February 2, 2022 passed in WPA No.950 of 2022 (Imran Javed v. Assistant Commissioner, State Tax, Ballygunge Charge & Ors. Considering the submission of the parties, this writ petition being WPA 8107 of 2022 is disposed of by setting aside the impugned order dated January 18, 2022 with a direction upon the first respondent concerned to consider the petitioner's application in question afresh on merits, and not on the point of limitation, and in accordance with law considering the referred judgments, by passing a reasoned and speaking order, within eight weeks from the date of communication of this order.

## **6. Delhi HC directs VAT Dept to Switch to Online Mechanism for Speedy Adjudication**

Case Name : Sanjay Enterprises Through Sanjay Bansal (Proprietor) Vs The Commissioner of Trade And Taxes And Anr. (Delhi High Court)

Appeal Number : W.P.(C) 7159/2022

Date of Judgement/Order : 09/05/2022

### **Sanjay Enterprises Through Sanjay Bansal (Proprietor) Vs Commissioner of Trade And Taxes And Anr. (Delhi High Court)**

The principal grievance of the petitioner is that the objections filed in the matter to the notice of default assessment of tax, interest and penalty issued under Section 32

of the Delhi Value Added Tax Act, 2004 , have not been adjudicated upon, up until now.

HC held that Given the fact that the physical interaction often, for various reasons, is not possible with the Commissioner, the respondents / revenue are directed to create a portal/online mechanism for intimation of notices issued under sub-section (8) of Section 74 of the Delhi Value Added Tax Act, 2004, read with Rule 56 of Delhi Value Added Tax Rules, 2005.

### **7. ENA & Malt Spirit in original form not to get 'C' Form**

Case Name : Legend Distilleries Pvt. Ltd. Vs State Of Chhattisgarh Through Secretary (Chhattisgarh High Court)

Appeal Number : WPT No. 39 of 2021

Date of Judgement/Order : 11/05/2022

### **Legend Distilleries Pvt. Ltd. Vs State Of Chhattisgarh Through Secretary (Chhattisgarh High Court)**

ENA and the Malt Spirit in its original form are not the alcoholic liquor fit for human consumption and would therefore, not come within the amended definition of clause(d) of Section 2 of the CST Act and in view thereof, the petitioner would not be entitled to get the 'C' Form, as claimed by the petitioner herein.

### **8. Meghalaya HC stays recovery of GST on royalty paid for mining rights to State**

Case Name : Hills Cement Company Limited Vs Union of India (Meghalaya High Court)

Appeal Number : WP(C) No. 177 of 2022

Date of Judgement/Order : 13/05/2022

### **Hills Cement Company Limited Vs Union of India (Meghalaya High Court)**

The issue here pertains to the applicability of goods and services tax on royalty paid for mining limestone in the State. The parties agree that the larger issue as to whether tax has to be paid on mining royalty is pending before the Supreme Court.

The petitioner has relied on an order dated October 4, 2021 where the special leave petition involving a similar question was directed by the Supreme Court to be tagged

with the matter wherein the issue is as to whether any GST is payable on royalty. The interim relief granted by the Supreme Court in such case, WP (Civil) No. 1076/2021, was unconditional as the demand for GST for grant of mining lease/royalty was directed to remain stayed.

Accordingly, the demand in the present case as contained in the impugned notice dated February 7, 2022 will remain stayed, pending disposal of this petition. Affidavit-in-opposition be filed within six weeks; reply thereto, if any may be filed within a fortnight thereafter. Let the matter appear eight weeks hence.

Since the issue as to whether GST would be applicable on royalty is pending before a Constitution Bench, this matter may have to await the outcome of the case before the Supreme Court.

**9. Allahabad HC stays GST demand on payment of royalty to conduct mining activity** :

Case Name : Jitendra Singh Vs Union of India (Allahabad High Court)

Appeal Number : Writ Tax No. - 699 of 2022

Date of Judgement/Order : 11/05/2022

**Jitendra Singh Vs Union of India (Allahabad High Court)**

On merits, it has been submitted, no liability of GST may arise on payment of royalty to conduct mining activity. Reliance has been placed on a an interim order dated 15.11.2021 of this Court passed by a division bench in Writ Tax No. 475 of 2021 (M/s A.D. Agro Foods Pvt. Ltd. Vs. Union of India).

It has been stated that the Supreme Court has disposed of Writ Petition (Civil) No. 1076 of 2021 on the ground of alternative remedy.

Matter requires consideration, both on the issue of liability to pay GST and royalty as also as to jurisdictional error in the second proceeding for the same tax period.

Until further order of this Court, demand of GST and payment of royalty pursuant to the orders dated 02.07.2021 and 23.06.2021 as also proceedings pursuant to the notice dated 15.03.2021 shall remain stayed.

