GST UPDATE
(March, 2022)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Appointment of Common Adjudicating authority for adjudicating SCNs issued by DGGI

Notification No. 02/2022-Central Tax dated 11th March, 2022 empowers Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence.

[Notification No. 02/2022-Central Tax dated 11th March, 2022]

2. Special composition scheme for Brick Kilns, as recommended by 45 GSTC

Notification No. 03/2022-Central Tax, Dated: 31.03.2022 – Seeks to amend notification no. 10/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by 45th GST Council Meeting.

Notification No. 04/2022-Central Tax, Dated: 31.03.2022 – Seeks to amend notification no. 14/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by 45th GST Council Meeting.

[Notification No. 03/2022-Central Tax, Dated: 31.03.2022 and Notification No. 04/2022-Central Tax, Dated: 31.03.2022]

(II) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 29th March, 2022

No. S.O. 18/P.A.5/2017/S.168/PGSTR/2017/R.61/2022.-In exercise of the powers conferred by section 168 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No.5 of 2017), hereafter in this notification referred to as "the said Act", read with sub-rule (5) of rule 61 of the Punjab Goods and Services Tax Rules,2017(hereafter in this notification referred to as "the said rules") and the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 107/PGSTR/2017/R.61/P.A.5/2017/S.168/2021, dated 06.09.2021 published in the Punjab Government Gazette, Part III, dated the 24th September,2021, the Commissioner, on the recommendations of the Council, hereby specifies the conditions in column (4) of the Table given below, for furnishing the return in FORM GSTR-3B electronically through the common portal for the month of July, 2017, for such class of registered persons as mentioned in the corresponding entry in column (2) of the said Table, by the date specified in the corresponding entry in column (3) of the said Table, namely:-

TABLE

Serial No.	Class of registered persons	Last date for furnishing of return in FORM GSTR-3B	Conditions
(1)	(2)	(3)	(4)
	Registered persons entitled to avail input tax credit in terms of section 140 of the said Act read with rule 117 of the said Rules but opting not to file FORM GST TRAN-1 on or before the 28th August, 2017	20th August, 2017	…

2.	Registered persons entitled to avail input tax credit in terms of section 140 of the said Act read with rule 117 of the said Rules and opting to file FORM GST TRAN-1 on or before the 28th August,2017	28th August, 2017	(i) compute the "tax payable under the said Act" for the month of July, 2017 and deposit the same in cash as per the provisions of rule 87 of the said Rules on or before the 20th August, 2017; (ii) file FORM GST TRAN-1 under sub-rule (1) of rule 117 of the said Rules before the filing of FORM GSTR-3B; (iii) where the amount of tax payable under the said Act for the month of July, 2017, as detailed in the return furnished in FORM GSTR-3B, exceeds the amount of tax deposited in cash as per item (i), the registered person shall pay such excess amount in cash in accordance with the provisions of rule 87 of the said Rules on or before 28th August, 2017 along with the applicable interest calculated from the 21st day of August, 2017 till the date of such deposit.
3.	Any other registered person	20th August, 2017	…

Payment of taxes for discharge of tax liability as per GSTR-3B.- Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger.

Explanation.- For the purposes of this notification, the expression-

(i) "Registered person" means the person required to file return under sub-section (1) of section 39 of the said Act;

(ii) "tax payable under the said Act" means the difference between the tax payable for the month of July, 2017 as detailed in the return furnished in FORM GSTR-3B and the amount of input tax credit entitled to for the month of July, 2017 under Chapter V and section 140 of the said Act read with the rules made thereunder.

This notification shall be deemed to have come into force on the 17th day of August, 2017.

NILKANTH S. AVHAD,
Commissioner of State Tax, Punjab.

2542/3-2022/Pb. Govt. Press, S.A.S. Nagar

(III) CENTRAL TAX NOTIFICATIONS

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

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

Notification No. 02/2022-Central Tax

New Delhi, the 11th March, 2022

G.S.R.....(E).– In exercise of the powers under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 02/2017-Central Tax, dated the 19th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 609(E), dated the 19th June, 2017, namely: -

In the said notification,–

(i) after paragraph 3, the following paragraph shall be inserted, namely :-

"3A. Notwithstanding anything contained in paragraph 3, the Additional Commissioners or the Joint Commissioners of Central Tax, as the case may be, subordinate to the Principal Commissioners of Central Tax or the Commissioners of Central Tax, as specified in column (2) of Table V, are hereby vested with the powers as specified in the corresponding entry in Column (3) of the said Table.";

(ii) after Table IV, the following Table shall be inserted, namely:-

"TABLE V

Powers of Additional Commissioner or Joint Commissioner of Central Tax for passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and Services Tax Intelligence

Sl. No.	Principal Commissioner or Commissioner of Central Tax	Powers (Exercisable throughout the territory of India)
(1)	(2)	(3)
1.	Principal Commissioner Ahmedabad South	Passing an order or decision in respect of notices issued by the officers of Directorate General of Goods and
2.	Principal Commissioner Bhopal	

3.	Principal Commissioner Chandigarh	Services Tax Intelligence under sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of Central Goods and Services Tax Act 2017.".
4.	Commissioner Chennai South	
5.	Principal Commissioner Delhi North	
6.	Principal Commissioner Guwahati	
7.	Commissioner Rangareddy	
8.	Principal Commissioner Kolkata North	
9.	Principal Commissioner Lucknow	
10.	Commissioner Thane	

"

[F. No. CBIC-20016/2/2022-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 02/2017- Central Tax, dated the 19th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 609(E), dated the 19th June, 2017 and last amended *vide* Notification No. 02/2021 – Central Tax , dated the 12th January, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 18(E), dated the 12th January, 2021.

Notification No. 03/2022-Central Tax

New Delhi, the 31st March, 2022

G.S.R (E).- In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.10/2019-Central Tax, dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 190(E), dated the 7th March, 2019, namely:-

In the said notification, in the Table, after serial number 3 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

"4.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
5.	6901 00 10	Bricks of fossil meals or similar siliceous earths
6.	6904 10 00	Building bricks
7.	6905 10 00	Earthen or roofing tiles".

2. This notification shall come into force on the 1st day of April, 2022.

[F.No.190354/56/2022-TRU]

(Vikram Vijay Wanere)
Under Secretary to the Government of India

Note: - The principal notification No. 10/2019-Central Tax, dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 190(E), dated the 7th March, 2019.

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 04/2022-Central Tax

New Delhi, the 31st March, 2022

G.S.R (E).- In exercise of the powers conferred under the proviso to sub-section (1) of section 10 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.14/2019-Central Tax, dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 196(E)., dated the 7th March, 2019, namely:-

In the said notification, in the Table, after serial number 3 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

"4.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
5.	6901 00 10	Bricks of fossil meals or similar siliceous earths
6.	6904 10 00	Building bricks
7.	6905 10 00	Earthen or roofing tiles".

2. This notification shall come into force on the 1st day of April, 2022.

[F.No.190354/56/2022-TRU]

(Vikram Vijay Wanere)
Under Secretary to the Government of India

Note: - The principal notification No.14/2019-Central Tax, dated the 7th March, 2019, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 196(E), dated the 7th March, 2019, and was last amended by notification No. 43/2019 – Central Tax, dated the 30th September, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 729(E), dated the 30th September, 2019.

(IV) CENTRAL TAX (RATE) NOTIFICATIONS

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No. 01/2022-Central Tax (Rate)

New Delhi, the 31st March, 2022

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

In the said notification, -

(a) in Schedule I – 2.5%, serial numbers 225B,226, 227, 228 and the entries relating thereto shall be omitted;

(b) in Schedule II – 6%, after serial number 176A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

"176B	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
176C	6901 00 10	Bricks of fossil meals or similar siliceous earths
176D	6904 10 00	Building bricks
176E	6905 10 00	Earthen or roofing tiles".

2. This notification shall come into force on the 1st day of April, 2022.

[F.No.190354/56/2022-TRU]

(Vikram Vijay Wanere)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 673(E), dated the 28th June, 2017, and was last amended by notification No. 21/2021 – Central Tax (Rate), dated the 31st December, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 920(E), dated the 31st December, 2021.

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 02/2022-Central Tax (Rate)

New Delhi, the 31st March, 2022

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby exempts the intra-state supplies of goods, the description of which is specified in column (3) of the table below, falling under the tariff item, sub-heading, heading or Chapter, as specified in the corresponding entry in column (2) of the said table, from so much of the central tax leviable thereon under section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said table and subject to the relevant conditions annexed to this notification, the condition number of which is mentioned in the corresponding entry in column (5) of the said table:

Table

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks	3%	1
2.	6901 00 10	Bricks of fossil meals or similar siliceous earths	3%	1
3.	6904 10 00	Building bricks	3%	1
4.	6905 10 00	Earthen or roofing tiles	3%	1

Explanation. –

(i) For the purposes of this notification, "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

ANNEXURE

Condition No.	Condition
1.	(a) credit of input tax charged on goods or services used exclusively in supplying such goods has not been taken; and (b) credit of input tax charged on goods or services used partly for supplying such goods and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such goods is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and the rules made thereunder.

2. This notification shall come into force on the 1st day of April, 2022.

[F. No.190354/56/2022-TRU]

(Vikram Vijay Wanere)
Under Secretary to the Government of India

(V) INTEGARTED TAX (RATE) NOTIFICATIONS

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No. 01/2022-Integrated Tax (Rate)

New Delhi, the 31st March, 2022

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

In the said notification, -

(a) in Schedule I – 5%, serial numbers 225B,226, 227, 228 and the entries relating thereto shall be omitted;

(b) in Schedule II – 12%, after serial number 176A and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

"176B	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks
176C	6901 00 10	Bricks of fossil meals or similar siliceous earths
176D	6904 10 00	Building bricks
176E	6905 10 00	Earthen or roofing tiles".

2. This notification shall come into force on the 1st day of April, 2022.

[F.No.190354/56/2022-TRU]

(Vikram Vijay Wanere)
Under Secretary to the Government of India

Note: - The principal notification No.1/2017-Integrated Tax (Rate), dated the 28th June, 2017, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 666(E), dated the 28th June, 2017, and was last amended by notification No. 21/2021 – Integrated Tax (Rate), dated the 31st December, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 921(E), dated the 31st December, 2021.

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

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 02/2022-Integrated Tax (Rate)

New Delhi, the 31st March, 2022

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 6 and clause (iv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby exempts the inter-state supplies of goods, the description of which is specified in column (3) of the table below, falling under the tariff item, sub-heading, heading or Chapter, as specified in the corresponding entry in column (2) of the said table, from so much of the integrated tax leviable thereon under section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said table and subject to the relevant conditions annexed to this notification, the condition number of which is mentioned in the corresponding entry in column (5) of the said table:

Table

Sl. No.	Tariff item, sub-heading, heading or Chapter	Description	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1.	6815	Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks	6%	1
2.	6901 00 10	Bricks of fossil meals or similar siliceous earths	6%	1
3.	6904 10 00	Building bricks	6%	1
4.	6905 10 00	Earthen or roofing tiles	6%	1

Explanation. –

(i) For the purposes of this notification, "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(ii) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

ANNEXURE

Condition No.	Condition
1.	(a) credit of input tax charged on goods or services used exclusively in supplying such goods has not been taken; and (b) credit of input tax charged on goods or services used partly for supplying such goods and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such goods is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and the rules made thereunder.

2. This notification shall come into force on the 1st day of April, 2022.

[F. No.190354/56/2022-TRU]

(Vikram Vijay Wanere)
Under Secretary to the Government of India

(VI) CGST CIRCULARS

Circular No.169/01/2022-GST

F. No. CBIC-20016/2/2022-GST

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs,

GST Policy Wing

*****

New Delhi, dated the 12th March, 2022

To,

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

Madam/Sir,

Subject: Amendment to Circular No. 31/05/2018-GST, dated 9th February, 2018 on 'Proper officer under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017'–reg.

Vide Notification No. 02/2022-Central Tax dated 11th March, 2022, para 3A has been inserted in the Notification No. 2/2017-Central Tax dated 19th June, 2017, to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence. Consequently, para 6 and 7 of the Circular No. 31/05/2018-GST, dated 9th February, 2018 are hereby amended as below:

"*6. The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGI") shall exercise the powers only to*

issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

TABLE

Sl. No.	*Central Tax Zone in whose jurisdiction the location of the principal place of business of the noticee having highest amount of demand of tax involved falls*	*Central Tax Commissionerate whose Additional Commissioner or Joint Commissioner shall adjudicate show cause notices issued by officers of DGGI*
(1)	*(2)*	*(3)*
1.	*Ahmedabad*	*Ahmedabad South*
2.	*Vadodara*	
3.	*Bhopal*	*Bhopal*
4.	*Nagpur*	
5.	*Chandigarh*	*Chandigarh*
6.	*Panchkula*	
7.	*Chennai*	*Chennai South*
8.	*Bengaluru*	
9.	*Thiruvananthapuram*	
10.	*Delhi*	*Delhi North*
11.	*Jaipur*	
12.	*Guwahati*	*Guwahati*
13.	*Hyderabad*	*Rangareddy*
14.	*Visakhapatnam (Amaravathi)*	
15.	*Bhubaneshwar*	
16.	*Kolkata*	*Kolkata North*
17.	*Ranchi*	

18.	***Lucknow***	***Lucknow***
19.	***Meerut***	
20.	***Mumbai***	***Thane***
21.	***Pune***	

7.2 In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.

7.3 In respect of show cause notices issued by the officers of DGGI prior to issuance of Notification No. 02/2022-Central Tax dated 11th March, 2022, involving cases mentioned in para 7.1 above and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 above, by issuing corrigendum to such show cause notices."

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

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

(Sanjay Mangal)

Principal Commissioner (GST)

(VII) ADVANCE RULINGS

1. 18% GST Payable on construction of IT Incubation Centre for TSIIC

Case Name : In re Siddhartha Constructions (GST AAR Telangana)
Appeal Number : TSAAR Order No.12/2022
Date of Judgement/Order : 02/03/2022

M/s. Siddhartha Constructions are into business of works contracts and have executed works for Telangana State Industrial Infrastructure Corporation Limited (TSIIC). The applicant in this contract has constructed IT Incubation Centre at Pothugal, Karimnagar for the TSIIC. As per the Memorandum of Association filed by the applicant TSIIC is owned by the Government of Telangana with paid up equity share capital of the Government of Telangana in excess of 90%. Therefore it is opined by the applicant that they have executed works to a Government entity and hence qualify for a lower rate of tax at the rate of 12%. Hence this application.

Held by AAR

The Memorandum of Association of TSIIC at clause III(a)(3) clearly states that the company pursues the objectives to implement the schemes of incentives, subsidies and the like formulated by the Government of Telangana or Government of India or other authorities or institutions and to administer such schemes of incentives from time to time in the interest of establishments and development of industries. Thus TSIIC organization works to further the policies of the State Government, Central Government and Local Government for development of industries in the State of Telangana.

Therefore in view of the above facts:
1. The applicant has executed works contracts for TSIIC which is a Government entity.
2. This work is construction of IT Incubation Centre. Therefore the civil structure is meant for commerce/industry or any other business.

Therefore the works contract executed by the applicant for construction of IT Incubation Centre for TSIIC falls under exception to Sr No. 3(vi) of Notification No. 11/2017-CT (Rate) wherein the civil structure is meant for commerce/industry or any other business and therefore the supply of this service is taxable at the rate of 9% under CGST & SGST each.

2. GST on Construction of IT towers for TSIIC

Case Name : In re Siddhartha Constructions (GST AAR Telangana)
Appeal Number : TSAAR Order No.11/2022
Date of Judgement/Order : 02/03/2022

The Memorandum of Association of TSIIC at clause III(a)(3) clearly states that the company pursues the objectives to implement the schemes of incentives, subsidies

and the like formulated by the Government of Telangana or Government of India or other authorities or institutions and to administer such schemes of incentives from time to time in the interest of establishments and development of industries. Thus TSIIC organization works to further the policies of the State Government, Central Government and Local Government for development of industries in the State of Telangana.

Therefore in view of the above facts:-
1. The applicant has executed works contracts for TSIIC which is a Government entity.
2. This work is construction of IT towers. Therefore the civil structure is meant for commerce/industry or any other business.

Therefore the works contract executed by the applicant for construction of IT towers for TSIIC falls under exception to Sr No. 3(vi) of Notification No. 11/2017-CT (Rate) wherein the civil structure is meant for commerce/industry or any other business and therefore the supply of this service is taxable at the rate of 9% under CGST & SGST each.

3. 18% GST payable on construction of Administrative building for TSIIC

Case Name : In re Siddhartha Constructions (GST AAR Telangana)
Appeal Number : Advance Ruling TSAAR Order No. 10/2022
Date of Judgement/Order : 02/03/2022

AAR held that works contract executed by the applicant for construction of Administrative building for TSIIC falls under Sr No. 3(vi) of Notification No. 11/2017-CT (Rate) as amended till date and therefore taxable at the rate of 6% under CGST & SGST each. However for works executed from 01-01-2022, the rate shall be 9% under CGST & SGST each as the Phrase 'Governmental authority or Governmental entity' is excluded, vide notification Number. 15/2021, dated.18.11.2021.

4. Geomembrane is classified at HSN 5911 & Tarpaulin at HSN 3926

Case Name : In re Texel Industries Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/11
Date of Judgement/Order : 07/03/2022

Whether the product, namely, Geomembranes merits classification under Heading 5911, Sub Heading 59111000 or Sub Heading 59119090, as Textile products, coated, covered or laminated with plastic, used for technical purposes?

Geomembrane is classified at HSN 5911, tariff item 59111000.

2. Whether woven Tarpaulin manufactured by M/s. Texel merit classification under Heading 5911, Sub Heading 59111000 or Sub Heading 59119090, as Textile products, coated, covered or laminated with plastic, used for technical purposes?

Tarpaulin is classified at HSN 3926, tariff item 39269099.

5. GST on composite supply of works contract provided to Adani Road Transport Ltd.

Case Name : In re Tecsidel India Private Limited (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/10
Date of Judgement/Order : 07/03/2022

(i) Whether the composite supply of works contract provided by Tecsidel to M/s. Adani Road Transport Ltd. shall be classified under Entry (vi) of Serial No. 3 of the Notification No. 11/2017-C.T. (R), dated 28th June, 2017 (hereinafter referred to as 'the CGST Rate Notification') liable to effective rate of GST ('Goods and Services Tax') @ 12% including CGST and GGST?

Held: The subject supply does not fall under 3(vi) of said NT.

(ii) Whether the composite supply of works contract provided by the Applicant to M/s. Adani Road Transport Ltd. shall also be classified under Entry (iv) to Serial No. 3 of the CGST Rate Notification read with the GGST Rate Notification liable to effective rate of GST @ 12% including CGST and GGST?

Held: The subject supply does not fall under 3(vi) of said NT.

(iii) Whether the rate of GST with respect to the services rendered by the sub-contractor to the main contractor i.e. Tecsidel would be applicable @ 12% in view of Entry (vi) and (iv) of the CGST Rate Notification read with the GGST Rate Notification or @ 18%?.

Held: As discussed at para 9.1 A to 10.3, subject supply is not covered at sr no 3(iv/vi) of said NT. Further, as per discussion at para 11.3, sr no 3(ix) of said notification is not attracted in subject case. GST is leviable at 18% vide Sr. No. 3 (xii) of Not. No. 11/2017-CT (Rate) dated 28-6-17 as amended.

6. 12% GST Payable on supply of EPABX system for Railways

Case Name : In re Intellicon Private Limited (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/09
Date of Judgement/Order : 07/03/2022

Whether the Entry no. 3(v) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (the Notification), as amended from time to time, is applicable to supplies by Intellecon under the Contract I and Contract II and resultantly, whether such supplies are subjected to 12% rate of Goods and Services Tax ('GST').

We find that the EPABX system comes into existence by assembly and connection of various goods/components, wherein transfer of property of such goods is involved in the execution of said contracts. We note that EPABX system once installed cannot be taken to market in as such condition. It would be required to be dismantled and disassembled in parts and components. In the process of dismantling, some parts of

the EPABX system such as cables, connectors may even be damaged/ may not be usable again. We, thereby, hold that an installed and commissioned EAPBX system becomes an immovable property and thereby its supply with installation and commissioning is Works Contract Service supply.

The subject supply pertains to Railways as it is for supply in railway office. As per Section 2(3 l)(d) Railways Act, 1989 , railway includes all offices and any other works constructed for the purpose of, or in connection with, railway. The subject supplies of EPABX system for Railways is covered at entry No. 3 (v) of Notification No. 11/2017-CT (R) dated 28-6-17, as amended, and liable to 12% GST.

