

GST UPDATE

(August, 2021)

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(I) GIST OF GST NOTIFICATIONS

1. CBIC allows filing of FORM GSTR-3B & GSTR-1/ IFF using EVC till 31.10.2021

The filing of **FORM GSTR-3B** and **FORM GSTR-1/ IFF** by companies using electronic verification code (EVC), instead of Digital Signature certificate (DSC) has already been enabled for the period from 27.04.2021 to 31.08.2021. **This has been further extended to 31st October, 2021.**

[Notification No. 32/2021-Central Tax | Dated: 29th August, 2021 | Central Goods and Services Tax (Seventh Amendment) Rules, 2021]

2. GSTR-3B Late fee amnesty scheme extended till 30.11.2021

Government, vide **Notification No. 19/2021- Central Tax, dated 01.06.2021**, had provided relief to the taxpayers by reducing / waiving late fee for non-furnishing **FORM GSTR-3B** for the tax periods from July, 2017 to April, 2021, if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021. **The last date to avail benefit of the late fee amnesty scheme, has now been extended from existing 31.08.2021 to 30.11.2021.**

[Notification No. 33/2021-Central Tax | Dated: 29th August, 2021]

3. Due date of filing of application for revocation of cancellation of GST registration extended

Based on the multiple representations received, Government has also extended the timelines for filing of application for revocation of cancellation of registration to **30.09.2021**, where the due date of filing of application for revocation of cancellation of registration falls between **01.03.2020 to 31.08.2021**. The extension would be applicable only in those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

[Notification No. 34/2021- Central Tax, dated 29.08.2021].

Reference:

Section 29(2)(b): a person paying tax under **section 10** has not furnished returns for **3 consecutive tax periods**.

Section 29(2)(c): any registered person, **other than a person specified in clause (b)**, has not furnished returns for a continuous period of **6 months**.

Revocation of cancellation of registration

- Extends timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021.

- The extension would be applicable only in those cases where registrations have been cancelled under clause (b) or clause (c) of section 29(2) of the CGST Act.

Amendment to CGST Rules 2017

- The filing of FORM GSTR-3B and FORM GSTR-1/ IFF by companies using electronic verification code (EVC), instead of Digital Signature certificate (DSC) has already been enabled for the period from 27.04.2021 to 31.08.2021. This has been further extended to 31st October 2021.
- Fourth proviso of Rule 26 of CGST Rules has been amended to extend time for companies to furnish FORM GSTR-3B and FORM GSTR-1 or invoice details using Invoice furnishing facility verified through e-verification code, up to 31 October 2021
- All the four provisos to rule 26(1) shall be omitted w.e.f 1st November 2021
- The restrictions on furnishing of information in Part A of Form GST EWB-01, in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period March 2021 to May 2021 shall not apply from 1st May 2021 to 18th August 2021.

(II) CENTRAL TAX NOTIFICATIONS

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

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

Notification No. 32/2021 – Central Tax

New Delhi, the 29th August, 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 (Seventh Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, —

(i) in sub-rule (1) of rule 26, -

(a) in the fourth proviso, for the figures, letters and words “31st day of August, 2021”, the figures, letters and words “31st day of October, 2021” shall be substituted;

(b) with effect from the 1st day of November, 2021, all the provisos shall be omitted;

(ii) with effect from the 1st day of May, 2021, in rule 138E, after the fourth proviso, the following proviso shall be inserted, namely: -

“Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021, in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period March, 2021 to May, 2021.”;

(iii) in **FORM GST ASMT-14**, -

(a) after the words, “with effect from -----”, the words, “vide Order Reference No. -----, dated -----” shall be inserted;

(b) the words, “for conducting business without registration despite being liable for registration” shall be omitted;

(c) at the end after “Designation”, the word “Address” shall be inserted.

[F. No. CBIC-20006/24/2021-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. 30/2021 - Central Tax, dated the 30th July, 2021 *vide* number G.S.R. 517 (E), dated the 30th July, 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. 33/2021 – Central Tax

New Delhi, the 29th August, 2021

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 76/2018– Central Tax, dated the 31st December, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1253(E), dated the 31st December, 2018, namely:—

In the said notification, in the ninth and tenth provisos, for the figures, letters and words “31st day of August, 2021”, where ever they occur, the figures, letters and words “30th day of November, 2021” shall be substituted.

[F. No. CBIC-20006/24/2021-GST]

(Rajeev Ranjan)

Under Secretary to the Government of India

Note: The principal notification No. 76/2018-Central Tax, dated 31st December, 2018 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1253(E), dated the 31st December, 2018 and was last amended *vide* notification number 19/2021 – Central Tax, dated the 1st June, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 363(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. 34/2021 – Central Tax

New Delhi, the 29th August, 2021

G.S.R.....(E).– In partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 310(E), dated the 1st May, 2021, in exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby notifies that where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act and the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the 1st day of March, 2020 to 31st day of August, 2021, the time limit for making such application shall be extended upto the 30th day of September, 2021.

[F. No. CBIC-20006/24/2021-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

(III) ADVANCE RULINGS

1. Place of supply is Location of recipient in case of Construction of Immovable property Outside India

Case Name : **In re Sri Avantika Contracts (I) Limited (GST AAR Telangana)**

Appeal Number : TSAAR Order No. 05/2021

Date of Judgement/Order : 05/08/2021

1. Whether the construction of Institute of Security and Law Enforcement studies at Addu City in Maldives, constructed for Government of Maldives under an Memorandum of Understanding between India and Maldives falls within the GST net?

The applicant who is the supplier of service & NBCCL who is recipient of service are located in India and therefore the place of supply is to be determined under Section 12 of the IGST Act. The proviso to Sub-Section (3) of Section 12 of IGST Act clearly mention that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient. Therefore the supply by the applicant to the NBCCL is within the ambit of GST.

2. Who is the recipient of service in the instant case?

National Buildings Construction Corporation Limited is recipient of service from the applicant

3. What is the place of supply in respect of the works contract for setting up of (he Institute of Security and Law Enforcement Studies at ADDU City in Maldives?

The applicant who is the supplier of service & NBCCL who is recipient of service are located in India and therefore the place of supply is to be determined under Section 12 of the IGST Act, The proviso to Sub-Section (3) of Section 12 of IGST Act clearly mention that if the location of immovable property is intended to be located outside India, the place of supply shall be the location of the recipient i.e., NBCCL.

2. GST on Supply of LPG & Related services to industrial users

Case Name : **In re SHV Energy Private Limited (GST AAR Telangana)**

Appeal Number : TSAAR Order No. 06/2021

Date of Judgement/Order : 06/08/2021

1. Whether sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for Supplier Gas System installed at the customer premises to store the LPG which is a condition precedent for supply of LPG be treated as composite supply under section 2(30) of GST Act, 2017?

Sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises do not form a composite supply.

3. ITC not admissible for bills of Jan to March 2020 for which supplier furnished GSTR-1/3B in November 2020

Case Name : **In re Eastern Coalfields Ltd (GST AAR West Bengal)**

Appeal Number : Order No. 07/WBAAR/2021-22

Date of Judgement/Order : 09/08/2021

Whether the applicant is entitled for input tax credit already claimed by him on the invoices raised by the supplier pertaining to the period Jan-2020, Feb-2020 and March-2020 for which the supplier has paid the tax in November-2020 and whether the applicant has to reverse the said ITC already availed by him

The applicant is not entitled for input tax credit claimed by him on the invoices raised by M/s Gayatri Projects Ltd. pertaining to the period Jan-2020, Feb-2020 and March-2020 for which the supplier has furnished FORM GSTR-1 and FORM GSTR-3B in the month of November'20 and the applicant is, therefore, required to reverse the said input tax credit.

4. GST exempt on housekeeping, Security & Other services to Government Hospitals

Case Name : **In re Padmavathi Hospitality & Facilities Management Service (GST AAR Tamilnadu)**

Appeal Number : Order No. 31/ARA/2021

Date of Judgement/Order : 10/08/2021

Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS?

The proposed supply as per the Tender for housekeeping, Security Services and Assistance in Electrical, Plumbing, laundering, Cooking, Catering, Gardening & Carpentry Services in 93 Government Hospitals under the Control of Directorate of Medical & Rural Health Services, -86 Institutions, Directorate Medical & Rural Health Services (ESI)-7 Institutions is exempt under Entry No. 3 of **Notification No.12/2017-C.T.(Rate) dated 28.06.2017** read with Entry No. 3 of Notification No.II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as brought out in para 8 above.

5. GST exemption on Vocational Training Courses by Leprosy Mission Trust India

Case Name : **In re The Leprosy Mission Trust India (GST AAR Tamilnadu)**

Appeal Number : Order No. 30/ARA/2021

Date of Judgement/Order : 10/08/2021

(i) The services provided by the Leprosy Mission Trust India, Regional Industrial Training Institute, Vadathorasalur under Vocational Training Courses pertaining to Mechanic (Motor Vehicle), Electrician, Sewing Technology recognized by National Council for Vocational Training (NCVT) are exempt under Serial Number 66 of **Notification 12/2017 Central Tax (Rate)** as education as part of an approved vocational education course.

(ii) Services provided by the applicant under Vocational training courses pertaining to Mechanic Refrigeration & Air Condition and Central Plant, Electrical Technician and Automobile Mechanic recognized by State Council of Vocational Training (SCVT) is exempt under Serial Number 66 **Notification 12/2017 Central Tax (Rate)** as education as part of an approved vocational education course subject to re-affiliation pending being granted by the Department of Employment and Training of Government of Tamil Nadu.

6. ITC not eligible on CSR Activity as Companies (CSR Policy) Rules, 2014

Case Name : **In re Adama India Private Limited (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/44/2021

Date of Judgement/Order : 11/08/2021

CSR activities, as per **Companies (CSR Policy) Rules, 2014** are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act.

7. Sub sub-contractor not eligible for being covered at Sr no 3 (ix) of NT 11/2017-CT(R)

Case Name : **In re Kababhai Popatbhai (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/43/2021

Date of Judgement/Order : 11/08/2021

We note that the Government Irrigation Division awarded work contract to Main Contractor M/s JSIW for EPC of a pumping station. Subsequently, the Main contractor awarded the said work to sub contractor M/s Radhe Construction. Subsequently, the sub contractor awarded the said work to the applicant, who is now a sub-sub contractor.

We hold that to be eligible for being covered at Sr no 3 (iii) of said **NT 11/2017 CT(R)**, the following two conditions shall be satisfied:-

i. Composite Supply of Works Contract to be supplied by Main Contractor to Government and

ii. Supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works.

We observe that the applicant does not satisfy condition 1 , but satisfies only condition no. 2.

Further, We hold that to be eligible for being covered at Sr no 3 (ix) of said **NT 11/2017 CT(R)**, the following two conditions shall be satisfied:-

i. Composite supply of works contract provided by a sub-contractor to the main contractor and

ii. That main contractor shall provide services specified in item (iii) to Government.

