GST UPDATE
(January, 2022)

Directorate of Training, Excise and Taxation Department, Punjab

ABSTRACT OF GST UPDATE

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PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION –II BRANCH)

NOTIFICATION

The 17th January, 2022

No. S.O. 9/P.A.5/2017/S.96/Amd./2022.- In exercise of the powers conferred by section 96 of the Punjab Goods and Services Tax Act, 2017 (Punjab Act No. 5 of 2017), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O. 31/P.A.5/2017/S.96/2021 dated the 30th March, 2021, namely:-

AMENDMENT

In the said notification, for serial Nos.1 and 2 and entries relating thereto, the following shall be substituted, namely:-

"1 Smt. Varinder Kaur, Additional Commissioner, Goods and Services Tax Commissionerate, Ludhiana appointed by Central Government; and

2. Sh. Showkat Ahmad Parray, Additional Commissioner of State Tax (Administration), Punjab appointed by the Government of Punjab.".

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

2490/1-2022/Pb. Govt. Press, S.A.S. Nagar

(II) ADVANCE RULINGS

1. Question on tax liability under RCM not liable for admission before advance ruling authority

Case Name : In re Shashi Metals Private Ltd. (GST AAR Uttar Pradesh)
Appeal Number : Advance Ruling No. UP ADRG 91/2022
Date of Judgement/Order : 03/01/2022

The applicant vide question No. 1 is desirous to know as to whether supply of Iron and Steel to M/s Dewan India, Moradabad for manufacturing of its items approved by the Government of India, Ministry of Commerce and Industry Department of Commerce, Moradabad Special Economic Zone, Moradabad will fall under supply for approved purpose. The said question (i.e. whether any supply will be covered in supply to SEZ unit for approved purpose) is not covered in any category under Section 97(2) of the CGST Act, 2017.

The applicant vide question No. 2 is desirous to know as to whether supply of Applicant will be treated as Zero Rated Supply. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

The applicant vide question No. 3 is desirous to know as to whether the applicant is entitled to claim refund on Inputs, if supplies are made without payment of tax against Letter of Undertaking. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

The applicant vide question No. 4 is desirous to know as to whether the applicant can be held liable for any penalty or tax if supplies made by him to M/s Dewan India, Moradabad are consumed used by recipient for any purpose other those mentioned in its LOA. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

The applicant vide question No. 5 is desirous to know the Documents required to be maintained by the applicant. The said question is also not covered in any category under Section 97(2) of the CGST Act, 2017.

The applicant vide question No. 6 is desirous to know as to whether there is any liability on Applicant Company under Reverse Charge Mechanism. The clause (a) of Section 95 of the CGST Act defines ‘advance ruling’ as under:-

(a) “Advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

From the above definition of advance ruling, it is evident that an applicant can seek an Advance Ruling only in relation to supply of goods or services or both undertaken or

proposed to be undertaken by them. Accordingly, the question on tax liability under reverse charge mechanism is not liable for admission before the authority of advance ruling.

2. GST not payable on recovery from Employees for canteen facility at subsidized rates

Case Name : In re Emcure Pharmaceuticals Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-119/2019-20/B-03
Date of Judgement/Order : 04/01/2022

Question 1: – Whether the GST would be payable on recoveries made from the employees towards providing canteen facility at subsidized rates in the factory and office?
Answer: – Answered in the negative.

Question 2: – Whether the GST would be payable on the recoveries made from the employees towards providing bus transportation facility?
If yes, whether the Applicant is exempted under Notification No. 12/2017 Central Tax (Rate)?
Answer: – Answered in the negative.

Question 3: – Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?
Answer: – Answered in the negative.

3. AAR cannot give a ruling if similar issue is pending before DGGI

Case Name : In re Dlecta Foods Pvt Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-115/2019-20/B-01
Date of Judgement/Order : 04/01/2022

Whether the product 'Non-Dairy Cream' manufactured by the Applicant is covered under CH 1517 90 90 or under CH 2106 90 99 of the GST Tariff?

Subject classification matter is pending as a dispute in proceedings initiated by the Directorate General GST Intelligence (DGGI), Pune Regional Unit and therefore in view of the first provisio to Section 98 of the CGST Act, we refrain from answering the question raised by the applicant and reject the application

4. GST not leviable on cash discount/incentive/schemes offered by supplier

Case Name : In re Rajesh Kumar Gupta of M/S Mahveer Prasad Mohanlal (GST AAR Madhya Pradesh)
Appeal Number : Advance Ruling order No. 01/2022
Date of Judgement/Order : 06/01/2022

Q1. Whether the applicant can avail the Input Tax Credit of the full GST charged on invoice of the supply or a proportionate reversal of the same is required in case of post purchase: –
a. Cash discount for early payment of supply invoices(bills) given by the supplier of goods to the applicant without adjustment of GST.
b. Incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant.

The applicant can avail the Input Tax Credit of the full GST charged on the invoice of the supply and no proportionate reversal of ITC is required in respect of commercial credit note issued by supplier for Cash discount for early payment of supply invoices(bills) and Incentive/schemes provided without adjustment of GST, if the said discount is not covered under Section 15(3)(b) of CGST Act, 2017 and the said discounts is not in terms of prior agreement. This is subject to the conditions that the GST paid for the said goods/service is not reversed or reimbursed / re-credited by the supplier to the applicant in any manner.

Q2. Whether GST is leviable on cash discount offered by supplier to applicant through credit note without adjustment of GST for making the early payment from the date stipulated for payment of such supply as output supply? If yes, then what is the applicable HSN and rate of GST and Whether GST is leviable on incentive/schemes provided through credit note without adjustment of GST by the supplier to the applicant (dealer) as output supply? If yes, then what is the applicable HSN and rate of GST?

Since the amount received in the form of credit note is actually a discount and not a supply by the applicant to the supplier, no GST is leviable on receiver on cash discount/incentive/schemes offered by the supplier to applicant through credit note against supply without adjustment of GST.

5. CPU, Memory & Storage with onscreen display of output fall under HSN 8471

Case Name : In re Next Education India private limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 01/2022
Date of Judgement/Order : 17/01/2022

The goods sold by the applicant has a Central processing unit (CPU), memory & storage with an onscreen display of output which is based on the input supply by the user. Therefore, in view of the notes to Chapter 84 and also the HSN entries under 8471, the goods fall under HSN 8471.

6. Rodent Feed classifiable under HSN 23099010 & not falls under exemption notification

Case Name : In re Hylasco Bio-technology Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No.02/2022
Date of Judgement/Order : 17/01/2022

1. Whether the product Rodent Feed can be classified under the HSN 2309 90 10 or not?
Yes. But not covered under the exemption notification.

2. If No, HSN applicable for the specified product?
Please refer above.

3. As HSN 2309 is exempt under the Serial Number 102 of Notification No. 02/2017 dated: 28.06.2017, whether the product Rodent Feed which falls under the same group is also exempt, if not the taxability of the same?
Description to Sl.No.102 does not include rodent feed and hence taxable under Sl.No.453 of Schedule III of Notification No. 01/2017 dated: 28.06.2017 at the rate of 9% CGST & SGST each.

7. Zirconium Oxide Ceramic Dental Blanks classifiable under Chapter Heading 69091200

Case Name : In re Jyoti Ceramic Industries Pvt. Ltd. (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-118/2019-20/B-06
Date of Judgement/Order : 19/01/2022

Question 1: – Whether the Product namely 'Zirconium Oxide Ceramic Dental Blanks' in different sizes as sold by Applicant are classifiable under Chapter Heading 69091200 as 'Ceramic Product' as at this stage Artificial Teeth are not produced from it, even though the Product is biscuit fired having hardness of less than 9 on Moh's scale or the product is classifiable under Chapter Heading 90212100 since Artificial Ceramic Teeth are produced from the product which has hardness of 9 on Moh's scale?
Answer:– In view of the discussions made above, the Product namely 'Zirconium Oxide Ceramic Dental Blanks' in different sizes as sold by Applicant are classifiable under Chapter Heading 69091200

Question 2:- Whether Artificial Teeth, Crown, Bridges, Dental Restoratives etc as produced from the Product of Applicant is classifiable under Chapter Heading 90212100.
Answer:- Since the question raised by the applicant does not pertain to an activity being undertaken or proposed to be undertaken by them, the said question is not being answered by this authority as per the provisions of Section 95 of the CGST Act, 2017,

Question 3: – Whether the health care services including providing of Artificial Teeth, Crown, Bridges etc treatment by dental clinic of Applicant to its patients, excluding health care services for bleaching of teeth and dental veneers treatment falls under Chapter Heading 999312, attracting Nil rate of GST?
Answer:- Services of providing of Artificial Teeth, Crown, Bridges falls under Chapter Heading 999312, attracting Nil rate of GST only when the same are provided as Health care Services and not as a Cosmetic Services.

Question 4:- Whether health care services namely bleaching of teeth and dental veneers for smile designing provided by dental clinic of Applicant to its patients falls under Chapter Heading 999312 at Nil rate of GST or Chapter Heading 999722 at 18% GST?
Answer:- In view of the above discussions, the services of bleaching of teeth and dental veneers for smile designing provided by dental clinic of Applicant to its patients falls under Chapter Heading 999722 at 18% GST.

8. GST not payable on recoveries from employees for notice pay recoveries & for providing parental insurance

Case Name : In re Syngenta India Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-25/2020-21/B-05
Date of Judgement/Order : 19/01/2022

Question 1: – Whether the GST would be payable on recoveries made from the employees towards providing parental insurance?

Answer:– This issue has already been decided by this Authority in the case of M/s Jotun India Private Limited wherein the question raised was similar viz. “Whether recovery of 50% of Parental Health Insurance Premium from employees, amounts to supply of service under Section 7 of the Central Goods and Service Tax Act, 2017?
Vide Order No. GST- ARA- 19/2019-20/B-108 Mumbai dated 04-10-2019 this authority had ruled that recovery of 50% of Parental Health Insurance Premium from employees, did not amount to supply of service under Section 7 of the Central Goods and Service Tax Act, 2017. The only difference between the matter in the subject case and the matter in the Jotun case is that, in the subject case, the applicant is recovering 100% of Parental Health Insurance Premium from employees whereas in the Jotun case the said applicant was recovering only 50% of Parental Health Insurance Premium from employees.

Further, a similar question was also raised by M/s POSCO India Pune Processing Centre Private Limited in their application before this Authority viz “Whether recovery of Parents Health Insurance expenses from employee in respect of the insurance provided by the Applicant amounts to supply of service under Section 7 of the Central Goods and Service Tax Act, 2017? This Authority had answered the question as follows:-
The recovery of Parents Health Insurance expenses from employee does not amount to supply of service under the GST Laws. Since there is no supply of services there is no question of time and value of the supply. The applicant cannot claim ITC of GST charged by the insurance company. Even in the case of M/s POSCO India Pune Processing Centre Private Limited, they were recovering only 50 % premium from their employees and in the subject case entire 100% is recovered from the employees of premium paid by the applicant to the Insurance Company.