**10. ITC cannot be denied on Genuine Transactions with suppliers whose registration cancelled after transaction**

Case Name : Sanchita Kundu & Anr. Vs Assistant Commissioner of State Tax (Calcutta High Court)

Appeal Number : W.P.A. 7231 of 2022 With W.P.A. 7232 of 2022

Date of Judgement/Order : 05/05/2022

These writ petitions have been filed by the petitioners being aggrieved by the action of the respondent GST concerned denying the benefit of Input Tax Credit (ITC) by their impugned order dated 27th December, 2021 to the petitioner on purchase of the goods in question from the suppliers and asking the petitioners to pay the penalty and interest under the relevant provisions of GST Act, on the ground that the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question.

Petitioner has also challenged the impugned orders dated 29th March, 2022 and 30th March, 2022 respectively being Annexure P-10 to the writ petition, under Section 79(1)(c) of the WBGST Act

The main contention of the petitioners in these writ petitions are that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contend that petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more so, when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction, petitioners could not be faulted if the suppliers appeared to be fake later on.

Petitioners further submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. Petitioners further submit that all the purchasers in question invoices-wise were available on the GST portal

in form GSTR-2A which are matters of record .

Considering the facts as recorded, without any further verification it cannot be said that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering into the transactions in question and that there was no verification of the genuineness of the suppliers in question by the petitioner during the relevant period .

Petitioners in support of their contention have relied on unreported judgment of this Court dated 13th December, 2021 in a similar case in the case of M/s. LGW Industries Limited & Ors. Vs. Union of India & Ors. in W.P.A No.23512 of 2019.

Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by setting aside the aforesaid impugned orders and remanding these cases of the petitioners to the respondents officer concerned to consider afresh on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners intend to rely in support of their claim of genuineness of the transactions in question and the respondent concerned shall also consider as to whether payments on purchase in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also to consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP) .

If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration as to whether facts of the petitioners are similar to the judgements of the Supreme Court and various High Courts and of this Court upon which petitioners intend to rely and if it is found similar to the present case in that event the petitioners shall be given the benefit of input tax credit in question .

These cases of the petitioner shall be disposed of by the respondents concerned in accordance with and in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners, within eight weeks from the date of communication of this order.

These Writ Petitions being WPA No.7231 of 2022 and WPA No.7232 of 2022 are disposed of in the light of observation and directions as made above. In view of setting aside the impugned adjudication orders, impugned orders being Annexure P-10 also stands set aside.

**11.HC directs tribunal to consider chemical analysis report of 'AT-PLAST' while deciding VAT Rate** :

Case Name : Unique Engineers Thru Proprietor Vs Commissioner Commercial Tax Lko (Allahabad High Court)

Appeal Number : Sales/Trade Tax Revision No. - 274 of 2010

Date of Judgement/Order : 06/05/2022

Admittedly, the revisionist manufactured 'AT-PLAST' which are being used in mixing of ready mix concrete / concrete and it has been averred by the revisionist that the said product are being used along with concrete for reducing the uses of water, delay the time of freezing as well as strengthening the concrete.

In para 7 as well as in the grounds of appeal before the Tribunal, details of the chemicals used in manufacturing of the product i.e. 'AT-PLAST' were being given and on the strength of which, the revisionist claimed that the said goods are chemical and duly covered under Entry 29, Schedule II and the same are liable to be taxed at the rate of 4 %, but the Tribunal has not considered the same.

Learned counsel for the revisionist had relied upon the judgement of this Court dated 28.8.2014 passed in a bunch of tax revisions leading case No. Sales / Trade Tax Revision No. 457 of 2014 (The Commissioner, Commercial Tax, UP, Lucknow Vs. M/S Cico Technology Limited, Ghaziabad) where in, this Court while considering the case of waterproofing components and construction materials has held that the said items will be covered under the head of chemical and are liable to tax accordingly.

In the case in hand, none of the authorities have discussed raw material / chemicals used in manufacturing of 'AT-PLAST' or the chemical analysis report as furnished by the revisionist in support of its case but had decided the issue, which cannot be justified in the eyes of law.

In view of above, the revision is allowed. The impugned order of the Tribunal is set aside. The matter is remanded to the Tribunal for deciding the issue afresh keeping in mind the order & judgement of 'Cico Technology Ltd. (supra).'

**12.HC directs dept to consider application for revocation of cancellation of registration in physical form**

Case Name : Madhav Copper Limited Vs State of Gujarat (Gujarat High Court)

Appeal Number : R/Special Civil Application No. 2776 of 2022

Date of Judgement/Order : 04/05/2022

**Madhav Copper Limited Vs State of Gujarat (Gujarat High Court)**

Mr. Bairagar, the learned AGP, wants the writ applicant to apply for revocation of the cancellation of registration in the requisite Form GST REG 21 Online at the GST common portal in accordance with the provisions of Section 30 of the GGST Act read with rule 23 of the GGST Rules.