15.1 We find that the applicant is not a sub contractor but a sub sub contractor. The person to whom the service is supplied is specific in the Notification. Either, the service shall be supplied by main contractor to Government or the service shall be supplied by a sub contractor to the main contractor providing services to Government. We observe that the applicant does not satisfy both the conditions.

M/s JSIW, M/s Radhe Construction and the applicant are all taxable persons. It is only the main contractor supplying subject service to Government and the sub contractor of the said main contractor who will merit entry at sr no 3(iii) and sr no 3(ix) of said **NT 11/2017 CT(R)** respectively. We hold that if condition of Notification was only that composite supply of works contract to be supplied by way of irrigation works, irrespective of the recipient being Government or not, then sub-sub contractor is also eligible for said entry in Notification. But the Notification lays down the condition that supply should be provided to Government by main contractor and only sub contractor to said main contractor enjoys the benefit of being covered under cited entries of said NT. As said applicant is sub-sub contractor and supplies service to M/s Radhe sub contractor and not to M/s JSIW main contractor, the conditions of said entry 3(iii)/ 3(ix) to said Notification is not satisfied.

GST rate on subject supply is 18% for services supplied by the sub-sub-contractor to sub-contractor M/s Radhe and supply merits entry at Heading 9954, Entry No 3(ii) of **Notification No.11/2017-CT(R) dated 28-6-17**.

8. GSRDC is a Government Entity: GST AAR Gujarat

Case Name : **In re Gujarat State Road Development Corporation (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/42/2021

Date of Judgement/Order : 11/08/2021

We have examined the Government of Gujarat Resolution dated 20-2-99, placed before us by the applicant, whereby GSRDC was established with objective to undertake the development of bridges and roads. We find that Government of Gujarat has established GSRDC as its wholly owned company and entrusted it with the

development of roads and bridges. Thus, we find that GSRDC satisfies the definition of Government Entity.

Further, as submitted by GSRDC, We note that it constructs roads, sideways, paths on the land which falls under the jurisdiction of Municipality and Panchayat. We note that roads and bridges are activities entrusted to a municipality under Article 243W of our Constitution and to a Panchayat under Article 243G of our Constitution. Therefore in such specific cases where GSRDC constructs municipal roads/bridges or village roads/bridges, it satisfies the definition of Government Authority.

9. 'Ammonium Sulphate' is classifiable at HSN 310221

Case Name : **In re Willmart Enterprise (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/41/2021

Date of Judgement/Order : 11/08/2021

1. 'Ammonium Sulphate' is classifiable at HSN 310221.
2. GST of 5% is leviable on Ammonium Sulphate supplied for direct use as fertilizers or used in the manufacturing of complex fertilizers for agricultural use (soil or crop fertilizers).
3. GST of 18% is leviable on Ammonium Sulphate supply for other than fertilizer use.

10. GST on re-gasification by Petronet of LNG owned by customers

Case Name : **In re Petronet LNG Ltd. (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUR/GAAR/R/40/2021

Date of Judgement/Order : 11/08/2021

Petronet's activity of re-gasification of LNG owned by its GST registered customers amounts to rendering of service by way of Job Work and merits to be covered at entry 'id' of Heading 9988 at Sl. No. 26 of **Notification No. 11/2017-CT (rate) dated 28.06.2017**, as amended, liable to CGST at 6% .

11. IGST on importation of tank containers lease services into India

Case Name : **In re Deccan Transco Leasing Private Limited (GST AAR Telangana)**

Appeal Number : TSAAR Order No. 08/2021

Date of Judgement/Order : 17/08/2021

Is GST liable to be paid on leasing of tank containers taken form a supplier i e., lessor who is located outside India and the tank containers do not reach India? As it is finance lease, it is supply of goods and tank containers do not reach the Indian Territory.

Yes. The applicant is liable to pay IGST on importation of lease services into India in light of the above discussion.

12. Others cannot make AAR application for Joint Venture Company

Case Name : **In re Mukesh & Associates (GST AAR Tamilnadu)**

Appeal Number : ORDER No. 34/ARA/2021

Date of Judgement/Order : 17/08/2021

From the submissions made by the applicant we find that it is the Joint Venture with the Registered seat of the Association at Cologne, Germany is the 'Person' to whom the 'Project' is awarded and not the applicant. As per existing laws of the land, a Joint Venture Company, which is formed by 2 or more entities have a separate existence than that of the said entities. Further, as per the Joint Venture Declaration, it is seen that the Lead Member of the JV is the sole representative of the JV and any restrictions to the Power of attorney extended by the participating Members shall be invalid. Therefore supply of goods or services or both, being undertaken or proposed to be undertaken in respect of the 'Project' will be by the Joint Venture Company, and not the applicant. Thus the person who can make such application is the Joint Venture Company only and not the applicant, hence the application is not admitted for consideration on merits.

13. AAR explains applicability of paragraph 2A of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019

Case Name : **In re Thiru Neelakanta Realtors LLP (GST AAR Tamilnadu)**

Appeal Number : Advance Ruling No. 33/ARA/2021

Date of Judgement/Order : 17/08/2021

1. Whether paragraph 2A of **Notification No. 03/2019-Central Tax (Rate) dated 29th March, 2019**, is applicable to those agreements entered on or before 29th September 2019 with unregistered persons?
2. If the answer to question (1) is affirmative, whether **Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019** is applicable, when the actual cost of construction of services are known?
3. If the answer to the question (1) or (2) is negative, which valuation rule is applicable for identifying the value of supply for construction services rendered?
4. What will be the value of supply, in case, Applicant adopts Rule 30 of CGST Rule, 2017?
5. What will be the value of supply, in case, Applicant adopts Rule 31, instead of Rule 30 of CGST Rule, 2017 in terms of proviso to Rule 31 of CGST Rules?
6. Whether paragraph 2A of **Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019**, is ultravires Section 15(5) of CGST Act, 2017 and hence is inapplicable

until there is prescription of rules in terms of Section 15(5) read with Section 2(87) of CGST Act, 2017?

In the instant case, the date of levy being the date of issuance of completion certificate, Para 2A becomes applicable to them and so the value should be calculated only as prescribed in the said para. The said para prescribes that the value of construction in respect of such apartments shall be deemed to be equal to the Total amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development rights/FSI. From the wording of this para, it is seen that the only value which can be adopted is as prescribed, there being no choice of adoption of any other value. As the law has provided for such valuation, the contention that para 2A is not applicable when the actual cost of construction is available does not hold water as we cannot go beyond the law pronounced. Hence the valuation as prescribed in the said para 2A becomes squarely applicable in the present case.

From the above, it is clear that Para 2A of the **Notification no. 3/2019** is applicable to the transaction between the applicant and the owners of the land and the valuation shall be done as stipulated therein. Applicant has preferred questions 3 to 5 in case the answer to question (1) and (2) is negative. Now that the answer to questions (1) and (2) being affirmative, the questions 3 to 5 become redundant and hence are not required to be answered. In respect of question no.6, the same being in the nature of discussing the legality of the provisions of law, it was found inadmissible under Section 97 (2) of the CGST, 2017, which fact was communicated to the applicant during the Personal Hearing held on 19.02.2021 and the applicant agreed on the same being inadmissible. Hence the same also is not answered herein.

14. Without material evidence for proposed supply, no ruling can be extended : AAR

Case Name : **In re Esmario Marine Private Limited (GST AAR Tamilnadu)**

Appeal Number : Order No. 32/AAR/2021

Date of Judgement/Order : 17/08/2021

Apart from the pictures and write-up, the applicant has not furnished any documents such as Bill of Entry, Tax Invoice, Purchase Order, address of sale & Service centers, letter/ correspondences to support their argument that they are in discussion with the mentioned Principals, the class of buyers of such intended goods, agreement/letter entered into with such class of recipients, etc which are essential facts of the case. The applicant has stated that they intend to enter into dealership with the principals as stated above, procure goods and supply for fishing boats and vessels and has sought ruling on the applicable rate of tax on such supply.

As per Section 95(a) of the GST Act, Advance Ruling can be sought in respect of the proposed supplies and as per Section 103 of the Act, the ruling is applicable to only the person seeking the ruling based on the material facts of the transactions. In the case at hand, the ruling is sought on the applicability of effective rate of the products

said to be 'proposed to supply' as parts of fishing boats and vessels falling under CTH 8901, 8902,8904,8905, 8906 86 8907.

In the case at hand, the applicant has stated that they have been established in March 2020 for the proposed supplies but had not furnished any documentary evidence to substantiate their proposed supply in the form of any Purchase Order from any class of recipient, List of goods to be supplied or any documentary evidence to prove the proposed business of the applicant, i.e., any correspondences with the proposed principal suppliers with whom they intend to enter into transactions or agreements/Purchase orders for further supply. In this situation, without the specifics of the proposed supply, substantiated with the material facts, this authority is constrained to rule on the applicability of the said entry to the proposed transactions, based on the clarification in the Circulars and the rulings extended by the Advance Ruling authorities of Kerala, Maharashtra, etc. It is pertinent to note here that the advance ruling is applicable to the applicant and their jurisdictional authority only and ruling cannot be extended based on the facts of any other case. Therefore, without material evidence for the proposed supply, no ruling is extended on the clarifications sought by the applicant.

15. Advance ruling obtained with misrepresentation of facts is void ab-initio

Case Name : **In re J K Papad Industries (GST AAAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAAR/APPEAL/2021/28

Date of Judgement/Order : 18/08/2021

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 the 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*.

16. Stipends reimbursed by Trainer Companies doesn't attract GST

Case Name : **In re Yashaswi Academy For Skills (GST AAR Maharashtra)**

Appeal Number : Advance Ruling No. GST-Ara-83/2019-20/B-47

Date of Judgement/Order : 20/08/2021

No GST on reimbursement received by applicant of stipend paid to trainees

M/s. Yashaswi Academy for Skills (**the Applicant**) has sought a clarification on the issue as to whether the reimbursement by the companies to the Appellant of the stipend paid to students attract Goods and Services Tax (**GST**).

The Applicant is registered as Third-party Aggregator under the Apprentice Act 1961 which enters into agreements with various companies who impart actual practical training to the students. The Applicant, In lieu of the agreements with the industry, is

engaged in preparing the Monthly attendance record of the apprentices, getting it certified from the company, processing stipends of the apprentices etc.

The Hon'ble Maharashtra Authority of Advance Ruling (“**MAAR**”) noted that the stipend is not directly paid to the trainees by the companies but are routed through the Applicant. That the applicant only acts as an intermediary since the applicant is not allowed to make any deductions from the stipend before providing it to the trainees.

Therefore, the amount received by the applicant in the form of reimbursement does not attract any GST.

17. GST on hiring of Non-AC buses to Company for Transport of Staff

Case Name : **In re Shailesh Ramsunder Pande (GST AAR Maharashtra)**

Appeal Number : Advance Ruling No. GST-Ara-66/2019-20/B-49

Date of Judgement/Order : 20/08/2021

In the instant case, the applicant has an agreement with RIPL for supplying Non-AC buses to transport staff of RIPL and the buses are owned by the applicant. Further, the applicant also incurs expenses on fuel and maintenance of the buses and for all these services provided by the applicant, they are paid fixed hire cost plus fixed fuel cost at predetermined rates of fuel plus mileage.