Since the facts, in the case of M/s Jotun India Private Limited and also in the case of M/s POSCO India Pune Processing Centre Private Limited are similar to the facts of the present case with respect to recovery of premiums from the employees, paid by

the applicant on Parental Insurance Policy, there is no reason or us to deviate from the decisions taken in both the said cases and therefore we hold that, in the instant case, GST would not be payable on recoveries made from the employees towards providing parental insurance.

Question 2: Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

Answer:- Recovery of notice pay from dues of employee / payment of notice pay by the employee who could not serve the notice for the period as per contractual agreement / appointment letter does not amount to supply and therefore as per Section 7 (1A) of the CGST Act, 2017, the provisions of Schedule II does not come into play. Thus, also relying on the reasoning and decision given by the MPAAAR, mentioned above and the decision of the Hon'ble Madras High Court in W.P. Nos 35728 to 35734 of 2016 in the case of GE T&D India Ltd Vs Deputy Commr of Central Excise, LTU, Chennai – 2020-VIL-39-MAD-ST, we hold that, the notice pay recovered by the applicant from its employees is not liable to GST.

9. Mango Pulp/Puree' classifiable under Tariff Item 08045040, 18% GST chargeable

Case Name : In re Foods and Inns Limited (GST AAAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAAR/AP/03(GST)/2022
Date of Judgement/Order : 20/01/2022

The 'Mango Pulp / Puree' is classifiable under Tariff Item 0804 50 40 and chargeable to GST @ 18% as per entry No.453 of Schedule III in Notification No. 1/2017 – Central Tax (Rate) Dated 28.06.2017.

10. SFDS is classifiable as 'parts of Submarine' & falls under Chapter 8906

Case Name : In re Bharat Dynamics Limited (GST AAAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAAR/AP/01(GST)/2022
Date of Judgement/Order : 20/01/2022

AAAR differed with the ruling of the Advance Ruling Authority and hereby modify the same and hold that the SFDS is classifiable as 'parts of Submarine' falling under Chapter 8906 and consequently attract a GST rate of five (5) percent, by virtue of entry No.252 of Schedule I in Notification No. 1/2017 – Central Tax (Rate) dt: 28.06.2017 .

11. GST payable on income earned from conducting Guest Lectures

Case Name : In re Sri Sairam Gopalkrishna Bhat (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 03/2022
Date of Judgement/Order : 21/01/2022

a. Whether the income earned from conducting Guest Lectures, amounts to or results to as taxable supply of services?
The income earned from conducting Guest Lectures, amounts to taxable supply of services as per entry No. (ii) of 21 of Notification No. 11/2017 Central Tax (Rate) dated: 28.06.2017.

b. Whether the income earned from Research and Training Projects funded by Ministries of Government of India and State Government of Karnataka, amounts to or results to as taxable supply of service to be taxed at Nil rate as per Heading 9992?
In the absence of the details of the recipient of service, the service in question merits classification under SAC 9983 and attracts GST at the rate of 18%.

c. Whether the income earned from Research and Training Projects funded by Ministries of Government of India and State Government of Karnataka, amounts to or results to as Taxable Supply to be taxed at (Integrated Tax) 18% under Heading 9983?
In the absence of the details of the recipient of service, the service in question merits classification under SAC 9983 and attracts GST at the rate of 18%.

12. Rate of GST on supply of Outboard Motors to unregistered fishermen

Case Name : In re Sea Men Associates (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 02/2022
Date of Judgement/Order : 21/01/2022

Rate of GST on supply of Outboard Motors to unregistered fishermen and whether the HSN Code for the same is 8407 or 8408?.

The Outboard motors (marine engine) and its spare parts supplied for fishing vessel for use as part of the fishing vessel- CTH 8902) shall attract GST at the rate of 5% [2.5%-CGST + 2.5%-KGST) as per entry at SI. No.252 of Schedule I of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 the respective Customs Tariff Heading classified.

13. GST on paid educational content & fee for portfolio management

Case Name : In re Cmepedia Gerda Huguette Emma Van Hoecke (GST AAR Karnataka)
Appeal Number : Advance Ruling No. KAR ADRG 01/2022
Date of Judgement/Order : 21/01/2022

1. Is paid educational content, which is used by health care professionals or students to fulfill a mandatory demand by their professional body or institute, exempt of tax?
The paid education content, which is used by health care professionals or students to fulfill a mandatory demand by their professional body or institute is not exempt to tax under the provisions of the Central Goods and Services Tax Act or Karnataka Goods and Services Tax Act or Integrated Goods and Services Tax Act, 2017.

2. Is the fee for the portfolio management, which will reduce the administrational pressure on professional bodies and health care professionals, and which will increase the transparency in the certification of educational activities, exempt of tax?
The fee collected for the portfolio management is also not exempt from tax under the provisions of the Central Goods and Services Tax Act or Karnataka Goods and Services Tax Act or Integrated Goods and Services Tax Act, 2017.

14. GST on Supply to Defence Machinery Design Establishment for use in warship building of Indian Navy

Case Name : In re Radiant Corporation Private Limited (GST AAR Telangana)
Appeal Number : TSAAR Order No. 03/2022
Date of Judgement/Order : 21/01/2022

In the present case, the applicant has submitted certain utilization certificates from the Naval authorities. The certificates categorically state that the goods supplied are used 'as stores for consumption onboard of Indian Navy Ship' (Certificate dated: 29.08.2016 & 08.11.2016). Similarly, in the certificate dated: 24.02.2017 it is stated that they are exclusively for use onboard Indian Naval Ships. In the certificate dated: 30.03.2017 it is stated that these goods are required for ATV program.

When the above (2) evidences are read in tandem, it is clear that the appellant is supplying special types of cables to the Naval authorities.

Therefore, the supplies made by the applicant to Defence Machinery Design Establishment (DMD) for the purpose of use in warship building of Indian Navy will qualify for the concessional rate of tax of 5% under CGST & SGST.

What is the applicable rate of CGST on the supply of pressure tight cables, non-pressure tight cables and special cables for use in S4 submarine supplied by the Applicant to DMDE, Ministry of Defense, Govt of India.

2.5% CGST & SGST each.

Whether these goods would be considered to be as parts of warships and accordingly classifiable under Sl.No.252 read with Sl.No.250 of Schedule I in Notification No. 01/2017 dated: 28.06.2017.

Yes.

15. GST not payable on hiring/leasing of buses by APSRTC to Public Transport Division

Case Name : Principal Commissioner Central Tax Vs Andhra Pradesh State Road Transport Corporation (GST AAAR Andhra Pradesh) (GST AAAR Andhra Pradesh)
Appeal Number : Advance Ruling No. AAAR/AP/04(GST)/2022
Date of Judgement/Order : 24/01/2022

The transaction of hiring/leasing of buses by the APSRTC to the Public Transport Division (PTD) of Government of Andhra Pradesh is eligible for exemption under Entry 22 of Notification No 12/2017 Central Tax (Rate).

16. ITC cannot be claimed for invoice issued in FY 2020-21 for Services related to FY 2018-19

Case Name : In re Vishnu Chemicals Limited (GST AAAR Andhra Pradesh)
Appeal Number : Advance Ruling Order AAAR/AP/05(GST)/2022
Date of Judgement/Order : 24/01/2022

The tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under Section 16(4) of the CGST/SGST Act, 2017. The appellant is not eligible to claim Input Tax Credit on the disputed invoice.

The main subject of contention is the issuance of a tax invoice dated 1.04.2020 for monthly rental services extended from April 2018 to March 2019 and its eligibility thereon to claim input tax credit under Sec.16(4).

The AAR while passing the Ruling, recorded the findings pertaining to the statute with reference to 'the issuance of invoice as per Section 31 read with Rule 47' and then found that the invoice dated 01.04.2020, in question, does not pertain to the financial year 2020-21 as the services supplied vide the invoice question pertains to the financial year 2018-19 in which the services were rendered.

In this case The supplier of service issued a tax Invoice dated 01.04.2020 covering the period from 01.04.2018 to 31.03.2019. Therefore, the supply of service pertains to the financial year 2018-19. The date on which the invoice issued was 01.04.2020 and hence appears that the invoice issued pertains to the financial year 2020-21. However, the date of invoice or the period to which an invoice pertains will be determined only by the period of supply covering which the said invoice was issued. Therefore, in the instant case, irrespective of the date of Invoice (which is leading to mis-interpretation of the period of Invoice), the same is pertaining to the period of supply covered by the said invoice i.e. 2018-19.

In the instant case, as the invoice pertains to the financial year 2018-19, vide Section 16 (4), the 'recipient is entitled to take ITC on the same before furnishing of Return under section 39 for the month of September, 2019 following the end of financial year 2018-19 to which such invoice pertains or furnishing of the relevant annual return for the year 2018-19, whichever is earlier.

Even the proviso to section 16 (4) reiterates that the registered person is entitled to take ITC in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18. This proviso absolutely necessitates or rather endorses the invoices relating to supplies made during the financial year 2017--18 only, for the registered dealer to claim entitlement of ITC in the succeeding financial year.

In light of the above, we uphold the decision of the lower Authority, while dismissing the plea of the appellant for the reasons explained supra. It is our considered view that the appellant is not eligible to claim Input Tax Credit on the disputed invoice dated 01.04.2020 that was issued covering the supply of services pertaining to the period from 01.04.2018 to 31.03.2019.

17. GST payable on membership/ subscription fee received from members of a club

Case Name : In re Poona Club Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-123/2019-20/B-12
Date of Judgement/Order : 31/01/2022

GST payable on membership/ subscription fee received from members of a club

The AAR, Maharashtra in the matter of M/S the Poona Club Limited [Advance Ruling No.GST-ARA-123/2019-20/B-12 dated January 31, 2022] held that, club of membership association and its members are distinct persons and the membership/ subscription fee, and annual fee, received from its members are consideration for supply of goods/services as a separate entity covered by the scope of the term 'business' and, thus, principle of mutuality is not applicable. Hence, GST would be payable on amounts received from club members.

Facts:
M/s. the Poona Club Limited ("the Applicant") is a membership association formed for creation of common infrastructure for members, maintain the same and administer the club, for which the Applicant receives the capital funds, raised exclusively through membership fee from its members. Certain members are required to pay annual subscription that is spent mainly for office & administrative expenses such as salaries, security, labour charges, electricity etc. and not for providing any specific service or goods to members. Moreover, all members have to pay Annual Game Fees also.

