GST UPDATE
(April, 2022)

Directorate of Training, Excise and Taxation Department, Punjab

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(I) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 7th April, 2022

No. S.O. 28 /PGSTR/2017/R.48/Amd./2022.-In exercise of the powers conferred by sub-rule (4) of rule 48 of the Punjab Goods and Services Tax Rules, 2017 and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.19/PGSTR/2017/R.48/2021, dated the 28th January, 2021, published in the Punjab Government Gazette (Extraordinary) Part III, dated the 5th February, 2021, namely:-

AMENDMENT

In the said notification, in the first paragraph, with effect from the 1st day of April, 2022, for the words "fifty crore rupees", the words "twenty crore rupees" shall be substituted.

A.VENU PRASAD,
Additional Chief Secretary(Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2549/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 31/P.A.5/2017/S.128/Amd./2022.- In exercise of the powers conferred by section 128 of Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.61/P.A.5/2017/S.128/ Amd./2019, dated the 9th May, 2019, namely:–

AMENDMENT

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

"Provided also that the amount of late fee payable under section 47 shall stand waived for the period as specified in column (4) of the Table given below, for the tax period as specified in the corresponding entry in column (3) of the said Table, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in **FORM GSTR-3B** by the due date, namely:-

Table

S. No.	Class of registered persons	Tax period	Period for which late fee waived
(1)	(2)	(3)	(4)
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	March, 2021 and April, 2021	Fifteen days from the due date of furnishing return
2.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	March, 2021 and April, 2021	Thirty days from the due date of furnishing return

3.	Tax payers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	January-March, 2021	Thirty days from the due date of furnishing return.”.

2. This notification shall be deemed to have come into force with effect from 20th day of April, 2021.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 32/P.A.5/2017/Ss.50 and 148/Amd./2022.- In exercise of the powers conferred by sub-section (1) of section 50 read with section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No.5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 24 /P.A.5/2017/Ss.50, 54 and 56/ 2017, dated the 30th June, 2017, namely:–

AMENDMENT

In the said notification, in the first paragraph, in the first proviso,-

(i) for the words, letters and figure "required to furnish the returns in **FORM GSTR-3B,** but fail to furnish the said return along with payment of tax", the words "liable to pay tax but fail to do so" shall be substituted;

(ii) in the Table, in column 4, in the heading, for the words "Tax period", the words "Month/Quarter" shall be substituted;

(iii) in the Table, for serial number 4, 5, 6 and 7,the following shall be substituted, namely:—

(1)	(2)	(3)	(4)
"4.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 per cent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021 and May, 2021
5.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter	March, 2021
		Nil for the first 15 days from the due date, 9	April, 2021

		per cent for the next 30 days, and 18 per cent thereafter	
		Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	May, 2021
6.	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under proviso to sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter	March, 2021
		Nil for the first 15 days from the due date, 9 per cent for the next 30 days, and 18 per cent thereafter	April, 2021
		Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	May, 2021
7.	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 45 days, and 18 per cent thereafter	Quarter ending March, 2021".

2. This notification shall be deemed to have come into force on and with effect from the 18th day of May, 2021.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 33/P.A.5/2017/S.128/Amd./2022.- In exercise of the powers conferred by section 128 of the of Punjab Goods and Services Tax Act, 2017(Punjab Act No.5 of 2017, and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.7/P.A.5/2017/S.128/2018, dated the 7th February, 2018, namely:–

AMENDMENT

In the said notification, after the fourth proviso, the following proviso shall be inserted namely:-

"Provided also that the total amount of late fee payable under section 47 of the said Act for financial year 2021-22 onwards, by the registered persons who fail to furnish the return in **FORM GSTR-4** by the due date, shall stand waived -

(i) which is in excess of two hundred and fifty rupees where the total amount of state tax payable in the said return is nil;

(ii) which is in excess of one thousand rupees for the registered persons other than those covered under clause(i).".

This notification shall be deemed to have come into force on and with effect from the 1st day of June, 2021.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 34/P.A.5/2017/S.25/Amd./2022.– In exercise of the powers conferred by sub-section (6D) of section 25 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No.5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council, is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.76/P.A.5/2017/S.25/2021, dated the 7th July 2021, namely:–

AMENDMENT

In the said notification, in the first paragraph, after the words "is pleased to notify that the provisions of", the words, brackets, figure and letter "sub-section (6A) or" shall be inserted.

This notification shall be deemed to have come into force on and with effect from the 24th day of September, 2021.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 35/P.A.8/2022/S.1/2022.- In exercise of the powers conferred by section 1 of the Punjab Goods and Services Tax (Amendment) Act, 2021(Punjab Act No.8 of 2022) and all other powers enabling him in this behalf, the Governor of Punjab, is pleased to appoint the 1st day of January, 2022, as the date on which the provisions of sections 2, 3 and 7 to 15 of the said Act shall be deemed to have come into force.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 36/P.A.5/2017/S.168A/Amd./2022.– In exercise of the powers conferred by section 168A of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the council ,is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation Notification No. S.O. 41/P.A.5/2017/ S.168A/2017 dated 22nd March, 2021, namely:-

AMENDMENT

In the said notification, in the first paragraph, in clause (i),--

(i) for the words, figures and letters "29th day of June, 2020", the words, figures and letters "30th day of August, 2020" shall be substituted;

(ii) for the words, figures and letters "30th day of June, 2020", the words, figures and letters "31st day of August, 2020" shall be substituted.

This notification shall be deemed to have come into force on and with effect from the 27th June, 2020.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 37/P.A.5/2017/S.23/2022.—In exercise of the powers conferred by sub-section (2) of section 23 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No.5 of 2017), hereinafter referred to as the "said Act", and all other powers enabling him in this behalf, the Governor of Punjab, on the recommendations of the Council and in supersession of the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.57/P.A.5/ 2017/S.23/2017, dated the 3rd October,2017, except as respects things done or omitted to be done before such supersession, is pleased to specify the categories of casual taxable persons (hereinafter referred to as "such persons") who shall be exempted from obtaining registration under the said Act-

(i) such persons making inter-State taxable supplies of handicraft goods as defined in the *"Explanation"* in notification No.S.O.141 / P.A. 5/ 2017/S.11/2018 dated the 18th September, 2018, and falling under the Chapter, Heading, Sub-heading or Tariff item specified in column (2) of the Table contained in the said notification and the Description specified in the corresponding entry in column (3) of the Table contained in the said notification;

or

(ii) such persons making inter-State taxable supplies of the products mentioned in column (2) of the Table below and the Harmonised System of Nomenclature (HSN) code mentioned in the corresponding entry in column (3) of the said Table, when made by the craftsmen predominantly by hand even though some machinery may also be used in the process:-

Table

Sl. No.	Products	HSN Code
(1)	(2)	(3)
1.	Leather articles (including bags, purses, saddlery, harness, garments)	4201, 4202, 4203

2.	Carved wood products (including boxes, inlay work, cases, casks)	4415, 4416
3.	Carved wood products (including table and kitchenware)	4419
4.	Carved wood products	4420
5.	Wood turning and lacquer ware	4421
6.	Bamboo products [decorative and utility items]	46
7.	Grass, leaf and reed and fibre products, mats, pouches, wallets	4601, 4602
8.	Paper mache articles	4823
9.	Textile (handloom products)	including 50, 58, 62, 63
10.	Textiles hand printing	50, 52, 54
11.	Zari thread	5605
12.	Carpet, rugs and durries	57
13.	Textiles hand embroidery	58
14.	Theatre costumes	61, 62, 63
15.	Coir products (including mats, mattresses)	5705, 9404
16.	Leather footwear	6403, 6405
17.	Carved stone products (including statues, statuettes, figures of animals, writing sets, ashtray, candle stand)	6802
18.	Stones inlay work	68
19.	Pottery and clay products, including terracotta	6901,6909, 6911, 6912, 6913, 6914
20.	Metal table and kitchen ware (copper, brass ware)	7418
21.	Metal statues, images/statues vases, urns and crosses of the type used for decoration of metals of Chapters 73 and 74	8306
22.	Metal bidriware	8306
23.	Musical instruments	92
24.	Horn and bone products	96

25.	Conch shell crafts	96
26.	Bamboo furniture, cane/Rattan furniture	94
27.	Dolls and toys	9503
28.	Folk paintings, madhubani, patchitra, Rajasthani miniature	97

Provided that such persons are availing the benefit of notification No. 03/2018–Integrated Tax, dated the 22nd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1052(E), dated the 22nd October, 2018:

Provided further that the aggregate value of such supplies, to be computed on all India basis, does not exceed the amount of aggregate turnover above which a supplier is liable to be registered in accordance with sub-section (1) of section 22 of the said Act, read with clause (iii) of the Explanation to that section.

2. Such persons mentioned in the preceding paragraph shall obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the Punjab Goods and Services Tax Rules, 2017.

3. This notification shall be deemed to have come into force on and with effect from the 22nd October, 2018.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 38/P.A.8/2022/S.1/2022.— In exercise of the powers conferred by sub-section (2) of section 1 of the Punjab Goods and Service Tax Act (Amendment) Act, 2021(Punjab Act No.8 of 2022) and all other powers enabling him in this behalf, the Governor of Punjab, is pleased to appoint the 1st day of June, 2021, as the date on which the provisions of section 6 of the said Act shall be deemed to have come into force.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

2562/4-2022/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 26th April, 2022

No. S.O. 39/P.A.8/2022/S.1/2022.- In exercise of the powers conferred by section 1 of the Punjab Goods and Service Tax (Amendment) Act, 2021(Punjab Act No.8 of 2022) and all other powers enabling him in this behalf, the Governor of Punjab, is pleased to appoint the 1st day of August, 2021, as the date on which the provisions of sections 4 and 5 of the said Act shall be deemed to have come into force.

K A P SINHA,
Additional Chief Secretary (Taxation)
to Government of Punjab,
Department of Excise and Taxation.

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(II) ADVANCE RULINGS

STP treated water eligible for GST exemption

Case Name : In re Rashtriya Chemicals and Fertilizers Limited (GST AAAR Maharashtra)
Appeal Number : order No. MAH/AAAR/AM-RM/02/2022-23
Date of Judgement/Order : 01/04/2022

The Appellant have a Sewage Treatment Plant ('STP') at its Trombay premises. This plant uses sewage water and converts it into water for use in the factory for manufacture of the fertilizers.

The Appellant has also contended that it has never been the intention of the Government, i.e., either Central Government or State Government, to levy any indirect tax on water of general purposes. In this regard, they have stated that even under the erstwhile indirect tax regime, no tax, whether in the nature of Central Excise or in the nature of VAT, was leviable on the water of general purposes, hence the supply of STP treated water was not subject to any indirect tax under the erstwhile tax regimes.Basis this contention, they have argued that the said impugned product, i.e., STP treated water, will also not be liable to tax even under the GST regime. They have further contended that since the impugned product was not subject to any indirect tax under the erstwhile tax regime, the same should also not be liable to tax under GST regime.

In this regard, we intend to agree with the Appellant's contention in as much as that the Government, whether the Central Government or State Government, has never intended to tax water of general purposes. Even under the GST regime, Government has clarified its intention of not levying GST on the supply of general-purpose water by way of issuance of the CBIC Circular No. 52/26/2018 dated 09 August 2018, wherein it has been clarified that supply of drinking water, for public purposes, if not supplied in sealed containers, is exempted from GST. Thus, by applying the canon of "purposive construction", which gives effect to the legislative purpose/intendment, we are inclined to hold that the impugned product, which can aptly be construed as water of general purpose as discussed earlier, is eligible for exemption under the relevant entry at Sl. No. 99 of the exemption notification no. 02/2017-C.T. (Rate) dated28.06.2017.

AAAR Set aside the MAAR order No. GST-ARA-67/2019-20/B-57 dated 09.10.2021, passed by the Maharashtra Advance Ruling Authority, and hold that STP treated water will be eligible for exemption in terms of entry at Sl. No. 99 of the Exemption notification no. 02/2017-C.T. (Rate) dated 28.06.2017. Thus, the Appeal filed by the Appellant is allowed.

1. GST on renting of immovable property to Social Justice Department of Govt of Maharashtra

Case Name : In re Tukaram Pundalik Borade (GST AAAR Maharashtra)

Appeal Number : Order No. MAH/AAAR/AM-RM/03/2022-23
Date of Judgement/Order : 01/04/2022

AAAR Set aside the Advance Ruling No. GST-ARA-94/2019-20/B-84 dated 02.11.2021, passed by MAAR, and hold that the impugned services of the renting out of immovable properties provided by the Appellant to the Social Justice Department of the Government of Maharashtra will be exempt form the levy of GST in terms of Sl. No. 3 of the Notification No. 12/2017- Central Tax (Rate), and accordingly, the TDS provisions made under section 51 of the CGST Act, 2017, will not be applicable therein. Thus, the Appeal filed by the Appellant is allowed.

2. Tertiary Treated Water eligible for exemption under Notification No. 02/2017-C.T. (Rate)

Case Name : In re M/s. Nagpur Waste Water Management Pvt. Ltd (GST AAAR Maharashtra)
Appeal Number : Order No. MAH/AAAR/AM-RM/01/2022-23
Date of Judgement/Order : 01/04/2022

AAAR set aside the Advance Ruling Order No. GST-ARA-65/2020-21/B-35 dated 27.07.2021, passed by the Maharashtra Advance Ruling Authority, and hold that Tertiary Treated Water (TTW) will be eligible for exemption in terms of entry at SI. No. 99 of the Exemption Notification No. 02/2017-C.T. (Rate) dtd.28.06.2017.

3. TDS under GST not applicable on renting of immovable property to Govt Social Justice Dept

Case Name : In re Meerabai Tukaram Borade (GST AAAR Maharashtra)
Appeal Number : Order No. MAH/AAAR/AM-RM/04/2022-23
Date of Judgement/Order : 01/04/2022

AAAR set aside the Advance Ruling No. GST-ARA-96/2019-20/B-86 dated 02.11.2021, passed by the MAAR, and hold that the impugned services of the renting out of immovable properties provided by the Appellant to the Social Justice Department of the Government of Maharashtra will be exempt from the levy of GST interms of SI. No. 3 of the Notification No. 12/2017- C.T. (Rate) dated 28.06.2017, and accordingly, the TDS provisions made under section 51 of the CGST Act, 2017, will not be applicable therein. Thus, the Appeal filed by the Appellant is, hereby, allowed.