7. Time of supply for discharge of GST in respect of Mobilization Advance

Case Name : In re SP Singla Constructions Pvt. Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/06
Date of Judgement/Order : 07/03/2022

SPSC desires to obtain Advance Ruling on the question as to what is the time of supply for the purpose of discharge of GST under the CGST Act, 2017 and SGST Act, 2017 in respect of Mobilization Advance (hereinafter referred to as 'said advance' for the sake of brevity) received by it for construction services provided by it?

Held: We note that SPSC does not contest the taxability on said Advance, but is before us for its deferment from date of its receipt to date of issue of invoice. We pass the Ruling based on Section 13(2) CGST Act read with its explanation (i). Time of Supply, on said Advances received by SPSC for Supply of its Service, is the date of receipt of said advance.

8. GST on re-gasification of LNG owned by GST registered customers

Case Name : In re Shell Energy India Private Limited (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/08
Date of Judgement/Order : 07/03/2022

Q1. Whether the Applicant's activity of providing service of re-gasification of LNG owned by its customers (who are registered under the CGST Act) to convert to RLNG, from its re-gasification terminal at Hazira Port, Gujarat would amount to rendering of service by way of job work as defined under Section 2(68) of the Central Goods and Services Tax Act, 2017 ('CGST Act')?

Q2. If yes, then whether the said re-gasification service by way of job-work be classifiable under Entry (id) of Heading No. 9988 of Sl. No. 26 of Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended vide Notification No. 20/2019-CT (Rate) dated 30.09.2019 and eligible for GST at the rate of 12%?

Held by AAR
Shell's activity of re-gasification of LNG owned by its GST registered customers amounts to rendering of service by way of Job Work and merits to be covered at entry

('id') of Heading 9988 at Sl. No. 26 of Notification No. 11/2017-CT (Rate) dated 28.06.2017, as amended, liable to CGST at 6% and SGST at 6%.

9. AAR cannot decide on validity of tax invoice issued to Customers

Case Name : In re Acme Holding (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/07
Date of Judgement/Order : 07/03/2022

Q1. For the Job work done during F. Y. 18-19, whether the invoice raised by the applicant considered to be a valid tax invoice as per provisions of GST law?

Q2. Whether the taxpayer is rightful to recover the tax from principal supplier of goods upon issuing a 'tax invoice' as per provision of the law subsequently?

Q3. In continuation of question 2, whether the recipient can claim ITC?

Held by AAR
Acme submitted subject Application vide Section 97(2)(d) & (e) CGST Act. Section 97(2)(d) is a question on admissibility of ITC of tax paid or deemed to have been paid. Section 97(2)(e) is a question on determination of the liability to pay tax

On reading the application, we infer that a purpose of Acme to file subject application is an attempt to seek Ruling for its customers admissibility to ITC (Question no 3). The Advance Ruling pronounced, as per Section 103(1) CGST Act, shall be binding only on Acme and its concerned jurisdictional officer and not on Acme's customer.
During Personal Hearing, Shri Jigar Parikh, CA submitted that Question 1 pertains to the Acme which is their principal question and that question 2 and question 3 of the Advance Ruling Application pertains to Acme's customers obligation or eligibility to claim ITC. Shri Jigar Parikh submitted to pass a Ruling with reference to Question 1 and that Acme withdraws Question 2 & 3.

Acme's Questions 1 is not regarding determination of liability to pay tax but pertains to whether the invoice raised by Acme to its customer be considered to be a valid tax invoice.

As per Section 95(a), CGST Act, 'Advance Ruling' means a decision provided by the Authority to an applicant on matters/ questions specified in Section 97(2), in relation to the supply of goods/ services or both being undertaken or proposed to be undertaken by the applicant. In view of the statutory provisions of Section 97(2) CGST Act, We hold that the Questions raised by Acme does not fall under the gamut of said Section 97(2).

In view of the above AAR held that Advance Ruling application is not maintainable.

10. GST Rate on Marine engine falling under HSN 8402 and 8407

Case Name : In re Global Engineering (GST AAR Gujarat)

Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/05
Date of Judgement/Order : 07/03/2022

What GST rate to be charged on Marine engine falling under HSN 8402 and 8407, whether 28% or 5% (As per circular No. 52/26/201-GST dated 9-8-18)

AAR held that GST rate on Marine engines is determinable on case to case basis. In cases where the applicant has conducted due diligence with KYC norms of customer such as customer in possession of certificate of registry of fishing boat/ certificate of licence of fishing boat, in such cases marine engine supplied will be part of fishing vessel, and thereby GST rate is 5%.

11. Tamarind Kernal Powder classifiable under Tariff Heading 1302 39 00

Case Name : In re Colourtex Industries Private Limited (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/04
Date of Judgement/Order : 07/03/2022

Applicant supplies Tamarind Kernal Powder (TKP). Colourtex, in Central Excise regime, classified TKP at CETH 1302, as per the CBIC Circular No. 1037/25/2016-CX dated 19th July 2016 vide which clarified that the product TKP shall be classified under tariff item 1302 32 90 of CETA, 1985 as a product derived from the seed of the tamarind fruit. The said classification shall apply to both treated (modified) tamarind kernel powder and plain (unmodified) tamarind kernel powder.

Question on which Advance Ruling sought Classification of TKP manufactured by Colourtex.

Tariff 1302 is classified into 3 groups, namely:

First Group	Vegatable Saps and Extracts
Second Group	Pectin substances, pectinates and pectates
Third group	Mucilages and thickeners, whethere or not modified, derived from vegetable products.

AAR observed that TKP merits classification in the third group as a Thickener (modified/ un-modified) derived from vegetable products.

The said third group is further classified into 3 groups, namely:

First Group	Agar-Agar
Second Group	Derived from locust beans, locust bean seeds or guar seed
Third group	Other

AAR held that TKP falls under third group ‘other’ as it is neither Agar-agar nor a thickener derived from locust beans/ locust bean seeds/ guar seeds. In view of the same Modified/ Un-modified TKP is classified at Tariff 1302 39 00.

12. No GST on canteen charges collected from Employees & Paid to service provider

Case Name : In re Intas Pharmaceuticals Limited. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/03
Date of Judgement/Order : 07/03/2022

Whether GST, at the hands of the applicant, is leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant from employees and paid to the Canteen Service Provider?

Appellant has arranged a canteen for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by Intas whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by Intas and paid to the Canteen Service Provider. Intas submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. In view of the same GST, at the hands of the Intas, is not leviable on the amount representing the employees portion of canteen charges, which is collected by Intas and paid to the Canteen service provider.

13. 28% GST & 12% GST Compensation Cess leviable on 'Apple/Malt Cola Fizzy'

Case Name : In re Mohammed Hasanbhai Kabala (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/02
Date of Judgement/Order : 07/03/2022

What should be the classification and applicable tax rate on the supply of Ready to Serve Fruit Beverage named as 'Apple Cola Fizzy' and 'Malt Cola Fizzy' made by the applicant under Notification No. 1/2017 – CT (Rate) dated 28.06.2017 as amended up to date?

AAR held that Apple Cola Fizzy and Malt Cola Fizzy are Carbonated Beverages with fruit juice, classifiable at HSN 22021090 and GST is leviable at 28% on Apple Cola Fizzy and Malt Cola Fizzy. Further GST Compensation Cess leviable at 12% on Apple Cola Fizzy and Malt Cola Fizzy.

14. No GST on Canteen charges recovered from employees & paid to service provider

Case Name : In re Astral Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/01
Date of Judgement/Order : 07/03/2022

Applicant has arranged a canteen for its employees, which is run by a Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by Astral whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by Astral and paid to the Canteen Service Provider. Astral submitted that it does not retain with itself any profit margin in this activity.

In view of the above GST, at the hands of Astral, is not leviable on the amount representing the employees portion of canteen charges, which is collected by Astral and paid to the Canteen service provider.

15. Whether any supply constitutes Continuous supply of Goods- AAR cannot answer

Case Name : In re AVS Tech Building Solutions India Pvt (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 08/2022
Date of Judgement/Order : 08/03/2022

The applicant has sought advance ruling, in their application, in respect of the question 'Whether our supply of goods – Ready Mix Concrete (HSN Code: 38245010) is covered under definition of Continuous supply of Goods under Section 2(32) of the CGST Act 2017?'

AAR held that Section 97(2) of the CGST Act 2017 stipulates that the questions on which advance ruling is sought shall be in respect of certain specified issues only and above question not falls within the purview of Section 97(2) hence the instant application is liable for rejection.

16. Poultry crate classifiable under Chapter 39231090

Case Name : In re Nilkamal Limited (GST AAR Maharashtra)
Appeal Number : Advance Rulings No. GST-ARA- 49/2020-21/B-29
Date of Judgement/Order : 08/03/2022

The impugned product i.e. poultry crate is an article of plastic. It is used for the conveyance of poultry and from a reading of para 5.5.2 above it is clear that the said product is clearly covered under sub heading 392310 of the Tariff. However it is seen that the subject product does not fall under the T.I. 39231010; 39231020; 39231030; and 39231040. Thus, the impugned product will be covered under the residual T.I. i.e. 39231090 of the Tariff.

From the above discussions we conclude that the impugned product is correctly covered under T.I. 39231090 and not at all covered under T.I. 84362900. The applicant has contended that, as per section 3(c) of general rules for the interpretation of the harmonized system (HSN) If an item is prima facie classifiable under two or more headings, the same shall be classified under the heading which occurs last in numerical order and when two views are possible, the one favorable to the assessee has to be adopted.

In the subject case the impugned product i.e. poultry crate is seen to be classifiable exclusively under Chapter 39231090 and therefore the question of taking into account, the general rules for the interpretation of the harmonized system (HSN), does not arise at all.

In view of our decision that the impugned product is classifiable under Chapter 39231090.

17. GST on reimbursement of stipend paid to trainees on behalf of Industry partner

Case Name : In re Teamlease Education Foundation (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 07/2022
Date of Judgement/Order : 08/03/2022

a. Whether, the Applicant is acting as a pure agent of the Industry partner to the extent of reimbursement received towards stipend paid to trainees on behalf of Industry partner as part of training agreement and therefore the said reimbursement is not chargeable to GST?

The Applicant does not qualify to be a pure agent of the Industry partner to the extent of reimbursement received towards stipend paid to Trainees on behalf of Industry partner as part of training agreement and therefore the said reimbursement is chargeable to GST.

b. Whether, the Applicant is acting as a pure agent of the Industry partner to the extent of reimbursement received against cost of medical and accident insurance obtained for the benefit of trainees by the Applicant and reimbursed by the Industry partner as per the training agreement and therefore the said reimbursement is not chargeable to GST?

The Applicant does not qualify to be a pure agent of the Industry partner to the extent of reimbursement received against cost of medical and accident insurance obtained for the benefit of Trainees by the Applicant and reimbursed by the Industry partner as per the training agreement and therefore the said reimbursement is chargeable to GST.

18. Coating activities done by applicant on goods belonging to customer is Job work

Case Name : In re lonbond Coatings Pvt. Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 41/2020-21/B-28
Date of Judgement/Order : 08/03/2022

The applicant is mainly engaged in to coating activities, which is mainly applied on goods belonging to customer and provides high performance Physical Vapor Deposition (PVD) and Plasma Assisted Chemical Vapor Deposition (PACVD) wear corrosion protection and decorative coatings. The applicant provides standard coating portfolios for the cutting, moulding and forming tool market and precision engineering & decorative components and to offer customized solutions for original equipment manufacturer (OEM) and end user customers. However in the subject case, the applicant, during the course of the final hearing has submitted that the questions raised

in this application pertains only to new tooling received from original equipment manufacturer (OEM).

According to the applicant, these coatings are applied on products like Gear Cutting Tools, HSS Tools, SC Tools, Piercing Punches, Press Tools, Cold Rolls, Dies & Molds, PDC Dies, Hot Forging Tools, Cold Forging Tools, Extrusion Tools, Plastic Injection Molding Tools, Valves, Tappets, Piston Rings, Tableting Punches, Gears and All wear & tear parts, etc (hereinafter referred to as tooling) and these coatings enhances performance of the said mentioned tooling by increasing Oxidation Resistance, Wear Resistance, Improved Surface Roughness, etc.

The applicant has submitted that the tooling are received by it through Delivery challan only and the applicant, after carrying out the impugned processes sends the said tooling back to customers with invoices for job work charges.

According to the applicant's submissions no new products emerge after the subject process been carried out by the applicant. The basic characteristics of the product have not been lost. Thus, in view of the contention of the applicant that they are a jobworker, we now discuss the specific issue hereon.

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

Further, Hon'ble Supreme court in the case of Maruti Suzuki Limited Vs. CCE, New Delhi, 2015 (318) E.LT 353 (S.C) has also held that there is a distinction between processing and manufacture and that Electro Deposition (ED) Coating of anti-rust treatment to increase shell life of various component is merely a processing activity and not a complete manufacturing activity.

The activity of the Applicant fits the definition of Job work under the present law. Further, in terms of the Apex court's ruling also, activity of coating is only a process undertaken on goods. Therefore, the activity undertaken by the applicant is covered under the definition of Job work'

19. GST on Paintings, Old & antique Car/jewellery/watches/Books

Case Name : In re Astaguru Auction House Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 40/2020-21/B-27
Date of Judgement/Order : 08/03/2022

Question 1: – The classification and HSN code of goods listed in table (as given in Annexure II of application as Issue for Determination) and GST rates applicable to such goods?

Answer:- (i) Paintings bought from individual art collectors will be classifiable under Heading 9701 and the applicant is liable to pay GST of 12%.
(ii) Old Cars:- Motor Vehicles fall under Heading 8703 of the GST Tariff. All the items under 8703 will attract 28% GST except Tariff item 870310 10; Sub-heading 8703 80. However old cars will attract a lower rate of tax as per Notification No. 08/2018 CT (Rate) dated 25.01.2018. As per the said Notification, the lesser rate of tax i.e. 18 % is applicable to old cars provided the conditions mentioned therein are fulfilled.
(iii) Old Jewellery:- Articles of jewellery and parts thereof, of precious metal will fall under Heading 7113 of the GST Tariff attracting 3% GST.
(iv) Antique jewellery of age exceeding 100 years:- Antique jewellery of age exceeding 100 years will fall under Tariff item 9706 00 00 and will be liable to tax @ 12% GST.
(v) Old watches:- Wrist watches, pocket-watches and other watches, including stopwatches, with case of precious metal or of metal clad with precious metal will fall under CH 9101 of the GST Tariff and Wrist watches, pocket-watches and other watches, including stop-watches, other than those of Heading 9101 will fall under Heading 9102 of the said Tariff. The rate of GST is 18% and the same will be applicable even to Old Watches.

(vi) Antique watches of age exceeding 100 years:- Antique watches of age exceeding 100 years will fall under Tariff item 9706 00 00 and will be liable to tax @ 12% GST.
(vii) Antique Books :- Antique books would fall under HSN 9706 of the GST Tariff and would attract GST @ 12%

Question 2: – Whether Applicant dealing in second hand goods is required to pay tax on the difference between selling price and purchase price as stipulated in Rule 32(5) of CGST Rules, 2017?

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

20. AAR cannot answer Question on ITC Utilisation & ITC claim method

Case Name : In re Bharatiya Reserve Bank Note Mudran Private Limited (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 06/2022
Date of Judgement/Order : 08/03/2022

1. Whether ITC can be claimed on common services which are utilized for both taxable as well as exempted supplies?
Ans : This question is not covered under the issues referred to in Section 97(2) of the CGST Act 2017, in respect which an applicant can seek advance ruling and hence this authority refrains from giving any ruling in this regard.

2. Whether the method followed by the applicant in connection with claiming of Input Tax Credit is in accordance with the provisions of law?

Ans : The impugned question is not covered under Section 97(2) of the CGST Act 2017, which specifies the issues on which the advance ruling can be sought by the applicant and hence this authority refrains from giving any ruling.

3. Turnover of which financial year to be considered in Rule 42 of the CGST Rules, 2017 while calculating ineligible ITC for the invoices which were accounted in the books of accounts in the FY 2019-20, however ITC was claimed during April to September of FY 2020-21 as per section 16(4) of the CGST Act, 2017 ?
Ans : The impugned question is not covered under Section 97(2) of the CGST Act 2017, and hence this authority refrains from giving any ruling.

21. GST on fee for entry into Brindavan Gardens – AAR rejects Application

Case Name : In re Cauvery Neeravari Nigama Limited (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 10/2022
Date of Judgement/Order : 14/03/2022

The issue before us is the admissibility / maintainability of the instant application and the said admissibility is governed by the first proviso to Section 98(2) of the CGST Act, 2017, which reads as under:

The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of applicant under any provisions of this Act.

Thus the conditions to be considered before admission of application, on the basis of above proviso are as under:

i. Whether the question raised is pending or decided in any proceedings.
ii. Whether the question raised is pending or decided in the case of applicant.
iii. Whether the question raised is pending or decided under any provisions of this Act.

We examined the records and observed that the instant application has been filed online on 06.12.2021 and the question raised therein is about the applicability of GST on entrance fee collected for entry into Brindavan Gardens and toll collected for use of Bridge. The assessment order and the notice issued by concerned authorities as mentioned supra, also pertains to the applicability of GST on entrance fee collected for entry into Brindavan Gardens and toll collected for use of Bridge.

The issues raised in the instant application and the issues mentioned in assessment order and the notice mentioned supra are one and the same i.e., applicability of GST on entrance fee collected for entry into Brindavan Gardens and toll collected for use of Bridge. Thus first proviso to Section 98(2) Act 2017 is squarely applicable to the instant case, as all the conditions therein are fulfilled.

The application is rejected as “inadmissible”, in terms of first proviso to Section 98(2) of the CGST Act 2017.

22. GST not exempt on Distillery Wet/DRY Grain Soluble

Case Name : In re Allied Blenders and Distillers Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No.14/2022
Date of Judgement/Order : 14/03/022

The applicant's chief argument is that their bye-products i.e., Distillery Wet Grain Soluble ('DWGS') and Distillery Dry Grain Soluble ('DDGS') are used only as cattle feed and therefore have to be classified under S.No.102 of Notification No. 02/2017.

It is observed that the Notification No. 01/2017 classifies 'brewing or distillery dregs and waste' at S.No.104 under tariff item '2303' and the rate applicable is 5% on these products.

Notification No.	S. No	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate
02/2017	102	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake	Nil
01/2017	104	2303	Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets	5%

It is further seen that the chapter headings of the tariff items which qualify as cattle feed at the S.No.102 of Notification No. 02/2017 do not include the HSN '2303'. Thus S.No.102 of Notification No. 02/2017 specifically excludes 'brewing or distillery dregs and waste'. As seen from the averments submitted by the applicant the Distillery Wet Grain Soluble ('DWGS') and Distillery Dry Grain Soluble ('DDGS') are clearly falling under 'brewing or distillery dregs and waste' and therefore under tariff item HSN No. '2303'. Hence these are excluded from the exemption Notification No. 02/2017.

23. GST on Agreement Value or on Stamp Duty value

Case Name : In re Pankaj Enterprises (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 09/2022
Date of Judgement/Order : 14/03/2022

The applicant has sought clarification about determination of taxable value of commercial immovable property for the purpose of GST liability i.e whether the sale

consideration mentioned in the sale deed between builder and proposed purchaser or guidance value fixed by the state government authorities for the purpose of registration should be considered as taxable value for the purpose of GST liability.

From Section 15 of CGST Act 2017, it is clear that the GST Act contemplates to treat the transaction value as the value of supply unless the same is rejected and the value determined as per Section 15 of the GST Act. It does not contemplate to consider a guidance value prescribed under another legislation to be deemed to be the value of the supply, unless the transaction value itself is disputed and found not acceptable under Section 15 of the GST Act. In the latter case, the determination of the value of such supply shall be made as per the provisions of Section 15 of the GST Act.

However, in case of apartments, the land value is fixed at one third of the value of the apartment involving the transfer of land along with the building, in Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. In such cases, the value of land is calculated as per the above specification and no other value is acceptable for the said land value.

