# GST UPDATE
# (February, 2022)

**Directorate of Training, Excise and Taxation Department, Punjab**

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# (I) PUNJAB GST NOTIFICATIONS



**PART I**

**GOVERNMENT OF PUNJAB**

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

**NOTIFICATION**

The 9th February, 2022

**No.8-Leg./2022.-**The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 1st day of February, 2022, is hereby published for general information:-

**THE PUNJAB GOODS AND SERVICES TAX (AMENDMENT) ACT, 2021**

**(Punjab Act No.8 of 2022)**

AN

ACT

further to amend the Punjab Goods and Services Tax Act, 2017.

BE it enacted by the Legislature of the State of Punjab in the Seventy-second Year of the Republic of India as follows:-

Short title and Commencement.

1. (1) This Act may be called the Punjab Goods and Services Tax (Amendment) Act, 2021.

(2) Save as otherwise provided, the provisions of this Act shall come into force on such date as the Government of Punjab may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment in section 7 of Punjab Act 5 of 2017.

2. In the Punjab Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, namely:—

"(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;".

Amendment in section 16 of Punjab Act 5 of 2017.

3. In the principal Act, in section 16, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—

"(aa) the details of the invoice or debit note referred to in clause has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;".

Amendment in section 35 of Punjab Act 5 of 2017.

4. In the principal Act, in section 35, sub-section (5) shall be omitted.

substitution of section 44 of Punjab Act 5 of 2017.

5. In the principal Act, for section 44, the following section shall be substituted, namely:—

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

Annual return.

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

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

6. In the principal Act, in section 50, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:— Amendment in section 50 of Punjab Act 5 of 2017.

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.".

7. In the principal Act, in section 74, in Explanation 1, in clause (ii), for the words and figures "sections 122, 125,129 and 130", the words and figures "sections 122 and 125" shall be substituted. Amendment in section 74 of Punjab Act 5 of 2017.

8. In the principal Act, in section 75, in sub-section (12), the following Explanation shall be inserted, namely:— Amendment in section 75 of Punjab Act 5 of 2017.

"Explanation.—For the purposes of this sub-section, the expression

"self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.".

9. In the principal Act, in section 83, for sub-section (1), the following sub-section shall be substituted, namely:— Amendment in section 83 of Punjab Act 5 of 2017.

"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.".

10. In the principal Act, in section 107, in sub-section (6), the following proviso shall be inserted, namely:— Amendment in section 107 of Punjab Act 5 of 2017.

"Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.".

Amendment in section 129 of Punjab Act 5 of 2017.

11. In the principal Act, in section 129, —

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

"(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;";

(ii) sub-section (2) shall be omitted;

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause(a) or clause (b) of sub-section (1).";

(iv) in sub-section (4), for the words "No tax, interest or penalty", the words "No penalty" shall be substituted;

(v) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section(1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.".

12. In the principal Act, in section 130, — Amendment in section 130 of Punjab Act 5 of 2017.

(a) in sub-section (1), for the words "Notwithstanding anything contained in this Act, if ", the word "Where" shall be substituted;

(b) in sub-section (2), in the second proviso, for the words, brackets and figures "amount of penalty leviable under sub-section (1) of section 129", the words "penalty equal to hundred per cent. of the tax payable on such goods" shall be substituted;

(c) sub-section (3) shall be omitted.

13. In the principal Act, in section 151, the following section shall be substituted, namely:— Substitution in section 151 of Punjab Act 5 of 2017.

"151. The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.". Power to call for information.

14. In the principal Act, in section 152, — Amendment in section 152 of Punjab Act 5 of 2017.

(a) in sub-section (1),—

(i) the words "of any individual return or part thereof" shall be omitted;

(ii) after the words "any proceedings under this Act", the words "without giving an opportunity of being heard to the person concerned" shall be inserted;

(b) sub-section (2) shall be omitted.

15. In the principal Act, in Schedule II, paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017. Amendment in Schedule-II of Punjab Act 5 of 2017.

**S.K. AGGARWAL,**
Principal Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.

*2508/2-2022/Pb. Govt. Press, S.A.S. Nagar*

# (II) CENTRAL TAX NOTIFICATIONS

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

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

**Notification No. 01/2022 – Central Tax**

**New Delhi, the 24th February, 2022**

G.S.R.....(E).- In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 13/2020 – Central Tax, dated the 21st March, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 196(E), dated 21st March, 2020, namely:-

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

[F. No. CBIC- 20021/1/2022-GST]

(Rajeev Ranjan)
Under Secretary to the Government of India

Note: The principal notification No. 13/2020 – Central Tax, dated the 21st March, 2020 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 196(E), dated 21st March, 2020 and was last amended *vide* notification No. 23/2021-Central Tax, dated the 1st June, 2021, published vide number G.S.R. 367(E), dated the 1st June, 2021.

## (III) ADVANCE RULINGS

### 1. GST is exempt on Comprehensive architectural services

Case Name : In re Sir J J College of Architecture Consultancy Cell (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-13/2020-21/B-15
Date of Judgement/Order : 01/02/2022

Question :- Applicability of GST exemption on Comprehensive architectural services that includes architectural design, structural design , MEP design , HVAC services design, preparation of drawings etc for repairs/ restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai ('MCGM').

Answer:- GST exemption vide Sr. No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, is applicable on Comprehensive architectural services that includes architectural design, structural design, MEP design , HVAC services design, preparation of drawings etc for repairs/ restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai ('MCGM').

### 2. ITC available on GST paid under RCM on hiring of buses for transportation of employees

Case Name : In re Maanicare System India Private Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-104/2019-20/B-14
Date of Judgement/Order : 01/02/2022

Question: – Whether the Applicant (Maanicare System India Private Limited) is eligible to take input tax credit on GST paid under Reverse Charge Mechanism @ 5% for hiring of buses for transportation of employees?

Answer:- In the affirmative but only with effect from 01/12/2019.

Section 17 (5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment i.e. 01.02.2019. However with effect from 01.02.2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver)

In the instant case, the bus service availed by the Applicant is 49-seater i.e. more than 13 seater. Accordingly, the same is not falling under the block credit as provided under section 17(5) of CGST Act 2017 and, therefore, in the instant case, (since the applicant

is utilizing the services of renting of motor vehicle for business or furtherance of business), the input tax credit is not restricted to the applicant under the referred Section 17(5) of CGST Act 2017. Thus the applicant would be eligible for ITC but only with effect from 01/02/2019 only, as per above legal provisions.

**3. Road tunneling work by way of drill and blast technique is a composite supply**

Case Name : In re Kapil Sons (Rajendra Kumar Baheti) (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. GST-ARA-05/2021-22/B-17
Date of Judgement/Order : 08/02/2022

From the submissions made by the applicant we observe that the main contractor has been given a contract by MSRDC to construct tunnels for Mumbai Pune Expressway and accordingly, the main contractor has subcontracted the tunneling work to the applicant by way of drill and blast technique of tunneling. In the subject case, the work is for construction of tunnels which can be considered as immovable properties belonging to the Government of Maharashtra. Further as per the work order submitted by the applicant, it clearly appears that the impugned activity carried out by the applicant can classified as composite supply of works contract for construction of tunnel. This would answer the first question raised by the applicant.

It is further noticed that similar view has been taken by the Advance Ruling Authority of Gujarat in case of M/s KHEDUT HAT [2018-TIOL-173-AAR-GST] that blasting work with use of explosives is a composite supply.

In respect of the second question asked by the applicant, we hold that the impugned activity carried out by the applicant is a composite supply of works contract for construction of tunnel and is covered under Entry 3(iv) of Notification No. 11/2017-CT (Rate) dated 28.06.2017.

**4. Seed is not a agricultural produce & GST payable on its Storage & Packaging Services**

Case Name : In re M. Narasimha Reddy & Sons (GST AAR Telangana)
Appeal Number : TSAAR Order No. 04/2022
Date of Judgement/Order : 11/02/2022

The applicant is supplying goods which are produce of cultivation of plants. However they are of seed quality and not grain, therefore further they are not meant for food, fibre, fuel or raw material for further processing. In the definition of agricultural produce, the word ‘raw material’ is used which is a general word and is in the company of specific words i.e., food, fibre and fuel. These specific words indicate direct consumption by human or in industry but not in cultivation.

The Hon’ble Supreme Court of India in the case of Godfrey Philips India Vs State of U.P 2005 (139) STC 537, held that when 2 or more words susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning

of the general word being restricted to a sense analogous to that of the less general. In this case, it was held that even in case of inclusive definition, principle of noscitur a sociis can be applicable.

Applying this rule to the present facts, supply of seed does not fall under the definition of agricultural produce as the seed does not fulfill the utilities prescribed therein.

Similarly the said definition restricts the 'agricultural produce' to unprocessed goods. Further even if 'processing' is done it should be 'such processing' as done by a 'cultivator' for 'primary market'. Essentially processed agricultural products do not fall under this definition. If any processing is done it should be on an equal footing to that done by a "cultivator for primary market" i.e., processing made by a farmer for agricultural mandi. Even if the farmer does any different processing such produce will not fall under this definition.

The facts presented by the applicant clearly indicate that the processing done by them to turn grain into seed quality goods is different from the processing done by a cultivator or producer of grain for primary market i.e., agricultural mandi or agricultural market yard. Therefore even on this count, the seed quality goods produced by them cannot be treated as agricultural produce.

Therefore the seeds produced by them do not qualify as agricultural produce and hence:

1. Storage of seeds in the storage facility/godown, loading/unloading and packaging by job worker are not exempt under:

a. Serial No. 54E of Notification No. 12/2017 as this entry pertains to Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. This entry relates to exemption of services engaged by a cultivator or an agriculturalist and not to services engaged by Seed Company.

b. Serial No. 24(i)(e) of Notification No. 11/2017 as this entry pertains to support services to agriculture, forestry, fishing, animal husbandry engaged by a cultivator and not to services engaged by a seed company.

2. Cleaning, drying, grading and treatment with chemicals carried out by a job worker or on job work basis are not exempt under:

a. Serial No. 54(c)(h) of Notification No. 12/2017 as this entry pertains to Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. This entry relates to exemption of services engaged by a cultivator or an agriculturalist and not to services engaged by Seed Company.

b. Serial No. 24(i)(c) & (h) of Notification No. 11/2017 as this entry pertains to support services to agriculture, forestry, fishing, animal husbandry engaged by a cultivator and not to services engaged by a seed company.

**5. GST payable on production and sale of seeds**

Case Name : In re Ganga Kaveri Seeds Pvt. ltd. (GST AAR Telangana)
Appeal Number : Advance Ruling No. TSAAR Order No.05/2022
Date of Judgement/Order : 11/02/2022

1. Storage of seeds in the storage facility/godown, loading/unloading and packaging by job worker are not exempt under:

a. Serial No. 54E of Notification No. 12/2017 as this entry pertains to Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. This entry relates to exemption of services engaged by a cultivator or an agriculturalist and not to services engaged by Seed Company.

b. Serial No. 24(i)(e) of Notification No. 11/2017- Central Tax (Ret)dated 28-06-2017 as this entry pertains to support services to agriculture, forestry, fishing, animal husbandry engaged by a cultivator and not to services engaged by a seed company.

2. Cleaning, drying, grading and treatment with chemicals carried out by a job worker or on job work basis are not exempt under:

a. Serial No. 54(c)(h) of Notification No. 12/2017 as this entry pertains to Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce. This entry relates to exemption of services engaged by a cultivator or an agriculturalist and not to services engaged by Seed Company.

b. Serial No. 24(i)(c) & (h) of Notification No. 11/2017- Central Tax (Ret)dated 28-06-2017 as this entry pertains to support services to agriculture, forestry, fishing, animal husbandry engaged by a cultivator and not to services engaged by a seed company.

3. Transportation of seeds from farm to storage facility and then transportation of packed seed from storage facility to distributors is not exempt under:

a. Serial No. 21(a) of Notification No. 12/2017, as this entry provides exemption on transportation services to agricultural produce and from the foregoing discussion it is established that seed is not agricultural produce in terms of the definition used in the notification, the transportation services engaged by a seed company are not exempt.