In this regard, we may only say that as the writ applicant has already filed an application for revocation of the cancellation of registration in physical form, as an exceptional case, let this application filed by the writ applicant in physical form be processed and appropriate order be passed.

The department may not insist for applying online at the GST common portal as it may create some technical problems. We direct the department to immediately look into the application dated 12.04.2022 referred to above and pass the necessary orders at the earliest. We direct the department to permit the writ applicant to make the payments towards staff salary, operational expenses, electricity bills etc. from the Cash Credit Account after being satisfied as regards the nature of the payment.

The revocation application shall be decided within a period of one week from today and the intimation to the debtors shall also be issued within one week from today.

**13.HC Stays Operation of confiscation notice under Section 130 of CGST Act**

Case Name : Matrix Traders Vs Deputy Assistant Commissioner (Andhra Pradesh High Court)

Appeal Number : W.P. No. 12843 of 2022

Date of Judgement/Order : 04/05/2022

**Matrix Traders Vs Deputy Assistant Commissioner (Andhra Pradesh High Court)**

HC admitted the Writ Petition and Stayed the Operation of confiscation notice under Section 130 of the CGST Act, 2017 on the ground that w.e.f. January 1,

2022 the non-obstante clause has been removed from Section 130 of the CGST Act, 2017 and therefore, in cases of goods in transit, proceedings can be invoked under section 129 of the CGST Act, 2017 only.

#### **14. Bombay HC allows filing of TRAN-1 & TRAN-2 Form manually**

Case Name : Ashoka Buildcon Ltd. Vs Union of India (Bombay High Court)  
Appeal Number : Writ Petition No. 44 of 2019  
Date of Judgement/Order : 02/05/2022

Ashoka Buildcon Ltd. Vs Union of India (Bombay High Court) HC held that Petitioners are allowed to file and correct TRAN-1 and TRAN-2 Form. In case it is not possible to file the same online, it shall be filed manually.

#### **15. Mandatory 1/3rd deduction of land is ultra-vires: HC**

Case Name : Munjaal Manishbhai Bhatt Vs Union of India (Gujrat High Court)  
Appeal Number : Special Civil Application No. 1350 of 2021  
Date of Judgement/Order : 06/05/2022

HC held that impugned Paragraph 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts.

Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. While we so conclude, the question is whether the impugned paragraph 2 needs to be struck down or the same can be saved by reading it down. In our considered view, while maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.

The impugned paragraph 2 of Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 and the parallel State tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable. In so far as the writ applicant of the



Special Civil Application No.1350 of 2021 is concerned, the value of land is available in the agreement to sale and the same is not challenged by the Respondents in the affidavit in reply.

The writ applicant had deposited the amount of tax charged under the GST Acts by the supplier i.e. respondent No.4 under protest and it was clearly observed in the interim order passed by this Court that such payment would be subject to the final outcome of this writ application.

Since we have declared the impugned deeming fiction to be ultra-vires and we have read it down to be inapplicable in cases where the actual value of land is unavailable, consequently we direct the concerned GST authority to refund the excess amount of tax under the GST Acts to the writ applicant which has been collected by the respondent No.4 and deposited with the Government treasury.

Such refund shall be calculated by determining the actual GST liability on the basis of actual construction value as stipulated in the agreement and such actual liability will be deducted from the total tax charged from the writ applicant and paid into the Government treasury. Refund is to be granted along with the statutory interest at the rate of 6% per annum which is to be calculated from the date of excess payment of tax till the date of refund.

The entire exercise of calculation of refund and disbursement of the same with interest shall be completed within 12 weeks from the date of receipt of this order. We are conscious of the fact the writ applicant of the Special Civil Application No.1350 of 2021 is the recipient of service and not the supplier and that the tax has been collected by the supplier from the writ applicant and deposited with the Government treasury.

However since the writ applicant has actually borne the burden of tax and such tax was paid under protest by virtue of interim order of this Court, we are directing refund of such tax directly to the writ applicant.

It will not be out of place to mention that in fact Section 54 of the CGST Act also envisages claim of refund directly by the recipient if he has borne the burden of tax. It has been so held by the Supreme Court in the case of Mafatlal Industries Ltd. v/s Union of India (1997) 5 SCC 536. In so far as the other two writ applications numbered Special Civil Application No.6840 of 2021 and Special Civil Application No.5052 of 2022 respaly are concerned, since the advance ruling appellate orders are based on the impugned notification providing for mandatory deeming fiction for deduction of value of land, the said orders are hereby quashed and set aside.

The objection with regard to maintainability of writ applications against the advance ruling appellate orders is summarily overruled considering the fact that the challenge to such orders is incidental to the challenge of the impugned Notification.

If at all during adjudication of such writ applications it is found that there is an element of supply of goods or services in the transactions undertaken by the writ applicants, then it is always open for the authority to adjudicate such liability in accordance with law.