4. GST & TDS on renting of Immovable Property to Social Justice Department

Case Name : In re Shital Tukaram Borade (GST AAAR Maharashtra)
Appeal Number : Order No. MAH/AAARJAM-RM/05/2022-23
Date of Judgement/Order : 01/04/2022
AAAR set aside the Advance Ruling No. GST-ARA-95/2019-20/B-85 dated 02.11.2021, passed by the MAAR, and hold that the impugned services of the renting out of immovable properties provided by the Appellant to the Social Justice Department of the Government of Maharashtra will be exempt from the levy of GST in

terms of SI. No. 3 of the Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, and accordingly, the TDS provisions made under section 51 of the CGST Act, 2017, will not be applicable therein. Thus, the Appeal filed by the Appellant is, hereby, allowed.

5. GST on dismantling & installation of sleepers for Railways

Case Name : In re Utkarsh India Limited (GST AAR West Bengal)
Appeal Number : Advance Ruling Order No. 01/WBAAR/2022-23
Date of Judgement/Order : 07/04/2022

Question: Whether dismantling of existing sleeper fixing and/or installation of new (H-Bean Steel sleepers) is amounting to execution of original work and would attract IGST @12% in terms of Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017?

Answer: The instant supply is found to be a composite supply of works contract as defined in clause (119) of section 2 of the GST Act but the supply cannot be regarded as composite supply of original work' as defined in clause 2 (zs) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The instant supply, therefore, shall not be covered under serial number 3(v) of Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017, as amended, to attract tax @ 12%.

Question: Whether the applicant is eligible for getting the benefit of Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017 by paying IGST @ 12% for construction, erection, commission or installation of original works pertaining to Railways?

Answer: The answer is in negative.

6. GST applicable on Liquidated damages for delay in performance of contract

Case Name : In re Singareni Collieries Company Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 20/2022
Date of Judgement/Order : 08/04/2022

In the present case, Liquidated damages are claimed by the applicant from the contractor due to the delay in performance of the contract, beyond the date prescribed in such contract by the contractor. Similarly, penalties are fixed for breach of the provisions of the contract. These amounts are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows:

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

Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act or a situation under an agreement

constitutes supply of service and the consideration or monetary value is exigible to tax.

The Consideration received for such forbearace is taxable under CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate

7. IGST paid on imports is eligible to be availed as ITC both on intra & inter-state sales

Case Name : In re Euroflex Transmissions (India) Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 22/2022
Date of Judgement/Order : 08/04/2022

The liability for registration arises under Section 22 of the CGST Act, 2017 if the supplier makes taxable supplies the aggregate turnover of which exceeds Rs. 20 Lakhs in a financial year. Such registration is to be obtained in the State from which the taxable supply is made.

Further, in the case of supply of goods made from a customs warehouse, such supply is not treated as supply of goods under Entry 8 of the Schedule III to the CGST Act, 2017 if it is a:

a. Supply of warehoused goods to any person before clearance for home consumption.
b. Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

As seen from the material papers submitted by the applicant it is observed that they are not seeking clarification on supplies which are in nature described in Entry 8 of Schedule III to the CGST Act, 2017. Evidently, after clearing the goods by paying customs duty and IGST the applicant is making inter-state supply of the same from the customs warehouse without taking such goods to their own business premises.

The transactions made by the applicant after clearing them from customs in their own account are subsequent sales and not sales in course of import, where the customs clearance will be made by the purchaser in which case the transactions will be covered under Entry 8 of Schedule III to the CGST Act, 2017 prescribed above. Therefore this subsequent sale when made to a customer within the State of Telangana will be an intra State sale liable to CGST & SGST and when such sale is made to a customer in other States of a country it will be an Inter-State sale liable to IGST. Being a taxable sale the person making such taxable sales is liable to take registration under CGST Act, 2017. It is seen that the applicant has already obtained a registration with GSTIN: 36AAACE5313K1ZS. Therefore this registration is sufficient to cover the transactions or supplies in nature described by the applicant.

Under Section 16 of the CGST Act, 2017 read with Section 20 of IGST Act, the IGST paid on imports is eligible to be availed as Input Tax Credit (ITC) both on intra-state and inter-state sales.

8. Supply of Bus body building on chassis owned by customer is supply of Service

Case Name : In re Vasant Fabricators Pvt. Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/23
Date of Judgement/Order : 12/04/2022

Q1. Whether the activity of fabricating and mounting Tankers, Tippers, etc. on the chassis provided by the owner of such chassis i.e. bus body building would be covered under the category of Supply of Services?

A1. Supply of Bus body building on the chassis owned by customer is supply of Service.

Q2. If yes, the applicable accounting code of such services as per the Scheme of Classification of Services and the applicable rate of GST thereon.

A2. GST rate:

S.No	Service Description	Notification 11/2017-CT(R) dated 28-6-17.	Service Code	GST rate
i.	Bus body building on chassis owned by GST registered customer.	Sr. no. 26(ic)	998882	18%
.	Bus body building on chassis owned by unregistered customer	Sr. no. 26(iv)	998882	18%

9. GST on Composite supply of works contract involving predominantly earth work

Case Name : In re Mahalakshmi Bt Patil Honai Construction (JV) (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-33/2020-21/B-47
Date of Judgement/Order : 12/04/2022

The first question raised by the applicant is whether the impugned contract is covered under the term 'Earth Work' and therefore covered under SI No 3A- Chapter No. 9954 as per Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, as amended by Notification No. 2/2018-C.T. (Rate) dated 25.01.2018, w.e.f. 25.01.2018. We find that Sr. No. 3A of Notification No. 12/2017-C.T. (Rate) dated 28.06.2017, as amended covers "Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent, of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the

Constitution". To fall under Sr. No 3 A mentioned above, the primary requirement is that the supply should be in the form of a 'Composite supply of goods and services'. We have already found above in para 5.8 above that, the impugned activity is a 'Composite supply of works contract' as defined in clause (119) of section 2 of the CGST Act, 2017. Being a Composite supply of works contract, the impugned activity cannot be covered under Sr. No. 3A mentioned above. Further, it is also seen that theimpugned supply is similar to the supply in the case of SMJV (mentioned above) wherein it was held by the Appellate Authority for Advance Ruling, Maharashtra that, the supply was not covered under Sr. No. 3A of Notification No. 12/2017-C.T. (Rate) dated 28.06.201,. Relying of the said decision of the Appellate Authority and the discussions made above, we are of the opinion that the impugned is not covered under Sr. No. 3A of Notification No. 12/2017-C.T. (Rate) dated 28.06.201,, as amended and therefore the first question is answered in the negative. The second questions raised is, 'if the answer to the first question is negative, then "whether the said contract is covered under the term "Earth Work" and therefore covered under SI No -Chapter No.9954 as per Notification No. 31/2017-Central Tax (Rate) dated 13th October 2017'. We find that the applicant has not mentioned the Serial number of Notification No. 31/2017- C.T. (R) dated 13.10.2017 in their question. However, we have already foundthat in the instant case, the applicant is rendering composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017, a fact which is supported by the decision of Maharashtra Appellate Advance Ruling Authority in the case of SMJV as mentioned above. Further, applying the ratio of the said decision andas per discussions made above, we find that such rendering composite supply of works contract involves predominantly earth work that is, constituting more than 75 per cent, of the value of the works contract, (also seen from the submissions made bythe applicant as well as the jurisdictional officer). Finally, we observe that the GMIDC is a Government Entity as also held by the Appellate Authority in the SMJV case.

In view of the above we find that, in the instant case, the applicant is rendering composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017, to GMIDC, a Government Authority, and such rendering of composite supply of works contract involves predominantly earth work that is, constituting more than 75 per cent, of the value of the works contract. Thus, the impugned activity of theapplicant is covered under the Sr. No. 3 (vii) of Notification No. 11/2017-CTR dated 28.06.2017 as amended by Notification No. 31/2017 -CTR dated 13.10.2017. We alsorely on the ratio of the decision of the Maharashtra Appellate Advance Ruling Authority in the case of Soma Mohite Joint Venture mentioned above which is squarely applicable in the subject case.

10. Recipient of Services cannot apply to know SAC & GST rate: AAR

Case Name : In re Surat Smart City Development Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/17
Date of Judgement/Order : 12/04/2022
Recipient of supply may seek Rulings in cases pertaining to admissibility of ITC of tax paid or deemed to have been paid (Section 97(2)(d)) or when the recipient is liable to pay tax under RCM. We find no such case before us to hold that SSDCL has locus standi, in subject matter.

In the Contract submitted before us, we find that the Advance Ruling is sought by SSDCL to determine the SAC, and GST Tax rate liability supplied by NEC Technologies Pvt. Ltd. to SSDClL. Shri Shah during hearing insisted that the subject application is maintainable and has, thereby, failed to appreciate the statutory provisions of Chapter XVII- Section 95, 97 and 103 CGST Act.

AAR held that
1. We find the application non-maintainable as per the Section 95(a) CGST Act.
2. We find any Ruling issued will not be binding on the Supplier of Service M/s NEC Technologies Pvt. Ltd., a Delhi registered person with GSTIN07AACCN3496J1Z4 who has to raise invoice in this case with details of Service description and GST tax rate in the invoices raised by it. Thereby the very thought for Issuance of Ruling in this case by us, would frustrate Section 103(1) CGST Act and thereby glaringly mock the provision of Laws.
3. The Application is hereby rejected in pursuance to Section 95(a) and Section 103(1) CGST Act as SSDCL has no locus standi in said matter.

12. AAR cannot substitute word 'CGST Rules' for 'Notification' referred in section 97(2)(b)

Case Name : In re JK Paper Ltd (GST AAR Gujarat)
Appeal Number : Advance Ruling no. GUJ/GAAR/R/2022/21
Date of Judgement/Order : 12/04/2022

The Gujarat Authority for Advance Ruling is a creature of the statute and is bound to pass Rulings within the confines of the statute. We find it improper and contrary to the statutory provisions of GST Act to replace the word 'Notification' in said section 97(2)(b) with the word ' CGST Rules' as submitted by Shri Vaja. We refer to the case law of JSW Energy vs UoI- 2019 (27) GSTL 198 (Bom.) wherein H'ble High Court at Mumbai held that High Court cannot go into merits of decision given by GST AAAR (Appellate Authority for Advance Ruling). Thus it is all the more imperative, not just imperative on us, but we are statutory bound, to pass Rulings within the functional jurisdiction carved out for the AAR vide the statutory provisions of section 97(2) CGSTAct. The word used in section 97(2) CGST Act is 'shall', to explain in detail, the advance ruling question shall be in respect of, as per provisions of section 97(2) CGST Act. Weshall not trespass and overreach our functional jurisdiction laid down vide Section 97(2).

We note that the duties and responsibilities conferred on this Authority by the Parliamentary Act should be exercised in accordance with law. With the said H'ble High Court Order dated 7-6-19 this Authority finds it legal and proper to pass Rulings, as per section 95(a), on matters as stipulated in section 97(2)(b). We find it overreach and encroachment to Rule on matters beyond our statutory and functional jurisdiction as defined in Section 97(2) CGST Act. For to pass Rulings on those matters pertaining to GST scheme of law, beyond the jurisdiction carved in Section 97(2) CGST Act is not proper and legal. For if the submission of Shri Vaja is to be favoured upon by us, issues such as validity of a Notification/ constitutionality or legality of a Notification etal

would also have to be admissible as maintainability of AAR Application before us. We find no reason to substitute the phrase 'CGST Rules' for the word 'Notification' referred to in section 97(2)(b). We find no merit in this submission and hold that AAR has its carved out functional jurisdiction to pass Rulings as per Section 97(2). To accept Shri Vaja's submission is to open almost everything under the Sun pertaining to GST; even to decide on legality or correctness of a Notification. We hold that this is not the intention of the competent Legislature while enacting the GST Act. Legislature enacted section 97(2) CGST Act carving the Authority's functional jurisdiction.

13. GST on free of cost bus transport facilities provided to employees

Case Name : In re Emcure Pharmaceuticals Limited (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/22
Date of Judgement/Order : 12/04/2022

Q1. Whether the recoveries made by the Applicant from the employees for providing canteen facility to its employees are taxable under the GST laws?

A1. GST, at the hands of M/s Emcure, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Emcure and paid to the Canteen service provider.

Q2. Whether the free of cost bus transport facilities provided by the Applicant to its employees is taxable under the GST laws?

A2. GST, at the hands of M/s Emcure, is not leviable on free bus transportation facility provided to its employees.

Q3. Without prejudice, even if GST is applicable in respect of employee recovery towards bus transportation facility, whether the Applicant would be exempted under the Sl. No. 15 of Notification No. 12/2017 – Central Tax (Rate) dated 28 June 2017?

A3. ITC on GST paid on canteen facility is blocked credit under Section 17 (5)(b)(i) CGST Act and inadmissible to M/s Emcure.

Q4. Whether input tax credit is admissible to the Applicant for the GST charged/paid to the vendors on procurement of such services in terms of Sec 16 of CGST Act, as the same are used in relation to furtherance of business? If yes, would the same be restricted to the portion of cost borne by the Applicant?

A4. ITC on GST paid on hiring of Bus, having approved seating capacity of more than 13 persons used for transportation of passengers, is admissible.

14. GST on employees portion of 3rd Party canteen charges

Case Name : In re Cadmach Machinery Pvt Ltd (GST AAR Gujarat)
Appeal Number : Advance Ruling no. GUJ/GAAR/R/2022/20

Date of Judgement/Order : 12/04/2022

Whether recovery of amount from employee on account of third party canteen service provided by assessee, which is obligatory under section 46 of Factories Act, 1948 would come under definition of, outward supply and, therefore, taxable as a supply under GST?

Cadmach 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 Cadmach whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by Cadmach and paid to the Canteen Service Provider. Cadmach submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. We are not inclined to accord this canteen service facility provided by Cadmach to its employees to be an activity made in the course or furtherance of business, to deem it a Supply by Cadmach to its employees.

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

15. No supply of services by employer by paying part consideration of employees' refreshments

Case Name : In re Cadila Healthcare Limited. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/19
Date of Judgement/Order : 12/04/2022

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

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

b. In case answer to above is no; GST is applicable on which portion i.e. amount paid by the Applicant to the Canteen Service Provider or only on the amount recovered from the employees?
Held by AAR AAR find that M/s Cadila 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 M/s. Cadila whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by M/s. Cadila and paid to the Canteen Service Provider. M/s. Cadila submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. We are not inclined to accord this canteen service facility provided by M/s Cadila to its employees to be an activity made in the course or furtherance of businessto deem it a Supply by M/s Cadila to its employees.

AAR held that GST, at the hands of the M/s Cadila, is not leviable on the amount representing the employees portion of canteen charges, which is collected by M/s Cadila and paid to the Canteen service provider.

