GST UPDATE
(July, 2021)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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(I) GIST OF GST NOTIFICATIONS

1. Govt omits GST Audit provision & amends Section 44 Annual return

Vide CGST Notification No. 29/2021-Central Tax dated 30/07/2021 CBIC has notified the provisions of Section 110 & 111 of the Finance Act, 2021 w.e.f. 01.08.2021. While Section 110 omits section 35(5) of CGST Act means GST Audit (GSTR-9C) by CA/CMA is no longer required and Section 111 substitutes section 44 (Annual return) of **CGST Act, 2017**. Extract of Section 110 and 111 of Finance Act, 2021 is as follows:-

110. Amendment of section 35.

*In section 35 of the **Central Goods and Services Tax Act**, sub-section (5) shall be omitted.*

Compliance obligation of mandatory requirement of getting annual accounts audited and submitting reconciliation statement by specified professional removed to allow self-certification.

Before removal of Section 35(5), every registered person whose turnover during a financial year exceeded the prescribed limit of Rs. 2 crore, was required to get his accounts audited by a chartered accountant or a cost accountant and submit a copy of the audited annual accounts, the reconciliation statement under section 44(2) and such other documents in such form and manner as prescribed in CGST Rules.

111. Substitution of new section for section 44.

For section 44 of the **Central Goods and Services Tax Act**, the following section shall be substituted, namely:—

"44. Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.".

[**Notification No. 29/2021-Central Tax Dated : 30th July, 2021]**

2. CBIC amends Rule 80 Annual return, GSTR 9 Instructions & GSTR 9C

CBIC has vide **Notification No. 30/2021–Central Tax | Dated** 30th July, 2021 amended Rule 80 related to Annual GST Return, It further amended Instructions related to GSTR 9 and also amended Form GSTR 9C.

The existing Rule 80 replaced for making the requisite amendments in Form GSTR-9 & Form GSTR-9C. The default due date as per rule 80 shall be 31st December following the FY. Rule 80 provides for exemption from GSTR-9C to taxpayers having AATO up to Rs. 5 crores.

Any person paying tax under composition scheme under section 10 shall furnish the annual return in GSTR-9A

Ecommerce operator required to collect tax at source under section 52 shall furnish annual statement in FORM GSTR – 9B.

Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return, on or before 31st December following the end of such FY, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

[Notification No. 30/2021–Central Tax | Dated 30th July, 2021]

3. GSTR-9 filing exempted if turnover is upto Rs. 2 crs for FY 20-21

Vide **Notification No. 31/2021-Central Tax Dated :** 30th July, 2021 CBIC exempts the registered person whose aggregate turnover in the financial year 2020-21 is upto two crore rupees, from filing annual GST return for the said financial year. This would ease compliance requirement of furnishing reconciliation statement in FORM GSTR-9C, as taxpayers would now be able to self-certify reconciliation statement, instead of getting it certified by a chartered accountants. This change will apply for Annual Return for FY 2020-21.

[Notification No. 31/2021-Central Tax Dated : **30th July, 2021]**

(II) PUNJAB GST NOTIFICATIONS

PART III

GOVERNMENT OF PUNJAB

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

NOTIFICATION

The 26th July, 2021

No. S.O. 80/P.A.5/2017/S.168A/2021.-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 the 22nd March, 2021, published in the Punjab Government Gazette, dated the 9thApril, 2021, namely:-

AMENDMENT

In the said notification, at the end of clause (i), the following proviso shall be inserted, namely: -

"Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of November, 2020.".

2. This notification shall be deemed to have come into force on and with effect from the 1st September, 2020.

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

2355/7-2021/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 July, 2021

No. S.O. 81/PGSTR/2017/R.48/2021.-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, dated the 5th February, 2021, namely:-

AMENDMENT

In the said notification, in the first paragraph, for the words "one hundred crore rupees", the words "fifty crore rupees" shall be substituted.

2. This notification shall be deemed to have come into force on and with effect from the 1stday of April, 2021.

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

2355/7-2021/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 July, 2021

No. S.O. 82/P.A.5/2017/S.128/2021.-In exercise of the powers conferred by section 128 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. 57/P.A.5/2017/S.128/2021, dated the 21st May, 2021, published in the Punjab Government Gazette (Extraordinary), dated the 25th May, 2021, namely:–

AMENDMENT

In the said notification, –

(i) in the first paragraph, for the figures, letters and words, "31st day of March", the figures, letters and words "30th day of June", shall be substituted;

(ii) in the first paragraph, for the figures, letters and words, "01st day of April", the figures, letters and words "1stday of July", shall be substituted.

2. This notification shall be deemed to have come into force on and with effect from the 30th day of March, 2021.

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

2355/7-2021/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 July, 2021

No. S.O. 83/P.A.5/2017/S.50/2021.-In exercise of the powers conferred by sub-section (1) of section 50 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) read with section 148 of the said Act 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 further amendment in Government of Punjab, Notification No. S.O.24 /P.A.5/2017/Ss.50, 54 and 56/ 2017, dated the 30th June, 2017, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 30th June, 2017, namely:–

AMENDMENT

In the said notification, in the first paragraph, for the first proviso and table, the following proviso and table shall be substituted, namely : –

"Provided that the rate of interest per annum shall be as specified in column (3) of the Table given below for the period mentioned in column (4) therein, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, namely:-

Table

S. No.	**Class of registered persons**	**Rate of interest**	**Tax period**
1	2	3	4
1.	Taxpayers having an aggregate turnover of more than rupees five crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent thereafter till 24th day of June, 2020	February, 2020, March 2020, April, 2020
3.	Taxpayers having an aggregate turnover of up to rupees five crores in the preceding financial year	Nil till the 30th day of June, 2020, and 9 per cent thereafter till the 30th day of September, 2020	February, 2020

Nil till the 5th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	March, 2020
Nil till the 9th day of July, 2020, and 9 per cent thereafter till the 30th day of September, 2020	April, 2020
Nil till the 15th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	May, 2020
Nil till the 25th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	June, 2020
Nil till the 29th day of September, 2020, and 9 per cent thereafter till the 30th day of September, 2020	July, 2020.".

2. This notification shall be deemed to have come into force on and with effect from the 24th June, 2020.

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

2355/7-2021/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 July, 2021

No. S.O. 84/P.A.5/2017/S.128/2021.-In exercise of the powers conferred by section 128 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017) (hereafter in this notification referred to as the said Act), read with section 148 of the said Act 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 further amendment in the Government of Punjab, Notification No. S.O.61/P.A.5/2017/S.128/Amd./2019 dated the 9th May, 2019, published in the Punjab Government Gazette, (Extraordinary),Part III, dated the 24th June, 2019, namely:–

AMENDMENT

In the said notification, in the third proviso, for the table, the following table shall be substituted, namely: –

"Table

S. No.	**Class of registered persons**	**Tax period**	**Condition**
1	2	3	4
1.	Taxpayers having an aggregate turnover of more than rupees five crores in the preceding financial year	February, 2020, March, 2020 and April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 24th day of June, 2020
3.	Taxpayers having an aggregate turnover of up to rupees five crores in the preceding financial year	February, 2020	If return in **FORM GSTR-3B** is furnished on or before the 30th day of June, 2020
		March, 2020	If return in **FORM GSTR-3B** is furnished on or before the 5th day of July, 2020

April, 2020	If return in **FORM GSTR-3B** is furnished on or before the 9th day of July, 2020
May, 2020	If return in **FORM GSTR-3B** is furnished on or before the 15th day of September, 2020
June, 2020	If return in **FORM GSTR-3B** is furnished on or before the 25th day of September, 2020
July, 2020	If return in **FORM GSTR-3B** is furnished on or before the 29th day of September, 2020."; and

(ii) after the table given in third proviso, the following provisos shall be inserted, namely: –

"Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived off which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in **FORM GSTR-3B** for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from the 01st day of July, 2020 to the 30th day of September, 2020:

Provided also that where the total amount of state tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived off for the registered person who failed to furnish the return in **FORM GSTR-3B** for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from the 01st day of July, 2020 to the 30th day of September, 2020.".

2. This notification shall be deemed to have come into force on and with effect from the 24th June, 2020.

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

2355/7-2021/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 July, 2021

No. S.O. 85/P.A.5/2017/S.128/2021.- In exercise of the powers conferred by section 128 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 further amendment in the Government of Punjab, Notification No. S.O.13/P.A.5/2017/S.128/2018 dated the 27th February, 2018, published in the Punjab Government Gazette, (Extraordinary),Part III, dated the 7th March, 2018, namely:–

AMENDMENT

In the said notification, for the fourth proviso and the table, the following proviso and the table shall be substituted, namely: –

"Provided also that the amount of late fee payable under section 47 of the said Act shall stand waived for the registered persons who fail to furnish the details of outward supplies for the months or quarter mentioned in column (2) of the Table below in **FORM GSTR-1** by the due date, but furnishes the said details on or before the dates mentioned in column (3) of the said Table:-

Table

Serial No.	Month/ Quarter	Dates
(1)	(2)	(3)
1.	March, 2020	10th day of July, 2020
2.	April, 2020	24th day of July, 2020
3.	May, 2020	28th day of July, 2020
4.	June, 2020	05th day of August, 2020
5.	January to March, 2020	17th day of July, 2020
6.	April to June, 2020	03rd day of August, 2020.".

2. This notification shall be deemed to have come into force on and with effect from the 24th June, 2020.

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

2355/7-2021/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 July, 2021

No. S.O. 86/P.A.5/2017/S.148/2021.- In exercise of the powers conferred by 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 further amendment in the Government of Punjab, Notification No. S.O.66/P.A.5/2017/S.148/2019, dated the 31st May, 2019, published in the Punjab Government Gazette, (Extraordinary), Part III, dated the 24th June, 2019, namely:–

AMENDMENT

1. In the said notification, in the third paragraph, in the first proviso, for the figures, letters and words "15th day of July, 2020", the figures, letters and words "31st day of August, 2020" shall be substituted.

2. This notification shall be deemed to have come into force on and with effect from13th July, 2020.

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

2355/7-2021/Pb. Govt. Press, S.A.S. Nagar

PART III

GOVERNMENT OF PUNJAB

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

NOTIFICATION

The 25th July, 2021

No. S.O. 87/P.A.5/2017/Ss.9, 11, 15 and 148/2021.- In exercise of the powers conferred by sub-sections (3) and (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and 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 being satisfied that it is necessary in the public interest so to do, 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 37/P.A.5/2017/S.11/2017 dated the 30th June, 2017, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 30th June, 2017, namely:-

AMENDMENT

In the said notification, in the Table, after serial number 19B and the entries relating thereto, the following shall be inserted, namely:-

"19C	9965	Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited	NIL	NIL"

2. This notification shall be deemed to have come into force on and with effect from the 16th day of October, 2020.

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

2355/7-2021/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 July, 2021

No. S.O. 88/P.A.5/2017/Ss.9 and 15/2021.-In exercise of the powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 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 16/P.A.5/2017/S.9/2017, dated the 30th June, 2017, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 30th June, 2017, namely:-

AMENDMENT

In the said notification, -

(a) in Schedule I @ 2.5%, against S. No. 259A, for the entry in column (2), the entry "9503" shall be substituted; and

(b) after Schedule I, in the List 1,after serial number 230 and the entries relating thereto, the following shall be inserted, namely-

"(231). Diethylcarbamazine ".

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

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

2355/7-2021/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 July, 2021

No. S.O. 89/P.A.5/2017/Ss.9,11,15,16and148/2021.- In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017), the Governor of Punjab, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, is pleased to make following amendment in the Government of Punjab (Department of Excise and Taxation), Notification No. S.O 17/P.A.5/2017/Ss.9, 11, 15 and 16/2017, dated the 30th June, 2017, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 30th June, 2017, namely:-

AMENDMENT

In the said notification, in the Table, -

(i) in serial number 3, against items (i), (ia), (ib), (ic) and (id) in column (3) , in the conditions in column (5), in sub-clause (ii) of the fourth proviso, after the words "developer- promoter to him", the following words shall be inserted, namely -

"and utilise the same notwithstanding anything contained in the first proviso,"

(ii) in serial number 25, after item (ia) in column (3) and the entries relating thereto, in columns (3), (4) and (5), the following items and entries shall be inserted, namely–

(3)	(4)	(5)
"(ib) Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts.	2.5	-"

(iii) in serial number 25, in item (ii) in column (3), for the words, brackets and figures " and (ia)", the words, brackets, and figures ",(ia) and (ib)" shall be substituted.

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

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

2355/7-2021/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 July, 2021

No. S.O. 90/P.A.5/2017/S.148/2021.-In exercise of the powers conferred by 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, and on being satisfied that it is necessary in the public interest so to do, is pleased to make the following amendment in the Government of Punjab (Department of Excise and Taxation), Notification No. S.O 69/P.A.5/2017/S.148/2019, dated the 6th June, 2019, published in the Punjab Government Gazette (Extraordinary), Part III, dated the 24th June, 2019, namely:-

AMENDMENT

In the said notification, in the first para,-

(a) for the words "**in whose case the liability to**", the words "**who shall**" shall be substituted; and

(b) for the words "*shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.*", the words and symbols "**in the tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority or date of its first occupation, whichever is earlier, falls.**" shall be substituted.

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

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

2355/7-2021/Pb. Govt. Press, S.A.S. Nagar

(III) CENTRAL TAX NOTIFICATIONS

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

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

Notification No. 29/2021 – Central Tax

New Delhi, the 30th July, 2021

S.O. ..... (E). - In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2021 (13 of 2021), the Central Government hereby appoints the 1st day of August, 2021, as the date on which the provisions of sections 110 and 111 of the said Act shall come into force.

[F. No. CBIC-20001/5/2021-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

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

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

Notification No. 30/2021 – Central Tax

New Delhi, the 30th July, 2021

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

1. Short title and commencement. - (1) These rules may be called the Central Goods and Services Tax (Sixth Amendment) Rules, 2021.

(2) They shall come into force from the 1st day of August, 2021.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), for rule 80, the following rule shall be substituted, namely: -

"**80. Annual return**.- (1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORM GSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR-9A**.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR - 9B**.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in **FORM GSTR-9C** along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.".

3. In the said rules, in **FORM GSTR-9**, in the instructions, -

(a) in paragraph 4, -

(A) after the word, letters and figures "or FY 2019-20", the word, letters and figures "or FY 2020-21" shall be inserted;

(B) in the Table, in second column, for the word and figures "and 2019-20" wherever they occur, the word and figures ", 2019-20 and 2020-21" shall be substituted;

(b) in paragraph 5, in the Table, in second column, -

(A) against serial number 6B, after the letters and figures "FY 2019-20", the letters, figures and word "and 2020-21" shall be inserted;

(B) against serial numbers 6C and 6D, -

(I) after the word, letters and figures "For FY 2019-20", the word and figures "and 2020-21" shall be inserted;

(II) for the word and figures "and 2019-20", the figures and word ", 2019-20 and 2020-21" shall be substituted;

(C) against serial number 6E, for the letters and figures "FY 2019-20", the letters, figures and word "FY 2019-20 and 2020-21" shall be substituted;

(D) against serial number 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, in the entry, for the figures and word "2018-19 and 2019-20", the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted;

(c) in paragraph 7, -

(A) after the words and figures "April 2020 to September 2020.", the following shall be inserted, namely: -

"For FY 2020-21, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B** between April 2021 to September 2021.";

(B) in the Table, in second column, -

(I) against serial numbers 10 and 11, after the entries, the following entry shall be inserted, namely: -

"For FY 2020-21, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year

but such amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April 2021 to September 2021 shall be declared here.";

(II) against serial number 12, -

(1) after the words, letters and figures "For FY 2019-20, the registered person shall have an option to not fill this table.", the following entry shall be inserted, namely: -

"For FY 2020-21, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April 2021 to September 2021 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details.";

(2) for the figures and word "2018-19 and 2019-20", the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted;

(III) against serial number 13, -

(1) after the words, letters and figures "reclaimed in FY 2020-21, the details of such ITC reclaimed shall be furnished in the annual return for FY 2020-21,", the following entry shall be inserted, namely: -

"For FY 2020-21, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April 2021 to September 2021 shall be declared here. Table 4(A) of **FORM GSTR-3B** may be used for filling up these details. However, any ITC which was reversed in the FY 2020-21 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2021-22, the details of such ITC reclaimed shall be furnished in the annual return for FY 2021-22.";

(2) for the figures and word "2018-19 and 2019-20", the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted;

(d) in paragraph 8, in the Table, in second column, for the figures and word "2018-19 and 2019-20" wherever they occur, the letters, figures and word "2018-19, 2019-20 and 2020-21" shall be substituted.".

4. In the said rules, in **FORM GSTR-9C**, -

(i) in Part A, in the table -

(a) in Sl no 9, after the entry relating to serial number K, the following serial number and entry relating thereto shall be inserted, namely: -

"K-1	Others					.";

(b) in Sl no 11, after entry relating to "0.10%", the following entry shall be inserted, namely: -

"Others					.";

(c) against Pt. V, -

(I) in the heading, for the words "Auditor's recommendation on additional Liability due to non-reconciliation", the words "Additional Liability due to non-reconciliation" shall be substituted;

(II) after entry relating to "0.10%", the following entry shall be inserted, namely: -

"Others					.";

(ii) after the table, for the portion beginning with "Verification:" and ending with "and balance sheet etc.", the following shall be substituted, namely: -

"Verification of registered person:

I hereby solemnly affirm and declare that the information given herein above is true and correct and nothing has been concealed there from. I am uploading this self-certified reconciliation statement in **FORM GSTR-9C**. I am also uploading other statements, as applicable, including financial statement, profit and loss account and balance sheet, etc.";

(iii) in the instructions, -

(a) in paragraph 4, in the Table, in second column, for the figures and word "2018-19 and 2019-20" wherever they occur, the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted;

(b) in paragraph 6, in the Table, in second column, for the figures and word "2018-19 and 2019-20" wherever they occur, the figures and word "2018-19, 2019-20 and 2020-21" shall be substituted.

(c) for paragraph 7, the following paragraph shall be substituted, namely, -

"7. Part V consists of the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other

outstanding demand which is to be settled by the taxpayer shall be declared in this Table.";

(iv) Part B Certification shall be omitted.

[F. No. CBEC-20001/5/2021-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610(E), dated the 19th June, 2017 and were last amended *vide* notification No. 27/2021-Central Tax, dated the 1st June, 2021, *vide* number G.S.R. 371(E), dated the 1st June, 2021.

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

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

Notification No. 31/2021 – Central Tax

New Delhi, the 30th July, 2021

G.S.R.....(E).— In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2020-21 is upto two crore rupees, from filing annual return for the said financial year.

2. This notification shall come into force from the 1st day of August, 2021.

[F. No. CBEC-20001/5/2021-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

(IV) CGST CIRCULARS

Circular No. 157/13/2021-GST

File No: CBIC-20006/10/2021
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 20th July, 2021

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

Madam/Sir,

Subject : Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

The Government has issued notifications under Section 168A of the CGST Act, 2017, wherein the time limit for completion of various actions, by any authority or by any person, under the CGST Act, which falls during the specified period, has been extended up to a specific date, subject to some exceptions as specified in the said notifications. In this context, various representations have been received seeking clarification regarding the cognizance for extension of limitation in terms of Hon'ble Supreme Court Order dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020under the GST law. The issues have been examined and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2.1 The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

"*We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."