In view of the foregoing, The taxable value under the GST Act of construction of immovable plots without occupancy certificate needs to be determined as per the transaction value and such value if found to be not acceptable, has to be determined as per the principles laid down under Section 15 of the GST Act, 2017

24. AAR cannot give ruling on question unrelated to supply of goods or services

Case Name : In re Granules USA Inc (GST AAR Telangana)
Appeal Number : TSAAR Order No.13/2022
Date of Judgement/Order : 14/03/2022

It is to inform that Section 96 of the CGST & SGST Acts clearly state territorial nexus of an Advance Ruling authority so that an authority for Advance Ruling shall function as such an Authority for Advance ruling for that State or Union Territory in which it is constituted under the CGST & SGST Acts. Evidently the applicant seeks clarification regarding the question impacting taxable person who is not a registered taxable person in the State of Telangana. Therefore an 'Advance Ruling' cannot be made for a person not registered in the State of Telangana in light of this provision.

Further Clause (a) of Section 95 of CGST Act, 2017 clearly states that 'Advance Ruling' means a decision provided by the authority to the applicant on questions "in relation to the supply of goods or services or both being undertaken by such applicant". Here a clarification is sought on a question unrelated to supply of goods or services made by the applicant. Therefore even on this count an 'Advance Ruling' can't be made in the present case.

In light of the above (2) Statutory provisions and reasons discussed, the application is rejected.

25. GST exempt on Supply of services to State educational boards related to conduct of exam

Case Name : In re Data Processing Forms Pvt. Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/13
Date of Judgement/Order : 14/03/2022

A. Whether from the facts and circumstances of the case, supplies made by the applicant to the Examination Boards and Educational Institution are entitled for exemption from payment of Good and Service Tax under Sr. No. 66, Heading No. 9992 (education Services) of the exemption Not. No. 12/2017-CT (Rate) dated 28-6-2017, read with Not. No. 14/2018-CT (Rate) dated 26-7-18.

We find that the Supply of services provided to State educational boards by way of services relating to conduct of examination by State Educational Boards is exempt vide entry 66(b) (iv) of said Notification 12/2017-CT(R), as clarified at clause 3(iv) to the Explanation of the said Notification.

We hold that the insertion of this clause 3(iv) vide Notification No. 14/2018-CT (R) dated 26-7-18 to the Explanation of the said Notification is clarificatory in nature making clear the applicability of said entry 66(b)(iv) of said Notification 12/2017-CT(R).

The subject supplies being undertaken to State Educational Board is exempt from GST vide entry 66(b)(iv) of the Notification No. 12/2017-CT (R) dated 28-6-2017 as amended.

Refund is not covered under the gamut of questions to be raised vide Section 97(2) CGST Act

B. If yes, whether the applicant is entitled for refund of the taxes collected and paid into Govt. treasury so far.

Refund is not covered under the gamut of questions to be raised vide Section 97(2) CGST Act.

26. GST on reimbursement received of actual Stipend amount from Industry partner

Case Name : In re Team Lease Education Foundation (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/12
Date of Judgement/Order : 14/03/2022

1. Whether, the Applicant is acting as a pure agent of the Industry partner to the extent of reimbursement received towards stipend paid to Trainees on behalf of Industry partner as part of training agreement and therefore the said reimbursement is not chargeable to GST?

TLEF is pure agent of Industry Partner to the extent of reimbursement of the actual amount Stipend incurred by it and thereby said reimbursement amount is not leviable to GST.

2. Whether, the Applicant is acting as a pure agent of the Industry partner to the extent of reimbursement received against cost of employee compensation insurance obtained for the benefit of Trainees by the Applicant and reimbursed by the Industry partner as per the training agreement and therefore the said reimbursement is not chargeable to GST?

TLEF is not pure agent of Industry partner for Insurance premium amount , as TLEF does not satisfy clause (d) to the explanation of Rule 33 CGST Rules. Thereby, insurance amount reflected its invoices, shall not be deducted from arriving at taxable value and thereby leviable to GST.

27. GST on Supply of functional Cattle Feed Plant with Erection, Installation & Commissioning

Case Name : In re IDMC Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/14
Date of Judgement/Order : 14/03/2022

1. Whether contract involving supply of equipment / machinery & erection, installation & commissioning services without civil work thereof would be contemplated as composite supply of cattle feed plant under GST regime? If the supplies would qualify as composite supply, what would be the classification of this bundle and applicable tax rate thereon in accordance with Notification No. 01/2017 – CT (Rate) dated June 28, 2017 (as amended).

2. Whether contract involving supply of equipment / machinery & erection, installation & commissioning services with civil work thereof would be contemplated as works contract service or not. If the supplies would qualify as composite supply of works contract, what would be the classification and applicable tax rate thereon in accordance with Notification No. 11/2017 – CT (Rate) dated June 28, 2017 (as amended).

Held : Supply of a functional Cattle Feed Plant, inclusive of its Erection, Installation and Commissioning and related works involved for both the question 1&2, is Works Contract Service Supply, falling at SAC998732 attracting GST leviability at 18%.

28. GST on Security Services rendered to various sites of Municipal Corporations

Case Name : In re Maharashtra Ex-Servicemen Corporation Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 105/2019-20/B-33
Date of Judgement/Order : 15/03/2022

Whether the Chapter No. 99, Sr. No. 3 of the Exemption Notification No. 12/2017 is applicable to MESCO Ltd. for the pure services i.e. Security Services rendered to various sites of Municipal Corporations in relation to functions entrusted to it under Article 243 W of the Constitution of India, thereby exempting as a service provider from the whole of GST.

Answer:- The exemption under Sr. No. 3 of the Exemption Notification No. 12/2017 is available to the applicant for the pure services i.e. Security Services rendered to various sites of Municipal Corporations only if such pure services are supplied to the Municipal Corporations, in relation to functions entrusted to such Municipal Corporations under Article 243 W of the constitution of India.

29. Agreeing to obligation to do an act amounts to supply of services

Case Name : Forest Development Corporation of Maharashtra Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 18/2020-21/B-31
Date of Judgement/Order : 15/03/2022

We observe that, the land belongs to the MSFR Department who is the owner. As an owner, MSFR Department has leased the land to the applicant. The applicant is not the owner of the land. Now, the MSFR Department has asked the applicant to hand over a part of the land to the Irrigation Department as mentioned in the application. Thus, in respect of the land to be transferred to the Irrigation Department, as and when the transfer is done it would have the effect of making MSFR Department as the lessor and the Irrigation Department as the lessee (with the applicant being nowhere in the picture) and presumably the lease rent if any, would be paid by the Irrigation Department to MSFR Department.

In view of the scenario mentioned in 5.7 above, we need to find out whether the subject transaction is a supply of service by the applicant. Prima facie, we find that the land will not be leased by the applicant to the Irrigation Department. In fact, the applicant will be relinquishing its lease right on the said land in favour of Irrigation Department on the directions of the owner of the land i.e. MSFR Department.

As per 5 (e) of Schedule mentioned above, agreeing to the obligation to do an act amounts to supply of services. In the subject case, the applicant has agreed to do an act i.e. the applicant has agreed to relinquish its lease right on the said land in favour of Irrigation Department on the directions of the owner of the land i.e. MSFR Department. Thus, the said action of the applicant is nothing but supply of services under the GST Laws and the said supply is to MSFR department for which compensation is received from the Irrigation department.

The applicant has submitted that the impugned supply is to the Irrigation department. However, it is seen that the applicant is agreeing to do an act as per the directions of the MSFR department and not the Irrigation department and the applicant has not brought anything on record to show that the impugned services are provided to MSFR

department by way of an activity in relation to any function covered under Article 243G or 243W of The Constitution of India.

Question 1: – Whether the transfer of land, held under lease by FDCM, towards Kolsapada Minor Irrigation Project is supply of service?

Answer: – Answered in the affirmative.

30. 18% GST payable on Transportation of Parcels by GSRTC in its Buses

Case Name : In re Gujarat State Road Transport Corporation (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/15
Date of Judgement/Order : 22/03/2022

GSRTC entered agreement with M/s Ashapura Trade and Transport Private Limited (hereinafter referred to as Ashapura) to provided space in its buses, on top of the bus as well as in bus cabin, for transporting parcels of Ashapura. The parcels booked by Ashapura and transported by the buses run by GSRTC from one station to another station which comes in its (bus route) scheduled route. GSRTC submits that it is not issuing any consignment note, nor is engaged in door to door delivery of the parcels booked by Ashapura. For the transportation of said parcels, GSRTC receives consideration as per the agreement.

AAR finds that GSRTC provides services to such firms/ agencies (its service recipients) carrying on the business of transportation of parcels, specific allied services. We agree with GSRTC that it itself is not a courier agency as it is not engaged in door to door transportation of goods/articles/documents. It is a fact on record that Ashapura is engaged in door to door transportation of its parcel goods but not GSRTC. What we find from the agreement is that GSRTC's services to Ashapura is supporting the business of Ashapura, by transporting the parcels of Ashapura from one destination to other, wherein Ashapura is both the consignor and consignee at the respective bus stations. Ashapura utilises the services of GSRTC for enabling it (Ashapura) for door to door delivery of parcels. Further, the specific activity of GSRTC supplying parcel office space/cabin/shed to Ashapura falls under the category of infrastructural support services which is a subset of Business Support Services. We hold GSRTC supplies Business Support Services to its service recipient. The standard agreement submitted before us asserts our findings.

Though GSRTC transports goods by road in its buses and issues parcel receipt, we are not inclined to accord this activity of GSRTC to fall under goods transport agency service for the following reasons,-

i. The service description in subject matter is Business Support Service and GSRTC supports the services to be supplied by Ashapura to its (Ashapura's) recipients.

ii. GSRTC in the said agreement at para 7(q) submits that it is not responsible or liable in case the parcels, courier covers is lost or damaged in transit, in the buses or premises or bus stations, recipient shall be solely responsible and liable for the same.

What we find is that although a parcel receipt is issued by GSRTC, it absolves itself from any responsibility of the parcels after receipt. Thus we find it hard to equate this parcel receipt to a consignment note wherein the responsibility of the goods being transported is not on the consignee.
iii. Further, the consideration received by GSRTC includes the following:-

a. Charges for transportation of parcel
b. Charges for providing parcel office space.

In continuum to holding that GSRTC is not supplying goods transport agency service, we also concur with GSRTC that its services will not be classified as supporting services for road transport under SAC 99674.

In this specific scenario presented before us, GSRTC supplies Business Support Service to its recipient. 2. SAC is 998599, covering Other Support Services n.e.c.; GST rate being 18%.

31. 18% GST payable on works contract services to TANGEDCO for retrofitting work

Case Name : In re PSK Engineering Construction & Co. (GST AAAR Tamilnadu)
Appeal Number : Order No. TN/AAAR/05/2022(AR)
Date of Judgement/Order : 23/03/2022

Question Raised

1. What is the rate of GST to be charged on providing works contract services to TANGEDCO for carrying out retrofitting work for strengthening the NPKRR Maaligai against seismic and wind effect and modification of elevation in TNEB headquarters building at Chennai.
2. Whether the entry in Sl.No.3 item (vi) of the Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended is applicable to the appellant in instant case.

AAAR upheld following Ruling of AAR on above Questions

1. The rate of GST to be charged on the services provided by the applicant to TANGEDCO for carrying out retrofitting work for strengthening the NPKRR Maaligai against seismic and wind effect and modification of elevation in TNEB headquarters building at Chennai is 18% ((9% CGST + 9% SGST) as per SL.No.3(xii) of Notification no. 11/2017-Central Tax (Rate) dated 28.06.20177 as amended.

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

32. AAR Telangana cannot give ruling in respect of Supply in Maharashtra

Case Name : In re Rajasekhar Reddy Tummuru (GST AAR Telangana)

Appeal Number : TSAAR Order No. 19/2022
Date of Judgement/Order : 29/03/2022

Questions raised: Whether the person registered in the State of Telangana who is in possession of an immovable property in the State of Maharashtra is required to be registered in the State of Maharashtra for provision of service related to Renting of Immovable property?

Held by AAR Telangana: As seen from the material papers submitted by the applicant, the place of supply of service under Sub Section 3 of Section 12 of the IGST Act is in the State where the immovable property is located and therefore this AAR is not the appropriate forum in terms of Section 96 of the CGST Act, 2017. Therefore the application is rejected.

33. Value of supply includes interest or late fee or penalty for delayed payment

Case Name : In re Hyderabad Metropolitan Water Supply And Sewerage Board (GST AAR Telangana)
Appeal Number : TSAAR Order No.18/2022
Date of Judgement/Order : 29/03/2022

The applicant M/s. Hyderabad Metropolitan Water Supply and Sewerage Board is making payments to the contractors in equated yearly installment manner where in such equated yearly installment consists of both principal amount and interest on such delayed payment. The applicant is desirous ascertaining their liability on payment of GST on interest for delayed payment.

The clause (d) of sub section 2 of Section 15 clearly states that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. Therefore all the monies paid to the contractor by the applicant including the interest on delayed payments is liable to tax under CGST Act, 2017 under this provision.

Q1. HMWS&SB being local authority, is payment of Equated Yearly Installment (which includes Principal and Interest) under Annuities Model is liable for payment of GST or Not? If Yes Classification of service and applicable rate of GST payable?

Interest is part of consideration as per the valuation rules discussed above. Therefore no separate classification exists.

Q2. Applicability of Entry No. 3 of the Notification Number 12/2017 – Central Tax (Rate), dt: 28th June, 2017 for payment of interest included in Equated Yearly Installments under Annuities Model, being payment of interest is a Pure Service?

In view of the above discussion, the question does not arise.

34. 18% GST payable on 'Ready to Eat' popcorn sold in retail packages

Case Name : In re Agro Tech Foods Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 17/2022
Date of Judgement/Order : 29/03/2022

What would be the correct HSN classification and consequently rate of GST applicable on 'Ready to Eat' popcorn sold in retail packages?

HSN classification is '1904' and the rate of tax is 9% SGST & CGST each.

35. Person not making or proposing to make any supplies of goods or services cannot apply for Advance Ruling

Case Name : In re Poli Vasudeva Reddy (GST AAR Telangana)
Appeal Number : TSAAR Order No.16/2022
Date of Judgement/Order : 29/03/2022

Section 95(c) defines applicant as any person registered or desirous of obtaining registration under this Act. And Section 95(a) enumerates that an Advance Ruling needs decision for providing in relation to supply of goods or services undertaken or proposed to be undertaken by the applicant. In the present case, the person applying for Advance Ruling does not qualify under Section 95(c) to be an applicant and also he is not making or proposing to make any supplies of goods or services. In view of these facts, an Advance Ruling cannot be given by this authority. Hence the application is rejected.

36. GST on design & development of patterns used for manufacturing of camshafts for Overseas Customers

Case Name : In re Precision Camshafts Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 22/2020-21
Date of Judgement/Order : 29/03/2022

Question: – Whether the activity of design and development of patterns used for manufacturing of camshafts, for a customer is a composite supply, the principal supply being supply of services?

Answer :- The activity of design and development of patterns used for manufacturing of camshafts, for a customer is a supply of service in the form of intermediary services.

37. AAR Telangana cannot pass ruling for Place of Supply Outside Telangana

Case Name : In re Growthmode Consulting Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No.15/2022
Date of Judgement/Order : 29/03/2022

As seen from the material papers submitted by the applicant, the place of supply of service under Section 12(2) of the IGST Act is in the State of Maharashtra and therefore this AAR is not the appropriate forum in terms of Section 96 of the CGST Act, 2017. Therefore the application is rejected.

38. GST on design & development of patterns used for manufacturing of camshafts for Overseas Customers

Case Name : In re Precision Camshafts Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 22/2020-21
Date of Judgement/Order : 29/03/2022

Question: – Whether the activity of design and development of patterns used for manufacturing of camshafts, for a customer is a composite supply, the principal supply being supply of services?

Answer :- The activity of design and development of patterns used for manufacturing of camshafts, for a customer is a supply of service in the form of intermediary services.

39. AAR cannot give ruling on issue already decided by any Authority

Case Name : In re Vinit Gloves Manufacturing Pvt. Ltd. (GST AAR West Bengal)
Appeal Number : Advance Rulings No. 25/WBAAR/2021-22
Date of Judgement/Order : 29/03/2022

In addition to the fact that the applicant has not made the application in FORM GST ARA-01 on the common portal, the first proviso to sub-section (2) of section 98 of the GST Act speaks that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

During the course of hearing, the authorised representative of the applicant submits that the proper officer has already decided the issue and disposed of the application for refund.

The instant application is, therefore, found liable for rejection. The aforesaid observation has been brought to the notice to the authorised representative of the applicant in terms of provision laid down in sub-section (2) of section 98 of the Act ibid who has admitted the same.

The application is, therefore, rejected in terms of sub-section (2) of section 98 of the GST Act.

40. Applicant cannot be treated as fair price shop if not supplying to ration card holders: AAR

Case Name : In re Provat Kumar Kundu (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 24/WBAAR/2021-22

Date of Judgement/Order : 29/03/2022

We now proceed to decide whether an agent can be regarded as a fair price shop or not. It appears that a fair price shop is licensed to sell public distribution commodities against ration documents (refer: Para 2.13) i.e., a fair price shop supplies S. K. Oil, along with other public distribution commodities, to the ration card holders only.

The applicant, on the other hand, procures S.K.Oil from the Oil Marketing Company (Indian Oil Corporation Limited, in the given case of the applicant) and supplies the same to the dealers who in turn supplies it to the consumers i.e., the ration card holders. The Sub-Divisional Controller, Food & Supplies, Ranaghat issues delivery orders to the applicant for supply of S.K.Oil, which inter alia contains (i) Name of the S.K.Oil Retailer and (ii) Name of the tagged FPS Dealer.

In the light of the aforesaid facts, we are of the view that the applicant cannot be regarded as a „fair price shop'. Since the entry serial number 11A of Notification No. 1498-FT dated 22.08.2017 [Central Notification No. 21/2017-Central Tax (Rate) dated 22.08.2017] specifically refers supply of services provided by Fair Price Shops (FPS) and the applicant doesn't qualify to be a „fair price shop', we refrain to discuss on applicability of the other aspects of the supply as referred to in the said entry i.e., (i) whether the applicant is supplying services to State Government or (ii) whether the applicant receives consideration in the form of commission or margin.

41. AAR explains meaning of Fair Price Shop

Case Name : In re Nathmull Bhagchand Jain (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 23/WBAAR/2021-22
Date of Judgement/Order : 29/03/2022

We find that in exercise of the power conferred by Section 3 of the Essential Commodities Act 1955, the Government of West Bengal issued the West Bengal Public Distribution System (Maintenance & Control) Order, 2013 on 8th August 2013. The said order defines fair price shops as following:

"Fair Price Shop" means a shop engaged and licensed under this Control Order for distribution of public distribution commodities against ration documents"

It appears from the above definition that a fair price shop is licensed to sell public distribution commodities against ration documents i.e., a fair price shop supplies S.K.Oil, along with other public distribution commodities, to the ration card holders only.

The applicant, on the other hand, procures S.K.Oil from the Oil Marketing Company and supplies the same to the MR Dealers (ration dealers). We are, therefore, of the view that the applicant cannot be regarded as a „fair price shop'.

42. GST on services to State Government for collection & disposal of bio-medical waste

Case Name : In re SNG Envirosolutions Pvt. Ltd. (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 21/WBAAR/2021-22
Date of Judgement/Order : 29/03/2022

Whether services for collection and disposal of bio-medical waste from various clinical establishments provided by the applicant shall be exempted vide serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?

Supplies provided by the applicant to State Government for collection and disposal of bio-medical waste from various clinical establishments shall get covered under entry serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017 State Tax (Rate) dated 28/06/2017.

(VIII) COURT ORDERS/ JUDGEMENTS

1. GST Registration cannot be cancelled in violation of principles of natural justice

Case Name : Latika Ghosh Vs The Commercial Tax Officer/Assistant Commissioner (Calcutta High Court)
Appeal Number : MAT 112 of 2022 With IA No. CAN 1 of 2022
Date of Judgement/Order : 01/03/2022

1. The court ordered for the restoration of the appellant's certificate of registration under the provisions of both West Bengal Goods & Service Tax Act and Central Goods & Service Tax Act within one week after noting that the order for cancellation of registration is in violation of principles of natural justice.

2. The Court further noted that the order of cancellation of the registration made by the state authorities as well as central authorities is unsustainable and the order rejecting the application for revocation dated October 6, 2021 is also not tenable.

3. If, according to the state authorities, the late fee remitted by the appellant falls short of any amount as per the Department computation then the appellant is entitled to know for which a show cause notice should have been issued", the Court underscored further.