The Applicant contended that, the membership fee, annual subscription and annual games fee collected from members of club are not liable to tax under the Central Goods and Services Tax Act, 2017 ("the CGST Act") as the club and the members are considered as same identity and hence the principle of mutuality is applicable and there cannot be any business or supply by one person with its own self. Further contended that, under Section 2(31) of the CGST Act i.e. the definition of consideration, there should be a recipient who receives the goods and services and the ordinary meaning of 'business' requires profit motive to be established.

Issue:
Whether the membership fee, annual subscription fee, annual games fee collected by the Applicant from its members are liable to tax under CGST Act?

Held:

The AAR, Maharashtra in Advance Ruling No.GST-ARA-123/2019-20/B-12 dated January 31, 2022 held as under:

- Observed that, as per the amended Section 7 of the CGST Act, the Applicant and its members are distinct persons and the fees received by the Applicant, from its members are nothing but consideration received for supply of goods/services as a separate entity.
- Opined that, the principle of mutuality is not applicable in view of the amended Section 7 of the CGST Act.
- Analysed Section 7 of the CGST Act and noted that, undertaking of a commercial activity, whether or not the same is for pecuniary benefit, which implies that whether or not such activity yields the benefit which can be quantifiable in monetary terms or not. Further, it covers the commercial transactions which are in the nature of barter or exchange wherein the benefit is in non-monetary terms.
- Held that, the club and its members are distinct persons and the fees received by the Applicant, from its members are consideration received for supply of goods/services as a separate entity covered by the scope of the term 'business', and therefore, the Applicant has to pay GST on the said amounts received from its members.

Relevant Provisions:

Section 7 of the CGST Act
"Scope of supply

(1) For the purposes of this Act, the expression "supply" includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
Explanation. —For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another
(b) import of services for a consideration whether or not in the course or furtherance of business and;
(c) the activities specified in Schedule I, made or agreed to be made without a consideration;
(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II,

(2) Notwithstanding anything contained in sub-section (1), —

(a) activities or transactions specified in Schedule III; or
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-
(a) a supply of goods and not as a supply of services; or
(b) a supply of services and not as a supply of goods."

18. GST on supply of RO Plant/system to Indian Navy/Coast Guard

Case Name : In re Rochem Separation Systems India Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-21/2021-22/B-10
Date of Judgement/Order : 31/01/2022

Question 1: What is applicable rate of GST on supply of Reverse Osmosis Plant/system (RO Plant/system) to Indian Navy/lndian Coast Guard in normal course?
Answer: – In view of the discussions made above, the applicable rate of GST is 18%.

Question 2: What is the applicable rate of GST on supply of RO Plant/system (Reverse Osmosis Plant) to the Indian Navy/Coast Guard which would be installed in/on a warship?
Answer: – In view of the discussions made above and in the absence of specific exemption, the applicable rate of GST is 18%.

(III) COURT ORDERS/ JUDGEMENTS

1. Revenue Authorities obligated to inform assessee about filing of appeal on wrong GST portal

Case Name : Tropical Beverages Pvt. Ltd. Vs Union of India and Others (Tripura High Court)
Appeal Number : WP(C) No.701 of 2021
Date of Judgement/Order : 04/01/2022

The Hon'ble Tripura High Court in Tropical Beverages Pvt. Ltd. v. the Union of India & Ors. [W.P(C) No. 701 of 2021 dated January 4, 2022] quashed the order of the Appellate Authority refusing the appeal filed by the assessee on the wrong GST portal. Further held that, uploading of an appeal may be before the wrong portal, but it is obligatory on the part of the authorities concerned in such an event to bring it to the notice of the assessee that the appeal has been filed before the wrong authority so that the necessary action can be taken.

Facts:
Tropical Beverages Pvt. Ltd. ("the Petitioner") has filed this petition, being aggrieved against the order of the Revenue Department ("the Respondent") refusing to accept the Petitioner's appeal filed in FORM GST APL-01, which was wrongly uploaded on the Central GST Portal by the Petitioner instead of State GST Portal.

Issue:
Whether the Petitioner's appeal can be refused due to uploading of the appeal in wrong forum?

Held:
The Hon'ble Tripura High Court in W.P(C) No. 701 of 2021 dated January 4, 2022 held as under:

- Noted that, the Petitioner had also filed a hard copy before the Respondent but the Respondent refused to accept the same as an appeal purportedly since on verification of the portal of the State GST no such appeal was found thereon.
- Observed that, the Petitioner had uploaded an appeal may be before the wrong portal but it is obligatory on the part of the authorities concerned in such an event to bring it to the notice of the Petitioner that the appeal has been filed before the wrong authority so that the Petitioner can take necessary action.
- Stated that, the Petitioner was unaware of uploading its appeal before the Central GST Portal instead of State GST Portal. Further noted that, the Respondent have now located the appeal filed by the Petitioner before the Central authorities.
- Directed the Petitioner, to file a fresh appeal and upload the before the appropriate authority i.e. the State GST Portal.
- Further directed the Respondent to condone the delay in filing the appeal, since the matter had been filed before a wrong forum.

- Further advised all Appellate Authority to inform the appellant or assessee in particular, by email about the error committed by them, in case the appeal is filed before the wrong forum, since all these facilities are fairly new and it requires time to carry out necessary corrections.

2. HC sets aside retrospective amendment In IPR denying GST reimbursement

Case Name : Ultratech Cement Limited Vs State of Odisha (Orissa High Court)
Appeal Number : W.P.(C) Nos. 29253 of 2020 and 12435 of 2019
Date of Judgement/Order : 04/01/2022

Conclusion:
High Court set aside the retrospective amendment in Industrial Policy Resolution denying GST reimbursement as the Court was not satisfied of the reasons given by the Opposite Parties for discriminating against assessee unit vis-à-vis KPCW which appeared to be identically placed as assessee and nowhere does IPR 2007 state that a cement producing unit that sources raw materials from outside would be ineligible to receive the incentives.

Held:
Assessee-company was stated to be operating cement manufacturing units in various States in India including a cement manufacturing unit in Jharsuguda District in Odisha. According to assessee, the said unit was a state-of-the-art cement manufacturing industrial unit which, inter alia, utilized intermediate products (clinker) and waste products (fly ash) generated by other industrial undertakings along with gypsum as a raw material to manufacture high quality cement. In the present case, however, the situation was entirely different. The Opposite Parties themselves had granted the eligibility certificate and verification certificate. In fact, the orders sanctioning the VAT reimbursement had been passed on 6th June 2017. Therefore, there was justification in denial of the benefit of SGST reimbursement to assessee. The Court rejected the plea of the opposite Parties that it was being called upon in the present case to review a policy decision. The Court was in fact being asked to examine the reasonableness of the decision of the Opposite Parties to retrospectively take away the benefits already extended to an existing unit under IPR 2007. Consequently, none of the decisions relied upon by the Opposite Parties in the context of judicial review of policy decisions of the State have any applicability to the facts of the present case. Lastly, the Court was not satisfied of the reasons given by the Opposite Parties for discriminating against assessee unit vis-à-vis KPCW which appeared to be identically placed as assessee. HCLA noted that KCMW was “a separate unit but part of integrated facility of OCL for manufacturing cement”. In other words, KCMW was also a standalone unit. Further, nowhere does IPR 2007 state that a cement producing unit that sources raw materials from outside would be ineligible to receive the incentives. Thus, the Court sets aside the order dated 6th October 2018 issued by the Director of Industries withdrawing the earlier order dated 6th June 2017 granting assessee the exemption.

3. Patna HC Quashes GST order passed in violation of Principles of Natural Justice

Case Name : Sky Vision Media Private Limited Vs State of Bihar (Patna High Court)
Appeal Number : Civil Writ Jurisdiction Case No. 21364 of 2021
Date of Judgement/Order : 04/01/2022

Petitioner has prayed for the following relief(s):
"(a) For issuance of a writ in the nature of certiorari for quashing of the ex-parte order dated 08.02.2021 and summary of order in form GST DRC 07 dated 08.02.2021 under rule 142 (5) of the Bihar Goods And Services Tax Rules, 2017 (hereinafter referred to as the "Bihar rules 2017 for short) passed and issued by the respondent number 3 under section 73 (1) of the Bihar Goods And Services Tax Act, 2017 hereinafter referred to as the "Bihar act 2017" for short);

b) For holding and a declaration that the impugned order dated 08.02.2021 passed by the respondent No. 3 is highly cryptic, misconceived, nonspeaking and violative of principles of natural Justice.

c) For issuance of a writ or order or direction restraining the respondent No.3 from making any coercive recovery of the amount in demand (tax and penalty) as contained in the order dated 08.02.2021 during pendency of the present writ application:

d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 08.02.2021 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, North Circle, Patna in GSTIN 10AARCS6890G1Z0, under Section 73(I) of BGST Act, 2017 and summary of order in Form GST DRC-07 dated 08.02.2021, for the tax period 2019-20, a demand of Rs.34,32,721.00 has been raised.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Assessing Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

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

such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 08.02.2021 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, North Circle, Patna in GSTIN 10AARCS6890G1Z0, under Section 73(I) of BGST Act, 2017 and summary of order in Form GST DRC-07 dated 08.02.2021;
(b) The petitioner undertakes to deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.
(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;
(d) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.
(e) Petitioner undertakes to appear before the Assessing Authority on 28.01.2022 at 10:30 A.M., if possible through digital mode;
(f) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;
(g) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;
(h) During pendency of the case, no coercive steps shall be taken against the petitioner.
(i) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;
(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;
(k) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;
(l) The Assessing Authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties;
(m) Liberty reserved to the petitioner to challenge the order, if required and desired;
(n) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;
(o) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;
(p) We have not expressed any opinion on merits and all issues are left open;
(q) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition sands disposed of in the aforesaid terms.
Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

4. GST: Officer cannot recover by way of invoking the bank guarantee after issue of Section 129 order

Case Name : National Radio Electronics Corporation Vs State Tax Officer (Intelligence) (Kerala High Court)
Appeal Number : W.P.(C) No. 40 of 2022
Date of Judgement/Order : 04/01/2022

The petitioner is challenging Ext.P3 order issued under Section 129 of the Central Goods and Service Tax Act, 2017 to the extent it invoked the bank guarantee furnished by the petitioner, while obtaining release of the goods detained under Section 129(1) of the said Act.

2. The limited relief claimed by the petitioner is that the statute permits him to prefer an appeal within a period of three months and if within the said period of three months, he abides by the terms stipulated in Section 107 of the CGST Act, all proceedings for invocation of the bank guarantee or other proceedings shall stand stayed by virtue of the statutory prescriptions. However, even without waiting for the period of three months, the respondents have proceeded to invoke the bank guarantee, which according to him, is due.