We also find that it is RIPL which controls the deployment of the buses. A perusal of the agreement reveals that the applicant shall deploy the buses (already inspected by RIPL) or as per instructions of the Admn. Dept, of RIPL. Thus the applicant cannot run the buses on their own because the overall control of the buses is with RIPL. Further, as per the agreement, Insurance Charges, etc., will be paid by the applicant whereas toll tax, etc will be paid by RIPL. Thus while the ownership of the buses lies with the applicant, the buses shall be operated strictly as per the instructions of RIPL. Therefore in the subject case, there is a clear transfer of right to use the buses by way of effective control as is seen from the fact that the buses are plying strictly as per RIPL's instructions.

Serial no. 15 of the exemption **notification no. 12/2017 Central Tax (Rate) dated 28.06.2017** reads as under:-

S. No.	Chapter Heading	Description of Services	Rate %	Condition
(1)	(2)	(3)	(4)	(5)
15	9964	Transport of passengers, with or without accompanied belongings, by- (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or	Nil	Nil

Form the submissions made by the applicant it is clear that they are considering their services as transportation of passengers.

We may mention here that, in the case of transportation of passengers, the recipient of service would be the passenger whereas in the case of renting of any motor vehicle, like buses in the subject case, the recipient would not be the passenger. In the subject case, the consideration for supply of service is charged from RIPL and not the passenger. Therefore in the subject case it is clear that the recipient is RIPL. Hence, we have no hesitation in holding that the subject activity, amounts to 'renting of motor vehicle' and shall qualify as a taxable activity under the provisions of the GST Laws. Since the subject activity is not 'transportation of passengers' as discussed, the provisions of **notification no. 12/2017 Central Tax (Rate) dated 28.06.2017** are not applicable in the subject case.

18. GST on services by World Economic Forum to its Liaison office in India

Case Name : **In re World Economic Forum, India Liaison Office (AAR Maharashtra)**

Appeal Number : No. GST-ARA-11/2019-20/B-50

Date of Judgement/Order : 20/08/2021

Question 1. Whether the activities carried by the Applicant's Head office located outside India and rendered to the Applicant will amount to supply as envisaged under Section 7 of the **Central Goods and Services Act, 2017** considering that the Applicant is not engaged in any business?

Answer: – Answered in the negative.

Question 2. Whether the activities carried by the Applicants Head office located outside India and rendered to the Applicant would be liable to GST in the hands of the Applicant considering that the Applicant is not engaged in any business?

Answer: – Answered in the negative.

Question 3. Whether Applicant would be required to obtain registration in India under Section 24 of the Central Goods and Service Tax Act, 2017 with respect to activities carried out by the Applicant's Head office located outside India and rendered to the Applicant considering that the Applicant is not engaged in any business?

Answer: – Answered in the negative.

19. No GST on reimbursement received of stipend paid to trainees

Case Name : **In re Yashaswi Academy for Skills (GST AAR Maharashtra)**

Appeal Number : Advance ruling No. GST-ARA- 84/2019-20/B-48

Date of Judgement/Order : 20/08/2021

Regarding the issue before us in respect of stipend paid to the trainees by the applicant, by the industry partner which provides training to the trainees and is required

to pay stipend to the trainees. This stipend is not directly paid to the trainees by the companies, rather the same are routed through the applicant. The applicant has submitted that the entire amounts received as stipend from the companies are paid to the trainees without any amount being retained. Thus, it is seen that the applicant is only acting as an intermediary in collecting the stipend from the companies and then disbursing the same to the trainees in full since the applicant is not allowed to make any deductions from the stipend before disbursing the same to the trainees. The applicant is only a conduit for the payment of stipend and the actual service is supplied by the trainees to the trainer companies (industry partners) against which stipend is payable. Hence the amount of stipend received by the applicant from the industry partners and paid in full to the trainee is not taxable at the hands of the applicant. Hence, in view of the submissions made by the applicant and also in agreement with the observations made by the jurisdictional officer, it is held that the reimbursement by Industry Partner to the applicant of the stipend paid to students does not attract GST.

20. Purchaser has no locus standi to file Advance ruling application

Case Name : **In re Hyflextar Pvt. Ltd. (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/47/2021

Date of Judgement/Order : 24/082021

1. The applicant (purchaser) submits that it approached M/s. Fanidhar Mega Food Park Private Limited (the Seller) to purchase a plot of land in 'Mega Food Park' at Village Mudarda, Taluka Jotana, District Mehsana, wherein the seller had also done certain development/ amenities activities.

Question on which Advance Ruling sought?

2. Whether GST is applicable on sale of land identified as individual plot in a Mega Food Park, the Park being developed pursuant to guidelines framed under the 'Mega Food Parks Scheme' of the Ministry of Food Processing Industries, GOI (MoFPI)

Personal Hearing:

3. Meghna Vasvani, CA appeared for personal hearing (Video Conferencing) on 12-8-21.

Findings:

4. At the outset, we find that the applicant is a purchaser and not the seller.

5. We note that as per Section 95(a) CGST Act, Advance Ruling is a decision provided to an applicant in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

6. Further the Advance Ruling pronounced by this Authority, as per Section 103(1) CGST Act, shall be binding only on the applicant who sought it and the concerned officer/ jurisdictional officer in respect of the applicant.

7. Firstly any GST tax liability, if arises as per law, will be paid by Supplier. Secondly, by pronouncing a Ruling on the Question before us, it will not bind the Supplier, as per Section 103(1) CGST Act.

8. In pursuance to Section 95(a) CGST Act, We hold that the Question raised by the applicant does not fall under the gamut of said Section 95(a).

9. Thereby, in pursuance to Section 95(a) and Section 103(1) of CGST Act, we hold that the applicant has no locus standi to file subject application.

10. The subject application is thereby rejected.

21. 'Other Services' not part of Composite supply with Main Construction Service, chargeable to GST @ 18%

Case Name : **In re Puranik Builders Ltd. (GST AAR Maharashtra)**

Appeal Number : Advance Ruling No. GST-ARA- 68/2019-20/B-52

Date of Judgement/Order : 27/08/2021

18% GST payable on other services not naturally bundled with Construction services

M/s Puranik Builders Pvt. Ltd (**Applicant**) has sought clarification on the issue of whether the charges other than that of consideration of main construction activity – like water connection charges, club house maintenance charges, share of municipal taxes, infrastructure charges, club house charges etc. (**other charges**) are to be treated as consideration for construction services of the Company and classified along with the main residential construction services of the Company or whether it would be treated as consideration for independent services of the respective head. Consequently, what will be the applicable effective rate of Goods and Services Tax (**GST**) on services underlying the Other Charges.

The Hon'ble Maharashtra Authority for Advance Ruling ("**MAAR**") noted that when the question arose to pay stamp duty, the Applicant did not treat these Other Charges as part of main supply, however when it came to payment of GST, the Applicant contended those other charges to be a part and parcel of main construction service. The party cannot be permitted to shift stands as per their convenience.

Observed, the "*Other Charges*" are different from the service of construction of residential flats. It cannot be said to be naturally bundled and supplied in conjunction with each other. The amount and consideration is separately for different services. Therefore, the Other Charges are not covered under "*Composite Supply of Services*".

Further observed, the Other Charges are held taxable as per their SAC under the GST Act, at 18% in terms of the respective and appropriate entries in **Notification No.11/2017 CT (R) dated 28.6.2017 ("Services Rate Notification")** as they are covered under services, other than construction services.

22. No GST on Hostel Rent of less than Rs. 1000 per day per Student

Case Name : **In re Ghodawat Eduserve LLP (GST AAR Maharashtra)**

Appeal Number : Advance Ruling No. GST-ARA- 72/2019-20/B-51

Date of Judgement/Order : 27/08/2021

M/s. Ghodawat Eduserve LLP (**Applicant**) has sought clarification on the issue as to whether there lies any exemption on the service of providing hostel on rent to students under S no. 12 or S no. 14 of the **Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 (Services Exemption Notification) under GST.**

The Hon'ble Maharashtra Authority of Advance Ruling ("**MAAR**") noted that the Applicant is providing facility of hostel by charging students Rs. 34,000/- per annum i.e. Rs. 95/- per day per room in addition to coaching fees. The contention put forth by the Applicant of covering the service under "*residential dwelling*" under S no 12 of the Service Exemption Notification is not satisfied as there lies no restriction of preparing own food, stay of family members and the food is not provided by the owners in residential dwellings. Such is not the case in the current hostel service provided by the Applicant.

Further noted, considering the clarification given in **Circular No. 32/06/2018-GST dated February 12, 2018**, the hostel facility provided to students can be included in the provisions of S no. 14 of the Services Exemption Notification which mentions Services by hotel, inn, etc., by whatever name called for residential or lodging purposes, thereby making the same exempt from taxes.

23. Advance ruling application not maintainable if DGGI inquiry initiated prior to application filing

Case Name : **In re V.L.Traders (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/49/2021

Date of Judgement/Order : 27/08/2021

i. the applicant has suppressed the material facts that DGGI had initiated inquiry with respect to the same Questions raised in the subject Application and that the proceedings initiated by DGGI vide relevant sections of CGST Act was initiated prior to filing of subject Advance Ruling application.

ii. The applicant had been issued Summons vide Section 70 CGST Act, prior to the filing of subject Application.

iii. We are of the view that the usage of the words "any proceeding" in the proviso to Section 98(2) of the CGST Act will encompass within its fold the following investigation proceedings launched by the DGGI under Section 70 of CGST Act. The applicant has contravened the provision of Section 98(2), CGST Act, in so much that it mis-declared that it had no proceedings pending under any provisions of the Act, with an intention to fraudulently obtain Ruling and frustrate the proceedings initiated by DGGI, for the Question raised in the subject Application dated 5-3-20 and issue for which

Investigation was initiated vide Section 70(1) of **CGST Act, 2017** by DGGI are the same.

iv. We hold that investigation initiated against the applicant is a proceeding within the ambit of Section 98 (2) of CGST Act.

v. The application is hereby **rejected** as non-maintainable and inadmissible.

24. E-Commerce Operator for booking of cabs liable for GST registration

Case Name : **In re Gensol Ventures Pvt.Ltd. (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/48/2021

Date of Judgement/Order : 27/08/2021

1. Whether the applicant is liable to be registered and classified under the Category of E-Commerce Operator?

M/s Gensol is an e-commerce operator and shall be liable to be registered.

2. Whether the applicant is liable to pay or discharge Goods & Service Tax(GST) in accordance to Section 9(5) of the CGST Act, 2017“

M/s Gensol is liable to pay GST as per Section 9(5)CGST Act.

3. If answer to Q 2 is yes, what shall be the value of supply for passenger transportation service on which Goods and Service Tax(GST) be charged?

The value of supply for passenger transportation service shall be the net amount arrived after the deduction of discount (to be provided by M/s Gensol to the customer) from the gross value.

4. What shall be Rate of Tax and Service Accounting Code for the services supplied in terms of passenger transportation service under Goods & Service Tax Law?