16. AAR can give ruling only on supply being undertaken or proposed to be undertaken

Case Name : In re Royal Techno Projects (India) Pvt. Ltd. (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/18
Date of Judgement/Order : 12/04/2022

Vide email dated 1-4-22, M/s Royal submitted Work Order dated 1-12-20 for Widening & Strengthening Costg. Slab Drain of Asoj Pilol Road (VR) of Vadodara District under MMGSY 2019-20, from Gujarat State Road and Building Department. We find that vide the Tender to this work order, said work was to be completed within 9 months from the date of written order to commence. We note M/s Royal received the work order to commence on 1-12-20, thereby time limit of 9 month is completed on 1-9-21.M/s Royal has not brought on record that said Work order/ tender for which Ruling is sought, the Supply is being undertaken. We note that subject Advance Ruling application was filed on 20-1-22, thereby the said activity, as submitted by M/s Royal is neither an ongoing nor a proposed activity as on date of filing subject application. We note that as per Section 95(a) CGST Act, Advance Ruling is a decision provided to an applicant in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Thereby, We hold that the Question raised by M/s Royal does not fall under the gamut of said Section 95(a) CGST Act. The subject Application is thereby non-maintainable as per Section 95(a) CGST Act and hereby rejected.

17. Benefit of concessional rate of GST on Works Contract for Excavation Work

Case Name : In re B.T. Patil & Sons Belgaum Construction Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 35/2020-21/B-49
Date of Judgement/Order : 18/04/2022

Question 1:- If the tax rate of M/s. Mahalaxmi B T Patil Honai Constructions JV (Referred to as JV) is NIL as per SI No 3A- Chapter No. 9954 as per Notification No. 12/2017 C.T. (Rate) dated 28.06.2017, as amended by Notification No. 2/2018-C.T. (Rate) dated 25.01.2018, w.e.f. 25th January 2018, whether we can avail the benefit of the same tax rate i.e. NIL?

Answer:- Answered in the negative.
Question 2:- If the above answer is negative, then whether we can avail the benefit of SI No 3 (x) –Chapter No. 9954 as per Notification No. 01/2018-C.T. (Rate) dated 25.01.2018 (amendments in the Notification No 11/2017-CT (Rate) dated 18.06.2017)?

Answer:- Answered in the affirmative BUT ONLY TILL 31.12.2021.

18. GST on work contract for Earth Work such as Excavation for Tunnel etc

Case Name : In re Mahalakshmi Infraprojects Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA- 34/2020-21/B-48
Date of Judgement/Order : 18/04/2022

Question 1:- If the tax rate of M/s. Mahalxmi B T Patil Honai Constructions JV is NIL as per SI No 3A-Chapter No. 9954 as per Notification No. 12/2017-CTR dated 28.06.2017, as amended by Notification No. 2/2018-CTR dated 25.01.2018, whether we can avail the benefit of the same tax rate i.e. NIL?

Answer:- In view of the discussions made above, the applicant cannot avail of the benefit conferred by SI No 3A- Chapter No. 9954 as per Notification No. 12/2017-CTR dated 28.06.2017

Question 2:-. If the above answer is negative, then Advance Ruling for whether we can avail the benefit of SI No 3 (x) – Chapter No. 9954 as per Notification No. 01/2018-C.T.(Rate) dt 25.01.2018 (amendments in the Notification No 11/2017- C.T. (Rate) dated 28th June 2017)?

Answer:- Answered in the affirmative, BUT ONLY TILL 31.12.2021.

19. School building for use by State Government for education cannot be considered a commercial building

Case Name : In re Tirupati Construction (GST AAR Gujarat)
Appeal Number : Advance Ruling No. GUJ/GAAR/R/2022/25
Date of Judgement/Order : 18/04/2022

Whether the activity of composite supply of works contract service by way of construction of Construction of Fire Station And Staff Quarters at T.P.S NO – 42 (BHIMRAD), F.P NO-65, in SWZ(A) at Bhimrad, Surat, for the Surat Municipal Corporation and as detailed in Work Order-North Zone/Out/879 dated 26.02.2019 entered in to by the applicant supplier and the said local authority recipient i.e. Surat Municipal Corporation, merits classification at Serial Number 3(vi)(a) of Notification Number 11/2017 – Central Tax(Rate) dated : 28.06.2017 (hereinafter referred to as the said NT) , as amended from time to time and last amended by Notification Number 21/2012-Central Tax(Rate) dated 31.12.2021 w.e.f. 01.01.2022?

Held by AAR

We find that the subject contract is for the construction of immovable property wherein transfer of property in goods is involved in the execution of subject contract. We hold

that subject supply is Works Contract Service. The Supply comprises supply of school building, school hostel, college hostel, Principal's bungalow and staff quarters. We hold subject supply is a composite supply of works contract service. We find that the service recipient is Government of Gujarat (GoG).

We note that vide Explanation to Serial No 3(vi) of said NT, 'business' shall not include any activity or transaction undertaken by the State Government in which they are engaged as public authorities. Thereby we find this activity undertaken by GoG out of the purview of business, as described at sr no 3(vi)(a) of Said NT. Also, School building is a structure meant for use as an educational establishment as described at entry at Sr no 3(vi)(b)(i) of said NT; and supply of Staff Quarters is covered at 3(vi)(c) of said NT.

We note that Revenue submits that said civil structure may be used for commerce or business. We hold that a School building will be used by State Government for education and cannot be considered a commercial building. Further, as already discussed, with the explanation of term business incorporated into Sr no 3(vi) of said NT as discussed in previous para and nothing of contrary vide a specific intelligence report submitted by Revenue that the structure supplied is for business/ commerce purpose, we find no merit in Revenue's submission.

20. Fire Station cannot be considered a commercial building: AAR

Case Name : In re Tirupati Construction (GST AAR Gujarat)
Appeal Number : Advance Ruling no. GUJ/GAAR/R/2022/ 24
Date of Judgement/Order : 18/04/2022

We find that the subject contract is for the construction of immovable property wherein transfer of property in goods is involved in the execution of subject contract. We hold that subject supply is works contract service. The supply comprises supply of the following: A type Fire station; A type Admin building; B type building; C type officers quarters; site development works; VDS roads; compound wall; watchman and Pump room. We hold subject supply is a composite supply of works contract service. We find that the service recipient is Surat Municipal Corporation, which we hold is a local authority.

We note that vide Explanation to Serial No 3(vi) of said NT, 'business' shall not include any activity or transaction undertaken by a local authority in which they are engaged as public authorities. We note that fire services is a matter listed in twelfth schedule ofour Constitution and thereby a function of the Municipal Corporation. Thereby we find this activity undertaken by Surat Municipal Corporation out of the purview of business,as described at sr no 3(vi)(a) of Said NT. Also, supply of Staff Quarters is covered at 3(vi)(c) of said NT.

We note Revenue's submission that said civil structure may be used for commerce or business. We hold that a fire station will be used for fire services function as envisaged in schedule twelfth of our Constitution and cannot be considered a commercialbuilding. Further, as already discussed, with the explanation of term business

incorporated into Sr. No 3(vi) of said NT as discussed in previous para and nothing of contrary vide a specific intelligence report submitted by Revenue that the structure supplied is for business/ commerce purpose, we find no merit in Revenue's submission.

21. RTO taxes & Insurance premium will form Part of Sale Value under MVAT Act, 2002

Case Name : In re Star motors & Other 27 Applicants (MVAT AAR Maharashtra)
Appeal Number : Advance Ruling No. 4 to 27 and 31 to 34/2021-22
Date of Judgement/Order : 18/04/2022

Q.1 Whether the One time 'RTO Tax (Road Tax),' required to be paid to Maharashtra Government for use of Motor Vehicle collect and paid by the dealer for the purchaser of Motor Vehicle and Insurance premium' after registration of Motor Vehicle on the name of purchaser in the office of registration (Regional Transport office) form a part of sale price considering the provisions section 2 (24) and 2(25) and liable to tax under the provision of MVAT Act, 2002.

Ans. In affirmative ,

A) The RTO Tax collected and paid by the dealer on behalf of the customer of a motor vehicle, forms a part of "sales price' as per MVAT Ad, 2002. And

B) The INSURANCE PREMIUM collected and paid by the dealer on behalf of the customer of a motor vehicle, forms a part of 'sales price as per MVAT Act, 2002.

22. Only a supplier can file an application for advance ruling: AAR Maharashtra

Case Name : In re Romell Real Estate Private Limited (GST AAR Maharashtra)
Appeal Number : Order No. GST-ARA-69/2020-21/B-51
Date of Judgement/Order : 21/04/2022

The applicant mainly emphasized the following two issues, viz.

(1) The word 'in relation to the supply of goods or services or both' in Section 95(a) of CGST Act, 2017, can be interpreted to include supply of both inward supply and outward supply.

(2) The inward supply or outward supply are specifically defined in the Act which are two parts of the supply.

However, since provisions of Sec 95 (a) are very clear and unambiguous that only a supplier can file an application for advance ruling, the contentions of the applicant are not accepted. The said provisions were discussed with the applicant's authorized representative during the course of the final hearing and he agreed that the questions are not maintainable and not capable of being covered under Scope of section 95(a) of GST Act.

23. Transfer of business by way of merger of two GST registrations amounts to Supply

Case Name : In re Crystal Crop Protection Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-31/2021-22/B-50
Date of Judgement/Order : 21/04/2022

Question 1: – Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply' under the GST law?
Answer: – Answered in the affirmative.

Question 2: – Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of goods' under the GST law?
Answer: – Answered in the affirmative.

Question 3: Whether merger between distinct persons would qualify as 'transfer of business as going concern' under the purview of GST Law?
Answer: – Not Answered in view of discussions made above.

Question 4: Whether the transaction of transfer of business by way of merger of two GST registrations/ distinct persons would constitute 'supply of services' under the GST law?
Answer: – Answered in the negative in view of discussions made above.

Question 5: If the transaction qualifies as 'supply of services', whether the said transaction would get covered under SI. No. 2 of the Notification no. 12/2017-Central Tax (Rated) dated 28 June 2017, and therefore not liable to GST?
Answer: – Not answered in view of answer to Question No. 4 above.

Question 6: Whether Nagpur registration can file Form GST ITC-02 and transfer unutilized credit balance to Akola registration?
Answer: – Answered in the negative.

Question 7: In case the Applicant merges the business of Akola registration, then can the Applicant claim credit balance appearing in Akola registration via Form GST ITC 02A in Nagpur registration?
Answer: – This question was not admitted at the time of admission of the application and is therefore not answered.

24. AAR cannot give ruling on issues already decided in audit proceedings

Case Name : In re Medreich Limited (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 13/2022
Date of Judgement/Order : 21/04/2022

AAR observed on examination of the records that the issues/questions raised by the applicant in the instant application have already been taken up by the audit team, in the case of applicant under the provisions of the CGST Act 2017. From the audit report mentioned supra it is evident that the impugned issues have already been decided in the audit proceedings. Further the fact that the unit was subjected to audit proceedings was admitted during the hearing.

The issues raised in the instant application and the issues decided under the audit proceedings are one and same. Thus first proviso to Section 98(2) of the CGST Act 2017 is squarely applicable to the instant case, as all the conditions therein are fulfilled.

In view of the foregoing, The application is rejected as "inadmissible", in terms of first proviso to Section 98(2) of the CGST Act 2017.

25. Determination of place of supply, is beyond the scope of advance ruling

Case Name : In re IBI Group India Pvt. Ltd. (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 12/2022
Date of Judgement/Order : 21/04/2022

Q1. Whether Consultancy services rendered to ADB, Manilla would qualify as " export of services" in terms of Section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act)?

A1. Determination of place of supply is not covered under any of the clauses (a) to (g) of Section 97(2) of the CGST Act 2017. Further, the use of term 'shall', is an imperative command restricting the scope of advance ruling only to the questions enumerated in the said sub-section. Thus, to answer the question relating to determination of place of supply, is beyond the scope of advance ruling. This authority, therefore, cannot answer the first question in the application.

Q2. If the Consultancy Services rendered to ADB, Manilla do not qualify as " export of services", whether ADB would be required to obtain refund of GST charged on invoice issued for consultancy services in terms of Section 55 of the Central Goods and Services Tax, 2017 ("CGST Act") or the services would be exempt as per provisions of the Asian Development Bank Act, 1966 ("ABD Act")?

A2. The second question is a conditional one and comes into existence only if the impugned services of the applicant do not qualify as "export of services". This question becomes redundant as the first question cannot be answered by this authority. Therefore the instant application is liable for rejection for the reasons mentioned above.

26. GST on computer software supplied to public funded research institutions

Case Name : In re Keysight Technologies India Pvt. Ltd. (GST AAR Karnataka)

Appeal Number : Advance Ruling No. KAR ADRG 11/2022
Date of Judgement/Order : 21/04/2022

The Notification No.45/2017-Central Tax (Rate) dated 14.11.2017 and Notification No.45/2017-Central Tax (Rate) dated 14.11.2017 stipulates the rate of CGST / IGST @ 5%, if the goods of computer software is supplied to public funded research institutions subject to fulfillment of the conditions prescribed under column 4 of the said notification. In the instant case the applicant is supplying computer software to a public funded research institution, under the administrative control of DRDO, Government of India. Further the said institute has also furnished a certificate as required to fulfill the required condition.

Q1. Whether software licenses supplied by the applicant qualifies to be treated as computer software resulting in supply of goods and are therefore to be classified under Chapter Heading 8523 80 20?

A1. The software supplied by the applicant qualifies to be treated as Computer Software resulting in supply of goods and are therefore be classified under Chapter Heading 8523 80 20.

Q2. Whether the benefits of Notifications No. 45/2017-Central Tax (Rate), Notification (45/2017) No. FD48 CSL 2017, Bengaluru and Notification No. 47/2017-IGST (Rate) all dated 14.11.2017 are applicable to the software licenses supplied by the Applicant to the institutions given in the notification?

A2. The benefits of Notifications No. 45/2017-Central Tax (Rate), Notification (45/2017), No.FD48 CSL 2017, Bengaluru and Notification No. 47/2017-IGST (Rate) all dated 14.11.2017 are applicable to the computer software supplied by the Applicant to the institutions given in the notification, subject to fulfillment of the conditions of the notification, in each case.

27. GST Payable on transfer of business if transfer is not as going concern

Case Name : In re Cosmic Ferro Alloys Limited (GST AAR West Bengal)
Appeal Number : Advance Ruling Order No. 02/WBAAR/2022-23
Date of Judgement/Order : 22/04/2022

Questions Raised
Whether transfer of an unit by the applicant with all the assets including taking over all the liabilities by the purchaser for a lump sum consideration would amount as supply of goods or supply of services and whether the transaction would be covered under Entry No. 2 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

(i) The transaction of transfer of business unit of the applicant involved in the instant shall be treated as a supply of services.
(ii) The transaction would be covered under Entry No. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 subject to fulfillment of the conditions to qualify as a going concern.

Held by AAR

In the instant case, admittedly the applicant has entered into an agreement which inter alia involves transfer of goods forming part of the assets of the business. In a standalone manner, such transfer shall be treated as supply of goods in terms of clause (a) of Entry No. 4 of Schedule II.