3. The learned Government Pleader Smt.M.M.Jasmin, on instructions, submitted that the bank guarantee has not, in fact, been invoked and that the proper officer does not have any intention to invoke the bank guarantee before the expiry of the appeal period.

4. Having regard to the period of three months available to the petitioner to prefer an appeal against Ext.P3 order, I am of the opinion that it is essential in the interests of justice that the bank guarantee is not invoked till the period for filing the appeal expires. The order dated 20.12.2021 produced as Ext.P3 shows that the 1st respondent has invoked the bank guarantee along with the order under Section 129 CGST Act, itself. Accordingly, this writ petition is disposed of directing the 1st respondent to withhold invocation of the bank guarantee for a period of four months from 20.12.2021 to enable the petitioner to pursue the appellate remedy. It is also directed that the petitioner shall keep alive the bank guarantee for a period of four months from today.

5. Cash credit account cannot be provisionally attached- HC issues contempt notice to Principal Commissioner

Case Name : Manish Scrap Traders Vs Principal Commissioner (Gujarat High Court)
Appeal Number : Special Civil Application No. 76 of 2022
Date of Judgement/Order : 05/01/2022

Way back in the year 2016, in the case of Kaneria Granito Ltd. vs. Assistant Commissioner of Income Tax, Special Civil Application No.14497 of 2014 decided on 27.06.2016, a Co-ordinate Bench of this Court took the view that a cash credit account cannot be provisionally attached.

Various orders have been passed over a period of time condemning the action on the part of the department in provisionally attaching the cash credit account in exercise of powers under Section 83 of the Act.

Settled position of law appears to have been very conveniently over-looked by the Principal Commissioner, CGST, Surat.

The Principal Commissioner says that the reliance placed by the writ applicant herein on one of the orders passed by this Court in the case of M/s. Formative Tex Fab vs. State of Gujarat is not binding to him as in the case of M/s. Formative Tex Fab (Supra), the order of provisional attachment was passed by the Assistant Commissioner and not by the Principal Commissioner.

Prima facie, we are of the view that the Principal Commissioner, CGST, Surat is in contempt. He owes an explanation as to on what basis he has distinguished all the orders passed by this Court over a period of time taking the view that a cash credit account could not be provisionally attached in exercise of powers under Section 83 of the Act, 2017.

Let Notice be issued to the respondents, returnable on 01.2022. Mr. Utkarsh Sharma, the learned Standing Counsel appearing for the department waives service of notice for and on behalf of the respondents Nos.1 and 2.

6. HC granted interim relief from payment of GST for grant of mining lease/royalty

Case Name : Ratan Black Stone Vs Union of India (Jharkhand High Court)
Appeal Number : W.P (T) No. 4609 of 2021
Date of Judgement/Order : 06/01/2022

Learned counsel for the Respondents submits that earlier, this Court have been pleased to grant stay of recovery of service tax for grant of mining lease / royalty from the petitioners covered under the interim order dated 02.03.2021 passed in the batch of writ petitions led by WPT No. 3878/2020, though interim protection so far as levy of CGST/JGST is concerned, was refused. Learned counsel for the Respondents however do not dispute that the Apex Court has been pleased to grant stay on payment of GST for grant of mining lease/royalty in the case of similarly situated persons.

On consideration of the materials on record placed by the parties and in view of interim protection granted by the Apex Court in Writ Petition (Civil) No. 1076/2021 in the case of M/s Lakhwinder Singh Versus Union of India & others and, that the petitioners herein, lessee of minor mineral, also raised similar issues of levy of GST on royalty and District Mineral Fund Contribution, we deem it proper to grant similar interim relief (s) to the petitioners herein. Accordingly, until further orders, payment of GST for grant of mining lease/royalty by the petitioners, shall remain stayed.

7. Goods in transit cannot be confiscated for Under-valuation & Wrong Route

Case Name : Karnataka Traders Vs State of Gujarat (Gujarat high Court)
Appeal Number : R/Special Civil Application No. 19549 of 2021
Date of Judgement/Order : 06/01/2022

In this case Hon'ble Gujarat High Court quashed the entire confiscation proceedings keeping in mind two things: first, mere change of route without anything more would not necessarily be sufficient to draw an inference that the intention was to evade tax. Sometime, change of route may assume importance provided there is cogent material with the department to indicate that an attempt was sought to be made to dispose of the goods indirectly at a particular place. If such is the case, then probably, the authority may be justified in initiating appropriate proceedings, but mere change of route of the vehicle by itself is not sufficient. In the same manner, mere undervaluation of the goods also by itself is not sufficient to detain the goods and vehicle far from being liable to confiscation.

8. Properties/Electronic Credit Ledger of assesse cannot remain provisionally attached/blocked after expiry of 1 year

Case Name : Vimal Yashwantgiri Goswami Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 5410 of 2020
Date of Judgement/Order : 06/01/2022

The orders of provisional attachment under challenge could be said to have been outlived statutory right considering the fact that the orders impugned are dated 23.07.2019 and it would cease to operate on expiry of period of one year as prescribed under Section-83.

The attention of this Court is drawn to the draft amendment, whereby, the writ-applicant has referred to the communication dated 28.07.2020 issued by the respondent no.5 as received from the respondent no.2, who seems to have passed the fresh order of attachment. On bare perusal of the said order dated 24.07.2020 produced at Annexure-R and the order dated 27.07.2020 produced at Annexure-Q, even those orders have outlived their statutory life in view of Section-83 of the CGST Act as well as Rule-86A(3) of the CGST Rules, 2017.

We find that, as on date nothing further is required to be adjudicated. Thus, as on date, it could be said that there are no orders of attachment of all the four current accounts running in the name of writ-applicant maintained with the respective banks as well as there is no attachment of the Input Tax Credit.

9. HC imposes cost on GST officer for seizure of goods without any justification

Case Name : Shri Surya Traders Vs Union of India (Allahabad High Court)
Appeal Number : Writ Tax No. - 1146 of 2021
Date of Judgement/Order : 06/01/2022

Admittedly, the petitioner have sold the goods to two different registered dealers. The petitioner being a registered dealer have duly issued two tax invoices of the goods in question. The authorities have not disputed the issuance of tax invoices. An adverse view has been drawn that after interception, another tax invoice for three bags of Betel Nut Product in favour of M/s Lal Ji Pan Bhandar, Tikona Park, Nawabganj, Gonda have been submitted along with the reply to the show cause notice just to cover the transaction in question. It is a matter of common knowledge that after the detention, show cause notice was issued and in reply to the show cause notice, bill/tax invoice no. 19-20/950 dated 9.10.2019 was submitted in which all details were mentioned as required under the Act and no discrepancy whatsoever have been pointed out by any of the authorities in it. If the dealer has submitted the tax invoice along with the reply to the show cause notice, no adverse inference can be drawn. If before the seizure order, the documents were submitted and if the same is not accepted, mere issuance of show cause notice will be redundant. It is well settled that the quasi judicial authority while exercising of its statutory powers must have to act fairly with open mind in the proceedings. The person who is subjected to the show cause notice must get an impression that the reply to the show cause notice will be not an empty ceremony and he will mere knock his head against the impenetrable wall. Once along with the reply to the show cause notice tax invoice was submitted for three bags of Betel Nut Product in the name of M/s Lal Ji Pan Bhandar, Tikona Park, Nawabganj, Gonda, the authorities must have to act fairly while adjudicating the same specially when have the powers to take punitive step against a person, whom show cause notice was issued. Once along with the reply, the tax invoice was submitted the value of which was less than fifty thousand and as per Rule 138, there was no requirement for generating of e-way bill to the said transaction. If the authorities were of the opinion that the transaction were not duly recorded in the books of account or had committed any contravention of the provisions of the Act, they are well equipped with all the provisions to make an inspection/survey at the business premises of the petitioner in accordance with law but the authorities were not justified in detaining / seizing and demanding the security of the goods as documents accompanying the goods as well as submitted along with the reply fully covers the transaction in question and by no stretch of imagination it can be attributed any contravention of the provisions of UPGST Act or Rule.

Rule 138-way bill requires if the value of the transaction is more than Rs. 50,000/- then only e-way bill is required. So far as the consignment of 87 bags are concerned which was duly accompanying with all proper documents as prescribed under the Act/Rule, the authorities were not justified in seizing and demanding security for release of the same.

The authorities have illegal and in arbitrary manner have referred the various discrepancies such as the pouches were not having batch number, packing date, expiry date, manufacturing date and referred that under the Food Safety Regulation, the said dates / details were required. But so far as the G.S.T. is concerned, the authorities have failed to record any provision for justification of the seizure of the goods in question.

A pointed query was put to Sri Jagdish Prasad Mishra, learned Standing Counsel to show the provisions on the said ground whether seizure can be made but the answer was in negative and accepted that in the absence of any specific contraventions or the provision of the Rules, the seizure of the goods as well as demand of security for release of the same, cannot be justified.

Before parting with the judgment, the Court is constrained to observe that the State Government have tried to create an atmosphere for free flow of trade and commerce so that a good business environment can be developed in the State of Uttar Pradesh which can be used for development purpose but the State Authorities in their whims and fencing are bend upon to harass the trading community of the State. The present case is a glaring example of the mischievous of the State Authorities which needs to be checked at the end of the State Government immediately.

The writ petition is allowed with cost of Rs. 20,000/-(twenty thousand) payable to the petitioner. The cost shall be paid within a period of one month from today. The respondents are at liberty to recover the said cost from the erring officer.

10. Transport of gold was with an intention to evade tax or not needs to be appreciated by Statutory authority: HC

Case Name : Kamalesh Sen Vs Assistant State Tax Officer (Kerala High Court)
Appeal Number : WP(C) No. 29966 of 2021
Date of Judgement/Order : 07/01/2022

It is noticed from Ext.P8, that the respondent has given a reason for initiating proceedings under Section 130. The correctness or otherwise of the said reason is not a matter which can be considered by this Court under Article 226 of the Constitution of India, especially in the light of the fact that, petitioner was not in possession of any documents contemplated under law. Whether the transport of gold was with an intention to evade tax or not is a matter which requires appreciation of disputed facts and hence the statutory authority will have to consider the same after appreciating the facts. In view of the above, I am of the opinion that, this is not a fit case for invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. Hence there is no merit in this writ petition. Since it is submitted that the petitioner was heard sometime in the past in order to render justice to both sides, the respondent shall afford an opportunity of a fresh hearing to the petitioner on 17/1/2022 at 11 am. The petitioner shall treat this judgment as sufficient notice for the hearing and appear before the respondent on the date so fixed and appropriate orders shall be passed thereon, in accordance with law.