2.2 The matter of extension of period of limitation under Section 168A of the CGST Act, 2017 was deliberated in the 43rd Meeting of GST Council. Council, while providing various relaxations in the compliances for taxpayers, also recommended that wherever the timelines for actions have been extended by the Hon'ble Supreme Court, the same would apply.

3. Accordingly, legal opinion was solicited regarding applicability of the order of the Hon'ble Supreme Court to the limitations of time lines under GST Law. The matter has been examined on the basis of the legal opinion received in the matter. The following is observed as per the legal opinion:-

(i) The extension granted by Hon'ble Supreme Court order applies only to quasi-judicial and judicial matters relating to petitions/ applications/ suits/ appeals/ all other proceedings. All other proceedings should be understood in the nature of the earlier used expressions but can be quasi-judicial proceedings. Hon'ble Supreme Court has stepped into to grant extensions only with reference to judicial and quasi-judicial proceedings in the nature of appeals/ suits/ petitions etc. and has not extended it to every action or proceeding under the CGST Act.

(ii) For the purpose of counting the period(s) of limitation for filing of appeals before any appellate authority under the GST Law, the limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) 3 of 2020 vide order dated 27th April 2021. Thus, as on date, the Orders of the Hon'ble Supreme Court apply to appeals, reviews, revisions etc., and not to original adjudication.

(iii) Various Orders and extensions passed by the Hon'ble Supreme Court would apply only to acts and actions which are in nature of judicial, including quasi-judicial exercise of power and discretion. Even under this category, Hon'ble Supreme Court Order, applies only to a lis which needs to be pursued within a time frame fixed by the respective statutes.

(iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, cannot come to a standstill by virtue of these extension orders. Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.

(v) The following actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law would not be covered by the judgment of the Hon'ble Supreme Court.

(vi) As regards issuance of show cause notice, granting time for replies and passing orders, the present Orders of the Hon'ble Supreme Court may not cover them even though they are quasi-judicial proceedings as the same has only been made applicable to matters relating to petitions/applications/suits, etc.

4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows: -

(a) **Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-**These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) **Quasi-Judicial proceedings by tax authorities:-**

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

(c) **Appeals by taxpayers/ tax authorities against any quasi- judicial order:-**Wherever any appeal is required to filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

5. In other words, the extension of timelines granted by Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not applicable to any other proceedings under GST Laws.

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

7. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Pr. Commissioner (GST)

(V) ADVANCE RULINGS

1. Services by 'Airbus Group India' are 'Intermediary service': AAR

Case Name : **In re Airbus Group India Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 31/2021
Date of Judgement/Order : 01/07/2021

Whether the activities proposed to be carried out in India by the Applicant would constitute as a supply of 'Other professional, technical and business services' falling under HSN code 9983 or as 'Intermediary service' classifiable under HSN code 9961/9962 or any other classification of services as specified under the Tariff entries of rate notification issued under Goods and Services Tax law?

We observe that the applicant is of the opinion that the activities undertaken by them are classifiable under Heading 9983 with description of 'Other professional, technical and business services'. As per the explanatory notes to the scheme of classification of services, heading 998399 offers the same description. This heading includes specialty design services including interior design, design originals, scientific and technical consulting services, original compilation of facts/ information services, translation services, trademark services and drafting services. It is clearly evident from para 7 above and from the contract agreement that the applicant does not deal with the activities mentioned in the HSN 998399.

Now, we proceed to examine whether the activities undertaken by the applicant can be called intermediary services. Intermediary is defined, under Section 2(13) of **IGST Act, 2017**, as a **broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.** In this regard, we notice that the applicant has emphasized upon not being an agent or a broker. We notice that there can be difference between agent, broker and an intermediary. Whereas in the case of an agent or broker, activity is undertaken on another's behalf which is not necessary in the case of an intermediary. Therefore, the reliance on principal to principal relationship or calling oneself as an independent contractor is not relevant for the purpose of determining an intermediary as per the definition. An intermediary will merely facilitate or arrange the supply of goods or services between two or more people but will not be providing such supplies on his own account. Here, the word, 'such' is of paramount importance. 'Such' goods in the present case are the raw materials supplied by the vendors to Airbus Invest SAS, France.

Applicant has also emphasized upon the **principle of ejusdem generis**. We understand that meaning of the phrase, ' …any other person, by whatever name called….' only denotes representation, which is also a characteristic of a broker or an agent. We observed that the applicant plays an important part in identifying the vendors, making them understand the product requirement, advising and guiding them not merely on technical aspect of the product but also the ethical aspect in relation to such activities, without which, Airbus Invest SAS, France will not be able to procure the goods from the vendors. Thus the instant activity is nothing but facilitating the

supplies to them from India. The applicant's submission that the approval authority for such vendors lies with Airbus Invest SAS, France does not make a difference to the role of facilitation undertaken by the applicant. In fact, we note that this work of facilitation is understood by them as technical advisory, guidance and business support assistance concerning quality control standards, performance and safety standards of the suppliers. By doing all this, they are merely facilitating the supplies to their holding company as all these activities are directed at the vendors. We also note that it is not necessary that a commission payment is always involved in an intermediary scenario. Cost plus mark up can also be one of the ways for payment. The criterion of the nature of the payment is not part of the definition of Intermediary. Therefore, we conclude that the activities performed by the applicant are fulfilling the parameters mentioned in the definition of 'Intermediary' as per Section 2 (13) of IGST Act, 2017.

Whether the services rendered by the Applicant would not be liable to GST, owing to the reason that such services may qualifies as 'export of services' in terms of clause 6 of Section 2 of the Integrated Goods and Services Tax Act 2017 (hereinafter 'IGST Act, 2017') and consequently, be construed as 'Zero rated supply' in terms of Section 16 of the said act?

We find that Export of service is defined, under Section 2(6) of the IGST Act, 2017, as under:-

2(6)- export of services means the supply of any service when,• (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India] 2 ; and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

The services of the applicant are covered under intermediary services, as concluded at para 17 above and hence the place of supply is India in terms of Section 13(8) of the IGST Act 2017. Thus the activities of the applicant are exigible to GST at the rate of 18% in terms of clause (iii) of entry no. 23 of **Notification No. 11/2017-Central Tax (R) dated 28.06.2017.**

2. GST applies on reimbursement of fuel procured for use in helicopter provided on rent

Case Name : **In re Global Vectra Helicorp Limited (GST AAAR Gujarat)**
Appeal Number : Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2021/23
Date of Judgement/Order : 06/07/2021

In terms of the valuation provisions under GST legislation, amount recovered as reimbursement by the appellant M/s. Global Vectra Helicorp Ltd. from the customer, for the fuel procured for use in the helicopter provided on rent to customer is required to be included in the value of services provided by the Appellant

3. Zn EDTA' & 'Fe EDTA' classifiable under Tariff heading 38249990

Case Name : **In re Shivam Agro Industries (GST AAAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAAR/APPEAL/2021/24
Date of Judgement/Order : 06/07/2021

AAAR confirm the **Advance Ruling No. GUJ/GAAR/R/79/2020 dated 17.09.2020** to the extent it has been appealed, by holding that the products 'Zn EDTA' and 'Fe EDTA' being supplied by M/s. Shivam Agro Industries are classifiable under heading 38.24 (Tariff Item 3824 99 90) of the First Schedule to the Customs Tariff Act, 1975 and are covered under Sl. No. 56 of Schedule-II of **Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017**, as amended and Notification No. 1/2017-State Tax (Rate) dated 30.06.2017, as amended, attracting Goods and Services Tax @ 12% (CGST 6% + SGST 6%).

4. Papad of any size and shape will attract NIL GST: AAR Gujarat

Case Name : **In re Global Gruh Udyog (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/ GAAR/ R/21/2021
Date of Judgement/Order : 08/07/2021

Authority for advance ruling, Gujarat, held that For classification of a product its ingredients, manufacturing process and trade parlance is important and not it's size and shape. Accordingly, papad of any size and shape will attract NIL GST. Earlier it was held that fryums attracts 18 % GST.

In this case goods such as such as Jeera papad, Red Chili papad, Green chilli papad, Rice papad, Pauapapad, Udadpapad, Mung papad and Black pepper papad are of different shapes and sizes but similar in respect of the ingredients, manufacturing process and use. We hold that due to advancement of technology, papad does not limit to the same age old traditional round shaped papad but can be in any desired shape and size. In the old era, usually `papad' was manufactured manually, therefore it was easy for them to manufacture the Round Shape papad. In the modern era, by the advent of technology, the product is being manufactured by machines and dies of different shape and size is used in the machine. Therefore, with the help of dies of various size and shapes, it is convenient to manufacture different shapes and sizes of papad. Further, at entry No. 96 of **Notification No. 02/2017-CT (Rate) dated 28-6-17**, the description goods is Papad, by whatever name it is known, except when served for consumption'. The subject Goods e classified at HSN 19059040.

5. GST on Sale of second hand gold jewellery purchased from individuals

Case Name : **In re Aadhya Gold Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 35/2021
Date of Judgement/Order : 09/07/2021

Whether GST is to be paid only on the difference between the selling price and purchase price as stipulated under Rule 32(5) of CGST Rules, 2017, if applicant purchases used/second hand gold jewellery from individuals who are not dealers under the GST and at the time of sale there is no change in the form/nature of goods?

In the case of applicant dealing in second hand goods and invoicing his supplies as "second hand goods", the valuation of supply of second hand gold jewellery which are purchased from individuals who are not registered under GST and there is no change in the form and nature of such goods, can be made as prescribed under sub-rule (5) of rule 32 of the Central Goods and Service Tax Rules.

Sub-rule (5) of rule 32 of the Central Goods and Service Tax Rules is as follows:-

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used good as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof between the date or purchase and the date of disposal by the person making such repossession.

6. Advance ruling under GST can be obtained only for supply by Applicant

Case Name : **In re Ramohalli Krishnrao Karthik (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 34/2021
Date of Judgement/Order : 09/07/2021

In the instant case, the applicant has sought advance ruling in respect of the supplies undertaken by M/s. Mysore Stoneware Pipes and potteries Private Limited and not with respect to the supplies undertaken by the applicant. Thus the application is not admissible and liable for rejection in terms of Section 98(2) of the CGST Act, 2017.

7. GST on construction of AAI residential colony for self use or staff use

Case Name : **In re B.G Shirke Constructions Technology Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 33/2021
Date of Judgement/Order : 09/07/2021

What is the applicable GST rate on contruction of Airport Authority of India (AAI) residential colony at Devenhalli, near Kempegowda International Airport, Bengaluru by the applicant for Airport Authority of India?

The construction of Airport Authority of India *residential colony for self use or their staff/ employees at Devenhalli, near Kempegowda International Airport, Bengaluru by the applicant for Airport Authority of India attracts tax at the rate of 12% as per Notification No.11/2017-Central Tax dated 28.06.2017 (6% CGST + 6% KGST) as amended by Notification No.24/2017-CT(R) dated 21.09.2017*

8. GST on landscaping & gardening work provided to government departments

Case Name : **In re Narayanappa Ramesh (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 32/2021
Date of Judgement/Order : 09/07/2021

Whether the landscaping and gardening work provided to government departments like Nagarasabha Karyalaya Chintamani, Nagarasabha Karyalaya Bhadravathi, Tumakuru Mahanagara Palike, Nagarasabha Raichur, Purasabha Karyalaya Devanahalli, Mahanagara Palike Shivamogga etc., attract GST?.

The landscaping and gardening work provided to Nagarasabha Karyalaya Chintamani, Nagarasabha Karyalaya Bhadravathi, Tumakuru Mahanagara Palike, Nagarasabha Raichur, Purasabha Karyalaya Devanahalli, Mahanagara Palike Shivamogga, is exempted under entry 3A of the **Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017** as amended by **Notification No.2/2018 -Central Tax (Rate) dated 25.01.2018** provided that the value of goods supplied is not more than 25% of the total contract value and the recipients of services arc Central or State Government Departments or a local authority or a Government Entity or Authority as per the definitions provided in the concerned notifications.

9. IGST payable on R&D services on goods physically made available by foreign entities

Case Name : **In re Hilti Manufacturing India Pvt.Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/26/2021
Date of Judgement/Order : 09/07/2021

On careful reading of the Service contract between the applicant and service receiver, applicant's submissions, even those during the personal hearing, we find that goods were sent by Hilti Aktiengesellschaft (hereinafter referred to as recipient) to the applicant which are required to be made physically available to the applicant, so that applicant conducts various tests and RD activities on the said goods and prepare the results and supply the subject service to the recipient. We find this situation is covered at Section 13(3)(a) of IGST Act. Thus, as per said section 13(3)(a) of IGST Act, the place of supply of the following services shall be the location where the services are actually performed, i.e. location of the applicant. As the services provided by the

applicant are in the form of R&D activity undertaken on the sample goods provided by the recipient i.e. the sample goods have to be made physically available by the recipient to the applicant in order to enable the applicant to provide the services. Therefore, the place of supply of service in the present case will be the location where the services are actually performed. The place of supply of services is therefore, Gujarat.

Further, Section 8(2) of the IGST Act, 2017 provides that in case of supply of services where the location of the supplier and the place of supply of services are in the same State, it shall be treated as intra-state supply.

Section 2(6)(iii) IGST Act stipulates that for 'Export of service' to be satisfied one of the conditions is place of supply should be outside India. This condition is not satisfied in subject case.

10. Seed dressing, coating & treating drum machine classified under HSN 84368090

Case Name : **In re Adarsh Plant Protected Ltd (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/25/2021
Date of Judgement/Order : 09/07/2021

As per HSN Notes [PageNo. XVI-8436-1], the other agricultural machinery includes seed dusting machines usually consisting of one or more hoppers feeding a revolving drum in which the seeds are coated with insecticidal or fungicidal powders. We find that this Chapter Heading is more appropriate for classifying the subject goods as the function of subject goods is also similar wherein the said agricultural machinery has a drum in which seeds are coated and treated with chemicals before sowing. The said Chapter heading makes no different treatment between manual and power driven machines. On examination of HSN 8436, the subheading 843680 covers: 'other machinery' and tariff item 84368090 covers 'other'. We hold that the description of subject goods fit into this Chapter Heading 8436, precisely subheading 843680 and further precisely at Tariff item 84368090.

After reading the cited HSN notes as detailed at para 6.1, we find no reason to examine HSN 8437 which covers MACHINES FOR CLEANING, SORTING OR GRADING SEED, GRAIN OR DRIED LEGUMINOUS VEGETABLES; MACHINERY USED IN THE MILLING INDUSTRY OR FOR THE WORKING OF CEREALS OR DRIED LEGUMINOUS VEGETABLES, OTHER THAN FARM-TYPE MACHINERY. We dismiss this HSN for subject goods.

11. GST on development & construction of sports complex for AUDA

Case Name : **In re Tirupati Construction (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/24/2021
Date of Judgement/Order : 09/07/2021

Whether the activity of composite supply of work contract service by way of development and construction of sports complex at Maninagar, Ahmedabad for the Ahmedabad Urban Development Authority, and as detailed in the tender document merit classification at Sr. No. 3(vi)(a) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 (hereinafter referred to as said NT)?

We have given much thought to the issue before us. We find the commercial uses of an already existing Sports complex at Bopal location as detailed in previous pages. We note the chargeable bookings and their rates, the non refundable nature of bookings too. With the plain reading of the **inclusive definition of the word 'business' in CGST Act as reproduced at paragraph 19.1** with the nature of commercial activities in which AUDA is involved as evidenced with the above illustration, with nothing to dissuade us from what is a glaring and clear illustration of activity of AUDA w.r.t. a sports facility already existing, We are of the strong opinion that subject proposed Sports Complex is not predominantly meant for use other than for commerce, industry, or any other business or profession. There is nothing contrary that said Sports Complex will not be used for commercial purpose i.e. given for organizing sports event and any other event for consideration We do not rule out the complex's intended commercial uses. We cannot water down or dilute the inclusive definition of business as defined in CGST Act. We again note that the definition of business as per CGST Act is an inclusive definition and the activities specified are only indicative and not exhaustive. We hold that the wording of the Notification should be strictly interpreted. The Wording in a statute for ' business' and at entry 3(vi)(a) of said Notification, when clear, plain and unambiguous and only one meaning can be inferred, we are bound to give effect to the said meaning.. We give due Regard to the clear meaning of words and matter should be governed wholly by the language of the notification. **We note that the explanation to said entry of the Notification wherein the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities and does not cover Government Authority.** We cannot allow any scope for intendment. The subject Supply does **not** merit to be entertained at subject Serial Number 3(vi)(a) of said NT (as amended from time to time).

12. Advance ruling cannot be given on matter which is sub-judice

Case Name : **In re Dishman Carbogen Amcis Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/23/2021
Date of Judgement/Order : 09/07/2021

1. The applicant, M/s. Dishman Carbogen Amcis Ltd. sought Advance Ruling on the applicability of IGST on the Ocean Freight services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India. The applicant cited H'ble Gujarat High Court order dated 13-3-20 in SCA 726/2018 in case of Mohit Minerals pvt ltd v/s UOI.

2. Shri Vinod Bohra, Manager (Indirect Taxation) of the applicant, appeared for the hearing on 30-6-21 and reiterated the contents of the application.

3. We find the subject matter on which Ruling is sought is sub-judice as the applicant's cited Order of the H'ble High Court of Gujarat dated 13-3-20 in the case of M/s. Mohit Minerals Pvt. Ltd. v/s UoI has been appealed by the Revenue before the H'ble Supreme Court vide SLP(C) 13958 of 2020.

4. The matter being sub-judice, we refrain from issuing a Ruling in this regard.

13. GST on amount collected from employees towards canteen charges

Case Name : **In re Dishman Carbogen Amcis Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/22/2021
Date of Judgement/Order : 09/07/2021

Whether it is required by the applicant to charge GST on the amount collected from the employees towards canteen charges?

applicant has arranged a canteen for its employees, which is run by a third party Canteen Service Provider. As per their arrangement, part of the Canteen charges is borne by the applicant whereas the remaining part is borne by its employees. The said employees' portion canteen charges is collected by the applicant and paid to the Canteen Service Provider. The applicant submitted that it does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges. This activity carried out by applicant is without consideration.

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

14. GST: Defence formation & Ordnance factories- E-way bill applicability, ITC

Case Name : **In re Senor General Manager Ordnance Factory (GST AAR Maharashtra)**
Appeal Number : Order No. GST-ARA-58/2019-20/B-28
Date of Judgement/Order : 13/07/2021

Question 1. Is audit by a Chartered Accountant or Cost Accountant under section 35(5) of the CGST Act. 2017 applicable to our organization for-

a) The F.Y 2017-18?

b) The F.Y 2018-19 & succeeding financial years

Answer:- Question is withdrawn by the applicant.

Question 2. Whether the exemption to a 'defence formation for preparation and generation of E – way bills is applicable to Ordnance factories & other Central

Government & Public Sector Undertakings (PSU's) that function under the Ministry of Defence. Government of India?

Answer:- Answer is in affirmative.

Question 3. Whether exemption on payment of GST on transport of 'military or defence equipment's through a goods transport agency applicable to goods transported by our organization?

Answer:- Answer is in affirmative.

Question 4. Whether availing of eligible Input Tax Credit on inputs & input services relating to the main business activity of manufacturing is allowed against GST liability on renting of immovable property (which is an ancillary business activity)?

Ansvver:- Answer is in negative.

Question 5. Whether Input Tax Credit is allowable in respect of food and beverages consumed in industrial canteen?

Answer:- Answer is in negative.