4. If processing is undertaken by an applicant himself for in house seed production, there is no supply and hence exempt.

## 6. Summons for appearance & authorization for arrest under GST is not a Criminal Proceedings

Case Name : Saurabh Mittal Vs Union of India (Delhi High Court)
Appeal Number : CRL.M.C. 644/2022
Date of Judgement/Order : 11/02/2022

In the instant case, the allegations against the petitioner are of indulging in creation of numerous fake firms and availing an enormous Input Tax Credit fraudulently. The petitioner agrees and undertakes to appear before the officers and cooperate in the investigation, however, the main grievance of the petitioner is about the possibility of his arrest and detention to custody. But the objection of the respondents is that this Court cannot interfere with investigation by granting protection to the petitioner at this stage. It is trite law that at the stage of show cause notice, summons, chargesheet or notice to appear, constitutional courts would not interfere as to interject the proceedings and thereby, prevent the authorities from proceeding with.

Perusal of the various provisions of CGST Act which have been discussed in various judgments time and again demonstrate that the summons for appearance issued under Section 70 of the CGST Act and the authorization for arrest issued under Section 69 (1) of the CGST Act, do not fall within the ambit of the definition of "Criminal Proceedings", because criminal proceeding commences, only after the launch of prosecution. It is pertinent to mention that Section 132 (1) of CGST Act lists out about twelve different types of offences under Clauses (a) to (l) and five out of these twelve offences are cognizable and non-bailable in view of Section 132 (5) of CGST Act and the remaining seven offences are non-cognizable and bailable in view of Section 132(4) of the CGST Act.

The sum and substance of the propositions of law, which could be culled out from the aforesaid decisions is as follows:

i. The summons under Section 70 of the CGST Act are to be issued only after inquiry is initiated and at the stage of issuance of summons, the Court cannot interfere or grant unreasonable stay on investigation.
ii. Any person against whom an enquiry is undertaken under the relevant provisions of the tax laws, does not ipso facto become an 'accused' until prosecution is launched.
iii. The powers bestowed upon the officers appointed under numerous tax enactments for search and arrest are in effect intended to aid, assist and provide support to their main purpose of levying and collecting the taxes and duties.
iv. Passing of any blanket orders without stating reasons would obstruct the investigation and could jeopardize the same. Therefore, such a broad directive is completely unjustified and before passing any blanket order, it is paramount to state the reasons for granting of any such interim relief or protection.

Court, in exercise of its jurisdiction under Section 482 Cr.P.C. cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts

Now, coming to the jurisdiction, suffice it to say that the Court, in exercise of its jurisdiction under Section 482 Cr.P.C. cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts. The issues involving facts raised by the petitioner by way of defence is a matter of investigation/inquiry and the same will have to be adjudicated on merits of the case and not by way of invoking jurisdiction under Section 482 Cr.P.C. at this stage.

The parameters of the jurisdiction of the High Court in exercising jurisdiction under Section 482 Cr.P.C, are now almost well-settled. Although it has wide amplitude, but a great deal of caution is also required in its exercise. The requirement is the application of well-known legal principles involved in each and every matter adverting back the facts of the present case, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 Cr.P.C. at this stage of issuance of summons. More so, the defence raised by the petitioners in the petition requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.P.C.

Reasonable Apprehension of Coercion by GST Dept mandatory to conduct Proceedings through CCTV Cameras

As far as the relief prayed for by the Ld. senior counsel for the petitioner with regard to the audio/videography of the proceedings to be carried out by the respondents, in the presence of petitioner's lawyer at a visible distance, beyond audible range, inter-alia, by way of installation of appropriate CCTV cameras, is concerned, the same is untenable in law as in the instant case, the petitioner has failed to raise any reasonable basis to apprehend coercion by the respondents herein against the petitioner. It is clear that such directions are to be issued in special facts and circumstances of that case. Perusal of Vijay Sajnani vs. Union of India [(2012) SCC OnLine SC 1094] and Birendra Kumar Pandey vs. Union of India & Ors. (W.P.(Crl.) 28 of 2012, Order dated 16.04.2012), relied upon by Ld. senior counsel for the petitioner shows that the permission to have an advocate present at visible, but not audible, distance, during the proceedings was permitted because the petitioners therein, apprehended that coercive attempts could be made to extort confessions from them, which is not the case here. A person, to whom summons have been issued cannot as a matter of right seek presence of an advocate at visible, but not audible distance and the said relief is to be granted sparingly, in exceptional circumstances, where it appears prima facie that the apprehension of the person is sincere and bonafide.

Keeping in view the fact that the investigation is still at a nascent stage and that the present case involves fraud of Rs 350 crores approximately and around 200 firms are involved in placing fraudulent Input Tax Credit coupled with the fact that one Upender Singh, a bank official at ICICI Bank, Kamla Nagar, has levelled specific allegations against the petitioner and has stated that at the behest of the petitioner and his father, he had opened accounts for these 200 firms without physical verification and further, looking into the conduct of the petitioner, the petitioner is not entitled to any relief from this court.

## 7. GST payable on liquidated damages for delay in delivery

Case Name : In re Achampet Solar Private Limited (GST AAR Telangana)
Appeal Number : Advance Ruling No. TSAAR Order No. 07/2022
Date of Judgement/Order : 16/02/2022

Whether liquidated damages recoverable by the applicant from Belectric India on account of delay in commissioning, qualify as a 'supply' under the GST law, thereby attracting the levy of GST?

In the case of the applicant, liquidated damages are imposed for covering the loss of revenue and costs borne by a project SPED due to delay according to a formula. Thus liquidated damages are claimed by the applicant from the contractor due to the delay in commissioning of the project and the taking over date by the contractor beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows:

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

Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value of such toleration is exigible to tax.
The clause (6) of the co-ordination agreement filed by the applicant specifies different liquidated damages to be paid for different periods of delay on the commissioning. This clause also specifies that the amount shall be paid within (3) days after the actual commissioning date as per the prescribed formula. The formula consists of various periods of delay i.e., delay upto (1) month, delay between (1) month to (3) months and such periods. Therefore the contract itself prescribes the date on which the damage has to be determined and paid. The date on which the liquidated damage is determined as per the formula prescribed in the clause 6 of the contract is the time of supply of service entry in 5(e) of Schedule II by the applicant.

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

## 8. 18% GST payable on drilling & blasting Services using explosives to CIDCO

Case Name : In re Kapil Sons Explosives LLP (GST AAR Maharashtra)
Appeal Number : Advance Ruling NO. GST-ARA- 06/2021-22/B-24
Date of Judgement/Order : 18/02/2022

The registered taxable person M/s Kapil Sons Explosives LLP (Applicant) is engaged in drilling and blasting works using Industrial explosives and other materials.

Applicant has submitted that, M/s CIDCO has given a contract to M/s Balajee Infratech and Constructions Pvt. Ltd. (Balajee) for Drilling, Blasting, Mucking and allied job and reclamation work of the land development for Navi Mumbai International Airport land Development work site at the Vahal Ulwe site of M/s CIDCO. Thereafter, M/s Balajee has subcontracted with the Applicant, to provide only drilling and blasting operation with the usage of explosives for extraction of boulders at the aforementioned site of M/s CIDCO. The works being done by the applicant involves drilling and blasting operation with the use of explosives.

The applicant is of the opinion that, the service rendered by M/s Balajee to M/s CIDCO is covered under Sr. No. 3 (vii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 which states that, Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity is taxable at 5% GST. Further, the applicant is also of the opinion that, the service rendered by it to M/s Balajee is covered under Sr. No. 3 (x) of Notification No. 11/2017-CT (Rate) dated 28.06.2017
We agree with the applicant's submissions as well as the submissions of the jurisdictional officer that, the work of blasting with explosives which is subcontracted to the applicant, is a composite supply as defined under the GST Laws.

Now, what we need to find is whether the work of drilling and blasting with explosives, which has been sub contracted to the applicant, falls under Sr. No. 3 (x) of Notification No. 11/2017-CT (Rate) dated 28.06.2017

We find that Notification No.11/2017-CT (Rate) dated 28/6/2017 was amended vide Notification No. 15/2021-CT(R) dated 18.11.2021 (with effect from 01.01.2022) and in Sr. No 3 (vii) of the amended Notification No. 15/2021-CT(R) dated 18.11.2021, the words "Governmental Authority" and "Government Entity" have been deleted. Therefore, in view of the above discussions, with effect from 01.01.2022, the impugned services supplied by the applicant will not be covered under Sr. No. 3 (x) of Notification No.11/2017-CT (Rate) dated 28/6/2017, as amended.

For reasons as discussed in the body of the order, the questions are answered thus—

Question 1: Whether the activity to be carried by the applicant shall be classified as supply of goods or services or a composite supply of 'works' contract'?

Answer: The activity to be carried by the applicant shall be classified as a composite supply of 'works' contract'.

Question 2: Whether the activity should be classified as Composite Supply of works contract under Entry 3(x) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 i.e.

provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity taxable at the rate of 5%?

Answer : Answered in the negative.

**9. 18% GST payable on setting of Naval Communication Network**

Case Name : In re Sterlite Technologies Limited (GST AAR Maharashtra)
Appeal Number : Advance Ruling No. No. GST-ARA- 80/2019-20/B-25
Date of Judgement/Order : 18/02/2022

The Applicant, registered under GST Laws is engaged in manufacturing of telecom products such as optic fiber optic fiber cable, etc.; laying of these optic fiber cables to create a network, setting up of control centers, installation of equipment necessary to operate the network for desired purpose, commissioning of network and any other ancillary activity that may be necessary for creation of network infrastructure for its customers in telecom industry.

The Indian Navy has entrusted the setting of a countrywide IP/MPLS based multiprotocol converged network, Naval Communication Network (referred to as "network"), as core infrastructure for supporting strategic and operational needs of Navy, to Bharat Sanchar Nigam Limited ("BSNL") which in turn has contracted with the Applicant to set up the network including the responsibility to supply all the material and services required for setting up of network, training services to operate the same and supply of satellite connectivity vehicles required for ensuring seamless connectivity during breakdown of network. Applicant has further submitted that the entire project as per the contract is bifurcated into different packages and the purchase order is presently raised by BSNL with reference to cost break up of each of the material and services required to be supplied by Applicant under these packages.

As per applicant's submissions, the said network to be so created mainly involves activities like : Construction of holdings and raising of civil structures necessary to house data centers, nearline data centers, disaster recovery station, satellite data center and connectivity equipment at various Naval ports; Installing rack, stack in the buildings and other civil infrastructures necessary to house the equipment and enable operation of all the centers/ports; Assemble /install all equipment and powering it up by connecting with power supply and back-up generators; and Interconnecting and configuring all the equipment in all the data centers, near line data centers, disaster recovery station, satellite data center, etc. with each other to enable information exchange across the network as desired.

The applicant has submitted that it had previously approached for advance ruing in the same matter and that this Authority had ruled that (i). The supply of goods or services for 'setting up of network' would qualify as a composite supply of 'works contract' as defined under Section 2(119) of the CGST Act and (ii) Activities of the Applicant were covered by sub-clause (ii) of Entry No. 3 of rate Notification and attracted GST at the rate of 18%.

Since, the activities discussed in above mentioned order and the activities under the present application for which applicant has sought Advance Ruling are one and the same and further, since there is no additional information/submission provided by the applicant in the present application, there is no point to deviate from the finding given in the earlier determination, since neither, any appeal seems to have been filed nor any further order is received in the said earlier matter.

In view of the above The supplies of the Applicant are covered by sub-clause (xii) of Entry No. 3 of Notification No. 11/2017 —CTR- dated 28.06.2017 as amended and taxable @ 18% GST.

**10. GST: Provisional attachment ceased to be effective after completion of one year**

Case Name : B. r. Consturction Company Vs Additional Director (Rajasthan High Court)
Appeal Number : Civil Writ Petition No. 2086/2021
Date of Judgement/Order : 22/02/2022

The petitioner's bank account was placed under provisional attachment by an order dated 03.12.2020 in exercise of powers under Section 83 of the Central Goods and Services Tax Act (for short 'CGST Act') by the respondents. Learned counsel for the petitioner pointed out that in terms of sub-section (2) of Section 83 such provisional attachment cannot survive beyond a period of one year.