However, here the applicant intends to sell his entire CRF unit where the purchaser agrees to take over the assets as well as the liabilities of the said CRF unit along with the employees and their benefits. In our view, such transfer of a unit of a business cannot be treated as supply of goods since business cannot be said to be a movable property so as to qualify as 'goods' as defined in clause (52) of section 2 of the GST Act. Further, anything other than goods, money and securities falls within the meaning of 'services' as defined in clause (102) of section 2 of the GST Act.

The term 'going concern' is not defined under the GST Act or rules framed there under. The applicant has submitted that the concept of going concern has been defined in Accounting Standards – 1 issued by ICAI which states that a fundamental accounting assumption is that of 'Going Concern' according to which "the enterprise is normally viewed as a going concern, that is, as continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations".

We find that the applicant has entered into BTA agreeing to sell the CRF Business located at Vill-Ajabnagar, P.O.-Molla Simla, Dist-Singur, PIN-712409. The purchaser has also agreed to purchase the CRF business having assets and all liabilities attached to the said CRF Unit as a going concern.

The BTA further refers that the purchaser shall continue to employ the current employees of CRF Unit even after the takeover of the CRF business. Furthermore, the seller i.e., the applicant has agreed that he shall not be entitled to engage in any business competing with the activities of the purchaser in respect of existing CRF business. Both the clauses indicate that the business will continue by the purchaser with regularity.

The applicant has also submitted that the concept of transferring a company as a 'going concern' was examined by the Delhi High court In re Indo Rama Textile Limited(2013) 4 Comp LJ 141 (Del). Para 27 of the said judgement reads as follows:

"Statement on Standard Auditing Practices (SAP) 16, "Going Concern", issued by the Council of the Institute of Chartered Accountants of India, provides that — "When a question arises regarding the appropriateness of the Going Concern assumption, the auditor should gather sufficient appropriate audit evidence to attempt to resolve, to the auditor's satisfaction, the question regarding the entity's ability to continue in operation for the foreseeable future.

It therefore appears that to qualify as a 'going concern', the business must not have 'intention or necessity of liquidation or of curtailing materially the scale of the operations'. In this context, we like to mention that the applicant has not furnished any documentary evidences from the auditor with regard to the 'entity's ability to continue in operation for the foreseeable future' in absence of which we are unable to conclude that the applicant has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations.

AAR ruled as under:
(i) The transaction of transfer of business unit of the applicant involved in the instant shall be treated as a supply of services.

(ii) The transaction would be covered under Entry No. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 subject to fulfillment of the conditions to qualify as a going concern.

28. AAR cannot give ruling based on incomplete & inconclusive documents submitted by applicant

Case Name : In re CLR Skills Training Foundation (Beeup Skills Foundation) (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-122/2019-20/B-54
Date of Judgement/Order : 27/04/2022

AAR find that, both the Agreements attached by the applicant as 'Specimen Copies" in respect of the subject application do not provide a clear picture of the actual facts in respect of the present matter before us and we therefore, cannot answer the questions raised, due to incomplete and inconclusive documentation submitted by the applicant in respect of the subject application.

29. AAR cannot give ruling on supply supposed to have been completed

Case Name : In Re Aryan Contractor Pvt Ltd (GST AAR Maharashtra)
Appeal Number : No. GST-ARA-62/2020-21/B-55
Date of Judgement/Order : 27/04/2022

The questions for obtaining an Advance Ruling can be asked by a supplier of goods or services or both, only in relation to the supply being undertaken or proposed to be undertaken and not in relation to any supply of goods or services or both which has already been undertaken and completed before.

Since provisions of Sec 95 (a) are very clear and unambiguous that a supplier can file application for advance ruling only in relation to the supply being undertaken or proposed to be undertaken and in the subject case the supply is supposed to have been completed on 31.12.2019 as per the impugned Work Order, the questions raisedby the applicant cannot be answered, in terms of Section 95 mentioned above.

30. Incentive under Intel Approved Component Supplier Program cannot be considered as Trade Discount

Case Name : In re MEK Peripherals India Pvt Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-59/2020-21/B-56
Date of Judgement/Order : 27/04/2022

Whether the Incentive received from Intel inside US LLC under Intel Approved Component Supplier Program (IACSP) can be considered as Trade Discount?

From the submissions we find that the applicant purchases the goods from the distributors and is not receiving discounts from the said distributors. Therefore, there is no supply of goods or services or both from IIUL to the applicant, no sale transaction of goods in the instant case between the applicant and IIUL and hence, the 'incentives' received by the applicant from IIUL will not be covered under the provision of Section 15 (3) mentioned above. There is no way that the said 'incentives' can be treated as Trade Discount given by IIUL to the applicant because the supply of goods in respect of which the incentives are purported to be given are rendered by the distributors and not by IIUL.

The Applicant relies on decision of Hon'ble Mumbai Tribunal in the case of Sharyu Motors v. Commissioner of Service Tax 2016(43) S.T.R. 158 (Tri. – Mumbai). We find that the facts of the said referred case law are not similar to the facts of the instant case and further, the relied upon case law pertains to the Erstwhile Service Tax regime and is not applicable in the current GST regime.

In view of the above the Incentive received from Intel Inside US LLC under Intel Approved Component Supplier Program (IACSP) cannot be considered as Trade Discount.

31. Concessional GST rate of 0.75% on construction applies to promoter & not to sub-contractor

Case Name : In re OM Construction Company (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 14/2022
Date of Judgement/Order : 30/04/2022

Q1. The applicability of Serial No. 3(i) of Notification No. 03/2019-Central Tax (Rate) New Delhi, the 29th March, 2019 (parent Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017 as amended by Notification No. 30/2018-Central Tax (Rate), dated the 31st December, 2018 to the applicant who is one of the sub- contractors to the builder / Developer / Contractor of Affordable housing under PMAYScheme.

A1. Serial No.3(i) of Notification No. 03/2019-Central Tax (Rate) New Delhi, the 29th March, 2019 (parent Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017 as amended by Notification No. 30/2018-Central Tax (Rate), dated the 31st

December, 2018 is not applicable to the applicant who is one of the sub-contractors to the builder / Developer / Contractor of Affordable housing under PMAY Scheme.

Q2. Eligibility of concessional rate of CGST at 0.75% as per the Notification No. 03/2019-Central Tax (Rate) New Delhi, the 29th March, 2019 amended from time to time.

A2. The concessional rate of CGST @ 0.75% as per entry No. 3(i) of the Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, as amended by the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 is not applicable to the applicant as the said entry is applicable only to the promoters, but not to the sub-contractors.

COURT ORDERS/ JUDGEMENTS

1. Haryana VAT Refund : HC explains power of Commissioner to withhold refund

Case Name : Vijendra Stores Vs State of Haryana and others (Punjab and Haryana High Court)
Appeal Number : CWP-7927-2020
Date of Judgement/Order : 01/04/2022

Section 20(5) of Haryana VAT Act, 2003 Act mandates that any amount refundable to any person as a result of an order passed by any Court, appellate authority or revising authority, shall be refunded to him on an application made in the prescribed manner. Section 21 prescribes the power to withhold refund to which an assessee claims himself to be entitled under Section 20. Section 21 clothes the competent authority with the power to withhold the refunds. However the same can be exercised only where an order giving rise to refund is subject matter of further proceedings and the taxing authority interested in the success of such proceedings is of the opinion that thegrant of refund is likely to adversely affect the recovery in the event of success of such proceedings. Section 21(2) further provides that on reference made under Sub- Section (1), the Commissioner has power to withhold refund or to direct the refund on furnishing of security as prescribed. Proviso to Section 21(2) provides that where a reference has been made to the Commissioner and no order withholding the refund isreceived within 90 days, the refund shall be given forthwith. In other words, the proviso arrests the power given to the Commissioner beyond 90 days.

Admittedly, in the present case, reference to the Commissioner for withholding the refund was made on 28.08.2019. On 28.08.2019, order passed by Tribunal i.e. the order giving rise to a refund was not subject matter of any further proceedings. So far as according of approval to withhold the refund by Commissioner on file is concerned, the same is inconsequential. From analysis of Section 21, one would infer that it confers power on Commissioner to pass an order withholding refund or allowing the refund on furnishing of security on satisfaction of the conditions enumerated under Section 21(2). Legislature was conscious of the fact that the power conferred to withhold refund in Section 21 is akin to exercising power to stay the money decree and thus, an option was given that the refund can be directed to be made on furnishing of security as the objective is to affect the recovery only. It goes without saying that any order passed to withhold the refund is prejudicial to the interest of assessee. Sincethe provision itself provides that the Commissioner may pass an order withholding the refund or direct that refund be made on furnishing of security, the said power cannot be exercised mechanically. While exercising this power, the authority i.e. Commissioner has to act judicially and is required to give an opportunity to the assessee to make out case for refund or satisfy him by furnishing security. Thus, noting on file cannot be a substitute to an order required to be passed under the provisions of Section 21. Further impugned order Annexure P-10 is bereft of any reasoning. It is trite that mere reproduction of the words of statute cannot be construed as substitute for the reasons that an authority exercising statutory power is required to record.

Keeping in view the aforesaid facts, we find that impugned order withholding the refund of is unsustainable being in teeth of provision of 2003 Act. The authorities are directed to issue refunds to the petitioner in terms of his application dated 08.08.2019 as per

law within a period of one month from the date of receipt of certified copy of this order.

2. Address on Invoice not Matches RC; Post Facto Amendment of GST Registration, HC Quashes Penalty

Case Name : Algae Labs Pvt. Ltd Vs State Tax Officer (Madras High Court)
Appeal Number : Writ Petition (MD) No. 4958 of 2022
Date of Judgement/Order : 04/04/2022

After hearing the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Writ Petition is disposed of.

2. In this Writ Petition, the petitioner has challenged the impugned order of demand of tax and penalty under Section 129 of the respective GST Acts. By the impugned order, the respondent has demanded a sum of Rs.12,46,678/-[Rs.6,23,339+Rs.6,23,339].

3. The petitioner is a new start up company and is engaged in research and development on Alage and its utilization. The petitioner placed purchase order on 07.10.2021 for supply of a specialized spray dryer and the parts thereof with M/s.ABV Engineering, Ahmedabad, who had consigned the same along with the invoice bearing No.197/21-22, dated 28.02.2022. The goods also accompanied with E-way Bill. As per the invoice, the name and address of the Consignee read as under: "Algae Labs Private Limited, 5/150, South Karumpattor, South Thamaraikulam, Kanyakumari, Tamilnadu – 629708"

4. The vehicle along with spray dryer were seized by the respondent on the ground that the address of the Consignee mentioned as No.5/150, South Karumpattor, South Thamaraikulam, Kanyakumari, Tamil Nadu – 629708, was not a place mentioned in the GST Registration of the petitioner.

5. The learned counsel for the petitioner submits that the petitioner has entered into a rental agreement with one of the Directors of the petitioner Company, who is running a Proprietary concern at the said premises called "Tvl.Pinnacle Biosciences" and the above said premise has been taken on rent by the petitioner. Post facto the petitioner has also amended GST Registration by including the address at No.5/150, South Karumpattor, South Thamaraikulam, Kanyakumari, Tamil Nadu – 629708 in the GST Registration.

6. The learned counsel for the petitioner submits that there is no violation of Section 129 of the respective GST enactments as the transportation by the supplier from Gujarat not only accompanied tax invoice, but also E-way Bill showing sufferance of tax to the goods transported from Gujarat to the petitioner. It is therefore submitted that the impugned order is not sustainable. The learned counsel for the petitioner has also drawn the attention of this Court to Circular No.10/2019 Q1/17253/2019, dated 31.05.2019, issued by the Commissioner of Commercial Taxes.

7. Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the registration profile of the petitioner reveals that one M.Adhi Visvanathan is the Director of the petitioner concern and also the Proprietor of Tvl.Pinnacle Biosciences, having address at No.5/150, South Karumpattor, South

Thamaraikulam, Kanyakumari, Tamil Nadu – 629708. It is submitted that the place of delivery of the consignment is the business place of Tvl.Pinnacle Biosciences, who is also in the same trade and thus, there is an attempt to evade tax. It is further submitted that the attempt was to clear the goods to the said said Tvl.Pinnacle Biosciences and therefore, the impugned order cannot be interfered.

8. It is further submitted that the reliance placed by the petitioner on Circular No.10/2019 Q1/17253/2019, dated 31.05.2019, is of no relevance.

9. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perused the impugned order and Circular No.10/2019 Q1/17253/2019, dated 31.05.2019.

10. Both the petitioner and the respondent admit that as on date the above said address has been included in the petitioner's place of business in the GST Registration. Thus, there is a post facto inclusion of the address, which was mentioned in the tax invoice raised by the supplier and in the E-way Bill.

11. Considering the above fact, I am inclined to quash the impugned order, as there is no attempt to evade tax. Incidentally, in W.P.(MD)No.5720 of 2022 [M/S.Smart Roofing Private Limited, represented by its Authorized Signatory, N.Karthick vs. The State Tax Officer (Int), Adjudication-II, Madeira], an order came to be passed under a some what similar circumstances on 30.03.2022. There also, post facto GST Registration was amended and relief was therefore granted. The facts of the present case and the facts of the above said case are not different. Considering the same, I am inclined to allow this Writ Petition.

12. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

3. Full address of buyer not mentioned on Invoice: HC order release of Goods & Vehicle on payment of 25% of Penalty

Case Name : RKS Agencies Vs State Tax Officer-I (Madras High Court)
Appeal Number : W.P.Nos. 7882 & 7886 of 2022
Date of Judgement/Order : 05/04/2022

The petitioner purchased goods called cement from Andhra Pradesh, whereas, the petitioner is having the Branch office at Coimbatore which is the destination where the purchased goods has to reach. When the goods were transported, the vehicle was intercepted by the respondent Revenue Squad and they found that, there is a violation in the invoice that the full address of the buyer has not been mentioned.

For the said violation and also some alleged violation that there is no activities in Coimbatore Branch, where the address had been given by the petitioner buyer, that since has been shown as the receiving end of the buyer's office, for such violation, the Revenue detained the goods and therefore, in lieu of that, they issued a notice on 07.03.2022.

Branch office of the petitioner located at Coimbatore, as claimed by the petitioner, is a non-functional office, where, on inspection, it was found by the Revenue that, no such activities of buying or stocking anything taken place. Therefore, cumulatively considering all these, such a fine has been imposed through the order dated 11.03.2022 and that order since is the final order, it is staring on the petitioner, however, the petitioner has only challenged the present communication dated 07.03.2022 which is only a notice, even though in the operative portion of the said notice, which is impugned herein, it has been stated that, the amount shall be paid within three days.