Question 6. Whether Input Tax Credit is allowable in respect of manpower services hired for industrial canteen and LPG cylinders refilled for use in industrial canteen?

Answer:- Answer is in negative.

Question 7. Whether Input Tax Credit is allowable in respect of medicines purchased in factory hospital and other inputs and input services used in factory hospital?

Answer:- Answer is in affirmative. It would be applicable with effect from 01.02.2019, and not for the prior period.

15. GST not leviable on reimbursement of property tax received from members of Housing Society

Case Name : **In re Emerald Court Co-operative Housing Society Limited (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-113/2019-20/B-29
Date of Judgement/Order : 13/07/2021

Question: – Determination of the liability to pay GST on Maintenance charges.

Emerald Court Co-op Housing Society Ltd is a Co-operative Housing Society (CHS). It looks after the upkeep of the society and its members. The CHS provides services to its members in the form of facilities or benefits like security, cleaning, repairs, water, common electricity etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc.

Presently, the CHS is raising monthly bills on its members which consist of 2 parts, one is property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged.

Hence we seek opinion on the chargeability of GST on such transaction since there could be no sale by the Co-operative Housing Societies to its own permanent members, for doctrine of mutuality would come into play, fo elaborate, CHS treated itself as the agent of the permanent members in entirely and advanced the stand that no consideration passed for the services rendered by the society to its members and there was only reimbursement of the amount by the members and therefore no GST could be levied.

Answer:- The applicant is liable to pay GST on maintenance charges (by whatever name called) collected from its members, if the monthly subscription or contribution charged from the members ia more then Rs. 7,500/- per month.

16. Online/Offline tending – Is it Supply of Service & GST Applicability

Case Name : **In re Maharashtra State Dental Council (GST AAR Maharashtra)**
Appeal Number : Order No. GST-ARA-125/2019-20/B-30
Date of Judgement/Order : 13/07/2021

Question 1:- Whether online tending to be considered as Supply of Goods or Supply of Service?

Answer:- Online tendering will be considered as Supply of Services.

Question 2:– Whether offline tendering to be considered as Supply of Goods or Supply of services?

Answer:- Offline tendering in its entirety involving sale of form, payment of tender fees and submission of bids etc. will be considered as Supply of Services.

Question 3:- Under which tariff head the Online rendering should get taxed?

Answer:- Online Tendering should get taxed under services heading 9997.

Question 4:– Under which tariff head the Offline Tendering should get taxed?

Answer:- Offline Tendering should get taxed under services heading 9997.

Question 5:- If tendering is service then whether it will be considered as administrative services or specific Service?

Answer:- In view of the discussions made above tendering will be considered as ‘miscellaneous services including services nowhere else specified.

Question 6:- Whether the activities conducted by the Maharashtra State Dental Council are the “Registration Activities and their related activities laid down in the Act” exempted under the **Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017** as amended and consequently, the receipt of the Registering Fees paid under Rule 73 of the Bombay Dentists Rules, 1951 by the Prospective Dental Practitioners to the Council is exempted from the levy of Goods and Services Tax.

Answer:- Answer is in the negative.

17. GST on Brush Holder Assembly, Lead Wires and parts for Railway

Case Name : **In re Arco Electro Technologies Pvt. Ltd. (GST AAR Maharashtra)**
Appeal Number : Advance Ruling NO.GST-ARA-61/2020-21/B-31
Date of Judgement/Order : 13/07/2021

Question: Railway parts such as Brush Holder Assembly and parts, Lead Wires for locomotives and Insulating Rods Locomotives manufactured as per the specification and drawings of Indian Railways. These should be classified under HSN Heading 8503, 8544 and 8547 @ 18% or under HSN Heading 8607 @12%

Answer: The products Brush Holder Assembly and parts, Lead Wires and Insulating Rods are to be classified under heading 86.07 only when they are manufactured as per the drawings and specifications given to the applicant by the Indian Railways and only when the said goods are used in traction motors meant for Railway locomotives.

18. GST on lease transaction between different registrations of same company

Case Name : **In re Chep India Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 36/2021
Date of Judgement/Order : 16/07/2021

1. Whether the pallets, crates and containers (equipment) leased by CHEP India Private Limited (CIPL or applicant) located and registered in Karnataka to its other GST registration located across India (say CIPL, Kerala) would be considered as lease transaction and accordingly taxable as supply of services in terms of Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act) and Karnataka Goods and Services Tax Act, 2017 ("KGST Act")?

The pallets, crates and containers leased by CHEP India Private Limited located and registered in Karnataka to its other GST registration located across India (say CIPL, Kerala) would be considered as lease transaction if the specific goods are sent on lease as per the agreement between the two entities and accordingly taxable as supply of services in terms of the provisions of the Integrated Goods and Services Tax Act, 2017 read with Section 7 of the Central Goods and Services Tax Act, 2017.

2. If the answer to Question 1 is yes, what is the value on which GST has to be charged i.e. whether it should be lease charges or the value of equipment in terms of Section 15 of the CGST Act and KGST Act read with relevant Rules?

The value declared in the invoice issued by the applicant would be the value on which GST has to be charged in terms of Section 15 of the CGST Act and KGST Act read with relevant Rules.

3. What are the documebts that should accompany the movement of goods from CUPL, Karnataka to CIPL, Kerala?

The documents to be carried for the movement of goods from CIPL, Karnataka to CIPL, Kerala would be delivery note and e-way bill for the entire value of the goods transported.

4. Whether movement of equipment from CIPL, Kerala to CIPL, Tamil Nadu on the instruction of CIPL, Karnataka can be said to be mere movement of goods not amounting to a supply in terms of Section 7 of the CGST Act and KGST Act, and thereby not liable to GST?

The movement of goods from CIPL, Kerala to CIPL, Tamil Nadu under the instruction of CIPL, Karnataka would be as a result of a separate transaction of supply between CIPL, Karnataka and CIPL, Tamil Nadu if the terms of the contract so state. But it would be a supply of CIPL, Kerala, if it is the agreement between CIPL, Kerala and CIPL, Tamil Nadu which causes the movement of goods from CIPL, Kerala to CIPL, Tamil Nadu. Further the services of CIPL, Kerala to CIPL, Karnataka in facilitating the transportation of goods to CIPL, Tamilnadu are exigible to GST.

5. With reference to Question 4 above, what are the documents that should accompany the movement of the goods from CIPL, Kerala to CIPL, Tamil Nadu?

The documents to be carried for the above movement is a delivery note and e-way bill issued by CIPL, Karnataka if the movement is as a result of supply by CIPL, Karnataka or a delivery note and e-way bill issued by CIPL, Kerala is the movement is as a result of supply by CIPL, Kerala, differentiated as per (4) above.

19. Advance Ruling cannot be misused when GST DRC-01A has already been issued

Case Name : **In re Shalby Limited (AAR GST Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/31/2021
Date of Judgement/Order : 19/07/2021

The applicant was aware of the investigation initiated and the proceedings initiated vide three GST DRC-01A Part A all dated 11-2-20. Yet it chose not to declare the same in the Advance Ruling Application dated 2-12-20 and mis-declared at said Sr. No. 17 Form GST ARA-01 dated 2-12-2020 of the said application. We notice that even the Revenue did not bring this misdeclaration by the applicant before the Authority prior to issuance of Ruling dated 20-1-21. However this does not shirk away the responsibility cast on the applicant.

The applicant submitted that the Advance Ruling was not appealed by the State Revenue. The matter at present is not appeal issue as prescribed at section 100 of CGST Act, but the matter at hand to decide whether the Ruling may be declared void abinitio as prescribed at section 104 of the CGST Act. We hold that the Authority has been empowered vide Section 104 of CGST Act to declare a Ruling void abinitio. We hold that the Advance Ruling cannot be used as a mechanism to nullify and frustrate the inquiry proceedings already initiated vide section 70(1) of CGST Act. Further, we hold that Advance Ruling cannot be misused when GST DRC-01A has already been issued, even prior to filing of Advance Ruling application.

The applicant should bear in mind that the CGST Act has deemed this Authority to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority

shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. The applicant has obtained said Advance Ruling dated 20-1-21 by suppressing the material facts.

We find that the applicant has submitted case laws in favour of merits of Advance Ruling dated 20-1-21. We are not deciding on the merits of the Ruling but whether Section 104 of CGST Act is to come into play in subject matter or otherwise.

In conspectus of aforementioned findings, We declare Advance Ruling No. GUJ/GAAR/R/11/202 dated 20-01-21 void ab-initio in terms of Section 104 of CGST Act.

20. Lassi is classifiable under HSN 040390 and is exempt from GST

Case Name : **In re Sampoorna Dairy and Agrotech LLP (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/30/2021
Date of Judgement/Order : 19/07/2021

Whether product manufactured as 'Lassi' but named as 'laban' can be classified as Lassi under Description of Goods, Is the goods taxable or exempted, If exempted, HSN of the Product and rate of tax on product and If taxable, HSN of product and rate of tax on product?

Lassi is a fermented milk drink and its main ingredients are curd, water and spices. We have noted the manufacturing Process submitted by the applicant. On reading the contents of the subject goods displayed on the bottle of 'laban', we find following ingredients printed on the bottle: Pasteurized toned milk, spices, pudina, green chilli, ginger, salts, active culture, added nature identical flavour and stabilizer (INS440). Further, on the bottle of 'laban' we note that ''Dairy based fermented Drink' is printed.

Inferring from the manufacturing process submitted and the contents of the subject goods printed on its bottle, we hold subject goods are Lassi. We find goods 'Lassi' is described at Sr. No.26 of **Notification No.2/2017-Central Tax (Rate) dated 28-6-17.**

The goods are classified as Lassi at HSN 040390 and is exempt from GST.

21. 18% GST Payable on mixed supply of Instant mix flour of Khaman & masala pack

Case Name : **In re Ramdev Food Products Pvt. Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/29/2021
Date of Judgement/Order : 19/07/2021

(a) What is the applicable rate of tax under the GST Acts on supply of instant mix flours for gota, khaman, dalwada, dahiwada, idli, dhokla, dhosa, pizza, methi gota and handvo?

The subject 10 goods merit classification at HSN. 2106 90 attracting 18% GST (9% CGST + 9% SGST) as per Sl. No. 23 of Schedule-III to the **Notification No.01/2017-Central Tax (Rate) dated 28-6-17.**

(b) What is the applicable rate of tax under the GST Acts on supply of instant mix flour for gota/methi gota along with chutney powder/kadhi chutney powder?

The mixed supply of Instant mix flour of Gota/Methi Gota with Chutney powder/Kadi Chutney powder shall be treated as supply of Instant Gota Mix Flour/Instant Methi Gota Mix Flour respectively (falling under HSN 2106 90) on which the GST liability will be 18%(9% CGST + 9% SGST).

(c) What is the applicable rate of tax under the GST Acts on supply of khaman along with masala pack?

The mixed supply of Instant mix flour of Khaman and masala pack shall be treated as supply of Instant Mix Flour of Khaman (falling under HSN 2106 90) on which the GST liability will be 18% (9% CGST + 9% SGST).

22. 18% GST payable on Instant Mix Flours/Mix Flours

Case Name : **In re Gajanand Foods pvt. ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/28/2021
Date of Judgement/Order : 19/07/2021

The Instant Mix Flours/Mix Flours of: (i)Gota (ii) DakorGota (iii) MethiGota (iv) Khaman (v) Dhokla (vi) Idli (vii) RavaIdli, (viii) Dosa (ix) Upma (x) Dahiwada (xi) Dalwada (xii) Menduvada (xiii) Handvo and (xiv) Khichu are classifiable under HSN. 2106 90(Others) attracting 18% GST (9% CGST + 9% SGST).

23. Ahmedabad Janmarg Limited is Local Authority' under CGST Act, 2017

Case Name : **In re Ahmedabad Janmarg Limited (Gujarat High Court)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/27/2021
Date of Judgement/Order : 19/07/2021

Q1. Whether AJL would be qualified as 'Local Authority' under the Central Goods and Services Tax Act, 2017?

1. Ahmedabad Janmarg ltd. is not a Local Authority.

Q2. Whether AJL is liable to pay GST on procurement of security services received from any person other than body corporate under reverse charge mechanism, considering the exemption granted in sl. no. 3 of Notification No. 12/2017–Central Tax (Rate) or sl. no. 3 of Notification No. 09/2017–IGST (Rate)?

2. Ahmedabad Janmarg ltd is liable to pay GST on security services under RCM, as per relevant Notification.

Q3. Whether AJL is required to pay GST on advertisement services or the service recipient of AJL is required pay GST under reverse charge mechanism considering Notification no. 13/2017-Central tax (Rate) dated 28-06-2017?

3. Ahmedabad Janmarg ltd is liable to pay GST on advertisement services supplied by it.

Q4. Whether AJL is required to be registered as a Deductor under GST as per the provision of Section 24 of the CGST Act?

4. Ahmedabad Janmarg ltd is not required to be registered as a Deductor under GST.

Q5. If AJL does not qualify to be local authority under Central Goods and Services Tax Act, 2017 in Part A, can be it construed to be a government entity or a governmental authority?

5. Ahmedabad Janmarg ltd is not a Government Entity/ Governmental Authority.

24. Unburnt or half-burnt coal and dust attracts 18% GST

Case Name : **In re Jeevaka Industries Private Limited (GST AAR Telangana)**
Appeal Number : TSAAR Order No.04/2021
Date of Judgement/Order : 19/07/2021

Under which HSN Code should the following goods be classified: The wastes, namely, a. Cinder Half-burnt Coal / Char Dolachar and b. ESP / Bag Filter Dust generated during the process of manufacturing Sponge Iron under DRI process?

(1a) & (1b) commodities fall under HSN Code '2619 00 90'

Would the GST Compensation Cess @ Rs.400/- per tonne be applicable on sale of waste, i.e. Cinder Half-burnt coal, generated during the said process?

No

25. Time of supply & point of taxation for flats allotted to land owner by builder

Case Name : **In re Vajra Infracorp India Private Limited (GST AAR Telangana)**
Appeal Number : TSAAR Order No. 03/2021
Date of Judgement/Order : 19/07/2021

1. Time of supply and point of taxation with respect to flats allotted to land owner by the builder by way of supplementary agreement on 15.05.2017 (i.e., before GST regime) where as the construction will be completed during GST regime.

As per **Notification No.4/2018 Dt:25.01.2018** the date of transfer of possession of the building or the right in it to the person supplying development rights will be the time of supply and the liability to pay tax on the said services shall arise on that day. The time of supply shall not be at any other time.

2. Is this date to be concluded as the date of allotment for payment of service tax in respect of construction services provided to landlord ignoring the fact that the construction was continued subsequently from May, 2017 to November, 2018.

No, the applicant has to pay tax as per the time of supply indicated at Point 1 above.

3. Will it be sufficient and adequate compliance, if the appellant complies law and remit entire service tax on the entire area earmarked to landlord.

No, the applicant has to pay tax as per the time of supply indicated at Point 1 above.

4. Once the time of supply is clarified and ruled, the appellant will plan for remittance of tax accordingly on hearing from office.

Not a question.

5. In the event the service tax is remitted based on the date of above supplementary agreement, will the appellant not required to comply with GST on the said value of service to land owner.

Does not arise.

6. Will this view in transitional period have any impact on the future projects to be explored by the applicant company.

Does not arise.

7. What is the 'Constructed complex' referred to in the notification.

'Constructed complex' refers to a building or a completed structure.

26. Advance Ruling is void ab-initio as applicant not informed about proceedings of DGGI

Case Name : **In re J K Snacks Industries (GST AAAR Gujarat)**
Appeal Number : Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2021/27
Date of Judgement/Order : 20/07/2021

In this case during the personal hearing, representative of appellant have not informed anything about the proceedings of DGGI, Surat.

It appears that had the fact of pending proceedings before the DGGI Surat in applicant's own case relating to questions raised in the application filed before the GAAR been brought to the notice of the GAAR, the application for advance ruling would not have been admitted in view of the proviso to sub-section (2) of section 98 of the CGST Act, 2017 and the question of issuing advance ruling would not have arisen.

However, the appellant have not informed the aforesaid material facts to the GAAR at any given point of time thereby willfully suppressing the fact from the Authority and obtaining the Ruling by suppressing the facts. Section 104 of the CGST Act, 2017 stipulates that any Ruling obtained by the applicant under Section 98(4) of the CGST

Act, 2017 by “fraud or suppression of material facts or misrepresentation of facts” may be declared *void ab-initio*.

As appellant has obtained the Advance Ruling by submitting application of advance ruling with suppression of material facts or misrepresentation of facts, and the application was not eligible to be admitted in view of proviso to sub-section (2) of section 98 of the CGST Act, 2017. Therefore, in terms of Section 104 of CGST Act, 2017, and the GGST Act, 2017, the advance ruling pronounced by the Gujarat Authority of Advance Ruling is liable to be declared as *void ab-initio*.

In view of the foregoing, we modify the **Advance Ruling No. GUJ/GAAR/R/78/2020 dated 17.09.2020** of the Gujarat Authority for Advance Ruling in the case of M/s J. K. Snacks Industries and declare it void ab-initio

27. GST on Phosphate Solubilising Bacteria & Potassium mobilising Bio-fertilizers

Case Name : **In re G.B. Agro Industries (GST AAAR Gujarat)**
Appeal Number : Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2021/25
Date of Judgement/Order : 20/07/2021

AAAR modified the **Advance Ruling No.GUJ/GAAR/R /71/2020 dated 17.09.2020** issued by the GAAR in respect of Bio-fertilizers, by holding that the two products namely Phosphate Solubilising Bacteria and Potassium mobilising Bio-fertilizers manufactured and supplied by the appellant M/s. G.B.Agro Industries, Bharuch are classifiable under Chapter sub-heading No.31059090 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975) and liable to GST at 5% in terms of Sl.No.182D of Schedule-I of **Notification No.01/2017-Central Tax(Rate) dated 28.06.2017** (as amended from time to time) for the reasons discussed hereinabove. Also, the classification of the aforementioned products is entirely based on the composition of inputs as given by the appellant and any alteration/change in the composition of the inputs would also result in alteration of the classification of the aforementioned products.

28. Corrigendum order in case M/s Emerald court Co-operative Housing Society Ltd.

Case Name : **In re Emerald Court Co-operative Housing Society Ltd. (GST AAR Maharashtra)**
Appeal Number : GST/ARA/113/2019-20/Corrigendum/21-22/B-34
Date of Judgement/Order : 27/07/2021

CORRIGENDUM

In the case of the applicant, M/s. Emerald Court Co-operative [lousing Society 1.1d, holder of GSTIN Number 27AABAE1552D1Z8. a Ruling was passed under Sections

98 of the **Central Goods and Services Tax Act** and the **Maharashtra Goods and Services Tax Act 2017** vide Advance Ruling Order No. GST-ARA-113/2019-20/B-29 Mumbai. dated 13.07.2021.

The aforesaid applicant has brought to our notice vide email dated 14.07.2021 that, an error has been noticed under hearing part in para No. 4.1 and 4.2 at two places wherein the name of Authorized representative is mentioned as “Smt. Satvinder Kaur” instead of “Mrs. Akbinder Kaur Saini:.

2. On perusal of the impugned order, it is noticed that such typographical error has indeed occurred in para No. 4.1 and 4.2 and needs correction. Therefore, this corrigendum order is issued, to correct the above mentioned error.