Section 83 of the CGST Act pertains to provisional attachment to protect the revenue in certain cases. In sub-section (1) of Section 83 the commissioner is empowered to order provisional attachment of the property of the assessee including bank account where proceedings under Chapters XII, XIV and XV are pending and the commissioner is of the opinion that for the purpose of protecting the interest of government revenue it is necessary so to do. Sub-section (2) of Section 83 provides that every such provisional attachment shall cease to have effect after expiry of period of one year from the date of order made under sub-section (1). The powers of provisional attachment and its inherent limitations in the nature of safeguards have been discussed at length in a recent judgment of the Supreme Court dated 20.04.2021 in Civil Appeal No.1155/2021- M/s Radha Krishan Industries Vs. State of Himachal Pradesh and Ors. Additionally we also find that the CBIC's circular dated 23.02.2021 has also clarified that every provisional attachment shall cease to have effect after expiry of period of one year from the date of attachment order.

In the present case the order of attachment was passed more than a year back and would therefore be ceased to be effective upon completion of period of one year.

By way of interim relief therefore it is provided that the provisional attachment order stands stayed.

Leave to join the concerned adjudicating officer at Udaipur as additional respondent is granted, as prayed for. Amendment in the cause title be made within a period of one

week. Thereupon notice shall be issued to the newly added respondent, returnable on 22.03.2022.

For considering rest of the prayers of the petitioner list the matter on 22.03.2022.

**11. Obesity is not a disease – Orlistat pellet cannot be classified as medicaments**

Case Name : In re Smt. Rama Devi Guttikonda (GST AAR Telangana)
Appeal Number : Advance Ruling TSAAR Order No.09/2022
Date of Judgement/Order : 23/02/2022

AAR held that Obesity is not a disease and hence reduction of weight cannot be seen as a treatment against a disease. Therefore The pharmaceutical Pellets and Granules except Orlistat pellet manufactured by the applicant can be classified as medicaments under Sl. No.62 of Schedule II of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 and subject to GST at the rate of 12% as discussed above.

**12. Advance ruling cannot sought by applicant in relation to supply being received by him**

Case Name : In re Cosmic CRF Limited (GST AAR West Bengal)
Appeal Number : Advance Ruling No. 20/WBAAR/2021-22
Date of Judgement/Order : 28/02/2022

In terms of clause (a) of section 95 of the GST Act, an advance ruling means a decision provided by this Authority or the Appellate Authority, as the case may be, on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the GST Act in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. In the instant case, the questions on which the applicant seeks advance ruling are not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant rather it is found to be in relation to supply being received by him.

In view of above, this Authority cannot provide a decision to the applicant in the form of an advance ruling and the instant application is, therefore, liable for rejection. The aforesaid observation has been brought to the notice to the authorised advocates of the applicant in terms of provision laid down in sub-section (2) of section 98 of the Act ibid who have admitted the same.

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

# (IV) COURT ORDERS/ JUDGEMENTS

## 1. Assistant Commissioner cannot refuse to comply with Order of Commissioner (A)

Case Name : Globus Petroadditions Pvt. Ltd. Vs UOI (Bombay High Court) Appeal Number : Writ Petition No. 3298 of 2021
Date of Judgement/Order : 01/02/2022

A perusal of the Order passed by the Assistant Commissioner indicates that he has refused to comply with the Order passed by the Commissioner (Appeals-II) by recording reasons as to why the said Order cannot be complied with as if the Assistant Commissioner was sitting in appeal against the order of the Commissioner (Appeals). In our view the Assistant Commissioner could not have refused to comply with the Order passed by the Commissioner (Appeals-II) on the ground that a decision was taken to impugn the said Order dated 14/10/2019 before GST Tribunal or on other ground recorded by the Assistant Commissioner about his dissent not to follow the said Order passed by his Superior Authority i.e. Commissioner (Appeals-II).

The Assistant Commissioner is directed to comply with the Orders in Appeal dated 14/10/2019 and 29/10/2020 passed by the Commissioner (Appeals-II) Central Tax Pune, within four weeks from the date of communication of this order and to pass an appropriate order in accordance with law without being influenced by the observations made and the conclusion drawn in the said Order dated 14/10/2019.

The learned Assistant Commissioner shall pass an order after granting opportunity of being heard to the Petitioner. The Order that would be passed by the Assistant Commissioner shall be communicated to the Petitioner within one week from the date of passing of such order. We hope that the Assistant Commissioner shall not refuse to comply with the Order passed by the Assistant Commissioner (Appeals-II) on 14/10/2019 on the ground that the decision to impugn the said Order dated 14/10/2019 before the GST Tribunal is taken by the higher Authority.

## 2. GST Evasion Case: Accused cannot be Detained in Custody Indefinitely- SC

Case Name : Paresh Nathalal Chauhan Vs State of Gujarat (Supreme Court of India) Appeal Number : Criminal Appeal Nos.164-165/2022
Date of Judgement/Order : 01/02/2022

Taxpayer cannot be detained for indefinite period for alleged tax evasion where investigation is pending

The Hon'ble Supreme Court of India in Paresh Nathalal Chauhan v. The State of Gujarat & Anr. [SLP (Crl) No. 009458 – 009459/2021, Criminal Appeal Nos.164-165/2022 dated February 01, 2022] granted bail to a person accused of tax evasion. Held that, assessee cannot be detained for indefinite period of time when the

maximum sentence for such offence is 5 years and investigation w.r.t. the same is still pending.

Facts:
Paresh Nathalal Chauhan ("the Petitioner") has filed this petition to seek bail for the alleged evasion of tax, who had been detained for 25 months out of a maximum period of 5 years for which the Petitioner can be sentenced. The Petitioner contended that the concerned officers preceded a search operation where the officers concerned occupied a house for more than a week with lady members, with an intent to teach the Petitioner a lesson, for having initiated proceeding which resulted in adverse orders against the Revenue Authority ("the Respondent").

The Respondent contended that the Petitioner should not be on bail as the Petitioner has been a habitual offender engaged in violation of law and played an important role in execution of the scam and that confidential investigation is still under way in order to identify these persons.
Issue
Whether the Petitioner who has been accused of tax evasion can be granted bail where the investigation has not been completed?

Held:
The Hon'ble Supreme Court of India in SLP (Crl) No. 009458 – 009459/2021, Criminal Appeal Nos.164-165 /2022 dated February 01, 2022 held as under:

- Observed that, the contention of the Respondent is coloured by the proceedings taken out by the Petitioner qua the conduct of the officers had an adverse effect and proceedings w.r.t. the same are still pending.
- Opined that the Petitioner cannot be detained indefinitely and have already undergone a custody of 25 months, whereas the maximum sentence for such offence is of five years and almost 50% of the sentence is completed by the Petitioner.
- Granted bail to the Petitioner upon satisfying the terms and conditions of the Trial Court.
- Directed the Petitioner to be careful and not to indulge in such activities in future.

Relevant Provisions:

Section 132(1) of the Central Goods and Services Tax Act, 2017 ("the CGST Act")
Punishment for certain offences

132. (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely:-

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
(b) issues any invoice or bill without supply of goods or services or both in violation of

the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill
(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d) ……..

shall be punishable—
(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;"

## 3. Negative blocking of ITC not allowed: Gujarat HC

Case Name : Samay Alloys India Pvt. Ltd. Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 18059 of 2021
Date of Judgement/Order : 03/02/2022

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

## 4. GST: Appellate Authority can provisionally release goods & vehicle- HC

Case Name : A K Enterprise Vs State of Gujarat (Gujarat High Court)
Appeal Number : C/SCA/15337/2021
Date of Judgement/Order : 03/02/2022

HC clarified that even pending the Appeals, it shall be open for the writ applicant herein being the owner of the goods and the applicant of the Civil Application being the owner of the conveyance to prefer an appropriate application for the provisional release of the goods as well as the conveyance. It may happen that the Appellate Authority may take some time before it decides the appeals on merits and during that period, if the Appellate Authority deems fit, he may provisionally release the goods and the vehicle subject to certain terms and conditions. We take notice of the fact that there may not be a provision analogous to Sub-section 6 of Section 67 in Section 107 of the Act. However, being an Appellate Authority, there is always an inherent power to pass such interim orders.

## 5. GST Authority cannot detain goods/conveyance in transit for non-payment of tax by other person in supply chain

Case Name : Shiv Enterprises Vs State of Punjab (Punjab and Haryana High Court)

Appeal Number : CWP-18392-2021
Date of Judgement/Order : 04/02/2022

GST authorities cannot detain goods on the ground of inadmissible ITC

The Hon'ble Punjab and Haryana High Court in M/s. Shiv Enterprises v. State of Punjab and others [CWP-18392-2021 dated February 04, 2022] held that, GST Authorities cannot detain goods in conveyance without passing appropriate orders if goods are accompanied with the documents as prescribed and cannot proceed against the taxpayer for contravention of any provision of the Central Goods and Services Tax Act, 2017 (the CGST Act). Further held that it is not the liability of the taxpayer to find out that whether or not other person in the supply chain has paid the tax and is the fundamental legal principle, that the law does not compel a man to do that which he cannot possibly perform.

Facts:
M/s. Shiv Enterprises ("the Petitioner") is engaged in selling copper scrap. The Petitioner sold scrap to its customer and while the goods were in transit, the vehicle containing such goods were checked and were detained inspite of producing all the documents. Subsequently order for physical verification / inspection of the conveyance, goods and documents in Form MOV-02 was issued and conveyance was stationed at the office of Assistant Commissioner ("the Respondent").

Further no other order was passed within 14 days as per the procedure under Section 129(6) of the CGST Act nor the goods were released. Later, the Petitioner filed reply to Form GST MOV-02 through e-mail and was intimated that inward supply to the sellers/suppliers of the Petitioner did not have inward supply and is only engaged in outward supply and not paying any tax. Thus, the Petitioner is liable to be proceeded under Section 130(1) CGST Act.

The Respondent contended that the Petitioner has evaded tax in several occasions and the procured goods are covered by fraudulent invoices generating by the non-existent firms to claim inadmissible ITC in clear violation of Section 16(2)(c) of the CGST Act, which is why Show Cause Notices ("SCNs") under Section 130 of the CGST Act were issued.

Being aggrieved, the Petitioner has filed this petition, challenging the detention of the goods under Section 129 of the CGST Act and for release of the same.

Issue:
Whether the Respondents can detain goods on grounds of inadmissible ITC without any explanation as per Section 129(6) of the CGST Act even after furnishing all the statutory documents?

Held:
The Hon'ble Punjab and Haryana High Court in CWP-18392-2021 dated February 04, 2022 held as under:

- Noted that, the Petitioner can be held liable only when 'intent to evade tax' has some direct nexus with its action, where the goods in transit are in contravention of the provisions of the CGST Act. The Petitioner cannot be accused of having intention to evade payment of tax for act or omission on part of a person not immediately linked to its activity.
- Further noted that, wrongful claim of ITC may be result of a bonafide claim as well and does not necessarily involve intent to evade payment of tax. Moreover, wrongful claim of ITC is not one of the conditions enumerated under Section 130 of the CGST Act that could entail confiscation of the goods. Section 130 of the CGST Act being penal in nature has to be construed strictly.
- Observed that, the goods and conveyance in transit were accompanied with the documents as prescribed and there has been no discrepancy/ allegation by the Respondents, that the Petitioner has contravened any provision of the CGST Act or the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") with an intent to evade payment of tax. Further, it is virtually impossible for the Petitioner to ascertain as to whether tax has been paid or not by its predecessors in the supply chain and it is for this reason also that the claim to ITC has been made subject to scrutiny and assessment.
- Opined that, it is the fundamental legal principle, that the law does not compel a man to do that which he cannot possibly perform. Thus, once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.
- Held that, in case the goods in transit are accompanied with the documents as prescribed, the Respondent need not proceed under Section 129 of the CGST Act and is mandatorily conclude inspection in a prescribing time limit. Further held that, the goods/conveyance cannot be detained without passing appropriate orders in accordance with law.
- Directed the Respondent to release the goods and conveyance.