The SAC for subject supply is 996412. The GST shall be leviable @ 5% (2.5% CGST + 2.5% SGST) subject to the fulfilment of the condition at Entry No.8 (ii) of cited **Notification 11/2017-CT(R) dated 28-6-2017**.

25. Transfer on a going concern is supply of service & exempted from GST

Case Name : **In re Airport Authority of India (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/46/2021

Date of Judgement/Order : 27/08/2021

1. Whether the transfer of business by the AAI to the M/s. Adani Ahmedabad International Airport Limited be treated as Supply u/s. 7 of the Central Goods and Service Tax Act, 2017 (“CGST”) viz-a-viz Gujarat State Goods and Service Tax Act, 2017 (“GSGST”)?

The Subject Supply of 'Transfer of Going Concern service' is Supply under Section 7 CGST Act.

2. Whether the transfer of business by AAI to M/s. Adani Ahmedabad International Airport Limited is treated as supply as going concern and covered in clause 4 of schedule II of CGST Act viz-a-viz GSGST?

- i. The subject Supply is 'Transfer of Going Concern Service'.
- ii. Schedule II (4) CGST Act refers to activities or transactions relating to **Transfer of business assets** to be treated as supply of goods or supply of services. Therefore, in present case, there arises no need to examine Schedule II(4) CGST Act.

3. Whether the transfer of business by AAI to M/s. Adani Ahmedabad International Airport Limited is covered under the Entry No. 2 of the exemption notification No 12/2017 – Central Tax (Rate) dated 28-06-2017 issued u/s Section 11 of CGST Act 2017?

The subject Supply is covered at Entry No. 2 of notification No 12/2017 – Central Tax (Rate) dated 28-06-2017

4. If the answer is negative, then whether GST is leviable on the transfer of Existing assets ("RAB"), Aeronautical Assets, non-aeronautical assets and Capital work in progress by AAI to the M/s. Adani Ahmedabad International Airport Limited?

Ruling not required, in pursuance to Ruling at serial no 3.

5. Whether the aforesaid transfer of asset be treated as services and the classification for the same?

Ruling not required, in pursuance to Rulings at serial no 2 & 3.

6. Whether the concession fees paid by M/s. Adani Ahmedabad International Airport Limited to AAI be treated as consideration for transfer of business?

Concession Fee is a part of the Consideration paid by SPV to AAI in subject matter.

7. Whether GST is applicable on Monthly/Annual concession fees charged by the AAI on the M/s. Adani Ahmedabad International Airport Limited?

The consideration for the subject Supply is exempt from GST vide Entry No. 2 of *Notification No.12/2017 – Central Tax Rate dated June 28, 2017.*

8. Whether GST is leviable on the invoice raised by AAI for reimbursement of the salary/ staff cost on M/s. Adani Ahmedabad International Airport Limited? If yes at what rate?

Ruling same as at Sr no 7. Further, the issue of reimbursement of staff cost has arisen in pursuance to the terms of subject Contract dated 14-2-20 wherein the 'the Supply of Transfer of Going concern Service' is exempt from GST. The contract is for 'transfer of going concern service', therefore the consideration / reimbursement of cost is exempt from GST.

9. Whether GST is applicable on the reimbursement claimed of Municipal tax, Property Tax and Water Charges by the AAI from M/s. Adani Ahmedabad International Airport Limited? If yes at what rate?

Ruling same as at Sr. No 7. Further, the issue of reimbursement has arisen in pursuance to the terms of subject Contract dated 14-2-20 wherein the 'Supply of Transfer of Going concern Service' is exempt from GST. The contract is for 'transfer of going concern service', therefore the consideration / re-imbusement of cost is exempt from GST

10. Whether GST is applicable on transfer of spares and consumables for consideration by the AAI to M/s. Adani Ahmedabad International Airport Limited? If yes at what rate?

GST on proposed supply of spares and consumables by AAI to SPV, these supplies being outside the scope of subject contract, is leviable to tax as per law, as discussed at paragraph 27.3 of this Ruling.

26. Partially Coated Polyester Fabric (Knitted or Woven) classifiable at HSN 5903

Case Name : **In re Supercoat India (Trade Name) Ayush Baid (Legal Name) (GST AAR Gujarat)**

Appeal Number : Advance Ruling No. GUJ/GAAR/R/45/2021

Date of Judgement/Order : 27/08/2021

- i. The applicant supplies partially coated Polyester fabric (knitted/woven) or partially coated fabric.
- ii. Said fabric is **scattered with micro-dot printing**.
- iii. The subject goods are used as **interlining fabric**.
- iv. The resultant fabric is **partially coated on one side** with scattered **dots and the dots are elevated in a manner that the fabric** can be attached to another fabric which is used for interlining.

The issue before us is the Classification of subject goods. We refer to HSN 5903, to examine its applicability in subject matter.

AAR find that the subject goods have passed all the conditionality's placed in the HSN 5903 Chapter Heading description and the Chapter Notes. AAR find that the subject goods have satisfied the guidelines specified in the Explanatory Notes to HSN 5903.

(IV) COURT ORDERS/ JUDGEMENTS

1. Mis-Match of Invoice details with details available with mobile Squad violates Rule 138: HC

Case Name : **Ranchi Carrying Corporation Vs Additional Commissioner Grade-2 And 2 Others (Allahabad High Court)**

Appeal Number : Writ Tax No. 403 of 2021

Date of Judgement/Order : 02/08/2021

By the impugned orders the authorities below have rejected the claim of the petitioner on the ground that the details mentioned in the invoices at serial nos.1 to 9 are not matching with the verifying sheets available with the mobile squad. This much is also clearly reflected from the record that the petitioner has transported the goods in violation of Rule 138. The findings have been recorded by the authorities below that it was fraudulently done and the penalty was also levied on the petitioner.

Learned counsel for the petitioner could not point out any error in the impugned orders. The Court does not find any merit in the writ petition. The writ petition is dismissed accordingly.

2. HC directs department to decide on GST refund applications of Medical Bureau

Case Name : **Medical Bureau Vs Commissioner of Central Goods And Service Tax (Delhi High Court)**

Appeal Number : W.P.(C) 7475/2021 & CM APPL. 23486/2021

Date of Judgement/Order : 02/08/2021

Medical Bureau (**Petitioner**) filed a writ petition seeking directions to the Commissioner of Goods and Services Tax (**Respondent**) to refund to the former, an amount of Rs. 1,35,30,255/- lying as unutilized input tax credit during the period spanning October 2017 to July 2018, along with interest.

The Petitioner contended that the present claims arose out of the failure of the Respondent to issue refund due to the Petitioner, owing to the exports made by the Petitioner, which qualified as 'Zero-rated supplies', the refund of which was covered under Section 16 (3) of the **Integrated Goods and Services Tax Act, 2017 (IGST Act)** read with Section 54 of the **Central Goods and Services Tax Act, 2017 (CGST Act)**.

The Hon'ble High Court of Delhi on finding that the relevant refund applications had not yet been disposed of, directed the original Adjudicating Authority to decide the above matter within a period of six weeks in accordance with the law.

3. No Demand can be raised during investigations: Telangana HC

Case Name : **Deem Distributors Private Ltd Vs Union of India (Telangana High Court)**

Appeal Number : WP 7063/2021

Date of Judgement/Order : 03/08/2021

In [**Writ Petition no. 7063 of 2021**], Telangana HC in its **order dated August 03, 2021** held that, M/S Deem Distributors Private (**the assessee/ the petitioner**) cannot be asked to make payment towards tax, interest or penalty while investigation is underway.

The petitioner, being an assessee under Telangana GST Act, 2017, **CGST Act, 2017**, and **IGST Act, 2017** is issued a letter specifying, Input Tax Credit (ITC) availed by them are on the basis of fake invoices issued by certain fictitious suppliers/firms. The letter further specifies that, ITC availed by the petitioner is in a fraudulent manner without receiving any material, and the **petitioner was requested to reverse ITC on such invoices.**

In the instant case, no doubt, summon has been issued to the Director of the petitioner firm under Section 70 of the CGST Act to give evidence / depose statement and to produce certain purchase orders and to appear. Admittedly, investigation against the petitioner is underway and not complete, and no notice u/s 74(1) of the Act has been issued to it.

The HC observed that, **Section 74(5) of the CGST Act gives an option to the taxpayer to make any payment, if he is so opts, but it does not confer any power on the respondents (authorities) to make a demand** as if there has been a determination of liability of the assessee and demand tax along with interest and penalty.

Consequent to the observation made, the HC directed the respondents to refund the amount already collected from petitioner along with interest @7% from the date of receipt till the date of refund.

4. GST: Bank account cannot continue to be attached after one year

Case Name : **Implement Impex Private Limited Vs State of Maharashtra (Bombay High Court)**

Appeal Number : Writ Petition No. 3710 of 2021

Date of Judgement/Order : 04/08/2021

The grievance that has been voiced in this writ petition is that despite lapse of more than a year from the date provisional attachment of the petitioner's bank account was ordered, the Joint Commissioner has not lifted such order of provisional attachment.

In ground (I), urged in support of the relief claimed in this writ petition, the petitioner has urged that by operation of law, the provisional attachment order ceases to exist.

In the reply-affidavit, the Joint Commissioner has very conveniently not adverted to the legal issue raised by the petitioner, obviously because he had no answer.

HC allowed the writ petition by directing the Joint Commissioner to immediately communicate to the petitioner's banker that the attachment order ceases to be operative and that the petitioner may be permitted to operate the relevant bank account which was under attachment.

5. GST Registration Cancellation is impermissible for reasons beyond statutory provisions

Case Name : **F R Trade Links Vs. State Tax Officer (Kerala High Court)**

Appeal Number : WP(C) No. 28917 of 2020

Date of Judgement/Order : 05/08/2021

Disposing a Writ Petition (Civil) in **F.R Trade Links Vs. The State Tax Officer & Ors (WPC No. 28917 of 2020 dated: 05.08.2021)** the Hon'ble High Court of Kerala has declared that the proper officer is not vested with any power to cancel registration certificate of a dealer, for reasons not prescribed U/s. 29 (2) of the **Central Goods & Services Tax Act/State Goods & Services Tax Act, 2017 (CGST Act & SGST Act).**

Facts of the case

The registration certificate granted under the provisions of the CGST/SGST Acts to a dealer namely, F.R. Trade Links, was subsequently cancelled. The relevant portion of the show cause notice issued by the proper officer, as extracted in the judgment is as below;

"Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

As per the intelligence squad report your business place is situated in the first floor of the three storied building which is partially completed with structure only and no building number affixed by the local authority.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice."