11. No restriction on parallel proceedings by different jurisdictional offices pertaining to different causes of action: SC

Case Name : Euphoria Technologies Pvt. Ltd. Vs DGGI (Supreme Court of India)
Appeal Number : Writ Petition (Crl.) No. 139/2021
Date of Judgement/Order : 10/01/2022

This Writ Petition under Article 32 of the Constitution of India has been filed for a direction to the respondent(s) to transfer the investigation pertaining to Summons No. F.NO.DZU/INV/A/GST/27/2021 pending at Delhi to the Directorate General of GST Intelligence, Surat Zonal Unit, Gujarat, on the assertion that another case against the petitioner is being investigated by the Surat Zonal Unit. The respondents have filed a detailed reply affidavit and have asserted that two investigations pertain to different causes of action. If so, it is for the investigating Agency to decide whether it would like to have a joint investigation pertaining to the petitioner. No writ of mandamus need be issued in that behalf in light of the factual assertion in the counter affidavit. Accordingly, this writ petition is disposed of. Pending application(s) shall stand disposed of. Writ petition is disposed of in terms of the signed order. Pending application(s) shall stand disposed of.

12. SC Covid limitation suspension orders apply to limitation for GST refund application

Case Name : Saiher Supply Chain Consulting Pvt. Ltd. Vs Union of India (Bombay High Court)
Appeal Number : Writ Petition (L.) No. 1275 of 2021
Date of Judgement/Order : 10/01/2022

It is not in dispute that the first and second refund applications were rejected on the ground of certain deficiencies in those applications filed by the Respondent No.2. The third refund application, which was required to be filed within two years in accordance with the Circular No.20/16/04/18-GST dated 18th November 2019, under Section 54(1) of the Central Goods and Services Tax Act, 2017. The limitation period fell between 15th March 2020 and 2nd October 2021, which period was excluded by the Hon'ble Supreme Court in all such proceedings irrespective of the limitation prescribed under the general law or Special Law whether condonable or not till further Order/s to be passed by the Hon'ble Supreme Court in those proceedings.

The Hon'ble Supreme Court by Order dated 23rd September 2021 in Misc. Application No. 665 of 2021 issued further directions that in computing the period of limitation in any Suit, Appeal, Application and or proceedings, the period from 15th March 2020 till 2nd October 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15th March 2021, if any shall become available with effect from 3rd October 2021.

In view of the said Order dated 23rd March 2020 and the judgment dated 23rd September 2021 passed by the Hon'ble Supreme Court, the period of limitation falling between 15th March 2020 and 2nd October 2021 stood excluded.

In our view also, the period of limitation prescribed in the said Circular under Section 54(1) also stood excluded. In our view, the Respondent No.2 is also bound by the said Order dated 23rd March 2020 and the Order dated 23rd September 2021 and is require to exclude the period of limitation falling during the said period. Since the period of limitation for filing the third refund application fell between the said period 15th March 2020 and 2nd October 2021, the said period stood excluded. The third refund

application filed by the Petitioner thus was within the period of limitation prescribed under the said Circular dated 18th November 2019 read with Section 54(1) of the Central Goods and Services Act, 2017. In our view, the impugned Order passed by the Respondent No.2 is contrary to the Order passed by the Hon'ble Supreme Court and thus deserves to be quashed and set-aside.

13. GST: Provisional attachment ceases to have effect upon expiry of period of one year

Case Name : Futurist Innovation & Advertising Vs Union of India And Others (Bombay High Court)
Appeal Number : Writ Petition (St.) No.15785 of 2021
Date of Judgement/Order : 10/01/2022

Hon'ble Supreme Court in case of Radha Krishan Industries (supra) has dealt with this issue in detail and has approved the decision taken by Gujarat High Court in case of Valerius Industries Vs. Union of India. It is held by the Hon'ble Supreme Court that the power to order a provisional attachment is entrusted during pendency of the proceedings under any of the specified provisions under Sections 63, 64, 67, 73 or 74. It is when a proceeding under any of these provisions is pending that a provisional attachment can be ordered. It is held that under sub-section (2) of Section 83, a provisional attachment ceases to have effect upon the expiry of the period of one year of the order being passed under sub-section (1). The power to levy a provisional attachment has been entrusted to the Commissioner during the pendency of proceedings under Sections 62, 63, 64, 67, 73 or as the case may be, Section 74. The principles laid down in the case of Radha Krishan Industries (supra) apply to the facts of this court. We are respectfully bound by the said judgement.

14. HC cancels summon under GST as Petitioner was co-operating

Case Name : FSM Education Pvt. Ltd. Vs Union of India (Bombay High Court)
Appeal Number : Writ Petition (L) No. 30974 of 2021
Date of Judgement/Order : 10/01/2022

Summons cannot be issued where the assessee is cooperating during the inquiry
The Hon'ble Bombay High Court in FSM Education Private Limited v. Union of India, & Ors. [Writ Petition (L) No.30974 of 2021 dated January 10, 2022] set aside the summons issued by the Revenue Department without any details of the inquiry, wherein the assessee was co-operating in furnishing the documents as requisitioned and to provide further details. Held that, summons is a last resort and are not to be issued in a casual manner.

Facts:
FSM Education Private Limited ("the Petitioner") is a school of music, engaged in the business of recreational activities such as teaching music to school children and other enthusiasts either at its teaching center or at a school. The Revenue Department ("the Respondent") issued various summons to the Petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") for appearance and to

submit certain documents, without any details of the inquiry, wherein, the Accounts Manager of the Petitioner was grilled and interrogated and was subjected to cross-questioning. Further another summon was issued to one of the Directors of the Petitioner for appearance, producing documents and providing oral evidence.

The Petitioner contended that, all the documents are furnished as requisitioned by the Respondent. Further, the summons cannot be issued to coerce and pressurize the Petitioner or its Director, being a musician, who is not personally familiar with the issue of exemption regarding payment of GST.

Issue:
Whether summons can be issued by the Respondent to coerce and pressurize the Petitioner or its director, even when the Petitioner is co-operating during the inquiry?

Held:
The Hon'ble Bombay High Court in Writ Petition (L) No.30974 of 2021 dated January 10, 2022 held as under:

- Noted that, the summons were issued in view of the statement made by Accounts Manager of the Petitioner that the decision regarding payment of taxes and claiming of exemption was taken by the director of the Petitioner.
- Observed that, issuance of summons is a last resort and are not issued in a casual manner. Further, there are no allegations made by the Respondent alleging non-cooperation on the part of the Petitioner. Further observed that, the Petitioner is agreeable to co-operate with the Respondents in furnishing the documents as requisitioned and to provide further details through consultants.
- Set aside the summons issued by the Respondent.
- Directed the Respondent to inform the Petitioner the list of further documents required to be produced by the Petitioner and other requisite queries for clarifications within one week.
- Directed the Consultant of the Petitioner to co-operate with the Respondents in furnishing the documents and the information within prescribed time.
- Opined that, it is upon the Respondent to decide whether the director of the Petitioner shall be still called for recording of evidence after furnishing of the documents and information by the consultant of the Petitioner.
- Held that, if any summon is issued by the Respondent, it shall indicate the purpose of issuing summon with clear 7 days' notice before fixing the date for recording the statement of the Director of the Petitioner, who shall appear on the appointed date and cooperate with the Respondent in recording evidence.

15. Delhi HC dismisses conducting of alleged parallel investigation by various jurisdictional authorities

Case Name : Indo International Tobacco Ltd Vs Vivek Prasad (Delhi High Court)
Appeal Number : CONT.CAS(C) 751/2021 & CM No.35806/2021
Date of Judgement/Order : 11/01/2022

The Hon'ble Delhi High Court in M/S. Indo International Tobacco Ltd. & Ors. v. Shri Vivek Prasad, Additional Director General, DGGI & Ors. [Cont.Cas(C) 751/2021 & Cm No.35806/2021 dated January 11, 2022] dismissed the applicability of Circular in a petition challenging the conduct of alleged parallel investigation by various jurisdictional authorities and affirmed the investigations conducted various jurisdictional authorities of the Revenue Department into entities having common nexus. Held that, Circular cannot be extended to cover all and myriad situations that may arise in the administration and the functioning of the GST structure.

Facts:
M/S. Indo International Tobacco Ltd. and M/S. SSM Exports ("the Petitioners") are engaged in the manufacturing and supply of tobacco products. These writ petitions have been filed, being aggrieved of multiple search operations, summons being issued and cancellation of GST registration by the Revenue Department ("the Respondent") for alleged availment and utilization of inadmissible Input Tax Credit ("ITC") and to challenge the conduct of alleged parallel investigation by officers of CGST, Directorate General of Goods and Services Tax Intelligence ("DGGI") Ahmedabad and Delhi Unit, Joint Commissioner (AE), CGST etc. ("various jurisdictional authorities").

The Petitioner contended that issuance of such multiple summons by multiple agencies is violative of the mandate of Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") and as also the Circular No. D.O.F.No. CBEC/20/43/01/2017-GST (Pt.) dated October 5, 2018 ("the Circular") clarifying initiation of intelligence based enforcement action.

Issue:
Whether parallel investigation by various jurisdictional authorities can be conducted at same time against the Petitioners?

Held:
The Hon'ble Delhi High Court in Cont.Cas(C) 751/2021 & Cm No.35806/2021 dated January 11, 2022 held as under:

Noted that, the CBIC vide Notification No. 14/2017 – Central Tax dated July 01, 2017 has appointed the Officers in the DGGI, Director General of Goods and Service Tax ("DGGST"), and Director General of Audit ("DG Audit") as the Central Tax Officers and conferred on them the powers extended throughout the territory of India, and who are empowered to exercise all-India jurisdiction and those who enjoy the limited territorial jurisdiction.

Observed that, to achieve the goal of harmonized goods and services tax structure and in the spirit of co-operative federalism, Section 6(1) of the CGST Act and pari materia provisions in the State Goods and Services Tax Act, 2017 ("the SGST Act") provide for cross-empowerment of the Central Tax Officers and the State Tax Officers.

Further noted that, Section 6 of the CGST Act is clearly guided by the object of providing a common national market of goods and services and to eliminate the subjection of the taxpayers to multiple jurisdictions. It aims to provide protection to the

taxpayers against being subjected to multiple agencies for the same set of transactions, at the same time empowering the Officers under the CGST Act or the SGST Act or the Union Territory Goods and Services Tax Act, 2017 ("the UTGST Act") to pass a comprehensive order and take action, keeping in view and extending to the other Acts. There should, therefore, be only one order insofar as the tax entity is concerned.