Relevant Provisions:

Section 129(1) of the CGST Act:

"Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —

…….

(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner

and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:
Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer."

Section 130(1) of the CGST Act: "Confiscation of goods or conveyances and levy of penalty-
(1) Where any person-
(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
(ii) does not account for any goods on which he is liable to pay tax under this Act; or
(iii) supplies any goods liable to tax under this Act without having applied for registration; or
(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,
then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122 of the CGST Act 2017."

## 6. Assessment order cannot be issued without giving an opportunity of being heard and is against the principles of natural justice

Case Name : Bharat Mint And Allied Chemicals Vs Commissioner Commercial Tax And 2 Others (Allahabad High Court)
Appeal Number : Writ Tax No. 1029 of 2021
Date of Judgement/Order : 04/02/2022

The Hon'ble Allahabad High Court in Bharat Mint and Allied Chemicals v. Commissioner Commercial Tax & Ors. [Writ Tax No. – 1029 of 2021 dated February 04, 2022] held that the Revenue Department cannot issue assessment orders without giving the assessee an opportunity of being heard and is against the principles of natural justice. Further, remanded back the matter to be heard as a fresh case.

Facts:
Bharat Mint and Allied Chemicals ("the Petitioner") has filed this petition challenging the assessment order dated November 09, 2021 ("the Impugned Order") passed by the Commissioner Commercial Tax ("the Respondent") creating demand of tax, interest and penalty against the Petitioner.

The Petitioner contended that the Impugned Order has been issued without giving an opportunity of being heard as per Section 75(4) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") creating patently in breach of principles of natural justice and thus, the Impugned Order is unsustainable.

The Respondent has prayed for a week's time for filing a counter affidavit and specifically disclosing as to whether opportunity of hearing was afforded to the Petitioner as contemplated in Section75(4) of the CGST Act.

Issue:
Whether the Respondent violated the principles of natural justice while passing the Impugned Order without giving the Petitioner an opportunity of being heard?

Held:

- Observed that, in the Show Cause Notice ("SCN") issued to the Petitioner did not mention lines, date, time and venue of personal hearing.
- Analysed Section 75(4) of the CGST Act and stated that, opportunity of hearing has to be granted by authorities, where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person.
- Opined that, where an adverse decision is contemplated against the Petitioner, in such a case the Petitioner need not to request for opportunity of hearing and it appears to be mandatory for the authority concerned to afford opportunity of hearing before passing an order adverse to such person.
- Held that, the Respondent has not complied with Section 75(4) of the CGST Act, and the Impugned Order passed is against the principle of natural justice.
- Remanded back the matter to the appropriate Authority to be heard as a fresh case on February 02, 2022.
- Directed the Respondent that, no coercive action shall be taken against the Petitioner pursuant to the demand created under the Impugned Order till the next date fixed.

Relevant Provisions:

Section 75(4) of the CGST Act
"General provisions relating to determination of tax.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.''

## 7. Bail granted to person accused of claiming Fake ITC & Creating Fake Firms

Case Name : Dananjay Singh Vs Union of India (Rajasthan High Court)
Appeal Number : S.B. Criminal Miscellaneous Bail Application No. 18825/2021
Date of Judgement/Order : 05/02/2022

1. The present bail application has been filed under Section 439 Cr.P.C. arising out of file No.DGGI/INV/MISC/433/2021-GR-H-O/O ADG-DGGI-ZU-JAIPUR Registered At Directorate General of GST Intelligence (DGGI), Jaipur Zonal Unit, Jaipur for the offence(s) under Sections 132 (1) (B) (H) (I) of Central Goods and Services Tax Act, 2017.

2. Learned counsel for the petitioner submits that the petitioner has been wrongly implicated in this case. He is behind the bars since 24.10.2021. Learned counsel for the petitioner further submits that the complaint against the petitioner was filed on 22.12.2021 and cognizance against the petitioner was taken on 21.01.2022. Learned counsel for the petitioner further submits that as per complaint, complainant does not disclose the complete investigation against the petitioner. Learned counsel for the petitioner further submits that as per GST Act, incomplete charge-sheet cannot be filed against the petitioner. After that there is no occasion that complainant can file full charge-sheet. So, complainant also claimed the bail on the ground under Section 167(2) Cr. P. C. as a default bail. Learned counsel for the petitioner further submits that as per contention of the complainant that the petitioner had supplied packaging material to the seven firms which are fake. Learned counsel for the petitioner further submits that the petitioner had paid GST as per the Act. So, there is no breach of Section 132 of the GST. Learned counsel for the petitioner also submits that show cause notice was not given to the petitioner. Learned counsel for the petitioner also submits that as per the GST Act, appeal can be filed by depositing 10 per cent of the assessed amount. Learned counsel for the petitioner also submits that the persons of the complainant had mis-behavied with Rohit Kumar and he had filed a writ before the high court for ill-treatment. Learned counsel for the petitioner also submits that in this case, no valid sanction has been given against the petitioner for filing of the complaint. Learned counsel for the petitioner also submits that the complainant had not made accused to so called seven fake firms. Learned counsel for the petitioner further submits that as per the GST Act, these firms are registered. So, it cannot be said that these firms are fake. Learned counsel for the petitioner also submits that the petitioner had not claimed any input tax credit and conclusion of trial may take long time. So, the petitioner be enlarged on bail.

3. Learned counsel for the petitioner has placed reliance upon the following judgments: (1) Rakesh Kumar Paul Vs. State Of Assam reported in (2017) 15 SCC 67; (2) Ram Kumar Vs. State Of Haryana reported in (1987) 1 SCC 476; (3) State, CBI Vs. Sashi Balasubramanian reported in (2006) 13 SCC 252 62; (4) State of T. N. Vs. M. M. Rajendran (1998) 9 SCC 268; (5) Natabar Parida Vs. State Of Orrisa reported in (1975) 2 SCC 220; (6) Union Of India Vs. Thamisharasi reported in (1995) 4 SCC 190; (7) CBI Vs. Anupam J Kulkarni, 1992(2) 3 SCC 141; (8) M. Ravindran Vs. Directorate of Revenuu Intelligence reported in (2021) 2 SCC 485; (9) Ram Narayan Singh Vs. State Of Delhi reported in 1953 SCR 652 153; (10) Mohd. Iqbal Sheikh Vs. State Of Maharashtra reported in (1996) 1 SCC 722; (11) Kalmesh Chaudhary Vs. State Of Rajasthan in Criminal Miscellaneous Bail Application No.16464/2019; (12) Kalmesh Chaudhary Vs. The State Of Rajasthan in Criminal Appeal No.15/2021; (13) Pradeep Kumar Bansal Vs. U.O.I through Commissioner CGST, Jaipur in S.B. Criminal Miscellaneous Bail Application No.12093/2020; (14) Anil Kumar Gupta Vs. U.O.I. Through Inspector (Anti Evasion) CGST in S.B. Criminal Miscellaneous Bail

Application No.15605/2020; (15) Hemant Kumar Singhal Vs. U.O.I, through Commissioner CGST, Alwar in S.B. Criminal Miscellaneous Bail Application No.8676/2020; (16) Ashwani Kumar Bagpatiya @ Golu Vs. U.O.I. through Commissioner CGST, Alwar in S.B. Criminal Miscellaneous Bail Application No.8676/2020 and (17) Gaurav Kumar Aanchaliya Vs. U.O.I. in S.B. Criminal Miscellaneous Bail Application No.3624/2019.

4. Learned Senior Standing Counsel for the respondent has opposed the arguments advanced by learned counsel for the petitioner and submitted that the petitioner had created the fake seven firms and claimed input tax credit of Rs.16,99,89,923 (Sixteen Crores Ninety Nine lacs Eighty Nine Thousand Nine Hundred and Twenty Three). He had issued the invoices of Rs. 94,43,88,462/-(Ninety Four Crores Forty Three Lacs Eighty Eight Thousand Four Hundred and Sixty Two). Learned Senior Standing Counsel further submits that the Hon'ble Apex Court in various pronouncement clearly specified that the matter of economic offences should be dealt strictly not as any other criminal offences. Learned Senior Standing Counsel further submits that Investigating against the fake firms is still pending. Petitioner and other persons are not co-operating in the investigation. Learned Senior Standing Counsel further submits that it is not a case of default bail because investigation against the petitioner has been completed and complaint has been filed against the petitioner. Learned Senior Standing Counsel also submits that the petitioner is not entitled for the default bail and looking to the gravity of offence, bail be dismissed.

5. Learned Senior Standing Counsel for the respondent has placed reliance upon the following judgments: (1) Mahender Mangal Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No.13041/2021; (2) Lalit Goyal Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 13042/2021; (3) Raj Kumar Sharma Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 11339/2021; (4) Rishiraj Swami Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No.11286/2021; (5) Anil Kumar Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No.10608/2021; (6) Abhishek Singal Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 6304/2021; (7) Ramchandra Vishnoi Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No.13104/2021; (8) Vinaykant Ameta Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 18243/2021; (9) Ashok Kumar Sihotiya Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 9808/2021;(10) Mahendra Saini Vs. State Of Rajasthan in S.B. Criminal Miscellaneous Bail Application No. 7564/2021; (11) Sumit Dutta Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No.5371/2021;(12) Nimmagadda Prasad Vs. CBI reported in (2013) 7 SCC 466; (13) Rajesh Goyal Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No.726/2011; (14) Ram Narain Popli Vs. CBI reported in 2003(1) SCR 119; (15) Serious Fraud Investigation Office Vs. Nittin Johari and Anr. In Criminal Appeal No.1381/2019 decided on 12.09.2019; (16) P. V. Ramana Reddy Vs. Union Of India & Ors. In SLP (Crl) No.4430/2019 decided on 27.05.2019; (17) P. V. Raman Reddy Vs. Union Of India in Writ Petition No.4764/2019 and other connected cases decided on 18.04.2019 by Telegna High Court; (18) State Of Gujarat Vs. Mohanlal Jitamalji Porwal reported in (1987) 2 SCC 364; (19) Himani Munjal Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 10350/2018; (20) Mukat Behari Sharma

Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 1238/2019; (21) Smt. Amal Mubarak Salim Al Reiyami Vs. Union Of India in S.B. Criminal Miscellaneous Bail Application No. 1870/2015 decided on 26.03.2015; (22) Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr. In Criminal Appeal No.2086/2010 decided on 29.10.2010; (23) Bharat Raj Punj Vs. Commissioner Of Central Goods and Service Tax in S.B. Criminal Writ No.76/2019 decided on 12.03.2019; (24) Suresh Sharma Vs. State Of Rajasthan in S.B. Criminal Miscellaneous Bail Application No.7225/2014 decided on 26.06.2014 and (25) Syed Mohammad Zama Vs. State Of Rajasthan in S.B. Criminal Miscellaneous Bail Application No. 11193/2014 decided on 05.01.2015.

6. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing any opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail.

7. Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner Dananjay Singh S/o Shri Hari Sharan Singh shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

**8. Commercial Tax office hubs of corruption- HC upheld Corruption charges against Officer**

Case Name : Padmanabha Vs State of Karnataka (Karnataka High Court)
Appeal Number : Criminal Appeal No. 200043/2015
Date of Judgement/Order : 09/02/2022

Facts- Sri Subramanian S/o. Sundaram, lodged a complaint with the Bagalkote Lokayuktha police on 10.12.2008 which was registered by the Lokayuktha Police in Crime No. 14/2008, which was transferred to the Vijayapur Lokayuktha and renumbered it as Crime No.13/2008. In the complaint, it is contended that complainant is the resident of Seetha Vihar in Chattisgad State and he is working in M/s. KMMI ISPAT Private Limited and incharge of Halavarthi, Koppal. On 2.12.2008, he had purchased equipments for KMMI Ispat factory for a sum of Rs.40 lakhs and he has paid Rs.80,000/- as tax and he was transporting the said equipment from Raipura to Koppal in a lorry bearing CG-04/DA-2645. The lorry reached Dhulkhed commercial tax check post on 7.12.2008 at about 2.00 p.m., The officers of the check post intercepted the vehicle and asked for illegal gratification which was intimated by the driver of the lorry to him. He has told the driver to settle with the officers by paying Rs.1,000/- or Rs.2,000/-. But, the driver replied that the officers are not agreeing for the small sum and they have told him to visit the check post. Accordingly, the complainant along with the Product Engineer Sri K. Mani visited the check post on 8.12.2008 and met Sri Ananthanarayana. He requested Sri Ananthanarayana but he demanded a sum of Rs.15 lakhs. Negotiations took place and the Commercial Tax Officer demanded minimum of Rs.5 lakhs and he was not agreeable for the same and therefore, he took the help of one Sabbir Huseni of Koppal. He assured that he would

visit the check post and negotiate further. On 10.12.2008, one Padmanabha was the in-charge of the check post. He demanded a sum of Rs.10,20,000/- and intimated the same to Sabbir Huseni. The said Padmanabha intimated the same to Sabbir Huseni over telephone and he also told that the said amount will be shared among himself, Dalwai and Ananthanarayana and he demanded minimum of Rs.5 lakhs. The complaint averments also reveal that immediately, the amount of Rs.5 lakhs is to be arranged, for which Sabbir Huseni replied that he has arranged Rs.3 lakhs and another Rs.2 lakhs he would arrange and pay the same. The accused replied that the amount is to be paid before morning otherwise, things would be different.