Even though the petitioner has rebutted the imputations by filing a detailed reply, the registration certificate was cancelled for the reasons as extracted from the order itself, as shown below;

"1. As per the new registration case verification report submitted by the inspector of this office dated 14/10/2020 and also the report of ASTO, Squad2, Intelligence wing, Kottayam at Pala dated 11.08.2020, it is observed that F R TRADE LINKS, 6/580-E, THEKKEMURANJOOR BUILDING, ERATTUPETTA – VAGAMON ROAD, ERATTUPETTA, Kottayam, Kerala, 686 121 with GSTIN 32CMEPR0466B1ZG is not functioning in the address given in the registration application at the time of registration. They also reported that, the business place is situated in the first floor of the three storied building which is partially completed with structures only. Said business place is an open space in pillars, having no partition walls or shutter. No

building number is seen affixed by the local authority and no stock in the business premises. There is only a banner with phone number & GSTIN in the wall of three storied building. In the circumstances your contention against the SCN issued on 29/09/2020 is not acceptable. Hence the registration is canceled U/s.29(2) of the CGST/SGST Act 2017.”

Upon receipt of the said cancellation order the petitioner has filed an application U/s. 30 of the CGST/SGST Acts for revocation of the cancellation of Registration Certificate, which was also rejected. Thus aggrieved, the dealer approached the Court by a writ petition.

Held by the Court

√ The registration of the petitioner has been cancelled invoking the provision of Sub Section (2) of Section 29 of the CGST Act, 2017, which reads thus:

”29. Cancellation or suspension of registration: (1) xxxxxxxxxxxxxx

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under Section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under Sub Section (3) of Section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts;

Provided that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Provided further that xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.”

√ It is seen from the foregoing provision of law that the proper officer can cancel registration of a person for the reasons stated in Sub Section (2) of Section 29 of the CGST Act. However, in the present case the proper has failed to establish that the petitioner had contravened any of the provisions of the Act or Rules made thereunder, either in the show-cause notice issued or in the order of cancellation, impugned herein. Out of the five grounds arrayed U/s. 29(2), sub clause [e] has some remote relevance with the present situation (registration has been obtained by means of fraud, willful misstatement or suppression of facts). However, the same is also not seen proved herein.

√ The only reason, in the instant case, for cancellation of the registration is that, business place is situated in a building which is partially completed with structures only and no building number is affixed by the local authority. In fact, this allegation is totally insufficient for the purpose because Sub section (2) of **Section 29** does not envisage

the contingency of situation of place of business in a partially completed building having no building number affixed on it by the local authority. Consequently, the impugned order of cancellation of registration cannot stand in the scrutiny of law.

√ That apart, as per Rule 25 of the CGST/SGST Rules, where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before grant of registration, or due to any other reason after the grant of registration, the proper officer may get verification of the place of business, in the presence of the said person, done. Thereafter, the verification report along with the other documents, including photographs, are required to be uploaded in FORM GST REG 30 on the common portal within a period of fifteen working days following the date of such verification. However, in the present case, the proper officer has not complied with this procedure but heavily relied on the report of another officer for cancellation of registration.

√ In the result, the writ petition is allowed, the impugned orders are quashed and set aside. Consequently, the respondents are directed to restore the registration of the petitioner.

Conclusion

◆ In the modern era, it is not desirable to deny or cancel registration under the GST laws relying on hyper technical grounds or on flimsy allegations. Denial of registration to a bonafide person is not at all a way to safeguard the interests of the Revenue. The GST Acts are being enforced by two powerful authorities –viz State GST Departments and the Central Excise & Customs, both are having sufficient infrastructure, enforcement machinery, manpower and advanced tools to curb any kind of tax evasion now a days. As such they are free to track the any dealer to ascertain the bonafides of his business activities. They could make good any leakage in revenue from any dealer or could detain, arrest or cancel the registration when and where the law requires so.

◆ Destroying startup businesses ventured by young entrepreneurs at its threshold on certain hyper technical grounds, happened due to the inexperience, is not fair but unjust and unkind. Now, all our Governments, of Central as well as of various States, are wholeheartedly promoting all startups in our country to revive our economy, particularly in this pandemic situation and also to curb the problem of large scale unemployment.

◆ Moreover, it is held by the Hon'ble High Court of Kerala in **Y. Mustaffa, Kanakom Traders Vs. Addl: S.T.O & Another [2002] 10 KTR 192 [Ker]** that *“Registration is a regulatory measure and denial of registration in almost all cases will lead to a situation that a person is prevented from attending a profession or trade. The pre-conditions are that the application has to be in order and the particulars correctly supplied. That a person is not having a manufacturing unit, or that he had affiliations with another person, or that he has no sufficient paraphernalia for carrying out the business, are insufficient to be projected as reason for denying him registration. It may even go to violate the fundamental rights of a person guaranteed under Article 19 of the Constitution of India”*

◆ In **Sri Sundha Metals V. CCT, Chennai & Another [2013] 57 VST 73 [Mad]** the Hon'ble High Court of Madras has warned the authorities that the Revenue should not obstruct the assesses from carrying on the business at every stage with the tax collector's point of view, but would deal with the matter from the point of view of the assessee.

6. Uttarakhand HC ruling on reversal of ITC on non deposit by supplier

Case Name : **Narula Menthol Vs UOI & Ors. (Uttarakhand High Court)**

Appeal Number : WPMS No. 1476 of 2021

Date of Judgement/Order : 06/08/2021

1. Hon'ble Uttarakhand High Court has quashed the demand intimation letters issued by the GST Dept. which directed the Petitioner to reverse the ITC amounting to Rs. 1.75 Cr on the basis that the supplier from whom the goods were purchased, has failed to deposit the tax to the Govt.

2. The Hon'ble HC has held that the provisions stipulated under section 73/74 read with rules should be mandatorily followed and no recovery can be done by any other means.

3. It is only an intimation of demand and hence there is no imminent threat, which is being faced by the petitioner of the recovery of the amount.

4. If at all the respondents intend to take any action for the purposes of recovery of the Input Tax Credit, they would proceed with exclusively in accordance with law and particularly in accordance with the procedure provided under Sections 73 and 74 to be read with the Rules.

7. Gauhati HC rejects Bail in GST Evasion case of Rs. 22.77 Crore

Case Name : **Subhash Kumar Singh Vs State of Assam and Anr. (Gauhati High Court)**

Appeal Number : Bail Appeal No. 1631/2021

Date of Judgement/Order : 06/08/2021

It has been, *prima facie*, found that the evasion of tax was more than Rs. 5 crores which necessitated the arrest of the Petitioner in compliance of the provision of Section 132 (1) (i) of the Assam GST Act, 2017. Hence, the argument put forth by the learned counsel for the Petitioner that the arrest of the Petitioner is illegal and arbitrary is devoid of any merit. This Court has also taken note of the fact, as appears from the materials in the case record, that the Petitioner evaded tax worth more than Rs. 5 crores and the investigating agency has collected materials to show that the Petitioner is the originator of the fake invoices, etc and direct documentary evidence is there in the record about the active involvement of the Petitioner in tax evasion. The investigation of the case is still continuing in order to ascertain the location of the godown and to examine other related witnesses and also for calculation of interest in

view of the revised notification (the notification is specifically referred to in para 34) regarding rate of interest which keeps varying from time to time. Moreover, if the Petitioner is enlarged on bail at this stage, he is more than likely to hamper the investigation and/or tamper evidence which may likely to compromise with the entire investigation.

Before parting with the record, I wish to make it clear that any observations/views/opinion expressed in this order are only for the limited purpose of deciding this bail application and shall not impact the case in the trial or in any other proceeding arising out of this case.

In view of the discussions above, and taking into account, the fact that to carry out further investigation as per the observations made by this Court in the later part of Para 35 as regards requirement of further investigation, this Court is not inclined to grant bail to the Petitioner, at this stage.

8. HC Grants anticipatory Bail in Rs. 56 Crore alleged GST Evasion case

Case Name : **Saurav Gupta Vs CGST (Delhi High Court)**

Appeal Number : Bail Appln. 2815/2021

Date of Judgement/Order : 02/08/2021

1. The present applications have been filed under **Section 482** Cr.P.C. on behalf of the applicant seeking exemption from filing the certified copy of the annexures and duly affirmed affidavits.
2. Insofar as the filing of the certified copy of the annexures is concerned, the same is allowed subject to just exceptions.
3. So far as the filing of duly affirmed affidavits is concerned, the same is also allowed, subject to the applicant filing the same within a period of two weeks from resumption of physical Courts.
4. The applications stand disposed of.

9. Provisions of Section 16(2)(c) of CGST Act challenged before Tripura HC

Case Name : **Sahil Enterprises Vs Union of India (Tripura High Court)**

Appeal Number : W.P. (C) No. 531 of 2021

Date of Judgement/Order : 09/08/2021

Hon'ble High Court of Tripura issued notice for the limited purpose of removing attachment of **Input Tax Credit (ITC)** ledger of assessee.

Facts:

Sahil Enterprises (**Petitioner**) has submitted that their ITC account is attached by Department on the ground that, supplier has not deposited the taxes and hence the Petitioner was not eligible to ITC in terms of Section 16(2)(c) of the **Central Goods**

and Services Tax Act, 2017 (CGST Act). The Petitioner has challenged the provisions contained under Section 16(2)(c) of the CGST Act, which states that, registered person shall be entitled to ITC only if the tax charged in respect of such supply has been actually paid to the Government by the supplier either in cash or through utilisation of ITC admissible in respect of the said supply.

The Petitioner contends that after paying taxes to the seller at the time of purchases, the Petitioner has no control over the seller to ensure that such tax is deposited with the Government. Denying ITC to the Petitioner where they have already paid tax would amount to double taxation.

Further, the provision contained in Section 16(2)(c) of CGST Act is in violation of Articles 14 [i.e., the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India], 19(1)(g) [i.e., all citizens shall have right to practice any profession, or to carry on any occupation, trade or business] and 300A [i.e., persons not to be deprived of property save by authority of law] of the Constitution of India.

Held:

The Hon'ble High Court of Tripura in ***Re: Sahil Enterprises v. Union of India WP(C) NO. 531 Of 2021 dated August 09, 2021*** held that, the issue require consideration. Since legislation framed by the Parliament is under challenge, issued notice to the learned Attorney General.

Learned Asstt. Solicitor General and learned counsel Mr. Paramartha Datta waived notice on behalf of Respondents. For the limited purpose of considering the Petitioner's request for interim relief for removing attachment of the ITC ledger, issued notice returnable on August 23, 2021.

10. Lack of opportunity of hearing results in stay of Bank Attachment & Cancellation of Registration

Case Name : **Cheema Local Carrier & Construction Vs Assistant Commissioner SGST (Chhattisgarh High Court)**

Appeal Number : WP(T) No. 51 of 2021

Date of Judgement/Order : 09/08/2021

Petitioner has filed the current writ petition challenging three issues:

- Provisional attachment of bank account,
- Cancellation of registration certificate under Goods and Services Tax (**GST**); and
- Input Tax Credit (**ITC**) being blocked.

The Petitioner contended that Rule 21 of the **Central Goods and Services Tax Rules, 2017 (CGST Rules)**, mandates the ground of cancellation of registration must exist, however the Show Cause Notice (**SCN**) issued did not mention the contraventions which the Petitioner must have made which resulted in cancellation of registration.