Observed that, the investigations were initiated by various jurisdictional authorities against the Petitioners that were allegedly found in the investigations and the same have been transferred to officials of the Respondent to be brought under one umbrella.

Stated that, in the course of investigating of a tax entity, a situation may arise where the investigation may have to be carried out from entities which are not within the territorial jurisdiction of the Officer appointed or with the limited territorial jurisdiction. It cannot be said that in every such case, the 'proper officer' having limited territorial jurisdiction must transfer the investigation to the 'proper officer' having pan India jurisdiction. It would depend on the facts of each case as to whether such transfer is warranted or not. To lay down the indefeatable rule in this regard may not be feasible or advisable, and certainly not acceptable.

Opined that, neither Section 6 of the CGST Act nor the Circular is intended to nor can be given an overarching effect to cover all the situations that may arise in the implementation of the CGST Act and the SGST Act.

Held that, the Circular cannot be extended to cover all and myriad situations that may arise in the administration and the functioning of the GST structure, and clearly has a limited application, which is of ensuring that there is no overlapping exercise of jurisdiction by the Central and the State Tax Officers, to bring harmony between the Centre and the State in the implementation of the GST regime, with the two not hustle for jurisdiction over a taxpayer. It is, however, not intended to answer a situation where due to complexity or vastness of the inquiry or proceedings or involvement.

Further held that, there is no prohibition to such transfer under the CGST Act and allowed multiple investigations initiated against the Petitioners at the same time by various jurisdictional authorities to be transferred to DGGI, Ahmedabad, in order to bring them all under one umbrella.

16. Bogus ITC passing of Rs 47.99 Crore: HC grants bail to accused

Case Name : Satindra Kumar Yadav Vs State of Odisha (Orissa High Court)
Appeal Number : BLAPL No.9039 of 2021
Date of Judgement/Order : 11/01/2022

In the instant case, the petitioner was arrested on 02.09.2021 for offences under Section 132(1)(b),(c)&(l) of OGST Act, 2017 having availed fake ITC by a firm M/s. S.S. Syndicate during the period under consideration. As is made to understand, the petitioner being the proprietor of a fictitious firm availed passed on bogus ITC without

physical receipt and supply of goods on the strength of fake invoices issued in the name of non-existing suppliers which could be revealed after extensive investigation. The allegation is also to the effect that the petitioner in collusion with other accused persons were involved in operation of fictitious firms and availed bogus ITC of Rs. 4.16 crore and passed on ITC for an amount of Rs. 47.99 crore. The details of the documentation regarding the alleged transactions have been unearthed during investigation.

The conclusion which has been drawn by the investigating agency is entirely based on documents which are shown to have been seized during and in course of investigation. No doubt, the materials on record prima facie suggest the involvement of the petitioner and others in engaging themselves in activities whereby bogus ITC was claimed on the strength of fake invoices without physical receipt and supply of goods and also passed on to others.

In other words, all the necessary materials which are required to prosecute the petitioner can be said to have been substantially collected during investigation.

The petitioner happens to be a local inhabitant of Bhubaneswar. Being a permanent resident of Bhubaneswar, the Court is of the view that there is a less chance of petitioner absconding or fleeing from justice. The extent of illegality in availing ITC as against the plea of the petitioner is certainly to be examined during and at the end of trial.

Since reasonably sufficient material evidence appears to have been gathered and taking into account the period of detention and the fact that the alleged offences are punishable with a maximum imprisonment of five years and as the accused not being an outsider but a local of Balianta situate within the jurisdiction of Bhubaneswar, the Court is of the humble view that the petitioner, who has remained in judicial custody for four months, should be enlarged on bail with stringent conditions.

17. Fake ITC availment: HC grants bail to accused

Case Name : Rohit Berlia Vs The Intelligence Officer (Orissa High Court)
Appeal Number : Blapl No. 8831 of 2021
Date of Judgement/Order : 11/01/2022

In the instant case, the petitioner was arrested on 08.2021 for an offence punishable under Section 132(1)(c) CGST Act, 2017 having availed fake ITC by the firm M/s. Arshee Ventures during the period from July, 2017 to March, 2019. As is made to understand, the business premises of the firm was searched and inspected in the year 2018 by CGST Intelligence Wing and the petitioner's statement was recorded and was further examined on couple of times once in the year 2019 and soon before his arrest in the month of August, 2021 and in the meantime, final PR was submitted on 5th October, 2021. The petitioner is claimed to be the authorized agent of M/s. Arshee Ventures with his wife as its proprietor. The allegation is to the effect that the firm in question availed ineligible ITC and also made it available for other business entities by providing fake invoices and thus, passed on within and outside the State. The

details of the documentation regarding the illicit transactions have been revealed during investigation. The conclusion which has been drawn by the investigating agency is entirely based on documents which are shown to have been seized during and in course of investigation. No doubt, the materials on record prima facie suggest the involvement of the alleged firm in engaging itself in activities whereby bogus ITC was claimed on the strength of fake invoices without physical receipt and supply of goods. That apart, the investigation revealed availment of ineligible ITC of huge amount without receipt of any goods/ services. The fake business entities appear to have been identified. In other words, all the relevant materials which are required to subject the petitioner to prosecution can be said to have been collected during investigation. The petitioner happens to be a local inhabitant of Sambalpur. The firm is being run in the name of wife of the petitioner. Being a permanent resident of Sambalpur, the Court is of the view that there is a remote possibility of petitioner absconding or fleeing from justice. The extent of illegality in availing ITC in juxtaposition to the plea of the petitioner is in any case to be examined during and at the end of trial. The enquiry lasted for nearly two years ever since the business premises of the firm was searched and inspected by the Intelligence Wing of CGST. Since all the material evidence appears to have been gathered during investigation and considering the fact that final PR has, in the meantime, been submitted in the month of October, 2021 and taking into account the fact that the trial is unlikely to be accomplished in the near future and as the accused not being an outsider but a local of Sambalpur town, the Court is of the considered view that the petitioner, who has remained in judicial custody for nearly five months, should be enlarged on bail with stringent conditions.

In the result, application under Section 439 Cr.P.C. stands allowed. As a necessary corollary, the petitioner is directed to be released on bail on furnishing a bail bond of Rs.50,00.000/-(rupees fifty lac) with two solvent sureties for the like amount to the satisfaction of the learned court below in seisin over the matter with conditions, such as, he shall not induce, threat or terrorize any of the material witnesses, while on bail; shall not exert any kind of influence or pressure vis-à-vis the prosecution witnesses to be examined during the trial and thus, not to tamper with the collected evidence, in any manner whatsoever; shall not involve or indulge in any such similar kinds of nefarious activities, while on bail; shall surrender his passport, if he has any, before the learned court below and shall not leave the jurisdiction of the court without its prior permission.

18. Electronic Credit Ledger automatically get unblocked after expiry of period of 1 year?

Case Name : Barmecha Texfab Pvt. Ltd. Vs Commissioner, Govt. of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 17567 of 2021
Date of Judgement/Order : 12/01/2022

Rule 86A of the CGST Rules, 2017 provided that the Electronic Credit Ledger can be blocked for a period of one year. On expiry of a period of one year, it would automatically get unblocked. In fact, it was the duty of the authority concerned to permit

the assessee, i.e. the writ-applicant, to avail the input credit available in his ledger. Once the statutory period comes to an end, the authority has no further discretion in the matter, unless a fresh order is passed. In the case on hand, it is very unfortunate to note that despite the fact that the period of one year elapsed, the authority did not permit the writ-applicant to avail the credit available in his ledger. Even representation was filed in this regard but the authority thought fit not to pay heed to such representation. We may further note that the authority did not permit the writ-applicant to avail the input credit available in his ledger for about more than two and a half months after the statutory life of the order came to an end. We make it clear that next time if we come across such a case, then the concerned authority would be held personally liable for the loss which the assessee might have suffered during the interregnum period.

19. Electronic Credit Ledger automatically gets unblocked after 1 Year

Case Name : Ambika Creation Vs Commissioner, Govt. of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 17564 of 2021
Date of Judgement/Order : 12/01/2022

Rule 86A itself has provided that the Electronic Credit Ledger can be blocked for a period of one year. On expiry of a period of one year, it would automatically get unblocked. In fact, it was the duty of the authority concerned to permit the assessee, i.e. the writ-applicant, to avail the input credit available in his ledger. Once the statutory period comes to an end, the authority has no further discretion in the matter, unless a fresh order is passed. In the case on hand, it is very unfortunate to note that despite the fact that the period of one year elapsed, the authority did not permit the writ-applicant to avail the credit available in his ledger. Even representation was filed in this regard but the authority thought fit not to pay heed to such representation.
We may further note that the authority did not permit the writ-applicant to avail the input credit available in his ledger for about more than two and a half months after the statutory life of the order came to an end.

We make it clear that next time if we come across such a case, then the concerned authority would be held personally liable for the loss which the assessee might have suffered during the interregnum period.

20. ITC cannot be denied despite non-deposit of VAT by selling dealer: Rajasthan HC

Case Name : Assistant Commissioner, Commercial Taxes Department Vs Asha Oil Traders A-11 (Rajasthan High Court)
Appeal Number : D.B. Sales Tax Revision Petition No. 1/2015
Date of Judgement/Order : 12/01/2022

Issues Raised
Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in holding that the respondent cannot be hold responsible for the

amount not deposited by the selling dealer and allowed the benefit of Input Tax Credit which ultimately will amount to double jeopardy to the State as the selling dealer has not deposited the tax whereas subsequent dealer has claimed benefit of Input Tax Credit.

Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in deleting the Tax, Interest and penalty despite of the fact that the Input Tax Credit claimed by the petitioner was found to be on the basis of false/forged VAT invoices issued by a dealer who has not deposited the tax and its registration was cancelled u/s 16(4) (g) of the Act.

Argument of Revenue
The argument of learned counsel for the revenue is that in cases where the registered seller is found to have obtained a forged registration as dealer and it is found that such person has not paid any tax to the department, recovery could always be made from the buyer. According to him, not only tax but interest and penalty is also leviable.

Further submission is that Input Tax Credit could not be claimed by the assessee as the same is raised on false/forged VAT invoices issued by the dealer, who never deposited the tax and where registration itself has been cancelled.

Held by High Court
Rajasthan High Court earlier in the case of R.S. Infra-Transmission Ltd Vs State of Rajasthan has held that it will be impossible for the petitioner to prove that the selling dealer has paid tax or not as while making the payment, the invoice including tax paid or not he has to prove the same and the petitioner has already put a summary on record which clearly establish the amount which has been paid to the selling dealer including the purchase amount as well as tax amount. In that view of the matter, we are of the opinion that Rule 18 if it is accepted, then the Sales Tax Department will to take undue advantage and cause harassment.