4. Liberty was however granted to the authorities to issue show cause notice to the appellant.

5. The appellant was also allowed to submit a reply and thereafter a a speaking order was ordered to be passed in accordance with law.

2. GST Refund Application cannot be rejected merely for delay: HC

Case Name : Gamma Gaana Limited Vs Union of India (Allahabad High Court)
Appeal Number : Writ Tax No. 173 of 2022
Date of Judgement/Order : 03/03/2022

The Hon'ble High Court of Allahabad has declared in Gamma Gaana Limited Vs. Union of India & 3 others in Writ Tax No. 173 of 2022/Dated.- March 3, 2022 that the refund application of the petitioner could not have been rejected by the respondent officer merely on the ground of delay, ignoring the order of Hon'ble Supreme Court in its order dated 10.01.2022 where it was held that "In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."

Facts of the case

Petitioner filed refund application for tax period from April to June, 2018, July to September, 2018 and October to December, 2018, which have been rejected by the impugned order under challenge in the Writ Petition herein. As per the said order, the period of limitation for filing refund application in terms of Section 54(1) of the CGST/UPGST Act, had expired in September, 2020 and even period extended by the department has also expired on 30.11.2020. Thereafter, petitioner filed refund application on 31.03.2021, which has been rejected by the impugned order on the ground of delay. According to the petitioner assessee the period between 15.03.2020 to 28.02.2022 has been directed by the Supreme Court to be excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, vide order dated 10.01.2022 in Misc. Application No. 21 of 2022 in Suo-Moto Writ Petition (C) No.3 of 2020.

Held by the Court

♦ The order dated 10.01.2022 in Misc. Application No. 21 of 2022 in Suo-Moto Writ Petition (C) No.3 of 2020 has been passed by Hon'ble Supreme Court due to the prevailing situation on account of the Covid pandemic. On the fact of the present case, it finds that the refund application of the petitioner could not have been rejected by the respondent officer merely on the ground of delay, ignoring the afore quoted order of Hon'ble Supreme Court.

♦ Under the circumstances, the impugned order cannot be sustained and is hereby quashed. Matter is remitted back to the respondent No.4 to decide the refund application of the petitioner in accordance with law, by reasoned and speaking order, expeditiously and preferably within six weeks from the date of presentation of copy of the order, after affording reasonable opportunity of hearing to the petitioner.

3. HC issues notice of Motion- Section 130- Invocation for confiscation of goods & conveyance in transit

Case Name : Chirag Steel Vs the State of Punjab & Others (Punjab and Haryana High Court)
Appeal Number : CWP-3141-2022
Date of Judgement/Order : 03/03/2022

Punjab & Haryana HC issues Notice of Motion to consider whether Section 130 can be invoked for confiscation of goods and conveyance in transit after amendment as the said section has been amended vide Finance Act, 2021 effective from 01.01.2022.

Relevant Provisions:
Section 130 of the CGST Act, 2017 & Punjab GST Act, 2017.

Brief Facts:
In the present case, petitioner purchased goods through broker and when the goods were being transported, the same were inspected and detained by the State Tax

Officer-Mobile Wing on the ground that owner/driver had not tendered relevant documents. Consequently, the Assisstant Commissioner of State Tax confiscated the goods and conveyance u/s 130 of CGST Act, 2017, and issued notice in Form GST MOV-10. Hence, the petitioner has challenged the confiscation of goods and conveyance in transit under Section 130 of the CGST Act/Punjab GST Act, 2017

Issue:
Whether Section 130 can be invoked for confiscation of goods and conveyance in transit after amendment vide Finance Act, 2021 effective from 01.01.2022 ?

Order:
A Bench headed by Hon'ble Justice Ajay Tewari heard the submissions of Advocate Sandeep Goyal, appearing on behalf of Petitioner who contended that the said notice is without jurisdiction as the source of deriving power to confiscate the goods and vehicle, itself is not in existence at the time of issuance of the notice as Section 130 got amended w.e.f. 01.01.2022 and now the power to detain the goods in transit is only available under section 129.

The Hon'ble Division bench on hearing the contention 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 15.03.2022.

4. HC suspends order cancelling GST registration based on Vague reasons

Case Name : Galaxy Mechanical Engineering Equipments Private Ltd. Vs Assistant Commissioner (Calcutta High Court)
Appeal Number : W.P.A. 2857 of 2022
Date of Judgement/Order : 03/03/2022

In this matter, petitioner has challenged the impugned show-cause notice for cancellation of registration of the petitioner and suspending the registration of the petitioner by the same impugned show-cause notice itself and petitioner has further challenged the impugned show-cause notice for cancellation of registration on the ground that the same was passed without providing any opportunity of hearing to the petitioner and, furthermore, the impugned order of cancellation of registration is a non-speaking order and also on the ground of non-application of mind by recording in the said impugned order of cancellation that the respondent has considered the reply in response to the impugned show-cause notice while in fact, no such reply was given. So far as the allegation with regard to passing a non-speaking order is concerned, on perusal of the aforesaid impugned order of cancellation of the registration, I am convinced that the allegation of the petitioner is correct since no reason has been given in the impugned order of cancellation and is non-speaking order and is not sustainable in law and accordingly the impugned order of cancellation of registration of the petitioner is set aside and all legal consequences will follow. So far as part of the impugned show-cause notice for cancellation of registration, where registration of the petitioner has been suspended this part of the impugned order will remain suspended since the allegation in the impugned show-cause notice is very vague and one line allegation without any basis and for the ends of justice a person against whom

a show-cause notice has been issued, he should be at least provided in brief the basis of such allegation so that the person can meet the allegations in show-cause notice. Impugned order of suspension will remain suspended till the reply to the impugned show-cause notice is given and hearing is given on the same and is disposed of by passing a reasoned and speaking order in accordance with law.

With this observation and direction, this writ petition being WPA No.2857 of 2022 is disposed of.

5. Swiggy Case: GST recovered at the time of search/inspection not Voluntary

Case Name : Union of India Vs Bundl Technologies Private Limited (Karnataka High Court)
Appeal Number : W.A. No. 1274 of 2021
Date of Judgement/Order : 03/03/2022

In this case The Officers of the Department entered the premises of the Company on 28.11.2019 at 10.30 a.m. During the course of the investigation from 28.11.2019 till 30.11.2019, DGGI Officers issued spot summons to the Directors and employees of the Company and their statements were recorded by the DGGI Officers. On 30.11.2019 at about 4.00 a.m., a sum of Rs.15 Crores was deposited by the Company under the GST cash ledger. On 30.11.2019 itself the Officers of the Company handed over the documents to DGGI officers between 6.45 a.m. to 8 a.m.

It is pertinent to note that a division bench of Gujarat High Court in M/S BHUMI ASSOCIATE VS. UNION OF INDIA by an interim order directed the Central Board Of Indirect Taxes And Customs was directed to enforce the following guidelines by issuing suitable circular / instructions:

(1) No recovery in any mode by cheque, cash e-payment or adjustment of input tax credit should be made at the time of search / inspection proceedings under Section 67 of the Central / Gujarat Goods and services Tax Act, 2017 under any circumstances.

(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC 03, the assesee should be asked / advised to file such Form DRC 03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.
(3) Facility of filing complaint / grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.
(4) If complaint / grievance is filed by assessee and officer is found to have acted in defiance of the afore stated directions, then strict disciplinary action should be initiated against the concerned officer.

The guidelines issued by the division bench are intended to regulate the powers of officers carrying out search and seizure as well as to safeguard the interest of the assessee.

The issue which arises for consideration is whether amount of Rs.27,51,44,157/- has been paid by the company on its own ascertainment under section 74(5) of the Act. In the instant case, there is no material on record to indicate that the amount of Rs.15 Crores and an amount of Rs.12,51,44,157/- which were paid at about 4AM and 1PM on 30.11.2019 and 27.12.2019 respectively were paid on admission by the Company about its liability. There is no communication in writing from company to the proper officer about either self-ascertainment or admission of liability by company to infer that such a payment was made under Section 74(5) of the Act. The company intimated the Department vide Communication dated 30.11.2019 that it reserves its right to claim refund of the amount and the same should not be treated as admission of its liability.

Thus it is evident that payments have not been made admitting the liability. On the other hand, the company reserved its right to seek refund and made it expressly clear that payment of the amount should not be treated as admission of its liability. Besides the aforesaid, there is no material on record to establish that guidelines issued by division bench of High Court of Gujarat were followed.

Thus for the aforementioned reasons, the first issue is answered in the negative and it is held that the amount was not paid voluntarily under Section 74(5) of the CGST Act.

6. No provision in law for lapsing of ITC available on cut-off-date of 30.06.2017

Case Name : Avatar Petro Chemicals Private Limited Vs Goods and Service Tax Council (Madras High Court)
Appeal Number : W.P (MD). No. 7093 of 2020
Date of Judgement/Order : 04/03/2022

There is no provision under the provisions of the respective GST enactments for lapsing of the input tax credit and the credit availed on capital goods under the respective enactments. These credits are indefeasible. They were meant for being used for discharging the tax liability under the provisions of the erstwhile Central Excise Act, 1944, and under the provisions of Chapter V of the Finance Act, 1994.

I do not find any merits in the stand of the respondents to deny the credit, which may have been legitimately earned by an Assessee or a Dealer under the provisions of the respective enactments, which stood subsume into the respective GST enactments. Since uploading of TRAN-1 may be a challenge at this distant point of time due to technicality involved therein, the amount can be credited directly into the petitioner's GST Electronic Register, if such amounts were indeed available on the cut-off-date as of 30.06.2017 for being transitioned.

In view of the above, I remit the case back to the jurisdictional authorities to examine the credit in the respective returns of the petitioner which the petitioner claims to have attempted to transition by uploading TRAN-1 after the enactment of GST Act with effect from 01.07.2017 and come to an independent conclusion on the same. In case, credit on such input and/or capital goods existed and had remained unutilized on 30.06.2017 and could have been transferred if TRAN-1 was filed properly, then the

proportionate amount shall be credited into the Electronic Credit Register of the petitioner, within a period of 90 days from the date of receipt of a copy of this order.

7. Despite existence of alternative remedy in case of violation of principles of natural justice HC can accept writ petition

Case Name : Bharat Mint And Allied Chemicals Vs Commissioner Commercial Tax (Allahabad High Court)
Appeal Number : Writ Tax No.1029 of 2021
Date of Judgement/Order : 04/03/2022

The stand taken by the respondents in the counter affidavit that the writ petition is not maintainable as the petitioner has an alternative remedy of appeal under Section 107 of the Act, can also not be accepted inasmuch as it is settled law that availability of alternative remedy is not a complete bar to entertain a writ petition under Section 226 of the Constitution of India. Certain exceptions have been carved out by Hon'ble Supreme Court that a writ petition under Article 226 of the Constitution of India may be entertained even there is an alternative remedy. One of the principle in this regard is that if the order impugned has been passed in gross violation of principles of natural justice. It is admitted case of the respondents that no opportunity of personal hearing, as contemplated under Section 75(4) of the Act, 2017, was afforded to the petitioner before passing the impugned order.

During the course of hearing of this writ petition, learned standing counsel has produced before us a photo stat copy of the order of the Assessing Authority relating to the impugned order and perusal thereof shows that no opportunity of hearing as contemplated under Section 75(4) of the Act, 2017 was not afforded to the petitioner. Thus, there being patent breach of principles of natural justice, the present writ petition is maintainable against the impugned order.

8. GST recovery during investigation is ingenious way of creating liquidity crunch: HC

Case Name : MNS Enterprises Vs Additional Director General (Madras High Court)
Appeal Number : W.P.No.20067 of 2021
Date of Judgement/Order : 04/03/2022

If the payment was coerced to be paid into the Electronic Liability Register of the petitioner by obtaining a letter from the petitioner, it may be ingenious way of creating liquidity crunch to ensure such amount is not frittered away. As mentioned above, whether the payment was under compulsion or otherwise, cannot be decided in this summary proceeding. It is for the petitioner to work out the remedy under law for refund of the amount under Section 54 of the CGST Act, 2017 read with provisions of Chapter X of the CGST Rules, 2017.

28. Even otherwise, considering the fact that there are serious allegations against the petitioner of having an availed fraudulent input tax credit in the Electronic Credit

Ledger on the strength of bogus and factious input tax invoice for discharging GST liability, with no supply, no refund can be ordered straight away in this proceedings.

At the same time, the invocation of Section 79(1)(c) at the moment is pre-mature. Recovery under Section 79 of the Act has to be in accordance with Chapter XVIII of CGST Rules, 2017. Recovery under Section 79(1)(c) of the Act has to be in consonance with Rule 145 of the CGST Rules, 2017.

Considering the fact that the respondent is investigating, the case, which commenced during the month of August-September, 2021, respondent is directed to complete investigation within a period within a period of 3 months from today and issue appropriate Show Cause Notice under Section 73 or 74 of CGST Act, 2017.

The amount lying in the Electronic Liability Register of the petitioner can be refunded only the manner in the law. It cannot be ordered to be refunded. It can however be utilised by the petitioner for discharging tax liability against future supplies to be made/effected by the petitioner provided of course prior to such supply, the tax to be paid by the petitioner is adjudicated and determined and appropriated in the proposed proceedings under Section 73/74 of the CGST Act, 2017, in which case, Section 79 of the CGST Act, 2017 can be pressed into service.

Though, it is quite possible for the petitioner to establish that the letter was obtained from the petitioner under coercion to ensure that the petitioner's client to pay the amount into the aforesaid Electronic Liability Register, it is to be decided elsewhere and not here. As the amount has not been debited and since it has not been appropriated so far, there is no scope for granting any relief to the petitioner in this writ petition. I therefore do not find any merits in the present Writ Petition. Therefore, the present Writ Petition is liable to be dismissed. I however, give liberty to the petitioner to work out an appropriate remedy under Section 54 of the CGST Act read with Chapter X of the CGST Rules.

9. GST Registration not cancellable by merely describing the firm as 'bogus'

Case Name : Apparent Marketing Private Limited Vs State Of U.P. (Allahabad High Court)
Appeal Number : Writ Tax No. 348 of 2021
Date of Judgement/Order : 05/03/2022

GST registration once granted could be cancelled only if one of the five statutory conditions was found present. Per se, no GST registration may be cancelled by merely describing the firm that had obtained it, was 'bogus'. The word "bogus" has not been used by the statute. The only contingency to which such expression may relate may be one appearing under Clauses (c) and (d) of Section 29(2) of the Act being where a registered firm does not commence its business within six months of its registration. Other than that, the term "bogus" may also refer to a satisfaction contemplated by Section 29(2)(c) of the Act where registration may be cancelled if the registered firm has not furnished its return for continuous period of six months. Those conditions have not been shown to exist in this case.

Yet, in case the authority wanted to cancel the existing registration, it ought to have mentioned (in the show cause notice), if it proposed to cancel the registration for violation of Section 29(2)(c) of the Act or for violation of Section 29(2)(d) of the Act. It cannot be a matter of contemplation or option either with the authority or the assessee to find out for itself by any guesswork or exploratory exercise, if the case fell in any of the conditions of Section 29(2) of the Act.

Registration having been granted earlier, the obligation existed on the authority to specify the exact reason/charge on which it proposed to cancel the registration. In the present case, unless the respondent authority had first specified the reason why it proposed to cancel the registration and unless the authority had specified the reason why it was attempting to treat the assessee firm “bogus” i.e. whether reference was being made to Section 29(2)(c) or Section 29(2)(d) of the Act – by specifically stating the facts as may give rise to that charge and unless the supporting material giving rise to that charge had been referred to in that notice, the notice itself remained defective in material aspect.

Though the notice for cancellation of registration may not be placed on a high pedestal of a jurisdictional notice, at the same time, unless the essential ingredients necessary for issuance of such notice had been specified therein at the initial stage itself, the authorities cannot be permitted to have margin or option to specify and/or improve the charge later.

In the present case, by merely describing the assessee firm “bogus”, the respondent authority did not make known to the assessee the exact charge that was being levelled against the assessee. Correspondingly, the respondent authority deprived the assessee of the necessary opportunity to rebut the charge.

In view of the discussion made above, the charge levelled in the notice dated 22.07.2020 and as was reiterated in the order dated 13.08.2020 and the further notice dated 2 1.08.2020 are wholly, vague. Effectively, it prevented the assessee to rebut the same. The statute contemplates issuance of the notice in specified circumstances for specific grounds. Those could not be diluted or muddled or made vague by describing the assessee firm as “bogus”. In absence of any specific charge, the respondent authority could not be permitted to proceed to cancel the assessee’s registration. Though it may remain open to the Assessing Authority to issue a fresh notice with exact charge specification, the proceedings arising from the impugned notice is inherently defective.

10. Passing of fraudulent ITC by creating bogus firms- HC grants bail to accused

Case Name : Mohsin Salimbhai Qureshi Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Criminal Misc. Application No. 91 of 2022
Date of Judgement/Order : 07/03/2022

Present Bail application was filed by, the present applicant, who was allegedly found indulged in receiving and passing of fraudulent ITC to their buyers by way of creating a chain of bogus firms, without physical receipt and supply of goods.

HC observed that Section 132(1)(i) provides for punishment as that 'in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine; and section 132(2) provides that, where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Section 138 of the Act makes provision for compounding of offences under the Act, even after the institution of prosecution, on payment by the person accused of the offence, such compounding amount in such manner as may be prescribed. The compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences, on payment of compounding amount as may be determined by the commissioner, the criminal proceeding already initiated in respect of the said offence shall stand abated.

Taking into consideration the provisions of law and the fact that the Commissioner is empower to recover the due amount and propose for abating the proceedings and as the trial will take its own time to conclude, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

Hence, the present application is allowed. The applicant is ordered to be released on regular bail.

11. GST: HC upheld order imposing conditions on release of seized goods & vehicle

Case Name : State Tax Officer, Bureau of Investigation (North Bengal) Vs Surinder Kumar Kotnala & Ors. (Calcutta High Court)
Appeal Number : MAT 1328 of 2021
Date of Judgement/Order : 08/03/2022

1. This intra Court appeal is directed against the interim order dated 25th November, 2021 in W.P.A. No.16096 of 2021 filed by the respondent nos.1 and 2 herein. The respondent nos.1 and 2 had challenged an order passed by the Appellate Authority under the provisions of the CGST Act, 2017 dated 15th September, 2021 confirming the order of the adjudicating authority dated 6th May, 2021 in levying tax of Rs.26,45,299/- and penalty of Rs.37,84,829 on the alleged ground that the goods were attempted to be offloaded in the State of West Bengal, though the goods were consigned to the State of Assam. The goods have been detained along with the vehicle since March, 2021 since the appellant could not avail the alternative remedy provided under Section 112 of the Act before the Appellate Tribunal as there is no forum as on date the writ petition was filed challenging the order of the Appellate Authority.

2. The respondent nos.1 and 2 prayed before the learned Single Bench for release of the goods as well as vehicle as the goods, which is said to be pan masala is unfit for

consumption on account of the fact that the goods were detained ever since March, 2021 and the vehicle also has deteriorated on account of exposure to the fury of weather.

3. The learned Single Bench on taking note of the fact that there is no forum available for the respondent nos.1 and 2 to challenge the order passed by the Appellate Authority, entertained the writ petition and imposed a condition on the respondent nos.1 and 2 for release of the vehicle and the goods. The learned Single Bench had directed 20% of the disputed tax amount to be paid by the respondent nos.1 and 2 so as to be entitled to release of the goods and the vehicle taking note of the fact that at time of filing of the appeal before the Appellate Authority, the first respondent, the consignee in the State of Assam, who claims ownership of the goods had deposited 10% of the disputed tax.

4. The revenue is aggrieved by such order on the ground that if the vehicle and the goods are released, the interest of the revenue will not be protected and such an order could not have been passed, more particularly in the light of the condition stipulated in Section 112(8)(a).

5. We have heard Mr. Debasish Ghosh, learned counsel appearing for the appellant and Ms. Rita Mukherjee, learned counsel appearing for the respondent nos.1 and 2.

6. It is not disputed by the revenue that as on date there is no Appellate Tribunal available for the respondent nos.1 and 2 to challenge the order passed by the Appellate Authority dated 15th September, 2021. Therefore, the writ petition was rightly entertained by the learned Single Bench. With regard to the direction issued by the writ Court for release of the goods and the vehicle, it is an order in exercise of discretion by the learned writ Court. Unless and until the exercise of discretion is absolutely unreasonable and arbitrary, as an Appellate Court, seldom such directions are interfered with. In the instant case, the first respondent does not admit any tax liability as their case is that the goods were consigned from the State of Uttar Pradesh to be delivered in the State of Assam and the consignee is the first respondent herein and the second respondent is the transporter.