Hence, now para No. 4.1 and 4.2 may be read as under:-

“4.1 Preliminary hearing in the matter was held on 28.05.2021. Mrs. Akbinder Kaur Saini (C.A), Authorized Representative, appeared, and requested for admission of their application. Jurisdictional Officers Shri. Rajesh Advani, Deputy Commissioner, MUM-VAT-C-720, Nodal Division-007, Mumbai and Shri. Shailesh Mulam were also present.

4.2 The application was admitted and called for final hearing on 22.06.2021. Mrs. Akbinder Kaur Saini (C.A). Authorized Representative, appeared. made oral and written submissions. Jurisdictional Officers Shri. Rajesh Advani. Deputy Commissioner, MUM-VAT-C-720, Nodal Division-007, Mumbai and Shri. Shailesh Mulam were also present and made submissions. We heard both the sides.”

29. GST applicable on “Tertiary Treated Water” supplied to MAHACENCO for Industrial use

Case Name : **In re Nagpur Waste Water Management Pvt. Ltd. (GST AAR Maharashtra)**
Appeal Number : Advance Ruling No. GST-ARA-65/2020-21/21-22/B-35
Date of Judgement/Order : 27/07/2021

It is observed that the applicant has processed the sewage water which contains various kinds of organic and inorganic impurities like sand. Silt, clay, chemicals, organisms, etc. The sewage water Cannot be used, in any way, in its original form. Sewage water can be used only after it is purified and even the purified sewage water is not used for drinking, as submitted by the applicant. It is however found to have industrial uses. Such a sewage water is purified by applying different processes in the STP plant as mentioned by the applicant. Thereafter, such obtained water is called as purified water and is sold to the ‘MAHAGENCO’ for their industrial use. It is not used as potable or drinking water.

As per the parameters tested by the applicant, the properties of processed water generated from the sewage is different than the properties of the original sewage water received in the STP plant. Therefore in our view. Tertiary Treated Water is purified sewage water and since it is purified water, the same will not fall under Sr. No, 99

of **Notification 02/2017-C.T. (Rale) dated 28.06.2017.** Since the said entry at Sr. No. 99 mentions that water, other than purified, aerated, mineral, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container, only will get exemption, therefore the impugned product being purified sewage water will not be exempted.

The legislation does not expect, such purified water to be allowed for exemption from GST. We feel that the subject product is out of purview of this entry and hence the subject product, is not covered under "water" as prescribed in the schedule entry no. 99 of **Notification 02/2017-C.T. (Rale) dated 28.06.2017.**

In the subject case, the water supplied by the applicant to mahagenco is obtained after the treatment to sewage water as submitted by the applicant and the said water is not potable. Hence Entry No. 46 B which pertains to drinking water only is not applicable to the impugned product.

The Dictionary meaning of Purification is "the removal of contaminants from something." Thus, Purified water means water on which any process has been carried out for removal of contaminants for making it fit for use. As per the applicant's submissions, it is clear that various contaminants are removed from the sewage water, thus purifying it to make purified sewage water useful for Industrial purpose. As per the contention of applicant 'Tertiary Treated Water' is not potable but it can be used for Industrial use. It is also submitted that the applicant is of the opinion that the supply of TTW by them to Mahagenco is taxable We do not find any reasons not to agree with the applicant's views. We are of the firm opinion that, the TTW supplied by the applicant is "purified Water" and is covered Entry No.24 of **Notification No. 01/2017-C.T. (Rate) dated 28.6.2017.**

In view of the above discussions, we agree with views of applicant and hold that the impugned goods, called as "Tertiary Treated Water", is purified water which is sold to MAHACENCO for its further industrial use and falls under Entry No. 24 of **Notification No. 01/2017-C.T. (Rate) dated 28.6.2017.** mentioned above.

30. Bakery selling eatables on take away basis cannot be treated as restaurant

Case Name : **In Assistant Commissioner, CGST & Central Excise Vs. M/s. Pioneer Bakers (GST AAAR Odisha)**
Appeal Number : Advance Ruling No.02/Odisha-AAAR/2021-22 dated 09.03.2021
Date of Judgement/Order : 27/07/2021

During the P.H., the Jurisdictional Officer, Sri Goutam Kumar Biswas(Appellant), Asst. Commissioner, CGST, Sambalpur-I Division stated that the applicant is running a bakery business, where different items likes cakes, bakery items, ice creams, chocolates, drinks & other eatable products are sold on take away basis. The facilities provided by the applicant in their outlets cannot be treated as restaurant service.

On the subject issue of Restaurant Service, the latest notification issued i.e. **Notification No.20/2019-Central Tax(Rate) dt.30.09.2019**(SI.No.7, (ii)) where the rate of duty & condition is prescribed mentioned below:

(3)	(4)	(5)
(ii) Supply of 'restaurant service' other than at 'specified premises'	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken(Please refer to Explanation no.(iv)

"(xxxii) "Restaurant service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

(xxxvi) "Specified premises" means premises providing "hotel accommodation" services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent."

On the plain reading the definition of Restaurant Service as defined in the notification clearly speaks that supply, by way of or as part of any services of goods, being food or any other article for human consumption or any drink, **provided by a restaurant** will be considered as Restaurant Service. In the present case, the nature of establishment/premises/outlets, which are running by the applicant M/s.Pioneer Bakers, whether can be treated as Restaurant or not, is the main question before us. But the ambiguity persists on the subject issue because the Restaurant Service is defined under **CGST Act, 2017**/SGST Act, 2017 but what is restaurant is not defined under CGST/SGST Act, 2017.

The meaning of the restaurant is provided in the Cambridge Dictionary, where it is defined as, **a restaurant is a place where meals are prepared & served to the customer.** The appellant, the Jurisdictional Officer has categorically stated that the applicant is running a bakery business where different items are sold on take away basis. Most of the items are not prepared in their premises. The serving of the items to the customer for taking the food in the premises is done to very few customers. Therefore, the establishment running by the applicant M/s.Pioneer Bakers cannot be considered as Restaurant. The concerned Officer, Deputy Commissioner, CT & GST, Odisha also put forth their submissions on the similar grounds. The Concerned Officer submitted that, in the instant case, it is a bakery outlets where ready to each items are sold & mere facility is provided to take it from the shop. The applicant has only prepared birthday cakes, as per order for take out service and they do not prepare birthday cakes immediately from the customers order. Those who wants to take within the premises, they merely supply the readily available cakes. They do not serve food to the Customer table & in most cases sold the items from the counter. Therefore, the applicant should not be considered as Restaurant Services.

We examined the submission made by the applicant. We have also gone through the above verification put forth by the Jurisdictional Officer & the Concerned Officer. Examining all the factors, we are in view that the establishments/outlets/premises of

the applicant cannot be treated as restaurant. Consequently, the activities carried out by the applicant from their premises/outlets cannot be considered as restaurant Service.

31. GST on supply of Marine diesel engine and parts thereof

Case Name : **In re MAN Energy Solutions India Private Limited (GST AAR Maharashtra)**
Appeal Number : Order No. GST-ARA-56/2019-20/B-41
Date of Judgement/Order : 30/07/2021

Question. Whether the marine diesel engine, and parts thereof illustrated in Exhibit D, supplied by the Applicant exclusively to ship building companies / shipyards or Indian Navy for use and application in ships, vessels, boats, floating structures etc. are to be classified under *Sr. No. 252 of* ***Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017****?*

Answer:- Marine diesel engine, and parts thereof will be covered under Sr. No. 252 of **Notification No. 1/2017-C.T.(Rate), dated 28-6-2017,** only when used in the manufacture of goods falling under 8901, 8902, 8904, 8905, 8906, 8907 and supplied only to ship building companies/shipyards or Indian Navy. Items which do not conform to "parts of marine diesel engines" will not be covered under the said Sr. No. 252 of **Notification No. 1/2017-C.T.(Rate), dated 28-6-2017**.

32. GST on Supply of Branded sealed fruit bowl containing only cut fresh fruits without any preservatives or additives

Case Name : **In re Juzi Fruits Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 49/2021
Date of Judgement/Order : 30/07/2021

1. (a) (i) Supply of sealed fruit bowl containing only cut fresh fruits without addition of any preservatives or additives which are sold under brand name is covered under entry no.59 of Schedule I of **Notification No.1/2017 -Central Tax (Rate) dated 28.06.2017** Vide HSN 1106 and is liable to tax @ 2.5% under CGST Act and 2.5% under the SGST Act, 2017.

(ii) The Fruit bowl containing both cut fresh fruits and dry fruits and nuts is taxable at rate applicable to the supply of dry fruits and nuts.

(b) As already discussed, the tax rate applicable on dry fruits and nuts cannot be provided as the exact nature of the dry fruit or nut is not provided.

2. The applicant is eligible for input tax credit on the tax paid on the inward supplies of inputs and input services involved in the supply which is taxable.

33. GST on street lighting under Energy Performance Contract

Case Name : **In re Bangalore Street Lighting Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 48/2021
Date of Judgement/Order : 30/07/2021

i. Whether the street lighting activity undertaken under the Energy Performance Contract dated 1st March 2019 (Which involves supply of various goods and rendition of various services), is to be considered as a Composite Supply the CGST/KGST Act2017?

The street lighting activity undertaken under the Energy Performance Contract dated 1st March 2019 (which involves supply of various goods and rendition of various services), is to be considered as a Composite Supply under the CGST I KGST Act 2017, where the principal supply is the service, classified under SAC 999112.

ii. If so, whether Supply of luminaries, without which there can be no energy conservation, and which is the primary deliverables, constituting approximately 70% of the total project cost, can be construed as the principal supply? What would be the applicable rate of GST on supply made under the contract?

The applicable rate of GST on supply made under this contract is 18% (9% CGST & 9% KGST) as per entry SI.No.29 of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017**.

iii. If supply of services is held to be the principal supply, which of the various services being rendered would constitute the principal supply? What would be the applicable rate of GST on supply made under this contract?

O & M of the installed equipments would constitute the principal supply and the applicable rate of GST on the said supply is as at (ii) supra.

iv. Whether the applicant is entitled to the benefit of exemption under entry 3A of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, as amended?

The Applicant is not entitled to the benefit of exemption under Entry 3A of **Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017**, as amended.

v. If the transaction is treated as a supply of luminaries, what is the time of such supply? Whether "Applicant ESCO" would be liable to pay tax at the time when invoices are issued as envisaged in Explanation 1 to Section 12(12) of the CGST/KGST Act or only at the time when the possession and ownership in goods are vested in "BBMP" at the end of tenure?

The time of supply of luminaries is not relevant as the impugned transaction is held to be a supply of service.

vi. What would be the value of the aforesaid taxable supply given the fact that payments are to be received based on energy savings, which can be computed on a monthly basis, with reference to the energy auditor certifying the workings submitted by applicant?

The value of the aforesaid taxable supply includes all the amounts received from BBMP pursuant to the contract dated 01.03.2019.

34. Inclusion of value of Assets not in GST purview for apportionment towards transfer of ITC in case of demerger

Case Name : **In re IBM India Private Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 47/2021
Date of Judgement/Order : 30/07/2021

Q1. Whether the value of assets which are outside the purview of GST is required to be included in the value of assets for the purpose of apportionment towards transfer of input tax credit in case of de-merger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017?

A1. The value of assets which are outside the purview of GST is required to be included in the value of assets for apportionment towards transfer of input tax credit in case of demerger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017

Q2. If the answer to Question

(i) is yes, whether following assets are required to be considered for the purpose of determining the value of assets for apportionment towards transfer of input tax credit in case of de-merger in terms of Section 18(3) of CGST Act, 2017 read with Rule 41(1) of CGST Rules, 2017:

a) Assets which are created only to comply with the requirements of the Accounting Standards;

b) Assets which are not being transferred as part of de-merger.

A2. *The value of assets includes the assets which are created only to comply with the requirement of accounting standards and also the assets which are not being transferred as part of demerger.*

Q3. If the answer to Question 1 and / or 2 are yes, whether the assets which are not attributable to any particular GSTIN be considered in the GSTIN of the head office of the Company for the purpose of computation of asset ratio?

A3. *There is no question of assets which are not being attributed to any particular GSTIN. For the purpose of computation of asset ratio, the assets which are transferred to the new units has to be considered to the total assets which the company was maintaining in the particular state and accordingly ITC apportionment is to be calculated.*

35. GST on supply of manpower services to Government Department

Case Name : **In re Sadanand Manpower Service (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 46/2021

Date of Judgement/Order : 30/07/2021

1. Whether Labor supply to Government Departments from a Register dealer under GST Act like providing Drivers, Peons, Housekeeping Data Entry operators and other clerical staff attracts exemption fron levy of GST as per Notification Nos.11/2017-CT(Rate) and 12/2017CT(Rate) both dated 28th June 2017.

Labour supply/supply of manpower services like Drivers, peons, housekeeping, data entry operators and other clerical staff to Government Departments attracts tax at the rate of 18%(CGST @ 9% and KGST @ 9%).

2. Whether above said supply of services covered under "Pure Labor Services" as per Service Accounting Code (SAC) under chapter No.99.

The said supply of service is covered under Service Accounting Code (SAC) 9985.

3. The dealer apply for work as per tender (E-procurement) as a "Contractor to supply labour" and TDS as per Income tax Act deducted U/s 194C (As a Contractor or Sub-Contractor) @ 1%. So, why not dealer to be treated as a Contractor under GST Act 2017 also?

The question sought by the applicant does not falls under the provisions of Section 97(2) of the CGST/KGST Act, 2017.

36. GST on Pure Services provided to Zilla Panchayat, City corporations etc.

Case Name : **In re Madivalappa Karveerappa Belwadi (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 45/2021
Date of Judgement/Order : 30/07/2021

Whether the Pure Services provided to Zilla Panchayat, City corporations, Educations Institutions, and Rural Water Supply Divisions are exempted under article 243G and 243W?

Supply of manpower services like Drivers and cleaners for solid waste 'anagement system to City Corporation/Municipalities/zilla parishads and manpower services like cleaning staff, cook, assistant cook, teachers, staff nurse and watchman to hostels and residential schools working under Social welfare department is ***exempted*** *since the manpower services provided are 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.*

Manpower services like Data Entry Operator, Drivers "D" Group etc to City Corporation/ Municipalities/zilla parishads and Manpower Services like clerical staff (FDA, SDA), Typists to Social welfare department are not 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 and hence attracts tax at the rate of 18%(CGST @ 9% and KGST @ 9%).

37. DG Rental Service – GST Applicable on Cost of diesel for running DG Set

Case Name : **In re Goodwill Auto's (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 44/2021
Date of Judgement/Order : 30/07/2021

GST applicability of cost of the diesel incurred for running DG Set in the course of providing DG Rental Service?

The cost of the diesel incurred for running DG Set in the course of providing DG Rental Service is nothing but additional consideration for the supply of DG Set on rent as per section 15 of the CGST/KGST Act and hence attracts CGST @9% and KGST @ 9%.

38. GST on amount received from PWD for Construction of bridge

Case Name : **In re Aishwarya Earth Movers (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 43/2021
Date of Judgement/Order : 30/07/2021

i. The applicant is liable to collect and pay GST at the rate of 12 % (CGST @ 6% and KGST @ 6%) as per Section 142(2) (a) of the GST Act on the amount received from the Public Works Department as per revised estimate in respect of work namely "Construction of bridge across Kumaradhara river on Kudmar Shanthimogru Sharavoor Alankar Road at KM 1.20 in Shanthimogaru of Puttur taluk, subject to the condition that the amount is related to price revision of the contract entered prior to the appointed date.

ii. Yes, the applicant is liable to collect and pay goods and services tax on amount received from the Executive Engineer, Public Works, Inland Water Transport Department, Mangalore Division.

39. 12% GST payable on affordable housing projects with infrastructure status given by GOI

Case Name : **In re Starworth Infrastructure And Construction Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 42/2021
Date of Judgement/Order : 30/07/2021

Whether the construction service provided by the Applicant to M/s Provident Housing Ltd., under the project 'Provident Neora, & Provident Capella' & to M/s Puravankara Ltd., under the project Provident Parksquare" qualifies for application of lower rate of CGST @ 6% and SGST @ 6% as provided in Sl.No.3-Item (V) sub item(da) vide Notification No.11/2017-CT (Rate) dated 28.06.2017?

The construction service provided by the applicant to M/s. Provident Housing Limited under the projects "Provident Neora and Provident Capella" and to M/s. Puravankara

Limited under the project “Provident Parksquare,” are liable to tax at the rate of 6% under the CGST and at the rate of 6% under KGST Act as provided in SI.No.3-Item (v)-sub item (da) of **Notification No.11/2017-CT (Rate) dated 28.06.2017**, if the projects are affordable housing projects and are given the infrastructure status as per notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No. 13/6/2009-INF, dated the 30th March, 2017, else, the services will be liable to tax at the rate of 9% under the CGST Act and at the rate of 9% under KGST Act as provided in SI.No.3-Item (xii) of **Notification No.11/2017-CT (Rate) dated 28.06.2017**.

40. GST on supply of tissue papers

Case Name : **In re Premier Tissues India Limited (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 41/2021
Date of Judgement/Order : 30/07/2021

Whether the supply of tissue papers by the applicant is covered under Serial No.112 of Schedule II of the Rate Notification No.01/2017 Central Tax (R) and therefore, is leviable to GST at the rate of 12%?

GST rate of 12% is applicable only to Uncoated paper and paperboard used for writing, printing or other graphic purposes; non perforated punch-cards and punch tape paper, in rolls or rectangular/square sheets, of any size; hand-made paper and paperboard. Further the paper of heading 4801 and 4803 are excluded from the heading 4802. The impugned products being the tissue papers fall under other paper and paperboard not containing fibres obtained by a mechanical or chemi-mechanical process and hence do not get covered under uncoated paper and paperboard. Therefore the impugned products of the applicant are not covered under the entry No. 112 of Schedule II to Notification supra and hence the GST rate of 12% is not applicable to them.

The supply of tissue papers by the applicant is not covered under the entry number 112 of Schedule II to the **Notification No.01/2017 Central Tax (R)** and therefore, GST rate of 12% is not applicable to the supply of the applicant.

41. GST rates on works contact services on original works for Railways

Case Name : **In re Bindu Projects & Co (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 40/2021
Date of Judgement/Order : 30/07/2021

Applicability of GST rates for works contact services doing original works with South Western Railways?

1. The new constructions involved in the contract are liable to tax at 12% (6% CGST and 6% SGST) as per entry no.3(v) of **Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017** as amended by **Notification No. 20/2017 – Central Tax (Rate) dated 22.08.2017**.

2. The services of repairs, maintenance, renovation and alterations of residential complex meant for use of the Railway employees are covered under entry 3(vi) of the Notification and hence eligible for tax at 6% CGST and 6% SGST.

3. Other repair works of old construction involved in the contract are liable to tax at 18% (9% CGST and 9% SGST) as per entry no. 3 (xii) of **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017** as amended from time to time.

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

Case Name : **In re Dakshina Kannada Co-Operative Milk Producers Union Ltd (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 39/2021
Date of Judgement/Order : 30/07/2021

1. Whether Stainless Steel cans of 40 Liters capacity is liable to be classified under HSN code 7310 or 7323?

The applicant is not the supplier of the said SS cans but the recipient. Thus no advance ruling can be given on this issue of classification of stainless steel cans of 40 liters capacity as the same is beyond the jurisdiction of this authority.