Since the complainant was not interested in parting away illegal gratification of Rs.5 lakhs, he lodged a complaint initially with Bagalkot Lokayuktha police, which was then transferred to Vijayapur Lokayuktha Police. After understanding the genuineness of the complaint averments, the Lokayuktha Police arranged for the trap.

Conclusion- It is the common experience that Commercial Tax office, is considered to be one of the the hubs of corruption. Poor and gullible drivers would fell prey for the illegal demands day in and day out. Only when the greed is too high, some cases reach the higher ups or the Lokayuktha.

While an innocent needs to be protected by the court of law, it is the equal duty and responsibility of the court of law to punish a culprit. All efforts must be made that real culprit does not escape from the rigors of law.

Corruption is a distinct type of offence. It is like a cancer to the society. It eats the social and economical health every second resulting in unimaginable consequences. It is only few officers of the Government misuse their official position forgetting their duty and loyalty to the State, resulting in eroding the economy of the country at large.

## 9. GST Authority should follow procedure under Section 70 of CGST Act: HC

Case Name : Dhariwal Products Vs Union of India (Rajasthan High Court)
Appeal Number : D.B. Civil Writ Petition No. 2189/2022
Date of Judgement/Order : 09/02/2022

By way of the instant writ petition, the petitioner seeks to assail the action of the respondent GST Department and its officials in conducting search and seizure of the petitioner's premises, coercing the petitioner to deposit a huge sum of Rs.11.5 crores during the course of search operations held on 05.06.01.2022 as being in gross contravention of the mandatory requirement of Section 74 of the CGST Act.

Mr. Vikas Balia, learned Senior Advocate assisted by Mr. Sharad Kothari, Mr. Mayank Taparia and Mr. Priyansh Arora, urges that the procedure adopted by the respondent officials while undertaking search operations in the petitioner's premises without prior intimation is totally illegal, unjust and highhanded. The GST Intelligence Officer, though present at the residence of the petitioner, gave a sham notice to the petitioner's representative for appearance in the factory premises and thereafter forcibly extracted

a confession from him. The petitioner was forced to deposit a sum of Rs.11.5 crores towards alleged GST evasion even though there is no evidence of such short payment/evasion. He urges that no sooner the petitioner's representative got the opportunity, he made a retraction of the statement. As the statement has been retracted, the respondents are required to adopt the mandatory procedure provided under Section 74 of the CGST Act, but rather than adhering to the said procedure, repeated notices are being issued to the petitioner's representative under Section 70 of the CGST Act and he apprehends arrest on appearance before the respondent officers, if their illegal demand of payment of GST is not acceded to. He urges that even the amount which has already been deposited is not a voluntary deposit as the petitioner seriously disputes the liability and thus, the procedure under Section 74 of the CGST Act would come into fray. Once this procedure is adopted, the respondents would be required to refund the amount already extracted from the petitioner and that is why the GST authorities are bypassing the lawful procedure and are trying to extract more money from the petitioner under the facade of it being a voluntary deposit. Mr. Balia further submits that the liability of the petitioner towards non-payment/evasion of GST has not been determined and without doing so, the respondents are pressurizing the petitioner to voluntarily deposit the amount or to face the consequence of arrest. He, thus, urges that the impugned notices are grossly illegal and amount to an abuse of power by the GST officials. In support of his contention, Mr. Balia has placed reliance on the following judgments :-

(1) M/s. Bhumi Associate Vs. Union of India through the Secretary [2021 (2) TMI 701] – Gujarat High Court
(2) Deem Distributors Private Ltd. Vs. Union of India [(2021) 87 GST 523] – Telangana High Court

We have heard and considered the submissions advanced at bar and have gone through the material placed on record. We have carefully perused the statutory provisions and the judgments cited at bar. Prima facie, it appears that the impugned action has been resorted to without adhering to the procedure provided under Section 74 of the CGST Act. As the petitioner's representative claims to have retracted from the confession, the voluntary nature of deposit of GST pursuant to the search proceedings dated 05-06.01.2022 is seriously disputed, there is merit in the contention of Mr. Balia that the procedure provided under Section 74 of the CGST Act would have to be followed. Once this procedure is adopted, the respondent authorities would not be able to procure allegedly short paid GST amounts by branding it to be a voluntary deposit and that is why a dubitable procedure of issuing summons to petitioner under Section 70 of the CGST Act is being adopted even though the petitioner's/representative's statement had already been recorded on the date of inspection/search itself.

The matter requires consideration.

Issue notice of the writ petition as well as the stay petition to the respondents. Rule is made returnable on 10.03.2022.

It is directed that till next date of hearing :-

(1) No coercive steps shall be taken against the petitioner/its representatives in furtherance of the search/seizure operations dated 05.01.2022/ 06.01.2022 and the summons issued in pursuance thereof;

(2) the petitioner shall not be forced to deposit any amount towards GST without adhering to the procedure provided under Section 74 of the CGST Act. List on 10.03.2022.

**10. HC Quashes GST Notice for not fulfilling ingredients of a proper SCN**

Case Name : NKAS Services Private Limited Vs. State of Jharkhand (High Court of Jharkhand)
Appeal Number : W.P.(T) No. 2659 of 2021
Date of Judgement/Order : 09/02/2022

A perusal of the impugned show cause notice at Annexure-1 creates a clear impression that it is a Show Cause notice (SCN) issued in a format without even striking out any relevant portions and without stating the contraventions committed by the petitioner. The summary of the show cause notice under DRC-01 indicates that as per the statistics received from the headquarter! government treasury, it has come to the notice of the department that the petitioner has received a sum as payment from the government treasury against works contracts services completed ! partly completed during the above mentioned period April 2020 to March 2021 whereas the liability reflected by him through filed returns is less than the above mentioned sum as per GSTR-3B. As such, he was not reflecting the total payment received and consequent total liability accrued in the filed returns just to evade payment of due tax to the government. It needs to be mentioned here that even the summary of the show cause notice does not disclose the information as received from the headquarter / government treasury as to against which works contract service completed or partly completed the petitioner has not disclosed its liability in the returns filed under GSTR-3B. We have held in the case of the same petitioner in W.P.(T) No. 2444 of 2021 related to a show cause notice under Section 74 of the JGST Act that a summary of show cause notice as issued in Form GST DRC-01 in terms of rule 142(1) of the JGST Rule, 2017 (Annexure-2 impugned herein) cannot substitute the requirement of proper show cause notice.

Requirement of principles of natural justice can only be met if (i) a show cause notice contains the materials / grounds, which according to the Department necessitate an action; (ii) the particular penalty/ action which is proposed to be taken. Even if it is not specifically mentioned in the show cause notice, but it can be clearly and safely discerned from the reading thereof that would be sufficient to meet this requirement.

We find that the show cause notice is completely silent on the violation or contravention alleged to have been done by the petitioner regarding which he has to defend himself. The summary of show cause notice at annexure-2 though cannot be a substitute to a show cause notice, also fails to describe the necessary facts which could give an inkling as to the contravention done by the petitioner. As noted herein

above, the brief facts of the case do not disclose as to which work contract, services were completed or partly completed by the petitioner regarding which he had not reflected his liability in the filed return as per GSTR-3B for the period in question. It needs no reiteration that a summary of show cause notice in Form DRC-01 could not substitute the requirement of a proper show cause notice. At the same time, if a show cause notice does not specify the grounds for proceeding against a person no amount of tax, interest or penalty can be imposed in excess of the amount specified in the notice or on grounds other than the grounds specified in the notice as per section 75(7) of the JGST Act.

The format GST DRC-01 or 01A are prescribed format on the online portal to follow up the proceedings being undertaken against an assessee. They themselves cannot substitute the ingredient of a proper show cause notice. If the show cause notice does not specify a ground, the Revenue cannot be allowed to raise a fresh plea at the time of adjudication

We are thus of the considered view that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show cause notice and amounts to violation of principles of natural justice. Accordingly, the impugned notice at annexure-1 and the summary of show cause notice at annexure-2 in Form GST DRC-01 is quashed.

## 11. GSTN cannot avoid giving effect to Court order by giving excuse of technical glitches

Case Name : Wardwizard Innovations And Mobility Limited Vs Commissioner, SGST (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 12954 of 2021
Date of Judgement/Order : 10/02/2022

Learned AGP expressed an apprehension that even as on date, the respondent no.2 may not be in a position to give effect to the order passed by the appellate authority due to technical glitches. Mr. Sharma solicits the help of the respondent no.3 – G.S.T.N. The technical glitches are something, which are within the control of the G.S.T.N. A registered dealer should not be told that despite succeeding before the appellate authority, it is difficult to give effect to the order passed by the authority because of technical glitches. The technical glitches should be attended at the earliest. Next time, there should not be complaint at the end of the writ- applicant herein that the order passed in appeal has not been given effect.

## 12. HC quashes Assessment order passed without issuing GST DRC-1 Notice

Case Name : V.R.S. Traders Vs Assistant Commissioner (State Taxes) (Madras High Court)
Appeal Number : Writ Petition Nos. 1607, 1609 and 1613 of 2022
Date of Judgement/Order : 10/02/2022

As per section 74 of CGST Act, 2017 the first step, if the revenue wants to initiate proceedings under Section 74, has to serve a notice to pay the amount of tax along with interest payable under Section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Therefore, what has been proposed by the revenue would be intimated by way of notice under Sub Section 5 of Section 74 of the Act initially to the assessee/dealer, who on receipt of the same may or may not accept and once he accepted there would be a conclusion. However, if he does not accept the proposal sent by the Revenue under Section 74(5) of the Act, the next course of action to be followed is to issue a notice under Section 74(1) of the Act as has been quoted herein above.

Therefore a Section 74(1) notice is an independent notice to be issued in DRC-01, whereas the notice under Section 74(5) was to be issued in DRC-01A. Herein the case in hand, admittedly DRC-01A was issued, thereafter straightaway the respondent revenue proceeded to pass the impugned assessment order.

The DRC-01 notice under Section 74(1) of the Act, which is also mandatory to be issued before passing the impugned order of assessment has not been issued in this case. In the absence of any such notice, the proceedings, which is culminated in the order of assessment, which is impugned herein, is, no doubt, vitiated.

## 13. HC directs dept to consider allowing petitioner to correct Form GSTR 1 Return

Case Name : Mahle Anand Termal Systems Pvt. Ltd. Vs Union of India (Bombay High Court) Appeal Number : Writ Petition No. 1174 of 2022
Date of Judgement/Order : 11/02/2022

In this case petitioner made inadvertent errors in GSTR-1 form wherein GSTN number of the recipient of goods was mentioned incorrectly. Leading to denial of credit to the recipient. Time limit for rectification expired. Supplier made representations, however, remained unanswered. The Hon'ble High Court directed to consider the request of the assessee in light of the ruling of the Madras High court in Pentacle Plant Machineries Pvt. Ltd. v/s. GST Council Secretariat and Sun Dye Chem v/s. Assistant Commissioner.