Rretrospective cancellation of registration of purchasing dealer does not affect the right of selling dealer for deduction

This court in the case of M/s Vardhman Mills (supra) also took into consideration identical facts and held that retrospective cancellation of registration of purchasing dealer does not affect the right of selling dealer for deduction.

Therefore, we are of the considered view that the issue raised in this petition has already been settled by this Court in more than one decision.

21. GST: Cash credit account of assessee cannot be provisionally attached

Case Name : Manish Scrap Traders Vs Principal Commissioner (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 76 of 2022
Date of Judgement/Order : 12/01/2022

The law is well-settled that a cash credit account of the assessee cannot be provisionally attached in exercise of powers under Section 83 of the CGST Act. In view of the aforesaid, this writ-application succeeds and is hereby allowed. The order of provisional attachment of the cash credit account of the writ-applicant is hereby quashed and set-aside.

22. CST not payable If movement of goods from one state to other occasions export

Case Name : Parle Products Pvt. Ltd. Vs The State of Karnataka (Karnataka High Court)
Appeal Number : S.T.R.P. No. 26/2017
Date of Judgement/Order : 12/01/2022

The petitioner – assessee is a manufacturer and dealer of consumer goods under provisions of the Karnataka Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 ('CST Act' for short). The returns in Form VAT 100 were filed by the assessee for the period under consideration i.e., 2005-06 to 2008-09. The Assistant Commissioner of Commercial Taxes (Assessing Authority) re-assessed the returns and disallowed the exemption claimed under Section 5(1) of CST Act on the ground that the petitioner had effected stock transfer and not a sale in the course of export. Being aggrieved, the petitioner preferred appeals before the First Appellate Authority who dismissed the appeals. Pursuant to which appeals were preferred before the Tribunal. The Tribunal by order dated 18.07.2011 set aside the order of the First Appellate Authority and remanded the matter back to the First Appellate Authority. The said appeals having being partly allowed, the petitioner preferred appeals before the Tribunal unsuccessfully. The review petition preferred by the assessee also came to be dismissed. Hence, the present revision petition.

In the case of State of Karnataka vs. Azad Coach Builders Private Limited and another [(2010) 9 SCC 524], the Hon'ble Apex Court has enunciated the principles relating to Section 5(3) of the CST Act as under:-

- To constitute a sale in the course of export there must be an intention on the part of both the buyer and seller to export.
- There must be obligation to export, and there must be an actual export.
- The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to
- To occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it, without which a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India.

Thus, it has been held that the test to be applied is, whether there is an unseverable link between the local sale or purchase and export, and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods,

then a claim under Section 5(3) for exemption from State sales tax is justified, in which case, the same goods theory has no application.

Learned counsel for the petitioner has filed a memo along with certain documents to substantiate his contention that the goods have occasioned the movement from Karnataka to Maharashtra in the course of export. The orders of the appellate authority relating to the subsequent assessment years 2009- 2010, 2011-2012 and 2012-2013 are also placed on record wherein the contention of the assessee that the transfer from branch office to head office was in the course of export has been accepted.

It is pertinent to note that the Tribunal has held that there must be a single sale to attract Section 5(1), but it is not the case of the department that the goods have moved from the branch office in Karnataka to Head Office at Mumbai as a result of sale. On the other hand, it is construed as stock transfer. The test to be applied is whether the contract of the foreign buyers with the Head Office occasioned the movement of the goods from Bangalore branch office. This inextricable link has not been properly examined by the authorities. However, learned Additional Government Advocate argued that it is revenue neutral. This argument would not take the dispute to logical conclusion. The matter requires to be re-examined by the Tribunal in the light of the judgments referred to above vis-à-vis the documents produced before this Court. If the Excise pass has any inextricable link with the export, certainly the transaction would come within the purview of Section 5(1) of CST Act. In other words, the movement of goods occasions such export. These aspects require to be verified by the Tribunal considering the material evidence placed on record by the assessee. Hence, the matter has to be restored to the file of the Tribunal sans answering the questions of law.

23. No penalty for non-transportation of goods within validity of E way bill due to agitation & blocked traffic: SC

Case Name : Assistant Commissioner (ST) & Ors. Vs Satyam Shivam Papers Pvt. Limited (Supreme Court of India)
Appeal Number : Petition(s) for Special Leave to Appeal (C) No(s). 21132/2021
Date of Judgement/Order : 12/01/2022

No tax evasion can be presumed on mere non-extension of validity of e-way bill due to traffic blockage and agitation

The Hon'ble Supreme Court of India in Assistant Commissioner ST & Ors. v. Satyam Shivam Papers Pvt. Ltd. [Special Leave to Appeal (C) No(s). 21132/2021 dated January 12, 2022] affirmed the judgment passed by the Hon'ble Telangana High Court and held that, tax evasion cannot be presumed on mere non-extension of validity of e-way bill by the assessee due to traffic blockage and agitation, for which the Revenue Authority is responsible for not providing smooth passage of traffic. Further, imposed a sum of INR 69,000/- on the Revenue Department towards the cost payable to the assessee, and to be recovered, directly from the persons responsible.

Facts:

This petition has been filed by the Revenue Department ("the Petitioner"), being aggrieved of the judgment passed by the Hon'ble Telangana High Court in Satyam Shivam Papers Pvt. Ltd. v. Assistant Commissioner ST & Ors. [Writ Petition No. 9688 of 2020 dated June 2, 2021] wherein, the Court set aside the order passed by the Petitioner in Form GST MOV-09, imposing tax and penalty on Satyam Shivam Papers Pvt. Ltd. ("the Respondent") due to the expiry of the e-way bill and deprecated the Petitioner for blatant abuse of power in detaining goods by treating validity of the expiry on the e-way bill as amounting to evasion of tax compelling the Petitioner to pay INR 69,000/- by such conduct. It was held that, no presumption can be drawn that there was an intention to evade tax on account of non-extension of the validity of the e-way bill by the Respondent. Further, directed the Petitioner to refund the amount collected from the Petitioner with interest @6% p.a. and imposed fine of INR 10,000/- payable to the Respondent.

The Petitioner contended that, the questions of law is involved in the matter w.r.t. the operation and effect of Section 129 of Central Goods and Services Tax Act, 2017 ("the CGST Act") and violation by the Respondent.

Issue:
Whether there involves a question of law in the matter as contended by the Petitioner?

Held:
The Hon'ble Supreme Court of India in Special Leave to Appeal (C) No(s). 21132/2021 dated January 12, 2022 held as under:

- Noted that, the Hon'ble High Court had meticulously examined and correctly found that no fault or intent to evade tax could have been inferred. Further, the amount of costs as awarded is rather on the lower side, considering the overall conduct of the Petitioner and the harassment faced by the Respondent.
- Observed that, there was no intent on the part of the Respondent to evade tax and the goods could not be taken to the destination within time, for the reasons beyond the control of the Respondent, including the traffic blockage due to agitation, for which the Petitioner alone is responsible for not providing smooth passage of traffic.
- Opined that, there is no question of law nor the question of fact involved in the matter and the petition filed by the Respondent has been misconceived.
- Enhanced and imposed a further sum of INR 59,000/- on the Petitioner the amount toward costs, payable within 4 weeks, over and above the sum of INR 10,000/- already awarded by the Hon'ble Telangana High Court.
- Clarified that the amount of costs, to be recovered, directly from the person/s responsible for such entirely unnecessary litigation.

24. Directors' personal property cannot be Attached to Recover Companies Sales Tax Dues

Case Name : Sunita Ramesh Bansal Vs Assistant Commissioner of State Tax (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 229 of 2022

Date of Judgement/Order : 13/01/2022

It appears that Ms. Veena Bhagvandas Jindal from whom the writ applicant purchased the plot, at one point of time, was a Director in a Company by name the Jindal Alufoils Pvt. Ltd. According to the writ applicant, she came to know upon inquiry that Ms. Jindal had resigned as a Director of the said Company way back in the year 2015. It appears that the State intends to recover some amount from the Jindal Alufoils Pvt. Ltd. towards the sales tax. For the purpose of recovery of such dues, the State went to the extent of creating a charge over the property purchased by the writ applicant on the premise that the said property was owned by the Director of the said Company and the Director would be responsible for the dues of the Company. It appears that the charge has been created in the record of rights by mutation of entries. The section 78 specifically deal with offence by companies and the criminal liability is fastened on the Directors who were in charge of and were responsible for the conduct of the business of the Company, but does not at all provide for any personal liability of the Directors to pay the sales-tax dues of the Company nor does it empower the authorities to proceed against the personal properties of the Directors. The very fact that the same Legislature has in the same Act provided for criminal liability of the Directors without providing for any personal liability of the Directors of their personal properties for payment of sales-tax dues of the Company in question, the provisions of Section 78 lend support to the case of the petitioners rather than the case of the authorities. As regards the faint plea of lifting the corporate veil, as per the settled legal position, the corporate veil is not to be lifted lightly. It is only when there is strong factual foundation for lifting the corporate veil that the question of examining the applicability of the principle of lifting such veil would be required to be examined. In neither of the two petitions raising the controversy, the authorities have passed any specific order fastening the liability on the Directors personally, much less any factual foundation has been laid to invoke the doctrine of lifting the corporate veil. Hence it is not necessary to dilate on the said principle any further." In view of the aforesaid, this writ application succeeds and is hereby allowed. The charge created by the State in the revenue records with respect to the subject property is set aside and both the orders of attachment are also hereby quashed and set aside.

25. HC directs unblocking of Electronic Credit Ledger as one year period was expired

Case Name : Krishna Fashion Vs Union of India (Delhi High Court)
Appeal Number : W.P.(C) 602/2022
Date of Judgement/Order : 18/01/2022

GST Authority cannot block the bank accounts or ECL beyond an year if assesse is cooperating

The Hon'ble Delhi High Court in M/S Krishna Fashion vs. Union of India & Ors. [W.P. (C) 602/2022 & CM APPL. 1696/2022 dated January 18, 2022] held that once the assessee is cooperating and has submitted the relevant documents to the Revenue Department then the bank accounts and Electronic Credit Ledger (ECL) of such

assessee to be unblocked upon the expiry of one year from the date of imposing such restrictions.

Facts:
M/s Krishna Fashion ("the Petitioner") filed this present writ petition before the Delhi High Court challenging the order dated March 16, 2020 ("Impugned order") passed by the Revenue Department ("the Respondents") stating that the Respondents have attached the Petitioner's bank account maintained in Union Bank of India and blocked the ECL.

The Petitioner contented that as per the Rule 86A(3) of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") the ECL was supposed to be unblocked on February 05, 2021 upon completion of one year from the date of imposing such restrictions. However, it continued to remain the same.