Also contended that under Rule 159(5) of the CGST Rules, when the objection is filed against attachment, the Commissioner after affording an opportunity of being heard may release the said property/ account. In the current case, no hearing was provided to the petitioner, which resulted into closure of the business.

The Hon'ble High Court of Chhattisgarh, relied on the case of ***Valerius Industries v. Union of India [Special Civil Application No. 13132 of 2019 dated July 31, 2019]*** which stated that there has to be some relevance to establish the sufficiency of ground and to state an opinion by the authority in this regard of attachment of a like nature.

It further noted, if the reply is not filed, the attachment order of the bank account and cancellation of registration does not show that what grounds were existing to pass such order.

Additionally, it directed the order dated February 17, 2021 directing the attachment of Bank Account along with the order for cancellation of registration dated March 26, 2021 shall remain stayed, till the next date of hearing.

11. Supreme Court modifies High Court's Order by granting appropriate authority to issue fresh SCN

Case Name : **State of Jharkhand & Ors. Vs Bihar Sponge Iron Ltd. (Supreme Court of India)**

Appeal Number : Petition(s) for Special Leave to Appeal (C) No(s). 14956/2020

Date of Judgement/Order : 09/08/2021

Current appeal has been filed against the *Order SLP(C)No. 14956 of 2020 dated October 23, 2019* by the Hon'ble Jharkhand High Court (**Jharkhand HC**) which quashed the Show Cause Notice (**SCN**) on the grounds of it violating Section 70(5)(b) of Jharkhand Value Added Tax Act, 2005 (**JVAT Act**) and not being in conformity with the provisions of it.

The Hon'ble Supreme Court allowing the current appeal by the Revenue observed that the contention put forth by M/s. Bihar Sponge Iron Ltd. ("**the Respondent**") that the Jharkhand HC decided the matter in favour of Respondents was not correct. The Apex Court noted that the contention is based upon incorrect reading of the Jharkhand HC's Order, observing that the judgment revolved around the factum of validity of the SCN, not more and not less.

Modifying the judgment put forth by the HC, the Supreme Court held that the HC should have kept the option open to the competent authority to issue a fresh SCN in conformity with the provisions of the JVAT Act and Rules.

Thus, directed the appropriate authority to issue a fresh SCN while being in continuation with action initiated in the Original SCN.

12. GST Evasion: Bombay HC refuses Anticipatory Bail to accused

Case Name : **Premprakash laxminarayan bansal Vs State of Maharashtra (Bombay High Court)**

Appeal Number : Anticipatory Bail application No.1800 of 2021

Date of Judgement/Order : 10/08/2021

1. Apprehending arrest in connection with Crime No. 0178/2021 registered with APMC Police Station, Navi Mumbai for the offences punishable under Sections 420, 406 and Section 34 of the Indian Penal Code, the applicant seeks pre-arrest bail.

2. The subject crime was registered at the instance of one, Mahendra Pukhraj Parmar, owner of M/s. Esjaypee Mercantile Global Private Limited. This company is engaged in the trading of dry-fruits and spices on wholesale basis. Co-accused, Sarfaraz Jaliyawala, a broker in Agricultural Produce Marketing Committee (APMC) is known to the informant. In March, 2020, co-accused Sarfaraz introduced the applicant to the complainant and informed him that applicant requires, large quantities of cloves. Applicant is trading in spices under the name and style of M/s. Bansal Traders. Both Sarfaraz and applicant, allegedly agreed to make payments for the goods within few days after delivery. At the relevant time, complainant's goods were stocked at, All India Storage and Warehousing situated at Navi Mumbai. The complainant sent an email to the Cold Storage and Warehousing on 2nd March, 2020 asking the Warehouse Manager to transfer 100 bags of cloves worth Rs.22,90,842/- to applicant's firm and vide another email dated 3rd March, 2020 asked the Manager to transfer 200 bags of cloves worth Rs.51,30,777/- to applicant's firm. Pursuant to the emails, Cold Storage and Warehousing service provider, transferred 300 bags of cloves in the name of applicant's firm, M/s. Bansal Traders. On 4th March, 2020, 150 bags of cloves were delivered at Godown No.G-39 of Sarfaraz, spice market premises. On 5th March, 2020, the second consignment of 150 bags of cloves were delivered to Sarfaraz at his godown. Soon thereafter, complainant has drawn the invoices. He filed the GST returns. Since the complainant did not receive the payment, notice was issued to the applicant and the co-accused, Sarfaraz and were called upon to make the payment. Applicant replied the notice through his Advocate stating that, he had not received the goods from the complainant. After which on a written complaint, crime in question came to be registered on 8th May, 2021.

3. Mr. Desai, learned Counsel for the applicant, has denied the entire transaction and submitted that, applicant had never entered into transaction with the complainant, nor applicant availed **Input Tax Credit**. Mr. Desai, submitted that applicant has raised a grievance with the GST Officer thereby bringing to his notice, the fraudulent invoices were raised by the complainant. Mr. Desai invited my attention to a Certificate issued by M/s. Rahul Pramod & Co. Chartered Accountants, to submit that, M/s. Bansal Traders has not availed the credit of CGST and SGST in GSTR-9 of Financial Year 2019-20 filed on 5th February, 2021 from the available credits in GSTR-2A returns. Mr. Desai, submitted that, neither the delivery challans nor the invoices were ever acknowledged or received by the applicant and a false case has been filed against him. Mr. Desai, further submitted that, custodial interrogation of the applicant is not required since the prosecution is largely relying on the documentary evidence. It is submitted that, applicant is a permanent resident of Mumbai and his presence for

investigation and trial can be secured by imposing appropriate conditions. On these grounds, the applicant seeks bail.

4. Mr. Dedhia, learned APP, on the other hand, would submit that, statement of the Warehouse Keeper, Mr. Mishra, and the relevant documents collected in the course of investigation, indeed show that, after receiving the stock transfer request from the company of the complainant, clove bags were transferred from Lot No.1333 in the name of M/s. Bansal Traders, vide receipt No. 2667. The statement of Mishra, shows that, Keshav Prem Prakash Bansal, son of the applicant had called him on mobile asking him to deliver 300 bags of cloves in vehicle Nos. MH-04-DS-4070 and MH-04-AL-9188. Owner of these vehicles, Mr. Yadav, told the police that, on 4th March, 2020 of M/s. Bansal Traders called him on mobile and asked to make available two vehicles for transporting 300 bags of cloves. The statements of drivers, reveals that, on 4th March, 2020 and 5th March, 2020, they had delivered 300 bags (150 +150) of cloves at Godown G-39 at spice market, Navi Mumbai. Mr. Dedhia, submitted that the Investigating Officer called for the information from the Assistant Commissioner, (Anti Evasion), CGST and C.Ex, Belapur in relation to the invoices raised by the complainant to ascertain whether the applicant has availed the Input Tax Credit (ITC) on these invoices. Mr. Dedhia, has placed before me response dated 1st September, 2020 received by the Investigating Officer from the office of the Assistant Commissioner, (Anti Evasion), CGST & C.Ex, Belapur. I have perused it.

5. Para-2 of the response reads as under :

“Also, M/s. Bansal Traders having GSTIN-27AAAPB332Q1ZG registered under CGST & C.Ex., Mumbai East Commissionerate and falling in our jurisdiction, it is observed that the tax payer has availed the Input Tax Credit (ITC) of CGST of Rs.1,76,705.2/- and SGST of Rs.1,76,705.2/- against the Invoices no.EMGPL/MH/19/106 dated 2.03.2020 and EMGPL/MH/19/107 dated 03.03.2020 issued by M/s. Esjaypee Mercantile Global Pvt. Ltd. A photo copy of the GSTR 2A enclosed of the said tax payer is enclosed herewith. As regards outward supplies made by M/s. Bansal Traders, please find enclosed herewith a copy of the Form GSTR-I, returns filed by the said tax payer during the period from March 2020 to June 2020 as it is not possible to ascertain at our end to which customer the impugned goods have been supplied.”

6. It may be stated that in terms of the GST, Input Tax Credit Rules, that for availing the Input Tax Credit Invoices issued by the supplier of the goods is a mandatory document. Herein, the response of the Assistant Commissioner, CGST in clear terms says, that M/s. Bansal Traders has availed the ITC against Invoices No.106 and 107. Besides, the statements of the Manager of the Warehouse, owner of the trucks and the statements of drivers, prima-facie, show that goods were delivered at the request of M/s. Bansal Traders to and at the godown premises of Sarfaraz. In consideration of the facts of the case and the evidence collected in the course of investigation, I have reason to believe that, goods were supplied by the complainant to the applicant. In my view, no case is made out for granting pre-arrest protection to the applicant. The application is rejected.

7. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of rejecting bail only and the same shall not, in any way, influence the trial in other proceedings.

13. TNVAT: No reversal of ITC for input loss during manufacturing

Case Name : **R. K. Ganapathy Chettiar Vs The Assistant Commissioner (ST) (Madras High Court)**

Appeal Number : W.P. Nos. 14166 & 14175 of 2021

Date of Judgement/Order : 11/08/2021

In that case, a certain amount of input had been utilised by the assessee, whereas the input in the finished product was marginally less. VAT department proceeded to reverse the cenvat credit on the difference between the original quantity of input and the input in the finished product.

The Bench, noticing at paragraph 13 that some amount of consumption of the input was inevitable in the manufacturing process, held that cenvat credit should be granted on the original amount of input used notwithstanding that the entire amount of input would not figure in the finished product. They state at paragraph 13 as follows:

13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'

In the light of the discussion as above, I am of the view that the reversal of ITC involving Section 17(5)(h) of the Tamil Nadu Value Added Tax Act, 2006 by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).

14. HC stays order Levying GST on commission & not on bet amount In Horse Races

Case Name : **Union of India Vs Bangalore Turf Club Limited (Karnataka High Court)**

Appeal Number : WA 727/2021

Date of Judgement/Order : 12/08/2021

Karnataka High Court Stays the Judgment of Single Judge in which he held that Goods and Service Tax (**GST**) cannot be levied on the entire bet amount received in the totalisator as it would take away the principle that tax can only be levied on consideration received under the **Central Goods and Service Tax Act, 2017 ("CGST Act")**. The Court also declared Rule 31A(3) of the **Central Goods and Service Tax Rules, 2017 ("CGST Rules")** and Karnataka Goods and Services Tax Rules, 2017 ("**KGST rules**") as *ultra virus* of the CGST Act.

15. HC directs Commissioner for fixation of a special rate to value added to manufactured goods

Case Name : **Jyothy Labs Ltd. Vs Union of India (Gauhati High Court)**

Appeal Number : Case No. WP(C)/3569/2021

Date of Judgement/Order : 12/08/2021

In the peculiar facts and circumstances of the present case, where the necessity for making of a request for fixation of the special rate for the value addition to the manufactured goods may not have occasioned earlier, we deem it appropriate that the Principal Commissioner of GST, Guwahati decides the application of the petitioner dated 18.05.2020 on its own merit as regards the claim for fixation of a special rate to the value addition to the manufactured goods of the given financial year. We also take note of that in the earlier order dated 24.03.2021 in WP(C) No.1644/2021, it was an agreed stand of the respondent GST Department that the application of the petitioner requesting for fixation of a special rate on the value addition to the manufactured goods would be considered and the possibility that the application would be rejected on the ground of it having not been submitted prior to 30th September of that given financial year was not raised when the said order was passed by the Court.