2. Whether flavored milk is liable to be classified under HSN code 0402 99 90 or under 2202 99 30?

The applicant is part of Karnataka Co-operative Milk Producers Federation Limited, in respect of whom advance ruling was given on the issue of classification of flavored milk, which has been dismissed by the Appellate Authority for Advance Ruling, Karnataka, on the grounds that the appellant therein had suppressed the facts of pending investigation. The applicant also produces same branded (Nandini) product flavoured milk and hence this authority can't give any ruling on the said issue.

3. Whether milk cream is liable to be classified under HSN code 0403 or 0401?

No ruling can be given on the issue of classification of milk cream, as the required information has not been furnished by the applicant.

4. Whether cold coffee is liable to be classified under HSN code 0402 99 90 or under 2202 99 30?

The cold coffee is similar to flavoured milk with the only difference that the flavor is coffee specific. Thus no ruling can be given by this authority on the issue of classification of cold coffee for the reasons stated at ruling (ii) supra.

5. Whether provision of subsidized lunch and refreshments to employee through contractors is to be treated as supply and if yes under which tarrif classification it has to be classified?

The applicant merely pays the part consideration towards the cost of lunch and refreshments to their employees through contractors and hence the said activity does not amount to supply, in terms of Section 7(i)(c) of the CGST Act 2017.

43. ITC on GST paid on canteen facility is inadmissible

Case Name : **In re Tata Motors Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/39/2021
Date of Judgement/Order : 30/07/2021

TC on GST paid on canteen facility is blocked credit under Section 17(5)(b)(i) of CGST Act and inadmissible to applicant.

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

44. No GST on Books Directly Purchased & Supplied Outside India

Case Name : **In re Guitar Head Publishing LLP (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 38/2021
Date of Judgement/Order : 30/07/2021

Whether GST is payable on Guitar Head Books purchased from Amazon Inc.-USA (located outside India) in a context where the Guitar Head Books so purchased are not brought into India?

We invite reference to Schedule III relevant to Section 7 of **CGST Act 2017**, which specifies certain activities or transactions that shall be treated neither as a supply of goods nor a supply of services. Para 7 of the said schedule stipulates that ***Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India*** as neither supply of goods nor supply of services. In the instant case the applicant is involved in supply of books, purchased from Amazon who owned the books, from a place outside India, a non-taxable territory, to another place outside India, a non-taxable territory, without the said goods entering into India. Thus the impugned supply of books by the applicant is neither supply of goods nor supply of services, in terms of schedule II to Section 7 of the CGST Act 2017.

The Guitar Head Books purchased from Amazon Inc.-USA (located outside India) and supplied to the customers located outside India, without bringing into India do not attract any GST, in terms of Schedule III to Section 7 of the CGST Act 2017.

45. GST leviable at 12% on Job work of pharmaceutical Drugs

Case Name : **In Re Romano Drugs Pvt. Ltd. (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/38/2021
Date of Judgement/Order : 30/07/2021

What is rate of tax applicable to the Services by way of job work on Diphenylmethoxy'N' N- diethylaminethanol HCI (Job work of pharmaceutical Drugs) , undertaken by the supplier (applicant) as per CBIC issued clarification on Job work vide **circular No.126/45/2019- GST dated 22.11.2019** i.e., whether the GST rate 18% or 12% is to be charged by the supplier?

We have considered all the submissions made by the applicant and find that subject activity merits to be covered at entry 'id' of Heading 9988 at Sl. No. 26 of **Notification No. 11/2017-CT (R) dated 28-6-17**, as amended, as in subject matter, applicant supplies services by way of jobwork on goods belonging to another registered person.

GST is leviable at 12% .

46. Supply of Vouchers taxable as supply of goods under GST

Case Name : **In re Premier Sales Promotion Pvt. Ltd. (GST AAR Karnataka)**
Appeal Number : Advance Ruling No. KAR ADRG 37/2021
Date of Judgement/Order : 30/07/2021

Whether the vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the applicant and If the answer to the above question is in the affirmative, what would be the rate of tax at which this would be taxable, i.e. which category would this be taxed under?

The product/item in the instant case i.e. voucher is undoubtedly a moveable property and squarely gets covered under intangible goods. Further Schedule II to section 7 of the CGST Act 2017 stipulates the activities or transactions to be treated as supply of goods or supply of services. Para 1(a) of Schedule II to Section 7 specifies that any transfer of the title in goods is supply of goods. The transaction of sale of vouchers in the instant case involves transfer of the title and hence they are covered under goods. We also observe that though both electricity and computer software are intangibles, they are covered under Tariff heading 2716 and 8523 respectively. Hence, we rule that the e-vouchers are taxable as per residual entry no. 453 of third schedule of **Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017** at the rate of 18% GST.

47. Admissibility of ITC on Central AC Plant, Lift, New Locker Cabinet installed during Construction of New office

Case Name : **In re The Varachha Co Op Bank Ltd (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/37/2021
Date of Judgement/Order : 30/07/2021

Q. Whether the Applicant, having undertaken the Construction of their New Administrative Office, will be eligible for the ITC of following:

(i) Central Air Conditioning Plant (Classified & Grouped under Plant & Machinery)

(ii) New Locker Cabinet (Classified & Grouped under Locker Cabinets)

(iii) Lift (Classified & Grouped under Plant & Machinery)

(iv) Electrical Fittings, such as Cables, Switches, NCB and other Electrical Consumables Materials (Classified & Grouped under Separate Block namely Electrical Fittings)

(v) Roof Solar (Classified & Grouped under "Plant & Machinery")

(vi) Generator (Classified & Grouped under "Plant & Machinery")

(vii) Fire Safety Extinguishers (Classified & Grouped under "Plant & Machinery")

(viii) Architect Service Fees (Charged to Profit & Loss Account)

(ix) Interior Designing Fees (Charged to Profit & Loss Account).

Answer:

1. Input Tax Credit is **admissible** on New Locker Cabinet and Generator.

2. Input Tax Credit is **blocked** under Section 17(5)(c) CGST Act for: Central Air Conditioning Plant; Lift; Electrical Fittings; Fire Safety Extinguishers, Roof Solar Plant.

3. Input Tax Credit is **blocked** under Section 17 (5) (d) CGST Act for : Architect Service and Interior Decorator fees.

48. AAR should not give ruling based on limited information

Case Name : **In re Maxpressure Systems LLP (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/36/2021
Date of Judgement/Order : 30/07/2021

Prima facie, We note that the applicant **is a person** who **facilitates SITEC with the potential list of buyers** besides the market analyses**.** Further with the limited material data submitted by the applicant, with no Expression of Interest/ Contract/ Agreement, we find it prudent to refrain from pronouncing a Ruling.

23. Barring Self Assessment, the Assessment to tax is the function of Revenue. We shall not employ the concept of Best Judgement Assessment to pronounce our Ruling based on reasoning on limited information available, for without examination of relevant Agreement/ Contract, neither shall we trespass to declare subject supply taxable, if in legality it weren't, nor shall we declare it zero rated citing that applicant has noting contrary in his written submission sans Agreement/ Contract.

49. GST on incentives received under 'Atma Nirbhar Gujarat Sahay Yojna'

Case Name : **In re Rajkot Nagarik Sahakari Bank Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. Guj/Gaar/R/35/2021
Date of Judgement/Order : 30/07/2021

1. whether the incentives received under 'Atma Nirbhar Gujarat Sahay Yojna' dated 16.05.2020 declared by the Gujarat Govt. could be considered as subsidy and not chargeable to tax?

2. whether the incentive received under said scheme could be considered as supply of service under the provisions of Section 7 under CGST Act?

3. whether the incentive received under said scheme if considered as supply then would it be covered under Sub Section 2 of Section 7 of CGST Act?

4. whether the incentive received under said scheme could be considered as excluded from the value of taxable supply under clause (e) of Sub Section 2 of Section 15 of CGST Act, 2017.

Held by AAR

We hold the subject incentive amount liable to GST. The said Incentive is not subsidy and does not merit exclusion from valuation under section 15(2)(e) CGST Act. The subject supply is covered at section 7(1)(a) CGST Act and not covered at section 7(2) CGST Act.

50. AAR Ruling on Reduction of Subsidy from taxable value of solar system

Case Name : **In Re Greenbrilliance Renewable Energy LLP (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/34/2021
Date of Judgement/Order : 30/07/2021

A) Whether subsidy amount is to be reduced for arriving at the taxable value of the solar system from the system price declared by the Nodal agency? And the GST liability shall be on the taxable value calculated after subtracting the subsidy amount from the system price?

The taxable Value on Tax invoice issued to the Customer shall be arrived after deducting the subject Subsidy from 'System Cost' and GST liability is on the Taxable Value.

(B) What will be the implication of sub-section (2) of Section 17 if the taxable value is derived after subtracting the subsidy amount from system price?

There shall be no implication of Section 17(2) CGST Act, if taxable value is arrived after subtracting the subsidy amount from the system price.

We find that the applicant has collected Subsidy from the Government in this regard and this subsidy amount is inclusive of GST, as detailed in aforementioned paragraphs, the applicant is required by law to pay to the Government the said amount

in the subsidy representing GST, irrespective of the position of law that subsidy portion is to be deducted from the value of supply charged to the customer, for arriving at the taxable value.

The applicant sought Ruling on the implications of Section 17(2) CGST Act, if taxable value is derived after subtracting the subsidy amount from the system price. The provisions of Section 17(2) CGST are attracted when the applicant is effecting taxable supplies and exempt supplies. The subject supply of the applicant is a taxable supply and for the reason that taxable value for charging GST is arrived after subtracting subsidy, does not alter the nature of taxable supply. It remains taxable supply. Therefore, for this matter presented before us, there is no implication of section 17(2) CGST.

51. ITC not admissible on AC & Cooling/Ventilation System in the process of establishing new factory

Case Name : **In re Wago private limited (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. GUJ/GAAR/R/33/2021
Date of Judgement/Order : 30/07/2021

Input tax credit is not admissible on Air-conditioning and Cooling System and Ventilation System, as this is blocked credit falling under Section 17(5)(c) CGST Act.

52. Gota/Khaman/Dalwada/Dahiwada/Dhokla/Idli/Dosa Flour classifiable under HSN 210690

Case Name : **In re Kitchen Express Overseas Ltd. (GST AAR Gujarat)**
Appeal Number : Advance Ruling No. Guj/Gaar/R/32/2021
Date of Judgement/Order : 30/07/2021

The products i.e. Gota Flour ii. Khaman Flour iii. Dalwada Flour iv. Dahiwada Flour v. Dhokla Flour vi. Idli Flour and vii. Dosa Flour are classifiable under HSN. 2106 90 (Others) attracting 18% GST (9% CGST + 9% SGST) as per Sl. No. 23 of Schedule-III to the **Notification No.01/2017-Central Tax (Rate) dated 28-6-2017**.

53. GST on Components, supplied in Sale-in-Transit transaction, without payment of tax under erstwhile CST regime

Case Name : **In re Andritz Hydro Private Limited (GST AAR Tamilnadu)**
Appeal Number : Order No. 29/AAR/2021
Date of Judgement/Order : 30/07/2021

Whether the Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the

Applicant, i.e., AHPL to its Customer (i.e., TANGEDCO) in Tamil Nadu, will attract levy of Goods and Services Tax?

The Components, which were supplied in Sale-in-Transit transaction, without payment of tax under the erstwhile Central Sales Tax regime, by the Applicant , i.e., AHPL to its Customer (i.e., TANGEDCO) in Tamil Nadu is a `Supply' as per Section 7 of the CGST/TNGST Act 2017 and will attract levy of Goods and Services Tax.

54. Advance ruling on Classification of goods cannot be given if applicant not furnishes specifics of the supply

Case Name : **In re Ashok Leyland Limited (GST AAR Tamilnadu)**
Appeal Number : Order No. 28/AAR/2021
Date of Judgement/Order : 30/07/2021

Whether Garbage compactor and hook loader supplied by the applicant is to be classified under Chapter Heading 8705 (special purpose motor vehicles other than those designed for transport of persons or goods) attracting IGST at 18% in terms of Sl.No.401A of Schedule III of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017 and CGST and SGST at the rate of 9% respectively in terms of the corresponding rate notification?

As per Section 95 of the GST Act, Advance Ruling can be sought in respect of the proposed supplies. In the case at hand, the ruling sought on the classification of the product, can be decided only based on the nature, features, intended purposes. It is pertinent to note that the applicant themselves have stated that they had not made any supplies and only their entities in the State of Karnataka and Rajasthan have undertaken such supplies. They have also not disputed that these goods are custom built. In this situation, without the specifics of the supply, the classification in general cannot be extended in as much as the competing CTH can be analysed only based on the specifics and the applicant has not furnished any purchase orders, copy of tenders to establish that they may have to supply such products in the near future or the specifics of the vehicle intended for such proposed supply. Hence we find that the application requiring the classification of the said goods cannot be admitted for consideration in merits and the application is rejected.

55. Bus Body Building on chassis supplied by customer on job work basis- is it supply of goods or Services?

Case Name : **In re Tvl Anamallais Engineering (p) Ltd. (GST AAR Tamilnadu)**
Appeal Number : Order No. 27/AAR/2021
Date of Judgement/Order : 30/07/2021

1. Whether the activity of Bus Body Building on the chassis supplied by the customer on job work basis is a supply of service or supply of goods?

The activity of bus body building undertaken on the chassis supplied by the customers to the applicant amounts to supply of service as per Schedule II clause 3 of **CGST Act 2017**

2. If it is supply of Service, what is the applicable rate of GST and its SAC code If it is supply of goods, what is the applicable rate of GST and its HSN?

The service rendered is classified under SAC 998881 and The applicable rate will be CGST @ 9% and SGST @ 9% as per entry no.26 of **Notification no.11/2017-Central Tax (Rate) dt. 28.06.2017** (as amended) and Sl.No.26 of Notification No.I1(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 72 dated 29.06.2017(as amended) respectively.

56. GST payable on transfer of leasehold rights

Case Name : **In re India Pistons Limited (GST AAR Tamil Nadu)**
Appeal Number : Order No. 26/AAR/2021
Date of Judgement/Order : 30/07/2021

As to whether GST is payable on the transfer of leasehold rights in respect of the consideration of Rs. 15 Crores received by them from M/s. INOX Air products Private Limited for the land allotted by SIPCOT? Whether the Subsequent transfer of SIPCOTs allotted land from the Applicant to M/s. Inox Air Products Private Limited would fall within the ambit of 'Supply' as defined under Section 7 of the Goods and Services Act 2017?

The activity of agreeing to partwith the leasehold interests held by the applicant in favour of M/s. INOX Air Products Private Limited is 'Supply' as defined under Section 7 of the Goods and Services Act 2017 and GST is liable to be paid on the consideration of Rs. 15 Crores received by them.

57. INOX cannot utilise ITC of GST restricted under Section 17(5)(d) Charged by IPL

Case Name : **In re INOX Air Products Pvt Ltd (GST AAR Tamilnadu)**
Appeal Number : Order No. 25/AAR/2021
Date of Judgement/Order : 30/07/2021

Whether INOX would be entitled to avail and utilize ITC of GST Charged by IPL if such transaction is considered to be a supply?

In the case at hand, it is seen that INOX had paid 'consideration' to IPL, for agreeing to partwith their rights in the leasehold held by IPL, on the land required by the applicant. IPL had consented against such consideration and applied for withdrawing the leasehold held by them in favour of the applicant and on approval by SIPCOT, the applicant has entered into a lease agreement with SIPCOT on payment of necessary charges as required and acquired the leasehold rights for the land. Thus, it is evident

that the amount paid is towards acquiring their entitlement to take on lease the land required for putting up a State of the art Ultra High Purity Cryogenic Liquid Medical and Industrial Oxygen Plant. The land is acquired in the course of business and by definition 'business' under GST(section 2(17) of the Act), includes services in connection with the commencement of business, therefore the transaction is in the course or furtherance of business. The applicant is a registered person and therefore is entitled to avail credit of the supplies received by them in the course or furtherance of business as per Section 16(1) of the Act. The applicant has stated that as the 'Air Separation Unit(ASU)' which is put up on the land leased is a 'Plant and Machinery', the restriction at Section 17(5)(d) is not applicable in respect of the goods and services used for the construction of such Plant and Machinery.

Section 17(5) of the Act, starts with the Non-obstante clause, `*Notwithstanding anything contained in sub-section (1) of section 16',* which indicates that the provisions under Section 17(5) prevails over section 16(1) of the Act. From the explanation of 'Plant and Machinery', it is evident that while 'Plant and Machinery' includes foundation and structural supports required to fix apparatus, equipment, machinery on the earth, land building or other civil structures are specifically excluded. From the pictures shared during the hearing and furnished by them, it is seen that in the leased land, Main Air Compressor 86 Nitrogen Compressor Shed, Compander Box, TSA Bed, OM Plant, SMR Unit, Hydrogen Compressor 86 Back up Quad shed, LNG area, Admin Building, etc which makes a complete manufacturing plant is put up. The service received from IPL is towards facilitating the lease acquisition of the land by the applicant. Therefore, the ASU, even if it qualifies as a 'Plant and Machinery' (we do not discuss whether ASU per-se is a 'Plant and Machinery' and refrain extending any conclusion in this context), the 'land' leased is not a 'Plant and Machinery' because of the explicit, specific exclusion provided in the GST Law in the Explanation to 'Plant and Machinery'. The services availed from IPL is in relation to acquiring lease of the land. By the specific exclusion in the definition of 'Plant and Machinery', as land stands excluded from 'Plant and Machinery', the services availed and utilized for acquiring such land on lease is restricted under Section 17(5)(d) of the CGST Act 2017, though the activity is in the course or furtherance of the business of the applicant and the credit of GST if payable on such supply is not eligible as credit to the applicant.

The applicant is not entitled to avail and utilize ITC of GST charged by IPL as the same is restricted under Section 17(5)(d) of the CGST/TNGST Act 2017, if such transaction is considered to be a supply.

58. AAR allows 'SNG Envirosolutions Private Limited' to withdraw Application

Case Name : **In re SNG Envirosolutions Private Limited (GST AAR West Bengal)**
Appeal Number : Advance Ruling Order No. 06/WBAAR/2021-22
Date of Judgement/Order : 30/07/2021

The authorised representative of the applicant has appeared on 19.07.2021 and stated that the applicant intends to withdraw the application unconditionally. The request of

the applicant to withdraw the application voluntarily and unconditionally is hereby allowed, without going into the merits or detailed facts of the case.

Pure services related to drinking water to Govt Dept exempt from GST
Whether services provided by the applicant to the Directorate of Public Health Engineering, Government of West Bengal for operation of water pump and safeguarding pumping machinery at various Pump Houses for supply of drinking water is exempt from payment of tax?

Pure services (without involvement of any supply of goods) provided by the applicant to Directorate of Public Health Engineering, Government of West Bengal, as enumerated in the application, is exempt from GST vide entry serial number 3 of the Notification No. 1136 F.T. dated 28.06.2017 [corresponding central **Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017**], as amended from time to time.

59. AAR refuses to admit application as issue was pending

Case Name : **In re Sree Krishna Rice Mill (GST AAR West Bengal)**
Appeal Number : Advance Ruling Order No. 04/WBAAR/2021-22
Date of Judgement/Order : 30/07/2021

We now come to the questions on which the instant advance ruling has been sought for. The applicant seeks to know in respect of taxability on transportation charges of raw paddy from the point of purchase to the rice mill and also on the reimbursement of Mandi labour charges.

We find that the aforesaid questions is entirely related to custom milling of paddy being undertaken by the applicant and an investigation proceedings is already pending on the business activities being carried out by the applicant as a custom miller of paddy.