7. The further case of the respondents / writ petitioners is that the driver of the vehicle, who also hails from the State of Uttar Pradesh had mistakenly taken a different route and travelled about 21 kilometers into the State of West Bengal and there was no intention on the part of the respondent nos.1 and 2 to deliver the goods within the State of West Bengal.

8. It is the further case of the first respondent that he is the consignee and the owner of the goods has shown his bona fide by appearing before the tax authorities and claiming ownership of the goods and praying for release of the goods and the vehicle to be taken to the State of Assam. By efflux of time, the goods are no longer safe for consumption and the vehicle has also undergone deterioration on account of the same being detained for nearly a year.

9. As long as the respondent nos.1 and 2 do not admit any of the tax liability or interest or fine or penalty, the question of invoking Clause (a) of Section 112 (8) would not arise. If that is the fact situation, then it has to be seen as to whether Clause (b) of Section 112(8) has been complied with. In fact, the learned writ Court bearing the same in mind had directed payment of additional 20% of the disputed tax, which the first respondent has already deposited.

10. Thus, we find that the exercise of discretion is neither improper or irrational for us to interfere. The interest of revenue stands sufficiently safeguarded as 30% of the disputed tax has been collected by the department. This Court expressed a concern that the product being pan masala and vehicle along with the goods having been detained for almost a year, the same would be unfit for consumption. This factual position is admitted by the first respondent.

11. The Court also expressed a concern that the first respondent, the consignee / owner of the goods, if is allowed to take the goods to the State of Assam, there may be a likelihood that the goods may be sold in the open market, which would be harmful. Taking note of the concern expressed by the Court, the learned counsel appearing for the respondent nos.1 and 2, on instruction, submitted that the first respondent may be permitted to send back the goods to the consignor in the State of Uttar Pradesh. If such permission is granted, it would ensure that the goods are not sold in the State of Assam and at the same time, would go back to the consignor in the State of Uttar Pradesh.

12. So far as the merits of the matter is concerned, it will be well open to the parties to agitate the same before the learned Single Bench, before which the appellant has to file affidavit-in-opposition, which has not been filed till date.

13. In order to safeguard the interest of revenue as well as to ensure that the respondent nos.1 and 2 cooperate in the proceedings, we are of the view that the balance amount of the disputed tax should be secured by the respondent nos.1 and 2 by executing a bond in the form as approved by the appellant.

14. Further the second respondent, the transporter, shall also undertake to produce the vehicle before the appellant authorities as and when required and to such an effect an undertaking shall also be executed in favour of the appellant authorities.

15. In the result, we find no grounds to interfere with the order passed by the learned Single Bench exercising discretion, imposing conditions for the purpose of release of the impugned goods and the vehicle.

16. Accordingly, the appeal and the connected application stand disposed of by directing the respondent nos.1 and 2 to execute a bond in the form as approved by the appellant authorities securing the interest of the revenue and also a letter of undertaking to produce the vehicle-in-question as and when required. Needless to state that the respondent nos.1 and 2 shall cooperate in the proceedings that may be initiated by the appellant department. The vehicle along with the goods shall be released within three days from the date on which the above conditions are complied

with along with the specific condition that the goods shall be sent back to the State of Uttar Pradesh to the consignor.

17. Since the respondent nos.1 and 2 have already deposited the 20% of the disputed tax, upon execution of the bond and the undertaking as mentioned above, the goods shall be released within three days therefrom.

18. We make it clear that this order and direction is issued considering the peculiar facts and circumstances of the case and the same shall not be treated as a precedent, taking note of the fact that the owner of the goods, namely, the first respondent has unequivocally agreed to send back the goods to the consignor in the State of Uttar Pradesh.

19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

12. GST Provisional Attachment Order Not Valid after expiry of a period of one year

Case Name : Pashupati Properties Estate Private Limited Vs Commissioner of Central Taxes GST Delhi (Delhi High Court)
Appeal Number : W.P.(C) 3624/2022 & C.M.Nos.10740-10741/2022
Date of Judgement/Order : 08/03/2022

1. Present writ petition has been filed challenging the letter dated 07 December, 2020 issued under Section 83 of the CGST Act, 2017 whereby the Respondent has directed the Bankers of the Petitioner to provisionally attach immovable property No.6, The Greens, Rajokari, Delhi-110038 in the name of the Petitioner. Petitioner also seeks directions to the Respondent to release/de-freeze the immovable property of the Petitioner that was provisionally attached vide the impugned letter.

2. On the last date of hearing, learned counsel for the Respondent had sought time to obtain instructions.

3. Today Mr.Harpreet Singh, learned standing counsel for the Respondent states that after December, 2020, no fresh attachment order has been issued. He further clarifies that no show cause notice under Section 74 of the CGST Act has been issued to the Petitioner till date.

4. Admittedly, after the issuance of the impugned letter dated 07th December, 2020, no fresh attachment order in Form GST DRC-22 has been issued. According to Section 83(2) of the CGST Act, every provisional attachment order ceases to have effect after the expiry of a period of one year from the date the order was passed under Section 83(1) of the CGST Act. Consequently, the impugned provisional attachment order/letter is no longer effective. Accordingly, this Court directs the Respondent to defreeze the bank accounts and release the immovable properties of the Petitioner not later than three days from today.

5. With the aforesaid directions, the present writ petition along with pending applications stand disposed of.

13. GST Evasion: No anticipatory bail for an offence which is bailable

Case Name : V.K. Traders Vs Union of India (Allahabad High Court)
Appeal Number : Criminal Misc Anticipatory Bail Application No. 19059 of 2021
Date of Judgement/Order : 08/03/2022

The dispute in the present matter relates to an amount of Rs.1,80,86,343/-which is stated to be prima facie availed by M/s V.K. Traders the applicant no. 1 as an inadmissible Input Tax Credit (ITC). It is argued that the applicant no. 1 is the proprietorship firm of which the applicant no. 2 is the sole proprietor. It is argued that since in para- 28 of the counter affidavit it has specifically been mentioned that all the offences in which tax evasion is less than Rs. 5 crore remain bailable and only most grave offences involving tax evasion above Rs. 5 crore have been made non-bailable and cognizable offences and, as such, the amount in the present dispute is much less than Rs. 5 crore, and, hence the offences are bailable. It is argued that as such the applicant is entitled to be granted anticipatory bail.

Department opposed the prayer for anticipatory bail and argued that the present anticipatory bail application under Section 438 Cr.P.C. is not maintainable inasmuch as the amount involved, which has been availed by M/s V.K. Traders the applicant no. 1 and is an inadmissible Input Tax Credit is Rs.1,80,86,343/- which is much less than the amount which would make the offence non – bailable and cognizable.

This Court without going into the merits of the case proceeds to examine the following question which arises before it for its adjudication :

“Whether an application under Section 438 Cr.P.C. would lie and is maintainable for an offence which has been declared by the concerned statute as a bailable offence?”

As per Section 438 of the Code of Criminal Procedure, 1973 as introduced in the State of Uttar Pradesh on 06.06.2019 The provision of anticipatory bail as per its scheme can be invoked by a person who has a “reason to believe that he may be arrested” for committing a “non – bailable offence”.

For entertaining an application under Section 438 Cr.P.C., there are two requirements as contemplated in its Clause (1), which are as follows:

(i) There must be an accusation of the petitioner having committed a non-bailable offence. Obviously, this accusation must be an existing one or in any case stemming from the facts already in existence.
(ii) There must be reasonable apprehension or belief in the mind of the petitioner that he would be arrested on the basis of such an accusation.

The simultaneous existence of both these conditions is a sine qua non for invoking courts jurisdiction. When the said two requirements are fulfilled, the High Court or the

Court of Sessions could entertain an application for anticipatory bail and then consider it on its own merit.

In the case of Joginder @ Jindi vs. State of Haryana : (2008) 10 SCC 138 the Apex Court has also held that Section 438 Cr.P.C. relates to non – bailable offences and a petition under Section 438 Cr.P.C. in relation to bailable offences is misconceived.

In the case of K. Krishna Kumar Vs. State of Assam : (1998) 1 SCC 474 it has been held by the Apex Court that anticipatory bail cannot be granted in offences which are bailable.

It is thus concluded that the conditions prerequisite for the court's exercise of its discretion under Section 438 Cr.P.C. is that the person seeking such relief must have a reasonable apprehension of his arrest on an accusation of having committed a non-bailable offence.

14. VAT refund after 01.07.2017 must be Processed Under Section 142 (3) of CGST Act, 2017: HC

Case Name : Rainbow Stones Private Limited Vs Assistant Commissioner (ST) (Madras High Court)
Appeal Number : Writ Petition No.27482 of 2021
Date of Judgement/Order : 08/03/2022

Under Section 142(3) of CGST Act, 2017, it is provided that, every claim for refund filed by any person before, on or after the appointed day (i.e. 01.07.2017), for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law.

HC held that Even in respect of the applications which were filed and pending before the appointed date ie., 01.07.2017, the same could have been disposed of under the existing law ie., the TNVAT Act, which is possible under the transitional provision viz., Section 142(3) of the GST Act, which in fact has been quoted by the very respondent in the impugned order.

When that being so, it is not known as to what was the difficulty of the Revenue to decide such refund claim filed by the petitioner within the meaning of Section 142(3) of the GST Act read with the erstwhile provisions under the TNVAT Act. Without considering the application of the petitioner for refund, the present order of reversal of the alleged inadmissible input tax credit with penalty and interest was made. Therefore, the impugned order cannot be proceeded further and for the above reason, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the respondent to consider the application submitted by the petitioner by way of reply dated 23.05.2016 followed by reminder dated 30.12.2016 and in this regard, during the consideration, notice shall be given to the petitioner as well as the Revenue to have a personal

hearing and further inputs if any to be supplied by the petitioner and after having verified the documents including Form-W, refund claim of the petitioner shall be disposed of at the earliest. Till such time, the impugned order shall be kept in abeyance.

- It is made clear that, depending upon the outcome of the said application with regard to the refund claim of the petitioner under the erstwhile VAT Act read with Section 142(3) of the GST Act, further action pursuant to the impugned order can be decided accordingly.

15. HC grants bail to STO accused of false VAT Challan postings & Assessment

Case Name : Ashwinbhai Kantilal Joshi Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Criminal Misc. Application No. 3286 of 2022
Date of Judgement/Order : 08/03/2022

It is alleged against the present applicant, a Sales Tax Officer, who retired as Tax Superintendent, that in connivance with Advocate Kamlesh Heruwala and others, under the VAT Act, fraudulent postings and assessment had been done in relation to the registered traders.

After hearing The applicant is ordered to be released on regular bail in connection with the First Information Report being C.R. No.11195016210589 of 2021 registered with Deesa North Police Station, Banaskantha on executing a personal bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial Court and subject to certain conditions.

16. HC quashes GST order for not providing Fair opportunity of hearing to Assessee

Case Name : Ajay Kumar Singh Vs State of Bihar (Patna High Court)
Appeal Number : Civil Writ Jurisdiction Case No. 3878 of 2022
Date of Judgement/Order : 09/03/2022

HC held that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, ex facie, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed ex parte in nature, does not assign any reasons sufficient even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, ex parte in nature, passed in violation of the principles of natural justice, entails civil consequences. HC also find the authorities not to have adjudicated the matter on the attending facts and circumstances. All issues of fact and law ought to have been dealt with, even if the proceedings were to be ex parte in nature.

In view of the above HC quashed and set aside the impugned order dated 18.12.2021 passed by the Additional Commissioner of State Tax

17. 7% statutory Interest payable on delayed GST Refund

Case Name : SNG Impex Through Proprietor Satya Narayan Gupt Vs Principal Commissioner of Customs (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 141 of 2022
Date of Judgement/Order : 09/03/2022

At the outset, Mr. Choudhary, the learned counsel submitted that during the pendency of the present writ application, the refund of IGST of Rs.7,69,093/- has been sanctioned and paid to the writ applicant by way of a cheque. However, his only grievance now is that the statutory interest for the delayed payment at the rate of 7% has not been paid.

The issue as regards payment of interest is no longer res integra after the judgment of this High Court in the case of M/s. Amit Cotton Industries vs. Principal Commissioner of Customs, Special Civil Application No.20126 of 2018. In such circumstances, referred to above, the respondents are directed to calculate the interest on the principal amount at the rate of 7% and make the necessary payment to the writ applicant within a period of six weeks from today.

The Hon'ble High Court with the above findings disposed of the writ application.

18. Non-Constitution of GST Tribunal: Allahabad HC Refers matter to Larger Bench

Case Name : Apex Leather Vs State of U.P. (Allahabad High Court)
Appeal Number : Writ Tax No. 96 of 2022
Date of Judgement/Order : 09/03/2022

In view of alarming situation created due to non-establishing of State Bench and Area Benches of GST Tribunal in the State of Uttar Pradesh, rendering the entire class of dealers remediless under the Act, 2017 from availing statutory remedy of appeal under Section 112 of the Act, 2017, we are of the view that under the facts and circumstances and prevailing situation, the matter with regard to the following questions are referred to Larger Bench:-

(i) Whether by interim order dated 04.03.2021 in PIL CIVIL No.6024 of 2021 (Awadh Bar Association High Court, Lko Thru Gen.Secy. & Anr. vs. U.O.I.Thru Secy. Finance Ministry, New Delhi & Ors.), directing for not establishing GST Appellate Tribunal for State of Uttar Pradesh without leave of the court, could be passed in conflict with the final judgment dated 09.02.2021 in Writ Tax No.655 of 2018 passed by the Division Bench?

(ii) Whether under the facts and circumstances of the case and in the interest of dealers in State of Uttar Pradesh under the CGST Act/ U.P.GST Act, 2017, a direction needs to be issued immediately to the respondent No.4 to notify the State Bench and Area Benches of GST Appellate Tribunal in the State of Uttar Pradesh, within a time

bound period so that persons/ dealers may avail statutory remedy of appeal under Section 112 of the CGST Act/ U.P. GST Act, 2017 and they may not suffer further?

(iii) Establishment of the State Bench of GST Appellate Tribunal at Prayagraj and its four Area Benches in the State of Uttar Pradesh in terms of the final judgment of the Division Bench dated 09.02.2021 in Writ Tax No.655 of 2018 (M/s Torque Pharmaceuticals Pvt. Ltd. Union of India and 5 others) and other 29 connected writ petitions?

Let this order alongwith the records of the writ petition be placed before Hon'ble the Chief Justice for constitution of a Larger Bench so that people in the State of Uttar Pradesh having right to avail remedy of appeal under Section 112 of the CGST/ U.P. GST Act, 2017 may avail the statutory remedy and may not remain remediless.

19. HC grants Bail to GST Accused in views of conflicting views on the question of the inclusion or exclusion of the day of remand

Case Name : Rohit Mehta Vs Superintendent (Preventive) (Punjab and Haryana High Court)
Appeal Number : Criminal Revision No. 60 of 2022(O&M)
Date of Judgement/Order : 09/03/2022

The contention on behalf of the respondent- Department is that the day of remand is to be excluded while calculating the sixty days period. In view thereof 28.11.2021 would be the Sixtieth day, the same day the complaint had been filed. The application of the petitioner for default bail filed on 28.11.2021 could not have been allowed.

The petitioner as also the respondents have relied on a number of decisions. It is not deemed necessary to refer to them. All that needs to be noticed is that taking note the conflicting views on the question of the inclusion or exclusion of the day of remand for the purpose of calculating the period, Hon'ble Supreme Court in Enforcement Directorate Vs. Kapil Wadhawan & Anr (Criminal Appeal No.701-702 of 2020) referred the matter to a Larger Bench observing as under:

"8. Since the earlier position of law was not considered and the latest decision is of a 3 Judge Bench, it is necessary for a Bench of appropriate strength to settle the law taking note of the earlier precedents. Unless the issue is appropriately determined, the Courts across the country may take decision depending upon which judgment is brought to the Court's notice or on the Courts own understanding of the law, covering default bail under Section 167(2)(a) II of Cr.P.C.

9. In the above circumstances, we feel it appropriate to refer the above-mentioned issue to a larger Bench of this Court for an authoritative pronouncement to quell this conflict of views as the same shall enable the Courts to apply the law uniformly."

In view of the aforesaid, leaning in favour of an interpretation to the benefit of the accused, it is deemed appropriate that the petitioner be directed to be conditionally released on bail. Accordingly, this petition is allowed.

20. GST Evasion Case: No bar on issue of Section 70 Summons before final assessment

Case Name : Prakash Chandra Purohit Vs Union of India (Rajasthan High Court, Jodhpur Bench)
Appeal Number : D.B. Civil Misc. Stay Petition No.2754/2022 in D.B. Civil Writ Petition No. 2750/2022
Date of Judgement/Order : 09/03/2022

During the course of arguments, learned counsel for the respondents submit that at present the only purpose of issuing Summons u/s 70 of CGST Act to the petitioners is to record their statements seeking to extract the role of the petitioners in the affairs of the companies involved in GST evasion. Learned counsel for the respondents would further submit that the apprehension that everyone, who is being called to give statement is being arrested, is not correct.

We also find that number of persons were issued summons under Section 70 of the CGST Act and it is not a case that every person has been arrested. Whether or not the petitioners are involved in the alleged GST evasion would depend upon result of the investigation which is being carried out.

Furthermore, the submission of learned counsel for the petitioners that once Director of the companies involved in the alleged GST evasion is arrested and complaint is filed against him, no further action can be taken against any other person including the petitioners, does not appeal to us.

Another submission that proceeding under Section 70 of the CGST Act could be initiated only after a final assessment is carried out, is also, on prima facie considerations, not borne out from the statutory scheme of the CGST Act.

On prima facie considerations, we do not find that the issuance of summons to petitioners is without jurisdiction and authority of law. The action initiated by the respondents does not appear to be actuated by any mala fide intention and further taking into consideration the material disclosed during various searches and raids conducted by the respondent authorities involving M/s MPPL and M/s. MPSPL, we are not inclined to pass any interim order in favour of the petitioners, keeping in view that we are not dealing with an application for grant of anticipatory bail but challenge to jurisdiction and authority of respondents in issuing summons under Section 70 of the CGST Act.

21. HC slams GST Dept for using Coercive Measures to Meet Revenue Collection Charges

Case Name : Wipro Ltd. Vs State Of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 11190 of 2021
Date of Judgement/Order : 09/03/2022

In the absence of any debtor – creditor relationship, the department could not have asked the bank to debit the accounts of the writ applicant – company and credit a particular amount as specified in the notices to the treasury of the State Government.

We may also observe that ordinarily, when appeals are pending before the first appellate authority or the Tribunal, as the case may be, with an application seeking stay towards recovery of the tax, then, in such circumstances, the department should not proceed to take coercive steps for the recovery of the amount incurred by the dealer under the GVAT Act. This statement of ours should not be construed as an absolute proposition of law, but, the department is expected to at least wait for the final outcome of the appeals on their own merits, more particularly, when the appeals are already admitted.

The Administrative directions for fulfilling recovery targets for the collection of revenue should not be at the expense of foreclosing the remedies which are available to assessees for challenging the correctness of a demand. The sanctity of the rule of law must be preserved. The remedies which are legitimately open in law to an assessee to challenge a demand cannot be allowed to be foreclosed by a hasty recourse to coercive powers. Assessing Officers and appellate authorities perform quasi-judicial functions under the GVAT Act, 2003.

In the result, this writ application succeeds and is hereby allowed. The impugned notices are hereby quashed and set aside. The appellate authority as well as the Tribunal is directed to take up all the appeals for hearing and dispose them off on their own merits within a period of two months from today.

22. GST Evasion Case: HC denies bail considering crucial stage of investigation

Case Name : Thiru. Yasar Arabath, Vs Deputy Commissioner (State Taxes) (Madras High Court)
Appeal Number : Criminal Original Petition No. 3725 of 2022
Date of Judgement/Order : 10/03/2022

In this case there is Sufficient materials available to show the petitioner without having inward supply of goods, have issued fake invoices without actual movement and supply of. He made total cash payment of Rs.7,30,324/- only as against the Rs.5,23,66,944/-. Hence, the offence committed exceeds Rs.5 crores. The offence committed falls under Section 132(1) of TNGST Act 2017. Hence, it is a non-bailable offence. The evidence gathered against the petitioner and the total loss of the State due to the tax credit evasion being detailed out in the counter elaborately. It is further stated that the investigation not yet completed to identify the other fake floated by the petitioner. Therefore, the investigation has entered very crucial stage, if the petitioner is granted bail, it will cause hindrance to the investigation and he may even tamper the evidence.