## 14. Vested right of taxpayer cannot be defeated for Technical Glitches in GSTN

Case Name : Bodal Chemicals Ltd. Vs Union of India (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 9151 of 2021
Date of Judgement/Order : 11/02/2022

HC held that GST department cannot raise their hands in despair saying that it is not possible to correct or take care of the technical glitches. The writ applicant herein has been running from pillar to post requesting the respondents to provide a solution and take care of the technical error and glitch that occurred as regards furnishing the GSTR

– 6 return for recording and distributing the ISD credit of Rs.20,52,989/-. As usual, there is no response at the end of the GSTN. The writ applicant is not allowed to distribute the ISD credit of Rs.20,52,989/- as the same has not been recorded, reported and declared in the GSTR – 6 return.

Mr. Tripathi is right in his submission that the credit is a tax paid by the registered person on input transactions and therefore, the credit of such tax already paid to the credit of the Central Government is a vested right of the person. Such vested right cannot be defeated on account of any irregularity in the system evolved by the Government.

For all the aforegoing reasons, this petition succeeds and is hereby allowed. The respondents are directed to allow the writ applicant to furnish manually the GSTR – 6 return with details of the ISD credit of Rs.20,52,989/- and also permit distribution of such credit to the constituents of the writ applicant. Let this entire exercise be undertaken within a period of six weeks from the date of the receipt of writ of this order.

**15. RVAT: Penalty justified for concealing transactions of sale & purchase to avoid payment of Tax**

Case Name : Assistant Commissioner Vs C.P. Agro Industries (Rajasthan High Court)
Appeal Number : D.B. Sales Tax (VAT) Revision Petition No. 315/2017
Date of Judgement/Order : 14/02/2022

The Tax Board has neither recorded any cogent finding on merits of the case before setting aside the penalty nor it has considered the provisions of section 61 of the RVAT Act, 2003, more particularly, when the fact was proved before all the Authorities that Forms-C submitted by the Assessee were forged and fake to avoid payment of Tax. The penalty was rightly imposed upon the Assessee by the Authorities as he (Assessee) furnished inaccurate particulars and he also concealed the transactions of sale and purchase to avoid the payment of Tax. Therefore, the Assessee is liable to pay penalty u/s 61 of the RVAT Act, 2003.

**16. GST: Subsequent events cannot be utilised to overcome the mandate of pre-deposit for Appeal filing**

Case Name : Nico Tiles Vs State Tax Officer (Kerala High Court)
Appeal Number : WP(C) No. 26301 of 2021
Date of Judgement/Order : 15/02/2022

Once the petitioner undertakes the remedy of a statutory appeal under section 107 of the Act, petitioner cannot thereafter turn around and approach this Court seeking reliance upon subsequent events, to avoid the mandatory pre-deposits. Such a practice, if permitted, would render the provisions of the statute redundant. The liability to make the pre-deposit befalls on the date of filing of the appeal, i.e., 11.03.2020 in the instant case. The said liability cannot be eschewed from reckoning on the basis of subsequent events, which as claimed by the petitioner to be beneficial to it. The subsequent events can, at the most, be utilised for availing the appropriate benefits

while the appeal is considered on merits but not to overcome the mandate of pre-deposit under section 107 of the Act.

## 17. GST: Vehicle owner cannot be foisted with vicarious liability of any mis-declaration/fraud by owner of goods

Case Name : Vijay Mamgain Vs State of Haryana (Punjab and Haryana High Court)
Appeal Number : CWP-1564-2022 (O&M)
Date of Judgement/Order : 15/02/2022

The facts are that in this case an order of penalty and tax was made against the goods but since the same was not paid within 14 days proceedings under Section 130 of the Central Goods and Services Act, 2017 were initiated. At that stage also the owner of the goods did not come forward to pay the tax and penalty or the fine in view of the confiscation. However, the owner of the conveyance i.e. the petitioner went and paid the fine imposed on the vehicle but, since the vehicle was not released he has filed the present writ petition.

Learned State counsel states that a perusal of Sub Section 1 of Section 129 of the Act clearly shows that on detention the goods and the vehicle can only be released on the payment of the applicable tax and penalty and the mere fact that Section 130 of the Act is subsequently invoked would not take away the rigour of Section 129 (1). She has further argued that there is no warrant for the proposition that the owner of the goods and the owner of the conveyance are two separate entities because as per her under the main Sub Section 2 of Section 130 of the Act it is clear that whoever wants the goods or the vehicle to be released has to pay the tax, penalty and fine imposed for all the things i.e. to say for the goods also as well as for the conveyance also. As per her, the proviso would not affect this basic provision.

In CWP No.18392 of 2021 titled as M/s Shiv Enterprises Vs. State of Punjab and others, decided on 04.02.2022 this Court held has held that the principle of vicarious liability can not be extended indefinitely. In the present case also to force the owner of the conveyance to pay the tax, penalty and fine on the goods would mean that the owner of the conveyance is also foisted with the vicarious liability of any mis-declaration/fraud by the owner of the goods despite the proviso engrafted on to Sub Section 2 of Section 130 of the Act.

Consequently, the argument of the learned State counsel is rejected and it is directed that the conveyance be released forthwith. The goods obviously would be confiscated and disposed of by the respondents in accordance with law.

## 18. No payment of fine in lieu of confiscation of goods required where owner of conveyance is seeking only release of vehicle

Case Name : Vijay Mamgain Vs State of Haryana & ors. (Punjab & Haryana High Court) Appeal Number : CWP-1564-2022 (O&M)
Date of Judgement/Order : 15/02/2022

Brief Facts:
In the present case, goods and conveyance were confiscated by the Tax Authorities during transit as the tax against these goods was not paid. Proceedings under Section 130 were initiated for the reason that the fine and penalty was not paid for 14 days. The owner of the goods did not come forward to pay the fine and penalty, but the owner of the conveyance paid the required fine in relation the conveyance. Even after the payment of fine by the owner of the conveyance, the authorities refused to release the conveyance on the ground that fine in lieu of confiscation of goods be also paid. Hence the present writ petition was filed by the owner of the conveyance.

Issue:
Whether the conveyance detained by the GST Authorities can be released on payment of the fine imposed on the conveyance without payment of fine imposed on goods?

Observations:
A Bench comprising of Justice Ajay Tewari and Justice Pankaj Jain heard the submissions of Advocate Sandeep Goyal, appearing on behalf of Petitioner. On hearing the contentions of both the sides, the Hon'ble Bench rejected the arguments of the state counsel, where they contended that the goods and the conveyance can only be released on payment of fine and penalty for all items detained as under Section 130(2) of the CGST Act. The Hon'ble Bench stated that if such a contention is accepted the Section itself would be termed unconstitutional. It was held that as the owner of the conveyance and the owner of the goods were different, the owner of the conveyance cannot be considered vicariously liable for the fine and penalty levied on the goods. The owner of the conveyance cannot be forced to pay the fine and penalty levied on the goods and hence the conveyance cannot be detained after the payment of such fine and penalty levied on the conveyance.

The Petition was allowed, and the conveyance was directed to be released.

## 19. Taxpayer cannot be deprived of ITC for technical glitch in portal

Case Name : Ezzy Electricals Vs State of Gujarat (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 13091 of 2020
Date of Judgement/Order : 16/02/2022

HC held that if the writ applicant is otherwise entitled to claim the Input Tax Credit under Section 18(1)(c) of the Act, a technical glitch in the portal should not deprive him of such a claim. It was within the capacity of the department itself to resolve the controversy and see to it that the needful is done.

## 20. GST: Interest cannot be recovered without initiation & completion of adjudication proceedings

Case Name : R.K. Transport Private Limited Vs Union of India (Jharkhand High Court)
Appeal Number : W.P.(T) No. 1404 of 2020
Date of Judgement/Order : 16/02/2022

The issue at hand is whether interest liability under Section 50 of the CGST Act can be determined without initiating any adjudication proceeding either under Section 73 or 74 of the CGST Act in the event the assesse disputes its liability towards interest. It is not in dispute that no such proceeding has been initiated in the case of the petitioner, though the liability has been disputed by the petitioner by way of a reply to the notice of recovery under Section 79 of the CGST Act, 2017.

The issue as on date stands answered by the decision rendered by the Coordinate Bench of this Court of which one of us (Deepak Roshan, J.) was a Member. The learned court has also answered the issue whether recovery proceedings under Section 79 of the CGST Act can be initiated for recovery of interest under Section 50 of the Act without initiation and completion of the adjudication proceedings under the Act at para-22 of the judgment which is quoted hereunder :-

“22. The next issue for adjudication in the instant writ application is as to whether garnishee proceedings under Section 79 of the CGST Act can be initiated for recovery of interest without adjudicating the liability of interest, when the same is admittedly disputed by the assesse. Section 79 of the CGST Act empowers the authorities to initiate garnishee proceedings for recovery of tax where “any amount payable by a person to the Government under any of the provisions of the Act and Rules made thereunder is not paid”. Since in the preceding paragraphs of our Judgment, we have already held that though the liability of interest is automatic, but the same is required to be adjudicated in the event an assesse disputes the computation or very leviability of interest, by initiation of adjudication proceedings under Section 73 or 74 of the CGST Act, in our opinion, till such adjudication is completed by the Proper Officer, the amount of interest cannot be termed as an amount payable under the Act or the Rules. Thus, without initiation of any adjudication proceedings, no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount.

While quashing the impugned order and the garnishee notices, liberty was left to the respondent authorities to initiate appropriate adjudication proceedings either under Section 73 or 74 of the CGST Act against the petitioner-assessee and determine the liability of interest, if any, in accordance with law after giving due opportunity of hearing to the petitioner.

Without initiating any adjudication proceedings under Section 73 or 74 of the CGST Act, 2017, the amount of interest cannot be termed as an amount payable under the Act or the Rules and no recovery proceeding under Section 79 of the Act can be initiated for recovery of the interest amount – the writ petition is allowed.

## 21. HC explains Rule 89(4) & 4(B) to determine quantum of ITC availed for GST refund

Case Name : Messers Filatex India Ltd. Vs Union of India (Gujarat High Court)
Appeal Number : R/Special Civil Application No. 13491 of 2021
Date of Judgement/Order : 18/02/2022

The short point for our consideration as on date is whether the assertion on the part of the writ applicant that it is entitled to claim the refund in accordance with the formula as provided under Sub Rule (4) of Rule 89 of the Rules is correct? To put it in other words, whether it is Sub Rule (4B) of Rule 89 which should be made applicable for the purpose of determining the claim so far as the refund is concerned? Mr. Dave vehemently submitted that in fact, if there is any formula which could be said to have been provided for the purpose of adjudicating the claim, the same is to be found in Sub Rule (4) of Rule 89, as Sub Rule (4B) of Rule 89 does not provide for any formula. However, Mr. Dave invited the attention of this Court to the stance of the Commissioner, as reflected in the affidavit-in-reply filed on behalf of the respondents. We take notice of the fact that Shri Manoj Kumar Srivastava, Principal Commissioner of Central Goods and Service Tax and Central Excise, Vadodara – II has affirmed the reply.

The stance of the Principal Commissioner is that it is not correct on the part of the writ applicants to say that if Sub Rule (4B) of Rule 89 is to be applied, then it is difficult for the writ applicants to establish the quantum of ITC availed in respect of inputs or input services to the extent used in exporting the goods. According to Mr. Dave, the Principal Commissioner, in its reply, has himself provided a workable formula. In such circumstances, according to Mr. Dave, there need not be any debate now whether the Sub Rule (4) or Sub Rule (4B) of Rule 89 would apply. In the reply, the Principal Commissioner has stated that each and every manufacturer / exporter is believed to be aware of the input / output ratio of the inputs / raw materials used in such manufacturing of the exported goods and the ITC availed against such input supplies received. According to the Principal Commissioner, it is difficult to believe that the manufacturer would not be aware, otherwise the manufacturer would not be in a position to arrive at the costing of the finished goods. Mr. Dave would submit that if the input / output ratio of the inputs / raw materials is to be looked into, then it is feasible for the writ applicants to determine its claim and seek appropriate refund. As noted above, the Joint Commissioner (Appeals), although took the view that Sub Rule (4B) of Rule 89 of the Rules would apply, yet it thought fit to remit the matter so that the claim can be determined accordingly. Mr. Dave would submit that now since the principle of input / output ratio is to be applied for the purpose of determining the amount to be refunded, a fresh exercise will have to be undertaken by the Assistant Commissioner.