The first proviso to sub-section (2) of section 98 of the GST Act speaks that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

The applicant has made the instant application in FORM GST ARA-01 on the common portal on 31.03.2021 and has declared vide serial number 17 of the said application that the questions raised in the application is not pending nor decided in any proceedings in his case under any of the provisions of this Act.

But we find that the applicant has been served with a notice dated 16.03.2021 in connection to a proceedings under the provisions of the GST Act and the questions raised in the instant application are related to the said proceedings.

In view of the above discussions No ruling is given for the instant case since the questions raised in the instant application is a subject matter which is found to be pending in case of the applicant under the provisions of the GST Act.

(VI) COURT ORDERS/ JUDGEMENTS

1. RWAs/Societies to pay GST on members' monthly contribution exceeding Rs. 7500: HC

Case Name : **Greenwood Owners Association Vs Union of India (Madras High Court)**
Appeal Number : WP No. 5518 & 1555 of 2020
Date of Judgement/Order : 01/07/2021

In the case of *Dilip Kumar* (supra), the Supreme Court reiterates the settled proposition that an Exemption Notification must be interpreted strictly. The plain words employed in Entry 77 being, *'upto'* an amount of 7,500/- can thus only be interpreted to state that any contribution in excess of the same would be liable to tax.

The term *'upto'* hardly needs to be defined and connotes an upper limit. It is interchangeable with the term *'till'* and means that any amount till the ceiling of Rs.7,500/- would exempt for the purposes of GST.

As regards the argument concerning slab rate, a slab is a measure of determining tax liability. The prescription of a slab connotes that income upto that slab would stand outside the purview of tax on exigible to a lower rate of tax and income above that slab would be treated differently. The intendment of the exemption Entry in question is simply to exempt contributions till a certain specified limit. The clarification by the GST Department even as early as in 2017 has taken the correct view.

The discussion as above leaves me no doubt that the conclusion of the AAR as well as the Circular to the effect that any contribution above Rs.7,500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry in question and both stand quashed. To clarify, it is only contributions to RWA in excess of Rs.7,500/- that would be taxable under GST Act.

2. Penalty cannot be imposed merely because it is lawful to do so

Case Name : **Mangalore Refinery and Petrochemicals Limited vs State of Karnataka (Karnataka High Court)**
Appeal Number : S.T.R.P. No. 433 of 2017
Date of Judgement/Order : 01/07/2021

In ***M/s Mangalore Refinery and Petrochemicals Limited v. the State of Karnataka [S.T.R.P. No. 433 of 2017 decided on July 1, 2021]*** M/s Mangalore Refinery and Petrochemicals Limited (**Petitioner**) is engaged in the activity of manufacture and sale of petroleum products. The Petitioner filed petition against the order dated May 24, 2017 (**Order**) by the passed by the Karnataka Appellate Tribunal denying the **input tax credit** (**ITC**) in respect of capital goods and imposing penalty stating that penal provisions are mandatory.

The Hon'ble Karnataka High Court analysed Section 12 of the Karnataka Value Added Tax Act, 2003 (**"KVAT Act"**) and stated the deduction of input tax has to be allowed on fulfilment of one of the conditions namely:

(1) after commencement of commercial production,

(2) sale of taxable goods and

(3) sale of any goods in the course of export out of the territory of India by the registered dealer

Further, noted that none of the conditions prescribed in Rule 133 of the Karnataka Value Added Tax Rules, 2005 (**"KVAT Rules"**) provide that each unit of the petitioner has to be an independent unit to avail of the benefit of input tax.

Held that, **the Petitioner was effecting sale of taxable goods on payment of VAT / CST as applicable and was effecting sale of goods in the course of export out of the territory of India. Therefore, the Petitioner had satisfied the conditions laid down in Section 12(2) of the KVAT Act and is eligible to avail of the benefit of ITC.**

The finding recorded by the Joint Commissioner of Commercial Taxes as well as by the Tribunal that the petitioner cannot be sustained in the eye of law as the expression 'or' used in Section 12(2) of the KVAT Act is not conjunctive but is disjunctive.

Further, **held that there is no element of any mens rea that the Petitioner had the intention to evade tax. The Petitioner had paid taxes according to the information furnished in the return and therefore, it should not have been penalized subsequently after the assessment proceedings are finalized and the amount of tax is determined. It is well settled in law that penalty cannot be imposed merely because it is lawful to do so. Since the Petitioner was entitled to ITC, therefore, the question of levy of penalty and interest does not apply.**

3. Technical glitches at transition stage to GST should not affect statutory right of dealers

Case Name : **Union Of India Vs Merchem India Pvt. Ltd (Kerala High Court)**
Appeal Number : WA No. 570 OF 2021
Date of Judgement/Order : 05/07/2021

It is significant to note that the statute does not provide for any provision for lapsing of unutilized input tax credit for non filing of TRAN-1. The input tax credit is required by law to be credited to the electronic credit ledger of an assessee. Failure to credit the **input tax credit** is an infraction of section 140(1) and to Rule 117(3) of the GST Rules. Input tax credit is an asset in the hands of the dealer. A registered dealer had a statutory right under the VAT regime to get refund. Unutilized input tax credit of the erstwhile regime can be denied from being credited to the electronic credit ledger only under the contingencies mentioned in the proviso to section 140(1). On all other situations, this statutory right cannot be defeated by any procedural rules under the

GST regime. In this context, we bear in mind the salutary principles enshrined in Article 265 and Article 300A of the Constitution of India also.

It is axiomatic that computer literacy has not reached its pinnacle in our country. Technical glitches at the transition stage to GST should not affect above said statutory right of dealers. Attempt must always be made not to deprive a dealer from a bonafide claim, through technicalities. In the wake of the transition period to GST and the switching over to the electronic portal, admittedly glitches had occurred. In such instances, the department should have, while assisting the assessees, acted with alacrity and promptness rather than deny bonafide claims.

The issue raised in this writ appeal being technical in nature, it is only in the interest of all that such technical issues do not stand in the way of rendering justice. Keeping in perspective the contentions in the case, we are of the view that the impugned judgment does not reflect any error of law warranting an interference by this Court in appeal. In fact, the impugned judgment of the learned Single Judge being an innocuous one, we are constrained to observe that the respondents ought not to have pursued the same in appeal, wasting judicial time and energy.

Granting an opportunity of hearing is only to enable the process of decision-making simpler. It is one of the basic principles of natural justice. In the process of rendering justice, an opportunity of hearing is a basic postulate. The challenge now raised by the appellant against the opportunity of hearing directed to be afforded by the learned Single Judge in the impugned judgment is therefore not tenable.

4. Proceedings of cancellation of GST registration cannot be kept hanging fire on any pretext

Case Name : **Avon Udhyog Vs State of Rajasthan (Rajasthan High Court)**
Appeal Number : S.B. Civil Writ Petition No. 7463/2021
Date of Judgement/Order : 05/07/2021

Without pronouncing upon petitioner's contention that on passing of a period of 30 days of the reply, the suspension stands annulled or vitiated, this Court hastens to add that provisions of sub-rule (3) of Rule 22 clearly mandates an order to be passed within 30 days of receipt of the reply. Suspension of a registration of an assessee has its own consequences – it brings the entire business of an assessee to a stand still. In a way it is worse than cancellation. Against cancellation, an assessee can take legal remedies but against suspension pending an enquiry, even if the assessee chooses to take remedies, the authorities or the Court(s) would normally show reluctance.

In the opinion of this Court, the proceedings of cancellation of registration cannot be kept hanging fire on any pretext, including that assessee failed to file reply within the time allowed. Authority issuing the notice is statutorily bound to pass order in terms of sub-rule (3) of Rule 22 of the Rules.

Having regard to the facts and circumstances of the case and also considering that the petitioner has omitted to file reply within time allowed and even within 30 days of receiving the notice dated 04.02.2021, the present writ petition is disposed of with a

direction to the petitioner to put forth all the submissions including the submission about automatic revocation of suspension advanced before this Court. Petitioner may file supplementary reply/written arguments.

5. HC directs Condonation of delay in filing revocation application of GST registration

Case Name : **Gautam Construction Vs Commissioner of CT & GST (Orissa High Court)**
Appeal Number : W.P.(C) No. 18936 of 2021
Date of Judgement/Order : 07/07/2021

The delay in Petitioner's invoking the proviso to Rule 23 of the **Odisha Goods and Services Tax Rules** (OGST Rules) is condoned and it is directed that subject to the Petitioner depositing all the taxes, interest, late fee, penalty etc. due and complying with other formalities, the Petitioner's application for revocation will be considered in accordance with law.

6. GST demand reduced from 11 crore to 18 Lakh: HC caution GST officer

Case Name : **Associated Power Structures Pvt. Ltd. Vs The State of Bihar (Patna High Court)**
Appeal Number : Civil Writ Jurisdiction Case No. 8285 of 2021
Date of Judgement/Order : 08/07/2021

Well, the stand taken by the officer is quite fair, but we only fail to understand as to why the officer did not apply his mind at the time of passing of the impugned order. It is only when this Court pointed out the difference, wide enough for anyone to notice in imposing the amount of penalty, did the officer realizing his mistake, agreed to rectify the same. We only caution the officer to be careful in future and not commit such mistake again, for such type of mistake not only causes harassment to the parties but also shatters faith of the people in the system. Illustratively, as against the original demand of Rs. 11 crores, the officer while reviewing his own order reduced it to 18 lacs and in another case from 8 crores to 2.8 crores.

The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner; The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties; If it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order; We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

7. ITC refund cannot be rejected without affording Opportunity of hearing

Case Name : **Tvl. Naggaraj Anooradha Vs State Tax Officer (Circle) (Madras High Court)**
Appeal Number : W.P. No. 174 of 2021 and WMP Nos. 239 and 240 of 2021
Date of Judgement/Order : 08/07/2021

Heard Mr.S.Ramanan, learned counsel for the petitioner and Mr.TNC.Kaushik, learned Government Advocate for the respondents.

2. The petitioner challenges order dated 22.07.2020 rejecting its request for refund. The petitioner is an registered assessee on the files of the State Tax Officer/sole respondent under the Goods and Services Tax Act, 2017 (in short 'Act'). The petitioner has made a claim for refund of Input Tax, in respect of which a deficiency memo had been raised by the respondent on 15.06.2020 calling for documents in support of the claim. An e-application for refund was once again filed on 16.06.2020. This was followed by a show cause notice dated 25.06.2020 proposing rejection of refund stating that there was a mismatch between the export value and the net ITC when compared to monthly returns. The petitioner has responded to the show cause notice vide reply dated 07.07.2020 enclosing copies of the export invoice, inward supply bills and bank realisation statements.

3. The case of the petitioner appears to be that two invoices relating to the month of March, 2020 had been inadvertantly omitted to be taken into account and this would account for mismatch. Had a personal hearing been afforded to the petitioner prior to adjudication of the request for refund, this point would have been explained. However, since the impugned order has come to be passed without affording an opportunity of personal hearing, this point has not been putforth to the respondent for consideration effectively.

4. Moreover, the impugned order, is non-speaking. In fact, there is a column available for reasons on the basis of which the claim has been either accepted or rejected. However, this column in the impugned order is conspicuously blank and no reasons have been adduced for the rejection of the request. Bearing in mind the violation of principles of natural justice, the impugned order of rejection is set aside.

5. The petitioner will appear before the respondent on Monday, the 19th of July, 2021 at 10.30 a.m. without expecting any further notice in this regard. After hearing the petitioner, the respondent shall pass an order of adjudication on the request of refund, de novo within a period of four (4) weeks from the date of personal hearing, in accordance with law.

6. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

8. Charitable Trust running medical store to give medicines without profit required to be registered under GST

Case Name : **Nagri Eye Research Foundation v. Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 7822 Of 2021
Date of Judgement/Order : 09/07/2021

In ***Nagri Eye Research Foundation v. Union of India [R/Special Civil Application No. 7822 of 2021 decided on July 9, 2021]*** Nagri Eye Research Foundation (**Petitioner**) filed an application for advance ruling to determine whether GST Registration would be required for medical store run by it as medical store would be providing medicines at a lower rate.

AAR, Gujarat– the Petitioner was required to obtain GST Registration for the medical store run by the Trust and that the medical store providing medicines at a lower rate amounted to supply of goods

AAAR, Gujarat- Dismissed the appeal and confirmed the findings recorded by the AAR, Gujarat.

The Hon'ble Gujarat High Court stated that every supplier who falls within ambit of Section 22(1) of the **Central Goods and Services Tax Act, 2017** (**"the CGST Act"**) has to get himself registered under the CGST Act.

Further, held that from a co-joint reading of Section 7(1) of the CGST Act, the expression 'supply' includes all forms of supply of goods and services or both such as sale, transfer, barter etc. made or agreed to be made for consideration by a person in the course or furtherance of business. And the term 'business' as defined under Section 2(17) of the CGST Act includes any trade or commerce whether or not for a pecuniary benefit.

Thus, the Petitioner would require GST Registration even if supplied at lower rate would amount to supply of goods if the aggregate turnover exceeding threshold limit.

9. Importance of appellate remedy, at no circumstances, be undermined: HC

Case Name : **Saint Gobain Glass India Ltd. Vs Appellate Joint Commissioner (CT) (Madras High Court)**
Appeal Number : W.P.No.3206 of 2014
Date of Judgement/Order : 09/07/2021

The power of judicial review under Article 226 of the Constitution of India is to be exercised to scrutinise the processes through which a decision is taken by the competent authority in consonance with the provisions of the Act, but not the decision itself. Thus, the petitioner is bound to prefer an appeal before the Tamil Nadu Sales Tax Appellate Tribunal, under the provisions of the Act, in a prescribed format, by complying with the procedures contemplated. The petitioner has also raised certain factual disputes in this Writ Petition and the findings of the Tribunal would be of assistance to the High Court for the purpose of exercising the power of judicial review under Article 226 of the Constitution of India. Thus, the importance of the appellate remedy, at no circumstances, be undermined. In view of the facts and circumstances,

the petitioner is at liberty to prefer an appeal before the Tamil Nadu Sale Tax Appellate Tribunal and in the event of preferring any such appeal by the petitioner, the Tribunal may condone the delay, taking note the period of pendency of the Writ Petition before this Court, and entertain the appeal and decide the same on merits and in accordance with law, by affording opportunity to the writ petitioner.

10. Individual avoiding appearance before competent authority without any just excuse cannot escape coercive action including arrest

Case Name : **Directorate General of GST Intelligence Vs Pankaj Agarwal (Jharkhand High Court)**
Appeal Number : Cont. Case (Civil) No. 665 of 2019
Date of Judgement/Order : 09/07/2021

Individual avoiding appearance before competent authority without any just excuse cannot escape coercive action including arrest

Hon'ble High Court of Jharkhand by an order dated July 09, 2021, observed that section 69 read with section 70 of the **Central Goods and Services Tax Act, 2017 (CGST Act)** does not imply that the competent authority cannot take coercive action against an individual who is avoiding appearance without any just excuse before the competent authority even after issuance of a dozen summons.

The Directorate General of GST Intelligence **("the Petitioner")** filed the present contempt case through Senior Intelligence Officer against the violation of directions issued by the Hon'ble High Court of Jharkhand by an order dated February 21, 2019. In the said order a batch of writ petitions were disposed off and the Court directed the Petitioner that they shall appear before the Senior Intelligence Officer who has issued summons to them as and when called, further, they shall not be arrested on the first day when they appear before him.

Pankaj Agarwal **("the Respondent")**, did not appear before the Senior Intelligence Officer and failed to produce necessary documents and tender other evidences. The Petitioner contended that he was reluctant to proceed against the Respondent because of observation of the High Court that he shall not be arrested on first day of his appearance before the Competent Authority.

The Hon'ble High Court of Jharkhand concluding on the issue, held that- whether Competent Authority had misconstrued the observations made by the High Court in order dated February 21, 2019 held that it is well-settled in law that any one intentionally avoiding the mandate in law is not entitled for any protection in law.

The Hon'ble High court held that Section 69 read with section 70 of the CGST Act does not immune an individual from coercive action of the competent authority including his arrest and the competent authority has the liberty to proceed in matter in accordance with law if an individual avoids appearance without any just excuse before the competent authority even after issuance of a dozen summons.

11. Criminal proceeding cannot be initiated against AO for passing tax refund Order

Case Name : **G. Santhosh Kumar Vs State Of Kerala (Kerala High Court)**
Appeal Number : Crl. M. C. No. 2237 Of 2021
Date of Judgement/Order : 12/07/2021

The Kerala High Court, in major relief to Ex Assistant Tax Commissioner, G.Santosh Kumar ruled that the criminal proceedings can not be initiated against a Public Servant for passing incorrect quasi-judicial order or against the government.

The petitioner, G.Santosh Kumar who was the assessing authority was alleged to have deliberately omitted to verify the assessment files, audited statement of accounts, revised returns and other records including bank accounts relating to M/s.Nano Excel Enterprises for the years 2008-09 and 2009-10. He ignored the suppression of turn over made by M/s.Nano Excel Enterprises and without following the statutory provisions and in violation of the written directions given by the Deputy Commissioner, Commercial Taxes, passed an order dated 04.05.2011 for refunding an amount of Rs.48,20,606/- to the above company as excess tax remitted by the company for the year 2009-10. He also passed an order dated 31.05.2011 for refunding an amount of Rs.1,98,000/- as excess amount of tax remitted by the company for the year 2008-09. As a result, the Government sustained a loss of Rs.50,18,606. The aforesaid orders were passed and refund of amount was made by the petitioner pursuant to a conspiracy hatched between him and the other accused.

Advocate C.S. Manu appearing on behalf of the petitioner contended that the prosecution against the petitioner is based on acts done or committed by him in good faith in discharge of his duties under the KVAT Act and therefore, he is entitled to get the protection under Section 79 of the KVAT Act.

Mr. Manu further added that the prosecution against the petitioner is based on orders of assessment of sales tax passed by him as a quasi-judicial authority. He is entitled to get the protection envisaged under Section 3(1) of the Judges (Protection) Act, 1985.

On the other hand, Mr. A. Rajesh, Public Prosecutor has submitted that the assessment orders were passed by the petitioner not in good faith and he had violated the written directions given by the Deputy Commissioner. The petitioner is not entitled to claim any protection or immunity under any law in respect of mala fide acts of corruption committed by him.

The Single Judge Bench of Justice R.Narayana Pisharadi relied on the Ramesh Chennithala v. State of Kerala wherein it was held that in all cases of malfeasance or misfeasance or wrong administration, or in all cases of loss caused to the Government by the discharge of duty by public servants, a prosecution under the P.C.Act cannot be initiated. If it is only a case of dereliction of duty or wrong administration or malfeasance or misfeasance detected on enquiry, only disciplinary action can be initiated against the erring public servant.

The Court concluded that the petitioner is entitled to get the protection envisaged under Section 3(1) of the Judges (Protection) Act, 1985 in respect of the assessment orders passed by him and that the prosecution against him, which is based merely on those assessment orders, is barred and not maintainable in law. The criminal proceedings against the petitioner, based on the charge-sheet, are liable to be quashed also for the other reasons stated earlier.