The reading of Sections 132 (1) (a), (b) and (c), 132(5) of Tamil goods and Services Tax Act and the explanation thereof made amply clear that in the instant case the tax evasion exceeds Rs.500 Lakhs i.e., Rs.5 Crores.

It is correct to say the arrest memo and remand report does not reflect the same figure. However, the material placed along with the remand report would show that the tax evasion on different heads had exceeding more than Rs.500 Lakhs. From the material placed by the prosecution show a continuous offence committed by the petitioner herein since 2018-2019 and the figure of Rs.4,78,47,505/- was only till July 2021. Whereas, the remand application is on 10.01.2022 which reflects the loss of revenue under three different heads with exceeds more than Rs.5 crores. Therefore, the plea of the petitioner that offence committed by him is only a bailable offence and the tax evasion is less than Rs.5 crores is contrary to the records placed by the prosecution.

As far as, the custodial interrogation viz., grant of bail it is necessary to take into account the apprehension of the respondent that the petitioner who has floated fictitious companies and create records, if let out on bail per the evidence. Since the investigation has entered the crucial stage, the the petitioner at this stage will lead to tampering of evidence. The objections of the respondent is well found and therefore, this Criminal Original Petition is dismissed.

23. HC directs restoration of GST registration which was cancelled for non-filing of Returns

Case Name : Tvl. Alamelu Contracts Vs The Commissioner of Commercial Taxes (Madras High Court)
Appeal Number : W.P (MD). No. 4264 of 2022
Date of Judgement/Order : 10/03/2022

The petitioner has challenged the impugned order, dated 16.07.2019, cancelling the Goods and Services Tax Registration. The impugned order preceded the show cause notice, dated 04.07.2019. It is the specific case of the petitioner that the petitioner was not having business and therefore, the petitioner did not file returns. It is submitted that the petitioner in any event would have filed only a nil return and that no prejudice has been caused to the respondents.

Petitioner further submits that the order was communicated electronically and since the petitioner had closed down the business, the petitioner was unaware of the cancellation of the registration. It is therefore submitted that the impugned order is liable to set aside.

Department submits that the petitioner was given time to file an application against the impugned order but failed to exercise such action and therefore no latitude should be given to the petitioner under the provisions of the Goods and Service Tax Act. It is therefore submitted that the writ petition is liable to be dismissed.

HC held that no useful purpose will be served by keeping such assessee out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply goods and not by bringing them back to the Goods and Service Tax tax fold/regime only the revenue only suffer.

The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.

It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

The respondents shall take suitable steps by instructing GST Network, New Delhi to mak suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

The writ petition stands allowed in terms of the above directions. No costs.

24. HC allows Refund of unutilized ITC accumulated on account of inverted tax structure on Bulk Gas

Case Name : Shivaco Associates Joint Commissioner of State Tax (Calcutta High Court)
Appeal Number : WPA No. 54 of 2022
Date of Judgement/Order : 11/03/2022

The petitioners claim refund in accordance with Section 54(3) of the CGST Act, 2017 on the ground that credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. Admittedly, the rate of tax on the input supply (LPG in bulk) is 18% and the rate of tax on output supply (LPG in small Containers for domestic consumers) is 5%.

The claim of the petitioners for refund stood rejected on the ground that the input and output supplies are the same. The said restriction on claiming refund has been imposed by the circular dated 31.03.2020. The said circular was issued in exercise of the powers conferred under Section 168(1) of the CGST Act, 2017.

According to Section 168(1) of the Act the Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of the Act shall observe and follow such orders, instructions or directions.

According to the petitioners, the gas which is purchased in bulk is not supplied to the consumers in the same manner and quantity, but bulk gas is refilled in small containers and thereafter sold out to both commercial as well as domestic consumers. Hence, it cannot be said that the input and output supplies remain the same.

HC allows GST refund on bulk gas

In the present case, the Act does not mention about non-granting of the benefit of accumulated input tax credit where the input and output supplies are the same. The circular is trying to restrict the refund to a particular set of supplies. The circular is trying to create a class inside the class, which is impermissible. According to the Act, refund is permissible in respect of all classes where the input tax is higher than the output tax. By way of the circular, the Board is curtailing the said benefit and making refund permissible only if the input and output supplies are different. The same amounts to overreaching the provisions as laid down in the Act.

It cannot be said that the legislature was unmindful of the fact that there may be instances where the input and output supplies are the same. On the contrary, it can be said that the legislature consciously did not create any distinction for allowing refund in all cases where the input tax is more than the output tax. The said benefit is applicable to all similar cases.

The respondent authority ought not to reject the claim of the petitioners relying on the circular as the prayer made by the petitioners is permissible under the Act.

In view of the discussions made hereinabove, the impugned orders passed by the adjudicating authority and the appellate authority are liable to be set aside and quashed. The same are accordingly set aside and quashed.

25. ITC available on evaporation loss of petrol pumps: HC

Case Name : Excise and Taxation Commissioner Vs Gupta Brother (Punjab and Haryana High court)
Appeal Number : VATAP-242-2018
Date of Judgement/Order : 14/03/2022

Issue –Whether in the facts and circumstances of the case the assessee is entitled to ITC under the provisions of the Act on evaporation/handling losses of the petroleum products?

Held – The question is answered in favour of the dealer i.e. assessee shall be entitled to ITC on evaporation of the petroleum products.

26. GST: Mismatch of quantity during roadside checking, cannot be termed as section 129 contravention

Case Name : Raghav Metals Vs State of Haryana and others (Punjab and Haryana High Court)
Appeal Number : CWP No. 25057 of 2021
Date of Judgement/Order : 14/03/2022

Hon'ble Punjab and Haryana High Court in the case of Raghav Metals Vs State of Haryana and others held that the mismatch of quantity during roadside checking, cannot be termed as contravention under section 129 of the CGST/SGST Act, 2017.

27. VAT exemption available to bread in Meghalaya cannot be extended to rusk

Case Name : Saj Food Products Pvt. Ltd. Vs State of Meghalaya & ors (Meghalaya High Court)
Appeal Number : CRP No.32/2019
Date of Judgement/Order : 14/03/2022

What is apparent in this case is that the petitioner may be using the same raw material as in the manufacture of bread, whereupon the petitioner manufactures a form of bread and refines the same to rusk. The process has been explicitly described at page 9 of the petition as quoted above. Thus, it is plain to see that the petitioner manufactures bread and subjects such bread to a further process, which activity falls within the meaning of „manufacture" as used in the said Act for an altogether different product to be produced.

The scenario herein is the same as noticed in Vasantham Foundry. The final products were not cast iron but the cast iron produced by the assessee was subjected to a further process of manufacture to be converted into pipes or manhole covers or bends. Just as the Supreme Court held in Vasantham Foundry that cast iron casting could not be regarded as cast iron since the manufactured cast iron was subjected to a further process of manufacture to be converted into cast iron castings, in the present case, the same ingredients that go into the manufacture of bread may, doubtless, be used by the petitioner but upon bread being manufactured by the petitioner, the petitioner subjects such bread to a further process of manufacturing activity to arrive at its finished product of rusk. Quite obviously, some value is added to bread to make it into rusk and that would attract VAT.

As a consequence, it cannot be said that the petitioner"s product rusk is bread or the VAT exemption available to bread in the State must be extended to rusk. Several of the Supreme Court judgments placed also applied a common parlance test. Upon applying the common parlance test in this case, the question that arises is whether a person desirous of buying bread would ask for rusk or whether a person who goes to a shop and asks for rusk would be given bread in its place. The answer is obvious: bread is bread and rusk is rusk and never may the twain be equated. Accordingly, there is no flaw found in the appellate judgment and order under revision and no ground seen for interfering therewith.

28. Gauhati HC stays levy & collection of Entry tax by Autonomous Council

Case Name : Instakart Services Pvt. Ltd Vs North Cachar Hills Autonomous Council (Guwahati High Court)
Appeal Number : Case No. WP(C)/1661/2022
Date of Judgement/Order : 14/03/2022

A reading of the provisions of Clause 8(3)(c) of the 6th Schedule to the Constitution of India makes it discernible that the District Council of the NCHAC is authorised to levy and collect tax on the entry of goods into a market for sale therein. In other words, the two conditions precedent are that the goods must enter into the market and it must

enter into the market for the purpose of effecting the sale from such market. In the instant case, it has come to our notice that the transactions involved are such that the original invoice of companies who are selling their respective goods to the end user customers through the technology platform of M/s. Flipkart Internet Private Limited specifically provide that goods sold by them are exclusively for end user customers and not meant for re-sale. In other words, the goods for which the logistic support are being provided by the petitioner company are for the purpose of end user consumption and not for re-sale. If it is not for re-sale, prima facie, we have to understand that the tax for entry of goods into a market for sale cannot be imposed on a sale transaction. Further under the North Cachar Hills Autonomous District Council Code, a 'market' is defined as a local area declared as such by the Executive Committee under Section 5 thereof. In other words, a particular local area within the District Council area would have to be declared to be a market by the Executive Committee. In the instant case, no material is produced that the goods for which logistic support are provided by the petitioner company enters into any local area which is declared to be a market. Further we have also been told that no regulation as such has been prepared under Clause 8(4) of the 6th Schedule to the Constitution of India for regulating the levy and collection of entry tax of goods and as such as per the provisions of Clause 8(4) no such regulation would have been given any effect.

Accordingly, considering the balance of convenience and irreparable loss that the petitioner may suffer, in the interim, until further order(s), we direct that the authorities under the NCHAC shall not levy and collect any entry tax on the goods for which logistic support are provided by the petitioner company for the end user buyers.

In order to facilitate further, we also direct the petitioner company to maintain a strict account of all such logistic support transactions that they may provide to any such goods as indicated above so that in the event, the decision in the writ petition goes against the petitioner, the authorities in the NCHAC can levy and collect the taxes, if otherwise entitled under the law.

29. Form GST DRC-01A is a pre-SCN intimation- principles of natural justice must be followed

Case Name : Nanhey Mal Munna Lal Vs State of U.P. (Allahabad High Court)
Appeal Number : Writ Tax No. 287 of 2022
Date of Judgement/Order : 15/03/2022

Prima facie, perusal of Form GST DRC-01A under rule 142(1A) of the Rules indicates that it is a pre-show cause notice (Pre-SCN) intimation with reference to Section 73(1)/(5) or Section 74(1)/(5) to an assessee so that either he may deposit the amount of tax and interest or he may disagree to the ascertainment resulting in show cause notice under Section 73(1) or Section 74(1), as the case may be. Likewise, such an intimation in Form GST DRC-01A provides an opportunity to the dealer to resolve the dispute by depositing or in case of disagreement to face the adjudication proceedings under the Act. Thus, prima facie, it appears that Section 74(1) read with Rule 142(1A) intends to afford an opportunity to the dealer/ assessee on a pre-show cause notice stage which shall ultimately benefit both, i.e the assessee and the department, and

shall also reduce litigation. This also indicates to follow the principles of natural justice at a pre-show cause notice stage.

30. Form GST ITC-02A not available on Portal: HC allows credit transfer through Form GSTR 3B

Case Name : Pacific Industries Ltd. Vs Union of India (Rajasthan High Court)
Appeal Number : Civil Writ Petition No. 12190/2019
Date of Judgement/Order : 15/03/2022

The petitioner is a registered dealer under the GST regime having two industrial units registered in Udaipur. The Union of India prescribed Form GST ITC-02A under the Central Goods and Service Tax Rules, 2017 (hereinafter referred to 'as the Rules of 2017') which had to be submitted/uploaded on the portal of the Goods and Service Tax Network (hereinafter referred to as 'the GSTN Portal') through which, unutilised input tax credit was permitted to be transferred to a newly registered unit of the assessee within the same State. The State of Rajasthan has also prescribed the same form by amending the Rules of 2017. Prior to 01.02.2019, a person having various business verticals within a State, was not entitled to seek separate registrations for multiple places of business. However, by effect of amendment dated 01.02.2019, a person having multiple business at different places became entitled to separate registrations for each location where his business verticals were being operated. As a single registration was permissible under the unamended provision, the tax liability and the input tax credit accrued to the said single registration. After coming into force of the amendment dated 01.02.2019, separate registrations as per location of business were allowed and accordingly, the tax liability as well as input tax credit would be calculated individually for each unit. Pursuant to this amendment, Rule 41A was introduced in the GST Rules of Center as well as State vide notification dated 29.01.2019. This rule prescribes transfer of unutilised input tax credit lying in the Electronic Credit Ledger of a registered unit to the newly registered unit of an assessee within the same State as per Section 25(2) of the Act. In order to give effect to this mode of filing ITC Credit, Form GST ITC-02A was prescribed which was to be submitted on the GSTN Portal within a month of obtaining the new registration as per Section 25(2) of the GST Act so that the unutilised input tax credit could be transferred from the previously registered unit to the newly registered unit of the assessee.

The petitioner has raised a pertinent grievance in this writ petition that the Form GST ITC-02A was not available on the GSTN Portal for the entire period of 30 days from the registration of its separate business verticals and even till the date of filing of the instant writ petition and as a consequence, the petitioner was denied the opportunity of transferring the unutilized input tax credit to its new registration which became effective on 16.04.2019. The petitioner claims to have uploaded a manual copy and submitted the same to the Deputy Commissioner, CTO Ward, A-Circle Udaipur on 14.05.2019 but the same was not accepted. The petitioner claims to be suffering immense financial difficulty on account of not being able to use the unutilised input tax credit of GST to fulfill the tax liability of the new business registration. The petitioner also raised this issue with the GST Helpdesk and a ticket No.201905145915528 was issued to it on 14.05.2019. In response to this ticket, the petitioner was forwarded a

tutorial link. However, this tutorial link was regarding filing of the Form GST ITC-02 and not Form GST ITC-02A. The petitioner submitted another letter to the Deputy Commissioner, CTO Ward, A-Circle Udaipur raising an issue regarding Form GST ITC-02A and the steps taken by the petitioner to submit the said form, but no response was received thereto whereupon, the petitioner approached this Court by way of this writ petition.

Shri Saraswat, learned counsel representing the respondent GST Department, vehemently and fervently opposed the submissions advanced by petitioner's counsel. However, he too was not in a position to dispute the fact that Form GST ITC-02A was not available on the GSTN Portal within the stipulated period of 30 days from the date of registration of the petitioner's new business vertical and hence, the petitioner was genuinely and bonafidely prevented from uploading the same. It was also not disputed that the petitioner manually submitted the form to the to the Deputy Commissioner, CTO Ward, A-Circle Udaipur within the prescribed period of 30 days.

As a consequence of the admitted factual position, we are of the firm opinion that the impugned action whereby, the respondents have failed to acknowledge and transfer the input tax credit to the tune of Rs.2,58,03,590/- accruing to the petitioner pursuant to the registration of its new business unit in accordance with Rule 41A of the GST Rules, is grossly illegal, arbitrary and unjust.

Hence, the writ petition deserves to be and is hereby allowed in the following terms: "The respondents are directed to regularise the input tax credit in favour of the petitioner as per entitlement. The petitioner shall be allowed to avail the Input Tax Credit of Rs.2,58,03,590/- through the next GSTR-3B return."

31. GST Evasion: HC Grants bail to accused as dept already attached property of value in excess of amount of alleged evasion

Case Name : Niraj Jaidev Arya Vs State of Gujarat (Gujarat High Court)
Appeal Number : Criminal Misc. Application No. 23127 of 2021
Date of Judgement/Order : 16/03/2022

During the course of arguments, it was pointed out by the learned Senior Advocate appearing for the applicant that the respondent-Department has already attached immovable property belonging to the applicant in excess of the amount of alleged evasion or fraudulent claim of input tax credit made by him. If that be so, then the interest of the respondent-Department is already protected. The provisions of Section 138 of the GGST Act & CGST Act provide for "compounding of offences". Under sub-section (1) of section 138, any offence under the Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment by the person accused of the offence to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed provided that such power of compounding shall be available once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 as also the offences specified in clause (l), which are relatable to offences specified in clauses (a) to (f) of the said sub-section. The Court is informed that except

the impugned complaint, no other complaint under the GGST Act or CGST Act has been registered against the applicant. The applicant is reported to be suffering from Prostrate Cancer and is presently, undergoing treatment at Nadiad in pursuance of the order dated 05.01.2022 passed by this Court.

Considering the statutory limit provided under the GGST Act & CGST Act for filing complaint as also the facts and circumstances of the case and without discussing the evidence in detail, this Court is inclined to grant regular bail to the applicant. In the result, the application is allowed and the applicant is ordered to be enlarged on regular bail in connection with the Memorandum of Arrest.

32. Provisional attachment should not hamper normal business activities of taxable person

Case Name : Arya Metacast Pvt. Ltd. Vs State Of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 2787 Of 2022
Date of Judgement/Order : 17/03/2022

In the facts of the case, undisputedly, the respondent no.2 has not only provisionally attached the stock of goods lying at the factory premise of the writ applicants, at the same time, the respondent No.2 has also provisionally attached the demat account and current account of the writ applicants. These are the valuable assets of the writ applicants, more particularly, raw material and the finished goods are valuables which are otherwise necessary for running of the business of the applicants. Even operating the demat account and current account are essentially required for the routine business of the writ applicants. Time and again, this Court as well as even the instructions instructions issued by the higher authority of the respondents, has directed the proper officer to ensure that their action of the provisional attachment should not hamper normal business activities of the taxable person. Even thereafter this Court vide judgment dated 27.01.2022 passed in Special Civil Application No.188 of 2022 in the case of M/s. Utkarsh Ispat LLP Vs. State of Gujarat had an occasion to deal with the similar facts whereby the respondent authorities have provisionally attached goods, stock and receivables and also bank accounts. This Court did not approve the provisional attachment of the goods, stock and receivables, more particularly, when the entire stock and receivables have been pledged and a floating charge has been created in favour of the Kalupur Commercial Bank Limited for the purpose of availing the cash credit facility with the provisional attachment of the goods, stock and receivables the entire business will come to a standstill.

For the aforesaid reasons, present writ application succeeds in part. We hereby quash and set aside the order of the provisional attachment dated 27.11.2021 qua the stock of goods, two demat accounts as well as current account of the writ applicants is concerned. So far the prayer of the writ applicants with regard to release of electronic items including Mobile Phone, laptop and other documents seized during the search proceedings are concerned, same is also directed to be released forthwith on condition that the writ applicants shall file an undertaking before the respondent no.2 thereby declaring that the aforesaid goods electronic items including mobile phone, laptop and other seized documents shall be retained in its original form and shall not be disposed

of pending the investigation, if any. At the same time, we permit the respondent authorities to secure the original data by availing necessary certificate under Section 65B of the Information and Technology Act.

33. Opportunity of hearing under GST must before imposing any Tax/Penalty or taking adverse decision

Case Name : Sree Constructions Vs The Assistant Commissioner (ST) (Andhra Pradesh High Court)
Appeal Number : Writ Petition No. 24955 of 2021
Date of Judgement/Order : 21/03/2022

Sub- Section (4) of Section 75 of CGST Act, reads as under:- 'An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.'

It is very much evident that an opportunity of hearing is required to be given where a request was made in writing to the person chargeable with taxes and penalty or where any adverse decision is contemplated against such person. Therefore, when the authority contemplates to pass an adverse order against any assessee, an opportunity of hearing is required to be given. Failure to do so, in our view, amounts to violation of principles of natural justice. In the instant case, admittedly no notice was given to the petitioner before contemplating to pass an adverse order. Such a course of caution is prejudicial to the interest of assessee and the same would be in violation of Sub-Section (4) of Section 75 of C.G.S.T. Act, 2017.

For the above said reasons, the Writ Petition is allowed, setting aside the Assessment Order and Rectification Order, and remanding the matter to department for consideration of the issues and for passing appropriate orders in accordance with law afresh after giving notice of hearing to the petitioner.

34. HPVAT: Lump-sum payment of composite tax U/s. 16(2) cannot be equated with powers of State U/s. 62(5)

Case Name : Pooja Cotspin Limited Vs State of Himachal (Himachal Pradesh High Court)
Appeal Number : Civil Revision Petition No. 226 of 2015
Date of Judgement/Order : 22/03/2022

The first proviso to Section 62(5) of the Himachal Pradesh Value Added Tax Act, 2005 enables the State to issue notification and allow any dealer to avail of any incentive on tax, if such incentive has been declared by the State before the commencement of the VAT Act. In exercise of such powers, the State Government issued notification dated 19.01.2006 and allowed the incentive of deferment to new and existing Industrial Units by applying all terms and conditions specified in deferment scheme.