In view of the aforesaid, it is not even necessary for us to now quash and set aside the order passed by the Joint Commissioner (Appeals), as, in fact, the matter should go back to the Assistant Commissioner for the purpose of determination of the refund claim in accordance with the principle / formula, as provided and explained in the reply. But, at the same time, it would be necessary for us to quash and set aside the order passed by the Joint Commissioner dated 19th July 2021. This writ application succeeds in part. The impugned order dated 19th July 2019 passed by the Joint Commissioner, CGST and Central Excise, Vadodara – II referred to above is hereby quashed and set aside. The Assistant Commissioner shall now proceed further in accordance with the directions issued by the Joint Commissioner (Appeals) vide the order dated 13th July 2020 and adjudicate the claim of the writ applicants in accordance with Sub Rule (4B) of Rule 89 of the CGST Rules, but keeping in mind the

formula of input / output ratio of the inputs / raw materials used in the manufacturing of the exported goods. In other words, keeping in mind what has been stated by the Principal Commissioner in his affidavit-in-reply filed in the present litigation, more particularly, in accordance with the averments made in para 7.2, which is at page 288 of the paper book. Let this entire exercise be undertaken at the earliest and the claim shall be determined and paid accordingly to the writ applicants within a period of eight weeks from the date of receipt of the writ of this order.

## 22. Fake ITC: Bail cannot be refused as indirect method of punishing accused person before conviction

Case Name : Smruti Ranjan Mohanty Vs State of Odisha (Orissa High Court)
Appeal Number : Blapl No.776 of 2021
Date of Judgement/Order : 18/02/2022

Bail cannot be refused as an indirect method of punishing the accused person before he is convicted. Furthermore, it has to be borne in mind that there is as such no justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. It cannot, therefore, be said that bail should invariably be refused in cases involving serious economic offences. It is not in the interest of justice that the Petitioners should be in jail for an indefinite period. No doubt, the offence alleged against the Petitioners is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, however, should not deter this Court from enlarging the Petitioners on bail when there is no serious contention of the Respondent that the Petitioners, if released on bail, would interfere with the trial or tamper with evidence.

9. Having regard to the entire facts and circumstances of the case, especially the fact that both the bread earning sons of a family have been in custody for over a year now I do not find any justification for detaining the Petitioners in custody for any longer. As a side note it observed that more and more such cases are brought to the fore where the mere pawns who have been used as a part of larger conspiracy of tax fraud have been brought under the dragnet by the prosecution. It is perhaps time that the prosecution will do well to follow the trail upstream and bring the “upstream” parties who are the ultimate beneficiaries who are the gainers in these evil machinations.

In view of the above discussion, it is directed that the Petitioners in both the BLAPLs be released on bail by the court in seisin over the matter in the aforesaid case on such terms and conditions as deemed fit and proper by him/ her with the following conditions:
(i) The Petitioners shall co-operate with the trial and shall not seek unnecessary adjournments on frivolous grounds to protract the trial;
(ii) The Petitioners shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing truth before the Court;
(iii) In case of their involvement in any other criminal activities or breach of any other aforesaid conditions, the bail granted in this case may also be cancelled.

(iv) The Petitioners shall submit their passports, if any, before the learned trial court and shall not leave India without prior permission of this Court.
(v) Any involvement in similar offences of under the GST Act will entail cancellation of the bail.

## 23. HC allows Refund of IGST lying in Electronic Credit Ledger

Case Name : IPCA Laboratories Ltd. Vs Commissioner (Gujarat High Court)
Appeal Number : Special Civil Application No. 638 of 2021
Date of Judgement/Order : 18/02/2022

The issue raised in the present writ application is no longer res integra in view of the judgement and order passed by this Court dated 11th March 2020 in the case of M/s. Britannia Industries Limited vs. Union of India [Special Civil Application No.15473 of 2019].We take notice of the fact that M/s. Britannia Industries Limited (supra) is based on M/s. Amit Cotton Industries vs. Principal Commissioner of Customs [Special Civil Application No.20126 of 2018 decided on 27th June 2019].

In view of the aforesaid, the writ applicant could be said to be entitled to claim the refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as Input Tax Credit is distributed by the input service distributor.

## 24. Bombay HC directs GST Department to issue Norms for Issuance of Summons during Investigations

Case Name : Shalaka Infra-Tech India Pvt. Ltd. Vs The Union of India (Bombay High Court)
Appeal Number : Writ Petition No.1745 of 2022
Date of Judgement/Order : 21/02/2022

The Division Bench of Justice R D Dhanuka and Justice S M Modak of the Bombay High Court has expressed its concern over the allegations made by several assessees in various petitions about the repeated summons issued by the GST authorities for the purpose of harassment, coercion and recovery of substantial amounts during the stage of investigation itself without issuance of a show cause notice.

The High Court was hearing a writ petition seeking directions to restrain the GST authorities for taking coercive action for recovery of money during the investigations. The Petitioners, represented by Advocates Vinay Shraff and Nikhil Rungta, argued that despite fully participating in the investigation proceedings, the GST department was repeatedly issuing summons so as to coerce it into making payment of disputed amount of tax in contravention of the mandate of law which provides for issuance of show cause notice.

In the above background, the High Court passed an order directing the GST department to issue norms as to how many times, such summons can be issued against the assessees and for what purpose. The High Court also directed that a copy

of this order be forwarded to the Additional Director General, Directorate General of GST Investigation, Pune to look in the matter of the Petitioner personally.

As regards the Petitioner's plea, the High Court ordered the GST department to give 7 (seven) days clear notice in case it proposes to adopt coercive steps for recovery of any amount, in which event the Petitioner would be at liberty to approach to apply for interim relief.

## 25. Application of Doctrine of Necessity in Quasi Judicial Cases – Refund of Service tax in GST Regime

Case Name : Ganges International Private Ltd. Vs Assistant Commissioner of GST & Central Excise (Madras High Court)
Appeal Number : W.P. Nos. 528, 1092 & 1160 of 2019
Date of Judgement/Order : 22/02/2022

The Honorable Madras High Court allowed Credit of Service Tax Paid under RCM which could not be availed as Transitional Credit under GST following the Principle of Doctrine of Necessity.

In a very important and path-breaking judgment, on the matter relating to Refund of taxes paid, the Honorable Madras High Court has allowed the Credit of Service Tax Paid under Reverse Charge Mechanism which could not be availed as Transitional Credit under the GST regime in the case of Ganges International Private Ltd & others* vs Asst Commissioner of GST & C.Ex., Puducherry under Writ Petition No: W.P.Nos.528, 1092 & 1160 of 2019.

The brief litigation involved in this case is that the petitioners (1) Ganges International Private Ltd, (2) SRC Projects Private Ltd and (3) Supreme Petrochemicals Ltd, ("The Petitioners") were engaged in providing various construction services to Government/Private parties and were registered under the erstwhile Service Tax Provisions with the Department and were holding Service tax Registration. From 01.07.2017 as the GST regime has come into effect, "The Petitioners" were migrated into the GST regime from that date. They had filed the last service tax return (Form ST3) in the erstwhile regime for the quarter from April to June 2017 on 15.08.2017. However, they had paid the due service tax in one case only on 30.12.2017 as it had attracted levy under Reverse Charge Mechanism, belatedly though, after the due date for filing GST-Tran-1 application had lapsed on 27-12-2017. Having paid the tax under the GST regime, the Service tax paid could not be taken as CENVAT Credit at the material time as the said provisions were rescinded.

In order to get the benefit of the said amount, as, service tax paid, on Reverse Charge Mechanism (RCM) which, is purely an input tax, credit could not be taken by the petitioner under erstwhile Cenvat Credit Rules, 2004 nor under GST regime directly. Therefore, they had made an application for a refund of the tax so paid, of course within the time limit prescribed by the existing law with the Department. The said application seeking a refund was rejected on the ground that though "The Petitioners" are eligible for taking Cenvat credit of the amount so paid under CENVAT Credit Rules

2004, there was no provision in the new regime (GST) to allow as an input tax credit (ITC) in Electronic cash ledger. The eligibility of the petitioners otherwise to claim the Cenvat Credit under normal circumstances under the erstwhile law prior to 30.06.2017 is not in much dispute. However, it is the vehement contention on the part of the Department was that what are all the eligible Taxes for which, credit can be taken by the petitioners during the transitional period was to be taken by the petitioners as on 30.06.2017 and thereafter the ensuing payments made shall not form part of the credit accrued on 30.06.2017. Therefore, the subsequent amount paid cannot be treated as an input tax credit for the purpose of making the claim in the transitional period even for carrying forward the same to the electronic credit ledger under the GST regime, leave alone Cash refunds.

In the absence of any specific provision, such kind of refund made by "The Petitioners" under the pretext of the subject of Transitional Credit, refund of the input tax credit cannot be considered and therefore, the claim was held untenable, and accordingly, it was rejected by the proper officer. Further, pointing out a reason, it was argued for the department that, under the Cenvat Credit Rules 2004 since the petitioners become eligible to claim the credit and if the credit is accrued in the account of the petitioners only as of 30.06.2017, certainly, the petitioners could have made a claim under 140(1) of the Act by making a GST TRAN-1 application. However, since the service tax itself was paid only after 01.07.2017 and it was paid only after 27.12.2017, the chance of making an application in GST TRAN-1 under Section 140(1) of the GST Act 2017 could not have been possible for "The Petitioners" in view of the legislative circumstances. The refund application ultimately stood rejected.

Aggrieved by the said order, a writ petition was filed in the Honorable Madras High Court by "The Petitioners". While allowing the petition, a Single Judge bench observed that "in these kinds of special situations, for which, the provision if not Section 142(3), no other eligible provision is available. The provisions of Section 142(3) of the CGST Act, 2017 reads thus:-

Section 142 (3) Every claim for refund filed by any person before, on, or after the appointed day, for a refund of any amount of CENVAT credit, duty, tax, interest, or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

It was argued that the existing law is nothing but the law which was prevailing prior to 01.07.2017 before the introduction of GST. Here in the case on hand, under the Cenvat Credit Rules, 2004, if the petitioners are eligible to claim credit, the petitioners would also be eligible to make an application for a refund under sub-section (3) of Section 142 of CGST Act 2017. The kind of application under Section 140(1) cannot be made in these cases, because, the condition imposed under Section 140(1) is that, the registered person opting to pay tax shall be entitled to eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day (i.e., 30-06-2017). This could not happen. In fact, if those opening

is not made available to the persons like the one in the present situation who are placed in a peculiar situation, where, they could not make an application under Section 140 (1) of CGST Act 2017by way of GST TRAN-1. Those assessees or applicants have to be necessarily dealt with under Section 142(3) of the Act alone. This kind of situation is necessarily to be met with by the Legislation, for which, these transitional provision has been brought in, in the Statute Book, there can be no impediment for invoking Section 142(3) of the Act by invoking the 'Doctrine of Necessity.
The "Doctrine of Necessity" has been best explained in (1996) 4 SCC 104, Election Commission of India and another Vs. Dr. Subramaniam Swamy and another and also in (2006) 3 SCC 276 in State of U.P. Vs. Sheo Shanker Lal Srivastava and others. The term Doctrine of Necessity is a term used to describe the basis on which administrative actions by the administrative authority, which are designed to restore order, are found to be constitutional.

The Court also held in this case that, "normally, the theory of "Doctrine of Necessity" could be invoked when there is a dire necessity with regard to the forum, before whom, the issue has to be referred to and disposed and decided by such forum. Earlier the view was that it would apply only to judicial matters but in the case of Mohapatra and Company and another Vs. The state of Orissa and another, it was held that "the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters". While relying on many case laws, the honorable Court also added that The "Doctrine of Necessity" though would be applied only with regard to the forum or the authority by whom it shall be decided, here, since it is a transitional period from the erstwhile tax regime to the present GST regime, where, the available provisions are to be best utilized by the taxpayers, it becomes imperative in order to meet the special situation like the one discussed above, to have a forum, for which, the available legal provision of the Act viz., GST Act, 2017 can very well be invoked. Therefore, though normally the "Doctrine of Necessity" would only be invoked for want of forum, here in the case, it also can be construed that, if Section 142(3) is not permitted to be invoked in meeting situations like this, that situation would render that taxpayer remediless, hence, here the "Doctrine of Necessity" can be invoked, in the interest of justice to the "The Petitioners" opined of the Court.