Even though the petitioner's counsel says or indicates that, only a sum of Rs.5,000/- will be normally imposed, that kind of arrangement is not agreeable for the learned Additional Government Pleader for the respondent as according to him, this violation is a recurring one from the petitioner, therefore a larger fine has to be imposed.

Considering the facts and circumstances of the case and to balance the interest of both sides, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the petitioner on payment of 25% of the demand of the penalty in each of the case, the goods and vehicles in question detained by the respondent shall be released. Such payment of 25% of the penalty is without prejudice to the right of the petitioner to be urged or raised before the Appellate Authority against the final order now has been passed on 11.03.2022 if he is advised to do so.

(ii) It is made clear that, if he has not paid the 25% of the demand of penalty, the goods and vehicles in question need not be released.

(iii) It is further made clear that, after paying the 25% penalty as indicated above and the goods and vehicles are released, against which, subsequently if the petitioner has not chosen to assail the order of final penalty dated 11.03.2022, after lapse of 3 months period from the date of release of the goods, it is open to the respondent to proceed, in accordance with law, the 11.03.2022 order for recovering the remaining amount of the penalty.

4. HC stays GST Adjudication Order passed by officer who conducted investigation/search/seizure

Case Name : Swastik Plastics Vs Commissioner of DGST (Delhi High Court)
Appeal Number : W.P.(C) 5680/2022
Date of Judgement/Order : 05/04/2022

Delhi HIgh Court stay Adjudication Order passed in consequence of investigation/search/seizure and SCN issued under Section 74 of the GST Act for the reason that that the authority who had conducted the investigation/search/seizure cannot conduct the adjudication proceedings as there is likelihood of Bias.

5. HC quashes GST Registration cancellation order

Case Name : FADA Trading Private Limited Vs Commissioner Goods and Service Tax (Delhi High Court)
Appeal Number : W.P.(C) 1212/2022
Date of Judgement/Order : 07/04/2022

The show cause notice, which is, dated 02.12.2019, gives no details as to the date and time on which the petitioner's authorized representative was to present himself for a personal hearing, before the adjudicating authority. This is apart from the fact that neither the show cause notice dated 02.12.2019, nor the subsequent order cancelling the petitioner's GST registration was received by the petitioner. To be noted, the record shows that the order cancelling the petitioner's GST registration was passed, on 11.12.2019.

Petitioner says that it did not receive any intimation about the show cause notice or the order cancelling the petitioner's GST registration, is on account of the fact that thethen directors of the petitioner, at the relevant time, were at cross purposes.

A close perusal of the order dated 11.12.2019, whereby the petitioner's registration was cancelled, shows that, in fact, there was no demand outstanding qua the petitioner.

In view of the above, the impugned order dated 26.10.2021, passed by the appellate authority, and the order cancelling the petitioner's GST registration dated 11.12.2019, are set aside.

6. Blocking of ITC- Petitioners should first approach the authorised Officer

Case Name : M. M. Traders State of U P (Allahabad High Court)
Appeal Number : Writ Tax No. 212 of 2022
Date of Judgement/Order : 07/04/2022

All the aforequoted writ petitions have been filed aggrieved with blocking of input tax credit by the concerned authority under Rule 86 A of the C.G.S.T. /U.P. G.S.T. Rules, 2017. Rule 86 A(2) of the C.G. & S.T. Rules, 2017, which provides as under :-

"86 A(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit."

From perusal of Rule 86 A(2) of the C.G. & S.T./U.P. G. & S.T. Rules, 2017, and paragraph 3.4 of the belowquoted guidelines of the Commercial Tax we are of the view that the petitioners should first approach the authorised Officer raising objections against the blocking of the input tax credit and the said authority would be under an obligation to decide the objection within a time bound period.

7. Intimation given in Form DRC-01 not valid, it should be in DRC-01A

Case Name : Agrometal Vendibles Private Limited Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 6919 of 2022
Date of Judgement/Order : 07/04/2022

The intimation under sub-section (5) of Section 74 has to be strictly in Form GST DRC – 01A. It is not a show cause notice. In the intimation, the dealer should be informed that if he fails to make the payment, the next step in the process will be issue of a show cause notice under sub-section (1) of Section 74 in accordance with the Form GST DRC – 01. Once there is a show cause notice in the Form GST DRC – 01 in accordance with Rule 142(1)(a) of the Rules to be read with sub-section (1) of Section74, the same would ultimately lead to regular assessment proceedings with final assessment order. Department needs to correct itself not only as regards their understanding of the entire procedure, but even the contents of the Forms are incorrect. The intention of the proper officer was to give intimation in accordance with sub-section (5) of Section 74 and therefore, the intimation should have been in the Form GST DRC – 01A and not Form GST DRC – 01. There is a vast difference between Rule 142(1)(a) and Rule 142(1A) of the Rules. Therefore, from now onwards, if the department deems fit to issue any intimation of tax ascertained as being payable under sub-section (5) of Section 74 in accordance with the Rule 142(1A) of the Rules, it shall issue notice in the Form GST DRC – 01A. In such a notice of intimation, the proper officer shall not threaten the dealer that if he would fail to comply with the intimation, the department shall proceed to recover the tax. The proper officer should inform the dealer that if he would pay the tax, well and good, otherwise the department shall proceed to issue a show cause notice under sub-section (1) of Section 74 in accordance with Rule 142(1)(a) of the Rules, 2017 in Form GST DRC – 01 and carry out regular assessment proceedings.

For the foregoing reasons, the impugned intimation of tax in the Form GST DRC – 01 is hereby quashed and set aside.

8. Interest payable on belated payment of GST: Madras High Court

Case Name : Srinivasa Stampings Vs Superintendent of GST and Central Excise Hosur (Madras High Court)
Appeal Number : WP. No. 7129 of 2021
Date of Judgement/Order : 08/04/2022

Interest has been demanded on the net tax liability of the petitioner on account of belated payment of tax during the aforesaid period under Section 50(1) of the CGST Act, 2017.

Since tax was paid by the petitioner belatedly, petitioner is liable to interest during the period default. There was no excuse for not paying the tax in time from its electronic cash register. Nothing precluded the petitioner from discharging the tax liability from its electronic credit.

If there is a belated payment of tax declared in the returns filed, interest has to follow. The petitioner has to pay the interest on the belated payment of tax and as has been demanded. Even where there is a failure to file returns or circumstances specified under Sections 73 and 74 of CGST Act, 2017, in interest has to be paid.

9. HC declines exemption from personal appearance under GST

Case Name : Suresh Balkrishna Jajra Vs Union of India (Rajasthan High Court)
Appeal Number : D. B. Civil Writ Petition No. 4741/2022
Date of Judgement/Order : 08/04/2022

This petition has been filed by the petitioner seeking direction of exemption from personal appearance pursuant to summons issued to the petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act of 2017') issued by Respondent No. 3.

Though jurisdiction of the authority is not under challenge, nor the order is alleged to be issued in exercise of any malice, in fact, against any particular authority, the ground of challenge is that the petitioner is entitled to be represented through his authorised representative as provided under Section 116 of the Act of 2017.

The other submission of learned counsel for the petitioner is that in view of clarification under FAQs, the petitioner's representation through authorised representative is required to be duly considered by the respondents. In this regard, he would submit that unless it is absolutely imperative, it is not necessary that in all cases, the petitioner should be insisted for personal appearance and he may be allowed to appear through representative also replying to various queries. Reliance has been placed on order dated 10.01.2022 passed by the High Court of Judicature at Bombay in the case of FSM Education Pvt. Ltd. Vs. Union of India (Writ Petition (L) No. 30974/2021).

Learned counsel for the petitioner also brought to the notice of this Court that GST authorities are acting in a high handed manner and in fact, son of the petitioner was apprehended in connection with the process of search and seizure, therefore, petitioner's apprehension of he being harassed is not without any basis.

On the other hand, learned counsel for the respondents would submit that in this case, summons have been issued under Section 70 of the Act of 2017 by Respondent No. 3 in exercise of powers under the law. He would next submit that as the petitioner has been directed to appear personally, provisions of Section 116 of the Act of 2017 would not be applicable. Learned counsel would submit that the authorities are presumed to exercise their power in accordance with the law and in the absence of any specific allegation against the authority, who has issued summons, the petitioner is not entitled to any such relief.

The argument of learned counsel for the petitioner that the petitioner is entitled to be represented through his representative in view of the provisions contained in Section 116 of the Act of 2017 is not acceptable in law because the provisions under Section 116 of the Act of 2017 will not be applicable when a person is required under the Act

to appear personally for examination on oath or affirmation. This is clear from the language of the provisions itself as contained in sub-section (1) thereof, which is reproduced herein as under:

"116. Appearance by authorised representative.-(1) Any person who is entitled or required to appear before an officer appointed under this Act or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.
(2) xxxxxxxx
(3) xxxxxxxx
(4) xxxxxxxx"

Therefore, on that count, no relief can be granted.

The other submission is based on FAQs, which have been annexed with the petition. FAQs do not provide that such kind of request for representation through legal representative would be permissible even in those cases which are not covered under Section 116 of the Act of 2017, that too by way of administrative instructions, as that would be against the provisions of law.

Reliance placed on the judgment of Bombay High Court in FSM Education Pvt. Ltd. (supra) is misplaced on facts because on facts of that case, the Court exercising its discretion was inclined to pass some protective order. On principles, we do not find that without there being any right to be represented only through legal representative, a mandamus can be issued by this Court to the respondent.
Last but not the least, submission of learned counsel for the petitioner that even though in a case where the summons under Section 70 of the Act of 2017 have been issued to a person, the authority may consider his request of limited nature either for changing date of personal appearance or granting some relief in the context of personal disability, is a matter of consideration of the concerned authority and not for the Court. It would be open for the petitioner to move such application of limited nature before the authority, if for any unavoidable reason, he is unable to appear on a particular date. Before parting with the case, this Court, taking note of the directions issued by Their Lordships in the Hon'ble Supreme Court in the case of Paramvir Singh Saini Vs. BaljitSingh & Others (2021) 1 SCC 184, would observe that even in the matter of issuance of summons under Section 70 of the Act of 2017 for personal appearance and recording of statement, certain procedure has to be followed as stated therein. All suchprocedure as laid down therein will have to be followed by the respondents while recording the statement of the petitioner pursuant to summons issued under Section 70 of the Act of 2017. Para 19 of the aforesaid judgment reads as under:

"19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:
(i) Central Bureau of Investigation (CBI)

(ii) National Investigation Agency (NIA)
(iii) Enforcement Directorate (ED)
(iv) Narcotics Control Bureau (NCB)
(v) Department of Revenue Intelligence (DRI)
(vi) Serious Fraud Investigation Office (SFIO)
(vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station."

The allegation with regard to high handed action against son of the petitioner could not be subject matter of this petition. We would not comment upon that.

In view of above, subject to observations made hereinabove, we are not inclined to grant relief, as prayed for in this petition.

Writ petition is, accordingly, disposed off.

10. Benefit of tax exemption under BIFR cannot be an unending bonanza: SC

Case Name : Augustan Textile Colours Limited Vs Director of Industries and Anr. (Supreme Court of India)
Appeal Number : Civil Appeal No. 2830 of 2022 in (Arising out of SLP(C) No. 24288 of 2018)
Date of Judgement/Order : 08/04/2022

Facts-The issue to be considered here is whether the benefit of tax exemption in respect of works contract granted in the process of revival of the industry, under the relevant provisions of the Sick Industrial Companies Act, 1985 based on the Kerala Government communication dated 20.3.2004 (Ext. P-2) can be withdrawn, by the subsequent government order dated 21.11.2006 (Ext. P-3).

Conclusion- Exemption of sales tax is contemplated for a period of two years. However, it further provides that it cannot be for more than five years or beyond the date the net worth of the company becomes positive whichever is earlier. Therefore, the maximum period in any case is 5 years. In the case of the appellant, the appellant enjoyed the benefit of the exemption till it was withdrawn on 21.11 2006. The said order in turn was withdrawn on 01.10.2007. It is no doubt true that on 29.02.2008, the order dated 01.10.2007 came to be withdrawn. The writ petition was filed by the appellant. Itwould appear that for a period of nearly 4 years, the appellant enjoyed the benefit of exemption in all.

It is obvious that it could not be an unending bonanza even after the company breaks even and even made profits.

11. HC directs dept. to complete delayed final GST assessment proceedings within 2 Months

Case Name : Modern Syntex Vs Assistant Commissioner of CGST And Central Excise (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 15927 of 2020
Date of Judgement/Order : 08/04/2022

The grievance of the writ-applicant is that the final GST assessment proceedings are yet to be undertaken. No final assessment order has been passed till this date.

We have gone through the affidavit-in-reply filed on behalf of the respondents. We do not intend to enter into the merits of this litigation as the issue is still at large before the Assistant Commissioner, Vadodara. Our only concern is the delay that hasoccurred in the present litigation in finalizing the assessment proceedings.

We direct the Assistant Commissioner of Central Excise, Vadodara to immediately take up the matter and see to it that the assessment proceedings are concluded finally with an appropriate order of assessment in accordance with law within a period of two(02) months from the date of the receipt of the writ of this order.

If the Assistant Commissioner of Central Excise, Vadodara is in need of any documents to finalize the assessment proceedings, then it may intimate the writ- applicant at the earliest to furnish such documents. If the writ-applicant receives any such intimation, it shall act promptly for effective and expeditiously disposal of the assessment proceedings.

With the aforesaid, this writ-application stands disposed of. The connected Civil Application also stands disposed of.

12. Fraudulent Claim of ITC of ₹9.97 crores: HC grants Bail to Accused

Case Name : Pulkit Vs State (NCT of Delhi) (Delhi High Court)
Appeal Number : Bail Appln. 21/2022
Date of Judgement/Order : 12/04/2022

1. The applicant seeks regular bail in connection with FIR No. 263/2018 dated 24.12.2018 registered at Police Station Economic Offences Wing for offences under Sections 420, 468 and 471 of the Indian Penal Code, 1860 [“IPC”].

2. The FIR was registered on 24.12.2018, originally in respect of offences under Sections 420, 468 and 471 of the IPC, and the only accused named in the FIR was one Sanjay Garg, son of Deep Chand Garg. The FIR alleges cheating and fraud by M/s Saraswati Enterprises [“Saraswati”], of which Sanjay Garg is the proprietor, causing loss to the government for the sum of ₹9.97 crores. Briefly stated, the allegations in the FIR concern unauthorised and fraudulent claim of input tax credit in respect of Goods and Services Tax [“GST”] by Saraswati.

3. The chargesheet has since been filed on 08.10.2021, wherein the applicant has been named as an accused. The allegation against the applicant is that he and a co-

accused [Shubham Khandelwal] have set up a number of fictitious companies, which are being used for the purposes of defrauding the government. It is contented that the accused persons have opened banks accounts in fictitious names and provided their telephone numbers and email addresses in this respect.