The lump-sum payment of composite tax under Section 16(2) of the Act in no way can be equated with the powers of State under Section 62(5) of the Act as both have separate and distinct fields of operation. There cannot be any overlapping between the two provisions, therefore, disallowance of Rs. 17,06,715/- payable from ITC to the petitioner by invoking the provisions either of Section 7 or Section 16(2) of the Act is wholly illegal and against the mandate of law.

The question of law under consideration is thus answered accordingly. It is held that the payment of presumptive tax under Section 7 or lump-sum tax by way of composition under Section 16(2) of the Act read with Rules 45 to 50 of the rules have their application in the specific field expressly contemplated in the Act and cannot be expanded to include deferment of tax notified under Section 62(5) of the Act.

35. GST interest liability U/s. 50 cannot be raised without initiating any adjudication proceeding if Assessee raises dispute

Case Name : Narsingh Ispat Limited Vs Union of India (Jharkhand High Court)
Appeal Number : W.P (T) No. 177 of 2021
Date of Judgement/Order : 22/03/2022

Whether liability of interest under section 50 of the GST Act could be raised without initiating any adjudication proceeding either under section 73 or 74 of JGST Act in the event Assessee raising a dispute towards liability of interest.

It has been held that if an Assessee disputes the liability of interest i.e. either disputes its calculation or even the leviability of interest, then the only option left for the Assessing Officer is to initiate proceeding either under Section 74 or 74 of the Act for adjudication of the liability of interest. In the present case, petitioner has disputed the interest liability by filing reply. Respondent had also indicated that in case petitioner fails to deposit the amount of tax and interest by 05.02.2020, show-cause notice under section 73(1) shall be issued. Respondent have themselves failed to follow the procedure stipulated under the Act as indicated by them in Form GST DRC-01A containing the intimation of the tax ascertained against the petitioner. Summary of the Order has been issued upon the petitioner in Form GST DRC-07 on his GSTN portal without following the principles of natural justice.

Respondents have failed to follow the procedure prescribed in law before issuing Summary of the Order in Form GST DRC-07 holding the petitioner liable to pay interest under section 50(1) of the Act due to late filing of GSTR-3B and not depositing the due interest on its own. As such, writ petition succeeds only on the point of failure to follow the principles of natural justice and the procedure prescribed in law.

Petitioner has inter-alia taken a legal plea that the interest is not payable on late filing of GSTR-3B since the amount of tax has been deposited in the Electronic Cash Ledger in accordance with Section 49 of the Act. The Revenue has not denied the tax due and as such, interest under section 50(1) which is compensatory in nature cannot be realized from it. Interest can only be charged on the tax unpaid or if the Assessee fails to pay the same by the due date, as per Section 50(1) of the Act. Since there is no

delay in payment of the tax, interest is not chargeable for late filing of GSTR-3B for which, a late fee has been prescribed under Section 47 of the Act which the petitioner had duly paid. Petitioner has also submitted that only the balance amount of tax which was paid through Electronic Cash Ledger after the due date, is liable to be charged for interest which the petitioner had also paid. However, since the proceedings have been held to be vitiated on failure to follow the principles of natural justice and the procedure prescribed under section 73(1) of JGST Act, 2017, we consciously refrain from making any comments on the merits of this contention raised by the petitioner at this stage. The impugned Summary of the Order contained in Form GST DRC-07 dated 26.02.2020 in the respective writ petitions relating to different tax periods in question are accordingly quashed. Respondents are at liberty to issue proper show-cause notice in terms of Section 73(1) of JGST Act, 2017 with opportunity to the petitioner to file response thereto before passing any adjudication order. It is open to the petitioner to raise the question of leviability of interest on delayed filing of GSTR-3B relying upon its plea that the amount of tax has been duly deposited in the Electronic Cash Ledger by the due date. Needless to say, if such a plea is raised, the Adjudicating Authority shall consider it in accordance with law.

36. Interest payable on GST refund after 60 days from the date of receipt of application

Case Name : Parekh Plastichem Distributors LLP Vs Union of India (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 11423 of 2020
Date of Judgement/Order : 23/03/2022

The plain reading of Section-56 of the Act would indicate that if any tax, which is ordered to be refunded under Sub-section (5) of Section-54 to any applicant, is not refunded within sixty days from the date of receipt of the application under Sub-section (1) of that section, interest at the rate not exceeding 6% [six percent] shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under Sub-section (5) of Section-54 of the Act.

While opposing this writ-application vehemently Mr. Dhaval Vyas, the learned senior standing counsel submitted that there was delay in processing the refund amount and actually crediting the said amount in the account of the writ-applicant on account of some technical glitch.

We are of the view having regard to the facts and circumstances of the case that the writ-applicant herein is entitled to interest on the delayed payment towards refund at the rate of 6% [six percent] as provided under Section-56 of the Act.

We dispose of this writ-application with a direction to the authorities concerned to calculate the amount towards interest towards the delayed refund amount in accordance with the provisions of Section-56 of the Act referred to above within a period of six weeks from today.

37. GVAT: Garnishee proceeding cannot be initiated without notice to concerned person

Case Name : Shakti Cotton Pvt. Ltd. Vs Commercial Tax Officer (Gujarat High Court)
Appeal Number : Special Civil Application No. 12788 of 2021
Date of Judgement/Order : 23/03/2022

Proceedings under Section 44 of the GVAT Act are in the nature of garnishee proceedings, i.e. attachment of a debt by means of which judgment-creditor is enabled to reach the money due from the judgment-debtor, which is in the hands of a third person. Issuance of a notice in writing to the person from whom the money is due and may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the same to the Assessing Officer is a sine qua non for initiating the proceedings under Section 44 of the GVAT Act. In the absence of the notice to the concerned person, there is no valid initiation of the garnishee proceedings.

Under sub-section (5) of Section 44 of the GVAT Act, a person to whom a notice under this sub-section is sent has a right to object to the notice by a statement that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee and then nothing contained in this sub-section would require such person to pay any money or part thereof, as the case may be.

After the person concerned objects by filing a statement that the sum demanded or any part thereof is not due from him to the assessee, then recovery cannot be effected from him unless the Assessing Officer or the Tax Recovery Officer holds an inquiry in which the concerned person is associated. In the inquiry, such person or dealer shall have to be given an opportunity of being heard.

In the case on hand, no notice was sent to the writ-applicants nos.2 and 3 respectively in the manner prescribed and straightway the respondent no.1 proceeded to attach the personal properties of the two writ-applicants.

Had the notice been sent to the writ-applicants nos.2 and 3 respectively as contemplated under sub-section (5) of Section 44 of the GVAT Act, both would have had the liberty to file their objections denying their liability to pay the amount as they did not owe the money to the assessee in default.

The entire proceedings, being without any jurisdiction, have resulted in undue harassment to the writ-applicants nos.2 and 3 respectively as the recovery was sought to be made without issuing notice to the writ-applicants.

Thus, from the aforesaid, it can be said that in interpreting a taxing statute, the equitable considerations are entirely out of place. The reasons of morality and fairness can have no application to bring a citizen who is not within the four corners of the taxing statute within its fold so as to make him liable to payment of tax. The entire approach of the department that as it is not in a position to recover anything from the

company, it can run after the Director of the company and attach his personal properties. The writ applicant No.3 has even otherwise no legal connection with the company. He just happens to be the brother of the writ applicant No.2 before us.

Over a period of time, we have noticed that Section 44 of the GVAT Act is being misused to the maximum. Either the authorities concerned have no idea about the scope and true purport of Section 44 of the GVAT Act or they just pretend to be ignorant of the correct interpretation of Section 44 of the GVAT Act.

In the result, this writ-application succeeds. The order of attachment in the case of both, the writ-applicant no.2 and the writ-applicant no.3, is hereby quashed and set-aside. The attachment stands removed.

38. GST registration cannot be cancelled for inadvertent mistake by CA

Case Name : Dilipkumar Chandulal Vs State Of Gujarat (Gujarat High Court)
Appeal Number : R/SPECIAL CIVIL APPLICATION NO. 4340 of 2022
Date of Judgement/Order : 23/03/2022

It was an inadvertent mistake committed by the Chartered Accountant which led to cancellation of the registration number of the proprietary ship.

We are of the view that the respondent No.2 should immediately look into the matter and see to it that the order cancelling the registration is recalled and the original registration under the CGST is restored. For a mistake said to have been committed by the Chartered Accountant, the dealer under the Act should not be made to pay a very heavy price like cancellation of the registration itself.

39. Section 18(8)(ix) of JVAT Act not applicable when no manufacturing activity is undertaken by the dealer: HC

Case Name : Exide Industries Limited Vs The State of Jharkhand (Jharkhand High Court)
Appeal Number : W.P.(T) No. 4566 of 2021
Date of Judgement/Order : 23/03/2022

The present dispute pertains to the period 2012 -2013. The Petitioner during the said period, had made local purchases of scrap batteries worth Rs. 6,12,45,703/- on which it had claimed Input Tax Credit (ITC) of Rs. 30,62,285. However, in the assessment order ; the assessing officer, after applying Section 18(8)(ix) of the JVAT Act, 2005, has allowed only a portion of ITC claimed and availed since the Petitioner has made interstate stock transfers. The Assessment order categorically observed that the Petitioner is a trader within the State of Jharkhand. The said assessment order was confirmed by the appellate authority and thereafter the Ld. Tribunal , again by relying on Section 18(8)(ix) of the Act, confirmed the Assessment order.

It further transpires that there was not even a whisper of allegation in the assessment order or the appellate order that the petitioner was involved in manufacturing activities within the State of Jharkhand.

Thus, the only dispute in the present case relates to the interpretation and applicability of Section 18(8) (ix) of the JVAT Act in the case of this Petitioner.

Thus, the only dispute in the present case relates to the interpretation and applicability of Section 18(8) (ix) of the JVAT Act in the case of this Petitioner. For brevity, relevant portion of the Act, as it existed during the assessment year 2012-13, is reproduced herein below:

"S. 18 Input Tax Credit
(8) No input tax credit under sub-Section (1) shall be claimed or be allowed to a registered dealer:

(ix) in respect of goods consumed for manufacture of goods for Inter-State transfer of stock or for sale outside the State."

From bare perusal of the aforesaid provision, it manifest that Section 18(8)(ix) of the JVAT Act is only applicable in case when some manufacturing activity is undertaken by the dealer. In the present case, admittedly, no manufacturing activity is carried out by the Petitioner in the State of Jharkhand. It is only a trader and hence Section 18(8)(ix) cannot be applied in the case of the Petitioner.

Further, the finding that scrap batteries could only have been used for processing or manufacturing is also incorrect, inasmuch as, a dealer such as the Petitioner is also free to trade in the said scrap batteries, i.e., sale and re-sale. It is incorrect to presume that scrap batteries can only be used for processing or manufacturing. If the interpretation of the Ld. Tribunal is accepted, then several traders would be debarred from eligible ITC since all products are ultimately processed or manufactured. The word 'trader' would itself lose its meaning.

In view of the aforesaid discussions and judicial pronouncements, it is held that Section 18(8) (ix) of the JVAT Act is not applicable in the case of this Petitioner.

40. Gujarat HC summoned GST officials over detention of tax consultant

Case Name : Sanjay Mukeshbhai Patel Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Criminal Application No. 3089 of 2022
Date of Judgement/Order : 23/03/2022

The Gujarat HC on Wednesday ordered a Goods and Service Tax (GST) officer to appear in court on Thursday morning and bring a tax consultant who had reportedly been in the department's custody for the previous five days without being shown before a judicial magistrate.

According to petitioner Sanjay Patel, GST official B D Trivedi summoned his brother Hitesh Patel, an Ahmedabad-based tax consultat involved in gumasta licence process, on Friday afternoon. He claimed that the family had not been permitted to contact Hitesh since then.

Sanjay said that he was allowed to present two sets of garments to a GST official at the GST office building's main gate on March 20, but was not allowed to meet his brother.
During the hearing, the petitioner's attorney stated that Hitesh was arrested on March 18, but was never brought before a magistrate. On Wednesday morning, the case was discussed in court, and the court decided to hear it in the afternoon. The petitioner received a call from an unknown individual ten minutes before the hearing alerting him that Hitesh was being brought before the magistrate.

According to two Supreme Court rulings in the D K Basu and Vimal Goswami instances, the petitioner's attorney stated that the GST officer's behaviour violated the guidelines given to protect the interests of a detainee in police custody. He contended that since the standards are intended for police, they apply to other agencies as well.

In summoning the GST officer, the bench of Justices Sonia Gokani and Mauna Bhatt further instructed him to demonstrate how the guidelines outlined in the SC judgments were followed in this matter.

41. HC direct GST dept to withdraw negative block of electronic credit ledger

Case Name : Milap Scrap Traders Through Pro. Harshadbhai Manubhai Patel Vs State/Commercial Tax Officer (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 12986 of 2021
Date of Judgement/Order : 23/03/2022

High Court held that the condition precedent for exercise of power under Rule 86A of the GST Rules is the availability of credit in the electronic credit ledger which is alleged to be ineligible. If credit balance is available, then the authority may, for reasons to be recorded in writing, not allow the debit of amount equivalent to such credit. However, there is no power of negative block for credit to be availed in future.

The respondents are directed to withdraw the negative block of the electronic credit ledger at the earliest. The negative block is to the extent of Rs.14,11,678/-. Whatever balance remained in the electronic credit ledger after the removal of the balance to negative figure, the same shall not be utilized by the writ applicant till the show cause notice is issued if any under Section 73 or 74 respectively of the C.G.S.T. Act. Once the negative block is removed, the writ applicant shall proceed to file his returns with appropriate tax, penalty and interest, that may be determined in accordance with law.

42. HC admits Petition for not processing GST TRAN-1 despite its order

Case Name : The British Motor Car Company (1934) Pvt Ltd Vs Assistant Commissioner (Delhi High Court)

Appeal Number : CONT.CAS(C) 62/2022 & CM APPL. 3629/2022
Date of Judgement/Order : 23/03/2022

1. Instant contempt petition has been filed for non-compliance of the order dated 27.05.2021 passed by this Court in W.P.(C) 2326/2020 whereby the Respondents were directed to either re-open the online portal so as to enable the Petitioners to file TRAN-I form electronically for claiming tax credit or to accept the same manually on or before 30.06.2021 and process the same in accordance with law.

2. It is stated that in compliance of the said order, the Petitioner herein filed the requisite form manually on 15.06.2021 for a claim of ₹25,51,002/-and the Respondent/Department vide communication dated 23.08.2021 had replied as under:

"Please refer to your office letter dated 22.07.2021 on the above mentioned subject matter.

In this regard, the Assistant Commissioner (Legal) vide their letter of even no 2950 dated 02.07.2021 inform this office that the department had not accepted the Hon'ble Delhi High Court Order dated 27.05.2021 and Proposal for filing SLP before the Hon'ble Supreme Court of India had been sent to the CBIC, Legal Cell, New Delhi for setting aside j quashing of Hon'ble Delhi High Court order and for stay for operation of the Order of Hon'ble Delhi High Court .

Further, it is also submitted that the Hqrs. Legal Branch vide their office letter dated 03.07.2021 informed that the Hon'ble Supreme Court of India stayed the Delhi High Court order dated 05.05.2020 in the case of M/ s Brand Equity Treaties Limited (WPC No. 11040/2018) vide order dated 19.06.2020(copy enclosed).

In the light of above, as Hon'ble Supreme Court of India stayed the Hon'ble Delhi High Court order in the TRAN-1 matter, and in the similar matter department proposal for filing appeal against the above subject Hon'ble High Court of Delhi Final order dated 27.05.2021 before the Hon'ble Supreme Court of India. Hence, this office is not able to process your TRAN-1 request until final outcome of the appeal filed by the department in the Hon'ble Supreme Court of India . This is for your kind information please."

3. Learned counsel for the Petitioner states that even on the date when the writ petition was disposed of, an SLP against the judgment of this Court dated 05.05.2020 in M/s Brand Equity Treaties Limited and Anr. v. Union of India was already pending and de hors the pendency of that petition, this Court passed the order dated 27.05.2021 in W.P.(C) 2326/2020. He, therefore, states that the pendency of SLP against the order of this Court in M/s Brand Equity Treaties Limited in W.P.(C) No. 11040/2018 cannot be a reason for not complying with the order dated 27.05.2021 passed by this Court in W.P.(C) 2326/2020.

4. Mr. Satish Kumar, learned counsel appearing for the Respondents, accepts notice and seeks time to file a reply. He states that there is no wilful default in the compliance of the order dated 27.05.2021 passed by this Court in W.P.(C) 2326/2020 inasmuch

as the issue in M/s Brand Equity Treaties Limited would have a bearing on the judgment of which compliance is sought for.

5. Let the reply be filed within four weeks from today. Rejoinder thereto, if any, be filed within two weeks thereafter.

6. Learned counsel for the Petitioner seeks permission to file amended Memo of Parties by giving the name of the Officer who, according to the Petitioner, has violated the order of this Court.

7. Let the amended Memo of Parties be filed before the next date of hearing.

8. List on 22.07.2022.

43. HC stays notice suspending GST Registration of Appellant without specifying the ground of Suspension

Case Name : SSG Furnising LLP Vs Assistant Commissioner, CGST (Delhi High Court)
Appeal Number : W.P.(C) 4790/2022 & CM APPL.14333/2022
Date of Judgement/Order : 24/03/2022

Present petition has been filed seeking quashing of the impugned show cause notice dated 14th February, 2022 issued by the Respondents as well as for directions to the Respondents to remove the suspension of GST Registration of the Petitioner and to declare Rule 21A of the CGST Rules as ultra vires Constitution of India and CGST Act and to direct the Respondents to remove suspension of GST Registration of the Petitioner to allow carrying on the business that belongs to the Petitioner.

Learned counsel for the Petitioner states that the impugned Show cause notice is vague and does not specify the reason as to why the cancellation proceedings have been initiated against the Petitioner. He emphasises that the reason mentioned in the show cause notice dated 14th February, 2022 only specifies the ground as “OTHERS”. He contends that the show cause notice dated 14th February, 2022 has thrown the Petitioner out of business which is violative of Article 19(l)(g) of the Constitution of India and has caused extreme hardship, irreparable loss, prejudice, distress and harassment to the Petitioner.

Issue notice. Mr.Anish Roy, Advocate accepts notice on behalf of the respondents. He states that he has instructions only to enter appearance. He prays for some time to obtain instructions on merits.

Let a counter affidavit be filed within four weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.

Since in the present case, the petitioner’s registration has been lying suspended for more than forty days on the basis of a show cause notice which is bereft of any reason

or fact, this Court stays the impugned notice dated 14th February, 2022 and directs forthwith restoration of the GST Registration of the petitioner.
List on 4 th August, 2022.

44. GST Evasion of Rs 869 Crores: HC denies bail to accused

Case Name : Sohan Singh Rao Vs Union of India (Rajasthan High Court)
Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 2555/2022
Date of Judgement/Order : 24/03/2022

It is admitted position that the petitioner and Vinaykant Ameta were Director in M/s Miraj Products Private Limited. As per the prosecution story, they had evaded tax of Rs. 869 Crores. GST department had seized one truck which was being unloaded at their premises. The Hon'ble Apex Court in various pronouncement held that the economic offender should not be dealt as general offender because economic offenders run parallel economy and they are serious threat to the national economy. Case of the petitioner is similar to the Vinaykant Ameta Vs. Union Of India and bail of the Vinaykant Ameta was dismissed by this Court and Hon'ble Apex Court had granted the bail of Vinaykant Ameta on depositing of Rs.200 Crores. So, after considering the submission put-forth by learned counsel for the parties and in the facts and circumstances of the present case and also looking to the seriousness of the offence(s) alleged against the petitioner without expressing any opinion on the merits of the case, I do not consider it a fit case to enlarge the petitioner on bail under Section 439 Cr.P.C.

45. Second proviso to Section 84(1) of West Bengal VAT Act, 2003 is constitutional

Case Name : A S L Enterprises Ltd. Vs Senior Joint Commissioner (Calcutta High Court)
Appeal Number : MAT 783 of 2017
Date of Judgement/Order : 25/03/2022

Whether proviso to Section 84(1) of the West Bengal VAT Act, 2003 which provides for mandatory pre-deposit of 15% is ultra vires?