The Court having convinced itself of invoking the Doctrine of Necessity also directed the GST Department to pass the necessary orders within a period of six weeks from the date of receipt of a copy of this order following the principles of Natural Justice, where the petitioners can put forth their case by providing all necessary inputs to the satisfaction of the authorities to take a decision in the right direction.

## 26. GST: Provisional attachment ceased to be effective upon completion of period of one year

Case Name : B. r. Consturction Company Vs Additional Director (Rajasthan High Court, Jaipur)
Appeal Number : D.B. Civil Writ Petition No. 2086/2021
Date of Judgement/Order : 22/02/2022

The petitioner's bank account was placed under provisional attachment by an order dated 03.12.2020 in exercise of powers under Section 83 of the Central Goods and Services Tax Act for short 'CGST Act') by the respondents. Learned counsel for the petitioner pointed out that in terms of sub-section (2) of Section 83 such provisional attachment cannot survive beyond a period of one year.

Section 83 of the CGST Act pertains to provisional attachment to protect the revenue in certain cases. In sub-section (1) of Section 83 the commissioner is empowered to order provisional attachment of the property of the assessee including bank account where proceedings under Chapters XII, XIV and XV are pending and the commissioner is of the opinion that for the purpose of protecting the interest of government revenue it is necessary so to do. Sub-section (2) of Section 83 provides that every such provisional attachment shall cease to have effect after expiry of period of one year from the date of order made under sub-section (1). The powers of provisional attachment and its inherent limitations in the nature of safeguards have been discussed at length in a recent judgment of the Supreme Court dated 20.04.2021 in Civil Appeal No.1155/2021- M/s Radha Krishan Industries Vs. State of Himachal Pradesh and Ors. Additionally we also find that the CBIC's circular dated 23.02.2021 has also clarified that every provisional attachment shall cease to have effect after expiry of period of one year from the date of attachment order.

In the present case the order of attachment was passed more than a year back and would therefore be ceased to be effective upon completion of period of one year.

By way of interim relief therefore it is provided that the provisional attachment order stands stayed.

Leave to join the concerned adjudicating officer at Udaipur as additional respondent is granted, as prayed for. Amendment in the cause title be made within a period of one week. Thereupon notice shall be issued to the newly added respondent, returnable on 22.03.2022.

For considering rest of the prayers of the petitioner list the matter on 22.03.2022.

## 27. Sales Tax dues of Company cannot be recovered from directors

Case Name : Nehal Ashwinkumar Shah Vs State of Gujarat (Gujarat High Court)
Appeal Number : Special Civil Application No. 3032 of 2022
Date of Judgement/Order : 23/02/2022

Gujarat High Court held that unlike Section 179 of the Income Tax Act, 1961, there is no provision in the Sales Tax Act fastening the liability of the company to pay its sales tax dues on its Director.

It further held that The attachment on the bank account of the writ applicant is hereby ordered to be lifted. The bank shall permit the writ applicant to operate the bank account. It is needless to clarify that the dues which are payable by the company shall remain pending and it shall be open for the department to take appropriate steps

against the company in accordance with law for the purpose of recovering its dues.

## 28. Entitlement To Refund Rests With Those Who Bear Ultimate Burden of Tax Under Central Sales Tax Act: Gujarat High Court

Case Name : Saint-Gobain India Private Limited Vs Union of India (Gujarat High Court)
Appeal Number : Special Civil Application No. 1481 of 2022
Date of Judgement/Order : 24/02/2022

It appears from the materials on record that the writ applicant is seeking direction to the respondents to forthwith grant the refund of the amount of Rs.2,30,11,188/- collected from the writ applicant by the seller of natural gas and deposited with the respondent authorities under the Central Sales Tax Act, 1956 (for short 'the CST Act').

It appears that despite the fact that natural gas continued to come within the ambit of the CST Act, after 1.7.2017, the authorities in the State of Rajasthan refused to issue "C" Form declarations of purchase of natural gas at concessional rate on the ground that after introduction of the GST regime, the registration certificates of the dealers such as the writ applicant, automatically stood cancelled and they were not eligible for making purchases of natural gas against C form declarations. In view of such stand taken by the authorities of the State of Rajasthan, the seller – Indian Oil Corporation Limited started raising invoice charging full tax @ 20% on sales of natural gas to the writ applicant. Since the authorities of the State of Rajasthan were not heeding to the request of the writ applicant as well as other similarly situated dealers, the writ applicant approached the Rajasthan High Court seeking a direction to the authorities of Rajasthan under the CST Act to issue C form declarations in respect of the natural gas required for use in the manufacturing of glass and consequential relief for the tax deposited at higher rate in the absence of C form being issued by the authorities of the State of Rajasthan. The Rajasthan High Court passed appropriate orders directing the CST Authorities at Rajasthan to issue "C" Form declarations in respect of the transactions in question. The respondents herein do not dispute the fact that against the "C" Form declarations, the tax collected from the writ applicant herein and deposited by the IOCL is required to be refunded. However, the stance of the respondents herein is that such refund can be made to the seller, i.e. the IOCL after its assessment for the period in question and not to the writ applicant who is not registered as the dealer in the State of Gujarat.

HC held that The burden of paying the amount in question was transferred by the respondents to the purchasers and, therefore, they were not entitled to get a refund. Only the persons on whom lay the ultimate burden to pay the amount would be entitled to get a refund of the same. The amount deposited towards the Fund was to be utilised for the development of sugarcane. If it is not possible to identify the persons on whom had the burden been placed for payment towards the Fund, the amount of the Fund can be utilised by the Government for the purpose for which the Fund Was created, namely, development of sugarcane. There is no question of refunding the amount to the respondents who had not eventually paid the amount towards the Fund. Doing so would virtually amount to allow the respondents unjust enrichment.

## 29. Denial of writ challenging denial of input tax credit for locus standi by HC not justified: SC

Case Name : Tata Steel Ltd. Vs The State of Jharkhand (Supreme Court of India)
Appeal Number : Civil Appeal No(S). 7398 of 2008
Date of Judgement/Order : 24/02/2022

During the course of hearing of this appeal, the learned senior counsel agree that the reasoning given by the High Court in the impugned judgment on the locus standi of the appellant is not justified and correct.

The appellant is a registered company, albeit for taxation purposes the units at Naomundi and Jamshedpur have been treated as separate assessees under the Jharkhand Value Added Tax Act, 2005. Thus, the writ petition preferred by Tata Steel Ltd., which is a juristic person, could not have been dismissed as not maintainable when it had challenged the denial of input tax credit to the unit at Naomundi, in respect of the purchases made and utilised in the said unit.

## 30. Writ against SCN not maintainable if no objection was filed against the same

Case Name : Sri Rajendra Narayan Mohanty Vs CT & GSTCuttack-1 East Circle(Orissa High Court)
Appeal Number : W.P (C). No. 5332 of 2022
Date of Judgement/Order : 24/02/2022

Since the Petitioner has come up before this Court without raising any objection or filing any reply to the said Show Cause Notice, we are not inclined to entertain the writ petition at this stage. The contentions of the Petitioner are in the nature of disputed fact which requires adjudication of fact on the basis of documents available in record and evidence to be adduced by the Petitioner during the course of adjudication process before the Proper Officer.

Entertaining writ petition is not proper when alternative remedy under statute is available. The Hon'ble Court in the said judgment therefore observed that the Respondents therein ought to have responded to the Show Cause Notice by placing material in support of their stand but at the same time, there was no reason to approach the High Court questioning the very Show Cause Notices.

During the course of hearing, the Petitioner admitted that though he had adjusted its tax liability against input tax credit available in the electronic credit ledger, he has not paid interest against such delayed adjustment/payment. We are of the view that disputed facts arising in the matter are required to be adjudicated by the Proper Officer. The Petitioner is at liberty to file his Show Cause reply and raise objections including jurisdictional issue.

Counsel for the Petitioner submits that the period allowed for filing Show Cause reply has been elapsed during the pendency of this writ petition. It is, therefore, directed that the Petitioner is at liberty to file its reply/objection before the Proper Officer within a

period of 15 days hence. It is open to the Proper Officer to deal with each objection and pass reasoned order therefor.

## 31. GST: HC directs Commissioner to furnish reasons for Provisional Attachment

Case Name : Originative Trading Private Limited Vs Union of India (Bombay High Court)
Appeal Number : Writ Petition No. 3786 Of 2021
Date of Judgement/Order : 28/02/2022

The question that arises for the consideration of this Court is whether the remedy of the petitioner to lodge his objection to the order of provisional attachment under section 83 read with Rule 159(1) of the CGST Rules can be effectively exercised without communication of the opinion of the Commissioner atleast at that stage or not.

A perusal of the scheme of section 83 of CGST Act and Rule 159 clearly indicate that the remedy provided to an assessee to lodge the objection can be exercised effectively only if the petitioner knows the reasons or opinion prima facie formed by the Commissioner before exercising the power under section 83 of the CGST Act read with Rule 159(1) to enable the petitioner to record the objections to the prima facie opinion formed by the Commissioner. Unless such prima facie opinion atleast at this stage is communicated to the petitioner, the petitioner would not be able to lodge the objection and to canvass that the prima facie opinion formed by the Commissioner was not in accordance with section 83 read with Rule 159(1) and there was no threat of loss of revenue to the respondents.

Insofar as the judgment of the Supreme Court in case of Bachhittar Singh (supra) relied upon by the learned counsel for the petitioner is concerned, a perusal of the said judgment indicates that the order passed in the said judgment has dealt with the order passed by the Commissioner in file and was not communicated to the petitioner. The question arose in that matter whether such order which remained in file and not having been communicated to the petitioner could be termed as an enforceable order or not. In that context the Hon'ble Supreme Court held that merely because the opinion is formed and the order is passed which remains on file without communication of such order or opinion would not partake the character an enforceable order. If the party against whom such an order is passed remains on file, the aggrieved party will not come to know about such order and would not have remedy to challenge such order. In our view, the said judgment would not advance the case of the petitioner. We have perused the provisions of section 83 read with Rule 159(1). In our view, the petitioner would be entitled to the copy of the opinion formed by the Commissioner before filing an objection.

Insofar as the objection raised by the learned counsel for the respondent that the petitioner ought to have filed an appeal against the order of provisional attachment and this petition is not maintainable on that ground is concerned, in view of the fact that the petitioner has impugned the validity of the circular issued by the respondents, the same cannot be challenged before the Appellate Authority. We are thus not

inclined to reject the writ petition on the ground of an alternate remedy available to the petitioner under the provisions of CGST Act.

We accordingly pass the following order :-

(a) The respondent no.4 is directed to furnish a certified copy of the opinion/reasons formed by the Commissioner under section 83 of the CGST Act read with Rule 159 of the CGST Rules under clause 3.1.4 of the circular dated 23rd February, 2021 to the petitioner within one week from today. The petitioner is allowed to raise objection to the prima facie opinion formed by the Commissioner within one week from the date of respondent no.4 furnishing such copy of the opinion to the effect that the property attached was not liable of the petitioner.

(b) The respondent no.4 shall grant an opportunity of being heard to the petitioner before passing the final order. If the respondent no.4 is satisfied that the bank accounts of the petitioner were no longer liable for attachment, shall withdraw the provisional attachment by issuing an order in FORM GST DRC-23 and if not satisfied, may reject such

(c) This exercise shall be done within two weeks from the date of filing objection. The order that would be passed by the respondent no.4 shall be communicated to the petitioner within one week from the date of passing order.

(d) If the order is adverse against the petitioner, the petitioner would be at liberty to file appropriate proceedings.

(e) Writ petition is dismissed with aforesaid directions. Rule is discharged. No order as to costs. The parties to act on the authenticated copy of this order.