4. A perusal of the chargesheet reveals that the allegation regarding fraudulent transactions causing loss to the government is based upon transactions for the period 27.08.2017 to 22.11.2017. It is stated that the addresses having been found to be fictitious, the mobile numbers and email addresses used for verification at the time of Value Added Tax ["VAT"]/ GST registration were investigated, as also the bank details disclosed by the accused persons. One of the mobile numbers used in the registration of Saraswati as well as in opening of its bank account was found to be in the name of the present applicant. In this regard, the Status Report filed by Mr. Amit Chadha, learned Additional Public Prosecutor for the State, states as follows:-

"(5) During investigation, CAF of suspected Mobile Numbers were collected from Nodal officers of Mobile operators. From analysis of records, it revealed that the mobile No. 9015824684 was found subscribed in the name of Shubham Khandewal since 07.03.2014. Later, this number 9015824684 was ported/transferred in the name of accused Pulkit on 13.03.2018, where Mobile No. 7210901568 was given as an alternative number. The Mobile No. 7210901568 was previously subscribed with operator Cellone, which had closed its offices and its record were not available but before that it was ported in Airtel Cellular and was found subscribed in the name of Shubham Khandelwal since 16-03-2018. Also, Mobile No. 9560238036 used at the time of opening of bank account of M/s Saraswati Enterprises in Bandhan Bank, Noida on 18.11.17 was found subscribed in the name of Shubham Khandelwal since 29.11.2016."

[Emphasis supplied].

5. The email addresses used at the time of registration in the VAT department and the banks have also been verified in respect of which the Status Report states as follows:-
"(6) During the course of investigation, a letter was written to Nodal officer, Google to provide detail of IP-address and other detail of Gmail used by accused persons in VAT Department at the time of registration and banks at the time of opening of the bank account i.e. email ID cauttam@gmail.com, pulkitg04@gmail.com and pulkitgoyal95@gmail.com and reply received. During investigation, it has been established that email ID of accused Pulkit i.e. pulkitgoyal95@gmail.com used in account of Saraswati Enterprises in Bandhan Bank, Noida, UP was last used by one Umesh Sharma at the instance and request of accused Pulkit tor insurance purpose. Mr. Umesh Kaushik, who is a neighbor of accused Pulkit was examined and at his instance Gmail of Pulkit was opened and various emails from Bandhan Bank, Noida for account of Saraswati Enterprises were seized by taking print out of the same."

[Emphasis supplied].

6. Mr. Sunil Dalal, learned Senior Counsel for the applicant, submits that the applicant was, in fact, an employee of Shubham Khandelwal only since early 2018 and it is the case of the prosecution itself that the mobile No. 9015824684 was transferred to the applicant's name only on 13.03.2018, after the transactions in question had already taken place. The registration of the suspect accounts and the opening of the bank

account using the said mobile number all pre-date the transfer of the said number to the present applicant. Mr. Dalal states that even in the chargesheet, investigation of the transactions with the purchasers dealing with Saraswati revealed that Shubham Khandelwal was the person who supplied the bills and accepted payments in account of Saraswati.

7. Mr. Chadha draws my attention to the contents of the Status Report to submit that the applicant is involved in a complex and well-planned scheme of setting up of fictitious companies, by using fake identities, in order to generate bogus invoices and claiming unauthorised input tax credit to the detriment of the government. He submits that having regard to the facts of this case, the applicant is not entitled to be released on bail.

8. Having heard learned counsel for the parties, I am of the view that the chargesheet and a supplementary chargesheet having been filed, the applicant is entitled to bail in the facts and circumstances of the case. From the Status Report quoted above, it appears that the main link of the present applicant with the transactions in question is on the basis of the use of the mobile No. 9015824684 and his email address. As far as the mobile number in question is concerned, the chargesheet and the Status Report reveal that it was transferred to the applicant only on 13.03.2018. The email addresses mentioned in paragraph 6 of the Status Report were also accessed not through the applicant but through another party. In the Status Report, the prosecution has made out a case that the applicant, in conspiracy with Shubham Khandelwal, had registered various bogus firms and opened fictitious bank accounts. The events mentioned in paragraphs 7 and 8 all relate to the year 2017. There is no suggestion in the Status Report that the applicant neither has prior criminal antecedents nor is there any material to suggest that he is a flight risk. The applicant has been in custody for a period of approximately nine months since 14.07.2021. The evidence in the present case is largely documentary, and has already been placed before the Trial Court. The chances of the applicant tampering with the evidence is therefore unlikely.

9. The seriousness of the offences alone is not conclusive of the applicant's entitlement to bail, as held by the Supreme Court inter alia in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40 in the following terms:

"23. Apart from the question ofprevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction ahs a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail

applications but that is not the only test or the factor; the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

25. The provision of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it maylead to chaotic situation and would jeopardize the personal liberty of an individual."

10. For the aforesaid reasons, the applicant is admitted to bail in connection with FIR No. 263/2018 dated 24.12.2018 registered at Police Station Economic Offences Wing, subject to the following conditions:- a. The applicant will furnish a personal bond in the sum of ₹1,00,000/- with two sureties of the like amount, one of which will be from a blood relative of the applicant, to the satisfaction of the Trial Court. b. The applicant will remain resident at the address mentioned in the memo of parties [House No. 321/29, Gali No. 6, Dev Nagar, Sonipat, Haryana]. c. The applicant will inform the Investigating Officer and the Trial Court in advance of any change in his residential address. d. The applicant will appear on each and every date fixed before the Trial Court. e. The applicant will give his mobile numbers to the IO and ensure that the mobile numbers are kept operational and reachable at all times. f. The applicant will not directly or indirectly tamper with evidence or try to influence any of the prosecutionwitness in the case. In case the same is established, the bail granted to the applicant shall stand cancelled forthwith.

11. The application stands disposed of with these directions.

12. Needless to state, nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

13. <u>HC allows Eligible input tax credit by modifying Form TRAN-1</u>

Case Name : Ambica Fertilizers Vs Union of India (Bombay High Court)
Appeal Number : Writ Petition No. 1690 of 2019
Date of Judgement/Order : 13/04/2022

Facts- The petitioner filed Form TRAN-1, but inadvertently did not claim approximately Rs.13,17,956/-in the said Form TRAN-1. There was no option available to the petitioner to revise the Form TRAN-1 after 27th December, 2017.

According to the petitioner, since the petitioner missed out the claim of approximately Rs.13,17,956/-, the petitioner prayed for permission by making representation to

correct the said mistake which was not allowed. The petitioner accordingly filed this writ petition, interalia, challenging the virus of Rule 117 and 120A of the Central Goods and Services Tax Rules, 2017.

Conclusion- This court, in the case of Heritage Lifestyles and Developers and Private Limited, a perusal of the said judgment indicates that the petitioner in that case was allowed to make such claim if the petitioner was otherwise eligible for credit of the amount. Considering those facts, this Court in the said judgment directed the respondents to accept the TRAN-1 filed by the petitioner and to give the due of input tax credit in the electronic credit ledger/input tax credit of the petitioner within two weeks from the date of the order.

In our view, the interest of justice would be served if we allow the petitioner to correct Form TRAN-1 in Writ Petition No. 1609/2019 and to file Form TRAN-2 withoutprejudice to the rights and contentions of both the parties. The respondents shall consider the issue whether the Form TRAN-1 and other forms that would be filed/corrected by the petitioner can be entertained in accordance with the provisions of section 140 of the Central Goods and Services Tax Act, 2017 and Rule 117 (1) of the Central Goods and Services Tax Rules, 2017 or not.

14. <u>Transition of ITC cannot be denied merely for technical difficulties</u>

Case Name : Vetrivel Explosives Pvt. Ltd. Vs Union of India (Madras High Court)
Appeal Number : Writ Petition (MD) No.8250 of 2021
Date of Judgement/Order : 13/04/2022

Judgement
The Madras High Court has held that credit which remained unutilized on the date of accident in the regular returns filed by the Petitioner, shall be allowed to the Petitioner either by way of suitable credit entry in the electronic cash register of the Petitioner or by way of cash refund to the Petitioner.

Fact of the case
Petitioner was engaged in manufacture of explosives and that there was a huge fire accident on 01.12.2016, which resulted closing of factory for a period about two years i.e. during subsumption of taxes to GST. The Petitioner was able to re-open the factory only during August 2018.

During this period, the Petitioner was required to file Form GST TRAN-1 on the common web portal in terms of Rule 117 of the CGST Rules, 2017 read with Section 140 of the CGST Act, 2017. The last date for filing return was 27.12.2017. However, the Petitioner was unable to file Form GST TRAN-1 in time as the factory had been closed and was under lock and seal.

Communication was sent by department to the Petitioner stating that Petitioner have neither attempted to file Tran-1 return nor come across any technical glitches at the time of filing TRAN-1 return at GSTN common portal. Hence, Petitioner’s request for enabling of filing of GST TRAN-1 does not merit consideration.

Argument by Petitioner

It was submitted on behalf of the petitioner that the relief was given to those assesses who faced technical problems after loading the information, vide Notification No.48/2018-Central Tax, dated 10.09.2018, with effect from 10.09.2018.

Petitioner also relied on various High Court Judgments wherein the TRAN-1 return filing was allowed

Argument by Department

It was submitted on behalf of the respondent that the benefit of Rule 117 (1A) was available only for the persons those who filed returns in Form TRAN-1 in time i.e., on or before 27.12.2017 and not to the persons like the petitioner, who did not file Form TRAN-1 in time.

Respondent also referred to the decision of the Delhi High Court in the case of M/s. Brand Equity Treaties Limited vs. Union of India wherein it was held that limitation of three years under the Limitations Act would apply is not good law. The Department is in appeal before the Hon'ble Supreme Court and hence, the question of allowing the petitioner to avail input tax credit in TRAN-1 cannot be permitted.

Legal Issue

Whether relief of allowing unutilised credit through TRAN-1 should be granted to even those assesses who have not faced technical problems or who never tried filing Form TRAN-1, vide Notification No.48/2018-Central Tax, dated 10.09.2018.

Observation of Court

The Hon'ble High Court held that in all the writ petitions cited above the benefit has been granted to all the assesses and that input tax credit is equivalent to cash for discharging the tax liability and hence, transition of the input tax credit cannot be restricted or denied merely because there were technical difficulties.

It also held that such unutilised credit on the date of accident should be allowed to the petitioner either by way of suitable credit entry in the electronic cash register of the petitioner or by way of cash refund to the petitioner

Comments

This ruling is an exceptional ruling to all the past precedents wherein, the petitioner was not able to file TRAN-1 due to halt in business for two years because of fire in thefactory and not due to error / technical issue faced while filing TRAN-1 on the GSTN portal.

The Hon'ble High Court thus disposed of this writ petition allowing the unutilised credit on the date of accident to the petitioner by way of suitable credit entry in the electronic cash register of the petitioner or by way of cash refund to the petitioner if the respondent are in case unable to permit filing of belated TRAN-1.

15. Plea In SC challenging GST levy on lease rentals

Case Name : Myrayash Hotels Pvt. Ltd. Vs Union of India (Supreme Court of India)
Appeal Number : Petition(s) for Special Leave to Appeal (C) No(s). 6080/2022
Date of Judgement/Order : 13/04/2022

The plea challenges the constitutional validity of GST Levy on Lease/ Rental Payments.

The Supreme Court of India has asked the petitioner(s) to serve an advance copy to the Additional Solicitor General to seek instructions in a plea challenging constitutional validity of levy of GST on lease/ rent payments. Justice M.R. Shah and Justice B.V. Nagarathna, while hearing the matter, observed, "Let one advance copy be served on Shri N. Venkataraman, learned ASG, who may take the instructions in the matter and file the counter affidavit.

The plea states, "By deeming a lease of land to be "supply of service" and then taxing it, essentially the GST Act tax the land itself. There is no reason why income or yield of land should be allowed to be taxed under Entry 49 List II, but the use of land which produces that yield or income should fall outside Entry 49 List II. When GST is levied on lease of land, it is ultimately levied on the lease income which is yield of land itself. The lease income and the lease user are inextricably linked. One cannot say that the lease is separate from the lease income which is generated.

16. Release Seized Goods on receipt of Bank Guarantee – HC directs GST Dept

Case Name : Tvl. Asian Paints Limited Vs Assistant Commissioner (ST) (Madras High Court)
Appeal Number : W.P. No. 9567 of 2022
Date of Judgement/Order : 18/04/2022

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus directing the first respondent herein to accept the bank guarantee equivalent to the disputed penalty amount of Rs.25,86,662/- in accordance with the provisions of Section 129(1)(c) of the CGST Act, 2017 and provisionally release the goods along with the conveyance bearing TN 07 AV 7881, pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

2. The case of the petitioner is that the petitioner company is a leading brand and manufacturer in paints and is a Public Limited Company registered under Companies Act, 2013 and also registered under the Central Goods and Services Tax Act, 2017(in short 'CGST Act') and Tamil Nadu Goods and Services Tax Act, 2017 (in short 'TNGST Act'). The petitioner imported Titanium Dioxide Rutile bearing TN 07 AV 7881from M/s.Tronox Pigments Private Limited, Australia for their manufacturing plant at Sriperumbudur. While that being so, the goods were inspected by the second respondent and the the petitioner was issued with the Order of Detention in Form GST MOV-06 dated 21.03.2022 along with the Penalty Notice under Section 129(3) of the CGST Act, 2017 and TNGST Act, 2017 by the first respondent. Challenging the order of detention by the first respondent, the petitioner filed Writ Petitions in W.P.Nos.7378

and 7384 of 2022 dated 29.03.2022 and the same was disposed of by this Court with a direction to the petitioner herein to raise all the points on merits before the adjudicating authority and directed the respondents herein to pass an order within a period of two weeks after giving an opportunity of being heard by considering the circumstances of the case.

3. Thereafter, the petitioner filed his objections on 04.04.2022 regarding detention of goods that were imported by the petitioner. However, the first respondent vide order dated 07.04.2022 confirmed the levy of penalty of Rs.25,86,662/- under Section 129(1)(a) of the CGST Act, 2017. Thereafter, the petitioner made a representation dated 11.04.2022 requested the respondents to release the goods in the vehicle bearing Regn.No.TN 07 AV 7881 by stating that they would furnish the bank guarantee equivalent to the disputed penalty amount of Rs.25,86,662/- and further that the petitioner yet to prefer appeal under Section 107 of the CGST Act, 2017 against the order dated 07.04.2022, however, till date no order has been passed on representation of the petitioner. Aggrieved by the same, this Writ Petition is filed.

4. The learned counsel for the petitioner submitted that, it would suffice if this Court issues direction to the first respondent to accept the bank guarantee equivalent to the disputed penalty amount of Rs.25,86,662/-in accordance with the provision of Section 129(1)(c) of the CGST Act, 2017 and provisionally release the goods in the vehicle bearing Regn.No.TN 07 AV 7881.