1. Insisting the dealer to produce the proof of payment of 15% of the disputed tax in terms of the second proviso to Section 84(1) does not infringe/ abrogate the vested right of appeal under Section 84(1) of the Act and such proviso does not amount to compulsory extraction of tax as it is a procedural law, prescribing a procedure for the purpose of entertaining an appeal.

2. The second proviso to Section 84(1) of the Act does not infringe Article 14 of the Constitution as the substantive law namely, Section 84(1) of the Act does not provide for any categories of dealers or categories of assessments except two categories namely, provisional assessments and other assessments and the two categories in the dealers as casual dealer or any other dealer. Therefore, all categories of dealers have been brought under a single umbrella and they have been given right to file

appeal against either a provisional assessment or other assessment. Thus, the attempt of the appellant to draw an artificial classification among the dealers is impermissible.

3. The right of appeal conferred under Section 84(1) of the Act has not been affected on account of the condition imposed under the second proviso to Section 84(1) which provides for the procedure to be adhered for entertainment of an appeal by an aggrieved dealer. The procedural law does not in any manner, impinge upon the vested right of the dealer conferred under Section 84(1) of the Act.

4. By virtue of the amendment brought about by West Bengal Finance Act, 2015, the second proviso to Section 84(1) of the Act stood substituted by the new proviso thereby, making the intention of the legislature clear that it never intended to keep alive the old proviso.

5. The principle of “reading down” cannot be applied when there is no ambiguity in the second proviso to Section 84(1) of the Act that apart the proviso being a procedural law, it is validly made applicable retrospectively, the dealers cannot claim any vested right in a procedural law and for several reasons the State legislature has sufficient freedom to impose conditions while prescribing the procedure for entertaining an appeal and insisting upon producing proof of payment of 15% of the tax in dispute is neither onerous or unreasonable.

6. The alleged hardship of a dealer cannot be of any relevance while considering vires of a statutory provision which has been held to be a reasonable condition and nothing onerous.

7. In the result, the appeals are dismissed and the constitutional validity of the second proviso to Section 84(1) is upheld. In cases where the appellants have prayed for consequential relief in the writ petitions by challenging show-cause notices or assessment orders, liberty is granted to such of those appellants to file the reply to the show-cause notices within 30 days from the date of receipt of the server copy of this judgment and order after which the concerned assessing authority shall proceed with the matter in accordance with law. In cases where the appellants have challenged the orders of assessments, they are granted liberty to file appeal before the concerned appellate authority within 30 days from the date of receipt of the server copy of this order and if such appeal is filed and the conditions in Section 84(1) are complied with, the appellate authority shall entertain the appellants appeals without rejecting the same on the ground of limitation. No Costs.

46. ‘C’ Form, cannot be denied for technical or administrative reasons: HC

Case Name : Srivenkateshware Tradex Pvt. Ltd. Vs Commissioner, Delhi Value Added Tax & Ors. (Delhi High Court)
Appeal Number : W.P. (C) No. 10115 of 2019
Date of Judgement/Order : 25/03/2022

It is not a case where there is a default or concealment or adverse material is found by the Commissioner suggesting inaccurate particulars in the returns. It is the case where all the documents and particulars were furnished correctly except that the purchases were inadvertently misdescribed as High Seas instead of Form “C” purchases. The sole reason for declining the Form “C” is not that the petitioner is not entitled but merely that the system does not permit the downloading of “C” Form.

Rule 5(4) (i) of the CST Delhi Rules is not attracted in the facts of this case. There was no failure on the part of the Petitioner to furnish a return, including reconciliation return or return in accordance with the provisions of law or in payment of tax due according to such return. In fact, the tax demand was “Nil” and there was no loss on account of Tax revenue to the Department.

While in present day and age, technology has immensely facilitated the business transactions but it cannot be permitted to take over completely and prevent the genuine entitlements of the petitioner to be denied merely on the technical ground that the system does not so permit. The systems have been created purely for facilitating and simplifying the business transactions and cannot be self defeating. The respondent cannot plead its helplessness on the ground of the system not enabling it to do so. Once the petitioner is held to be entitled to “C” Form, the same cannot be denied for technical or administrative reasons as has been observed by Hon’ble Supreme Court in the decision of State of H.P. v. Gujarat Ambuja Cement Ltd. (2005) 6 SCC 499. 20. The Writ petition is accordingly allowed and the respondent is directed to furnish the Form “C” for the Financial Year 2016-2017 to the petitioner within 3 months.

47. Section 84(1) – WBVAT – Mandatory pre-deposit of 15% not ultra vires

Case Name : A S L Enterprises Ltd. Vs The Senior Joint Commissioner, Sales Tax (Calcutta High Court)
Appeal Number : MAT 783 of 2017
Date of Judgement/Order : 25/03/2022

Whether proviso to Section 84(1) of the West Bengal VAT Act, 2003 which provides for mandatory pre-deposit of 15% is ultra vires and it effects the vested rights of the appellant and also it is discriminatory in nature as it holds liable for payment all kinds of assessee to pay blanket 15%?

High Court Held That –

1. Insisting the dealer to produce the proof of payment of 15% of the disputed tax in terms of the second proviso to Section 84(1) does not infringe/ abrogate the vested right of appeal under Section 84(1) of the Act and such proviso does not amount to compulsory extraction of tax as it is a procedural law, prescribing a procedure for the purpose of entertaining an appeal.

2. The second proviso to Section 84(1) of the Act does not infringe Article 14 of the Constitution as the substantive law namely, Section 84(1) of the Act does not provide

for any categories of dealers or categories of assessments except two categories namely, provisional assessments and other assessments and the two categories in the dealers as casual dealer or any other dealer. Therefore, all categories of dealers have been brought under a single umbrella and they have been given right to file appeal against either a provisional assessment or other assessment. Thus, the attempt of the appellant to draw an artificial classification among the dealers is impermissible.

3. The right of appeal conferred under Section 84(1) of the Act has not been affected on account of the condition imposed under the second proviso to Section 84(1) which provides for the procedure to be adhered for entertainment of an appeal by an aggrieved dealer. The procedural law does not in any manner, impinge upon the vested right of the dealer conferred under Section 84(1) of the Act.

4. By virtue of the amendment brought about by West Bengal Finance Act, 2015, the second proviso to Section 84(1) of the Act stood substituted by the new proviso thereby, making the intention of the legislature clear that it never intended to keep alive the old proviso.

5. The principle of "reading down" cannot be applied when there is no ambiguity in the second proviso to Section 84(1) of the Act that apart the proviso being a procedural law, it is validly made applicable retrospectively, the dealers cannot claim any vested right in a procedural law and for several reasons the State legislature has sufficient freedom to impose conditions while prescribing the procedure for entertaining an appeal and insisting upon producing proof of payment of 15% of the tax in dispute is neither onerous or unreasonable.

6. The alleged hardship of a dealer cannot be of any relevance while considering vires of a statutory provision which has been held to be a reasonable condition and nothing onerous.

In the result, the appeals are dismissed and the constitutional validity of the second proviso to Section 84(1) is upheld.

48. VAT: Recovery Proceedings initiation before Expiry of Time for Filing Appeal is Impermissible – Kerala HC

Case Name : K.T. Joseph Vs Deputy Commissioner of State Tax (Kerala High Court)
Appeal Number : WP(C) No. 10331 of 2022
Date of Judgement/Order : 25/03/2022

Disposing writ petition in K T Joseph Vs. Deputy Commissioner of State Tax & Ors, the Hon'ble high Court of Kerala has observed that initiating recovery proceedings even before the expiry of the said period will make the appeal practically redundant. The petitioner herein was a registered dealer under the Kerala Value Added Tax Act, 2003. For the AY 2016-2017, an order of assessment was issued against the petitioner under the said Act, against which an appeal was preferred before the 1st appellate authority. Though the first appeal was dismissed, by order dated 30.12.2021 which

was served on him only on 22.02.2022 and he has a period of 60 days from the date of receipt of the order to prefer a second appeal before the Tribunal. However, even before the period for preferring the appeal expired, respondents initiated recovery proceedings and froze the bank account of the petitioner. On writ petition being filed it is proclaimed by the Hon'ble Court that, it is essential in the interest of justice that proceedings for recovery be initiated only after expiry of the period for filing the appeal. Since the petitioner was served with the order of the first appellate authority only on 22.02.2022, the period for filing the appeal will expire only on 21.04.2022. Initiating recovery proceedings even before the expiry of the said period will make the appeal practically redundant.

49. Show cause notice travels beyond reasons: SC ask petitioner to urge before concerned authority

Case Name : Ganesh Ores Pvt. Ltd. Vs The State of Odisha & Ors. (Supreme Court of India)
Appeal Number : Petition(s) for Special Leave to Appeal (C) No(s). 5208/2022
Date of Judgement/Order : 28/03/2022

The petitioner had filed a refund claim, which was granted by the authorities. Subsequently, a notice was issued to the petitioner for recovery of the refund granted erroneously. The petitioner submitted that the revenue authorities should have filed an appeal against the refund order in accordance with GST law instead of issuing a notice for recovering the refund amount. The Odisha High Court held that the authorities could have issued a notice without filing an appeal against the refund order and dismissed the writ petition.

Supreme Court held that it is open to the petitioner to urge before the concerned authority that the show cause notice travels beyond the reasons delineated in Section 74 of the Odisha Goods and Services Tax Act, 2017. That issue be considered by the appropriate authority on its own merits and in accordance with law.

50. Vehicle carrying goods ought not to be stopped/seized by authorities for expiry of E-way bill

Case Name : Podder & Podder Industries Private Limited Vs The State of Tripura and others (Tripura High Court)
Appeal Number : WP(C) No.285 of 2022
Date of Judgement/Order : 29/03/2022

HC held that balance has to be brought between transportation of goods as well as the taxing event i.e. the sale or purchase of goods of service. In a case where there is no doubt that a transaction is made between two registered dealers and is covered by the necessary documents including the e-way bill even if the e-way bill has expired just prior to the date of entry into the State, such goods ought not to be stopped and instead an undertaking should be taken from the buyer or the seller and intimation should be provided to the assessing officer of both the parties before whom the buyer

or seller may appear to make necessary compliance. Any hindrance in the movement of goods or fray amounts to an obstacle of the development of the nation.

51. HC Quashes second Provisional attachment order which was passed 4 days after Quashing of First order

Case Name : Global Enterprises Vs Commissioner Central Goods and Service Tax (Delhi High Court)
Appeal Number : W.P.(C) 8301/2021
Date of Judgement/Order : 29/03/2022

A division bench of the Delhi High Court has quashed a provisional attachment order as the validity of the same is expired after one year.

The petitioner's account was frozen for the first time via provisional attachment order dated 19.05.2020, which was, concededly, quashed by this Court via order dated 22.03.2021, passed in W.P.(C) 5344/2020. The appellant contended that immediately after the Court had quashed the earlier provisional attachment order on 22.03.2021, a fresh order was passed on 26.03.2021. It was also contended that the petitioner has preferred an appeal, against the order dated 08.09.2021, and deposited 10 per cent of the tax demanded by the respondent.
As per the assertions made in the rejoinder filed by the petitioner, the proceedings under Section 74 of the Central Goods and Services Tax Act, 2017 are no longer pending, as an adjudication order has been passed on 08.09.2021.

The division bench comprising Mr. Justice Rajiv Shakdher and Ms. Justice Poonam A. Bamba observed that the impugned order dated 26.03.2021, which has been issued, concededly, under Section 83 of the CGST Act, cannot remain efficacious, beyond the period of one year commencing from the date of the order.

Section 83 provides for the Provisional attachment to protect revenue in certain cases, "Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed. (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)."

"Having regard to the foregoing, according to us, the impugned order dated 26.03.2021 has lost its efficacy, and, therefore, the attachment should stand lifted," the Court said.

52. HC explains distinction between 'Attachment of Property' & 'Charge over Property'

Case Name : Shree Radhekrushna Ginning And Pressing Pvt. Ltd. Vs State of Gujarat (Gujarat High Court)

Appeal Number : Special Civil Application No. 5413 of 2022
Date of Judgement/Order : 29/03/2022

HC explains that Attachment creates no charge or lien upon the attached property. It merely prevents and avoids private alienations; it does not confer any title on the attaching creditors. There is nothing in any of the provisions of the Code which in terms makes the attaching creditor a secured creditor or creates any charge or Hen in his favour over the property attached. But an attaching creditor acquires, by virtue of the attachment, a right to have the attached property kept in custodia legis for the satisfaction of his debt, and an unlawful interference with that right constitutes an actionable wrong.Attachment, only prevents alienation, it does not confer title.

A charge on the other hand under Section 48 of the GVAT Act creates no interest in or over a specific immovable property, but is only a security for the payment of money. (See : Dattatreya Shanker Mote vs. Anand Chintaman Datar and others (1974) 2 SCC 799).

The concept of charge emanates from Section 100 of the Transfer of Property Act. Section 100 of the Transfer of Property Act, 1882 defines “charge” as follows:

“100. Charges.- Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust- property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.”

The above-mentioned Section clearly indicates the following types of charges :

1) Charges created by act of parties; and
2) Charges arising by operation of law.

The words “by operation of law” are more extensive than the words “by law” and a charge created by operation of law includes a charge directly created by the provisions of an Act (like Section 48 of the GVAT Act) as well as other charges created indirectly as a legal consequence of certain conditions. The expression “operation of law” only means working of the law.

53. GST Evasion Case: Allahabad Grants Bail to Accused

Case Name : Rohit Rastogi Vs Union of India (Allahabad High Court)
Appeal Number : Criminal Misc. Bail Application No. 8984 of 2022
Date of Judgement/Order : 30/03/2022

Heard Shri Bijendra Kumar Mishra, learned counsel for the applicant, Shri Dileep Chandra Mathur, learned counsel for the complainant and Shri I.P. Srivastava, learned AGA for the State.

A case was lodged against the applicant as Case Crime No.928 of 2021 at Police Station Kaushambi District Ghaziabad, Directorate General of GST Intelligence (DGGI) Ghaziabad Regional Unit under Sections 132(1) (b)& (1) of CGST Act, 2017.

The applicant is in jail since 10.09.2021 pursuant to the said F.I.R.

The bail application of the applicant was rejected by learned Sessions Judge, Meerut on 28.01.2022.

Shri Bijendra Kumar Mishra, learned counsel for the applicant contends that the applicant has been falsely implicated in the instant case. The statement of the applicant under Section 70 of the C.G.S.T Act, 2017 is self-implicatory which was extracted by coercion and made under duress. No reliance can be placed upon the said statement to connect to connect the applicant with this crime. The applicant has closed down 11 offending firms after following due process of law. In regard to other transactions the applicant has exercised his right of appeal and the appeal is pending. Learned counsel for the applicant contends that the applicant does not have any criminal history apart from this case. Learned counsel for the applicant claims congruency in role and seeks parity in relief granted to other co-accused namely Gaurav Gupta who has been enlarged on bail by learned Additional District and Sessions Judge/ Special Judge, (Prevention of Corruption Act), Meerut on 22.10.2021 in Bail Application No. 6037 of 2021. Lastly it is contended by the learned counsel for applicant that the applicant shall not abscond and will cooperate in the criminal law proceedings. The applicant shall not tamper with the evidence nor influence the witnesses in any manner.

Shri Dileep Chandra Mathur, learned counsel for the complainant and Shri I.P. Srivastava, learned AGA for the State could not satisfactorily dispute the aforesaid submissions from the record. Learned AGA does not dispute the fact that the applicant does not have any criminal history apart from this case.

I see merit in the submissions of learned counsel for the applicant and accordingly hold that the applicant is entitled to be enlarged on bail.

In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

Let the applicant-Rohit Rastogi be released on bail in Case Crime No.928 of 2021 at Police Station Kaushambi District Ghaziabad, Directorate General of GST Intelligence (DGGI) Ghaziabad Regional Unit under Sections 132(1) (b)& (1) of CGST Act, 2017, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence during the trial.
(ii) The applicant will not influence any witness.
(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
(iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

54. HC deletes penalty under GST as there was no intention to evade tax

Case Name : Smart Roofing Private Limited Vs State Tax Officer (Madras High Court)
Appeal Number : W.P.(MD) No. 5720 of 2022
Date of Judgement/Order : 30/03/2022

The petitioner has challenged the impugned order dated 25.03.2022 in Form GST Mov-9 seeking to impose penalty of Rs.2,50,387/- under CGST and SGST each, totally for a sum of Rs.5,00,774/- under Section 129(3) of the CGST Act, 2017.

2. The petitioner had consigned the goods from its main place of business at Chennai to its additional place of business, Sastha Bombalan Modern Rice Mill, 3/237-B, Chintamani Road, Anuppandi, Madurai. This was not the additional place of business, as per the original registration certificate obtained by the petitioner on 02.08.2018. However, in the E-way bill and the delivery Challan, the petitioner had declared the consignee as 130, Ring Road Chintamani, Madurai, though the consignment was meant for being discharged at its new place of business at Sastha Mombalan Modern Rice Mill, 3/237-B, Chintamani Road, Anuppandi, Madurai, Tamil Nadu 625 009. Under these circumstances, the consignment along with lorry was detained on 22.03.2022. A show cause notice dated 23.03.2022, to which the petitioner has replied on 25.03.2022, which has culminated in the impugned order dated 25.03.2022.

3. It is the specific case of the petitioner that there is no intention to evade tax as the petitioner has generated E-way bill by declaring the consignee as its additional place of business at No.130, Ring Road Chintamani, Madurai. It is further submitted that ex post facto, i.e., on the date of the petitioner has taken steps for amending the registration by including Sastha Mombalan Modern Rice Mill, 3/237-B, Chintamani Road, Anuppandi, Madurai, Tamil Nadu 625 009 also as the additional place of business. It is submitted that the imposition of penalty under Section 129 (3) of the CGST and SGST is unwarranted under the circumstances.

4. Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the petitioner has an alternate remedy under Section 107 of CGST Act, 2017/SGST Act, 2017 and therefore there is no merits in this writ petition.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

6. No doubt, the authorities acting under the Act were justified in detaining the goods inasmuch as there is a wrong declaration in the E-way bill. However, the facts indicate that the consignor and the consignee are one and the same entity, namely, Head Office and the Branch Office. In this case, the petitioner has a new place of business, but had not altered the GST Registration. However, steps have been taken to ex post facto include the new place of business altering the GST Registration. The registration certificate has also been amended.

7. Considering the fact that there is only a technical breach committed by the petitioner and there is no intention to evade tax, I am inclined to quash the impugned order and allow this writ petition by directing the respondent to release the vehicle and the consignment to the petitioner, if the same has not been released already.

8.The writ petition is disposed of, in terms of the above observations. No costs. Consequently, connected miscellaneous petition is closed.

55. HC set-aside order rejecting GST refund without giving a personal hearing

Case Name : Richie Rich Exim Solutions Vs Commissioner of CGST Delhi South (Delhi High Court)
Appeal Number : W.P.(C) 11138/2021 & CM APPL. 40310/2021
Date of Judgement/Order : 30/03/2022

In this case GST refund was rejected without giving a personal hearing as per proviso to rule 92(3) of CGST Rules, 2017 and in view of the same Delhi High Court set aside the order.

A perusal of the audit history does establish the veracity of the assertions made by the petitioner, which is, that it does not reveal that hearing for its refund application was fixed on 29.12.2020. Since the audit history, as noticed above, is a document generated by the respondent, it is clear that the respondent has not been able to discharge the onus which is placed on it, to demonstrate that a date had been fixed for grant of personal hearing to the petitioner.

That being the position, the impugned order passed in the petitioner's refund application, in our view, is flawed, as the proviso to sub-rule 3 of Rule 92 of the CGST Rules clearly obliges the respondent to grant a reasonable opportunity to the petitioner of hearing before rejecting the application for refund.

Since the respondent was mandatorily required to grant reasonable opportunity to the petitioner before rejecting its application for refund, there has been, as contended by Mr Jain, a breach of the principles of natural justice.

Furthermore, according to us, the order of rejection i.e., the impugned order has given no reasons as to why refund sought by the petitioner was neither admissible nor payable. Mr Jain is right that the only ground given was that the supplier of the petitioner was reported as "risky", which, to our minds, does not convey much.

Therefore, for the reasons given hereinabove, we are inclined to accept the stance taken on behalf of the petitioner that the impugned order deserves to be set aside. The respondent shall hear the petitioner in support of its refund application, before passing a fresh order with regard to the same.