12. HC admits writ challenging constitutional of Section 2(6) of IGST Act, 2017

Case Name : **Koenig Solutions Pvt. Limited Vs Union of India & Ors. (Delhi High Court)**
Appeal Number : W.P.(C) No. 6303/2021
Date of Judgement/Order : 13/07/2021

Present writ petition has been filed challenging the constitutional validity under Section 2(6) of the Integrated Goods and Services Act, 2017 ('IGST Act') regarding 'export of services'. Petitioner also seeks a declaration that the amount received in convertible foreign exchange from foreign companies/citizen for its both onshore and offshore activities are in the course of export of services out of the territory of India and not subject to levy of tax under IGST Act. The HC has issued notice by order dated 13.07.2021. List on 05th October, 2021

13. HC Allowed refund of IGST paid on ocean freight

Case Name : **Mahesh oil Products Vs Union of India (Rajasthan High Court)**
Appeal Number : D.B. Civil Writ Petition No. 14177/2019
Date of Judgement/Order : 13/07/2021

Petitioner has filed the petition under Article 226 of the Constitution of India seeking following reliefs:-

"a. To issue appropriate writ/order/direction to the effect declaring Sr. No. 9(ii) of the ***Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017*** *to be an unconstitutional and ultra-vires to the provisions of the Integrated Goods and Service Tax Act, 2017 to the extend it prescribe rate for levy of Integrated-tax on services by way of transportation of goods by vessel from a place outside India, up to custom station of clearance of India, where service provider i.e. supplier of service and service recipient i.e. recipient of service both are located in non taxable territory i.e. Outside India;*

b. To issue appropriate writ/order/direction to the effect declaring the Sr. No. 10 of the ***Notification No. 10/2017 – Integrated Tax (Rate) dated 28.06.2017*** *to be an unconstitutional, ultra-vires and de-hors to the provisions of the Section 5(3) of the* ***Integrated Goods and Service Tax Act, 2017*** *read with Section 2(93) of the* ***Central Goods and Service Tax Act, 2017*** *to the extent it deems 'Importer' within meaning of Section 2(26) of the Custom Act, 1962 as 'recipient' of service;*

c. To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

d. To award costs of and incidental to this application be paid by the respondents; And for this act of kindness, petitioners shall, as in duty bound, ever pray."

Learned counsel for the petitioner has submitted that he is only pressing reliefs at number (a) & (b) and has further submitted that the said reliefs claimed by the petitioner are covered by decision given by the Gujarat High Court in the case of ***Mohit Minerals Private Limited vs. Union of India and Ors. (R/Special Civil Application No. 726 of 2018) decided on 23.01.2020***.

Learned counsel for the petitioner has not pressed other reliefs sought by the petitioner in the writ petition. The counsel for the petitioner has further submitted that in view of the decision given by the Gujarat High Court in the case of ***M/s COMSOL Energy Private Limited vs. State of Gujarat (R/Special Civil Application No. 11905 of 2020) decided on 21.12.2020***, the petitioner is also entitled for refund of Integrated Goods and Service Tax (IGST) paid by him.

Learned counsel for the respondents have failed to controvert the fact that the issue involved in the present case is covered by decisions given by the Gujarat High Court relied upon by the learned counsel for the petitioner.

Learned counsel for the respondents has, however, submitted that the judgment passed by the Gujarat High Court in the case of *Mohit Minerals Private Limited (supra)* is under challenge before the Apex Court but operation of the judgment has not been stayed.

The operative part of the order passed by the Gujarat High Court in *Mohit Minerals Private Limited (supra)* reads as under :-

"In the result, this writ-application along with all other connected writ-applications is allowed. The impugned ***Notification No. 8/2017 – Integrated Tax (Rate) : MANU/GSIT/0006/2017 dated 28th June 2017*** *and the Entry 10 of the* ***Notification No. 10/2017 – Integrated Tax (Rate) : MANU/GSIT/0014/2017 dated 28th June 2017*** *are declared as ultra vires the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of.*

The operative part of the judgment of Gujarat High Court in *M/s COMSOL Energy Private Limited (supra)* reads as under:-

12. Similarly, this Court, in the case of **Bharat Oman Refineries Ltd. vs. Union of India (Special Civil Application No. 8881 of 2020, decided on 18.08.2020***) directed the respondent to sanction the refund of the IGST paid by the assessee pursuant to the Entry No. 10 of the* ***Notification No. 10/2017 – Integrated Tax (Rate) dated 28.06.2017*** *declared to be ultra vires in the case of Mohit Minerals Pvt. Ltd. (supra).*

13. In view of the aforesaid, this writ-application succeeds and is hereby allowed. The deficiency memo issued in the prescribed form RFD-03 vide

Nos. ZD240720008807J and ZD240720008830U both dated 17.07.2020 are hereby quashed and set-aside.

14. The respondent is directed to process the refund claim filed in the prescribed form RFD-01 online portal for the month of February 2018 and march 2018 for an amount of Rs.93.54 lakh along with simple interest at the rate of 6% per annum."

Keeping in view the submissions made by the learned counsel for the parties, this petition is disposed of in terms of the decisions given by the Gujarat High Court in *Mohit Minerals Private Limited (supra) & M/s COMSOL Energy Private Limited (supra).*

14. Payment of interest liability in installments is allowed due to pandemic situation

Case Name : **Aich Brothers Vs Union of India (Gauhati High Court)**
Appeal Number : Case No. WP(C)/3222/2021
Date of Judgement/Order : 13/07/2021

The Hon'ble Gauhati High Court in the case ***of M/s. Aich Brothers v. the Union of India [WP(C)/3222/2021, dated July 13, 2021]*** directed the assessee to approach the Revenue Department with an application to pay the outstanding dues against the interest liability for delayed filing of returns in Form GSTR-3B, in instalments as a special case considering Covid-19 pandemic situation.

Facts:

This petition has been filed by M/s. Aich Brothers (**"the Petitioner"**), being aggrieved of cancellation of Goods and Services Act (**"GST"**) registration of the Petitioner's firm by the Revenue Department (**"the Respondent"**) for alleged non-payment of the outstanding amount of around INR 73 lakhs against the interest liability for delayed filing of returns Form **GSTR-3B** for the period from October 2018 to April, 2020, causing immense difficulties in releasing the payment due to the Petitioner against various contractual works in different organizations.

The Petitioner has contended that the outstanding amount shown on the portal was duly paid and even after the payment by the Petitioner, the registration was not restored. Further, appropriate direction has been sought by the Petitioner to accept the interest liability in instalment due to financial crisis faced during pandemic situation.

Issue:

- Whether the Petitioner is entitled to pay the arrear amount of interest in instalment?

Held:

The Hon'ble High Court of Gauhati in ***WP(C)/3222/2021, dated July 13, 2021*** held as under:

- Observed that, due to non-payment of the interest liability, the Petitioner is required to make the payment and only thereafter, the registration of the Petitioner shall be restored by the Respondent.

- Noted that, due to striking out of the registration of the Petitioner's firm, the Petitioner could not collect the contractual dues from the various organizations against the contractual job and the stated that the same cannot be disbelieved.
- Directed the Petitioner to approach the Respondent along with an application to permit the Petitioner to pay the interest liability in instalment as a special case keeping in view the pandemic situation arising out of Covid-19.
- Directed the Respondent, to immediately restore the GST registration of the Petitioner, once all the dues are cleared as per the direction of the Respondent.

Our Comments:

Earlier, the Hon'ble Kerala High Court in the matter of ***Pazhayidom Food Ventures Pvt. Ltd v. Superintendent Commercial Taxes [WP(C). No. 14275 of 2020 dated July 24, 2020],*** in similar circumstances, had directed the Revenue Authorities to accept the belated returns and permitted the assessee to discharge the balance tax liability inclusive of any interest and late fee thereon, in equal monthly instalments commencing from August 25, 2020 and culminating on March 25, 2021.

Further, the Hon'ble Kerala High Court in ***Malayalam Motors Pvt. Ltd. v. The Assistant State Tax Officer [WP(C). No. 21490 of 2020(I) dated October 12, 2020]*** had held that, the assessee who has sought an instalment facility to pay the admitted tax, together with interest thereon, shall be permitted to discharge the tax liability, inclusive of any interest and late fee thereon, in equal successive monthly instalments, in view of the financial difficulties faced by it during the COVID pandemic situation.

Under the provisions of the **Central Goods and Services Tax Act, 2017** (**"CGST Act"**), on the application filed by a taxable person, the Commissioner may give an opportunity to the taxpayer to pay due taxes/demand in installment. However, the taxpayer has to comply with condition as specified in Section 80 of CGST Act 2017 and applicable rules.

Relevant Provision:

Section 80 of the CGST Act:

"Payment of tax and other amount in instalments.

80. On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery."

15. Amendment in TN VAT Act for rectification of an anomaly is retrospective: HC

Case Name : **Nezone Tubes Limited Vs The Assistant Commissioner (CT) (Madras High Court)**
Appeal Number : W.P. No. 4176 of 2014
Date of Judgement/Order : 14/07/2021

M/s. Nezone Tubes Limited (**the Petitioner**) filed a writ petition on the issue that whether the benefit of I**nput Tax Credit** (**ITC**) is to be extended in respect of the transactions occurred prior to the issue of amendment in the Tamil Nadu VAT Act, 2006 (5 of 2015).

The Petitioner contended that the amendment was effected by way of rectification of an anomaly and therefore, it cannot be construed as a new policy. Thus, the benefit of ITC granted pursuant to the amendment is to be extended so as to cover the transactions took place prior to the insertion of the amendment.

The Hon'ble Madras High Court relied on the case of ***Tvl. Bharath Traders v. The Commissioner of Commercial [W.P.(MD)Nos.15103 of 2015 and others dated July 13, 2015]*** wherein it was held that Section 8(1) of the Centra Sales Tax Act, 1956 (**"the CST Act"**) provides the benefit of concessional rate of tax, upon production of a statutory declaration form, to an interstate transaction with a registered dealer, and relating to specified goods. Section 8(2) of the CST Act stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) of the CST Act extended ITC in respect of the transaction under Section 8(1) ibid, the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under Section 8(2) ibid for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8(2) ibid pre and post April 1, 2015 are assessed to tax.

Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Tamil Nadu VAT Act, 2006 (5 of 2015) itself, retrospectively. Allowed the petition.

16. If there is no positive credit standing in the electronic credit ledger on the date of the order, passed under Rule 86-A, that order would be read to create a lien upto limit specified

Case Name : **R M Dairy Products LLP Vs State of U P and 3 Ors. (Allahabad High Court)**

provision of Rule 86-A is not a recovery provision but only a provision to secure the interest of revenue and not a recovery provision, to be exercised upon the fulfillment of the conditions, as we have discussed above, we are not inclined to accept the further submission advanced by the learned counsel for the petitioner that there is any violation of the principle when a legislative enactment requires an act to be performed in a particular way it may be done in that manner or not at all.

It also stands to reason, if there is no positive credit standing in the electronic credit ledger on the date of the order, passed under Rule 86-A, that order would be read to create a lien upto limit specified in the order passed as per Rule 86-A of the Rules. As and when the credit entries arise, the lien would attach to those credit entries upto the limit set by the order passed under Rule 86A of the Rules. The debit entry recorded in the electronic credit ledger would be read accordingly.

17. Extraordinary Writ Jurisdiction cannot be invoked in case of Fake ITC & Bills

Case Name : **M/S. Ajanta Industries Vs Commissioner of Central Goods and Services Tax and Anr. (Delhi High Court)**
Appeal Number : W.P.(C) 6609/2021
Date of Judgement/Order : 16/07/2021

It is settled law that a petitioner who files a petition invoking the extra ordinary writ jurisdiction has to come to Court with clean hand. Further, a petitioner who seeks equity must do equity. In commercial/appellate jurisdiction, a Court may have to grant relief if all the ingredients of a statutory provision are satisfied. But this is not so in a writ jurisdiction where relief may be denied to a petitioner on the ground that he has not approached the Court with clean hands, even when he satisfies all the ingredients of a statutory provision.

In the present case, none of the findings given in the impugned order like premises of the petitioner being found locked during inspection; the partner of the petitioner not responding to the Summons; and L1 & L2 suppliers having issued fake and bogus invoices and passed on fake Input Tax Credit, have been dealt with leave alone challenged. Consequently, this Court is of the view that it would not be appropriate to entertain the present writ petition. Moreover, as the impugned order is an appealable order, present writ petition is dismissed, with liberty to the petitioner to avail the appellate remedy in accordance with law. Needless to say that the appeal shall be decided on its own merit without being influenced by any observation made by this court.

18. Delhi HC directed to hold final order w.r.t. reopening of old assessments of pre-GST period

Case Name : **Tuli Motors & Anr Vs Union of India & ORS. (Delhi High Court)**

Appeal Number : W.P.(C) 6766/2021
Date of Judgement/Order : 20/07/2021

In ***M/s. Tuli Motors through its Managing director & Anr v. Union of India & Ors. [W.P. (C) 6766/2021 decided on July 20, 2021]*** M/s. Tuli Motors **(Petitioner)** challenges the show cause notice dated April 19, 2021 **(SCN)**, and the summons dated October 10, 2017, and January 27, 2021 (**Impugned Summons**) issued for reopening the old assessments for the period 2015 to 2017.

The Petitioner submitted that the old assessments for the period 2015 to 2017 cannot be reopened in the year 2021. The Petitioner emphasises that after the repeal of Chapter V of the Finance Act, 1994 **("the Finance Act")** by the **Central Goods and Services Tax Act, 2017 ("the CGST Act")**, there is no power to initiate any fresh proceeding under the repealed Act i.e. the Finance Act.

Further, the Department submitted that the Hon'ble High Court, Delhi in case of ***Vianaar Homes Private Limited v. Assistant Commissioner (Circle-12), Central Goods & Services Tax, Audit-II, Delhi & ors. [WP(C) 2245/2020, dated November 03, 2020]*** held that there is power to initiate fresh proceedings under the Finance Act despite coming into force of the CGST Act.

The Hon'ble High Court, Delhi directed that proceedings pursuant to the SCN and Impugned summons shall continue but the final orders shall not be given effect to till disposal of the writ petition. Listed the case on August 9, 2020 for next hearing.

19. GST Search & Seizure by Inspector without authority of proper jurisdictional officer is unlawful

Case Name : **R. J. Trading Co. Vs Commissioner of CGST, Delhi North &**
Appeal Number : Ors. (Delhi High Court)
Date of Judgement/Order : W.P.(C) 4847/2021
Related Assessment Year : 20/07/2021

Search and Seizure carried out by the Inspector of CGST without authority of a proper jurisdictional officer is unlawful – Delhi High Court

In case of R J Trading Company vs. Commissioner of CGST, Delhi (W.P.(C).4847/2021 it is held that search and seizure carried out by the Inspector of CGST without authority of a proper jurisdictional officer is unlawful/ unsustainable.

Brief of the case is herein below:

The petitioner M/s. R J Trading Company was engaged in the business of trading in cigarettes and tobacco products which were supplied to him by the authorized dealers and well known manufacturing companies.

The officer of CGST Delhi North Commissionerate conducted search and seizure at his premises. Being aggrieved the petitioner filed a writ petition contending that the said search and seizure was without proper authorization and unlawful.

The Honorable High Court observed that in this case, the search and seizure was conducted by an Inspector of CGST based on the authorization of Additional Commissioner of the same department.

It was also observed that actually no investigation was carried out against the petitioner and the search and seizure investigation was not conducted pursuant to sub-section (1) of Section 67 of CGST Act. In the instant case, the conduct of search and seizure appeared to have been carried out under the cover of omnibus term 'otherwise' provided in sub-section (2) of Section 67 of GST Act.

Further, it was observed that authorization of search was merely on the basis of the communication address by Joint Commissioner (AE), Gautam Budh Nagar to the Additional/ Joint Commissioner, CGST Delhi North Commissionerate.

On careful perusal of the communication of Joint Commissioner (AE), Gautam Budh Nagar it was held that Joint Commissioner (AE), Gautam Budh Nagar merely wanted to know existence of the petitioner in connection with another investigation in respect to other assessee and therefore, authorization issued by Additional Commissioner, CGST Delhi North Commissionerate was unsustainable in law.

20. Take Action against Officials causing Revenue loss to State: HC to GST Dept.

Case Name : **G.E. Govindaraj Vs Assistant Commissioner (CT) (Madras High Court)**
Appeal Number : WP No. 28927 of 2012
Date of Judgement/Order : 20/07/2021

It is in the public domain that large scale and wider allegation of corrupt activities, more specifically, in Department like Commercial Tax Department, are prevailing and, people are lamenting about the corrupt activities in collusion with the traders at large in the State. However, no measures are taken to minimise such corrupt activities of the Commercial Tax Department officials with the traders.

The ultimate sufferers on the one end is the common man and the other end is the State revenue. At the cost of the common man and the State revenue, these traders and the officials are not only inactive but not initiating action properly and indulging in corrupt activities. Thus a conjoint and serious actions are required to be taken and in the event of allowing such corrupt activities to continue for a longer period, then the State revenue would suffer, which would impact the implementation of the constitutional principles of equality in economic status and social justice as well as the implementation of various welfare schemes for the benefit of the public.

The State revenue, being the backbone of the State's economy, there cannot be any compromise in the implementation of the provisions of the Tax Laws and in the event of any dilution or tolerance towards the inaction and corrupt activities, then the Government is also failing in its duty to uphold the constitutional principles and thus, urgent actions are highly warranted.

Common women and men are lamenting and witnessing the corrupt activities of these Commercial Tax Department officials, as they are indulging in demand and acceptance of freebies openly from the business community. Much more freebies and corrupt activities are openly witnessed by the people in general during the festival seasons. It is akin to that of getting mamul by the Police Department officials and this Court dealt with the practice of mamul by the police in a writ petition in the case of N.Ulagaraj vs. Secretary to Government and Another [pronounced on 05.10.2020 in WP(MD) No.16185 of 2012].

The evil menace of demand and acceptance of freebies in large scale in a routine manner are causing loss to the State revenue, as these corrupt officials are failing in their duties, to initiate appropriate actions against the illegalities prevailing amongst the traders, businessmen etc. Thus, the higher officials are bound to monitor these aspects effectively and efficiently, so as to control the menace and deal with such officials in a hard manner without showing any misplaced sympathy.

Decent amount of salary has been paid to the Government officials. The salary paid by the Government is, undoubtedly, more competitive than that of the salary being offered by the private players. By virtue of Government appointment, the officials are holding a status in the society. Therefore, they are bound to act in the interest of people at large and any failure or illegality must be dealt with strictly in accordance with law.

The Government officials are performing the public duties and they play a pivotal role in upholding and achieving the constitutional goals and therefore, there cannot be any compromise in the matter of dealing with such corrupt activities amongst the public servants.

This Court is frequently witnessing the cases of this nature, where actions are either not initiated or initiated belatedly allowing the illegality to lapse and allowing the traders to escape from the clutches of law. In these circumstances, painfully the State revenue suffers huge loss.

Revenue loss to the State is the loss to the public at large. The monetary losses are neither compensated nor recovered and therefore, the State is deprived in implementing the public welfare policies in favour of common women and men. Thus, adequate care is to be taken, so as to ensure that the taxes, as applicable, are collected promptly and the officials, who all are not prudent in execution of law, are dealt with mercilessly.

The Secretary to Government, Commercial Taxes and Registration Department, Fort Saint George, Chennai-600 009 and the Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai-600 005 are suo motu impleaded as respondents 3 and 4 in this writ petition for a limited purpose of initiating appropriate actions against the erring officials, who all are responsible and accountable for negligence, lapses and dereliction of duty under the Discipline and Appeal Rules and under the Corruption Laws, if required.