5. The learned Additional Government Pleader appearing for the respondents submitted that if the petitioner could annex the bank guarantee along with the copy of the representation made before the first respondent, immediately after the receipt of the bank guarantee of the petitioner, the detained goods will be released in favour of the petitioner within a period of one week form the date of receipt of the same.

6. In view of the fair submission made by the learned Additional Government Pleader, this Court permits the petitioner to obtain and annex the bank guarantee within a period of one week from the date of receipt of a copy of this order along with the application/representation. If such bank guarantee and application is made, the respondents are directed to release the detained goods to the petitioner within a period of one week thereafter.

7. With the aforesaid directions, this Writ Petition is disposed of. No Costs.

17. Summary SCN not fulfilling ingredients of a proper SCN violates principles of natural justice

Case Name : Godavari Commodities Ltd. Vs State of Jharkhand (Jharkhand High Court)
Appeal Number : W.P.(T) No. 3908 of 2020
Date of Judgement/Order : 18/04/2022

The Hon'ble High Court of Jharkhand at Ranchi in M/s. Godavari Commodities Ltd. vs. The State of Jharkhand [W.P.(T) No. 3908 of 2020 dated April 18, 2022], held that the Adjudication Order is non est in the eye of law, as the same has been passed without issuance of proper Show Cause Notice (SCN) and thus, amounts to violation of principles of natural justice.

Facts:
The M/s. Godavari Commodities Ltd. ("the Petitioner") is a Public Limited Company and is primarily engaged in the business of trading of coal. The Petitioner for the purpose of trading of coal, purchases coal primarily from various subsidiaries of Coal India Limited including various Government entities like Jharkhand State Mineral Development Corporation, Heavy Engineering Corporation Limited as well as other similarly situated coal traders.

There were inter-state purchases and sales transactions by and between the Petitioner and other coal traders.

The state of Jharkhand tax department ("the Respondents") carried out an inspection under Section 67 of the Jharkhand Goods Service Tax Act, 2017 ("the Jharkhand GST Act") in the registered premises of the Petitioner with primary allegation of having availed ITC on goods without its actual movement. Vide inspection report dated January 28, 2019 the Petitioner was directed to produce documents pertaining to movement of goods relating to purchase and sale transactions of the Petitioner in exercise of powers.

However, the Respondents were not convinced with the documents furnished by the Petitioner and issued pre-show cause notice consultation in Form GST DRC 01A dated January 29, 2020 ("the pre- SCN consultation notice") directing the Petitioner to make payment of the amount of tax along with applicable interest and penalty.

Subsequently, summary of show cause notice was issued in Form GST DRC-01 dated March 14, 2020 ("Summary SCN"). Thereafter, straightaway, an Adjudication Order was passed dated August 13, 2020 ("the Adjudication Order") fastening liability of tax, interest, and penalty upon the Petitioner however, the same was never communicated to the Petitioner and only Form DRC-07 dated September 11, 2020 ("the Summary Order") was issued. From the order sheet, it is evident that no opportunity of personal hearing was granted to the Petitioner.

Being aggrieved, the Petitioner filed appealed against the Adjudication Order.

Issue:
Whether the very initiation of the adjudication proceeding without issuance of SCN is void ab initio?

Held:
The Hon'ble Jharkhand high court in W.P.(T) No. 3908 of 2020 dated April 18, 2022 held as under:

Relied on the judgement of Hon'ble Jharkhand High Court in M/s. NKAS Services Private Limited v. The State of Jharkhand and Ors [WP (T) No. 2444 of 2021 dated October 06, 2021], wherein the Court quashed the SCN in respect of wrongful availment of Input Tax Credit ("ITC") as it was vogue, unclear and lacked serious details.

There is serious lacuna in the proceeding conducted under the Jharkhand GST Act which has ultimately entailed adverse consequences upon the Petitioner stated that the entire adjudication proceedings have been carried out in stark disregard to the mandatory provisions of the Central Goods and Services Tax Act, 2017 ("the CGST Act") and in violation of the principles of natural justice.

Quashed and set aside the Summary Order, Adjudication Order and Summary SCN.

Held that the Adjudication Order is non est in the eye of law, as the same has been passed without issuance of proper SCN and, thus, amounts to violation of principles of natural justice.

However, the Respondents would have the liberty to initiate a fresh proceeding in accordance with the law, if so advised.

HC directs State GST Department to issue guidelines regarding the manner of issuance of Show Cause Notice

The original records produced before us leave no iota of doubt that the present adjudication proceedings have been carried out by the authorities of the State Tax Department in stark disregard to the mandatory provisions of GST Act and the well-known procedures for conduct of proceedings have been completely disregarded. We refrain ourselves from saying any further, but we direct the Commissioner of State Tax Department to issue appropriate guidelines/ circular/notification elaborating therein the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings, as huge revenue of the State is involved and it would be in ultimate interest of the Respondent-State of Jharkhand itself that the adjudication proceedings are conducted after following due procedure and process of law.

18. As per principal provision of Section 56 of CGST Act, interest is payable @ 6% & not 9%

Case Name : Union Of India & Ors. Vs Willowood Chemicals Pvt. Ltd. (Supreme Court of India)
Appeal Number : Civil Appeal Nos. 2995-2996 of 2022
Date of Judgement/Order : 19/04/2022

Facts- M/s. Willowood Chemicals Pvt. Ltd. submitting that said Writ Petitioner was entitled on the basis of Section 16 of the IGST Act read with Section 54 of the CGST Act for compensation in receipt of delayed payment as detailed in Annexure D of the petition, which in turn dealt with 12 refunds with delay ranging between 94 to 290 days.

The main question in the present matter is that there is no dispute with regard to availability of refund along with interest for delayed payment of the claim. The dispute is it is alleged that interest of 6% is payable, however, assessee argues the interest of 9% per annum.

Conclusion- Held that rate of interest is 6 per cent where the case for refund is governed by the principal provision of Section 56 of the CGST Act. In terms of the principal part of Section 56 of the CGST Act, the interest would be awarded at the rateof 6 per cent. The award of interest at 9 per cent would be attracted only if the matter was covered by the proviso to the said Section 56.

19. Jharkhand HC grants interim protection from GST payment on mining royalty & allied charges

Case Name : Mandhan Minerals Corporation Vs Union of India (Jharkhand High Court)
Appeal Number : W.P (T) No. 432 of 2021
Date of Judgement/Order : 20/04/2022

HC considered the submissions of learned counsel for the parties on the prayer for interim relief on the levy of GST on royalty /DMF. On consideration of the rival pleas in the canvass of facts and the legal propositions advanced by them, it is clear that the levy of GST by the respondents is on the royalty/DMF in respect of the mining lease granted to the petitioners. The decision of the Apex Court by the 7 Judges Constitution Bench in the case of India Cements Ltd. (supra) that royalty is a tax is under consideration before a 9 Judges Constitution Bench of the Apex Court upon reference made in the case of Mineral Area Development Authority & others (supra).

Following the interim order passed by the Apex Court in the case of M/s Lakhwinder Singh (supra) dated 04.10.2021, this Court had been pleased to grant interim protection on levy of GST on mining lease / royalty/DMF. In the background of the legal position that royalty has been considered to be a tax or profit pendre and the issue is pending before the 9 Judge Constitution Bench, we are of the considered viewthat the petitioners have made out a case for interim protection. As such, there shall be stay ofrecovery of GST for grant of mining lease/ royalty/DMF from the petitioners till further orders. However, the Revenue is not restrained from conducting and completing the assessment proceedings.

Since interim protection has been granted earlier in the case of Sunita Ganguly and others Vrs. Union of India & others vide order dated 02.03.2021 passed in W.P.(T) No. 3878 of 2020 and other analogous cases on levy of service tax on royalty/DMF, similar interim protection is being granted in W.P.(T) No. 897 of 2022, W.P.(T) No. 903 of 2022, W.P.(T) No. 926 of 2022, W.P.(T) No. 927 of 2022 where the levy of service tax

on royalty/ DMF is under challenge. As such, interim order dated 02.03.2021 shall govern the case of said writ petitioners also.

20. HC Quashes Vague order cancelling GST Registration

Case Name : Asterpetal Trade And Services Private Limited Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 7155 of 2022
Date of Judgement/Order : 20/04/2022

The writ applicant is engaged in the business of trading of bullion and agricultural commodities. The writ applicant is registered under the GGST Act with effect from 25.01.2018. The writ applicant came to be served with a show cause notice dated 15.06.2021 in Form GST REG – 17/31 calling upon the writ applicant to show cause as to why the registration should not be cancelled. Later, the Commercial Tax Officer, Ghatak – 25 (Kalol) , Range -7, Division – 3, Gujarat, issued a fresh show cause notice dated 28.07.2021. Ultimately, the final order came to be passed dated 10.08.2021 cancelling the registration.

HC observed that show cause notices, referred to above, and the impugned order are as vague as anything. The issue is now covered by the decision of this Court in the case of Aggarwal Dyeing and Printing Works vs. State of Gujarat & 2 Ors., Special Civil Application No.18860 of 2021, decided on 24.02.2022.

In view of the aforesaid, this writ application succeeds and is hereby allowed. The impugned order cancelling the registration and the show cause notice is hereby quashed and set aside.

21. HC stays recovery of GST on royalty paid on account of excavation of sand for brick

Case Name : Shree Basant Bhandar Int Udyog Vs Union of India (Rajasthan High Court at Jodhpur)
Appeal Number : D.B. Civil Writ Petition No. 5678/2022
Date of Judgement/Order : 21/04/2022

Learned counsel for the petitioner has submitted that as per the decision of the Hon'ble Supreme Court rendered in the case of India Cement Ltd. Etc. Vs. State of Tamil Nadu Etc., reported in AIR 1990 SC 85, the royalty is separate and distinct from the land revenue and it is not related to the land as a unit, as such, no tax is to be paid upon the royalty. Learned counsel for the petitioner has further submitted that the Hon'ble Supreme Court in Special Leave to Appeal (C) No.37326/2017, arising out of judgment of this Court rendered in the case of Udaipur Chamber of Commerce and Industry Vs. Union of India has already stayed payment of service tax for grant of mining lease/royalty.

Issue notice. Issue notice of stay application also, returnable on 5.7.2022.

Meanwhile, the respondents are restrained from recovery of GST on the royalty paid on account of excavation of sand for brick and further proceedings pursuant to the notice dated 15.02.2022 (Annex.5) shall remain stayed.

22. Advertisement Tax levied by Municipal Corporation not Conflicts with GST

Case Name : Hubballi Dharwad Advertisers Association (R) Vs State of Karnataka (Karnataka High Court)
Appeal Number : Writ Petition No. 104172 of 2021 (LB-Tax)
Date of Judgement/Order : 21/04/2022

The GST as stated above is levied on any supply of goods or services. The petitioners carrying on advertisement business it is during the course of the said business that the petitioner is required to collect GST from any of its/their clients and remit it to the authorities. It is not that the petitioners are making payments of GST out of their own pockets. The petitioners supplying services and or goods, on the invoice that the petitioners were to raise on their respective clients the invoice amount would be required to be accompanied by a GST amount on the basis of the categorization of services and or goods under the GST Act. The said GST collected from the client of the petitioners, the amount is required to be remitted by the petitioners to the GST authorities.

In this transaction the petitioners are only a collecting agency who collects the GST payable on the service rendered and deposits the same with the authorities, the incidence of tax, i.e., GST being on the services rendered or goods supplied, the obligation of payment being on the person availing the service and or receiving the goods.

The incidence of GST is on the service rendered by the petitioner to its clients and has nothing to do with respondent No.2-HDMC. The transaction with HDMC is the permission and or license granted by the HDMC to put up hoarding and or use a hoarding either on the land belonging to the HDMC and or on land belonging to a private party. The incidence of advertisement tax or advertisement fee is on the license granted by HDMC permitting the petitioner to put up hoarding or make use of the hoardings, this incidence of advertisement tax or fee has nothing to do with supply or service or goods by the petitioner to its clients.

In view of the above there are two distinct transactions. The incidence of tax on both transactions are different.

The first transaction is the permission by respondent No.2-HDMC to put up a hoarding or advertisement to use their hoarding for the purpose of advertisement, as regards which respondent No.1-HDMC charges the fee or advertisement tax.

The second transaction is on the petitioners making use of the hoarding to display advertisements of its clients towards which the petitioners charge their client which is a supply of services or goods as regards which the GST is liable to be paid.

Both the transactions being independent and distinct the incidence of both the GST and advertisement fee being on two distinct transactions inasmuch as the GST not being charged by the respondent No.1-HDMC and advertisement free not being charged by the GST authorities, though of course there may be GST charged on the Advertisement Fee charged by the HDMC, I am unable to accept the submission of Sri.Zameer Pasha that there is double taxation.

By extending the analogy the petitioners cannot contend that on the business being done by them, they are also making payment of income tax. Therefore, GST cannot be levied or vice-versa. That would end up in a ridiculous situation that would be completely untenable.

As afore observed the transactions being independent the incidence of tax being independent, the same would not amount to double taxation.

After examining all aspects, the Gujarat High Court has come to a conclusion that the charges levied by the Municipal Corporation permitting putting up of advertisement is more of a fee than a tax inasmuch as there is a quid pro quo by way of permission to put up an advertisement hoarding.

In the present case, there is no challenge either to Section 134 of the Karnataka Municipal Corporations Act nor is there a challenge made to GST Act. The only reliefs which have been sought for are for setting aside the impugned demand notice at Annexure-A and a writ of prohibition directing the respondents not to meddle with the advertisement display and the hoardings of the petitioners.

For all the aforesaid reasons, It is declared that there is no conflict between the power to levy GST under GST Act and power of Municipal Corporation to levy advertisement fee or advertisement tax under Section 134 of the Karnataka Municipal Corporations Act.

23. Jurisdiction for audit department to issue a notice called spot memo

Case Name : Ideal Unique Realtors Private Limited Vs Union of India (Calcutta High Court)
Appeal Number : FMA 297 of 2022 With I.A. No. CAN 1 of 2022
Date of Judgement/Order : 22/04/2022

From the records placed before us, we find that none of the proceedings initiated by the department has been shown to have been taken to the logical end. If, according to the respondents department, there is an irregularity in the availment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

We find that such a procedure had not been adopted in the instant case and the appellants appears to have been dealt with in a most unfair manner in the sense that from the year 2018 for the very same TRAN – 1 issue the appellants have repeatedly been summoned, issued notices etc. The spot memos, which have been

communicated to the appellants along with the communications dated 22nd March, 2021 is also for the very same purpose.

Thus, it is not clear as to why different wings of the very same department have been issuing notices and summons to the appellants without taking any of the earlier proceedings to the logical end.