If any such apprehension would have been expressed, the matter possibly would have been decided in the earlier writ petition itself. From such point of view also, on the principle of constructive res-judicata, the ground for rejecting such application for the reason that it was not submitted within 30th September of the given financial year would perhaps be not available for the respondent authorities for rejecting the application.

In the circumstance, we direct the Principal Commissioner, GST, Guwahati to consider the application of the petitioner dated 18.05.2020 seeking for fixation of a special rate to the value addition to the manufactured goods of the given financial year and decide the same as per law.

16. Alleged Wrongful input tax credit : HC dismisses Plea for anticipatory bail

Case Name : **Hema Garg and another Vs State of Haryana and another (Punjab & Haryana High Court)**

Appeal Number : CRM-M-30676-2021 (O&M)

Date of Judgement/Order : 12/08/2021

It is submitted that in the instant case, the petitioners are praying for anticipatory bail, in response to the notices issued by the respondents-Department, just in the shape of demand in form GST DRC-01A with an advice to pay the amount of tax, as the petitioners have liability of paying tax of more than Rs.36.00 crores, which they are evading on the basis of certain fake documents. The petitioners have failed to appear before the authorities, which has issued the notices, as they are involved in availing and utilizing wrongful input tax credit on the strength of invoices and E-way bills, which are issued from the non-existent and suspicious firms and further passed on input tax

credit to various taxpayers throughout the country, thereby causing huge loss to the State Exchequer.

For the reasons recorded above and finding no merit in both these petitions, same are dismissed.

17. P&H HC allow Spicejet to pay GST dues in instalment

Case Name : **Spicejet Limited Vs Excise and Taxation Officer cum Proper Officer (Punjab and Haryana HC)**

Appeal Number : CWP-14892-2021 (O&M)

Date of Judgement/Order : 17/08/2021

Current writ petition has been filed by SpiceJet Limited (**Petitioner**) to quash the *Notice bearing No. 1273, ETO/W-1/GGM (North) dated July 27, 2021* which provided to the Petitioner to discharge its statutory tax dues.

The Excise and Taxation Department of Haryana sent a Show Cause Notice ("**SCN**") mentioning that recovery proceedings would be initiated against the Petitioner if it does not pay its tax dues after already having been sent a notice for the same.

The Petitioner contended that the operations were curtailed not only because of the impact of Covid which led to acute cash crunch for the company, but also control from the side of the Government due to the Pandemic. It prayed that the department provide an installment facility to clear the tax liabilities.

The Hon'ble High Court of Punjab and Haryana stated that it considers the prayer of the Petitioner to be a fair one. Therefore, it directed the Department to decide the issue on the basis of representation or letter by passing a speaking order on the same.

18. Digitalization is to convenience tax payers & not to harass them; HC allows Transitional Credit

Case Name : **BMW India Financial Services Pvt. Ltd. Vs Union of India (Telangana High Court)**

Appeal Number : Writ Petition No. 9166 of 2020

Date of Judgement/Order : 18/08/2021

In the facts of the present case, even though the petitioner is in receipt of an acknowledgment number and also an email confirming successful submission of the Form GST TRAN-1 electronically, the information furnished thereunder is not transitioned into online electronic credit ledger of the petitioner maintained on the portal, which admittedly is in the control of the respondents. The respondents instead of taking steps to set-right their house in order, are alleging negligence on the part of the petitioner. The said action of the respondents is a highly reprehensible and only goes to show the high-handed attitude and approach of the respondents in dealing with the taxpayers, forgetting the fact that no tax can be collected without authority of

law, which implies that the respondents grant the benefit / concession to which a tax payer is entitled to otherwise. By denying the transitional credit as in the present case, the respondents are compelling the tax payer like petitioner to pay tax in full without availing the benefit of adjustment / debit from its credit ledger.

It is also to be seen that though the respondents filed a lengthy counter-affidavit, it neither denied or disputed the ARN number generated from their systems and the email received by the petitioner of successful filing of GST TRAN-1 Form. In the absence of any denial to the ARN number or email sent to the petitioner, it is not open for the respondents now to turn around and allege the petitioner to be a non-filer. Further, no explanation is offered by the respondents as to which transaction the ARN number referred to by the petitioner is relatable to, if under the said ARN number, the petitioner has not filed Form GST TRAN-1 on 27.12.2017.

Since, the counter-affidavit does not deal with the said specific contention of the petitioner, it is to be construed that the respondents do not dispute the fact of petitioner filing form GST TRAN-1 electronically on 27.12.2017 claiming a transitional credit of Rs.21,07,574/-. As the factum of the petitioner filing the form GST TRAN-1 within the time prescribed stands confirmed, the natural corollary is that the amount claimed as transitional credit available to it, has to be reflected automatically in the online electronic credit ledger. The entitlement of the petitioner to the said credit is another aspect, which needs to be gone into by the concerned authority by examining the claim by calling for such information from the petitioner after putting the petitioner on notice, but the same cannot be denied to be transitioned at the initial stage itself.

In an identical situation, in petitioner's own case, the Bombay High Court in WP-LD-VC-85 of 2020 considering a similar issue of transitional credit of Rs.17,07,673/- claimed through TRAN-1 filed on 27.12.2017 not being transitioned into the petitioner's electronic credit ledger despite successful filing, by its judgement dt.29.10.2020 while observing that the action of the respondents is unfair and unjust HELD THAT "*The whole objective of digitalization is to convenience the tax payers and not to harass them. We are conscious that the GST system is still evolving in its implementation. We are of the view that merely because there were no technical glitches in the GSTN with respect to the Petitioner's TRAN-1 which was admittedly filed in time, the claim of the Petitioner, if it was otherwise eligible in law, cannot be rejected for no apparent fault on the part of the Petitioner. This cannot be the objective of the GST system or digitization. Such a situation cannot be countenanced as it would be wholly unfair and unjust.*"

By holding as above, the Bombay High Court allowed the writ petition and directed the respondents to take such action as may be necessary for transitioning the credit of such amount into petitioner's credit ledger/electronic credit ledger within four weeks from the date of the order.

In the facts of the present case, we see no reason to take a different view from the one as expressed by the Bombay High Court, merely because the respondents chose to file a counter in the present writ petition alleging negligence on the part of the petitioner, which in our concerned view, as detailed herein above is without any basis, unsubstantiated apart from being reprehensible.

Further, as the various activities under GST are technology driven, and given the fact that there exists no seamless connectivity between a tax payer and the respondent network, and a tax payer is required to go through various intermediate service providers, more so in the initial stage of implementation by migrating from existing system of indirect taxation, it would be highly improbable to expect the transition to be smooth and without glitches as being claimed by the respondents.

Accordingly, the writ petition is allowed. The respondents are directed to transition the credit of amount of Rs. 21,07,574/- claimed by the petitioner, into petitioner's electronic credit ledger in Form GST PMT-2 maintained on the portal, within a period of four weeks from the date of the order.

19. HC lifts Provisional GST assessment as no Section 73 & 74 proceedings were pending

Case Name : **Mahavir Enterprise Vs. State of Gujarat (Gujarat High Court)**

Appeal Number : Special Civil Application No. 9586 of 2020

Date of Judgement/Order : 19/08/2021

Provisional assessment order lifted as no proceedings were pending under Section 73 and 74 of the CGST Act

Hon'ble High Court of Gujarat in its order has directed Assistant Commissioner of Sales Tax (**Respondent No. 4**) to lift the provisional attachment of the property of M/s Mahavir Enterprise (**Appellant**) under Section 83 of the **Central Goods and Services Tax Act, 2017 (CGST Act)**.

The powers as mentioned in Section 83 ibid can only be exercised in case of pendency of proceedings under Section 62 or 63 or 64 or 73 or 74 of the CGST Act.

Noted, no proceedings were pending neither under Section 73 nor Section 74 on the date on which the order under Section 83 was passed by the Respondent No. 4.

Further directed the Respondent No. 4 to state on affidavit the circumstances under which the order of provisional assessment has been passed.

20. Gauhati HC refuses Bail to Person accused of illegally availing ITC

Case Name : **Amit Kumar Vs Union of India (Gauhati High Court)**

Appeal Number : Case No. Bail Appln./1714/2021

Date of Judgement/Order : 23/08/2021

Court have considered the materials on record and found that this complaint alleges commission of an economic offence of huge magnitude and therefore, a thorough and detail investigation is essential. Further, considering the enormous materials collected and placed before this Court, vide the record, in respect of manipulation of invoices, etc and thereby allegedly evading tax by the petitioner to the tune of Rs. 28,97,85,917/- by way of illegally availing **ITC**, the enlargement of the petitioner on bail, at this stage

is likely to hamper the investigation and tamper evidence which may amount to compromising with the entire investigation of the case.

This Court has also taken note of the fact that the investigation of the case, involves a huge number of documents to be examined at different levels and at different places necessitating reasonably sufficient time to the Investigating Agency.

In view of the observations made in para 12 and 13 above, the prayer for bail of the petitioner stands *rejected*, at this stage.

21. SC issues notice on Plea challenging 18% GST on Diplomat of National Board course

Case Name : **Association of Diplomate of National Board Doctors Vs National Medical Commission and Ors. (Supreme Court of India)**

Appeal Number : Writ Petition (Civil) No. 904/2021

Date of Judgement/Order : 23/08/2021

In ***Association of Diplomate of National Board Doctors v. National Medical Commission and Ors [Writ Petition (Civil) No.904/2021 dated August 23, 2021]***, Association of Diplomate of National Board Doctors (**Petitioner**) has filed the current writ petition for quashing of Notification imposing of 18% Goods and Services Tax (**GST**) on fee deposited by Diplomate of National Board (**DNB**) students.

The Petitioner contends the course falls under the category of S no. 66(aa) of ***Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017*** (“**Services Exemption Notification**”) making the same to be exempted from GST. Along with that, even after clarification provided in ***Circular No. 151/07/2021-GST dated June 17, 2021***, which mentioned that GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations, The National Board of Examinations (“**NBE**”) is forcing its students to pay extra GST on Education/ Tuition fees by way of threatening mails saying that if fee is not paid till August 5th their candidature will be cancelled.

The Hon’ble Supreme Court of India thereby in the Order dated August 23, 2021 taking into account the submissions of the Applicant that GST at the rate of 18% is being charged on the course fee payable by candidates for the DNB course and that there has been fee hike, has issued a notice looking into the aspect and has further observed that the courses conducted by NBE as mentioned in Circular stands exempted.