21. Detention under GST: e-way bill not necessary for transportation of used car or house hold articles -Kerala HC

Case Name : **Assistant State Tax Officer (Intelligence) Vs. VST And Sons (P) Limited (Kerala High Court)**
Appeal Number : WA NO. 914 of 2021
Date of Judgement/Order : 22/07/2021

Disposing Writ Appeal No. 914 of 2021 on 22.07.2021 (**Assistant State Tax Officer (Intelligence), Alappuzha Vs. VST & Sons (P) Limited)** a division bench of the Hon'ble High Court of Kerala has propounded that e –way bill is not necessary for transportation of personal effects and as such detention U/s. 129 of the **Central Goods & Services Tax Act**/State Goods & Services tax Act, 2017 (CGST Act & SGST Act) in the instant case is unwarranted.

Facts of the case

VST & Sons (P) Ltd and Muthukumar Meenakshy first and second respondents respectively, in the writ appeal herein initially filed the writ petition challenging the detention of the 'RANGE ROVER' motor vehicle belonging to the 2nd respondent while being transported from Coimbatore to Thiruvananthapuram as 'used personal effect' of the second respondent. The vehicle was detained on the allegation that the same was transported without the E-way bill as contemplated under Rule 138 of the Kerala Goods and Service Tax Rules, 2017. By the impugned judgment, the learned Single Judge allowed the writ petition and quashed the notices issued U/s 129 of the CGST/Kerala SGST Acts. Pursuant to the impugned judgment in the WP[C], the vehicle had been released to the 2nd respondent. However, aggrieved by the judgment of the single bench, the State Tax Department has filed this writ appeal. While dismissing the writ petition, the learned Single Judge relied upon the decision in **KUN Motor Company Private Limited and Others v. the Assistant State Tax Officer**, Squad No.3 Kerala State, Goods and Service Tax Department and Others [(2019) 60 GSRT 144 (Kerala)].

Held by the Court in the Writ Appeal

- The only reason stated for detaining the goods was that it was transported without the e-way bill. It must be remembered that goods that are classifiable as used personal and household effect falls under Rule 138(14) (a) of the Kerala Goods and Services Tax Rules, 2017 and are exempted from the requirement of e-way bill. The 2nd respondent had purchased the vehicle after payment of **IGST**. A temporary registration was also taken apart from the motor vehicle insurance. The vehicle was entrusted for transportation from Coimbatore to Thiruvananthapuram instead of driving the same across the State borders. The vehicle had in fact run 43 Kms but during transportation, the vehicle was detained for the reason of non-generation of e-way bill.
- In the decision in KUN Motor Company's case (supra), the Division Bench of the Court had, in an almost identical situation, observed as follows :-
- *"We do not understand how the State could take a contention that if the car had been driven into the State of Kerala from the U.T. of Puthuchery; then there could not have been a detention under Section 129, since then there would have been no question of*

uploading of e-way bill. We cannot also comprehend how an intra-State sale would be converted to an inter-State sale merely for reasons of it being transported in carriage.

- *The incidence of tax is on the supply and not on the nature of transport. There is no distinction in so far as the I.G. & S.T. Act is concerned, of a supply by road or on a carriage. We hence are of the opinion that the supply of the new vehicle by its authorised dealer terminated on it being purchased by the 2nd appellant in Puthuchery and the subsequent movement of the goods was not occasioned by reason of the transaction of supply. The goods having come into the possession of the purchaser, and the vehicle having been used, however negligible the distance run, we are also of the opinion that it is his "used personal effect" and there can be alleged no taxable transaction in so far as the movement of goods from Puthuchery to Trivandrum in Kerala, especially since the car had been registered in the name of the purchaser".*
- The said decision held that used vehicles, even if it has run only negligible distances are to be categorized as 'used personal effects'. Agreeing with the decision in KUN Motor Company's case (supra) and since the facts of the present case is almost similar to that case, the Hon'ble Court has dismissed the appeal filed by the state and therefore confirmed the judgment of the single bench.

22. Pre-Show Cause Notice consultation mandatory before issuance of SCN

Case Name : **Dharamshil Agencies Vs Union of India (Gujarat High Court)**
Appeal Number : R/Special Civil Application No. 8255 of 2019
Date of Judgement/Order : 23/07/2021

Appellant challenged the legal validity of the Show Cause Notice dated April 12, 2019. The facts of the case are that the Petitioner was issued a pre-show cause consultation notice letter dated April 12, 2019 consultation calling upon Petitioner to remain present on the same day at 14 hrs for pre-show cause notice consultation. Due to such short notice, the Petitioner submitted a letter requesting the Department for another dare for pre-show cause notice consultation. However, the Department issued the SCN on the same day i.e., April 12, 2019.

The Hon'ble Gujarat High Court noted that as per the settled legal position, the Circulars issued by the Board are binding to and have to be adhered to by the Department. In this regard *Master Circular dated Match 10, 2017* was issued which stated that pre-show cause notice consultation is mandatory in cases involving the demands of duty above Rs.50 lacs.

Dismissed the Departments' contention that the period of recovery of 5 years was to expire on April 15, 2021 and stated that it was Department's responsibility to issue pre-show cause consultation notice immediately after the final audit report issued on February 28, 2019, and they waited till the last date on April 12, 2019.

Further, stated that illusionary pre-show cause consultation notice is not only arbitrary, but is in utter disregard and in contravention of the very object and purpose of the above Master Circular.

Set aside the SCN on the ground that Petitioner was not granted an adequate opportunity for the consultation prior to the issuance of SCN. Further, stated that the Petitioner would not be permitted to take unfair advantage on the ground that the demand made in the notice had now become time-barred in view of the statutory provisions.

Furthermore, **directed the Department to issue fresh pre-show cause consultation notice**.

Allowed the petition and asked the **Department to deposit Rs. 20,000/-** in the Court within eight weeks from today, out of which, the office shall pay Rs. 10,000/- to the Petitioner and remaining Rs. 10,000/- to Gujarat State Legal Services Authority.

23. Hear plea on Interest Charging for delayed GST Payment: HC to GST Dept

Case Name : **S R & Sons Vs Assistant Commissioner (ST) (FAC) (Madras High Court)**
Appeal Number : WP Nos.15306 and 15307 of 2021
Date of Judgement/Order : 26/07/2021

This Court is of the considered opinion that the petitioner has emphatically stated that he has no grievance against the order in original dated 11.11.2020 and his grievance is against the charging of interest under Section 50 of the **Central Goods and Services Tax Act, 2017** and in respect of the said grievance, the petitioner submitted a representation to the first respondent on 03.11.2020, which is yet to be disposed of and such representation is entertainable under the provisions of the Act and the Authorities Competent is duty bound to dispose of the same on merits and in accordance with law.

In view of of the submission of the abovesaid representation, the first respondent is directed to consider the representation submitted by the petitioner on 03.11.2020 and pass an order on merits and in accordance with law and by affording an opportunity to the writ petitioner, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioner is directed to cooperate with the first respondent for the early disposal of the application by submitting all relevant documents and evidences or the rulings relied upon. It is made clear that in respect of the circular issued by the Board, if any grievance exists, the petitioner is at liberty to move the appropriate Court of Law after adjudication and passing an order by the Competent Authority.

24. SC dismissed SLP citing an alternative remedy of Appeal against Assessment Order

Case Name : **Siddhi Vinayak Trading Company Vs Union of India (Supreme Court of India)**
Appeal Number : Special Leave to Appeal (C) No.11071/2021
Date of Judgement/Order : 26/07/2021

Hon'ble Supreme Court dismissed the Special Leave Petition (**SLP**) as alternative remedy of appeal against the Assessment order is available with the Petitioner.

Facts:

Earlier, M/s Siddhi Vinayak Trading Company (**"the Petitioner"**) filed writ petition before the Hon'ble Allahabad High Court seeking to quash of Revenue's order, as the initiation of the proceeding and summon were issued under Section 70 of the **Central Goods and Services Tax Act, 2017** (**"the CGST Act"**) was made by Central Tax Authority and adjudication is made by State Tax Authority.

The High Court observed that the initiation of the proceeding for imposition of tax and penalty was with the issuance of the notice under Section 74 of the **Uttar Pradesh Goods and Services Tax Act, 2017** (**"the UPGST Act"**) and the inquiry under Section 70 of the CGST Act was independent. Subsequently, the High Court dismissed the petition.

Aggrieved with the decision of Allahabad High Court, the petitioner is before the Hon'ble Supreme Court against the High Court decision.

Held:

The Hon'ble Supreme Court in Special Leave to Appeal (C) No.11071/2021] dated July 26, 2021 held as under:

- Since an appeal lies under Section 107 of the UPGST Act against the order of assessment, we are not entertaining the SLP.
- It is open to the Petitioners to pursue the alternative remedy keeping all the rights and contentions of the parties open.
- Supreme Court dismissed the Appeal

25. HC releases Ambulances which were detained for not having E-way bill

Case Name : **East India InfoTech Pvt. Ltd. Vs State of Tripura (Tripura High Court)**
Appeal Number : WP(C) No.494/2021
Date of Judgement/Order : 28/07/2021

Considering the prime defence of the petitioner that he is not a registered dealer nor is he dealing in purchase and sale of vehicles and the ambulances have been purchased by the petitioner only for its own use and purpose since the petitioner wants to start a business of proving ambulance service, it would not be appropriate to allow further detention of the vehicles. Pending final assessment and subject to certain conditions these vehicles can be released. Even otherwise, the authorities under General Sales Tax(GST) Act have sufficient powers for provisional release of detained goods.

Petitions are disposed of with following directions :

(i) It would be open for the petitioner to file reply to the show cause notices dated 21st July 2021 by ***10th August 2021***.

(ii) The Assessing Officer shall thereupon pass order in relation to these show cause notices, in accordance with law, after considering the replies of the petitioner. If the petitioner requests for personal hearing of the authorised representative, the same may also be granted.

(iii) In the meantime, the vehicles shall be released as soon as the petitioner furnishes unconditional Bank guarantee to the tune of 25% of the possible tax and penalties, as indicated in the show cause notices and furnishing a bond for the remaining 75% of the values.

26. Power to extend period to be exercised before expiry of original limitation period

Case Name : **Cobra Instalaciones Y Servicios, S.A. Vs Commissioner of Sales Tax (Orissa High Court) W.P. (C) No.15956 of 2013**
Appeal Number : 29/07/2021

M/s Cobra Instalaciones Y Servicios (**Petitioner**) challenged an assessment order dated May 15, 2013 (**Assessment Order**) passed under Section 42 of the Odisha Value Added Tax Act, 2004 (**OVAT Act**) for being passed beyond the period of limitation i.e. after lapse of more than 6 months from the date of completion of the Audit Visit Report (**AVR**) on June 20, 2012.

The Assessing Authority (**"AA"**) realised that limitation period was going to end thus, requested the Commissioner of Sales Tax (**"CST"**) to invoke the power conferred on him in terms of proviso to Section 42(6) of the OVAT Act. Thereafter the CST passed an order extending the time for passing the assessment order on July 20, 2013 by a period of 6 months.

The Hon'ble Orrisa High Court noted that on the date that the Assessment Order was passed i.e., May 15, 2013, there was no order passed by the CST extending time for making the assessment. Further, the Assessment Order dated does not even mention the fact that the AA had made a request to the CST for extension of time for completion of the assessment proceedings.

Thus, the extension has been granted post facto to a case where Assessment Order has already been passed on May 15, 2013. Therefore, Assessment Order is unsustainable in law. Further, the order passed by the CST in terms of the proviso to Section 42(6) of the OVAT Act cannot validate such an illegal assessment order, which, on the date it was passed, was clearly time-barred.

27. Parallel proceedings by State & Central GST Authorities: HC explains scope of Section 6(2)(b)

Case Name : **Kuppan Gounder P.G.Natarajan Vs Directorate General of GST Intelligence (Madras High Court)**
Appeal Number : W.P.No.15708 of 2021
Date of Judgement/Order : 29/07/2021

Let us consider the scope of Section 6(2)(b) of the Act. It contemplates that “where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter”. Therefore, subjects proposed to be dealt with by the State authorities as well as the Central authorities must be one and the same to avail the benefit of Section 6(2)(b) of the Act. Even in such circumstances, if the aggrieved person is of an opinion that the subjects are one and the same, it is for him to establish the same before the competent authority by producing the records. Contrarily, such an adjudication in detail, cannot be conducted by the High Court in a writ proceedings under Article 226 of the Constitution of India. Various business transactions, its intricacies, the manner in which the accounting system is followed and the taxes paid, are to be elaborately scrutinized by the Department officials, who are having expertise in the subject. Such an adjudication, if entertained by the High Court, undoubtedly, there is a possibility of error, commission or omission at the instance of either of the parties and more over, based on the mere affidavit or counter affidavit filed by the parties, High Court cannot make a finding in respect of such disputed facts or issues. The very purpose and object of the Statute is to ensure that the investigation and proceedings are conducted in the manner known to law and then only, the truth may be culled out and during the process, the persons aggrieved are bound to establish their innocence or otherwise by producing the documents, evidences etc., Contrarily, intervention during the intermittent period by the High Court at the stage of summon, undoubtedly, would paralyze the entire proceedings, which is not desirable and even in such cases, where there are certain factual similarities or otherwise, the same is to be established by the person aggrieved by producing all original documents, evidences, etc.,
As far as Section 6(2)(b) of the Act is concerned, this Court is of the considered opinion that the State authorities issued a notice for intimating discrepancies in the return after scrutiny in proceedings dated 17.12.2020. The said proceedings would reveal that during the scrutiny of the return for the tax period referred certain discrepancies have been noticed. Regarding such discrepancies, the proceedings are initiated and is pending for adjudication. As far as the present summon is concerned, there was an order of seizure and earlier also, a summon was issued under Section 70 of the Act on 20.01.2021 and subsequently also, summons were issued and the investigations are in progress. The very purpose and object of Section 6(2) (b) of the Act is to ensure that on the same subject, the parallel proceedings are to be avoided. Once on a particular subject, the State authority has initiated action under the State Goods and Services Tax Act, then alone, the proper answer under the Central Goods and Services Tax Act are restrained to wait till the finalization of the proceedings initiated by the State authorities. However, in all circumstances, and in respect of various other proceedings, the benefit cannot be claimed by the assessees.

It is to be established that subject matter is one and the same. Mere pendency of proceedings before the State authorities is not a ground to restrain the Central

authorities from issuing summons and conduct investigation regarding certain allegations. Therefore, all these factors require an adjudication before the competent authority and if the summons are kept in abeyance at this stage, the same would paralyze the entire proceedings, which is not only desirable, but would cause prejudice to the interest of the Revenue in the present case.

This being the factum established, the petitioner is at liberty to respond to the summons by producing all relevant documents, evidences, statements, etc., and defend his case in the manner known to law. The respondent is also at liberty to proceed with the investigation by following the procedures as contemplated under the Statute and Rules.

28. HC set aside ex-parte order passed without allowing due opportunity of hearing

Case Name : **V.S. Enterprises Vs State of U.P. (Allahabad High Court)**
Appeal Number : Writ Tax No. 414 of 2021
Date of Judgement/Order : 29/07/2021

Undisputedly, three periods for which the orders had been passed are overlapping. Notice dated 22.12.2020 was issued by respondent no.2 for the period July 2017 to March 2018. It covers the entire period and dispute being sought to be adjudicated in the other two notices as well.

At the same time, we find that by notice dated 22.12.2020, next date fixed was 05.01.2021 but the petitioner could not participate in the same on account of the spread of pandemic COVID-19. Also, in that regard, it has been brought to our notice that realizing the difficulties from the spread of pandemic COVID-19, the Government had itself issued an order dated 01.05.2021 extending the period to submit reply and responses, up to 30.05.2021. Subsequently, it was extended up to 30.06.2021. In light of that fact, the order dated 09.06.2021 is clearly an *ex-parte* order, which has been passed without allowing due opportunity of hearing to the petitioner.

In view of the above, present writ petition is **disposed of** with the following terms:

(i) the orders dated 9.6.2021 passed by respondent no.2 for the period September 2017 to December 2017 and the order dated 9.6.2021 passed by respondent no.3 for the period November 2017 are quashed.

(ii) So far as the order dated 9.6.2021 passed by respondent no. 2 for the period July 2017 to March 2018 is concerned, the same arises from the proceedings initiated by notice dated 22.12.2020. That order dated 9.6.2021 is set aside and the matter remitted to respondent no.2 to pass a fresh adjudication order after affording the petitioner reasonable opportunity of being heard. However, it is provided that the petitioner shall file his reply to the notice dated 22.12.2020 within a period of one month from today, not later than 31 August 2021. Further proceedings may be conducted and concluded strictly in accordance with law.

29. Proceedings by both State & Central GST Authorities allowed if subject matter is not same

Case Name : **Kuppan Gounder P.G. Natarajan Vs Directorate General of GST Intelligence (Madras High Court)**
Appeal Number : W.P. No. 15708 of 2021 and W.M.P. Nos. 16604 & 16605 of 2021
Date of Judgement/Order : 29/07/2021

As far as Section 6(2)(b) of the Act is concerned, this Court is of the considered opinion that the State authorities issued a notice for intimating discrepancies in the return after scrutiny in proceedings dated 17.12.2020. The said proceedings would reveal that during the scrutiny of the return for the tax period referred certain discrepancies have been noticed. Regarding such discrepancies, the proceedings are initiated and is pending for adjudication. As far as the present summon is concerned, there was an order of seizure and earlier also, a summon was issued under Section 70 of the Act on 20.01.2021 and subsequently also, summons were issued and the investigations are in progress. The very purpose and object of Section 6(2) (b) of the Act is to ensure that on the same subject, the parallel proceedings are to be avoided. Once on a particular subject, the State authority has initiated action under the State Goods and Services Tax Act, then alone, the proper answer under the Central Goods and Services Tax Act are restrained to wait till the finalization of the proceedings initiated by the State authorities. However, in all circumstances, and in respect of various other proceedings, the benefit cannot be claimed by the assessees.

It is to be established that subject matter is one and the same. Mere pendency of proceedings before the State authorities is not a ground to restrain the Central authorities from issuing summons and conduct investigation regarding certain allegations. Therefore, all these factors require an adjudication before the competent authority and if the summons are kept in abeyance at this stage, the same would paralyze the entire proceedings, which is not only desirable, but would cause prejudice to the interest of the Revenue in the present case.

This being the factum established, the petitioner is at liberty to respond to the summons by producing all relevant documents, evidences, statements, etc., and defend his case in the manner known to law. The respondent is also at liberty to proceed with the investigation by following the procedures as contemplated under the Statute and Rules.

30. SC allows IGST export refund as it was to the extent of customs component

Case Name : **Union of India & Ors. Vs Awadkrupa Plastomech Pvt. Ltd. (Supreme Court of India)**
Appeal Number : Special Leave To Appeal (C) No.7095/2021
Date of Judgement/Order : 30/07/2021

Supreme Court has upheld decision of the Gujarat High Court where the High Court directed the Goods and Service Tax Authorities to immediately sanction refund

towards IGST paid in respect to goods exported made via shipping bills as same was only to the extent of the customs component.

31. HC quashes GST Assessment order passed without Fair opportunity of hearing

Case Name : **National Enterprises Vs Union of India (Patna High Court)**
Appeal Number : Civil Writ Jurisdiction Case No.12233 of 2021
Date of Judgement/Order : 30/07/2021

Having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences. HC quashed and set aside the impugned order.