Also, as per the Section 83(2) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") the Impugned order will stand invalid upon completion of one year from the date of passing such order.

The Respondents argued that there were no new GST DRC-22 (i.e., Provisional attachment of property under Section 83 of the CGST Act) issued in this matter, the Petitioner has not appeared before the Investigating Officer despite of the service of the summons and not even produced the relevant documents.

Issue:
Whether the Respondent has the power to keep the bank account and the ECL blocked under Section 83(2) of the CGST Act and Rule 86A(3) CGST Rules beyond one year?

Held:
The Hon'ble Delhi High Court in W.P. (C) 602/2022 & CM APPL. 1696/2022 dated January 18, 2022 held as under:

- Observed that the Petitioner has cooperated with the investigating agencies and will continue to appear before the Investigating Authorities as and when required along with the relevant documents.
- Directed the Respondents to de-freeze the bank account of the Petitioner maintained with M/S Union Bank of India as well as unblock the ECL within three working days of uploading the present order.

Relevant Provisions:

Section 83(2) of the CGST Act "83. Provisional attachment to protect revenue in certain cases
(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section."

Rule 86A(3) of the CGST Rules

“86A. Conditions of use of amount available in electronic credit ledger: –
(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.”

26. Rajasthan HC Upheld the provisions w.r.t claiming of refund of unutilized ITC

Case Name : Triveni Electrodes Vs Union of India (Rajasthan High Court at Jaipur)
Appeal Number : D.B. Civil Writ Petition No. 2137/2021
Date of Judgement/Order : 20/01/2022

Rajasthan HC directs GST Authorities to decide on petitioner’s time barred GST refund claim The Hon’ble Rajasthan High Court in M/S Triveny Electrodes & ors. v. Union of India, Through Secretary, Finance Department, Government of India, New Delhi & ors. [D.B. Civil Writ Petition No. 2137/2022 dated January 20, 2022] upheld the provisions w.r.t claiming of refund of unutilized Input Tax Credit (ITC) and asked the department to pass final order after taking into account the reply of the assessee. Facts: M/S Triveny Electrodes & ors. (“the Petitioner”) had challenged the vires of Section 54 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) as ultra vires to the constitution. The petitioner had claimed refund of the accumulated credit in the ledger account. The Union of India, Through Secretary, Finance Department, Government of India, New Delhi & ors. (“the Assessing Officer” or “Competent Authority”) communicated the Petitioner and rejected the claim stating that it is time barred. The competent authority however before passing such order issued a show cause notice to the Petitioner which was to be replied within 15 days. Following which the Petitioner also filed a reply raising concern that refund was not claimed after the expiry of the limitation period and the final order is pending. Subsequently, the Petitioner also filed the present writ and contended that the relaxations related to COVID would apply to the provisions related to time limit contained in the statutes for refund.

Issue:
Whether Section 54 of the CGST Act is ultra vires the Constitution of India?

Held:
The Hon’ble Rajasthan High Court in D.B. Civil Writ Petition No. 2137/2022 dated January 20, 2022] held as under: Noted that in the case of Union of India and others v. VKC Footsteps India Pvt. Ltd. [Civil Appeal No 4810 of 2021 dated September 13, 2021] the Hon’ble Supreme Court has upheld the vires of the statutory provisions Section 54 of the CGST Act. Refused to go into the questing in the petition and stated that the Assistant Commissioner must conclude the Petitioner’s refund claim keeping in mind the reply filed by the Petitioner against the show cause notice. Further, stated that the Petitioner has the right to file reply raising additional grounds in support of the refund claims within a week from the date of this order.

Relevant Provision:
Section 54 of the CGST Act “54. Refund of tax
(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years

from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed. Explanation.-For the purposes of this section,—

(2) "relevant date" means- (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,— (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or (ii) if the goods are exported by land, the date on which such goods pass the frontier; or (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India; (b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished; (c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of— (i) receipt of payment in convertible foreign exchange 2[or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice; (d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction; (e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section

(3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises; (f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof; (g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and (h) in any other case, the date of payment of tax."

27. Claimant needs to satisfy all eligibility criteria/conditions of exemption notification: SC

Case Name : State of Gujarat Vs Arcelor Mittal Nippon Steel India Limited (Supreme Court of India)
Appeal Number : Civil Appeal Nos. 7710-7714 of 2021
Date of Judgement/Order : 21/01/2022

Facts-
The appellant was granted sales tax exemption in terms of Entry No. 255(2) of the notification dated 05.03.1992. The exemption was from payment of purchase tax on raw-material for (i) Naphtha and (ii) Natural Gas. Exemption was available to steel manufacturing units (ESL) and units engaged in generating electricity (EPL) were specifically excluded from the exemption.

Further, condition 6 required to unit to actually use the goods purchased within the State of Gujarat as raw-material; processing material or consumable stores in the manufacture of goods for sale within the State of Gujarat or outside or as packing material.

Conclusion-
The person claiming the exemption has to fulfil and satisfy all the eligibility criteria/conditions mentioned in the exemption notification.

The respondent (ESL) was not eligible at all for exemption from payment of purchase tax as in fact power generating companies (EPL) were put in the list of 'ineligible industries'. Therefore, by such a modus operandi, the benefit, which was not available to the EPL was made available by such transfer of raw materials by the ESL to EPL.
Held that the respondent -ESL – the eligible unit was not entitled to the exemption from payment of purchase tax under the original Entry No.255(2) dated 05.03.1992, firstly, on the ground that it did not fulfill the eligibility criteria/conditions mentioned in the original Entry No.255(2) dated 05.03.1992 and secondly that there was a breach of declaration in Form No.26.

28. HC disapproves provisional attachment of goods, stock & receivables

Case Name : Utkarsh Ispat LLP Vs State of Gujarat (Gujarat High Court)
Appeal Number : Special Civil Application No. 188 of 2022
Date of Judgement/Order : 27/01/2022

In the case on hand, HC do not approve the provisional attachment of the goods, stock and receivables, more particularly, when the entire stock and receivables have been pledged and a floating charge has been created in favour of the Kalupur Commercial Bank Limited for the purpose of availing the cash credit facility with the provisional attachment of the goods, stock and receivables the entire business will come to a standstill.

29. HC directs restoration of GST registration on payment of tax, penalty & uploading of returns

Case Name : Tvl. Suguna Cutpiece Center Vs The Appellate Deputy Commissioner (ST) (GST) (Madras High Court)
Appeal Number : W.P. Nos. 25048, 25877 and 14508 of 2021
Date of Judgement/Order : 31/01/2022

These Writ Petitions pertain to the challenge to the cancellation of GST Registrations issued to the petitioners under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017. Some of the petitioners have filed these Writ Petitions against the order of the cancellation of GST registration, while, some of the petitioners have filed these Writ Petitions against the order passed in the appeals filed against the order of the cancellation of GST registration.

The learned Special Government Pleader would further submit that though the petitioner has belatedly filed the returns and paid the tax, the appeal was beyond the limitation. It is submitted that though the petitioner has paid the tax and filed the returns belatedly, nevertheless the petitioner having not opted for filing suitable application for revocation of cancellation of registration, the relief sought for in this Writ Petition cannot be granted.

High court held that no useful purpose will be served by keeping these petitioners out of the bounds of GST regime under the respective GST enactments other than to allow further leakage of the revenue and to isolate these petitioners from the main stream contrary to the objects of the respective GST enactments.

The purpose of GST registration is only to ensure just tax gets collected on supplies of goods or service or both and is paid to the exchequer. Keeping these petitioners outside the bounds of the GST regime is a self defeating move as no tax will get paid on the supplies of these petitioners.

By not allowing the petitioners to revive their registration is to de-recognise a whole lot of entrepreneurs and to not to collect GST at all from them.

Notwithstanding the fact that the petitioners have shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration, this Court is inclined to quash the impugned orders with grant consequential reliefs subject to terms.

The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under Article 14, read with Article 19 (1)(g) and Article 21 of the Constitution of India.

As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

This is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.

In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-

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

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

iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.

vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.

vii. The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.

viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

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

x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.

30. GST registration cannot be suspended for more than 2 months on the basis of SCN lacking any reason or fact

Case Name : Shakti Shiva Magnets Private Limited Vs Assistant Commissioner & Ors. (Delhi High Court)
Appeal Number : W.P.(C) 1559/2022
Date of Judgement/Order : 31/01/2022

GST registration cannot be suspended for more than 2 months on the basis of SCN lacking any reason or fact

The Hon'ble Delhi High Court in Shakti Shiva Magnets Private Limited v. Assistant Commissioner & Ors [W.P.(C) 1559/2022 dated January 31, 2022] quashed the Show Cause Notice ('SCN) issued by the Revenue Department suspending GST registration of the assessee and directed to reissue a fresh SCN with all the relevant facts and reasons within a week's time regarding. Further, directed the Revenue Department to restore the assessee's GST registration and issue a practice direction so that in future, if any SCN for cancellation of GST registration is issued, the same is not bereft of any material particulars or reasons.

Facts:
Shakti Shiva Magnets Private Limited (the Petitioner) has filed this petition against the SCN issued dated November 11, 2021 ("the impugned SCN") by Revenue Department ("the Respondent") due to which the Petitioner's registration was suspended for more than 2 months with no sufficient explanation or reason or fact.

The Petitioner contended that as per Rule 21A of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") that describes the conditions needed to be fulfilled for suspending a registration and Rule 22(3) of the CGST Rules wherein it is provided that an assessee's registration can be suspended only for 30 days and the cancellation proceeding has to be concluded within the same period.

Further, the Respondent prayed for 3 days' time to issue a fresh detailed SCN to the Petitioner and for fifteen days' time to decide the same.

Issue:
Whether the Respondent can suspend the registration of the Petitioner with no sufficient explanation, reason or fact under the CGST Rules?

Held:
The Hon'ble Delhi High Court in W.P.(C) 1559/2022 dated January 31, 2022 held as under:

- Observed that the impugned SCN contains no fact or reasons and is not supported by any document based on which the Petitioner's registration could be suspended.
- Quashed the impugned SCN.

- Directed the Respondent to restore the Petitioner's GST registration. However, allowed the Respondent to issue a fresh SCN mentioning all the relevant facts and reasons within a week.
- Further directed the Respondent to issue a practice direction so that in future, if any SCN for cancellation of GST registration is issued, the same is not bereft of any material particulars or reasons.

Relevant Provisions:

Rule 21A of the CGST Rules:
"Suspension of registration
(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22."

Rule 22(3) of the CGST Rules:
"Cancellation of registration
Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under sub-rule (1) of rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1) or under sub-rule (2A) of rule 21A, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29."