22. Tax authorities to detain goods only in the case of deliberate tax evasion and not for technical or minor defects

Case Name : **NE Equipment Solutions Pvt. Ltd. Vs State of Tripura and others (Tripura High Court)**

Appeal Number : WP(C) No. 577/2021

Date of Judgement/Order : 24/08/2021

Tax authorities to detain goods only in the case of deliberate tax evasion and not for technical or minor defects

NE Equipment Solution Pvt. Ltd. (Petitioner) approached the Hon'ble Tripura High Court primarily for release of the machinery which was intercepted by the GST authorities on the ground that the driver did not have valid e-way bill for the machinery being brought within the State.

Further, the Superintendent of Taxes, Churaibari Enforcement Wing issued a show-cause notice dated August 19, 2021 (**SCN**) to the Petitioner under Section 129(3) of the **Central Goods and Services Tax Act, 2017 (CGST Act)** and the State Goods and Services Tax Act, 2017 (**SGST Act**) imposing penalty of Rs. 17,87,796/- on the Petitioner.

The Hon'ble Tripura High court held that the machinery should be released as the validity of the E-way bill expired on account of unforeseen and unexpected delay in crossing the check post since the transport department stopped the movement of the vehicle on the ground that the machinery was not registered in the State of Tripura and GST department imposed a fine of Rs.10,000/- which the Petitioner paid. This process, however, took more than 24 hours and in the meantime, the validity of the e-way bill expired. Though the Petitioner generated a new e-way bill, the GST department of the State was not prepared to accept it.

Further, added that detaining such machinery at the check post would expose it to deterioration particularly in the present season of heavy rainfall. The purchaser of the vehicle would also suffer gross inconvenience because having paid more than fifty lakhs of rupees for the purchase of the machinery he would not get the delivery of it for an indefinite period of time.

Moreover, the tax authorities must make a clear distinction between deliberate tax evasion and technical or minor defects which manifest no intention to evade tax. When the IGST liability has been fully discharged, no intention can be attributed on part of the Petitioner to evade tax.

Directed:

- GST Department to release the transport vehicle and the machinery.
- The Petitioner to file an undertaking before the Court to the effect that if any tax or penalty liability is crystallized upon final assessment subject to right of appeal and further challenge, the Petitioner shall deposit the same with the Government revenue.
- The Petitioner to reply to the SCN till September 10, 2021
- The Assessing Officer to pass final order of assessment in connection with the SCN bearing in mind the observations made in this order.

23. Patna HC quashed orders passed ex-parte without providing fair opportunity of hearing to the petitioner

Case Name : **Rambabu Singh Vs State of Bihar (Patna High Court)**

Appeal Number : Civil Writ Jurisdiction Case No.14475 of 2021

Date of Judgement/Order : 26/08/2021

Rambabu Singh (**the Petitioner**) filed the petitions to quash- two orders dated February 03, 2020; two order dated March 05, 2020 and one order dated December 28, 2020 (**the Orders**) passed by Additional Commissioner of State Tax (**the Respondent**) as the Orders were passed ex-parte and no fair opportunity of hearing was accorded to the Petitioner.

The Respondent counsel submitted that he has no objection if the matter is remanded to the Assessing Authority for deciding the case afresh. Further, contended that, the case shall be decided on merits. Furthermore, assured that during pendency of the case, no coercive steps shall be taken against the Petitioner.

On perusal of all the facts and evidences the Honorable Patna High Court adjudicated that the Orders passed by the Respondent are bad in law. The Court gave two reasons-

(a) violation of principles of natural justice, as fair opportunity of hearing was not provided to the Petitioner;

(b) the Order passed ex-parte do not assign any sufficient reasons, as to how the officer determined the amount due and payable by the Petitioner.

On such context, the Orders were quashed by the Honorable Patna High Court.

24. GST Appellate Authority revokes cancellation of GSTIN after payment of pre deposit

Case Name : **Sahayta Security Services Pvt Ltd, Vs Asst. Commissioner State Tax & (GST Appellate Authority, Himachal Pradesh)**

Appeal Number : Appeal No: ADO20821000271Z

Date of Judgement/Order : 26/08/2021

GST Appellate Authority revokes cancellation of GSTIN as It is made clear in the section 107 (7) that after amount of pre deposit paid by appellant, recovery proceeding for balance amount shall deemed to be stayed.

Issue involved: Revocation of Cancellation of GSTIN

The appellant, M/s Sahatya Security Services Private Limited engaged in providing security services to various institutes and corporate offices. The Proper officer issued show cause notice to the appellant proposing cancellation of registration for non-deposit of interest on delayed payment of GST/ for non filing of return for a period of three months.

The appellant filed appeals on 12.03.2021. Despite filing of appeals the respondent authority issued cancellation order on 15.03.2021. The applicant made several request to the proper officer for restoration of GSTIN so as to facilitate him submission of its compliances. Appellant submitted that the cancellation had badly affected the business. The applicant duly cited legal provisions as well as judgments from the Apex Court, which clearly indicates that no corrosive action can be taken up against a dealer during the pendency of the appeal.

The appellant contended that the cancellation is against the provision section 107(7) of the CGST/HPGST Act, 2017 enactments. Section 107(7) of CGST/HPGST Act, 2017 provides deemed stay of recovery proceedings for the balance amount in the event of filing of appeal. The cancellation by the Proper Officer was complete violation of provision envisaged u/s 107(7) of CGST Act, 2017.

The Appellate Authority under (GST) Himachal Pradesh while deciding the appeal, passed an order on 26.08.2021 holding that the Section 107(7) provides, where the appellant had paid the amount under subsection 6 the recovery proceeding for the balance amount shall be deemed to stay. In the present case, the appellant has deposited more than 10% of the disputed tax amount. Also, the interest amount is part of the order against which appeal has been filed by the appellant. Therefore, there is no contravention of the provision under section 29(2)(a) of CGST or HPGST Act 2017 for initiation of proceedings under the section.

The appellate authority further ordered the Proper Officer to revoke the cancellation of the appellant i.e. Sahatya Security Services Private Limited, with immediate effect.

Copy of order attached.

25. HC directs Advance ruling authorities to answer specific questions asked by Appellant

Case Name : **Kasturba Health Society Vs Union of India (Bombay High Court)**

Appeal Number : Writ Petition No. 1745 of 2020

Date of Judgement/Order : 30/08/2021

On going through the impugned orders challenged here, we find that these orders do not answer the basic question raised by the petitioner-society. The question raised by the petitioner-society was as to whether or not, the petitioner-society, on its own strength and in its own right, could be said to be entitled to seek exemption from the requirement of registration and also discharge of Goods and Service Tax liability and this is on the ground that the petitioner-society could be considered to be a society having been established with the predominant object of imparting education and therefore, the society would be entitled to have status of an 'educational institution'. This question, of course, has been answered by the first Authority as well as appellate Authority by saying that the petitioner-society could not claim itself to be an 'educational society', but the reason given by both these authorities is not related to the activities or the business, the aims and objects of the petitioner-society. The reason given by both these authorities is that the petitioner-society is not an 'educational institution' because the activity of imparting education is carried on not by the petitioner-society in actual terms, but by its Special Purpose Vehicle-MGIMS. In fact, this factual position is also not denied by the petitioner-society. But, the contention of the petitioner-society is that it has been established primarily for the purpose of imparting of education and that it does so, through its Special Purpose Vehicle viz. MGIMS. Therefore, to the extent the petitioner-society imparts education through its Special Purpose Vehicle-MGIMS, the society would also be eligible to be termed as

'educational institution' and therefore, entitled for seeking exemption from the requirement of registration and GST liability, is the submission of the society. This contention of the petitioner, as seen from both the orders challenged here, has neither been considered nor has it been answered specifically by these authorities. The authorities ought to have considered this contention independently of the activity of MGIMS and in the light of the manner in which the aims and objects of the society is fulfilled by the petitioner-society. Such exercise having not been done by the authorities below and no findings on these lines having been rendered by both the Authorities, we are of the view that both the orders, as rightly submitted by the learned counsel for the petitioners, are erroneous and cannot stand to the scrutiny of law. The question posed by the petitioner-society in respect of which Advance Ruling was solicited, must be answered specifically by these Authorities.

26. Madras HC issues Non-Bailable Warrants on failure to pay Entry Tax

Case Name : **Grandhe Construction Private Limited Vs Government of Tamilnadu (Madras High Court)**

Appeal Number : W.P. Nos. 26205 to 26207 of 2008

Date of Judgement/Order : 31/08/2021

The Madras High Court vide an **order returnable on September 06, 2021** issued a Non-Bailable warrant against Grandhe Construction Private Limited (**Petitioner No. 1**) and Sri Murugan Earth Movers (**Petitioner No. 2**) in lieu of their Writ Petitions Nos. 26205 to 26207 of 2008.

The Non-bailable warrant thus passed was on account of the failure to pay Entry Tax on Import of Earthmovers by the Petitioner No. 1 & 2.

The Petitioners made a submission that they are not in a position to pay the required Entry Tax. The counsel appearing on their behalf stated that he has informed the fact regarding the hearing of the writ petitions before this Court to the Petitioners and they are not responding.

On perusal of all the facts and evidences, the Honorable Madras High Court therefore was inclined to issue Non-Bailable Warrant to the Petitioners, returnable on September 06, 2021.

27. Revisional order passed merely based on notings & in absence of records was invalid

Case Name : **North End Food Marketing Pvt. Ltd. Vs State of U P (Allahabad High Court)**

Appeal Number : Writ tax no. 309 of 2021

Date of Judgement/Order : 31/08/2021

The preconditions for the exercise of powers are basically two folds, namely, error in the order passed by an officer subordinate to the revisional authority and prejudice to

the interest of revenue. Once these two conditions stood fulfilled, it was incumbent upon the revisional authority to give an opportunity to the assessee of being heard and after making such enquiry as he thought fit he could pass appropriate orders as circumstances of the case would justify. This power is basically a supervisory power. However, in order to ascertain whether the officer subordinate to him has passed an erroneous order, which may be prejudicial to the revenue, the Commissioner is required to call for and examine the record of such proceedings.

In the present matter, admittedly without summoning the record the notice was prepared by the subordinate officers in which two options were indicated to the revisional authority with an observation that in case second option is approved, accordingly stay order may be prepared. This may not be intention of the legislature while incorporating the said feature. **Once the supervisory power is being exercised in absence of relevant record merely on the basis of certain noting, which is forwarded to the revisional authority for exercising the powers it is sheer misuse of the power. The said practice cannot be accepted by this Court.**

After considering the record, the Court is of the considered opinion that while exercising the revisional power the authority has given go-bye to the procedure, that too without application of independent mind. The intent of the legislature to accord such power under the revision with a rider is to ensure that there may not be errors in the order passed by the officer subordinate to the revisional authority and the order may not be prejudicial to the interest of revenue. On the above parameters there is hardly any scope for taking another view. Admittedly, the order impugned has been passed in absence of record and the revenue authority has proceeded to endorse on the dotted line, which has been submitted by the subordinate officer. Even though, the appellate order was appealable, which clearly reflects that said action is contrary to the procedures contained therein. The order must be supported by reasons but unfortunately the revisional authority/Commissioner did not choose to give reasons in support of order passed by him. This was in plain disregard to the requirement of law. The said order does not satisfy the requirement of law. Therefore, the said action cannot be accepted.