Therefore, on that ground, we are of the view that the spot memos, which have been furnished along with the communications dated 22nd March, 2021 cannot be enforced.

24. HC refuses bail to Person allegedly involved in availment of Fraudulent ITC

Case Name : Paritosh Kumar Singh Vs State of Chhattisgarh (Chhattisgarh High Court)
Appeal Number : Writ Appeal No. 348 of 2021
Date of Judgement/Order : 22/04/2022

Challenge in this writ appeal is to the legality, validity and propriety of the order dated 1.10.2021 passed by the learned Single Judge in WPCR No.469/2021 dismissing the said writ petition filed against the order dated 26.6.2021 passed by the 5th Additional Sessions Judge, Raipur in Criminal Revision No.62/2021 by which the revisional Court affirmed the order dated 12.5.2021 of the Chief Judicial Magistrate, Raipur rejecting the application filed by the appellants/petitioners under Section 167 of CrPC for grant of default bail.

02. Facts of the case, in brief, are that the appellants created several fictitious and physically non-existent trading company firms in Chhattisgarh, Jharkhand, Madhya Pradesh, West Bengal and Maharashtra, got them registered in GSTN portal online using identity credential of several persons using forged PAN and issued fake bills to transmit fake Income Tax Credit (ITC) to several other traders. For the said purpose, the appellants had fraudulently shown in their GST returns to have procured several kinds of goods from within and across the State. The Directorate General of Goods and Service Tax Intelligence, Raipur Zonal Unit, Raipur cracked this racket on the basis of intelligence against a taxpayer, namely, M/s Manoj Enterprises, who during the month of July, 2020 and August, 2020, claimed Rs.44.72 crores from ITC by way of trading activities even when their statutory returns did not indicate purchase of any such goods for trade. On the basis of information gathered, the appellants No.1 & 2 were arrested for the offence under Section 132(1)(b) & (c) of the Central Goods and Service Tax Act, 2017 (in short “the Act of 2017”) on 25.1.2021 from Raipur and produced before the Chief Judicial Magistrate, Raipur on the same day whereas appellants No. 3 & 4 were arrested for commission of the said offence from Siwan, Bihar on 25.1.2021 and produced before the Chief Judicial Magistrate, Siwan, who granted transit remand upto Raipur and accordingly, they were produced before the Chief Judicial Magistrate, Raipur on 28.1.2021.

03. The appellants/writ petitioners filed an application under Section 167(2) of CrPC for granting them default bail as despite lapse of 60 days from the date of their judicial custody, no charge sheet was filed by the respondent/GST authority against them.

The said application was rejected by the Chief Judicial Magistrate, Raipur vide order dated 12.5.2021, which was subsequently affirmed by the revisional Court vide order dated 26.6.2021 and the writ petition filed against the said order was also dismissed by the learned Single Judge.

4. Learned counsel for the appellants/writ petitioners has submitted that, admittedly, the appellants were arrested on 25.1.2021 in connection with Crime (DGGI Case) No. 124/2020-21 for offence under Section 132(1)(b) & (c) of the the Act of 2017 and produced before the Judicial Magistrate, who granted their judicial custody but no charge sheet within 60 days from their judicial custody was filed and only a complaint was filed on 25.3.2021 by respondent No.2/Senior Intelligence Officer, DGGI, Zonal Unit, Raipur. Therefore, the learned Single Judge was not justified in dismissing the writ petition and the appellants are entitled to be released on bail by virtue of Section 167(2) of CrPC.

5. Learned counsel for the appellants submitted that as per the Act of 2017, offence under Section 132 is a cognizable offence. There is no provision to file any complaint instead of charge sheet. No FIR was lodged against the appellants, no investigation was conducted by the concerned police station, no charge sheet was filed against them under Section 173 of CrPC, as such, the learned Single Judge was in error in not enlarging the appellants on default bail.

6. Referring to the complaint (Annexure P/3 in the writ petition), it is contended that as per para 26 of the said complaint, the complainant expressed desire to examine the witnesses listed in appended Annexure-A and sought to rely upon the documents as listed in appended Annexure-B. It was also mentioned in the said para that investigation in the matter is under process, the complainant may file supplementary report after further investigation and the complainant also reserves its right to examine more witnesses and also to adduce more documentary evidences in the matter, if need so arises. Therefore, it cannot be said that the complaint filed by respondent No.2 wasafter complete investigation, he submits.

7. On the other hand, learned counsel appearing for the respondents supported the impugned order. Reliance has been placed on the judgment of the Hon’ble Supreme Court in the matter of Directorate of Enforcement Vs. Deepak Mahajan and another, reported in AIR 1994 SC 1775.

8. Heard learned counsel for the parties and perused the material available on record.
9. It is not in dispute that the accused is entitled to an indefeasible right of default bail or statutory bail if the accused is prepared to furnish bail in case the charge sheet being not filed in the Court within 90 days of custody in cases punishable with death, life imprisonment, and imprisonment not less than 10 years, and after 60 days of custody for any other offence. Section 167 (2) of CrPC reads as under:

“167. Procedure when investigation cannot be completed in twenty-four hours. –
(1) xxx xxx xxx

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that –

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police."

10. Section 190 of CrPC provides for taking of cognizance of offences by the Magistrates, which reads as under:

"190. Cognizance of offences by Magistrates: – (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence –
(a) upon receiving a complaint of facts which constitute such offence;
(b) upon a police report of such facts;
(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try."

11. Section 134 of the Act of 2017 reads as under:
"134. Cognizance of offences. – No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence."

12. True it is that in this case, there is no FIR lodged by the GST authority and the Magistrate has not taken cognizance of the offence on his own but the cognizance has been taken on the complaint filed by the GST authority/respondent No.2 along with the list of witnesses and relevant documents. Under the Act of 2017, power of inspection, search and seizure is prescribed under Section 67; Section 68 deals with power of inspection of goods in movement; Section 69 relates to power of arrest; Section 70 prescribes the power to summon persons to give evidence and produce documents and Section 71 deals with the power to access to business premises.

Likewise, Sections 100 to 110A under Chapter-XIII of the Customs Act, 1962 also prescribe the power to search, arrest, inspection, examination of persons, recording of evidence, penalty for failure to furnish information return, etc. Similarly, Sections 35 to 40 of the Foreign Exchange Regulation Act, 1973 also deal with power to arrest, stop and search conveyances; search premises; seize documents, etc; power to examine persons and summon persons to give evidence and produce documents.

13. The Act of 2017 has been enacted for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto. It is a special Act for economic offences.

14. In the matter of Deepak Mahajan (supra), the Hon'ble Supreme Court has held that to invoke Section 167(1) of CrPC, it is not an indispensable pre-requisite conditionthat in all circumstances, the arrest should have been effected only by a police officer and none else and that there must necessarily be records of entries of a case diary. Therefore, it necessarily follows that a mere production of an arrestee before a competent Magistrate by an authorised officer or an officer empowered to arrest (notwithstanding the fact that he is not a police officer in its stricto sensu) on a reasonable belief that the arrestee "has been guilty of an offence punishable" under the provisions of the special Act is sufficient for the Magistrate to take that person into his custody on his being satisfied of the three preliminary conditions, namely (1) the arresting officer is legally competent to make the arrest; (2) that the particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and (3) that the provisions of the special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code.

It has been further observed that the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation andflexible so as to include the investigation carried on by any agency, whether he be a police officer or empowered or authorized officer or a person not being a police officerunder the direction of a Magistrate to make an investigation vested with the power of investigation.

15. As regards the contention of the appellants that the complaint filed by the GST authority is not after completion of investigation in view of para 26 of the complaint, the said argument is not acceptable for the reason that the offence allegedly committed by the appellants is an economic offence; if on further investigation any new relevant fact or document comes within the knowledge of the investigating officer,he can file the supplementary report. So far as the appellants are concerned, the material collected against them during investigation as filed with the complaint are sufficient for establishing a prima facie case against them under Section 132(1)(b) &
(c) of the Act of 2017 and therefore, on filing of such complaint, the Magistrate has taken cognizance of the offence against them.

16. Thus, considering the entire facts and circumstances of the case, and keeping in view the judgment of the Hon'ble Supreme Court in Deepak Mahajan (supra), this Court is of the opinion that though the complaint filed by respondent No.2 cannot be said to have been filed under Section 173 of CrPC but for the purpose of default bail, it can be said that respondent No.2, who is an authorized officer under the Act of 2017to carry out investigation/enqiury, filed the complaint within the prescribed time limit which satisfies the requirement under Section 167 of CrPC and as such, no right accrues to the appellants to seek default bail under Section 167(2) of CrPC.

17. For the aforesaid reasons, this Court finds no illegality or infirmity in the impugned judgment of the learned Single Judge. Accordingly, the writ appeal being without any substance is hereby dismissed at the admission stage itself.

25. HC dismisses petition seeking quashing of Form GST DRC-16

Case Name : Tvl.G.Sankar Timber Depot Vs State Tax Officer (Adjudication) (Madras High Court)
Appeal Number : W.P.(MD) No.7880 of 2022
Date of Judgement/Order : 25/04/2022

It is the case of the petitioner that despite the aforesaid order, the respondent had proceeded to issue the notice for attachment and for sale of the immovable property under Section 79 of the GST Act, 2017 in Form GST DRC -16 by attaching various properties in this schedule to the said notice. The petitioner has also replied to the same on 16.12.2021 and 20.01.2022.

It is the further case of the petitioner that despite the petitioner having replied, the respondent has issued yet another notice on 14.02.2022 and has also attached the bank accounts of the petitioner. The petitioner was directed to appear before the respondent for a personal hearing on 25.02.2022. However, it appears that the petitioner has not appeared. The grievance of the petitioner now is that there should be a stay of Form GST DRC-16 dated 20.11.2021.

The present writ petition challenging the Form GST DRC-16 is belated and therefore, the writ petition is liable to be dismissed. That apart, in Form GST DRC-16 merely attaches immovable properties. There is no attachment of any bank accounts. The

petitioner appears to be interested in dragging on the proceeding though the petitioner appears to be in arrears of huge amount of tax for these assessment years. Since the matter has been remitted back, it is not open for the petitioner to now seek for quashing of the Form GST DRC-16. It is sufficient to state that the petitioner should participate in the proceedings before the respondent in terms of the notice dated 14.02.2022.

26. CGST Rule 25: Physical verification without the knowledge of Appellant is not valid

Case Name : Micro Focus Software Solutions India Private Limited Vs Union of India & Anr. (Delhi High Court)
Appeal Number : W.P.(C) 8451/2021, CM Nos.26176/2021 & 28634/2021
Date of Judgement/Order : 26/04/2022

Reply to GST Registration cancellation notice was filed by the petitioner, stating why its registration should not be cancelled. Ignoring the reasons stated the GST Registration certificate was cancelled. Inspection of the premises was carried out by the Authority, before cancellation of GST Registration certificate, without the knowledge of the Appellant. Rule 25 of the CGST Rules, 2017 requires inspection to be done in the presence of the person whose property is being inspected. The order of cancellation is set aside and ordered revival of registration.

Extract of Rule 25 is as follows:-

“Rule 25. Physical verification of business premises in certain cases.- where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, inthe presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.”

27. Goods & Vehicles should not be detained merely for mistake in selection of ODC vehicle type while generating e-Way Bill

Case Name : Dhabriya Polywood Limited Vs Union of India (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 7702 of 2022
Date of Judgement/Order : 27/04/2022

The short point for our consideration is whether, in fact, it was a bona fide mistake on the part of the writ applicant, or whether it was a mischievous act with a view to derive some illegal benefit, as asserted by Mr. Sharma, the learned A.G.P. We take notice of the fact that the goods were in transit with all the necessary documents including the E-way bill generated from the GST portal. The goods were moved through a truck whose registration number was also correct. The only mistake in this case was Selection of wrong ODC vehicle type while generating e-Way Bill.

CBIC circular no. CBEC/20/16/03/2017-GST dated 14th September, 2018 makes it clear that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, the proceedings under Section 129 of the CGST Act may not be ordinarily initiated, more particularly, in the situation, as highlighted in para 5 of the circular, which are as follows:-

a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

We are of the view that the goods of the writ applicant fall within Clause 5 of the circular referred to above. The manner in which the writ applicant has proceeded so far and also having regard to the fact that very promptly he brought to the notice of the authority concerned and admitted its mistake, we would like to give the writ applicant some benefit of doubt.

In view of the aforesaid, this writ application succeeds and is hereby allowed. The impugned notice issued by the respondent No.3 in Form GST MOV – 07 dated 12th April 2022 is hereby quashed and set aside. Consequently, the order of detention passed by the respondent No.3 under Section 129(1) of the CGST Act in Form GST MOV – 06 dated 12th April 2022 is also hereby quashed and set aside. The goods and the conveyance shall be released at the earliest.

<u>28. Fake ITC Case: Bail Amount can be paid by debiting credit ledger</u>

Case Name : Amit Gupta Vs Directorate General of GST Intelligence Headquarters (Delhi High Court)
Appeal Number : W.P.(CRL) 1267/2021
Date of Judgement/Order : 29/04/2022

A reading of Section 49 of GST Act permits availing of the amount in electronic ledger for making any payments towards output tax under the Act or under the Integrated Goods and Services Tax Act. Further Section 49 (5) and (6) describes the manner in which the amount of input tax credit available in the electronic ledger is to be utilised

and provides that the balance in electronic cash ledger after payment of tax, interest, penalty, fee etc. may be refunded in accordance with the provisions of Section 54 of the GST Act.

The case of the respondent is that the ITCs being fraudulent the same cannot be availed of, during the course of arguments, learned counsel for the respondent does not dispute that the payment of tax could be made from the electronic ledger under Section 49 (4) of the GST Act however, contends that since the learned Trial Court directed the petitioner to deposit the amount of ₹70 crores, he could not have availed the amount of ₹1.60 crores by debiting the ITCs.

As noted above, the petitioner has to his credit ITC worth ₹260 crores and the investigation does not show that beyond approximately ₹42 crores ITCs rest are fraudulent till now. Hence the reversal of the ITC credit for depositing the part amount of ₹2.70 crores with the department as directed by the learned Trial Court cannot be said to be illegal or unwarranted, warranting cancellation of the bail granted to the petitioner.

Undoubtedly, non-compliance of the conditions of bail is a ground for cancellation of the same however, in the present case the condition was to deposit a sum of ₹2.70 crores with the department which stands satisfied by the petitioner depositing part amount by transfer of ITCs. Further in case the learned Trial Court felt that its order warranted deposit of money only with the department it could have granted time to the petitioner to deposit the same. The petitioner having fulfilled the condition of deposit of the amount partly by cash ledger and partly by debit ledger of the ITC it cannot be said that the petitioner has failed to fulfil the conditions imposed on him.